

1-1 By: Hughes S.B. No. 2093  
1-2 (In the Senate - Filed March 7, 2019; March 21, 2019, read  
1-3 first time and referred to Committee on Criminal Justice;  
1-4 May 6, 2019, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 0; May 6, 2019, sent  
1-6 to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Whitmire	X		
1-10	Huffman	X		
1-11	Buckingham	X		
1-12	Flores	X		
1-13	Hughes	X		
1-14	Miles	X		
1-15	Perry	X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 2093 By: Whitmire

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to subpoenas, orders, and warrants for the disclosure of  
1-20 location information, electronic customer communications records,  
1-21 and electronic customer data and for the use of pen registers, ESN  
1-22 readers, cell site simulators, and mobile tracking devices;  
1-23 creating a criminal offense.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Article 18.02, Code of Criminal Procedure, is  
1-26 amended to read as follows:

1-27 Art. 18.02. GROUNDS FOR ISSUANCE. (a) A search warrant  
1-28 may be issued to search for and seize:

1-29 (1) property acquired by theft or in any other manner  
1-30 which makes its acquisition a penal offense;

1-31 (2) property specially designed, made, or adapted for  
1-32 or commonly used in the commission of an offense;

1-33 (3) arms and munitions kept or prepared for the  
1-34 purposes of insurrection or riot;

1-35 (4) weapons prohibited by the Penal Code;

1-36 (5) gambling devices or equipment, altered gambling  
1-37 equipment, or gambling paraphernalia;

1-38 (6) obscene materials kept or prepared for commercial  
1-39 distribution or exhibition, subject to the additional rules set  
1-40 forth by law;

1-41 (7) a drug, controlled substance, immediate  
1-42 precursor, chemical precursor, or other controlled substance  
1-43 property, including an apparatus or paraphernalia kept, prepared,  
1-44 or manufactured in violation of the laws of this state;

1-45 (8) any property the possession of which is prohibited  
1-46 by law;

1-47 (9) implements or instruments used in the commission  
1-48 of a crime;

1-49 (10) property or items, except the personal writings  
1-50 by the accused, constituting evidence of an offense or constituting  
1-51 evidence tending to show that a particular person committed an  
1-52 offense;

1-53 (11) persons;

1-54 (12) contraband subject to forfeiture under Chapter 59  
1-55 of this code;

1-56 (13) electronic customer communications records and  
1-57 electronic customer data held in electronic storage~~[, including the~~  
1-58 ~~contents of and records and other information related to a wire~~  
1-59 ~~communication or electronic communication held in electronic~~  
1-60 ~~storage]; [or]~~

2-1 (14) a cellular telephone or other wireless  
2-2 communications device, subject to Article 18.0215; or  
2-3 (15) location information.

2-4 (b) For purposes of this article [~~Subsection (a)(13)~~]:

2-5 (1) "Electronic communication" and "wire  
2-6 communication" have the meanings assigned by Article 18A.001.

2-7 (2) "Electronic customer communications records,"  
2-8 "electronic customer data," [~~and~~] "electronic storage," and  
2-9 "location information" [~~storage~~] have the meanings assigned by  
2-10 Article 18B.001.

2-11 SECTION 2. Article 18.06(a), Code of Criminal Procedure, is  
2-12 amended to read as follows:

2-13 (a) A peace officer to whom a search warrant is delivered  
2-14 shall execute the warrant without delay and forthwith return the  
2-15 warrant to the proper magistrate. A search warrant issued under  
2-16 Article 18B.354, and Articles 18B.222 and 18B.223 if requiring the  
2-17 disclosure of location information, as defined by Article 18B.001,  
2-18 must be executed in the manner provided by Article 18B.355 not later  
2-19 than the 30th [~~11th~~] day after the date of issuance. In all other  
2-20 cases, a search warrant must be executed within three days from the  
2-21 time of its issuance. A warrant issued under this chapter, Chapter  
2-22 18A, or Chapter 18B shall be executed within a shorter period if so  
2-23 directed in the warrant by the magistrate.

2-24 SECTION 3. Article 18B.001, Code of Criminal Procedure, is  
2-25 amended by adding Subdivisions (1-a), (6-a), (9-a), and (9-b) and  
2-26 amending Subdivisions (4), (7), and (8) to read as follows:

2-27 (1-a) "Cell site simulator" means a device that:

2-28 (A) locates or identifies a wireless  
2-29 communications device in the immediate vicinity of the simulator by  
2-30 simulating the functions of a wireless telecommunications network  
2-31 transceiver; and

2-32 (B) is designed to collect location information  
2-33 from the wireless communications device.

2-34 (4) "Designated law enforcement office or agency"  
2-35 means:

2-36 (A) the sheriff's department of a county with a  
2-37 population of 3.3 million or more;

2-38 (B) a police department in a municipality with a  
2-39 population of 500,000 or more; [~~or~~]

2-40 (C) the office of inspector general of the Texas  
2-41 Department of Criminal Justice;

2-42 (D) a special investigator under Article 2.122  
2-43 when assisting a peace officer of this state in:

2-44 (i) apprehending a person charged with an  
2-45 offense under Article 18B.222(b)(2); or

2-46 (ii) resolving an emergency situation  
2-47 involving:

2-48 (a) an immediate life-threatening  
2-49 situation;

2-50 (b) conspiratorial activities  
2-51 characteristic of an imminent threat from violent organized crime;

2-52 (c) an ongoing attack on a protected  
2-53 computer, as defined by 18 U.S.C. Section 1030, that constitutes an  
2-54 offense under Section 33.02, Penal Code, or an equivalent offense  
2-55 under federal law; or

2-56 (d) the report of the disappearance of  
2-57 an individual, including the report of a runaway individual younger  
2-58 than 18 years of age, or a report of a suicidal individual, where  
2-59 the report indicates the individual may be in danger based on the  
2-60 circumstances of the disappearance, including circumstances such  
2-61 as the age and mental or physical condition of the individual; or

2-62 (E) a prosecutor, assistant prosecutor, or a  
2-63 peace officer who is an investigator of a prosecutor's office in a  
2-64 county with a population of more than 800,000.

