

## **BILL ANALYSIS**

C.S.H.B. 3790

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Emerging Issues In Texas Law Enforcement, Select  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recently enacted legislation provided law enforcement agencies and personnel with important tools to investigate and prosecute child predators. However, interested parties note that there have been a number of interpretations regarding different sections of the enacted law. C.S.H.B. 3790 seeks to address this issue by revising provisions relating to pen registers and trap and trace devices, access to stored communications, and mobile tracking devices.

### **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**

C.S.H.B. 3790 amends the Code of Criminal Procedure, for purposes of statutory provisions establishing requirements for government access to stored communications, to authorize an authorized peace officer to require a provider of a wire service to disclose electronic customer data that is in electronic storage by obtaining a warrant. The bill removes such a peace officer's limited authorization to require a provider of an electronic communications service or a provider of a remote computing service to disclose only electronic customer data that is information revealing the identity of customers of the applicable service or information about a customer's use of the applicable service without giving the subscriber or customer notice under certain circumstances and instead specifies the types of information that an authorized peace officer may require such providers or a provider of a wire service to disclose under those conditions and circumstances, authorizing such an officer to obtain the following information: call detail records, records relating to the Internet Protocol address used by a computer or wireless communications device, telephone call toll billing records, records relating to a short message service or text message service that do not include the contents of the messages, wireless Internet access point transactional records, telecommunication identifying information, or any other electronic customer data that reveals the identity of customers or subscribers of the applicable service or provides information about a customer's or subscriber's use of the applicable service. The bill adds to the conditions of such authority of an authorized peace officer that the peace officer obtained the consent of the user of the applicable service to the disclosure of the data. The bill further authorizes such a peace officer, for the purpose of locating a suspect or wireless communications device or identifying an unknown suspect or wireless communications device in an ongoing criminal investigation, to obtain subscriber or customer bulk records under those conditions and circumstances by means of a pen register or trap and trace device. The bill establishes that provisions regarding requirements for government access to stored

communication as amended by the bill do not authorize a peace officer, whether under the authority of a subpoena or otherwise, to obtain, or to require a provider of a wire or electronic communications service or a provider of a remote computing service to disclose, electronic customer data in electronic storage that is the content of a wire communication or electronic communication.

C.S.H.B. 3790 defines, among other terms that are defined or redefined, "telecommunication identifying information" as an electronic serial number or other number or signal that is not part of the content of any wire communication or electronic communication and that is associated with a specific cellular telephone or other wireless communications device, customer or subscriber account, or data track of an electronic communication.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3790 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Section 1, Article 18.21, Code of Criminal Procedure, is amended by adding Subdivisions (2-a), (4-c), and (9-a) and amending Subdivisions (4) and (6) to read as follows:

(2-a) "Call detail record" means information produced by a telephone exchange or other telecommunications device or equipment that documents the details of a wire or electronic communication that passes through the exchange, device, or equipment. The term includes information such as the time, duration, completion status, source number, and destination number of an electronic communication, but does not include the content of the communication.

**No equivalent provision.**

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 1, Article 18.21, Code of Criminal Procedure, is amended by adding Subdivisions (2-a), (8-a), (9-a), and (9-b) and amending Subdivisions (3-c), (4), and (6) to read as follows:

(2-a) "Call detail record" means information produced by a telephone exchange or other telecommunications device or equipment that documents the **transactional** details of a wire or electronic communication that passes through the exchange, device, or equipment. The term includes information such as the time, duration, completion status, source number, and destination number of a wire or electronic communication, but does not include the content of the communication.

