

By: Hughes

S.B. No. 2093

A BILL TO BE ENTITLED

1 AN ACT
2 relating to subpoenas, orders, and warrants for the disclosure of
3 location information, electronic customer communications records,
4 and electronic customer data and for the use of pen registers, ESN
5 readers, cell site simulators, and mobile tracking devices;
6 creating a criminal offense.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Article 18.02, Code of Criminal Procedure, is
9 amended to read as follows:

10 Art. 18.02. GROUNDS FOR ISSUANCE. (a) A search warrant may
11 be issued to search for and seize:

12 (1) property acquired by theft or in any other manner
13 which makes its acquisition a penal offense;

14 (2) property specially designed, made, or adapted for
15 or commonly used in the commission of an offense;

16 (3) arms and munitions kept or prepared for the
17 purposes of insurrection or riot;

18 (4) weapons prohibited by the Penal Code;

19 (5) gambling devices or equipment, altered gambling
20 equipment, or gambling paraphernalia;

21 (6) obscene materials kept or prepared for commercial
22 distribution or exhibition, subject to the additional rules set
23 forth by law;

24 (7) a drug, controlled substance, immediate

1 precursor, chemical precursor, or other controlled substance
2 property, including an apparatus or paraphernalia kept, prepared,
3 or manufactured in violation of the laws of this state;

4 (8) any property the possession of which is prohibited
5 by law;

6 (9) implements or instruments used in the commission
7 of a crime;

8 (10) property or items, except the personal writings
9 by the accused, constituting evidence of an offense or constituting
10 evidence tending to show that a particular person committed an
11 offense;

12 (11) persons;

13 (12) contraband subject to forfeiture under Chapter 59
14 of this code;

15 (13) electronic customer communications records and
16 electronic customer data held in electronic storage[, ~~including the~~
17 ~~contents of and records and other information related to a wire~~
18 ~~communication or electronic communication held in electronic~~
19 ~~storage~~]; [~~or~~]

20 (14) a cellular telephone or other wireless
21 communications device, subject to Article 18.0215; or

22 (15) location information.

23 (b) For purposes of this article [~~Subsection (a)(13)~~]:

24 (1) "Electronic communication" and "wire
25 communication" have the meanings assigned by Article 18A.001.

26 (2) "Electronic customer communications records,"
27 "electronic customer data," [~~and~~] "electronic storage," and

1 "location information" [~~storage~~] have the meanings assigned by
2 Article 18B.001.

3 SECTION 2. Article 18.06(a), Code of Criminal Procedure, is
4 amended to read as follows:

5 (a) A peace officer to whom a search warrant is delivered
6 shall execute the warrant without delay and forthwith return the
7 warrant to the proper magistrate. A search warrant issued under
8 Article 18B.354, and Articles 18B.221 and 18B.222 if requiring the
9 disclosure of location information as defined by Article 18B.001,
10 must be executed in the manner provided by Article 18B.355 not later
11 than the 11th day after the date of issuance. In all other cases, a
12 search warrant must be executed within three days from the time of
13 its issuance. A warrant issued under this chapter, Chapter 18A, or
14 Chapter 18B shall be executed within a shorter period if so directed
15 in the warrant by the magistrate.

16 SECTION 3. Article 18B.001, Code of Criminal Procedure, is
17 amended by adding Subdivisions (1-a), (6-a), (9-a), and (9-b) and
18 amending Subdivisions (4), (7), and (8) to read as follows:

19 (1-a) "Cell site simulator" means a device that:
20 (A) locates or identifies a wireless
21 communications device in the immediate vicinity of the simulator by
22 simulating the functions of a wireless telecommunications network
23 transceiver; and
24 (B) is designed to collect information from the
25 wireless communications device.

26 (4) "Designated law enforcement office or agency"
27 means:

1 (A) the sheriff's department of a county with a
2 population of 3.3 million or more;

3 (B) a police department in a municipality with a
4 population of 500,000 or more; [~~or~~]

5 (C) the office of inspector general of the Texas
6 Department of Criminal Justice;

7 (D) a special investigator under Article 2.122
8 when assisting a peace officer of this state in:

9 (i) apprehending a fugitive from justice
10 charged with an offense under Article 18B.221(b)(2); or

11 (ii) resolving an emergency involving:

12 (a) an immediate life-threatening
13 situation;

14 (b) conspiratorial activities
15 characteristic of violent organized crime;

16 (c) an immediate threat to a national
17 security interest;

18 (d) an ongoing attack on a protected
19 computer, as defined by 18 U.S.C. Section 1030, that constitutes an
20 offense under Section 33.02, Penal Code, or an equivalent offense
21 under federal law; or

22 (e) the report of the disappearance of
23 an individual, including the report of a runaway individual younger
24 than 18 years of age, or a report of a suicidal individual, where
25 the report indicates the individual may be in danger based on the
26 circumstances of the disappearance, including circumstances such
27 as the age and mental or physical condition of the individual; or

1 (E) a prosecutor or assistant prosecutor in a
2 county with a population of more than 800,000.