2-65 (6-a) "Electronic customer communications records"  
2-66 means data or records, other than location information or  
2-67 electronic customer data, that:

2-68 (A) are in the possession, care, custody, or  
2-69 control of a provider of an electronic communications service or a

3-1 provider of a remote computing service; and  
 3-2 (B) contain:  
 3-3 (i) the content of a wire or electronic  
 3-4 communication sent to or by the customer, including:  
 3-5 (a) information that identifies by  
 3-6 name the recipient or destination of a wire or electronic  
 3-7 communication;  
 3-8 (b) the draft form of a wire or  
 3-9 electronic communication, regardless of whether the communication  
 3-10 was sent; or  
 3-11 (c) a summary description of the  
 3-12 content of a wire or electronic communication, such as file name,  
 3-13 subject line, or uniform resource locator; or  
 3-14 (ii) the content of files or records owned  
 3-15 or possessed by a customer that are stored by the applicable service  
 3-16 provider by or on behalf of the customer.

3-17 (7) "Electronic customer data" means data or records,  
 3-18 other than location information or electronic customer  
 3-19 communication records, that:

3-20 (A) are in the possession, care, custody, or  
 3-21 control of a provider of an electronic communications service or  
 3-22 provider of a remote computing service; and

3-23 (B) contain:  
 3-24 (i) information revealing the identity of  
 3-25 customers of the applicable service;  
 3-26 (ii) information about a customer's use of  
 3-27 the applicable service; or  
 3-28 (iii) information that identifies the  
 3-29 recipient or destination of a wire or electronic communication sent  
 3-30 to or by a customer[+

3-31 ~~(iv) the content of a wire or electronic~~  
 3-32 ~~communication sent to or by a customer; and~~

3-33 ~~(v) any data stored with the applicable~~  
 3-34 ~~service provider by or on behalf of a customer].~~

3-35 (8) "Electronic storage" means storage of electronic  
 3-36 customer data, electronic customer communications records, or  
 3-37 location information in a computer, computer network, or computer  
 3-38 system, regardless of whether the data is subject to recall,  
 3-39 further manipulation, deletion, or transmission. The term includes  
 3-40 storage of a wire or electronic communication by an electronic  
 3-41 communications service or a remote computing service.

3-42 (9-a) "Immediate life-threatening situation" has the  
 3-43 meaning assigned by Article 18A.201.

3-44 (9-b) "Location information" means data or records,  
 3-45 other than information identifying the subscriber or customer or  
 3-46 the account with which a wireless communications device is  
 3-47 associated or information composed of network transactional access  
 3-48 records unrelated to the location of a wireless communications  
 3-49 device, that:

3-50 (A) suggest the physical location of a wireless  
 3-51 communications device by identifying the first, intermediate, or  
 3-52 last point through which a wire or electronic communication enters  
 3-53 or departs the physical infrastructure of an electronic  
 3-54 communications system, including data or records commonly known as  
 3-55 cell site location information;

3-56 (B) are created by or accessible to a provider of  
 3-57 an electronic communications system and designed to identify the  
 3-58 physical location of a wireless communications device, including  
 3-59 information commonly known as E911 or precision location  
 3-60 information derived through a global positioning system or  
 3-61 multi-lateration measurement; or

3-62 (C) are created by or accessed through the use of  
 3-63 a cell site simulator.

3-64 SECTION 4. Subchapter B, Chapter 18B, Code of Criminal  
 3-65 Procedure, is amended by adding Article 18B.0505 to read as  
 3-66 follows:

3-67 Art. 18B.0505. APPLICABILITY. This subchapter and  
 3-68 Subchapters C and D do not apply to the use of a cell site simulator.

3-69 SECTION 5. Article 18B.151, Code of Criminal Procedure, is

4-1 amended to read as follows:

4-2 Art. 18B.151. EMERGENCY INSTALLATION AND USE OF PEN  
 4-3 REGISTER OR TRAP AND TRACE DEVICE. [~~(a)~~ In this article,  
 4-4 "~~immediate life-threatening situation~~" has the meaning assigned by  
 4-5 Article ~~18A.201~~.

4-6 [~~(b)~~] A peace officer authorized to possess, install,  
 4-7 operate, or monitor a device under Subchapter E, Chapter 18A, may  
 4-8 install and use a pen register or trap and trace device if:

4-9 (1) another peace officer is designated to approve for  
 4-10 the authorized peace officer's agency the emergency required  
 4-11 disclosure of location information by:

4-12 (A) the head of the agency; and  
 4-13 (B) a district attorney or criminal district  
 4-14 attorney with jurisdiction over all or part of the other officer's  
 4-15 jurisdiction; and

4-16 (2) the peace officer described by Subdivision (1)  
 4-17 approves the installation and use of a pen register or trap and  
 4-18 trace device by reasonably determining that:

4-19 (A) an emergency situation exists in the  
 4-20 territorial jurisdiction of the authorized peace officer, or  
 4-21 another officer the authorized officer is assisting, involving:

4-22 (i) an immediate life-threatening  
 4-23 situation;

4-24 (ii) conspiratorial activities  
 4-25 characteristic of an imminent threat from violent organized crime;

4-26 (iii) if the authorized peace officer is  
 4-27 assisting an employee, officer, or agent of the federal government,  
 4-28 an immediate threat to a national security interest;

4-29 (iv) an ongoing attack on a protected  
 4-30 computer, as defined by 18 U.S.C. Section 1030, that constitutes an  
 4-31 offense under Section 33.02, Penal Code, or an equivalent offense  
 4-32 under federal law; or

4-33 (v) the report of the disappearance of an  
 4-34 individual, including the report of a runaway individual younger  
 4-35 than 18 years of age, or a report of a suicidal individual, where  
 4-36 the report indicates the individual may be in danger based on the  
 4-37 circumstances of the disappearance, including circumstances such  
 4-38 as the age and mental or physical condition of the individual;

4-39 (B) installing and using the pen register or trap  
 4-40 and trace device may resolve the emergency situation; and

4-41 (C) [~~the peace officer reasonably believes:~~  
 4-42 ~~(1) an immediate life-threatening situation exists~~  
 4-43 ~~that:~~

