



OFFICE OF THE DIRECTOR OF POLICE
THE UNIVERSITY OF TEXAS SYSTEM
TRAINING BULLETIN 034
Search Warrants for Prospective Location
Information (Geo-Location)



NOVEMBER 22, 2021

I. Purpose

The 87th session (2021) of the Texas Legislature met and made changes to section 18B of the Texas Code of Criminal Procedure. This section of the code describes the manner for declaring emergencies and the process for tracking live cellular or mobile devices. In the past, prospective location information (live geo-location) could be obtained by a court order. After the most recent changes by the legislature, a search warrant must now be obtained.

Agencies most often rely upon this section of the code during investigations of kidnappings, hostage situations, and sometimes criminal offenses in progress. As with any new statute, the changes in the Code of Criminal Procedure will be subject to interpretation by a local district attorney. Each University of Texas System Police Department should have clear processes established with the specified prosecutor in their respective judicial jurisdictions.

Historical geo-location data can still be obtained with a search warrant, by *any* law enforcement officer approved by a judge and submitted directly by them to the electronic communications service, provider, or carrier.

II. Definitions

A. "Prospective location information" means:

Data, records, or other information that is created by or accessible to a provider of an electronic communication service or a provider of remote computing service and may be used to identify the geographical physical location of the communication device, including the current, real-time, or prospective geographical physical location of the communication device.

B. "Department" means:

The Department of Public Safety of the State of Texas.

C. "Designated law enforcement office or agency" means:

1. A Sheriff's Department of a county with a population of 3.3 million or more
2. A police department in a municipality with a population of 200,000 or more; or
3. The Office of the Inspector General of the Texas Department of Criminal Justice

- D. "Immediate life-threatening situation" means: A hostage, barricade, or other emergency situation in which a person unlawfully and directly:
1. threatens another with death; or
 2. exposes another to a substantial risk of serious bodily injury.
- E. "Prosecutor" means:
A district attorney, criminal district attorney, or county attorney performing the duties of a district attorney, with jurisdiction in the county within an administrative judicial region described by Article 18A.053.

III. Discussion

Previously, sworn law enforcement personnel could request prospective location information (i.e., live geo-location information) with a court order. In situations of exigent or immediate life-threatening situations, an emergency (verbal) order could be obtained with the investigator submitting the probable cause affidavit to justify the release of the information within a specified time set by the statute.

With these new changes under Section 18B, the legislature has limited who can obtain prospective data (live-geo-location). As of September 1, 2021, the legislature established that law enforcement personnel must now obtain a search warrant, as opposed to a court order, for prospective location information. A search warrant application for this specific information can only come from a prosecutor with jurisdiction in a judicial district and must be supported by a sworn affidavit.

The sworn affidavit must provide sufficient and substantial facts to establish probable cause that 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 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.

The application must be filed with a district judge in the applicable judicial district on the prosecutor's own motion; or at the request of an authorized peace officer of a designated law enforcement office or agency, or an authorized peace officer commissioned by the department (Texas Department of Public Safety).

This will require that officers assigned to criminal investigations within the University of Texas System Police, when those investigations require current prospective location information from a carrier, will now be required to contact an authorized peace officer of a designated law enforcement office or agency or an authorized peace officer commissioned by the Texas Department of Public Safety. The primary investigator should provide the following information to the designated law enforcement agency or officer or authorized peace officer from the Texas Department of Public Safety:

- a. An assigned case number for the criminal investigation
- b. Name, badge or identifying employee number for the primary investigator
- c. Telephone contact information for the primary investigator
- d. Email address for primary investigator (as this is normally where the requested information will be forwarded)

- e. Agency address for any potential fees or charges from the carrier or service provider
- f. Probable cause for the search warrant which establishes that 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 that 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.

The officer from the designated law enforcement agency or the Texas Department of Public Safety can now submit the probable cause information to the prosecutor who may file an application for the warrant. (*Code of Criminal Procedure, Art. 18B.322*)

The district judge may accept the application and then issue the warrant allowing the location information to be obtained from a provider regardless of whether the location information is held at a location in this state or another state.

III. Emergency Disclosure

(*Code of Criminal Procedure 18B.325*)

Article 18B.325 provides that an authorized officer of a designated law enforcement office or agency or an authorized peace officer commissioned by the Texas Department of Public Safety may, without a warrant, require the disclosure of location information. An emergency disclosure without a warrant can be made by said officer when, 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. There should also be sufficient grounds on which to obtain a warrant requiring the disclosure of the location information.

The primary/assigned investigator of the University of Texas System Police should be able to provide the target number and service provider (if available) to the designated law enforcement agency or the commissioned officer of the Texas Department of Public Safety. Again, the primary/assigned investigator should provide:

- a. An assigned case number for the criminal investigation
- b. Name, badge or identifying employee number for the primary investigator
- c. Telephone contact information for the primary investigator
- d. Email address for primary/assigned investigator (as this is normally where the requested information will be forwarded)
- e. Agency address for any potential fees or charges from the carrier or service provider
- f. Probable cause for the search warrant which establishes that 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 that 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.
- g. Facts or justification to declare the situation as an immediate life-threatening situation. (A hostage, barricade, or other emergency

situation in which a person unlawfully and directly threatens another with death; or exposes another to a substantial risk of serious bodily injury. (Due to the definition of “immediate life- threatening situation” provided in the statute, some jurisdictions may not consider runaways or suicidal persons as immediate life-threatening situations. Always confer with the district attorney or prosecutor for guidance).

When the subject and/or targeted phone is located, notify the assisting agency by telephone call and email as soon as possible – so that the assisting agency can notify the carrier or service provider to cease the search.

No later than forty-eight (48) hours after requiring the disclosure of location information without a warrant, the authorized peace officer of the designated law enforcement agency should obtain a warrant, through the prosecutor, for the purpose of the disclosure to the applicable district judge.

**Note: Exigent “pings” or exigent requests for prospective location information are generally free, but each agency should be prepared for the potential of incurred costs for extended searches under a non-exigent warrant.*

Warrants issued under the authority of this chapter are sealed and are valid for a period of 60 days. For example, a criminal actor may turn on and off a targeted device to limit detection – therefore, limiting live prospective location information. The district attorney may file for extensions, which may not exceed a period of sixty (60) days. The statute requires that the district court issue these warrants, and applications *sealed* and may not unseal the warrant and application until after the warrant expires.

(See Attachment A for process flow chart.)

Federal agencies, which are not impacted by this new statute, may also be another avenue to obtain prospective location information, depending on the circumstances and nature of the criminal offense being investigated.



Michael J. Heidingsfield
Director of Police

ATTACHMENT A