3 (6-a) "Electronic customer communications records"
4 means data or records, other than location information or
5 electronic customer data, that:

6 (A) are in the possession, care, custody, or
7 control of a provider of an electronic communications service or
8 provider of a remote computing service; and

9 (B) contain:

10 (i) the content of a wire or electronic
11 communication sent to or by the customer, including:

12 (a) information that identifies by
13 name the recipient or destination of a wire or electronic
14 communication;

15 (b) the draft form of a wire or
16 electronic communication, regardless of whether the communication
17 was sent; or

18 (c) a summary description of the
19 content of a wire or electronic communication, such as file name,
20 subject line, or uniform resource locator; or

21 (ii) the content of files or records owned
22 or possessed by a customer that are stored by the applicable service
23 provider by or on behalf of the customer.

24 (7) "Electronic customer data" means data or records,
25 other than location information or electronic customer
26 communication records, that:

27 (A) are in the possession, care, custody, or

1 control of a provider of an electronic communications service or
2 provider of a remote computing service; and

3 (B) contain:

4 (i) information revealing the identity of
5 customers of the applicable service;

6 (ii) information about a customer's use of
7 the applicable service; and

8 (iii) information that identifies the
9 recipient or destination of a wire or electronic communication sent
10 to or by a customer[~~+~~

11 ~~[(iv) the content of a wire or electronic
12 communication sent to or by a customer; and~~

13 ~~[(v) any data stored with the applicable
14 service provider by or on behalf of a customer].~~

15 (8) "Electronic storage" means storage of electronic
16 customer data, electronic customer communications records, or
17 location information in a computer, computer network, or computer
18 system, regardless of whether the data is subject to recall,
19 further manipulation, deletion, or transmission. The term
20 includes storage of a wire or electronic communication by an
21 electronic communications service or a remote computing service.

22 (9-a) "Immediate life-threatening situation" has the
23 meaning assigned by Article 18A.201.

24 (9-b) "Location information" means data or records,
25 other than information identifying the subscriber or customer or
26 the account with which a wireless communications device is
27 associated or information composed of network transactional access

1 records unrelated to the location of a wireless communications
2 device, that:

3 (A) suggest the physical location of a wireless
4 communications device by identifying the first, intermediate, or
5 last point through which a wire or electronic communication enters
6 or departs the physical infrastructure of an electronic
7 communications system, including:

8 (i) data or records commonly known as cell
9 site location information; and

10 (ii) any data or records generated by
11 successor technologies operating similarly to the technology
12 described in this paragraph;

13 (B) are created by or accessible to a provider of
14 an electronic communications system and designed to identify the
15 physical location of a wireless communications device, including:

16 (i) information commonly known as E911 or
17 precision location information derived through a global
18 positioning system or multi-lateration measurements; and

19 (ii) any data or records generated by
20 successor technologies operating similarly to the technology
21 described in this paragraph; or

22 (C) are created by or accessed through the use of
23 a cell site simulator.

24 SECTION 4. Subchapter B, Chapter 18B, Code of Criminal
25 Procedure, is amended by adding Article 18B.050 to read as follows:

26 Art. 18B.050. APPLICABILITY. This subchapter and
27 Subchapters C and D do not apply to a cell site simulator.

1 SECTION 5. Article 18B.151, Code of Criminal Procedure, is
2 amended to read as follows:

3 Art. 18B.151. EMERGENCY INSTALLATION AND USE OF PEN
4 REGISTER OR TRAP AND TRACE DEVICE. [~~(a)~~ ~~In this article,~~
5 ~~"immediate life-threatening situation" has the meaning assigned by~~
6 ~~Article 18A.201.~~

7 [~~(b)~~] A peace officer authorized to possess, install,
8 operate, or monitor a device under Subchapter E, Chapter 18A, may
9 install and use a pen register or trap and trace device if:

10 (1) another peace officer is designated to approve for
11 the authorized officer's agency the emergency required disclosure
12 of location information by:

13 (A) the head of the agency; and

14 (B) a district attorney or criminal district
15 attorney with jurisdiction over all or part of the other officer's
16 jurisdiction; and

17 (2) the peace officer described by Subdivision (1)
18 approves the installation and use of a pen register or trap and
19 trace device by reasonably determining that an emergency exists in
20 the territorial jurisdiction of the authorized officer, or another
21 officer the authorized officer is assisting, involving:

22 (A) an immediate life-threatening situation;

23 (B) conspiratorial activities characteristic of
24 violent organized crime;

25 (C) an immediate threat to a national security
26 interest;

