

By: Hughes

S.B. No. 1717

A BILL TO BE ENTITLED

AN ACT

1  
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. GROUND FOR ISSUANCE. (a) A search warrant  
11 may 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 shall immediately  
7 [~~forthwith~~] return the warrant to the proper magistrate. [~~A search~~  
8 ~~warrant issued under Article 18B.354 must be executed in the manner~~  
9 ~~provided by Article 18B.355 not later than the 11th day after the~~  
10 ~~date of issuance. In all other cases, a search warrant must be~~  
11 ~~executed within three days from the time of its issuance. A warrant~~  
12 ~~issued under this chapter, Chapter 18A, or Chapter 18B shall be~~  
13 ~~executed within a shorter period if so directed in the warrant by~~  
14 ~~the magistrate.~~]

15 SECTION 3. Article 18.07(a), Code of Criminal Procedure, is  
16 amended to read as follows:

17 (a) Unless the magistrate directs in the warrant a shorter  
18 period for the execution of any search warrant issued under this  
19 chapter, Chapter 18A, or Chapter 18B, the [~~The~~] period allowed for  
20 the execution of the [~~a search~~] warrant, exclusive of the day of its  
21 issuance and of the day of its execution, is:

22 (1) 15 whole days if the warrant is issued solely to  
23 search for and seize specimens from a specific person for DNA  
24 analysis and comparison, including blood and saliva samples;

25 (2) 30 [~~10~~] whole days if the warrant is issued under:

26 (A) Article 18B.222 or 18B.223, if requiring the  
27 disclosure of location information as defined by Article 18B.001;

1 or

2 (B) Article 18B.354; or

3 (3) three whole days if the warrant is issued for a  
4 purpose other than that described by Subdivision (1) or (2).

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

8 (1-a) "Cell site simulator" means a device that:

9 (A) locates or identifies a wireless  
10 communications device in the immediate vicinity of the simulator by  
11 simulating the functions of a wireless telecommunications network  
12 transceiver; and

13 (B) is designed to collect location information  
14 from the wireless communications device.

15 (4) "Designated law enforcement office or agency"  
16 means:

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

19 (B) a police department in a municipality with a  
20 population of 200,000 or more; ~~or~~

21 (C) the office of inspector general of the Texas  
22 Department of Criminal Justice;

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

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

27 (ii) resolving an emergency situation

1 involving:

2 (a) an immediate life-threatening  
3 situation;

4 (b) conspiratorial activities  
5 characteristic of an imminent threat from violent organized crime;

6 (c) an ongoing attack on a protected  
7 computer, as defined by 18 U.S.C. Section 1030, that constitutes an  
8 offense under Section 33.02, Penal Code, or an equivalent offense  
9 under federal law; or

10 (d) the report of the disappearance of  
11 an individual, including the report of a runaway individual younger  
12 than 18 years of age, or a report of a suicidal individual, where  
13 the report indicates the individual may be in danger based on the  
14 circumstances of the disappearance, including circumstances such  
15 as the age and mental or physical condition of the individual; or

16 (E) a prosecutor, assistant prosecutor, or a  
17 peace officer who is an investigator of a prosecutor's office in a  
18 county with a population of more than 800,000.

19 (6-a) "Electronic customer communications records"  
20 means data or records, other than location information, that:

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

24 (B) contain:

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

27 (a) information that identifies by

1 name the recipient or destination of a wire or electronic  
2 communication;

3 (b) the draft form of a wire or  
4 electronic communication, regardless of whether the communication  
5 was sent; or

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

9 (ii) the content of files or records owned  
10 or possessed by a customer that are stored by the applicable service  
11 provider by or on behalf of the customer.

12 (7) "Electronic customer data" means data or records,  
13 other than location information or electronic customer  
14 communication records, that:

15 (A) are in the possession, care, custody, or  
16 control of a provider of an electronic communications service or  
17 provider of a remote computing service; and

18 (B) contain:

19 (i) information revealing the identity of  
20 customers of the applicable service;

21 (ii) information about a customer's use of  
22 the applicable service; or

23 (iii) information that identifies the  
24 recipient or destination of a wire or electronic communication sent  
25 to or by a customer [~~+~~

26 [~~(iv) the content of a wire or electronic~~  
27 ~~communication sent to or by a customer, and~~

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

3                   (8) "Electronic storage" means storage of electronic  
4 customer data, electronic customer communications records, or  
5 location information in a computer, computer network, or computer  
6 system, regardless of whether the data is subject to recall,  
7 further manipulation, deletion, or transmission. The term includes  
8 storage of a wire or electronic communication by an electronic  
9 communications service or a remote computing service.

