

By: Whitmire

S.B. No. 1856

A BILL TO BE ENTITLED

AN ACT

relating to the nonsubstantive revision of certain provisions of the Code of Criminal Procedure, including conforming amendments.

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

ARTICLE 1. NONSUBSTANTIVE REVISION OF CERTAIN PROVISIONS OF THE

CODE OF CRIMINAL PROCEDURE

SECTION 1.01. Title 1, Code of Criminal Procedure, is amended by adding Chapter 18A to read as follows:

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ELECTRONIC COMMUNICATIONS

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CHAPTER 18A. DETECTION, INTERCEPTION, AND USE OF WIRE, ORAL, AND  
ELECTRONIC COMMUNICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Art. 18A.001. DEFINITIONS. In this chapter:

(1) "Access," "computer," "computer network,"  
"computer system," and "effective consent" have the meanings  
assigned by Section 33.01, Penal Code.

(2) "Aggrieved person" means a person who was a party  
to an intercepted wire, oral, or electronic communication or a  
person against whom the interception was directed.

(3) "Aural transfer" means a transfer containing the  
human voice at any point between and including the point of origin  
and the point of reception.

(4) "Communication common carrier" means a person  
engaged as a common carrier for hire in the transmission of wire or  
electronic communications.

(5) "Computer trespasser" means a person who accesses  
a protected computer without effective consent of the owner and has  
no reasonable expectation of privacy in a communication transmitted  
to, through, or from the protected computer. The term does not

1 include a person who accesses the protected computer under an  
2 existing contractual relationship with the owner or operator of the  
3 computer.

4 (6) "Contents," with respect to a wire, oral, or  
5 electronic communication, includes any information concerning the  
6 substance, purport, or meaning of that communication.

7 (7) "Covert entry" means an entry that is made into or  
8 onto premises and that, if not authorized by a court order under  
9 this chapter, would violate the Penal Code.

10 (8) "Department" means the Department of Public Safety  
11 of the State of Texas.

12 (9) "Director" means:

13 (A) the public safety director of the department;  
14 or

15 (B) if the public safety director is absent or  
16 unable to serve, the assistant director of the department.

17 (10) "Electronic communication" means a transfer of  
18 any signs, signals, writing, images, sounds, data, or intelligence  
19 transmitted wholly or partly by a wire, radio, electromagnetic,  
20 photoelectronic, or photo-optical system. The term does not  
21 include:

22 (A) a wire or oral communication;

23 (B) a communication made through a tone-only  
24 paging device; or

25 (C) a communication from a tracking device.

26 (11) "Electronic communications service" means a  
27 service that provides to users of the service the ability to send or

1 receive wire or electronic communications.

2 (12) "ESN reader," "pen register," and "trap and trace  
3 device" have the meanings assigned by Article 18B.001.

4 (13) "Intercept" means the aural or other acquisition  
5 of the contents of a wire, oral, or electronic communication  
6 through the use of an interception device.

7 (14) "Interception device" means an electronic,  
8 mechanical, or other device that may be used for the nonconsensual  
9 interception of wire, oral, or electronic communications. The term  
10 does not include a telephone or telegraph instrument, the equipment  
11 or a facility used for the transmission of electronic  
12 communications, or a component of the equipment or a facility used  
13 for the transmission of electronic communications if the  
14 instrument, equipment, facility, or component is:

15 (A) provided to a subscriber or user by a  
16 provider of a wire or electronic communications service in the  
17 ordinary course of the service provider's business and used by the  
18 subscriber or user in the ordinary course of the subscriber's or  
19 user's business;

20 (B) provided by a subscriber or user for  
21 connection to the facilities of a wire or electronic communications  
22 service for use in the ordinary course of the subscriber's or user's  
23 business;

24 (C) used by a communication common carrier in the  
25 ordinary course of the carrier's business; or

26 (D) used by an investigative or law enforcement  
27 officer in the ordinary course of the officer's duties.

1           (15) "Interception order" means an order authorizing  
2 the interception of a wire, oral, or electronic communication.

3           (16) "Investigative or law enforcement officer"  
4 means:

5                   (A) an officer of this state or a political  
6 subdivision of this state who is authorized by law to investigate or  
7 make arrests for offenses described by Article 18A.101; or

8                   (B) an attorney authorized by law to prosecute or  
9 participate in the prosecution of those offenses.

10           (17) "Judge of competent jurisdiction" means a judge  
11 described by Article 18A.051.

12           (18) "Mobile tracking device" has the meaning assigned  
13 by Article 18B.201.

14           (19) "Oral communication" means a communication  
15 uttered by a person exhibiting an expectation that the  
16 communication is not subject to interception under circumstances  
17 justifying that expectation. The term does not include an  
18 electronic communication.

19           (20) "Prosecutor" means a district attorney, criminal  
20 district attorney, or county attorney performing the duties of a  
21 district attorney, with jurisdiction in the county within an  
22 administrative judicial region described by Article 18A.053.

23           (21) "Protected computer" means a computer, computer  
24 network, or computer system that is:

25                   (A) owned by a financial institution or  
26 governmental entity; or

27                   (B) used by or for a financial institution or



1 governmental entity, if conduct constituting an offense affects  
2 that use.

3 (22) "Residence" means a structure or the portion of a  
4 structure used as a person's home or fixed place of habitation to  
5 which the person indicates an intent to return after a temporary  
6 absence.

7 (23) "User" means a person who uses an electronic  
8 communications service and is authorized by the service provider to  
9 use the service.

10 (24) "Wire communication" means an aural transfer made  
11 wholly or partly through the use of facilities for the transmission  
12 of communications by the aid of wire, cable, or other similar  
13 connection between the point of origin and the point of reception,  
14 including the use of the connection in a switching station, if those  
15 facilities are provided or operated by a person authorized to  
16 provide or operate the facilities for the transmission of  
17 communications as a communication common carrier. (Code Crim.  
18 Proc., Art. 18.20, Secs. 1(1), (2), (3), (4), (5), (6), (7) (part),  
19 (8), (9), (10), (11), (12), (13), (14), (15), (16), (18), (21),  
20 (24), (25), (26); New.)

21 Art. 18A.002. NONAPPLICABILITY. This chapter does not  
22 apply to conduct described as an affirmative defense under Section  
23 16.02(c), Penal Code, except as otherwise specifically provided by  
24 that section. (Code Crim. Proc., Art. 18.20, Sec. 17.)

25 SUBCHAPTER B. APPLICATION FOR INTERCEPTION ORDER

26 Art. 18A.051. JUDGE OF COMPETENT JURISDICTION. (a) For  
27 purposes of this chapter, a judge of competent jurisdiction is a

1 judge from the panel of nine active district judges with criminal  
2 jurisdiction who is appointed by the presiding judge of the court of  
3 criminal appeals under this article.

4 (b) The presiding judge of the court of criminal appeals, by  
5 order filed with the clerk of that court, shall appoint one district  
6 judge from each of the administrative judicial regions of this  
7 state to serve at the presiding judge's pleasure as the judge of  
8 competent jurisdiction in that administrative judicial region.

9 (c) The presiding judge shall fill vacancies as those  
10 vacancies occur in the same manner. (Code Crim. Proc., Art. [18.20](#),  
11 Secs. 1(7), 3(a).)

12 Art. 18A.052. REQUEST FOR FILING OF INTERCEPTION  
13 APPLICATION. (a) The director may, based on written affidavits,  
14 request in writing that a prosecutor apply for an interception  
15 order.

16 (b) The head of a local law enforcement agency or, if the  
17 head of the agency is absent or unable to serve, the acting head of  
18 the local law enforcement agency may, based on written affidavits,  
19 request in writing that a prosecutor apply for an interception  
20 order.

21 (c) Before making a request under Subsection (b), the head  
22 of a local law enforcement agency must submit the request and  
23 supporting affidavits to the director. The director shall make a  
24 written finding as to whether the request and supporting affidavits  
25 establish that other investigative procedures have been attempted  
26 and have failed or those procedures reasonably appear unlikely to  
27 succeed or to be too dangerous if attempted, is feasible, is

justifiable, and whether the department has the necessary resources available.