27 (D) an ongoing attack on a protected computer, as

1 defined by 18 U.S.C. Section 1030, that constitutes an offense
2 under Section 33.02, Penal Code, or an equivalent offense under
3 federal law; or

4 (E) the report of the disappearance of an
5 individual, including the report of a runaway individual younger
6 than 18 years of age, or a report of a suicidal individual, where
7 the report indicates the individual may be in danger based on the
8 circumstances of the disappearance, including circumstances such
9 as the age and mental or physical condition of the individual [~~the~~
10 ~~peace officer reasonably believes:~~

11 ~~[(1) an immediate life-threatening situation exists~~
12 ~~that:~~

13 ~~[(A) is within the territorial jurisdiction of~~
14 ~~the peace officer or another officer the peace officer is~~
15 ~~assisting; and~~

16 ~~[(B) requires the installation of a pen register~~
17 ~~or trap and trace device before an order authorizing the~~
18 ~~installation and use can, with due diligence, be obtained under~~
19 ~~this chapter; and~~

20 ~~[(2) there are sufficient grounds under this chapter~~
21 ~~on which to obtain an order authorizing the installation and use of~~
22 ~~a pen register or trap and trace device].~~

23 SECTION 6. Article 18B.152, Code of Criminal Procedure, is
24 amended by adding Subsection (c) to read as follows:

25 (c) In the event that no offense was readily apparent at the
26 time of the installation and use of a pen register or trap and trace
27 device under this subchapter, the judge shall note the exact date

1 and time at which the likelihood that an offense occurred became
2 apparent, if applicable. If no offense became apparent before the
3 conclusion of the emergency or issuance of an order authorizing
4 continued use of the device under Subchapter B, the judge shall
5 annotate the order to reflect that: "No affirmative investigative
6 or prosecutive use may be made of any pen register or trap and trace
7 records obtained pursuant to the device's emergency installation or
8 use."

9 SECTION 7. Article 18B.202(c), Code of Criminal Procedure,
10 is amended to read as follows:

11 (c) The affidavit must:

12 (1) state the name, department, agency, and address of
13 the applicant;

14 (2) identify the vehicle, container, or item to which,
15 in which, or on which the mobile tracking device is to be attached,
16 placed, or otherwise installed;

17 (3) state the name of the owner or possessor of the
18 vehicle, container, or item identified under Subdivision (2);

19 (4) state the judicial jurisdictional area in which
20 the vehicle, container, or item identified under Subdivision (2) is
21 expected to be found; and

22 (5) state the facts and circumstances that provide the
23 applicant with probable cause to believe [~~a reasonable suspicion~~]
24 that:

25 (A) criminal activity has been, is, or will be
26 committed; and

27 (B) the installation and use of a mobile tracking

1 device will [~~is likely to~~] produce:

2 (i) evidence of the offense;

3 (ii) the location of contraband, fruits of
4 the offense, or other items illegally possessed;

5 (iii) the location of criminal instruments;

6 (iv) the identity of a person to be
7 arrested; or

8 (v) the identity of a person being
9 unlawfully restrained [~~information that is material to an ongoing~~
10 ~~criminal investigation of that criminal activity~~].

11 SECTION 8. Article 18B.205, Code of Criminal Procedure, is
12 amended to read as follows:

13 Art. 18B.205. DURATION OF ORDER. (a) An order under this
14 subchapter expires not later than the 45th [~~90th~~] day after the date
15 that the mobile tracking device was activated in place on or within
16 the vehicle, container, or item.

17 (b) For good cause shown, the judge may grant an extension
18 for an additional 45-day [~~90-day~~] period.

19 SECTION 9. Chapter 18B, Code of Criminal Procedure, is
20 amended by adding Subchapter E-1 to read as follows:

21 SUBCHAPTER E-1. WARRANT FOR USE OF CELL SITE SIMULATOR OR REQUIRING
22 DISCLOSURE OF LOCATION INFORMATION

23 Art. 18B.221. WARRANT FOR USE OF CELL SITE SIMULATOR OR
24 DISCLOSURE OF CERTAIN LOCATION INFORMATION. (a) A district judge
25 may issue a warrant:

26 (1) authorizing the use of a cell site simulator to
27 obtain location information from a cellular telephone or other

1 wireless communications device; or

2 (2) requiring the disclosure of location information
3 by a service provider who has possession, care, custody, or control
4 of the information, regardless of whether the location information
5 is held at a location in this state or another state.