10                  (9-a) "Immediate life-threatening situation" has the  
11 meaning assigned by Article 18A.201.

12                  (9-b) "Location information" means data or records,  
13 other than information identifying the subscriber or customer or  
14 the account with which a wireless communications device is  
15 associated or information composed of network transactional access  
16 records unrelated to the location of a wireless communications  
17 device, that:

18                         (A) suggest the physical location of a wireless  
19 communications device by identifying the first, intermediate, or  
20 last point through which a wire or electronic communication enters  
21 or departs the physical infrastructure of an electronic  
22 communications system, including data or records commonly known as  
23 cell site location information;

24                         (B) are created by or accessible to a provider of  
25 an electronic communications system and designed to identify the  
26 physical location of a wireless communications device, including  
27 information commonly known as E911 or precision location

1 information derived through a global positioning system or  
2 multi-lateration measurement; or

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

5 SECTION 5. Subchapter B, Chapter 18B, Code of Criminal  
6 Procedure, is amended by adding Article 18B.0505 to read as  
7 follows:

8 Art. 18B.0505. APPLICABILITY. This subchapter and  
9 Subchapters C and D do not apply to the use of a cell site simulator.

10 SECTION 6. Article 18B.151, Code of Criminal Procedure, is  
11 amended to read as follows:

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

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

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

22 (A) the head of the agency; and

23 (B) a district attorney or criminal district  
24 attorney with jurisdiction over all or part of the other officer's  
25 jurisdiction; and

26 (2) the peace officer described by Subdivision (1)  
27 approves the installation and use of a pen register or trap and



1 trace device by reasonably determining that:

2 (A) an emergency situation exists in the  
3 territorial jurisdiction of the authorized peace officer, or  
4 another officer the authorized officer is assisting, involving:

5 (i) an immediate life-threatening  
6 situation;

7 (ii) conspiratorial activities  
8 characteristic of an imminent threat from violent organized crime;

9 (iii) if the authorized peace officer is  
10 assisting an employee, officer, or agent of the federal government,  
11 an immediate threat to a national security interest;

12 (iv) an ongoing attack on a protected  
13 computer, as defined by 18 U.S.C. Section 1030, that constitutes an  
14 offense under Section 33.02, Penal Code, or an equivalent offense  
15 under federal law; or

16 (v) the report of the disappearance of an  
17 individual, including the report of a runaway individual younger  
18 than 18 years of age, or a report of a suicidal individual, where  
19 the report indicates the individual may be in danger based on the  
20 circumstances of the disappearance, including circumstances such  
21 as the age and mental or physical condition of the individual;

22 (B) installing and using the pen register or trap  
23 and trace device may resolve the emergency situation; and

24 (C) ~~[the peace officer reasonably believes:~~

25 ~~[(1) an immediate life-threatening situation exists~~  
26 ~~that:~~

27 ~~[(A) is within the territorial jurisdiction of~~

1 ~~the peace officer or another officer the peace officer is~~  
2 ~~assisting, and~~

3 ~~[(B) requires the installation of a pen register~~  
4 ~~or trap and trace device before an order authorizing the~~  
5 ~~installation and use can, with due diligence, be obtained under~~  
6 ~~this chapter, and~~

7 ~~[-2-]~~ there are sufficient grounds under this chapter  
8 on which to obtain an order authorizing the installation and use of  
9 a pen register or trap and trace device.

10 SECTION 7. Article 18B.152, Code of Criminal Procedure, is  
11 amended by adding Subsection (c) to read as follows:

12 (c) In the event that at the time of the installation and use  
13 of a pen register or trap and trace device under this subchapter it  
14 is not readily apparent that any offense has been committed, the  
15 judge shall note the exact date and time at which the likelihood  
16 that an offense was committed became apparent, if applicable. If,  
17 before the conclusion of the emergency or issuance of an order  
18 authorizing continued use of the device under Subchapter B it did  
19 not become apparent that any offense was committed, the judge shall  
20 annotate the order to reflect that: "No affirmative investigative  
21 or prosecutive use may be made of any pen register or trap and trace  
22 records obtained pursuant to the device's emergency installation or  
23 use."