(d) A prosecutor may file the application requested under Subsection (b) only after a written positive finding by the director on all of the requirements provided by Subsection (c). (Code Crim. Proc., Art. 18.20, Sec. 6.)

Art. 18A.053. JURISDICTION. Except as provided by Article 18A.054, a judge of competent jurisdiction may act on an application for an interception order if any of the following is located in the administrative judicial region with respect to which the judge is appointed:

(1) the site of:

(A) the proposed interception; or

(B) the interception device to be installed or monitored;

(2) the communication device to be intercepted;

(3) the billing, residential, or business address of the subscriber to the electronic communications service to be intercepted;

(4) the headquarters of the law enforcement agency that makes the request for or will execute the interception order; or

(5) the headquarters of the service provider. (Code Crim. Proc., Art. 18.20, Sec. 3(b).)

Art. 18A.054. ALTERNATE JURISDICTION. (a) An application for an interception order may be made to the judge of competent jurisdiction in an administrative judicial region adjacent to a

1 region described by Article 18A.053 if:

2 (1) the judge of competent jurisdiction for the  
3 administrative judicial region described by Article 18A.053 is  
4 absent or unable to serve; or

5 (2) exigent circumstances exist.

6 (b) Exigent circumstances under Subsection (a)(2) do not  
7 include a denial of a previous application on the same facts and  
8 circumstances. (Code Crim. Proc., Art. 18.20, Secs. 3(b) (part),  
9 (c) (part).)

10 Art. 18A.055. APPLICATION FOR INTERCEPTION ORDER. (a) A  
11 prosecutor applying for an interception order must make the  
12 application in writing under oath to a judge of competent  
13 jurisdiction.

14 (b) An application must:

15 (1) identify the prosecutor making the application and  
16 state the prosecutor's authority to make the application;

17 (2) identify the officer requesting the application;

18 (3) include a complete statement of the facts and  
19 circumstances relied on by the prosecutor to justify the  
20 prosecutor's belief that an order should be issued, including:

21 (A) details about the particular offense that has  
22 been, is being, or is about to be committed;

23 (B) except as otherwise provided by this chapter,  
24 a particular description of the nature and location of the  
25 facilities from which or the place where the communication is to be  
26 intercepted;

27 (C) a particular description of the type of

1 communication sought to be intercepted; and

2 (D) the identity of the person, if known,  
3 committing the offense and whose communications are to be  
4 intercepted;

5 (4) include a complete statement as to whether other  
6 investigative procedures have been attempted and have failed or why  
7 those procedures reasonably appear to be unlikely to succeed or to  
8 be too dangerous if attempted;

9 (5) include a statement of the period for which the  
10 interception is required to be maintained and, if the nature of the  
11 investigation indicates that the interception order should not  
12 automatically terminate when the described type of communication is  
13 first obtained, a particular description of facts establishing  
14 probable cause to believe that additional communications of the  
15 same type will occur after the described type of communication is  
16 obtained;

17 (6) include a statement whether a covert entry will be  
18 necessary to properly and safely install wiretapping, electronic  
19 surveillance, or eavesdropping equipment and, if a covert entry is  
20 requested, a statement as to why a covert entry is necessary and  
21 proper under the facts of the particular investigation, including a  
22 complete statement as to whether other investigative techniques  
23 have been attempted and have failed or why those techniques  
24 reasonably appear to be unlikely to succeed or to be too dangerous  
25 if attempted or are not feasible under the circumstances or  
26 exigencies of time;

27 (7) include a complete statement of the facts

1 concerning all applications known to the prosecutor that have been  
2 previously made to a judge for an interception order involving any  
3 persons, facilities, or places specified in the application and of  
4 the action taken by the judge on each application;

5 (8) if the application is for the extension of an  
6 order, include a statement providing the results already obtained  
7 from the interception or a reasonable explanation of the failure to  
8 obtain results; and

9 (9) if the application is made under Article 18A.054,  
10 fully explain the circumstances justifying application under that  
11 article.

12 (c) In an ex parte hearing in chambers, the judge may  
13 require additional testimony or documentary evidence to support the  
14 application. The testimony or documentary evidence must be  
15 preserved as part of the application. (Code Crim. Proc., Art.  
16 18.20, Secs. 3(c) (part), 8.)

17 SUBCHAPTER C. ISSUANCE OF INTERCEPTION ORDER AND RELATED ORDERS

18 Art. 18A.101. OFFENSES FOR WHICH INTERCEPTION ORDER MAY BE  
19 ISSUED. A judge of competent jurisdiction may issue an  
20 interception order only if the prosecutor applying for the order  
21 shows probable cause to believe that the interception will provide  
22 evidence of the commission of:

23 (1) a felony under any of the following provisions of  
24 the Health and Safety Code:

25 (A) Chapter 481, other than felony possession of  
26 marihuana;

27 (B) Chapter 483; or

(C) Section 485.032;

(2) an offense under any of the following provisions of the Penal Code:

(A) Section 19.02;

(B) Section 19.03;

(C) Section 20.03;

(D) Section 20.04;

(E) Chapter 20A;

(F) Chapter 34, if the criminal activity giving rise to the proceeds involves the commission of an offense under Title 5, Penal Code, or an offense under federal law or the laws of another state containing elements that are substantially similar to the elements of an offense under Title 5;

(G) Section 38.11;

(H) Section 43.04;

(I) Section 43.05; or

(J) Section 43.26; or

(3) an attempt, conspiracy, or solicitation to commit an offense listed in Subdivision (1) or (2). (Code Crim. Proc., Art. 18.20, Sec. 4.)

Art. 18A.102. JUDICIAL DETERMINATIONS REQUIRED FOR ISSUANCE OF INTERCEPTION ORDER. On receipt of an application under Subchapter B, the judge may issue an ex parte interception order, as requested or as modified, if the judge determines from the evidence submitted by the prosecutor that:

(1) there is probable cause to believe that a person is committing, has committed, or is about to commit a particular

1 offense described by Article 18A.101;

2 (2) there is probable cause to believe that particular  
3 communications concerning that offense will be obtained through the  
4 interception;

5 (3) normal investigative procedures have been  
6 attempted and have failed or reasonably appear to be unlikely to  
7 succeed or to be too dangerous if attempted;

8 (4) there is probable cause to believe that the  
9 facilities from which or the place where the wire, oral, or  
10 electronic communications are to be intercepted is being used or is  
11 about to be used in connection with the commission of an offense or  
12 is leased to, listed in the name of, or commonly used by the person;  
13 and

14 (5) a covert entry is or is not necessary to properly  
15 and safely install the wiretapping, electronic surveillance, or  
16 eavesdropping equipment. (Code Crim. Proc., Art. 18.20, Sec. 9(a).)

17 Art. 18A.103. CONTENTS OF INTERCEPTION ORDER. (a) An  
18 interception order must specify:

19 (1) the identity of the person, if known, whose  
20 communications are to be intercepted;

21 (2) except as otherwise provided by this chapter, the  
22 nature and location of the communications facilities as to which or  
23 the place where authority to intercept is granted;

24 (3) a particular description of the type of  
25 communication sought to be intercepted and a statement of the  
26 particular offense to which the communication relates;

27 (4) the identity of the officer making the request and



1 the identity of the prosecutor;

2 (5) the period during which the interception is  
3 authorized, including a statement of whether the interception will  
4 automatically terminate when the described communication is first  
5 obtained; and

6 (6) whether a covert entry or surreptitious entry is  
7 necessary to properly and safely install wiretapping, electronic  
8 surveillance, or eavesdropping equipment.

9 (b) Each interception order and extension of that order must  
10 provide that the authorization to intercept be executed as soon as  
11 practicable, be conducted in a way that minimizes the interception  
12 of communications not otherwise subject to interception under this  
13 chapter, and terminate on obtaining the authorized objective or  
14 within 30 days, whichever occurs sooner.