(3-c) "Electronic customer data" means data or records that:

(A) are in the possession, care, custody, or control of a provider of a wire or [an] electronic communications service or a remote computing service; and

(B) contain:

(i) information revealing the identity of customers or subscribers of the applicable service;

(ii) information about a customer's or subscriber's use of the applicable service, including:

- (a) call detail records;
- (b) telephone call toll billing records;
- (c) wireless Internet access point transactional records;
- (d) records relating to a short message service or text message service that do not include the contents of the messages; and
- (e) telecommunication identifying information;
- (iii) information that identifies the recipient or destination of a wire communication or electronic communication sent to or by the customer;
- (iv) the content of a wire communication or electronic communication sent to or by the customer or subscriber; or [and]
- (v) any data stored with the applicable service provider by or on behalf of the customer or subscriber ~~[with the applicable service provider].~~

(4) "ESN reader" means a device that records telecommunication identifying information ~~[the electronic serial number]~~ from the data track of a ~~[wireless telephone,]~~ cellular telephone~~;~~ or other wireless communications ~~[similar communication]~~ device that transmits its operational status to a base site, if the telephone or device does not intercept the contents of a communication.

(4) "ESN reader" means a device that records telecommunication identifying information ~~[the electronic serial number]~~ from the data track of a ~~[wireless telephone,]~~ cellular telephone~~;~~ or other wireless communications ~~[similar communication]~~ device that transmits its operational status to a base site, if the telephone or device does not intercept the contents of a communication.

(4-c) "Location information" means information that concerns the current or past location of a cellular telephone or other wireless communications device that is created, or is accessed with technology, by a provider of a wire or electronic communications service or remote computing service or by a communication common carrier. The term does not include a subscriber's or customer's account information and any wireless Internet access point transactional records or other electronic customer data not relating to the current or past location of the telephone or device.

**No equivalent provision.**

(6) "Pen register" means a device or process that records, ~~[or]~~ decodes, or intercepts dialing, routing, addressing, or signaling information, location information, or telecommunication identifying information that is transmitted by an instrument or facility from which a wire or electronic

(6) "Pen register" means a device or process that records or decodes dialing, routing, addressing, or signaling information or telecommunication identifying information that is transmitted by an instrument or facility from which a wire or electronic communication is transmitted, if the

communication is transmitted, if the information does not include the contents of the communication. The term does not include a device used by a provider or customer of a wire or electronic communication service in the ordinary course of the provider's or customer's business for purposes of:

- (A) billing or recording as an incident to billing for communications services; or
- (B) cost accounting, security control, or other ordinary business purposes.

No equivalent provision.

(9-a) "Telecommunication identifying information" means an electronic serial number or other number or signal that identifies a specific:

- (A) cellular telephone or other wireless communications device;
- (B) customer or subscriber account; or
- (C) electronic communication.

No equivalent provision.

SECTION 2. Section 4, Article 18.21, Code of Criminal Procedure, is amended by amending Subsections (a) and (b) and adding Subsections (b-1) and (b-2) to read as follows:

- (a) An authorized peace officer may require

information does not include the contents of the communication. The term does not include a device used by a provider or customer of a wire or electronic communication service in the ordinary course of the provider's or customer's business for purposes of:

- (A) billing or recording as an incident to billing for communications services; or
- (B) cost accounting, security control, or other ordinary business purposes.

(8-a) "Subscriber or customer bulk records" means the records of a provider of a wire or electronic communications service or a remote computing service that contain telecommunication identifying information for all of the service's subscribers or customers in a specific geographic area. The term does not include the contents of a wire communication or electronic communication.

(9-a) "Telecommunication identifying information" means an electronic serial number or other number or signal that is not part of the content of any wire communication or electronic communication and that is associated with a specific:

- (A) cellular telephone or other wireless communications device;
- (B) customer or subscriber account; or
- (C) data track of an electronic communication.

(9-b) "Telephone call toll billing record" means a record retained by a wire or electronic communications service or a remote computing service that identifies, for a telephone toll call, the following billing information:

- (A) the name, address, and telephone number of the caller;
- (B) the telephone number called; and
- (C) the date, time, and length of the call.

SECTION 2. Section 4, Article 18.21, Code of Criminal Procedure, is amended by amending Subsections (a) and (b) and adding Subsections (b-1), (b-2), and (b-3) to read as follows:

- (a) An authorized peace officer may require

a provider of a wire or [an] electronic communications service or a provider of a remote computing service to disclose electronic customer data that is in electronic storage by obtaining a warrant under Section 5A.