4-44 [~~(A) is within the territorial jurisdiction of~~  
 4-45 ~~the peace officer or another officer the peace officer is~~  
 4-46 ~~assisting; and~~

4-47 [~~(B) requires the installation of a pen register~~  
 4-48 ~~or trap and trace device before an order authorizing the~~  
 4-49 ~~installation and use can, with due diligence, be obtained under~~  
 4-50 ~~this chapter; and~~

4-51 [~~(2)] there are sufficient grounds under this chapter~~  
 4-52 ~~on which to obtain an order authorizing the installation and use of~~  
 4-53 ~~a pen register or trap and trace device.~~

4-54 SECTION 6. Article 18B.152, Code of Criminal Procedure, is  
 4-55 amended by adding Subsection (c) to read as follows:

4-56 (c) In the event that at the time of the installation and use  
 4-57 of a pen register or trap and trace device under this subchapter it  
 4-58 is not readily apparent that any offense has been committed, the  
 4-59 judge shall note the exact date and time at which the likelihood  
 4-60 that an offense was committed became apparent, if applicable. If,  
 4-61 before the conclusion of the emergency or issuance of an order  
 4-62 authorizing continued use of the device under Subchapter B it did  
 4-63 not become apparent that any offense was committed, the judge shall  
 4-64 annotate the order to reflect that: "No affirmative investigative  
 4-65 or prosecutive use may be made of any pen register or trap and trace  
 4-66 records obtained pursuant to the device's emergency installation or  
 4-67 use."

4-68 SECTION 7. Article 18B.202(c), Code of Criminal Procedure,  
 4-69 is amended to read as follows:

5-1 (c) The affidavit must:  
 5-2 (1) state the name, department, agency, and address of  
 5-3 the applicant;  
 5-4 (2) identify the vehicle, container, or item to which,  
 5-5 in which, or on which the mobile tracking device is to be attached,  
 5-6 placed, or otherwise installed;  
 5-7 (3) state the name of the owner or possessor of the  
 5-8 vehicle, container, or item identified under Subdivision (2);  
 5-9 (4) state the judicial jurisdictional area in which  
 5-10 the vehicle, container, or item identified under Subdivision (2) is  
 5-11 expected to be found; and  
 5-12 (5) state the facts and circumstances that provide the  
 5-13 applicant with probable cause to believe [~~a reasonable suspicion~~]  
 5-14 that:

5-15 (A) criminal activity has been, is, or will be  
 5-16 committed; and  
 5-17 (B) the installation and use of a mobile tracking  
 5-18 device will [~~is likely to~~] produce:  
 5-19 (i) evidence of the offense;  
 5-20 (ii) the location of contraband, fruits of  
 5-21 the offense, or other items illegally possessed;  
 5-22 (iii) the location of criminal instruments;  
 5-23 (iv) the identity or location of a person to  
 5-24 be arrested; or  
 5-25 (v) the identity or location of a person  
 5-26 being unlawfully restrained [~~information that is material to an~~  
 5-27 ~~ongoing criminal investigation of that criminal activity~~].

5-28 SECTION 8. Article 18B.205, Code of Criminal Procedure, is  
 5-29 amended to read as follows:

5-30 Art. 18B.205. DURATION OF ORDER. (a) An order under this  
 5-31 subchapter expires not later than the 45th [~~90th~~] day after the date  
 5-32 that the mobile tracking device was activated in place on or within  
 5-33 the vehicle, container, or item.

5-34 (b) For good cause shown, the judge may grant an extension  
 5-35 for an additional 45-day [~~90-day~~] period.

5-36 SECTION 9. Chapter 18B, Code of Criminal Procedure, is  
 5-37 amended by adding Subchapter E-1 to read as follows:

5-38 SUBCHAPTER E-1. WARRANT FOR USE OF CELL SITE SIMULATOR OR REQUIRING  
 5-39 DISCLOSURE OF LOCATION INFORMATION

5-40 Art. 18B.221. APPLICABILITY. This subchapter does not  
 5-41 apply to a device used by the Texas Department of Criminal Justice,  
 5-42 or a person under contract with the department, to detect  
 5-43 contraband in a correctional facility.

5-44 Art. 18B.222. WARRANT FOR USE OF CELL SITE SIMULATOR OR  
 5-45 DISCLOSURE OF CERTAIN LOCATION INFORMATION. (a) A district judge  
 5-46 may issue a warrant:

5-47 (1) authorizing the use of a cell site simulator to  
 5-48 obtain location information from a cellular telephone or other  
 5-49 wireless communications device; or

5-50 (2) requiring the disclosure of location information  
 5-51 by a provider of an electronic communications service or a provider  
 5-52 of a remote computing service who has possession, care, custody, or  
 5-53 control of the information, regardless of whether the location  
 5-54 information is held at a location in this state or another state.

5-55 (b) A district judge may issue a warrant described by  
 5-56 Subsection (a) only:

5-57 (1) except as provided by Article 18B.231, on  
 5-58 application by:

5-59 (A) a prosecutor; or  
 5-60 (B) an assistant prosecutor, if applying on  
 5-61 request of:

5-62 (i) an authorized peace officer  
 5-63 commissioned by the department; or

5-64 (ii) an authorized peace officer of a  
 5-65 designated law enforcement office or agency; and

5-66 (2) for the investigation of:  
 5-67 (A) an offense under:

5-68 (i) Section 19.02, Penal Code;  
 5-69 (ii) Section 19.03, Penal Code;