15 (c) For purposes of Subsection (b), if the intercepted  
16 communication is in code or a foreign language and an expert in that  
17 code or language is not reasonably available during the period of  
18 interception, minimization may be accomplished as soon as  
19 practicable after the interception. (Code Crim. Proc., Art. 18.20,  
20 Secs. 9(b), (d) (part).)

21 Art. 18A.104. LIMITATION ON COVERT ENTRY. (a) An  
22 interception order may not authorize a covert entry for the purpose  
23 of intercepting an oral communication unless:

24 (1) the judge, in addition to making the  
25 determinations required under Article 18A.102, determines:

26 (A) that:

27 (i) the premises into or onto which the

1 covert entry is authorized or the person whose communications are  
2 to be obtained has been the subject of a pen register previously  
3 authorized in connection with the same investigation;

4 (ii) the premises into or onto which the  
5 covert entry is authorized or the person whose communications are  
6 to be obtained has been the subject of an interception of wire or  
7 electronic communications previously authorized in connection with  
8 the same investigation; and

9 (iii) the procedures under Subparagraphs  
10 (i) and (ii) have failed; or

11 (B) that the procedures under Paragraph (A)  
12 reasonably appear to be unlikely to succeed or to be too dangerous  
13 if attempted or are not feasible under the circumstances or  
14 exigencies of time; and

15 (2) the interception order, in addition to the matters  
16 required to be specified under Article 18A.103(a), specifies that:

17 (A) the covert entry is for the purpose of  
18 intercepting oral communications of two or more persons; and

19 (B) there is probable cause to believe that the  
20 persons described by Paragraph (A) are committing, have committed,  
21 or are about to commit a particular offense described by Article  
22 18A.101.

23 (b) An interception order may not authorize a covert entry  
24 into a residence solely for the purpose of intercepting a wire or  
25 electronic communication. (Code Crim. Proc., Art. [18.20](#), Secs.  
26 9(e), (f).)

27 Art. 18A.105. AUTHORITY TO ISSUE CERTAIN ANCILLARY ORDERS.

1 An interception order may include an order to:

2 (1) install or use a pen register, ESN reader, trap and  
3 trace device, or mobile tracking device or similar equipment that  
4 combines the function of a pen register and trap and trace device;  
5 or

6 (2) disclose a stored communication, information  
7 subject to an administrative subpoena, or information subject to  
8 access under Chapter 18B. (Code Crim. Proc., Art. [18.20](#), Sec. 9(c)  
9 (part).)

10 Art. 18A.106. ORDER TO THIRD PARTY TO ASSIST WITH EXECUTION  
11 OF INTERCEPTION ORDER. (a) On request of the prosecutor applying  
12 for an interception order, the judge may issue a separate order  
13 directing a provider of a wire or electronic communications  
14 service, communication common carrier, landlord, custodian, or  
15 other person to provide to the prosecutor all information,  
16 facilities, and technical assistance necessary to accomplish the  
17 interception unobtrusively and with a minimum of interference with  
18 the services that the service provider, carrier, landlord,  
19 custodian, or other person is providing the person whose  
20 communications are to be intercepted.

21 (b) A provider of a wire or electronic communications  
22 service, communication common carrier, landlord, custodian, or  
23 other person that provides facilities or technical assistance under  
24 an order described by Subsection (a) is entitled to compensation,  
25 at the prevailing rates, by the prosecutor for reasonable expenses  
26 incurred in providing the facilities or assistance. (Code Crim.  
27 Proc., Art. [18.20](#), Sec. 9(c) (part).)

1           Art. 18A.107. DURATION OF INTERCEPTION ORDER. An  
2 interception order may not authorize the interception of a  
3 communication for a period that:

4               (1) is longer than is necessary to achieve the  
5 objective of the authorization; or

6               (2) exceeds 30 days. (Code Crim. Proc., Art. 18.20,  
7 Sec. 9(d) (part).)

8           Art. 18A.108. EXTENSION OF INTERCEPTION ORDER. (a) A judge  
9 who issues an interception order may grant extensions of the order.

10           (b) An extension of an interception order may be granted  
11 only if:

12               (1) an application for an extension is made in  
13 accordance with Article 18A.055; and

14               (2) the judge makes the findings required by Article  
15 18A.102.

16           (c) The period of extension may not:

17               (1) be longer than the judge considers necessary to  
18 achieve the purposes for which the extension is granted; or

19               (2) exceed 30 days. (Code Crim. Proc., Art. 18.20,  
20 Sec. 9(d) (part).)

21           Art. 18A.109. REPORT ON NEED FOR CONTINUED INTERCEPTION.

22           (a) An interception order may require reports to the judge who  
23 issued the order that show any progress toward achieving the  
24 authorized objective and the need for continued interception.

25           (b) Reports under this article must be made at any interval  
26 the judge requires. (Code Crim. Proc., Art. 18.20, Sec. 9(g).)

27           Art. 18A.110. SUBSEQUENT CRIMINAL PROSECUTION RELATED TO

INTERCEPTION ORDER. A judge who issues an interception order may not hear a criminal prosecution in which:

(1) evidence derived from the interception may be used; or

(2) the order may be an issue. (Code Crim. Proc., Art. 18.20, Sec. 9(h).)

SUBCHAPTER D. INTERCEPTION ORDER FOR COMMUNICATION BY  
SPECIFIED PERSON

Art. 18A.151. REQUIREMENTS REGARDING INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED PERSON. The requirements of Articles 18A.055(b)(3)(B) and 18A.103(a)(2) relating to the specification of the facilities from which or the place where a communication is to be intercepted do not apply if:

(1) in the case of an application for an interception order that authorizes the interception of an oral communication:

(A) the application contains a complete statement as to why the specification is not practical and identifies the person committing or believed to be committing the offense and whose communications are to be intercepted; and

(B) a judge of competent jurisdiction finds that the specification is not practical; or

(2) in the case of an application for an interception order that authorizes the interception of a wire or electronic communication:

(A) the application identifies the person committing or believed to be committing the offense and whose communications are to be intercepted;

1           (B) a judge of competent jurisdiction finds that  
2 the prosecutor has made an adequate showing of probable cause to  
3 believe that the actions of the person identified in the  
4 application could have the effect of preventing interception from a  
5 specified facility; and

6           (C) the authority to intercept a wire or  
7 electronic communication under the interception order is limited to  
8 a period in which it is reasonable to presume that the person  
9 identified in the application will be reasonably proximate to the  
10 interception device. (Code Crim. Proc., Art. 18.20, Sec. 9A(a).)

11       Art. 18A.152. IMPLEMENTATION OF INTERCEPTION ORDER. A  
12 person implementing an interception order that authorizes the  
13 interception of an oral communication and that, as permitted by  
14 this subchapter, does not specify the facility from which or the  
15 place where a communication is to be intercepted may begin  
16 interception only after the person ascertains the place where the  
17 communication is to be intercepted. (Code Crim. Proc., Art. 18.20,  
18 Sec. 9A(b).)

19       Art. 18A.153. MOTION TO MODIFY OR QUASH INTERCEPTION ORDER.  
20 (a) A provider of a wire or electronic communications service that  
21 receives an interception order that authorizes the interception of  
22 a wire or electronic communication and that, as permitted by this  
23 subchapter, does not specify the facility from which or the place  
24 where a communication is to be intercepted may move the court to  
25 modify or quash the order on the ground that the service provider's  
26 assistance with respect to the interception cannot be performed in  
27 a timely or reasonable manner.

(b) On notice to the state, the court shall decide the motion expeditiously. (Code Crim. Proc., Art. 18.20, Sec. 9A(c).)

SUBCHAPTER E. EMERGENCY INSTALLATION AND USE OF INTERCEPTION  
DEVICE

Art. 18A.201. DEFINITIONS. In this subchapter:

(1) "Immediate life-threatening situation" means a hostage, barricade, or other emergency situation in which a person unlawfully and directly:

(A) threatens another with death; or

(B) exposes another to a substantial risk of serious bodily injury.