24 SECTION 8. Article 18B.202(c), Code of Criminal Procedure,  
25 is amended to read as follows:

26 (c) The affidavit must:

27 (1) state the name, department, agency, and address of

1 the applicant;

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

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

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

10 (5) state the facts and circumstances that provide the  
11 applicant with probable cause to believe [~~a reasonable suspicion~~]  
12 that:

13 (A) criminal activity has been, is, or will be  
14 committed; and

15 (B) the installation and use of a mobile tracking  
16 device will [~~is likely to~~] produce:

17 (i) evidence of the offense;

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

20 (iii) the location of criminal instruments;

21 (iv) the identity or location of a person to  
22 be arrested; or

23 (v) the identity or location of a person  
24 being unlawfully restrained [~~information that is material to an~~  
25 ~~ongoing criminal investigation of that criminal activity~~].

26 SECTION 9. Article 18B.205, Code of Criminal Procedure, is  
27 amended to read as follows:

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

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

7 SECTION 10. Chapter 18B, Code of Criminal Procedure, is  
8 amended by adding Subchapter E-1 to read as follows:

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

11 Art. 18B.221. APPLICABILITY. This subchapter does not  
12 apply to a device used by the Texas Department of Criminal Justice,  
13 or a person under contract with the department, to detect  
14 contraband in a correctional facility.

15 Art. 18B.222. WARRANT FOR USE OF CELL SITE SIMULATOR OR  
16 DISCLOSURE OF CERTAIN LOCATION INFORMATION. (a) A district judge  
17 may issue a warrant:

18 (1) authorizing the use of a cell site simulator to  
19 obtain location information from a cellular telephone or other  
20 wireless communications device; or

21 (2) requiring the disclosure of location information  
22 by a provider of an electronic communications service or a provider  
23 of a remote computing service who has possession, care, custody, or  
24 control of the information, regardless of whether the location  
25 information is held at a location in this state or another state.

26 (b) A district judge may issue a warrant described by  
27 Subsection (a) only:

1           (1) except as provided by Article 18B.231, on  
2 application by:

3           (A) a prosecutor; or

4           (B) an assistant prosecutor, if applying on  
5 request of:

6                   (i) an authorized peace officer  
7 commissioned by the department; or

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

10          (2) for the investigation of:

11           (A) an offense under:

12                   (i) Section 19.02, Penal Code;

13                   (ii) Section 19.03, Penal Code;

14                   (iii) Section 20.03, Penal Code;

15                   (iv) Section 20.04, Penal Code;

16                   (v) Chapter 20A, Penal Code;

17                   (vi) Section 21.02, Penal Code;

18                   (vii) Section 21.11, Penal Code;

19                   (viii) Section 22.01, Penal Code, if the  
20 offense is punishable as a felony;

21                   (ix) Section 22.011, Penal Code;

22                   (x) Section 22.02, Penal Code;

23                   (xi) Section 22.021, Penal Code;

24                   (xii) Section 22.04, Penal Code;

25                   (xiii) Section 22.041, Penal Code;

26                   (xiv) Section 28.02, Penal Code;

27                   (xv) Section 29.02, Penal Code;

- 1                   (xvi) Section 29.03, Penal Code;  
2                   (xvii) Section 30.02, Penal Code;  
3                   (xviii) Chapter 34, Penal Code;  
4                   (xix) Title 8, Penal Code;  
5                   (xx) Chapter 43, Penal Code;  
6                   (xxi) Chapter 481, Health and Safety Code,  
7 other than an offense under:  
8                   (a) Section 481.121(b) of that code,  
9 if the offense involves not more than one pound of marihuana;  
10                   (b) Section 481.1151(b)(1),  
11 481.116(b), 481.1161(b)(1), (2), or (3), 481.117(b), 481.118(b),  
12 or 481.125(d) of that code; or  
13                   (c) Section 481.115(b) of that code  
14 that did not involve fentanyl, alpha-methylfentanyl, or  
15 carfentanyl, or any derivative of those substances, including any  
16 isomer, ester, ether, salt, or salt of an isomer, ester, or ether of  
17 those substances;  
18                   (xxii) Chapter 483, Health and Safety Code;  
19 or  
20                   (xxiii) Chapter 485, Health and Safety  
21 Code;  
22                   (B) a felony under Chapter 71, Penal Code;  
23                   (C) any sex offense for which a person is subject  
24 to registration under Chapter 62 and in which the victim was younger  
25 than 18 years of age at the time the offense was committed;  
26                   (D) an offense of another jurisdiction in the  
27 United States equivalent to an offense under Paragraph (A), (B), or