6-1 (iii) Section 20.03, Penal Code;  
 6-2 (iv) Section 20.04, Penal Code;  
 6-3 (v) Chapter 20A, Penal Code;  
 6-4 (vi) Section 21.02, Penal Code;  
 6-5 (vii) Section 21.11, Penal Code;  
 6-6 (viii) Section 22.01, Penal Code, if the  
 6-7 offense is punishable as a felony;  
 6-8 (ix) Section 22.011, Penal Code;  
 6-9 (x) Section 22.02, Penal Code;  
 6-10 (xi) Section 22.021, Penal Code;  
 6-11 (xii) Section 22.04, Penal Code;  
 6-12 (xiii) Section 22.041, Penal Code;  
 6-13 (xiv) Section 28.02, Penal Code;  
 6-14 (xv) Section 29.02, Penal Code;  
 6-15 (xvi) Section 29.03, Penal Code;  
 6-16 (xvii) Section 30.02, Penal Code;  
 6-17 (xviii) Chapter 34, Penal Code;  
 6-18 (xix) Title 8, Penal Code;  
 6-19 (xx) Chapter 43, Penal Code;  
 6-20 (xxi) Chapter 481, Health and Safety Code,  
 6-21 other than an offense under:  
 6-22 (a) Section 481.115(b),  
 6-23 481.1151(b)(1), 481.116(b), 481.1161(b)(1), (2), or (3),  
 6-24 481.117(b), 481.118(b), or 481.125(d) of that code; or  
 6-25 (b) Section 481.121(b) of that code,  
 6-26 if the offense involves not more than one pound of marihuana;  
 6-27 (xxii) notwithstanding Subparagraph (xxi),  
 6-28 any offense under Chapter 481, Health and Safety Code, involving  
 6-29 fentanyl, alpha-methylfentanyl, or carfentanyl, or any derivative  
 6-30 of those substances, including any isomer, ester, ether, salt, or  
 6-31 salt of an isomer, ester, or ether of those substances;  
 6-32 (xxiii) Chapter 483, Health and Safety  
 6-33 Code; or  
 6-34 (xxiv) Chapter 485, Health and Safety Code;  
 6-35 (B) a felony under Chapter 71, Penal Code;  
 6-36 (C) any sex offense for which a person is subject  
 6-37 to registration under Chapter 62 and in which the victim was younger  
 6-38 than 18 years of age at the time the offense was committed;  
 6-39 (D) an offense of another jurisdiction in the  
 6-40 United States equivalent to an offense under Paragraph (A), (B), or  
 6-41 (C), regardless of whether the offense was committed in this state  
 6-42 or another jurisdiction; or  
 6-43 (E) an emergency situation described by Article  
 6-44 18B.231(a)(2)(A).  
 6-45 (c) An application under this article must:  
 6-46 (1) be made in writing under oath; and  
 6-47 (2) include:  
 6-48 (A) the name, department, agency, and address of  
 6-49 the applicant;  
 6-50 (B) the offense being investigated and for which  
 6-51 the application is being made;  
 6-52 (C) the case number or unique identifier assigned  
 6-53 by the law enforcement agency to the investigation of the offense  
 6-54 for which the application is being made;  
 6-55 (D) the name of:  
 6-56 (i) the customer or subscriber whose data  
 6-57 or device is the subject of the application, if the application  
 6-58 seeks location information related to a particular subscriber or  
 6-59 customer and the name of the customer or subscriber is known to the  
 6-60 applicant; and  
 6-61 (ii) the person who is the subject of the  
 6-62 application, if that person is not described by Subparagraph (i);  
 6-63 (E) the account number or unique identifier that  
 6-64 is the subject of the application; and  
 6-65 (F) if the application is requesting  
 6-66 authorization to use a cell site simulator, a description of the  
 6-67 manner and method of deploying the cell site simulator device,  
 6-68 including:  
 6-69 (i) whether the use of the device is likely

7-1 to result in the device collecting from a cellular telephone or  
7-2 other wireless communications device data that is not the subject  
7-3 of the application; and

7-4 (ii) procedures for mitigating the  
7-5 collection of extraneous data as described by Subparagraph (i).

7-6 (d) The accompanying affidavit must contain a statement of  
7-7 facts and circumstances demonstrating:

7-8 (1) probable cause that:

7-9 (A) an offense listed in Subsection (b)(2)(A),  
7-10 (B), (C), or (D) has been, is being, or will be committed; and

7-11 (B) the location information being sought or the  
7-12 use of a cell site simulator will reveal the location of:

7-13 (i) evidence of the offense;

7-14 (ii) contraband, fruits of the offense, or  
7-15 other items illegally possessed;

7-16 (iii) criminal instruments;

7-17 (iv) a person to be arrested; or

7-18 (v) a person being unlawfully restrained;

7-19 or

7-20 (2) that the use of a cell site simulator or the  
7-21 required disclosure of location information will resolve an  
7-22 emergency situation described by Article 18B.231(a)(2)(A).

7-23 Art. 18B.223. WARRANT FOR CERTAIN LOCATION INFORMATION.

7-24 (a) The judge may issue a warrant requiring a provider of an  
7-25 electronic communications service or a provider of a remote  
7-26 computing service to disclose location information related to the  
7-27 commission of an offense based on an application for a warrant  
7-28 submitted without specifying any customer information required  
7-29 under Articles 18B.222(c)(2)(D) and (E), provided that the  
7-30 application:

7-31 (1) meets all other requirements of this subchapter;

7-32 and

7-33 (2) includes:

7-34 (A) the location where the offense is alleged to  
7-35 have been committed; and

7-36 (B) each provider on whom the warrant will be  
7-37 served.

7-38 (b) The location information disclosed pursuant to a  
7-39 warrant issued under this article may not be used to further an  
7-40 investigation unrelated to the investigation of the offense for  
7-41 which the warrant application was made, unless an authorized peace  
7-42 officer, prosecutor, or assistant prosecutor:

7-43 (1) makes a separate application to a district judge  
7-44 to authorize the use of the location information to further an  
7-45 unrelated investigation; and

7-46 (2) states in the application described by Subdivision  
7-47 (1) specific and articulable facts showing good cause for that use.

7-48 (c) Unless authorized by a district judge, a law enforcement  
7-49 agency holding location information disclosed pursuant to a warrant  
7-50 issued under this article:

7-51 (1) may not commingle:

7-52 (A) the location information determined relevant  
7-53 to the investigation of the offense for which the warrant  
7-54 application was made; and

7-55 (B) the location information determined to be  
7-56 irrelevant to that investigation; and

7-57 (2) must keep separated by the criminal episode or  
7-58 location each set of location information described by Subdivision  
7-59 (1)(B).