6 (b) A district judge may issue a warrant described by
7 Subsection (a) only:

8 (1) except as provided by Article 18B.230, on
9 application by:

10 (A) a prosecutor; or

11 (B) an assistant prosecutor, if applying on
12 request of:

13 (i) an authorized peace officer
14 commissioned by the department; or

15 (ii) an authorized peace officer of a
16 designated law enforcement office or agency; and

17 (2) for the investigation of:

18 (A) an offense under:

19 (i) Section 19.02, Penal Code;

20 (ii) Section 19.03, Penal Code;

21 (iii) Section 20.03, Penal Code;

22 (iv) Section 20.04, Penal Code;

23 (v) Chapter 20A, Penal Code;

24 (vi) Section 21.02, Penal Code;

25 (vii) Section 21.11, Penal Code;

26 (viii) Section 22.011, Penal Code;

27 (ix) Section 22.02, Penal Code;

- 1 (x) Section 22.021, Penal Code;
2 (xi) Section 22.04, Penal Code;
3 (xii) Section 22.041, Penal Code;
4 (xiii) Section 29.02, Penal Code;
5 (xiv) Section 29.03, Penal Code;
6 (xv) Section 30.02, Penal Code, if the
7 offense is punishable under Subsection (d) of that section;
8 (xvi) Chapter 34, Penal Code;
9 (xvii) Section 36.05, Penal Code;
10 (xviii) Section 37.11, Penal Code;
11 (xix) Section 38.06, Penal Code;
12 (xx) Section 38.07, Penal Code;
13 (xxi) Section 39.03, Penal Code;
14 (xxii) Section 43.04, Penal Code;
15 (xxiii) Section 43.05, Penal Code;
16 (xxiv) Chapter 481, Health and Safety Code,
17 other than an offense involving marihuana;
18 (xxv) Chapter 483, Health and Safety Code; or
19 (xxvi) Chapter 485, Health and Safety Code;
20 (B) a felony under Chapter 71, Penal Code;
21 (C) any sex offense for which a person is subject
22 to registration under Chapter 62 and in which the victim was younger
23 than 18 years of age at the time the offense was committed;
24 (D) an offense of another jurisdiction in the
25 United States equivalent to an offense under Paragraph (A), (B), or
26 (C), committed by a fugitive from justice, regardless of whether
27 the offense was committed in this state or another jurisdiction; or

1 (E) an emergency for which a judge may issue a
2 warrant under Article 18B.230.

3 (c) An application under this article must:

4 (1) be made in writing under oath; and

5 (2) include:

6 (A) the name, department, agency, and address of
7 the applicant;

8 (B) the offense being investigated and for which
9 the application is being made;

10 (C) the case number or unique identifier assigned
11 by the law enforcement agency to the investigation of the offense
12 for which the application is being made;

13 (D) the name of:

14 (i) the customer or subscriber whose data
15 or device is the subject of the application, if the application
16 seeks location information related to a particular subscriber or
17 customer and the name of the customer or subscriber is known to the
18 applicant; and

19 (ii) the person who is the subject of the
20 application, if that person is not described by Subparagraph (i);
21 and

22 (E) the account number or unique identifier that
23 is the subject of the application.

24 (d) The accompanying affidavit must contain a statement of
25 facts and circumstances demonstrating:

26 (1) probable cause that:

27 (A) an offense listed in Subsection (b)(2) has

1 been, is being, or will be committed; and

2 (B) would lead a reasonably prudent person to
3 believe the location information being sought or the use of a cell
4 site simulator will produce:

5 (i) evidence of the offense;

6 (ii) contraband, fruits of the offense, or
7 other items illegally possessed;

8 (iii) criminal instruments;

9 (iv) a person to be arrested; or

10 (v) a person being unlawfully restrained;

11 or

12 (2) that the use of a cell site simulator or the
13 required disclosure of location information will resolve an
14 emergency described by Article 18B.230(a)(2)(A).

15 Art. 18B.222. WARRANT FOR MASS, INDISCRIMINATE LOCATION
16 INFORMATION. (a) In accordance with the requirements of this
17 subchapter for the application and issuance of a warrant requiring
18 the disclosure of location information by a service provider, other
19 than Articles 18B.221(c)(2)(D) and (E), a district judge may issue
20 a warrant requiring the disclosure of location information by a
21 provider of an electronic communications service or a remote
22 computing service based on the location where an offense occurred
23 if the application includes:

24 (1) the location where the offense occurred; and

25 (2) each provider on whom the warrant will be served.

26 (b) The location information disclosed pursuant to a
27 warrant issued under this article may not be used to further an

1 investigation unrelated to the investigation of the offense for
2 which the warrant application was made, unless an authorized peace
3 officer, prosecutor, or assistant prosecutor:

4 (1) makes an application, other than the warrant
5 application, to a district judge to use the location information to
6 further an unrelated investigation; and

7 (2) shows good cause for that use.

8 (c) Unless authorized by a district judge, a law enforcement
9 agency holding location information disclosed pursuant to a warrant
10 issued under this article may not commingle:

11 (1) the location information determined relevant to
12 the investigation of the offense for which the warrant application
13 was made;

14 (2) the location information determined to be
15 irrelevant to that investigation; and

16 (3) other than the location information described by
17 Subdivision (1), each set of location information disclosed by a
18 different provider pursuant to a warrant issued under this article.

