

SUBJECT: Establishing search warrant procedures for certain location information

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 9 ayes — White, Bowers, Goodwin, Harless, Hefner, E. Morales, Patterson, Schaefer, Tinderholt

0 nays

SENATE VOTE: On final passage, April 29 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — M. Paige Williams, for Dallas County Criminal District Attorney John Creuzot; (*Registered, but did not testify*: Chris Jones, Combined Law Enforcement Associations of Texas; Jessica Anderson, Houston Police Department; Thomas Parkinson)

Against — None

On — Steven McCraw and Matt Hicks, Texas Department of Public Safety

BACKGROUND: Concerns have been raised that some companies are claiming that existing law governing search warrants does not require them to disclose certain electronic location information and that this can impact law enforcement efforts, especially in emergency situations. Some have proposed revising provisions on search warrants to specifically allow location information to be disclosed, if certain criteria are met, to law enforcement agencies.

DIGEST: CSSB 112 would establish provisions governing search warrants for the disclosure of certain location information held in electronic storage.

"Location information" would be defined to mean data, records, or other information that was created by or accessible to a provider of an electronic communications service or a provider of a remote computing service and may be used to identify the geographic physical location of a

communication device, including the current, real-time, or prospective geographic physical location of a communication device.

Warrant for location information. Under the bill, a warrant would be required to obtain the disclosure of location information that was held in electronic storage by a provider of an electronic communications service or a remote computing service and that was created after the issuance of the warrant. Such warrants would be subject to current statutory provisions for executing warrants, compliance with warrants, and the authentication of records that govern warrants for access to stored communications and stored customer data.

Applications for the warrants could be filed only by a prosecutor or a prosecutor's assistant with jurisdiction in a county within a judicial district with the headquarters of the office of the prosecutor or law enforcement agency filing the applications for the warrant or proposing to execute the order. The application would have to be supported by a sworn affidavit with substantial facts establishing probable cause.

Applications would have to be filed with a district judge in the applicable judicial district on the prosecutor's or assistant's own motion or the request of an authorized peace officer of a designated law enforcement office or agency or an authorized peace officer commissioned by the Department of Public Safety (DPS).

Issuance of a warrant. District judges would be authorized to issue a warrant to obtain the disclosure of location information regardless of whether the information was held at a location in Texas or another state.

Judges could not issue a warrant unless the sworn affidavit provided sufficient and substantial facts to establish probable cause that:

- the disclosure of the location information would produce evidence of an offense under investigation or result in the apprehension of a fugitive from justice; and
- the location information sought was held in electronic storage in

the possession, care, custody, or control of the service provider that was served the warrant.

Warrants would be valid for up to 60 days after being issued, unless the courts granted an extension. Courts would have to order the warrant and its application to be sealed and could not unseal them until after the warrant expired.

Emergency disclosure of location information. An authorized peace officer of a designated law enforcement office or agency or an authorized peace officer commissioned by DPS could, without a warrant, require the disclosure of location information if:

- the officer reasonably believed an immediate life-threatening situation existed and required the disclosure of the location information before a warrant could, with due diligence, be obtained; and
- there were sufficient grounds under the bill's provisions to obtain a warrant requiring the disclosure of the location information.

Within 48 hours of requiring disclosure of location information without a warrant, the officer would have to obtain a warrant.

Prohibition on admitting certain evidence. The bill would prohibit the state from using as evidence in a criminal proceeding any information obtained through the required disclosure of location information unless a warrant was obtained before requiring the disclosure, if a warrant had been obtained under the emergency provisions in the bill, the officer later obtained the warrant.

Other provisions. The bill would raise the burden of proof from a reasonable suspicion to probable cause for the facts and circumstances that had to be provided in an affidavit from a peace officer requesting a district judge authorize the installation and use of a mobile tracking device. The bill also would revise definitions relating to the installation and use of tracking equipment and access to communications so that the

definition of electronic customer data included location information.

CSSB 112 would revise a requirement that peace officers executing a search warrant return the warrant to the magistrate "forthwith."

The bill would take effect September 1, 2021, and would apply to disclosures of information on or after that date.