(2) "Member of a law enforcement unit specially trained to respond to and deal with life-threatening situations" means a peace officer who, as evidenced by the submission of appropriate documentation to the Texas Commission on Law Enforcement:

(A) receives each year a minimum of 40 hours of training in hostage and barricade suspect situations; or

(B) has received a minimum of 24 hours of training on kidnapping investigations and is:

(i) the sheriff of a county with a population of 3.3 million or more or the sheriff's designee; or

(ii) the police chief of a police department in a municipality with a population of 500,000 or more or the chief's designee. (Code Crim. Proc., Art. 18.20, Secs. 1(22), (23).)

Art. 18A.202. POSSESSION AND USE OF INTERCEPTION DEVICE IN

1 EMERGENCY SITUATION. (a) The prosecutor in a county in which an  
2 interception device is to be installed or used shall designate in  
3 writing each peace officer in the county, other than a commissioned  
4 officer of the department, who is:

5 (1) a member of a law enforcement unit specially  
6 trained to respond to and deal with life-threatening situations;  
7 and

8 (2) authorized to possess an interception device and  
9 responsible for the installation, operation, and monitoring of the  
10 device in an immediate life-threatening situation.

11 (b) A peace officer designated under Subsection (a) or  
12 Article 18A.301(c) may possess, install, operate, or monitor an  
13 interception device if the officer:

14 (1) reasonably believes an immediate life-threatening  
15 situation exists that:

16 (A) is within the territorial jurisdiction of the  
17 officer or another officer the officer is assisting; and

18 (B) requires interception of communications  
19 before an interception order can, with due diligence, be obtained  
20 under this subchapter;

21 (2) reasonably believes there are sufficient grounds  
22 under this subchapter on which to obtain an interception order; and

23 (3) before beginning the interception, obtains oral or  
24 written consent to the interception from:

25 (A) a judge of competent jurisdiction;

26 (B) a district judge for the county in which the  
27 device will be installed or used; or



1 (C) a judge or justice of a court of appeals or of  
2 a higher court.

3 (c) If a peace officer installs or uses an interception  
4 device under Subsection (b), the officer shall:

5 (1) promptly report the installation or use to the  
6 prosecutor in the county in which the device is installed or used;  
7 and

8 (2) within 48 hours after the installation is complete  
9 or the interception begins, whichever occurs first, obtain a  
10 written interception order from a judge of competent jurisdiction.

11 (d) A peace officer may certify to a communication common  
12 carrier that the officer is acting lawfully under this subchapter.  
13 (Code Crim. Proc., Art. 18.20, Secs. 8A(a), (b), (d), (g).)

14 Art. 18A.203. CONSENT FOR EMERGENCY INTERCEPTION. (a) An  
15 official described by Article 18A.202(b)(3) may give oral or  
16 written consent to the interception of communications under this  
17 subchapter to provide evidence of the commission of a felony, or of  
18 a threat, attempt, or conspiracy to commit a felony, in an immediate  
19 life-threatening situation.

20 (b) Oral or written consent given under this subchapter  
21 expires on the earlier of:

22 (1) 48 hours after the grant of consent; or

23 (2) the conclusion of the emergency justifying the  
24 interception. (Code Crim. Proc., Art. 18.20, Sec. 8A(c).)

25 Art. 18A.204. WRITTEN ORDER AUTHORIZING INTERCEPTION. (a)  
26 A judge of competent jurisdiction under Article 18A.051 or under  
27 Article 18A.202(b) may issue a written interception order under

this subchapter during the 48-hour period prescribed by Article 18A.202(c)(2).

(b) A written interception order under this subchapter expires on the earlier of:

(1) the 30th day after the date of execution of the order; or

(2) the conclusion of the emergency that initially justified the interception.

(c) If an interception order is denied or is not issued within the 48-hour period, the officer shall terminate use of and remove the interception device promptly on the earlier of:

(1) the denial;

(2) the end of the emergency that initially justified the interception; or

(3) the expiration of 48 hours. (Code Crim. Proc., Art. 18.20, Sec. 8A(e).)

Art. 18A.205. CERTAIN EVIDENCE NOT ADMISSIBLE. The state may not use as evidence in a criminal proceeding information gained through the use of an interception device installed under this subchapter if authorization for the device is not sought or is sought but not obtained. (Code Crim. Proc., Art. 18.20, Secs. 8A(b) (part), (f).)

#### SUBCHAPTER F. DETECTION OF CELLULAR TELEPHONE OR OTHER WIRELESS COMMUNICATIONS DEVICE IN CORRECTIONAL OR DETENTION FACILITY

Art. 18A.251. DEFINITION. In this subchapter, "correctional facility" means:

(1) a place described by Section 1.07(a)(14), Penal

1 Code; or

2 (2) a "secure correctional facility" or "secure  
3 detention facility" as defined by Section 51.02, Family Code. (Code  
4 Crim. Proc., Art. 18.20, Sec. 8B(a).)

5 Art. 18A.252. USE OF INTERCEPTION DEVICE BY INSPECTOR  
6 GENERAL. (a) Notwithstanding any other provision of this chapter  
7 or Chapter 18B, the office of inspector general of the Texas  
8 Department of Criminal Justice may:

9 (1) without a warrant, use an interception device to  
10 detect the presence or use of a cellular telephone or other wireless  
11 communications device in a correctional facility;

12 (2) without a warrant, intercept, monitor, detect, or,  
13 as authorized by applicable federal laws and regulations, prevent  
14 the transmission of a communication through a cellular telephone or  
15 other wireless communications device in a correctional facility;  
16 and

17 (3) use, to the extent authorized by law, any  
18 information obtained under Subdivision (2), including the contents  
19 of an intercepted communication, in a criminal or civil proceeding  
20 before a court or other governmental agency or entity.

21 (b) When using an interception device under Subsection (a),  
22 the office of inspector general shall minimize the impact of the  
23 device on a communication that is not reasonably related to the  
24 detection of the presence or use of a cellular telephone or other  
25 wireless communications device in a correctional facility. (Code  
26 Crim. Proc., Art. 18.20, Secs. 8B(b), (d).)

27 Art. 18A.253. REPORTING USE OF INTERCEPTION DEVICE. Not

1 later than the 30th day after the date on which the office of  
2 inspector general uses an interception device under Article  
3 18A.252(a), the inspector general shall report the use of the  
4 device to:

5 (1) a prosecutor with jurisdiction in the county in  
6 which the device was used; or

7 (2) the special prosecution unit established under  
8 Subchapter E, Chapter 41, Government Code, if that unit has  
9 jurisdiction in the county in which the device was used. (Code  
10 Crim. Proc., Art. 18.20, Sec. 8B(c).)

11 Art. 18A.254. NO EXPECTATION OF PRIVACY. (a) A person  
12 confined in a correctional facility does not have an expectation of  
13 privacy with respect to the possession or use of a cellular  
14 telephone or other wireless communications device located on the  
15 premises of the facility.

16 (b) A person confined in a correctional facility, and any  
17 person with whom the confined person communicates through the use  
18 of a cellular telephone or other wireless communications device,  
19 does not have an expectation of privacy with respect to the contents  
20 of a communication transmitted by the telephone or device. (Code  
21 Crim. Proc., Art. 18.20, Sec. 8B(e).)

22 SUBCHAPTER G. AGENCIES AND PERSONNEL AUTHORIZED TO POSSESS AND USE  
23 INTERCEPTION DEVICES

24 Art. 18A.301. DEPARTMENT OF PUBLIC SAFETY AUTHORIZED TO  
25 POSSESS AND USE INTERCEPTION DEVICE. (a) Except as otherwise  
26 provided by this subchapter and Subchapters E and F, only the  
27 department is authorized by this chapter to own, possess, install,

1 operate, or monitor an interception device.

2 (b) An investigative or law enforcement officer or other  
3 person may assist the department in the operation and monitoring of  
4 an interception of wire, oral, or electronic communications if the  
5 officer or other person:

6 (1) is designated by the director for that purpose;  
7 and

8 (2) acts in the presence and under the direction of a  
9 commissioned officer of the department.

10 (c) The director shall designate in writing the  
11 commissioned officers of the department who are responsible for the  
12 possession, installation, operation, and monitoring of  
13 interception devices for the department. (Code Crim. Proc.,  
14 Art. 18.20, Secs. 5(a), (b).)