19 (d) A district judge may review similar applications for a
20 warrant under this article and instruct an agency holding
21 separately the location information under Subsection (c) to compare
22 the information to determine whether the information is relevant to
23 the cases or to other locations identified in similar applications.

24 Art. 18B.223. JURISDICTION. An application under this
25 subchapter must be filed in a judicial district in which is located:

26 (1) the headquarters of:

27 (A) the office of the prosecutor filing an

1 application under this subchapter;

2 (B) a law enforcement agency that requests the
3 prosecutor to file an application for a warrant under this
4 subchapter or that proposes to execute the warrant, if one is issued
5 under this subchapter; or

6 (C) a service provider required to disclose
7 location information held in electronic storage;

8 (2) the site of the proposed use of a cell site
9 simulator; or

10 (3) the billing, residential, or business address of
11 the subscriber or customer of a provider of an electronic
12 communications service or remote computing service who is the
13 subject of the application.

14 Art. 18B.224. DURATION OF WARRANT. (a) A warrant issued
15 under this subchapter authorizing the use of a cell site simulator
16 is valid for a period not to exceed 30 days.

17 (b) A warrant issued under this subchapter requiring the
18 ongoing disclosure of prospective location information is valid for
19 a period not to exceed 60 days.

20 Art. 18B.225. USE OF LOCATION INFORMATION IN UNRELATED
21 INVESTIGATION PROHIBITED. Except as provided by Article 18B.222(b)
22 or (d), location information obtained pursuant to a warrant issued
23 under this subchapter:

24 (1) may not be used to further an investigation
25 unrelated to the investigation of the offense for which the warrant
26 application was made; and

27 (2) may be used to investigate or prosecute offenses

1 and defendants related to the offense for which the warrant
2 application was made.

3 Art. 18B.226. CERTAIN RESTRICTIONS ON USE OF CELL SITE
4 SIMULATOR. (a) Under a warrant issued under this subchapter
5 authorizing the use of a cell site simulator:

6 (1) if the cell site simulator is used to locate a
7 known person's wireless communications device, location
8 information that is derived from the simulator's use and is
9 irrelevant to locating the device must be deleted on the date the
10 information was collected; and

11 (2) unless granted an exception by a district judge to
12 the requirement described in this subdivision, if the cell site
13 simulator is used to locate an unknown wireless communications
14 device, location information that is derived from the simulator's
15 use and is irrelevant to locating the device must be deleted not
16 later than the 30th day after the date the simulator is first used,
17 and not later than the earlier of the following:

18 (A) at the end of each 30-day period following
19 the initial 30-day period described by this subdivision; or

20 (B) the expiration of the warrant.

21 (b) The district judge who issues a warrant under this
22 subchapter for the use of a cell site simulator may extend a period
23 described by Subsection (a) if the applicant for the warrant shows
24 good cause for the extension. The judge may grant a subsequent
25 extension only if the applicant shows good cause for the subsequent
26 extension. An extension granted under this subsection may not
27 exceed 90 days, unless the judge makes a finding in the record that

1 the circumstances of the investigation justify an extension longer
2 than 90 days.

3 (c) A district judge may not issue a warrant to authorize
4 using or configuring a cell site simulator for, and a person acting
5 under a warrant issued under this subchapter may not use or
6 configure a cell site simulator for:

7 (1) intercepting, capturing, or collecting the
8 content of any electronic communication; or

9 (2) collecting information on the attendees of a
10 public gathering.

11 Art. 18B.227. PRESERVATION OF CERTAIN LOCATION
12 INFORMATION. (a) Location information disclosed by a service
13 provider pursuant to a warrant issued under this subchapter:

14 (1) must be preserved; and

15 (2) except as provided by 18B.222(b) or (d), may not be
16 used in the investigation or prosecution of an offense unrelated to
17 the offense for which the warrant application was made.

18 (b) As soon as practicable after receiving a timely request
19 from a defendant, the attorney representing the state shall produce
20 and permit inspection and electronic and print duplication of the
21 location information described by Subsection (a) by or on behalf of
22 the defendant.

23 Art. 18B.228. WARRANTS SEALED. (a) Notwithstanding any
24 other law, other than Subsections (b) and (c), a district judge
25 issuing a warrant under this subchapter shall seal the warrant and
26 applicable affidavit.

27 (b) A judge shall authorize the disclosure of the warrant

1 and applicable affidavit to:

2 (1) a defendant, or the attorney representing the
3 defendant, in a criminal action, if the defendant or attorney makes
4 a timely request for disclosure; or

5 (2) the public, if at an in camera hearing the judge
6 finds that the warrant application or affidavit does not
7 substantially comply with requirements for the issuance of a
8 warrant under this subchapter.

