

## **BILL ANALYSIS**

H.B. 2263  
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Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Today's cellular phones and smart phones can transmit a user's location to the user's service provider numerous times a day, creating a virtual road map of the user's whereabouts. Interested parties note that while the United States Constitution guarantees the right to be secure against unreasonable searches and seizures, the potential remains in Texas for personal location information to be released by service providers to government agencies without a warrant or a showing of probable cause. Interested parties believe that efforts should be made to ensure that this constitutional right is not outpaced by advancing technology and that protections against unreasonable searches and seizures should be extended to location-tracking data. The goal of H.B. 2263 is to provide for such a solution.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 2263 amends the Code of Criminal Procedure to authorize the issuance of a search warrant to search for and seize location information, defined by the bill as any information that concerns the location of a cellular telephone or other wireless communications device and that is wholly or partly generated by or derived from the operation of the device. The bill removes a requirement that a district court seal an application and order for the installation and use of a pen register, ESN reader, trap and trace device, or similar equipment that combines the function of a pen register and a trap and trace device and instead authorizes the district court to seal such an application and order at the request of the prosecutor or a peace officer. The bill restricts the sealing of the application and order to an initial period not to exceed 180 days and, for circumstances in which good cause is shown, authorizes the court to grant one or more additional one-year periods. The bill requires the court to retain a record of any such application made or order granted and to submit the record to the Department of Public Safety (DPS) in accordance with the bill's provisions. The bill requires the court, with respect to any application that is or becomes subject to disclosure, on a judicial determination that the disclosure of identifying information for a person who is a victim, witness, peace officer, or informant would cause a specified adverse result, to redact the identifying information from the application and from the record of the application retained and submitted to DPS. The bill authorizes the court to permanently seal the application on a showing of clear and convincing evidence that disclosure of identifying personal information would cause an adverse result.

H.B. 2263 authorizes a district judge to issue a warrant for location information provided by the mobile tracking features of a cellular telephone or other wireless communications device and authorizes such a warrant to be issued in the same judicial district as, or in a judicial district that is contiguous to the same judicial district as, the site of either the investigation or the person, vehicle, container, item, or object the movement of which will be tracked by the location information obtained from the wireless communications device. The bill authorizes the warrant to authorize the acquisition of location information obtained from a wireless communications device that, at the time the location information is acquired, is located outside the judicial district but within Texas if the warrant applicant reasonably believes the device to be located within the district at the time the warrant is issued.

H.B. 2263 authorizes the district judge to issue a warrant for location information only on the application of a peace officer that is written, signed, and sworn to or affirmed before the judge and sets out the affidavit's required content. The bill requires the warrant to be executed within a specified time frame by properly serving the warrant on a communication common carrier, an electronic communications service, or a remote computing service; establishes the expiration date for such a warrant; and prohibits location information from being obtained after the expiration date without an extension of the warrant. The bill authorizes a judge to grant an extension for an additional 90-day period on a showing of good cause. The bill authorizes the district court, at the request of a peace officer, to seal an application and warrant for an initial period not to exceed 180 days and, for circumstances in which good cause is shown, authorizes the court to grant one or more additional one-year periods. The bill requires the court to retain a record of any such application made or warrant issued and to submit the record to DPS in accordance with the bill's provisions. The bill requires the court to redact identifying information from an application that is or becomes subject to disclosure and from the record retained and submitted to DPS on a judicial determination that the disclosure of the identifying information for a person who is a victim, witness, peace officer, or informant would cause a specified adverse result. The bill authorizes the court to permanently seal the application on a showing of clear and convincing evidence that disclosure of identifying personal information would cause an adverse result.

H.B. 2263 authorizes location information to be obtained from a wireless communications device without a warrant by a private entity or a peace officer if the device is reported stolen by the owner or by a peace officer if there exists an immediate life-threatening situation or if the officer reasonably believes the device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense. The bill authorizes a peace officer to apply for, and a district court to issue, an order authorizing the officer to obtain location information from a wireless communications device on the officer's showing that there are reasonable grounds to believe that the device is in such a fugitive's possession. The bill requires a peace officer, regardless of whether an order has been issued with respect to such reasonable grounds, to apply for a warrant to obtain location information from a wireless communications device believed to be in such a fugitive's possession or if there exists an immediate life-threatening situation as soon as practicable and makes any evidence obtained inadmissible in a criminal action if a district judge finds that such a situation did not occur and declines to issue the warrant.

H.B. 2263 includes a remote computing service among the entities to which certain law enforcement and criminal justice officials are authorized to issue an administrative subpoena to compel the production of certain business records. The bill authorizes a district court, on application by the director of DPS, the inspector general of the Texas Department of Criminal Justice, or the sheriff or chief of a law enforcement agency, or those persons' designees, to issue a search warrant to a communication common carrier, an electronic communications service, or a remote computing service to compel the production of the carrier's or service's business records that disclose location information about the carrier's or service's customers or users of the services offered by the carrier or service, if there is probable cause to believe the records disclosing location information will provide evidence in a criminal investigation.

H.B. 2263 requires a court to submit to DPS by a certain date specified information relating to an application for a warrant or order, as applicable, for the installation and use of a pen register, ESN reader, trap and trace device, or similar equipment. The bill requires each prosecutor, not later than March 15 of each year, that submits an application for such a warrant or order or for an extension of such a warrant or order to submit to DPS specified information for the preceding calendar year, including a general description of information collected under each warrant or order and other information relating to arrests made, criminal trials commenced, and the number of convictions obtained in connection with such an issued warrant or order. The bill makes such information submitted to DPS public information that is subject to disclosure under state public information law.

H.B. 2263 requires the public safety director of DPS, not later than June 1 of each year, to submit to certain state officers and legislative committees a report containing specified information for the preceding calendar year relating to instances of tracking or monitoring of pen register, trap and trace, ESN reader, and location information and applications for warrants or orders for such tracking and monitoring and the offenses, arrests, and convictions associated with such warrants or orders.

**EFFECTIVE DATE**

September 1, 2015.