15 Art. 18A.302. TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
16 AUTHORIZED TO POSSESS AND USE INTERCEPTION DEVICE. (a) The Texas  
17 Department of Criminal Justice may own an interception device for a  
18 use or purpose authorized by Section 500.008, Government Code.

19 (b) The inspector general of the Texas Department of  
20 Criminal Justice, a commissioned officer of that office, or a  
21 person acting in the presence and under the direction of the  
22 commissioned officer may possess, install, operate, or monitor the  
23 interception device as provided by Section 500.008, Government  
24 Code. (Code Crim. Proc., Art. 18.20, Sec. 5(c).)

25 Art. 18A.303. TEXAS JUVENILE JUSTICE DEPARTMENT AUTHORIZED  
26 TO POSSESS AND USE INTERCEPTION DEVICE. (a) The Texas Juvenile  
27 Justice Department may own an interception device for a use or

1 purpose authorized by Section 242.103, Human Resources Code.

2 (b) The inspector general of the Texas Juvenile Justice  
3 Department, a commissioned officer of that office, or a person  
4 acting in the presence and under the direction of the commissioned  
5 officer may possess, install, operate, or monitor the interception  
6 device as provided by Section 242.103, Human Resources Code. (Code  
7 Crim. Proc., Art. 18.20, Sec. 5(d).)

8 SUBCHAPTER H. DISCLOSURE AND USE OF INTERCEPTED COMMUNICATIONS

9 Art. 18A.351. DISCLOSURE OR USE OF INTERCEPTED  
10 COMMUNICATIONS. An investigative or law enforcement officer who,  
11 by means authorized by this chapter, obtains knowledge of the  
12 contents of a wire, oral, or electronic communication or evidence  
13 derived from the communication may:

14 (1) use the contents or evidence to the extent the use  
15 is appropriate to the proper performance of the officer's official  
16 duties; or

17 (2) disclose the contents or evidence to another  
18 investigative or law enforcement officer, including a law  
19 enforcement officer or agent of the United States or of another  
20 state, to the extent that the disclosure is appropriate to the  
21 proper performance of the official duties of the officer making or  
22 receiving the disclosure. (Code Crim. Proc., Art. 18.20,  
23 Secs. 7(a), (b).)

24 Art. 18A.352. DISCLOSURE UNDER OATH. A person who  
25 receives, by means authorized by this chapter, information  
26 concerning a wire, oral, or electronic communication or evidence  
27 derived from a communication intercepted in accordance with this

chapter may disclose the contents of that communication or evidence while giving testimony under oath in any proceeding held under the authority of the United States, this state, or a political subdivision of this state. (Code Crim. Proc., Art. 18.20, Sec. 7(c).)

Art. 18A.353. PRIVILEGED COMMUNICATIONS. (a) An otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, this chapter does not lose its privileged character.

(b) Evidence derived from a privileged communication described by Subsection (a) against a party to that communication is privileged. (Code Crim. Proc., Art. 18.20, Sec. 7(d).)

Art. 18A.354. DISCLOSURE OR USE OF INCIDENTALLY INTERCEPTED COMMUNICATIONS. (a) This article applies only to the contents of and evidence derived from wire, oral, or electronic communications that:

(1) are intercepted by an investigative or law enforcement officer while engaged in intercepting wire, oral, or electronic communications in a manner authorized by this chapter; and

(2) relate to offenses other than those specified by the interception order.

(b) The contents of and evidence derived from a communication described by Subsection (a) may be disclosed or used as provided by Article 18A.351.

(c) The contents of and evidence derived from a communication described by Subsection (a) may be used under Article

1 18A.352 when authorized by a judge of competent jurisdiction if the  
2 judge finds, on subsequent application, that the contents were  
3 otherwise intercepted in accordance with this chapter.

4 (d) An application under Subsection (c) must be made as soon  
5 as practicable. (Code Crim. Proc., Art. 18.20, Sec. 7(e).)

6 Art. 18A.355. NOTICE AND DISCLOSURE OF INTERCEPTION  
7 APPLICATION, INTERCEPTION ORDER, AND INTERCEPTED COMMUNICATIONS.

8 (a) Within a reasonable period but not later than the 90th day  
9 after the date an application for an interception order is denied or  
10 after the date an interception order or the last extension, if any,  
11 expires, the judge who granted or denied the application shall  
12 cause to be served on each person named in the order or application  
13 and any other party to an intercepted communication, if any, an  
14 inventory that must include notice of:

15 (1) the application or the issuance of the order;

16 (2) the date of denial of the application, or the date  
17 of the issuance of the order and the authorized interception  
18 period; and

19 (3) whether during any authorized interception period  
20 wire, oral, or electronic communications were intercepted.

21 (b) The judge may, on motion, make available for inspection  
22 to a person or the person's counsel any portion of an intercepted  
23 communication, application, or order that the judge determines to  
24 disclose to that person in the interest of justice.

25 (c) On an ex parte showing of good cause to the judge, the  
26 serving of the inventory required under Subsection (a) may be  
27 postponed.



1 (d) Evidence derived from an order under this chapter may  
2 not be disclosed in a trial until after the inventory has been  
3 served. (Code Crim. Proc., Art. 18.20, Sec. 13.)

4 Art. 18A.356. NOTICE OF INTERCEPTION REQUIRED. (a) The  
5 contents of an intercepted wire, oral, or electronic communication  
6 or evidence derived from the communication may not be received in  
7 evidence or otherwise disclosed in a trial, hearing, or other  
8 proceeding in a federal or state court unless each party, not later  
9 than the 10th day before the date of the trial, hearing, or other  
10 proceeding, has been provided with a copy of the interception order  
11 and application under which the interception was authorized.

12 (b) The judge may waive the 10-day period described by  
13 Subsection (a) on a finding that:

14 (1) it is not possible to provide the party with the  
15 information 10 days before the trial, hearing, or proceeding; and

16 (2) the party will not be prejudiced by the delay in  
17 receiving the information. (Code Crim. Proc., Art. 18.20, Sec.  
18 14(a).)

19 Art. 18A.357. COMMUNICATIONS RECEIVED IN EVIDENCE. (a)  
20 The contents of an intercepted communication and evidence derived  
21 from the communication may be received in evidence in any trial,  
22 hearing, or other proceeding in or before any court, grand jury,  
23 department, officer, agency, regulatory body, legislative  
24 committee, or other authority of the United States, this state, or a  
25 political subdivision of this state unless:

26 (1) the communication was intercepted in violation of  
27 this chapter, Section 16.02, Penal Code, or federal law; or

1           (2) the disclosure of the contents of the  
2 communication or evidence derived from the communication would  
3 violate a law described by Subdivision (1).

4           (b) The contents of an intercepted communication and  
5 evidence derived from the communication may be received in a civil  
6 trial, hearing, or other proceeding only if the civil trial,  
7 hearing, or other proceeding arises out of a violation of a penal  
8 law.

9           (c) This article does not prohibit the use or admissibility  
10 of the contents of an intercepted communication or evidence derived  
11 from the communication if the communication was intercepted in a  
12 jurisdiction outside this state in compliance with the law of that  
13 jurisdiction. (Code Crim. Proc., Art. [18.20](#), Sec. 2.)

14           Art. 18A.358. SUPPRESSION OF CONTENTS OF INTERCEPTED  
15 COMMUNICATIONS. (a) An aggrieved person charged with an offense in  
16 a trial, hearing, or proceeding in or before a court, department,  
17 officer, agency, regulatory body, or other authority of the United  
18 States, this state, or a political subdivision of this state may  
19 move to suppress the contents of an intercepted wire, oral, or  
20 electronic communication or evidence derived from the  
21 communication on the ground that:

22               (1) the communication was unlawfully intercepted;

23               (2) the interception order is insufficient on its  
24 face; or

25               (3) the interception was not made in conformity with  
26 the interception order.