9 (c) A judge authorizing disclosure under Subsection (b)
10 shall redact information tending to reveal the identity of
11 cooperating witnesses, informants, or undercover peace officers.

12 Art. 18B.229. NOTICE TO SUBSCRIBER OR CUSTOMER. An
13 authorized peace officer may require a provider of an electronic
14 communications service or a provider of a remote computing service
15 to disclose location information without giving the subscriber or
16 customer notice if the officer obtains:

17 (1) a warrant under this subchapter; or

18 (2) the consent of the subscriber or customer.

19 Art. 18B.230. EMERGENCY USE OF CELL SITE SIMULATOR OR
20 REQUIRED DISCLOSURE OF LOCATION INFORMATION. (a) Subject to
21 Subsections (c) and (d), an authorized peace officer may without a
22 warrant require a service provider who has possession, care,
23 custody, or control of location information to disclose the
24 information, if:

25 (1) a peace officer in the authorized officer's agency
26 is designated to approve for the agency the emergency required
27 disclosure of location information by:

1 (A) the head of the agency; and
2 (B) a district attorney or criminal district
3 attorney with jurisdiction over all or part of the agency's
4 jurisdiction; and
5 (2) the peace officer described by Subdivision (1)
6 approves the authorized officer's requiring the disclosure of the
7 information by reasonably determining that:
8 (A) an emergency exists in the territorial
9 jurisdiction of the authorized officer, or another officer the
10 authorized officer is assisting, involving:
11 (i) an immediate life-threatening
12 situation;
13 (ii) conspiratorial activities
14 characteristic of violent organized crime;
15 (iii) an immediate threat to a national
16 security interest;
17 (iv) an ongoing attack on a protected
18 computer, as defined by 18 U.S.C. Section 1030, that constitutes an
19 offense under Section 33.02, Penal Code, or an equivalent offense
20 under federal law; or
21 (v) the report of the disappearance of an
22 individual, including the report of a runaway individual younger
23 than 18 years of age, or a report of a suicidal individual, where
24 the report indicates the individual may be in danger based on the
25 circumstances of the disappearance, including circumstances such
26 as the age and mental or physical condition of the individual; and
27 (B) requiring the information may resolve the

1 emergency.

2 (b) Subject to Subsections (c) and (d), an authorized peace
3 officer of the department or a designated law enforcement office or
4 agency may without a warrant use a cell site simulator if the head
5 of the authorized officer's agency or that person's designee
6 approves the authorized officer's use of the cell site simulator by
7 reasonably determining that:

8 (1) an emergency described by Subsection (a)(2)(A)
9 exists in the applicable judicial district under Article 18B.223;
10 and

11 (2) use of the cell site simulator may resolve the
12 emergency.

13 (c) An authorized officer who requires disclosure of
14 location information or uses a cell site simulator under Subsection
15 (a) or (b) shall:

16 (1) promptly report the required disclosure of
17 location information or the use of the simulator to, as applicable:

18 (A) if using a cell site simulator, the
19 prosecutor in the county in which the simulator is used; or

20 (B) if requiring the disclosure of location
21 information, the prosecutor in the county where the peace officer's
22 agency is headquartered; and

23 (2) within 48 hours after providing notice of the
24 required disclosure or within 48 hours after the use of the
25 simulator begins, as applicable, obtain a warrant under this
26 subchapter authorizing the required disclosure or the use of the
27 simulator.

1 (d) If a warrant application is denied or is not issued
2 within the 48-hour period, the peace officer shall delete the
3 disclosed location information or terminate use of the cell site
4 simulator promptly on the earlier of the denial of the warrant
5 application or the expiration of 48 hours.

6 Art. 18B.231. EXECUTION OF WARRANT. Article 18B.355
7 applies to the execution of a warrant issued under this subchapter
8 in the same manner as the article applies to the execution of a
9 warrant for electronic customer communications records.

10 Art. 18B.232. WARRANT ISSUED IN ANOTHER STATE. Any
11 domestic entity that provides electronic communications services
12 or remote computing services to the public shall comply with a
13 warrant issued in another state and seeking location information
14 described by Article 18B.221, if the warrant is served on the entity
15 in a manner equivalent to the service of process requirements
16 provided by Article 18B.355(b).

17 SECTION 10. Article 18B.351, Code of Criminal Procedure, is
18 amended to read as follows:

19 Art. 18B.351. GOVERNMENT ACCESS TO ELECTRONIC CUSTOMER
20 COMMUNICATIONS RECORDS AND ELECTRONIC CUSTOMER DATA. (a) An
21 authorized peace officer may require a provider of an electronic
22 communications service or a provider of a remote computing service
23 to disclose electronic customer communications records or
24 electronic customer data that is in electronic storage by obtaining
25 a warrant under Article 18B.354.

