

BILL ANALYSIS

Senate Research Center

S.B. 112
By: West
Criminal Justice
6/7/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current Texas law under Article 18B.202(c)(5), Code of Criminal Procedure, allows an affidavit to be submitted to the courts for a law enforcement agency to obtain permission to install a mobile tracking device to further a criminal investigation to help prove that an alleged criminal activity has taken place or will take place.

The language of Section(c)(5) now reads that a law enforcement agency must only meet the standard of reasonable suspicion regarding the occurrence of criminal activity for the court to order the installation of a mobile tracking device.

The reasonable suspicion standard is inconsistent with other sections of Chapter 18, Code of Criminal Procedure, on the issuance of search warrants and with federal search warrant requirements that require the probable cause standard to be met by law enforcement for a search warrant to be issued or to permit a device to be installed.

S.B. 112 would amend Article 18B.202(c)(5), Code of Criminal Procedure, to bring state law into conformity with other sections of this code and also with the United States Constitution 4th Amendment protections against unreasonable searches and seizures.

S.B. 112 would apply the probable cause standard to Article 18B.202 of this code to require a peace officer's affidavit to state facts and circumstances related to the case that would lead the officer to believe that criminal activity has been or will be committed to request the installation of a mobile tracking device.

(Original Author's/Sponsor's Statement of Intent)

S.B. 112 amends current law relating to the procedures for the installation and use of tracking equipment and for access to certain communications and location information by law enforcement and the admissibility of certain evidence obtained through those procedures.

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, as follows:

(b) Provides that, except as otherwise provided by this code, rather than except as provided by Article 18.011 (Sealing of Affidavit), the affidavit becomes public information when the search warrant for which the affidavit was presented is executed, and the magistrate's clerk is required to make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

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 requiring that a search warrant issued under Article 18B.354 (Warrant Issued in This State: Application and Issuance of Warrant) be executed in the manner provided by Article 18B.355 (Warrant Issued in This State: Execution of Warrant) not later than the 11th day after the date of issuance. Deletes existing text requiring that a search warrant, in all other cases, be executed within three days from the time of its issuance. Deletes existing text requiring that a 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) be executed within a shorter period if so directed in the warrant by the magistrate.

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, Chapter 18A, or Chapter 18B, the period allowed for the execution of the warrant, exclusive of the day of its issuance and of the day of its execution, is 10 whole days if the warrant is issued under Article 18B.354 or Subchapter G-1, Chapter 18B. Makes nonsubstantive changes.

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 Article 18B.202(c), Code of Criminal Procedure, to require that an affidavit for the use of a mobile tracking device meet certain criteria, including stating the facts and circumstances that provide the applicant with probable cause to believe, rather than provide the applicant with a reasonable suspicion of, certain matters relating to criminal activity.

SECTION 6. 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, 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) Provides that 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 requiring that an application be filed in a judicial district in which is located the headquarters of a certain office or law enforcement agency) is authorized 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).

(c) Requires that the application be filed with a district judge in the applicable judicial district on:

(1) the prosecutor's or assistant's own motion; or

(2) 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 authorizing a warrant to be served only on a provider of an electronic communications service or a remote computing service that is a domestic entity or company or that otherwise does business in this state), 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 will 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) Provides that a district court that issues a warrant under this subchapter is required to order the warrant and the application for the warrant sealed and is prohibited 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 that 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 7. Repealer: Article 18B.151(a) (relating to defining "immediate life-threatening situation"), Code of Criminal Procedure.

SECTION 8. Makes application of Chapter 18B, Code of Criminal Procedure, as amended by this Act prospective.

SECTION 9. Effective date: September 1, 2021.