27           (b) A person identified by a party to an intercepted wire,

1 oral, or electronic communication during the course of that  
2 communication may move to suppress the contents of the  
3 communication on:

4 (1) a ground provided under Subsection (a); or

5 (2) the ground that the harm to the person resulting  
6 from the person's identification in court exceeds the value to the  
7 prosecution of the disclosure of the contents.

8 (c) The motion to suppress must be made before the trial,  
9 hearing, or proceeding unless:

10 (1) there was not an opportunity to make the motion; or

11 (2) the aggrieved person was not aware of the grounds  
12 of the motion.

13 (d) The hearing on the motion to suppress shall be held in  
14 camera on the written request of the aggrieved person.

15 (e) If the motion to suppress is granted, the contents of  
16 the intercepted wire, oral, or electronic communication and  
17 evidence derived from the communication shall be treated as having  
18 been obtained in violation of this chapter.

19 (f) The judge, on the filing of the motion to suppress by the  
20 aggrieved person, shall make available to the aggrieved person or  
21 the person's counsel for inspection any portion of the intercepted  
22 communication or evidence derived from the communication that the  
23 judge determines to make available in the interest of justice.

24 (g) A judge of this state, on hearing a pretrial motion  
25 regarding conversations intercepted by wire in accordance with this  
26 chapter, or who otherwise becomes informed that there exists on  
27 such an intercepted wire, oral, or electronic communication

1 identification of a specific individual who is not a suspect or a  
2 party to the subject of interception shall:

3 (1) give notice and an opportunity to be heard on the  
4 matter of suppression of references to that individual if  
5 identification is sufficient to give notice; or

6 (2) suppress references to that individual if  
7 identification is:

8 (A) sufficient to potentially cause  
9 embarrassment or harm that outweighs the probative value, if any,  
10 of the mention of that individual; and

11 (B) insufficient to require the notice under  
12 Subdivision (1). (Code Crim. Proc., Art. 18.20, Secs. 14(b), (c),  
13 (d), (e).)

14 SUBCHAPTER I. USE AND DISPOSITION OF APPLICATIONS AND ORDERS

15 Art. 18A.401. SEALING OF APPLICATION OR ORDER. The judge  
16 shall seal each application made and order issued under this  
17 chapter. (Code Crim. Proc., Art. 18.20, Sec. 11 (part).)

18 Art. 18A.402. CUSTODY OF APPLICATIONS AND ORDERS. Custody  
19 of applications and orders issued under this chapter shall be  
20 wherever the judge directs. (Code Crim. Proc., Art. 18.20, Sec. 11  
21 (part).)

22 Art. 18A.403. DISCLOSURE OF APPLICATION OR ORDER. An  
23 application made or order issued under this chapter may be  
24 disclosed only on a showing of good cause before a judge of  
25 competent jurisdiction. (Code Crim. Proc., Art. 18.20, Sec. 11  
26 (part).)

27 Art. 18A.404. DESTRUCTION OF APPLICATION OR ORDER. An

1 application made or order issued under this chapter may be  
2 destroyed only on or after the 10th anniversary of the date the  
3 application or order was sealed and only if the judge of competent  
4 jurisdiction for the administrative judicial region in which the  
5 application was made or the order was issued orders the  
6 destruction. (Code Crim. Proc., Art. 18.20, Sec. 11 (part).)

7 SUBCHAPTER J. CREATION, USE, AND DISPOSITION OF RECORDINGS

8 Art. 18A.451. CREATION OF RECORDINGS. The contents of a  
9 wire, oral, or electronic communication intercepted by means  
10 authorized by this chapter shall be recorded on tape, wire, or other  
11 comparable device in a way that protects the recording from editing  
12 or other alterations. (Code Crim. Proc., Art. 18.20, Sec. 10(a).)

13 Art. 18A.452. DUPLICATION OF RECORDINGS. Recordings under  
14 Article 18A.451 may be duplicated for use or disclosure under  
15 Article 18A.351 for investigations. (Code Crim. Proc., Art. 18.20,  
16 Sec. 10(c).)

17 Art. 18A.453. SEALING AND CUSTODY OF RECORDINGS. (a)  
18 Immediately on the expiration of the period of an interception  
19 order and all extensions, if any, the recordings under Article  
20 18A.451 shall be:

21 (1) made available to the judge issuing the order; and

22 (2) sealed under the judge's directions.

23 (b) Custody of the recordings shall be wherever the judge  
24 orders. (Code Crim. Proc., Art. 18.20, Sec. 10(b) (part).)

25 Art. 18A.454. DESTRUCTION OF RECORDINGS. A recording under  
26 Article 18A.451 may be destroyed only on or after the 10th  
27 anniversary of the date of expiration of the interception order and

1 the last extension, if any, and only if the judge of competent  
2 jurisdiction for the administrative judicial region in which the  
3 interception was authorized orders the destruction. (Code Crim.  
4 Proc., Art. 18.20, Sec. 10(b) (part).)

5 Art. 18A.455. PREREQUISITE FOR USE OR DISCLOSURE OF  
6 RECORDING IN CERTAIN PROCEEDINGS. The presence of the seal  
7 required by Article 18A.453(a) or a satisfactory explanation of the  
8 seal's absence is a prerequisite for the use or disclosure of the  
9 contents of a wire, oral, or electronic communication or evidence  
10 derived from the communication under Article 18A.352. (Code Crim.  
11 Proc., Art. 18.20, Sec. 10(d).)

12 SUBCHAPTER K. VIOLATION; SANCTIONS

13 Art. 18A.501. CONTEMPT. A violation of Subchapter I or J  
14 may be punished as contempt of court. (Code Crim. Proc., Art.  
15 18.20, Sec. 12.)

16 Art. 18A.502. RECOVERY OF CIVIL DAMAGES BY AGGRIEVED  
17 PERSON. A person whose wire, oral, or electronic communication is  
18 intercepted, disclosed, or used in violation of this chapter or  
19 Chapter 16, Penal Code:

20 (1) has a civil cause of action against any person who  
21 intercepts, discloses, or uses or solicits another person to  
22 intercept, disclose, or use the communication; and

23 (2) is entitled to recover from the person:

24 (A) actual damages but not less than liquidated  
25 damages computed at a rate of \$100 for each day the violation occurs  
26 or \$1,000, whichever is higher;

27 (B) punitive damages; and

1 (C) reasonable attorney's fees and other  
2 litigation costs reasonably incurred. (Code Crim. Proc., Art.  
3 18.20, Sec. 16(a).)

4 Art. 18A.503. ACTION BROUGHT BY FEDERAL OR STATE  
5 GOVERNMENT; INJUNCTION; PENALTIES. (a) A person is subject to suit  
6 by the federal or state government in a court of competent  
7 jurisdiction for appropriate injunctive relief if the person  
8 engages in conduct that:

9 (1) constitutes an offense under Section 16.05, Penal  
10 Code, but is not for a tortious or illegal purpose or for the  
11 purpose of direct or indirect commercial advantage or private  
12 commercial gain; and

13 (2) involves a radio communication that is:

14 (A) transmitted on frequencies allocated under  
15 Subpart D of Part 74 of the rules of the Federal Communications  
16 Commission; and

17 (B) not scrambled or encrypted.

18 (b) The attorney general or the county or district attorney  
19 of the county in which the conduct described by Subsection (a) is  
20 occurring may file suit under that subsection on behalf of the  
21 state.

22 (c) A defendant is liable for a civil penalty of \$500 if it  
23 is shown at the trial of the civil suit brought under Subsection (a)  
24 that the defendant has been:

25 (1) convicted of an offense under Section 16.05, Penal  
26 Code; or

27 (2) found liable in a civil action brought under

1 Article 18A.502.

2 (d) Each violation of an injunction ordered under  
3 Subsection (a) is punishable by a fine of \$500. (Code Crim. Proc.,  
4 Art. 18.20, Secs. 16(c), (d), (e), (f).)

5 Art. 18A.504. GOOD FAITH DEFENSE AVAILABLE. A good faith  
6 reliance on a court order or legislative authorization constitutes  
7 a complete defense to an action brought under Article 18A.502 or  
8 18A.503. (Code Crim. Proc., Art. 18.20, Sec. 16(b).)

