

BILL ANALYSIS

Senate Research Center
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H.B. 3363
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Advances in technology and growth in the electronic communications industry over the past decade are unparalleled. Now, even elementary-aged children have cell phones and iPads and it is rare to find an adult of any age—with the possible exception of our eldest seniors—who do not have a mobile phone.

Unfortunately crime and criminal activities have advanced just as quickly and we know offenders look for ways to stay a step ahead of the law. But often they leave electronic footprints that can be used to apprehend the bad actors and also to help save lives. H.B. 3363, if passed into law, can be one of those tools used by law enforcement to help track down those who would flee the law.

Under current state statutes, law enforcement agencies were able to request electronic customer data to assist in locating fugitives. This changed recently when large, well-known electronic communications service providers began either denying or ignoring requests for cell site location information.

H.B. 3363 would provide law enforcement with the ability to obtain location information from electronic devices used by those suspected of committing serious offenses, who are considered felony fugitives, and their attempts to avoid apprehension.

Under H.B. 3363, law enforcement and prosecutors would apply for a search warrant, based on probable cause, to obtain location information from devices used by suspects from electronic communications companies.

H.B. 3363 contains provisions that would allow a law enforcement agency to obtain location information without a warrant in life-threatening situations, but requires the warrant to be obtained within 48 hours. However, the information acquired would be inadmissible in court unless the warrant is obtained.

H.B. 3363 is the companion bill to S.B. 1867 which was not heard.

H.B. 3363 amends current law relating to the issuance and execution of certain search warrants in a criminal investigation and the admissibility of evidence obtained through certain searches.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 18.01(b), Code of Criminal Procedure, to create an exception as otherwise provided by the Code of Criminal Procedure, rather than as provided by Article 18.011 (Sealing of Affidavit), to the provision that the sworn affidavit setting forth facts establishing probable cause becomes public when the related search warrant is executed.

SECTION 2. Amends Article 18.06(a), Code of Criminal Procedure, as follows:

(a) Requires a peace officer to whom a search warrant is delivered to execute the warrant without delay and to return the warrant to the proper magistrate. Deletes existing text relating to the manner and date by which certain search warrants are required to be executed.

SECTION 3. Amends Article 18.07(a), Code of Criminal Procedure, as follows:

(a) Provides that, unless the magistrate directs in the warrant a shorter period for the execution of any search warrant issued under Chapter 18 (Search Warrants), Chapter 18A (Detection, Interception, and Use of Wire, Oral, and Electronic Communications), or Chapter 18B (Installation and Use of Tracking Equipment; Access to Communications), the period allowed for the execution of the warrant, rather than a search warrant, exclusive of the day of its issuance and of the day of its execution, is:

(1) makes no changes to this subdivision;

(2) 10 whole days if the warrant is issued under Article 18B.354 (Warrant Issued in This State: Application and Issuance of Warrant) or Subchapter G-1, Chapter 18B; or

(3) makes no changes to this subdivision.

SECTION 4. Amends Article 18B.001, Code of Criminal Procedure, by amending Subdivision (7) and adding Subdivisions (9-a) and (9-b) to redefine "electronic customer data," and to define "immediate life-threatening situation" and "location information" for purposes of Chapter 18B.

SECTION 5. Amends Chapter 18B, Code of Criminal Procedure, by adding Subchapter G-1, as follows:

SUBCHAPTER G-1. PROSPECTIVE LOCATION INFORMATION

Art. 18B.321. APPLICABILITY. (a) Provides that this subchapter applies only to a warrant described by Article 18B.322 for the required disclosure of location information that is:

(1) held in electronic storage in the possession, care, custody, or control of a provider of an electronic communications service or a provider of a remote computing service; and

(2) created after the issuance of the warrant.

(b) Provides that Articles 18B.355 (Warrant Issued in This State: Execution of Warrant), 18B.356 (Warrant Issued in This State: Compliance With Warrant), and 18B.357 (Warrant Issued in This State: Authentication of Records by Service Provider) apply to a warrant issued under this subchapter in the same manner as those articles apply to a warrant issued under Article 18B.354.

Art. 18B.322. WARRANT REQUIRED FOR CERTAIN LOCATION INFORMATION HELD IN ELECTRONIC STORAGE. (a) Provides that a warrant is required to obtain the disclosure of location information described by Article 18B.321(a) by a provider of an electronic communications service or a provider of a remote computing service.

(b) Authorizes only a prosecutor or a prosecutor's assistant with jurisdiction in a county within a judicial district described by Article 18B.052(4) (relating to the requirement that an application be filed in a judicial district in which certain headquarters are located) to file an application for a warrant under this subchapter. Requires that the application be supported by the sworn affidavit required by Article 18.01(b) (relating to the circumstances in which a search warrant is authorized to be issued).

(c) Requires that the application be filed with a district judge in the applicable judicial district on the prosecutor's or assistant's own motion or on 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 of the State of Texas (DPS).

Art. 18B.323. ISSUANCE OF WARRANT. (a) Authorizes a district judge, on the filing of an application for a warrant under this subchapter, to issue the warrant to obtain the disclosure of location information by a provider described by Article 18B.355(b) (relating to the circumstances in which a warrant issued under 18B.354 is authorized to be issued), regardless of whether the location information is held at a location in this state or another state.

(b) Prohibits a warrant from being issued under this article unless the sworn affidavit required by Article 18.01(b) provides sufficient and substantial facts to establish probable cause that:

(1) the disclosure of the location information sought will produce evidence of an offense under investigation or result in the apprehension of a fugitive from justice; and

(2) the location information sought is held in electronic storage in the possession, care, custody, or control of the service provider on which the warrant is served.

Art. 18B.324. DURATION; SEALING. (a) Provides that a warrant issued under this subchapter is valid for a period not to exceed 60 days after the date the warrant is issued, unless the prosecutor or prosecutor's assistant applies for and obtains an extension of that period from the court before the warrant expires.

(b) Prohibits each extension granted under Subsection (a) from exceeding a period of 60 days.

(c) Requires a district court that issues a warrant under this subchapter to order the warrant and the application for the warrant sealed and prohibits the court from unsealing the warrant and application until after the warrant expires.

Art. 18B.325. EMERGENCY DISCLOSURE. (a) Authorizes an authorized peace officer of a designated law enforcement office or agency or an authorized peace officer commissioned by DPS to, without a warrant, require the disclosure of location information described by Article 18B.321(a) if:

(1) the officer reasonably believes an immediate life-threatening situation exists that is within the officer's territorial jurisdiction and requires the disclosure of the location information before a warrant can, with due diligence, be obtained under this subchapter; and

(2) there are sufficient grounds under this subchapter on which to obtain a warrant requiring the disclosure of the location information.

(b) Requires the authorized peace officer, not later than 48 hours after requiring disclosure of location information without a warrant under Subsection (a), to obtain a warrant for that purpose in accordance with this subchapter.

Art. 18B.326. CERTAIN EVIDENCE NOT ADMISSIBLE. Prohibits the state from using as evidence in a criminal proceeding any information obtained through the required disclosure of location information described by Article 18B.321(a), unless:

(1) a warrant is obtained before requiring the disclosure; or

(2) if the disclosure is required under Article 18B.325 before a warrant can be obtained, the authorized peace officer who required the disclosure obtains a warrant as required by Subsection (b) of that article.

SECTION 6. Repealer: Article 18B.151(a) (relating to the definition of "immediate life-threatening situation"), Code of Criminal Procedure.

SECTION 7. Makes application of Chapter 18B, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 8. Effective date: September 1, 2021.