1 (C), regardless of whether the offense was committed in this state  
2 or another jurisdiction; or

3 (E) an emergency situation described by Article  
4 18B.231(a)(2)(A).

5 (c) An application under this article must:

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

7 (2) include:

8 (A) the name, department, agency, and address of  
9 the applicant;

10 (B) the offense being investigated and for which  
11 the application is being made;

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

15 (D) the name of:

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

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

23 (E) the account number or unique identifier that  
24 is the subject of the application; and

25 (F) if the application is requesting  
26 authorization to use a cell site simulator, a description of the  
27 manner and method of deploying the cell site simulator device,

1 including:

2 (i) whether the use of the device is likely  
3 to result in the device collecting from a cellular telephone or  
4 other wireless communications device data that is not the subject  
5 of the application; and

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

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

10 (1) probable cause that:

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

13 (B) the location information being sought or the  
14 use of a cell site simulator will reveal the location of:

15 (i) evidence of the offense;

16 (ii) contraband, fruits of the offense, or  
17 other items illegally possessed;

18 (iii) criminal instruments;

19 (iv) a person to be arrested; or

20 (v) a person being unlawfully restrained;

21 or

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

25 Art. 18B.223. WARRANT FOR CERTAIN LOCATION INFORMATION.

26 (a) The judge may issue a warrant requiring a provider of an  
27 electronic communications service or a provider of a remote



1 computing service to disclose location information related to the  
2 commission of an offense based on an application for a warrant  
3 submitted without specifying any customer information required  
4 under Articles 18B.222(c)(2)(D) and (E), provided that the  
5 application:

6 (1) meets all other requirements of this subchapter;  
7 and

8 (2) includes:

9 (A) the location where the offense is alleged to  
10 have been committed; and

11 (B) each provider on whom the warrant will be  
12 served.

13 (b) The location information disclosed pursuant to a  
14 warrant issued under this article may not be used to further an  
15 investigation unrelated to the investigation of the offense for  
16 which the warrant application was made, unless an authorized peace  
17 officer, prosecutor, or assistant prosecutor:

18 (1) makes a separate application to a district judge  
19 to authorize the use of the location information to further an  
20 unrelated investigation; and

21 (2) states in the application described by Subdivision  
22 (1) specific and articulable facts showing good cause for that use.

23 (c) Unless authorized by a district judge, a law enforcement  
24 agency holding location information disclosed pursuant to a warrant  
25 issued under this article:

26 (1) may not commingle:

27 (A) the location information determined relevant

1 to the investigation of the offense for which the warrant  
2 application was made; and

3 (B) the location information determined to be  
4 irrelevant to that investigation; and

5 (2) must keep separated by the criminal episode or  
6 location each set of location information described by Subdivision  
7 (1)(B).

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

13 Art. 18B.224. JURISDICTION. An application under this  
14 subchapter must be filed in a judicial district in which is located:

15 (1) the headquarters of:

16 (A) the office of the prosecutor filing an  
17 application under this subchapter;

18 (B) a law enforcement agency that requests the  
19 prosecutor to file an application for a warrant under this  
20 subchapter or that proposes to execute the warrant, if one is issued  
21 under this subchapter; or

22 (C) a provider of an electronic communications  
23 service or a provider of a remote computing service holding in  
24 electronic storage location information for which the warrant is  
25 sought;

26 (2) the site of the proposed use of a cell site  
27 simulator; or

1           (3) the billing, residential, or business address of  
2 the subscriber or customer of a provider of an electronic  
3 communications service or a provider of a remote computing service  
4 who is the subject of the application.

5           Art. 18B.225. DURATION OF WARRANT. (a) A warrant issued  
6 under this subchapter authorizing the use of a cell site simulator  
7 is valid for a period not to exceed 30 days.