9 Art. 18A.505. NO CAUSE OF ACTION. A computer trespasser or  
10 a user, aggrieved person, subscriber, or customer of a  
11 communication common carrier or provider of an electronic  
12 communications service does not have a cause of action against the  
13 carrier or service provider, the officers, employees, or agents of  
14 the carrier or service provider, or other specified persons for  
15 providing information, facilities, or assistance as required by a  
16 good faith reliance on:

17 (1) legislative authority; or

18 (2) a court order, warrant, subpoena, or certification  
19 under this chapter. (Code Crim. Proc., Art. 18.20, Sec. 16(g).)

20 SUBCHAPTER L. REPORTS

21 Art. 18A.551. REPORT OF INTERCEPTED COMMUNICATIONS BY  
22 JUDGE. (a) Within 30 days after the date an interception order or  
23 the last extension, if any, expires or after the denial of an  
24 interception order, the issuing or denying judge shall report to  
25 the Administrative Office of the United States Courts:

26 (1) the fact that an order or extension was applied  
27 for;



1           (2) the kind of order or extension applied for;

2           (3) the fact that the order or extension was granted as  
3 applied for, was modified, or was denied;

4           (4) the period of interceptions authorized by the  
5 order and the number and duration of any extensions of the order;

6           (5) the offense specified in the order or application  
7 or extension;

8           (6) the identity of the requesting officer and the  
9 prosecutor; and

10          (7) the nature of the facilities from which or the  
11 place where communications were to be intercepted.

12          (b) A judge required to file a report under this article  
13 shall forward a copy of the report to the director. (Code Crim.  
14 Proc., Art. [18.20](#), Secs. 15(a), (c) (part).)

15          Art. 18A.552. REPORT OF INTERCEPTED COMMUNICATIONS BY  
16 PROSECUTOR. (a) In January of each year each prosecutor shall  
17 report to the Administrative Office of the United States Courts the  
18 following information for the preceding calendar year:

19           (1) the information required by Article 18A.551(a)  
20 with respect to each application for an interception order or  
21 extension made;

22           (2) a general description of the interceptions made  
23 under each order or extension, including:

24                (A) the approximate nature and frequency of  
25 incriminating communications intercepted;

26                (B) the approximate nature and frequency of other  
27 communications intercepted;

(C) the approximate number of persons whose communications were intercepted; and

(D) the approximate nature, amount, and cost of the personnel and other resources used in the interceptions;

(3) the number of arrests resulting from interceptions made under each order or extension and the offenses for which the arrests were made;

(4) the number of trials resulting from interceptions;

(5) the number of motions to suppress made with respect to interceptions and the number granted or denied;

(6) the number of convictions resulting from interceptions, the offenses for which the convictions were obtained, and a general assessment of the importance of the interceptions; and

(7) the information required by Subdivisions (2) through (6) with respect to orders or extensions obtained.

(b) A prosecutor required to file a report under this article shall forward a copy of the report to the director. (Code Crim. Proc., Art. [18.20](#), Secs. 15(b), (c) (part).)

Art. 18A.553. REPORT OF INTERCEPTED COMMUNICATIONS BY DEPARTMENT OF PUBLIC SAFETY. (a) On or before March 1 of each year, the director shall submit a report of all intercepts conducted under this chapter and terminated during the preceding calendar year to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the chair of the senate jurisprudence committee;  
and

(5) the chair of the house of representatives criminal  
jurisprudence committee.

(b) The report must include:

(1) the reports of judges and prosecuting attorneys  
forwarded to the director as required by Articles 18A.551(b) and  
18A.552(b);

(2) the number of department personnel authorized to  
possess, install, or operate an interception device;

(3) the number of department and other law enforcement  
personnel who participated or engaged in the seizure of intercepts  
under this chapter during the preceding calendar year; and

(4) the total cost to the department of all activities  
and procedures relating to the seizure of intercepts during the  
preceding calendar year, including costs of equipment, personnel,  
and expenses incurred as compensation for use of facilities or  
technical assistance provided to the department. (Code Crim.  
Proc., Art. 18.20, Sec. 15(c) (part).)

SECTION 1.02. Title 1, Code of Criminal Procedure, is  
amended by adding Chapter 18B to read as follows:

CHAPTER 18B. INSTALLATION AND USE OF TRACKING EQUIPMENT; ACCESS TO  
COMMUNICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Art. 18B.001. DEFINITIONS

SUBCHAPTER B. APPLICATION FOR ORDER AUTHORIZING INSTALLATION AND  
USE OF EQUIPMENT

Art. 18B.051. REQUIREMENTS REGARDING REQUEST FOR AND  
FILING OF APPLICATION

Art. 18B.052. JURISDICTION

Art. 18B.053. APPLICATION REQUIREMENTS

SUBCHAPTER C. ORDER AUTHORIZING INSTALLATION AND USE OF EQUIPMENT

Art. 18B.101. ORDER AUTHORIZING INSTALLATION AND USE  
OF PEN REGISTER, ESN READER, OR  
SIMILAR EQUIPMENT

Art. 18B.102. ORDER AUTHORIZING INSTALLATION AND USE  
OF TRAP AND TRACE DEVICE OR SIMILAR  
EQUIPMENT

Art. 18B.103. COMPENSATION FOR CARRIER OR SERVICE  
PROVIDER

Art. 18B.104. DURATION OF ORDER

Art. 18B.105. SEALING RECORDS OF APPLICATION AND ORDER

SUBCHAPTER D. EMERGENCY INSTALLATION AND USE OF CERTAIN EQUIPMENT

Art. 18B.151. EMERGENCY INSTALLATION AND USE OF PEN  
REGISTER OR TRAP AND TRACE DEVICE

Art. 18B.152. ORDER AUTHORIZING EMERGENCY INSTALLATION  
AND USE

Art. 18B.153. ADMISSIBILITY OF EVIDENCE OBTAINED

SUBCHAPTER E. MOBILE TRACKING DEVICES

Art. 18B.201. DEFINITION

Art. 18B.202. ORDER AUTHORIZING INSTALLATION AND USE  
OF MOBILE TRACKING DEVICE

- 1 Art. 18B.203. JURISDICTION
- 2 Art. 18B.204. NOTIFICATION OF JUDGE FOLLOWING
- 3                           ACTIVATION OF MOBILE TRACKING DEVICE
- 4 Art. 18B.205. DURATION OF ORDER
- 5 Art. 18B.206. REMOVAL OF DEVICE
- 6 Art. 18B.207. NONAPPLICABILITY
- 7                   SUBCHAPTER F. LAW ENFORCEMENT POWERS AND DUTIES
- 8 Art. 18B.251. POLICY REQUIRED
- 9 Art. 18B.252. PEACE OFFICERS AUTHORIZED TO POSSESS,
- 10                           INSTALL, OPERATE, OR MONITOR EQUIPMENT
- 11 Art. 18B.253. LIMITATION: PEN REGISTERS
- 12 Art. 18B.254. APPLICATION OR ORDER NOT REQUIRED FOR
- 13                           CERTAIN SEARCHES
- 14                           SUBCHAPTER G. OVERSIGHT
- 15 Art. 18B.301. COMPLIANCE AUDIT
- 16 Art. 18B.302. REPORT OF EXPENDITURES
- 17   SUBCHAPTER H. ACCESS TO STORED COMMUNICATIONS AND OTHER STORED
- 18                           CUSTOMER DATA
- 19 Art. 18B.351. GOVERNMENT ACCESS TO ELECTRONIC CUSTOMER
- 20                           DATA
- 21 Art. 18B.352. COURT ORDER FOR GOVERNMENT ACCESS TO
- 22                           STORED CUSTOMER DATA
- 23 Art. 18B.353. WARRANT ISSUED IN THIS STATE:
- 24                           APPLICABILITY
- 25 Art. 18B.354. WARRANT ISSUED IN THIS STATE:
- 26                           APPLICATION AND ISSUANCE OF WARRANT