7-60 (d) A district judge may review similar applications for a  
7-61 warrant under this article and instruct an agency holding  
7-62 separately the location information under Subsection (c) to compare  
7-63 the information to determine whether the information is relevant to  
7-64 the cases or to other locations identified in similar applications.

7-65 Art. 18B.224. JURISDICTION. An application under this  
7-66 subchapter must be filed in a judicial district in which is located:

7-67 (1) the headquarters of:

7-68 (A) the office of the prosecutor filing an  
7-69 application under this subchapter;

8-1 (B) a law enforcement agency that requests the  
8-2 prosecutor to file an application for a warrant under this  
8-3 subchapter or that proposes to execute the warrant, if one is issued  
8-4 under this subchapter; or  
8-5 (C) a provider of an electronic communications  
8-6 service or a provider of a remote computing service holding in  
8-7 electronic storage location information for which the warrant is  
8-8 sought;  
8-9 (2) the site of the proposed use of a cell site  
8-10 simulator; or  
8-11 (3) the billing, residential, or business address of  
8-12 the subscriber or customer of a provider of an electronic  
8-13 communications service or a provider of a remote computing service  
8-14 who is the subject of the application.

8-15 Art. 18B.225. DURATION OF WARRANT. (a) A warrant issued  
8-16 under this subchapter authorizing the use of a cell site simulator  
8-17 is valid for a period not to exceed 30 days.  
8-18 (b) A warrant issued under this subchapter requiring the  
8-19 ongoing disclosure of prospective location information by a  
8-20 provider of an electronic communications service or a provider of a  
8-21 remote computing service is valid for a period not to exceed 60  
8-22 days.

8-23 Art. 18B.226. USE OF LOCATION INFORMATION IN UNRELATED  
8-24 INVESTIGATION PROHIBITED. Except as provided by Article 18B.223(b)  
8-25 or (d), location information obtained pursuant to a warrant issued  
8-26 under this subchapter:  
8-27 (1) may not be used to further an investigation  
8-28 unrelated to the investigation of the offense for which the warrant  
8-29 application was made; and  
8-30 (2) may be used to investigate or prosecute offenses  
8-31 and defendants related to the offense for which the warrant  
8-32 application was made.

8-33 Art. 18B.227. CERTAIN RESTRICTIONS ON USE OF CELL SITE  
8-34 SIMULATOR. (a) Under a warrant issued under this subchapter  
8-35 authorizing the use of a cell site simulator:  
8-36 (1) if the cell site simulator is used to locate a  
8-37 known person's wireless communications device, location  
8-38 information that is derived from the simulator's use and is  
8-39 irrelevant to locating the device must be deleted on the date the  
8-40 information was collected; and  
8-41 (2) unless granted an exception by a district judge to  
8-42 the requirement described in this subdivision, if the cell site  
8-43 simulator is used to locate an unknown wireless communications  
8-44 device, location information that is derived from the simulator's  
8-45 use and is irrelevant to locating the device must be deleted not  
8-46 later than the 30th day after the date the simulator is first used,  
8-47 and not later than the earlier of the following:  
8-48 (A) at the end of each 30-day period following  
8-49 the initial 30-day period described by this subdivision; or  
8-50 (B) the expiration of the warrant.  
8-51 (b) The district judge who issues a warrant under this  
8-52 subchapter for the use of a cell site simulator may extend a period  
8-53 described by Subsection (a) if the applicant for the warrant shows  
8-54 good cause for the extension. The judge may grant a subsequent  
8-55 extension only if the applicant shows good cause for the subsequent  
8-56 extension. An extension granted under this subsection may not  
8-57 exceed 90 days, unless the judge makes a finding in the record that  
8-58 the circumstances of the investigation justify an extension longer  
8-59 than 90 days.  
8-60 (c) A district judge may not issue a warrant to authorize  
8-61 using or configuring a cell site simulator for the purpose of, and a  
8-62 person acting under a warrant issued under this subchapter may not  
8-63 use or configure a cell site simulator for the purpose of:  
8-64 (1) intercepting, capturing, or collecting the  
8-65 content of any electronic communication; or  
8-66 (2) collecting information on the attendees of a  
8-67 public gathering who are exercising any right under the First  
8-68 Amendment to the United States Constitution, including as part of a  
8-69 protest, demonstration, rally, political meeting, or religious

9-1 gathering.  
9-2 Art. 18B.228. PRESERVATION OF CERTAIN LOCATION  
9-3 INFORMATION. (a) Location information disclosed by a provider of  
9-4 an electronic communications service or a provider of a remote  
9-5 computing service pursuant to a warrant issued under this  
9-6 subchapter must be preserved by the attorney representing the  
9-7 state.  
9-8 (b) As soon as practicable after receiving a timely request  
9-9 from a defendant, the attorney representing the state shall produce  
9-10 the location information described by Subsection (a) and permit  
9-11 inspection and electronic and print duplication of that information  
9-12 by or on behalf of the defendant.  
9-13 Art. 18B.229. WARRANTS AND AFFIDAVITS SEALED.  
9-14 (a) Notwithstanding any other law, other than Subsections (b) and  
9-15 (c), a district judge issuing a warrant under this subchapter shall  
9-16 seal the warrant and applicable affidavit.  
9-17 (b) A judge shall authorize the disclosure of the warrant  
9-18 and applicable affidavit to:  
9-19 (1) a defendant, or the attorney representing the  
9-20 defendant, in a criminal action, if the defendant or attorney makes  
9-21 a timely request for disclosure; or  
9-22 (2) the public, if a criminal action has been filed  
9-23 based on evidence obtained as part of the investigation conducted  
9-24 under the case number or unique identifier included in the warrant  
9-25 application and each defendant in that criminal action has been  
9-26 convicted or acquitted.  
9-27 (c) A judge authorizing disclosure under Subsection (b)  
9-28 shall redact all information revealing the identity of cooperating  
9-29 witnesses, informants, or undercover peace officers.  
9-30 (d) This article may not be construed to affect any other  
9-31 right of access to public records or proceedings granted under any  
9-32 other law.  
9-33 Art. 18B.230. NOTICE TO SUBSCRIBER OR CUSTOMER. An  
9-34 authorized peace officer may require a provider of an electronic  
9-35 communications service or a provider of a remote computing service  
9-36 to disclose location information without giving the subscriber or  
9-37 customer notice if the officer obtains:  
9-38 (1) a warrant under this subchapter and the court  
9-39 issuing the warrant makes a finding that there is reason to believe  
9-40 that giving notice under this section may result in:  
9-41 (A) endangering the life or physical safety of an  
9-42 individual;  
9-43 (B) a suspect or defendant fleeing from  
9-44 prosecution;  
9-45 (C) the destruction of or tampering with  
9-46 evidence;  
9-47 (D) the intimidation of potential witnesses who  
9-48 may assist an investigation of an offense or testify at a legal  
9-49 proceeding; or  
9-50 (E) otherwise jeopardizing an investigation or  
9-51 unduly delaying a trial; or  
9-52 (2) the consent of the subscriber or customer.  
9-53 Art. 18B.231. EMERGENCY USE OF CELL SITE SIMULATOR OR  
9-54 REQUIRED DISCLOSURE OF LOCATION INFORMATION. (a) Subject to  
9-55 Subsections (c) and (d), an authorized peace officer may without a  
9-56 warrant require a provider of an electronic communications service  
9-57 or a provider of a remote computing service who has possession,  
9-58 care, custody, or control of location information to disclose the  
9-59 information, if:  
9-60 (1) a peace officer in the authorized peace officer's  
9-61 agency is designated to approve for the agency the emergency  
9-62 required disclosure of location information by:  
9-63 (A) the head of the agency; and  
9-64 (B) a district attorney or criminal district  
9-65 attorney with jurisdiction over all or part of the agency's  
9-66 jurisdiction; and  
9-67 (2) the peace officer described by Subdivision (1)  
9-68 approves the authorized peace officer's requiring the disclosure of  
9-69 the information by reasonably determining that:

10-1 (A) an emergency situation exists in the  
 10-2 territorial jurisdiction of the authorized peace officer, or  
 10-3 another officer the authorized peace officer is assisting,  
 10-4 involving:  
 10-5 (i) an immediate life-threatening  
 10-6 situation;  
 10-7 (ii) conspiratorial activities  
 10-8 characteristic of an imminent threat from violent organized crime;  
 10-9 (iii) if the authorized peace officer is  
 10-10 assisting an employee, officer, or agent of the federal government,  
 10-11 an immediate threat to a national security interest;  
 10-12 (iv) an ongoing attack on a protected  
 10-13 computer, as defined by 18 U.S.C. Section 1030, that constitutes an  
 10-14 offense under Section 33.02, Penal Code, or an equivalent offense  
 10-15 under federal law; or  
 10-16 (v) the report of the disappearance of an  
 10-17 individual, including the report of a runaway individual younger  
 10-18 than 18 years of age, or a report of a suicidal individual, where  
 10-19 the report indicates the individual may be in danger based on the  
 10-20 circumstances of the disappearance, including circumstances such  
 10-21 as the age and mental or physical condition of the individual; and  
 10-22 (B) requiring the information may resolve the  
 10-23 emergency situation.  
 10-24 (b) Subject to Subsections (c) and (d), an authorized peace  
 10-25 officer of the department or a designated law enforcement office or  
 10-26 agency may without a warrant use a cell site simulator if the head  
 10-27 of the authorized peace officer's agency or that person's designee  
 10-28 approves the authorized peace officer's use of the cell site  
 10-29 simulator by reasonably determining that:  
 10-30 (1) an emergency situation described by Subsection  
 10-31 (a)(2)(A) exists in the applicable judicial district under Article  
 10-32 18B.224; and  
 10-33 (2) use of the cell site simulator may resolve the  
 10-34 emergency situation.  
 10-35 (c) An authorized peace officer who requires disclosure of  
 10-36 location information or uses a cell site simulator under Subsection  
 10-37 (a) or (b) shall:  
 10-38 (1) promptly report the required disclosure of  
 10-39 location information or the use of the simulator to, as applicable:  
 10-40 (A) if using a cell site simulator, the  
 10-41 prosecutor in the county in which the simulator is used; or  
 10-42 (B) if requiring the disclosure of location  
 10-43 information, the prosecutor in the county where the peace officer's  
 10-44 agency is headquartered; and  
 10-45 (2) within 48 hours after providing notice of the  
 10-46 required disclosure or within 48 hours after the use of the  
 10-47 simulator begins, as applicable, obtain a warrant under this  
 10-48 subchapter authorizing the required disclosure or the use of the  
 10-49 simulator.  
 10-50 (d) If a warrant application is denied or is not issued  
 10-51 within the 48-hour period, the peace officer shall delete the  
 10-52 disclosed location information or terminate use of the cell site  
 10-53 simulator promptly on the earlier of the denial of the warrant  
 10-54 application or the expiration of the 48-hour period.  
 10-55 Art. 18B.232. EXECUTION OF WARRANT. Article 18B.355  
 10-56 applies to the execution of a warrant issued under this subchapter  
 10-57 in the same manner as the article applies to the execution of a  
 10-58 warrant for electronic customer communications records.  
 10-59 Art. 18B.233. WARRANT ISSUED IN ANOTHER STATE. A provider  
 10-60 of an electronic communications service or a provider of a remote  
 10-61 computing service shall comply with a warrant issued in another  
 10-62 state and seeking location information described by Article  
 10-63 18B.222, if the warrant is served on the service provider in a  
 10-64 manner equivalent to the service of process requirements provided  
 10-65 by Article 18B.355(b).  
 10-66 Art. 18B.234. REPORTING REQUIRED. Not later than April 1 of  
 10-67 each year, each law enforcement office or agency employing a person  
 10-68 who applies for a warrant under this subchapter shall annually post  
 10-69 on the Internet website of the office or agency the following

11-1 information:

11-2 (1) the number of warrants of all persons of the office  
 11-3 or agency who applied for a warrant under this subchapter  
 11-4 requesting authorization for use of a cell site simulator and the  
 11-5 number of those warrants granted to those persons;

11-6 (2) the number of warrants of all persons of the office  
 11-7 or agency who applied for a warrant under this subchapter requiring  
 11-8 the disclosure of location information by a provider of an  
 11-9 electronic communications service or a provider of a remote  
 11-10 computing service and the number of those warrants granted to those  
 11-11 persons;

11-12 (3) the offense for which each warrant application  
 11-13 under Subdivision (1) or (2) was made; and

11-14 (4) the number of persons who were located as a result  
 11-15 of the location information obtained pursuant to a warrant issued  
 11-16 under this subchapter and were charged with a felony.