8           (b) A warrant issued under this subchapter requiring the  
9 ongoing disclosure of prospective location information by a  
10 provider of an electronic communications service or a provider of a  
11 remote computing service is valid for a period not to exceed 60  
12 days.

13           Art. 18B.226. USE OF LOCATION INFORMATION IN UNRELATED  
14 INVESTIGATION PROHIBITED. Except as provided by Article 18B.223(b)  
15 or (d), location information obtained pursuant to a warrant issued  
16 under this subchapter:

17           (1) may not be used to further an investigation  
18 unrelated to the investigation of the offense for which the warrant  
19 application was made; and

20           (2) may be used only to investigate or prosecute  
21 offenses and defendants related to the offense for which the  
22 warrant application was made.

23           Art. 18B.227. CERTAIN RESTRICTIONS ON USE OF CELL SITE  
24 SIMULATOR. (a) Under a warrant issued under this subchapter  
25 authorizing the use of a cell site simulator, if the cell site  
26 simulator is used to locate a known person's wireless  
27 communications device, location information that is derived from

1 the simulator's use and is irrelevant to locating the device must be  
2 deleted on the date the information was collected.

3 (b) Unless granted an exception by a district judge to the  
4 requirement described in this subsection, if the cell site  
5 simulator is used to locate an unknown wireless communications  
6 device under a warrant issued under this subchapter, location  
7 information that is derived from the simulator's use and is  
8 irrelevant to locating the device must be deleted not later than the  
9 30th day after the date the simulator is first used.

10 (c) If the period of the initial warrant exceeds 30 days or  
11 an extension is granted under Subsection (d), information described  
12 by Subsection (b) that is collected after the initial 30-day period  
13 described by that subsection must be deleted not later than the  
14 earlier of the following:

15 (1) at the end of each 30-day period following the  
16 initial 30-day period described by Subsection (b); or

17 (2) the expiration of the warrant.

18 (d) The district judge who issues a warrant under this  
19 subchapter for the use of a cell site simulator may extend a period  
20 described by Section 18B.225(a) if the applicant for the warrant  
21 shows good cause for the extension. The judge may grant a  
22 subsequent extension only if the applicant shows good cause for the  
23 subsequent extension. An extension granted under this subsection  
24 may not exceed 90 days, unless the judge makes a finding in the  
25 record that the circumstances of the investigation justify an  
26 extension longer than 90 days.

27 (e) A district judge may not issue a warrant to authorize

1 using or configuring a cell site simulator for the purpose of, and a  
2 person acting under a warrant issued under this subchapter may not  
3 use or configure a cell site simulator for the purpose of:

4 (1) intercepting, capturing, or collecting the  
5 content of any electronic communication; or

6 (2) collecting information on the attendees of a  
7 public gathering who are exercising any right under the First  
8 Amendment to the United States Constitution, including as part of a  
9 protest, demonstration, rally, political meeting, or religious  
10 gathering.

11 Art. 18B.228. PRESERVATION OF CERTAIN LOCATION  
12 INFORMATION. (a) Location information disclosed by a provider of  
13 an electronic communications service or a provider of a remote  
14 computing service pursuant to a warrant issued under this  
15 subchapter must be preserved by the attorney representing the  
16 state.

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

22 Art. 18B.229. WARRANTS AND AFFIDAVITS SEALED.

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

26 (b) A judge shall authorize the disclosure of the warrant  
27 and applicable affidavit to:

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

4           (2) the public, if a criminal action has been filed  
5 based on evidence obtained as part of the investigation conducted  
6 under the case number or unique identifier included in the warrant  
7 application and each defendant in that criminal action has been  
8 convicted or acquitted.

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

12           (d) This article may not be construed to affect any other  
13 right of access to public records or proceedings granted under any  
14 other law.