(b) An authorized peace officer may require a provider of a wire or [an] electronic communications service or a provider of a remote computing service to disclose information described by Subsection (b-1) or (b-2) [only electronic customer data that is information revealing the identity of customers of the applicable service or information about a customer's use of the applicable service,] without giving the subscriber or customer notice:

- (1) by obtaining an administrative subpoena authorized by statute;
- (2) by obtaining a grand jury subpoena;
- (3) by obtaining a warrant under Section 5A;
- (4) by obtaining the consent of the subscriber or customer to the disclosure of the data;

(5) by obtaining a court order under Section 5; or

(6) as otherwise permitted by applicable federal law.

(b-1) Under Subsection (b), an authorized peace officer may obtain:

- (1) call detail records;
- (2) records relating to the Internet Protocol address used by a computer or wireless communications device;
- (3) telephone call toll billing records;
- (4) records relating to a short message service or text message service that do not include the contents of the messages;
- (5) wireless Internet access point transactional records;
- (6) telecommunication identifying information;
- (7) any stored data that is published on a social networking Internet website, including any profile information, images, or text published by the user of the social networking Internet website; or
- (8) any other electronic customer data that:
  - (A) reveals the identity of customers or subscribers of the applicable service; or
  - (B) provides information about a customer's or subscriber's use of the applicable service.

a provider of a wire or [an] electronic communications service or a provider of a remote computing service to disclose electronic customer data that is in electronic storage by obtaining a warrant under Section 5A.

(b) An authorized peace officer may require a provider of a wire or [an] electronic communications service or a provider of a remote computing service to disclose information described by Subsection (b-1) or (b-2) [only electronic customer data that is information revealing the identity of customers of the applicable service or information about a customer's use of the applicable service,] without giving the subscriber or customer notice:

- (1) by obtaining an administrative subpoena authorized by statute;
- (2) by obtaining a grand jury subpoena;
- (3) by obtaining a warrant under Section 5A;
- (4) by obtaining the consent of the subscriber, ~~[a] customer,~~ or user of the applicable service to the disclosure of the data;

(5) by obtaining a court order under Section 5; or

(6) as otherwise permitted by applicable federal law.

(b-1) Under Subsection (b), an authorized peace officer may obtain the following electronic customer data:

- (1) call detail records;
- (2) records relating to the Internet Protocol address used by a computer or wireless communications device;
- (3) telephone call toll billing records;
- (4) records relating to a short message service or text message service that do not include the contents of the messages;
- (5) wireless Internet access point transactional records;
- (6) telecommunication identifying information; or

- (7) any other electronic customer data that:
  - (A) reveals the identity of customers or subscribers of the applicable service; or
  - (B) provides information about a customer's or subscriber's use of the applicable service.

(b-2) In an ongoing criminal investigation, an authorized peace officer may obtain under Subsection (b), for the purpose of locating a suspect or wireless communications device or identifying an unknown suspect or wireless communications device by means of a pen register or trap and trace device, bulk records of a wire or electronic communications service or remote computing service or a communication common carrier. Bulk records sought under this subsection may contain information described by Subsection (b-1) for all subscribers and customers in a specific geographic area.

No equivalent provision.

SECTION 3. The change in law made by this Act applies to the disclosure of certain information by a provider of a wire or electronic communications service or remote computing service or by a communication common carrier under a warrant, order, or other legal process on or after the effective date of this Act.

SECTION 4. This Act takes effect September 1, 2015.

(b-2) In an ongoing criminal investigation, an authorized peace officer may obtain subscriber or customer bulk records under Subsection (b) for the purpose of locating a suspect or wireless communications device or identifying an unknown suspect or wireless communications device by means of a pen register or trap and trace device.

(b-3) This section does not authorize a peace officer, whether under the authority of a subpoena or otherwise, to obtain, or to require a provider of a wire or electronic communications service or a provider of a remote computing service to disclose, electronic customer data in electronic storage that is the content of a wire communication or electronic communication, including any images or videos contained in the information.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.