11-17 SECTION 10. Article 18B.351, Code of Criminal Procedure, is  
 11-18 amended to read as follows:

11-19 Art. 18B.351. GOVERNMENT ACCESS TO ELECTRONIC CUSTOMER  
 11-20 COMMUNICATIONS RECORDS AND ELECTRONIC CUSTOMER DATA. (a) An  
 11-21 authorized peace officer may require a provider of an electronic  
 11-22 communications service or a provider of a remote computing service  
 11-23 to disclose electronic customer communications records or  
 11-24 electronic customer data that is in electronic storage by obtaining  
 11-25 a warrant under Article 18B.354.

11-26 (b) An authorized peace officer may require a provider of an  
 11-27 electronic communications service or a provider of a remote  
 11-28 computing service to disclose ~~[only]~~ electronic customer data ~~[that~~  
 11-29 ~~is information revealing the identity of customers of the~~  
 11-30 ~~applicable service or information about a customer's use of the~~  
 11-31 ~~applicable service,]~~ without giving the subscriber or customer  
 11-32 notice:

11-33 (1) by obtaining an administrative subpoena  
 11-34 authorized by statute;

11-35 (2) by obtaining a grand jury subpoena;

11-36 (3) by obtaining a court order under Article 18B.352;

11-37 (4) by obtaining a warrant under Article 18B.354;

11-38 (5) by obtaining the consent of the subscriber or  
 11-39 customer to the disclosure of the data; or

11-40 (6) as otherwise permitted by applicable federal law.

11-41 SECTION 11. Article 18B.352(a), Code of Criminal Procedure,  
 11-42 is amended to read as follows:

11-43 (a) A court shall issue an order authorizing disclosure of  
 11-44 electronic customer data related to [contents, records, or other  
 11-45 information of] a wire or electronic communication held in  
 11-46 electronic storage if the court determines that there is a  
 11-47 reasonable belief that the information sought is relevant and  
 11-48 material to an ongoing criminal investigation [to a legitimate law  
 11-49 enforcement inquiry].

11-50 SECTION 12. Article 18B.353, Code of Criminal Procedure, is  
 11-51 amended to read as follows:

11-52 Art. 18B.353. WARRANT ISSUED IN THIS STATE: APPLICABILITY.  
 11-53 Articles 18B.354-18B.357 apply to a warrant required under Article  
 11-54 18B.351 to obtain electronic customer communications records or  
 11-55 electronic customer data[, including the contents of a wire or  
 11-56 electronic communication].

11-57 SECTION 13. Articles 18B.354(a), (b), and (c), Code of  
 11-58 Criminal Procedure, are amended to read as follows:

11-59 (a) On the filing of an application by an authorized peace  
 11-60 officer, a district judge may issue a search warrant under this  
 11-61 article for electronic customer communications records or  
 11-62 electronic customer data held in electronic storage[, including the  
 11-63 contents of and records and other information related to a wire or  
 11-64 electronic communication held in electronic storage,] by a provider  
 11-65 of an electronic communications service or a provider of a remote  
 11-66 computing service described by Article 18B.355(b), regardless of  
 11-67 whether the electronic customer communications records or  
 11-68 electronic customer data is held at a location in this state or  
 11-69 another state. An application made under this subsection must

12-1 demonstrate probable cause for the issuance of the warrant and must  
 12-2 be supported by the oath of the authorized peace officer.

12-3 (b) A search warrant may not be issued under this article  
 12-4 unless the sworn affidavit required by Article 18.01(b) provides  
 12-5 sufficient and substantial facts to establish probable cause that:

- 12-6 (1) a specific offense has been committed; and
- 12-7 (2) the electronic customer communications records or  
 12-8 electronic customer data sought:

12-9 (A) constitutes evidence of that offense or  
 12-10 evidence that a particular person committed that offense, or  
 12-11 reveals the location of a person charged with a felony offense; and

12-12 (B) is held in electronic storage by the service  
 12-13 provider on which the warrant is served under Article 18B.355(c).

12-14 (c) Only the electronic customer communications records or  
 12-15 electronic customer data described in the sworn affidavit required  
 12-16 by Article 18.01(b) may be seized under the warrant.

12-17 SECTION 14. Article 18B.356(c), Code of Criminal Procedure,  
 12-18 is amended to read as follows:

12-19 (c) The service provider shall produce all electronic  
 12-20 customer communications records, electronic customer data,  
 12-21 ~~[contents of communications,]~~ and other information sought,  
 12-22 regardless of where the information is held and within the period  
 12-23 allowed for compliance with the warrant, as provided by Subsection  
 12-24 (a) or (b).

12-25 SECTION 15. Articles 18B.406(a) and (d), Code of Criminal  
 12-26 Procedure, are amended to read as follows:

12-27 (a) Not later than the 14th day after the date a subscriber  
 12-28 or customer receives notice under Article 18B.402, the subscriber  
 12-29 or customer may file a written motion to quash the subpoena or  
 12-30 vacate the court order in the court that issued the subpoena or  
 12-31 court order. The motion must contain an affidavit or other sworn  
 12-32 statement stating:

12-33 (1) that the applicant is a subscriber or customer of  
 12-34 the provider of an electronic communications service or the  
 12-35 provider of a remote computing service from which the electronic  
 12-36 customer data held in electronic storage for the subscriber or  
 12-37 customer has been sought; and

12-38 (2) the applicant's reasons for believing that the  
 12-39 electronic customer data sought is not relevant and material to an  
 12-40 ongoing criminal investigation ~~[a legitimate law enforcement~~  
 12-41 ~~inquiry]~~ or that there has not been substantial compliance with the  
 12-42 provisions of this chapter in some other respect.