15           Art. 18B.230. NOTICE TO SUBSCRIBER OR CUSTOMER. An  
16 authorized peace officer may require a provider of an electronic  
17 communications service or a provider of a remote computing service  
18 to disclose location information without giving the subscriber or  
19 customer notice if the officer obtains:

20           (1) a warrant under this subchapter and the court  
21 issuing the warrant makes a finding that there is reason to believe  
22 that giving notice under this section may result in:

23                   (A) endangering the life or physical safety of an  
24 individual;

25                   (B) a suspect or defendant fleeing from  
26 prosecution;

27                   (C) the destruction of or tampering with

1 evidence;

2 (D) the intimidation of potential witnesses who  
3 may assist an investigation of an offense or testify at a legal  
4 proceeding; or

5 (E) otherwise jeopardizing an investigation or  
6 unduly delaying a trial; or

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

8 Art. 18B.231. EMERGENCY USE OF CELL SITE SIMULATOR OR  
9 REQUIRED DISCLOSURE OF LOCATION INFORMATION. (a) Subject to  
10 Subsections (c) and (d), an authorized peace officer may without a  
11 warrant require a provider of an electronic communications service  
12 or a provider of a remote computing service who has possession,  
13 care, custody, or control of location information to disclose the  
14 information, if:

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

18 (A) the head of the agency; and

19 (B) a district attorney or criminal district  
20 attorney with jurisdiction over all or part of the agency's  
21 jurisdiction; and

22 (2) the peace officer described by Subdivision (1)  
23 approves the authorized peace officer's requiring the disclosure of  
24 the information by reasonably determining that:

25 (A) an emergency situation exists in the  
26 territorial jurisdiction of the authorized peace officer, or  
27 another officer the authorized peace officer is assisting,

1 involving:

2 (i) an immediate life-threatening  
3 situation;

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

6 (iii) if the authorized peace officer is  
7 assisting an employee, officer, or agent of the federal government,  
8 an immediate threat to a national security interest;

9 (iv) an ongoing attack on a protected  
10 computer, as defined by 18 U.S.C. Section 1030, that constitutes an  
11 offense under Section 33.02, Penal Code, or an equivalent offense  
12 under federal law; or

13 (v) the report of the disappearance of an  
14 individual, including the report of a runaway individual younger  
15 than 18 years of age, or a report of a suicidal individual, where  
16 the report indicates the individual may be in danger based on the  
17 circumstances of the disappearance, including circumstances such  
18 as the age and mental or physical condition of the individual; and

19 (B) requiring the information may resolve the  
20 emergency situation.

21 (b) Subject to Subsections (c) and (d), an authorized peace  
22 officer of the department or a designated law enforcement office or  
23 agency may without a warrant use a cell site simulator if the head  
24 of the authorized peace officer's agency or that person's designee  
25 approves the authorized peace officer's use of the cell site  
26 simulator by reasonably determining that:

27 (1) an emergency situation described by Subsection



1 (a)(2)(A) exists in the applicable judicial district under Article  
2 18B.224; and

3 (2) use of the cell site simulator may resolve the  
4 emergency situation.

5 (c) An authorized peace officer who requires disclosure of  
6 location information or uses a cell site simulator under Subsection  
7 (a) or (b) shall:

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

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

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

15 (2) within 48 hours after providing notice of the  
16 required disclosure or within 48 hours after the use of the  
17 simulator begins, as applicable, obtain a warrant under this  
18 subchapter authorizing the required disclosure or the use of the  
19 simulator.

20 (d) If a warrant application is denied or is not issued  
21 within the 48-hour period, the peace officer shall delete the  
22 disclosed location information or terminate use of the cell site  
23 simulator promptly on the earlier of the denial of the warrant  
24 application or the expiration of the 48-hour period.

25 Art. 18B.232. EXECUTION OF WARRANT. Article 18B.355  
26 applies to the execution of a warrant issued under this subchapter  
27 for the required disclosure of location information in the same

1 manner as the article applies to the execution of a warrant for  
2 electronic customer communications records.

3 Art. 18B.233. WARRANT ISSUED IN ANOTHER STATE. A provider  
4 of an electronic communications service or a provider of a remote  
5 computing service shall comply with a warrant issued in another  
6 state and seeking location information described by Article  
7 18B.222, if the warrant is served on the service provider in a  
8 manner equivalent to the service of process requirements provided  
9 by Article 18B.355(b).