26 (b) An authorized peace officer may require a provider of an
27 electronic communications service or a provider of a remote

1 computing service to disclose [~~only~~] electronic customer data [~~that~~
2 ~~is information revealing the identity of customers of the~~
3 ~~applicable service or information about a customer's use of the~~
4 ~~applicable service,~~] without giving the subscriber or customer
5 notice:

6 (1) by obtaining an administrative subpoena
7 authorized by statute;

8 (2) by obtaining a grand jury subpoena;

9 (3) by obtaining a court order under Article 18B.352;

10 (4) by obtaining a warrant under Article 18B.354;

11 (5) by obtaining the consent of the subscriber or
12 customer to the disclosure of the data; or

13 (6) as otherwise permitted by applicable federal law.

14 SECTION 11. Article 18B.352(a), Code of Criminal Procedure,
15 is amended to read as follows:

16 (a) A court shall issue an order authorizing disclosure of
17 electronic customer data related to [~~contents, records, or other~~
18 ~~information of~~] a wire or electronic communication held in
19 electronic storage if the court determines that there is a
20 reasonable belief that the information sought is relevant and
21 material to an ongoing criminal investigation [~~to a legitimate law~~
22 ~~enforcement inquiry~~].

23 SECTION 12. Article 18B.353, Code of Criminal Procedure, is
24 amended to read as follows:

25 Art. 18B.353. WARRANT ISSUED IN THIS STATE: APPLICABILITY.
26 Articles 18B.354-18B.357 apply to a warrant required under Article
27 18B.351 to obtain electronic customer communications records or

1 electronic customer data[, ~~including the contents of a wire or~~
2 ~~electronic communication~~].

3 SECTION 13. Articles 18B.354(a), (b), and (c), Code of
4 Criminal Procedure, are amended to read as follows:

5 (a) On the filing of an application by an authorized peace
6 officer, a district judge may issue a search warrant under this
7 article for electronic customer communications records or
8 electronic customer data held in electronic storage[, ~~including the~~
9 ~~contents of and records and other information related to a wire or~~
10 ~~electronic communication held in electronic storage,~~] by a provider
11 of an electronic communications service or a provider of a remote
12 computing service described by Article 18B.355(b), regardless of
13 whether the electronic customer communications records or
14 electronic customer data is held at a location in this state or
15 another state. An application made under this subsection must
16 demonstrate probable cause for the issuance of the warrant and must
17 be supported by the oath of the authorized peace officer.

18 (b) A search warrant may not be issued under this article
19 unless the sworn affidavit required by Article 18.01(b) provides
20 sufficient and substantial facts to establish probable cause that:

- 21 (1) a specific offense has been committed; and
22 (2) the electronic customer communications records or
23 electronic customer data sought:

24 (A) constitutes evidence of that offense or
25 evidence that a particular person committed that offense, or
26 reveals the location of a fugitive from justice charged with a
27 felony offense described by Article 18B.221(b)(2)(A), (B), (C), or

1 (D); and

2 (B) is held in electronic storage by the service
3 provider on which the warrant is served under Article 18B.355(c).

4 (c) Only the electronic customer communications records or
5 electronic customer data described in the sworn affidavit required
6 by Article 18.01(b) may be seized under the warrant.

7 SECTION 14. Article 18B.356(c), Code of Criminal Procedure,
8 is amended to read as follows:

9 (c) The service provider shall produce all electronic
10 customer communications records, electronic customer data,
11 [~~contents of communications,~~] and other information sought,
12 regardless of where the information is held and within the period
13 allowed for compliance with the warrant, as provided by Subsection
14 (a) or (b).

15 SECTION 15. Articles 18B.406(a) and (d), Code of Criminal
16 Procedure, are amended to read as follows:

17 (a) Not later than the 14th day after the date a subscriber
18 or customer receives notice under Article 18B.402, the subscriber
19 or customer may file a written motion to quash the subpoena or
20 vacate the court order in the court that issued the subpoena or
21 court order. The motion must contain an affidavit or other sworn
22 statement stating:

23 (1) that the applicant is a subscriber or customer of
24 the provider of an electronic communications service or the
25 provider of a remote computing service from which the electronic
26 customer data held in electronic storage for the subscriber or
27 customer has been sought; and

1 (2) the applicant's reasons for believing that the
2 electronic customer data sought is not relevant and material to an
3 ongoing criminal investigation [~~a legitimate law enforcement~~
4 ~~inquiry~~] or that there has not been substantial compliance with the
5 provisions of this chapter in some other respect.