12-43 (d) The court shall rule on the motion as soon as  
 12-44 practicable after the filing of the peace officer's response. The  
 12-45 court shall deny the motion if the court finds that the applicant is  
 12-46 not the subscriber or customer whose data is the subject of the  
 12-47 subpoena or court order or that there is reason to believe that the  
 12-48 peace officer's inquiry is legitimate and that the data sought is  
 12-49 relevant to that inquiry. The court shall quash the subpoena or  
 12-50 vacate the court order if the court finds that the applicant is the  
 12-51 subscriber or customer whose data is the subject of the subpoena or  
 12-52 court order and that there is not a reason to believe that the data  
 12-53 is relevant and material to an ongoing criminal investigation ~~[a~~  
 12-54 ~~legitimate law enforcement inquiry]~~ or that there has not been  
 12-55 substantial compliance with the provisions of this chapter.

12-56 SECTION 16. Article 18B.451, Code of Criminal Procedure, is  
 12-57 amended to read as follows:

12-58 Art. 18B.451. SUBPOENA AUTHORITY. (a) Except as provided  
 12-59 by Subsection (b), the ~~[The]~~ director of the department or the  
 12-60 director's designee, the inspector general of the Texas Department  
 12-61 of Criminal Justice or the inspector general's designee, or the  
 12-62 sheriff or chief of a designated law enforcement agency or the  
 12-63 sheriff's or chief's designee may issue an administrative subpoena  
 12-64 to a communication common carrier or a provider of an electronic  
 12-65 communications service to compel the production of any carrier's or  
 12-66 service provider's business records:

- 12-67 (1) that:
  - 12-68 (A) ~~[(1)]~~ disclose information about:
    - 12-69 (i) ~~[(A)]~~ the carrier's or service

13-1 provider's customers; or  
13-2 (ii) [~~(B)~~] users of the services offered by  
13-3 the carrier or service provider; or  
13-4 (B) are electronic customer data described by  
13-5 Article 18B.001(7)(B)(iii); and

13-6 (2) are material to a criminal investigation.  
13-7 (b) A person described by Subsection (a) may not compel the  
13-8 production of business records containing location information or  
13-9 electronic customer communications records by issuing an  
13-10 administrative subpoena under Subsection (a).

13-11 SECTION 17. Article 18B.501(a), Code of Criminal Procedure,  
13-12 is amended to read as follows:

13-13 (a) An authorized peace officer seeking electronic customer  
13-14 communications records or electronic customer data under Article  
13-15 18B.351 may apply to the court for an order commanding the service  
13-16 provider to whom a warrant, subpoena, or court order is directed not  
13-17 to disclose to any person the existence of the warrant, subpoena, or  
13-18 court order. The order is effective for the period the court  
13-19 considers appropriate.

13-20 SECTION 18. Articles 18B.503(a) and (b), Code of Criminal  
13-21 Procedure, are amended to read as follows:

13-22 (a) Except as provided by Subsection (c), an authorized  
13-23 peace officer who obtains electronic customer communications  
13-24 records or electronic customer data under Article 18B.351 or  
13-25 18B.359 or other information under this chapter shall reimburse the  
13-26 person assembling or providing the records, data, or information  
13-27 for all costs that are reasonably necessary and that have been  
13-28 directly incurred in searching for, assembling, reproducing, or  
13-29 otherwise providing the records, data, or information, including  
13-30 costs arising from necessary disruption of normal operations of a  
13-31 provider of an electronic communications service or a provider of a  
13-32 remote computing service in which the electronic customer  
13-33 communications records or electronic customer data may be held in  
13-34 electronic storage or in which the other information may be stored.

13-35 (b) The authorized peace officer and the person providing  
13-36 the electronic customer communications records, electronic  
13-37 customer data, or other information may agree on the amount of  
13-38 reimbursement. If there is not an agreement, the court that issued  
13-39 the order for production of the records, data, or information shall  
13-40 determine the amount. If a court order was not issued for  
13-41 production of the records, data, or information, the court before  
13-42 which any criminal prosecution relating to the records, data, or  
13-43 information would be brought shall determine the amount.

13-44 SECTION 19. Chapter 16, Penal Code, is amended by adding  
13-45 Section 16.07 to read as follows:

13-46 Sec. 16.07. UNLAWFUL USE OF CELL SITE SIMULATOR. (a) In  
13-47 this section:

13-48 (1) "Cell site simulator" has the meaning assigned by  
13-49 Article 18B.001, Code of Criminal Procedure.

13-50 (2) "Communication common carrier" and "electronic  
13-51 communication" have the meanings assigned by Article 18A.001, Code  
13-52 of Criminal Procedure.

13-53 (b) A person commits an offense if the person knowingly uses  
13-54 a cell site simulator to locate or identify a wireless  
13-55 communications device or intercept the content of an electronic  
13-56 communication.

13-57 (c) An offense under this section is a state jail felony.

13-58 (d) It is an affirmative defense to prosecution under this  
13-59 section that the actor:

13-60 (1) is an officer, employee, or agent of a  
13-61 communication common carrier and the actor uses a cell site  
13-62 simulator in the regular course of business of the carrier for the  
13-63 purpose of:

13-64 (A) protecting property or services provided by  
13-65 the carrier; or

13-66 (B) assisting another whom the actor reasonably  
13-67 believes to be a peace officer authorized to use a cell site  
13-68 simulator under Article 18B.222, Code of Criminal Procedure;

13-69 (2) is a person authorized to use a cell site simulator

14-1 under Article 18B.222, Code of Criminal Procedure, and acted within  
14-2 the scope of that authorization; or

14-3 (3) obtained the effective consent of the owner or  
14-4 renter of the wireless communications device and the simulator was  
14-5 not used to commit an offense or other prohibited act.

14-6 SECTION 20. Chapter 18B, Code of Criminal Procedure, as  
14-7 amended by this Act, applies to the disclosure of certain  
14-8 information by a provider of a wire or electronic communications  
14-9 service or remote computing service or by a communication common  
14-10 carrier under a warrant, order, or other legal process on or after  
14-11 the effective date of this Act.

14-12 SECTION 21. This Act takes effect September 1, 2019.

14-13 \* \* \* \* \*