10 Art. 18B.234. REPORTING REQUIRED. Not later than April 1 of  
11 each year, each law enforcement office or agency employing a person  
12 who applies for a warrant under this subchapter shall annually post  
13 on the Internet website of the office or agency the following  
14 information:

15 (1) the number of warrants of all persons of the office  
16 or agency who applied for a warrant under this subchapter  
17 requesting authorization for use of a cell site simulator and the  
18 number of those warrants granted to those persons;

19 (2) the number of warrants of all persons of the office  
20 or agency who applied for a warrant under this subchapter requiring  
21 the disclosure of location information by a provider of an  
22 electronic communications service or a provider of a remote  
23 computing service and the number of those warrants granted to those  
24 persons;

25 (3) the offense for which each warrant application  
26 under Subdivision (1) or (2) was made; and

27 (4) the number of persons who were located as a result

1 of the location information obtained pursuant to a warrant issued  
2 under this subchapter and were charged with a felony.

3 SECTION 11. Article 18B.351, Code of Criminal Procedure, is  
4 amended to read as follows:

5 Art. 18B.351. GOVERNMENT ACCESS TO ELECTRONIC CUSTOMER  
6 COMMUNICATIONS RECORDS AND ELECTRONIC CUSTOMER DATA. (a) An  
7 authorized peace officer may require a provider of an electronic  
8 communications service or a provider of a remote computing service  
9 to disclose electronic customer communications records or  
10 electronic customer data that is in electronic storage by obtaining  
11 a warrant under Article 18B.354.

12 (b) An authorized peace officer may require a provider of an  
13 electronic communications service or a provider of a remote  
14 computing service to disclose [~~only~~] electronic customer data [~~that~~  
15 ~~is information revealing the identity of customers of the~~  
16 ~~applicable service or information about a customer's use of the~~  
17 ~~applicable service,~~] without giving the subscriber or customer  
18 notice:

19 (1) by obtaining an administrative subpoena  
20 authorized by statute;

21 (2) by obtaining a grand jury subpoena;

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

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

24 (5) by obtaining the consent of the subscriber or  
25 customer to the disclosure of the data; or

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

27 SECTION 12. Article 18B.352(a), Code of Criminal Procedure,

1 is amended to read as follows:

2 (a) A court shall issue an order authorizing disclosure of  
3 electronic customer data related to ~~[contents, records, or other~~  
4 ~~information of]~~ a wire or electronic communication held in  
5 electronic storage if the court determines that there is a  
6 reasonable belief that the information sought is relevant and  
7 material to an ongoing criminal investigation ~~[to a legitimate law~~  
8 ~~enforcement inquiry]~~.

9 SECTION 13. Article [18B.353](#), Code of Criminal Procedure, is  
10 amended to read as follows:

11 Art. 18B.353. WARRANT ISSUED IN THIS STATE: APPLICABILITY.  
12 Articles 18B.354-18B.357 apply to a warrant required under Article  
13 [18B.351](#) to obtain electronic customer communications records or  
14 electronic customer data ~~[, including the contents of a wire or~~  
15 ~~electronic communication]~~.

16 SECTION 14. Articles [18B.354](#)(a), (b), and (c), Code of  
17 Criminal Procedure, are amended to read as follows:

18 (a) On the filing of an application by an authorized peace  
19 officer, a district judge may issue a search warrant under this  
20 article for electronic customer communications records or  
21 electronic customer data held in electronic storage ~~[, including the~~  
22 ~~contents of and records and other information related to a wire or~~  
23 ~~electronic communication held in electronic storage,~~] by a provider  
24 of an electronic communications service or a provider of a remote  
25 computing service described by Article [18B.355](#)(b), regardless of  
26 whether the electronic customer communications records or  
27 electronic customer data is held at a location in this state or

1 another state. An application made under this subsection must  
2 demonstrate probable cause for the issuance of the warrant and must  
3 be supported by the oath of the authorized peace officer.

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

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

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

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

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

18 SECTION 15. Article 18B.355(a), Code of Criminal Procedure,  
19 is amended to read as follows:

20 (a) Not later than the 31st [~~11th~~] day after the date of  
21 issuance, an authorized peace officer shall execute a warrant  
22 issued under Article 18B.354, except that the peace officer shall  
23 execute the warrant within a shorter period if the district judge  
24 directs a shorter period in the warrant. For purposes of this  
25 subsection, a warrant is executed when the warrant is served in the  
26 manner described by Subsection (c).