6 (d) The court shall rule on the motion as soon as
7 practicable after the filing of the peace officer's response. The
8 court shall deny the motion if the court finds that the applicant is
9 not the subscriber or customer whose data is the subject of the
10 subpoena or court order or that there is reason to believe that the
11 peace officer's inquiry is legitimate and that the data sought is
12 relevant to that inquiry. The court shall quash the subpoena or
13 vacate the court order if the court finds that the applicant is the
14 subscriber or customer whose data is the subject of the subpoena or
15 court order and that there is not a reason to believe that the data
16 is relevant and material to an ongoing criminal investigation [~~a~~
17 ~~legitimate law enforcement inquiry~~] or that there has not been
18 substantial compliance with the provisions of this chapter.

19 SECTION 16. Article 18B.451, Code of Criminal Procedure, is
20 amended to read as follows:

21 Art. 18B.451. SUBPOENA AUTHORITY. (a) Except as provided
22 by Subsection (b), the [~~The~~] director of the department or the
23 director's designee, the inspector general of the Texas Department
24 of Criminal Justice or the inspector general's designee, or the
25 sheriff or chief of a designated law enforcement agency or the
26 sheriff's or chief's designee may issue an administrative subpoena
27 to a communication common carrier or a provider of an electronic

1 communications service to compel the production of any carrier's or
2 service provider's business records that:

3 (1) disclose information about:

4 (A) the carrier's or service provider's
5 customers; or

6 (B) users of the services offered by the carrier
7 or service provider; and

8 (2) are material to a criminal investigation.

9 (b) A person described by Subsection (a) may not compel the
10 production of business records containing location information or
11 electronic customer communications records by issuing an
12 administrative subpoena under Subsection (a).

13 SECTION 17. Article 18B.501(a), Code of Criminal Procedure,
14 is amended to read as follows:

15 (a) An authorized peace officer seeking electronic customer
16 communications records or electronic customer data under Article
17 18B.351 may apply to the court for an order commanding the service
18 provider to whom a warrant, subpoena, or court order is directed not
19 to disclose to any person the existence of the warrant, subpoena, or
20 court order. The order is effective for the period the court
21 considers appropriate.

22 SECTION 18. Articles 18B.503(a) and (b), Code of Criminal
23 Procedure, are amended to read as follows:

24 (a) Except as provided by Subsection (c), an authorized
25 peace officer who obtains electronic customer communications
26 records or electronic customer data under Article 18B.351 or
27 18B.359 or other information under this chapter shall reimburse the

1 person assembling or providing the records, data, or information
2 for all costs that are reasonably necessary and that have been
3 directly incurred in searching for, assembling, reproducing, or
4 otherwise providing the records, data, or information, including
5 costs arising from necessary disruption of normal operations of a
6 provider of an electronic communications service or a provider of a
7 remote computing service in which the electronic customer
8 communications records or electronic customer data may be held in
9 electronic storage or in which the other information may be stored.

10 (b) The authorized peace officer and the person providing
11 the electronic customer communications records, electronic
12 customer data, or other information may agree on the amount of
13 reimbursement. If there is not an agreement, the court that issued
14 the order for production of the records, data, or information shall
15 determine the amount. If a court order was not issued for
16 production of the records, data, or information, the court before
17 which any criminal prosecution relating to the records, data, or
18 information would be brought shall determine the amount.

19 SECTION 19. Chapter 16, Penal Code, is amended by adding
20 Section 16.07 to read as follows:

21 Sec. 16.07. UNLAWFUL USE OF CELL SITE SIMULATOR. (a) In
22 this section:

23 (1) "Cell site simulator" has the meaning assigned by
24 Article 18B.001, Code of Criminal Procedure.

25 (2) "Communication common carrier" and "electronic
26 communication" have the meanings assigned by Article 18A.001, Code
27 of Criminal Procedure.

1 (b) A person commits an offense if the person knowingly uses
2 a cell site simulator to locate or identify a wireless
3 communications device or intercept the content of an electronic
4 communication.

5 (c) An offense under this section is a state jail felony.

6 (d) It is an affirmative defense to prosecution under this
7 section that the actor:

8 (1) is an officer, employee, or agent of a
9 communication common carrier and the actor uses a cell site
10 simulator in the regular course of business of the carrier for the
11 purpose of:

12 (A) protecting property or services provided by
13 the carrier; or

14 (B) assisting another whom the actor reasonably
15 believes to be a peace officer authorized to use a cell site
16 simulator under Article 18B.221, Code of Criminal Procedure;

17 (2) is a person authorized to use a cell site simulator
18 under Article 18B.221, Code of Criminal Procedure; or

19 (3) obtained the effective consent of the owner or
20 renter of the wireless communications device and the simulator was
21 not used to commit an offense or other prohibited act.

22 SECTION 20. Chapter 18B, Code of Criminal Procedure, as
23 amended by this Act, applies to the disclosure of certain
24 information by a provider of a wire or electronic communications
25 service or remote computing service or by a communication common
26 carrier under a warrant, order, or other legal process on or after
27 the effective date of this Act.

1 SECTION 21. This Act takes effect September 1, 2019.