27 SECTION 16. Article 18B.356(c), Code of Criminal Procedure,

1 is amended to read as follows:

2 (c) The service provider shall produce all electronic  
3 customer communications records, electronic customer data,  
4 [~~contents of communications,~~] and other information sought,  
5 regardless of where the information is held and within the period  
6 allowed for compliance with the warrant, as provided by Subsection  
7 (a) or (b).

8 SECTION 17. Articles 18B.406(a) and (d), Code of Criminal  
9 Procedure, are amended to read as follows:

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

16 (1) that the applicant is a subscriber or customer of  
17 the provider of an electronic communications service or the  
18 provider of a remote computing service from which the electronic  
19 customer data held in electronic storage for the subscriber or  
20 customer has been sought; and

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

26 (d) The court shall rule on the motion as soon as  
27 practicable after the filing of the peace officer's response. The

1 court shall deny the motion if the court finds that the applicant is  
2 not the subscriber or customer whose data is the subject of the  
3 subpoena or court order or that there is reason to believe that the  
4 peace officer's inquiry is legitimate and that the data sought is  
5 relevant to that inquiry. The court shall quash the subpoena or  
6 vacate the court order if the court finds that the applicant is the  
7 subscriber or customer whose data is the subject of the subpoena or  
8 court order and that there is not a reason to believe that the data  
9 is relevant and material to an ongoing criminal investigation [~~a~~  
10 ~~legitimate law enforcement inquiry~~] or that there has not been  
11 substantial compliance with the provisions of this chapter.

12 SECTION 18. Article 18B.451, Code of Criminal Procedure, is  
13 amended to read as follows:

14 Art. 18B.451. SUBPOENA AUTHORITY. (a) Except as provided  
15 by Subsection (b), the [~~The~~] director of the department or the  
16 director's designee, the inspector general of the Texas Department  
17 of Criminal Justice or the inspector general's designee, or the  
18 sheriff or chief of a designated law enforcement agency or the  
19 sheriff's or chief's designee may issue an administrative subpoena  
20 to a communication common carrier or a provider of an electronic  
21 communications service to compel the production of any carrier's or  
22 service provider's business records:

23 (1) that:

24 (A) [~~(1)~~] disclose information about:

25 (i) [~~(A)~~] the carrier's or service  
26 provider's customers; or

27 (ii) [~~(B)~~] users of the services offered by

1 the carrier or service provider; or  
2 (B) are electronic customer data described by  
3 Article 18B.001(7)(B)(iii); and

4 (2) are material to a criminal investigation.

5 (b) A person described by Subsection (a) may not compel the  
6 production of business records containing location information or  
7 electronic customer communications records by issuing an  
8 administrative subpoena under Subsection (a).

9 SECTION 19. Article 18B.501(a), Code of Criminal Procedure,  
10 is amended to read as follows:

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

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

20 (a) Except as provided by Subsection (c), an authorized  
21 peace officer who obtains electronic customer communications  
22 records or electronic customer data under Article 18B.351 or  
23 18B.359 or other information under this chapter shall reimburse the  
24 person assembling or providing the records, data, or information  
25 for all costs that are reasonably necessary and that have been  
26 directly incurred in searching for, assembling, reproducing, or  
27 otherwise providing the records, data, or information, including



1 costs arising from necessary disruption of normal operations of a  
2 provider of an electronic communications service or a provider of a  
3 remote computing service in which the electronic customer  
4 communications records or electronic customer data may be held in  
5 electronic storage or in which the other information may be stored.

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

15 SECTION 21. Chapter 16, Penal Code, is amended by adding  
16 Section 16.07 to read as follows:

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

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

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

24 (b) A person commits an offense if the person knowingly uses  
25 a cell site simulator to locate or identify a wireless  
26 communications device or intercept the content of an electronic  
27 communication.

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

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

4           (1) is an officer, employee, or agent of a  
5 communication common carrier and the actor uses a cell site  
6 simulator in the regular course of business of the carrier for the  
7 purpose of:

8                   (A) protecting property or services provided by  
9 the carrier; or

10                   (B) assisting another whom the actor reasonably  
11 believes to be a peace officer authorized to use a cell site  
12 simulator under Article 18B.222, Code of Criminal Procedure;

13           (2) is a person authorized to use a cell site simulator  
14 under Article 18B.222, Code of Criminal Procedure, and acted within  
15 the scope of that authorization; or

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

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

25       SECTION 23. This Act takes effect September 1, 2021.