1 Art. 18B.355. WARRANT ISSUED IN THIS STATE: EXECUTION  
2 OF WARRANT  
3 Art. 18B.356. WARRANT ISSUED IN THIS STATE:  
4 COMPLIANCE WITH WARRANT  
5 Art. 18B.357. WARRANT ISSUED IN THIS STATE:  
6 AUTHENTICATION OF RECORDS BY SERVICE  
7 PROVIDER  
8 Art. 18B.358. WARRANT ISSUED IN ANOTHER STATE  
9 Art. 18B.359. GOVERNMENT ACCESS TO CERTAIN STORED  
10 CUSTOMER DATA WITHOUT LEGAL PROCESS  
11 SUBCHAPTER I. BACKUP PRESERVATION OF ELECTRONIC CUSTOMER DATA  
12 Art. 18B.401. BACKUP PRESERVATION OF ELECTRONIC  
13 CUSTOMER DATA  
14 Art. 18B.402. NOTICE TO SUBSCRIBER OR CUSTOMER  
15 Art. 18B.403. RELEASE OF COPY OF ELECTRONIC CUSTOMER  
16 DATA  
17 Art. 18B.404. DESTRUCTION OF COPY OF ELECTRONIC  
18 CUSTOMER DATA  
19 Art. 18B.405. REQUEST FOR COPY OF ELECTRONIC CUSTOMER  
20 DATA BY AUTHORIZED PEACE OFFICER  
21 Art. 18B.406. PROCEEDINGS TO QUASH SUBPOENA OR VACATE  
22 COURT ORDER  
23 SUBCHAPTER J. PRODUCTION OF CERTAIN BUSINESS RECORDS  
24 Art. 18B.451. SUBPOENA AUTHORITY  
25 Art. 18B.452. REPORT OF ISSUANCE OF SUBPOENA  
26 Art. 18B.453. COMPLIANCE WITH POLICY FOR INSTALLATION  
27 AND USE OF EQUIPMENT

SUBCHAPTER K. SERVICE PROVIDER POWERS AND DUTIES

Art. 18B.501. PRECLUSION OF NOTIFICATION

Art. 18B.502. DISCLOSURE BY SERVICE PROVIDER

PROHIBITED

Art. 18B.503. REIMBURSEMENT OF COSTS

SUBCHAPTER L. REMEDIES

Art. 18B.551. CAUSE OF ACTION

Art. 18B.552. NO CAUSE OF ACTION

Art. 18B.553. EXCLUSIVITY OF REMEDIES

CHAPTER 18B. INSTALLATION AND USE OF TRACKING EQUIPMENT; ACCESS TO  
COMMUNICATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Art. 18B.001. DEFINITIONS. In this chapter:

(1) "Authorized peace officer" means:

(A) a sheriff or deputy sheriff;

(B) a constable or deputy constable;

(C) a marshal or police officer of a  
municipality;

(D) a ranger or officer commissioned by the  
Public Safety Commission or the director of the department;

(E) an investigator of a prosecutor's office;

(F) a law enforcement agent of the Texas  
Alcoholic Beverage Commission;

(G) a law enforcement officer commissioned by the  
Parks and Wildlife Commission;

(H) an enforcement officer appointed by the  
inspector general of the Texas Department of Criminal Justice under

1 Section 493.019, Government Code;

2 (I) an investigator commissioned by the attorney  
3 general under Section 402.009, Government Code; or

4 (J) a member of an arson investigating unit  
5 commissioned by a municipality, a county, or the state.

6 (2) "Communication common carrier," "electronic  
7 communication," "electronic communications service," "user," and  
8 "wire communication" have the meanings assigned by Article 18A.001.

9 (3) "Department" means the Department of Public Safety  
10 of the State of Texas.

11 (4) "Designated law enforcement office or agency"  
12 means:

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

15 (B) a police department in a municipality with a  
16 population of 500,000 or more; or

17 (C) the office of inspector general of the Texas  
18 Department of Criminal Justice.

19 (5) "Domestic entity" has the meaning assigned by  
20 Section 1.002, Business Organizations Code.

21 (6) "Electronic communications system" means:

22 (A) a wire, radio, electromagnetic,  
23 photo-optical, or photoelectronic facility for the transmission of  
24 wire or electronic communications; and

25 (B) any computer facility or related electronic  
26 equipment for the electronic storage of wire or electronic  
27 communications.



1           (7) "Electronic customer data" means data or records  
2 that:

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

6                   (B) contain:

7                           (i) information revealing the identity of  
8 customers of the applicable service;

9                           (ii) information about a customer's use of  
10 the applicable service;

11                           (iii) information that identifies the  
12 recipient or destination of a wire or electronic communication sent  
13 to or by a customer;

14                           (iv) the content of a wire or electronic  
15 communication sent to or by a customer; and

16                           (v) any data stored with the applicable  
17 service provider by or on behalf of a customer.

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

24           (9) "ESN reader" means a device that, without  
25 intercepting the contents of a communication, records the  
26 electronic serial number from the data track of a wireless  
27 telephone, cellular telephone, or similar communication device

1 that transmits its operational status to a base site.

2 (10) "Pen register" means a device or process that  
3 records or decodes dialing, routing, addressing, or signaling  
4 information transmitted by an instrument or facility from which a  
5 wire or electronic communication is transmitted, if the information  
6 does not include the contents of the communication. The term does  
7 not include a device used by a provider or customer of a wire or  
8 electronic communications service in the ordinary course of the  
9 service provider's or customer's business for purposes of:

10 (A) billing or recording incident to billing for  
11 communications services; or

12 (B) cost accounting, security control, or other  
13 ordinary business purposes.

14 (11) "Prosecutor" means a district attorney, criminal  
15 district attorney, or county attorney performing the duties of a  
16 district attorney.

17 (12) "Remote computing service" means the provision of  
18 computer storage or processing services to the public by means of an  
19 electronic communications system.

20 (13) "Trap and trace device" means a device or process  
21 that records an incoming electronic or other impulse that  
22 identifies the originating number or other dialing, routing,  
23 addressing, or signaling information reasonably likely to identify  
24 the source of a wire or electronic communication, if the  
25 information does not include the contents of the communication.  
26 The term does not include a device or telecommunications network  
27 used in providing:

1 (A) a caller identification service authorized  
2 by the Public Utility Commission of Texas under Subchapter E,  
3 Chapter 55, Utilities Code;

4 (B) the services referenced by Section  
5 55.102(b), Utilities Code; or

6 (C) a caller identification service provided by a  
7 commercial mobile radio service provider licensed by the Federal  
8 Communications Commission. (Code Crim. Proc., Art. 18.20, Secs.  
9 1(17), (20); Art. 18.21, Secs. 1(1) (part), (2), (3), (3-a), (3-b),  
10 (3-c), (4), (6), (7), (8), (10).)

11 SUBCHAPTER B. APPLICATION FOR ORDER AUTHORIZING INSTALLATION AND  
12 USE OF EQUIPMENT

13 Art. 18B.051. REQUIREMENTS REGARDING REQUEST FOR AND FILING  
14 OF APPLICATION. (a) A prosecutor with jurisdiction in a county  
15 within a judicial district described by Article 18B.052 may file  
16 with a district judge in the judicial district an application for  
17 the installation and use of a pen register, ESN reader, trap and  
18 trace device, or similar equipment that combines the function of a  
19 pen register and a trap and trace device.

20 (b) A prosecutor may file an application under this  
21 subchapter or under federal law on:

22 (1) the prosecutor's own motion; or

23 (2) the request of an authorized peace officer,  
24 regardless of whether the peace officer is commissioned by the  
25 department.

26 (c) A prosecutor must make an application personally and may  
27 not make the application through an assistant or other person

1 acting on the prosecutor's behalf if the prosecutor:

2 (1) files an application on the prosecutor's own  
3 motion; or

4 (2) files an application for the installation and use  
5 of a pen register, ESN reader, or similar equipment on the request  
6 of an authorized peace officer not commissioned by the department,  
7 other than an authorized peace officer employed by a designated law  
8 enforcement office or agency.

9 (d) A prosecutor may make an application through an  
10 assistant or other person acting on the prosecutor's behalf if the  
11 prosecutor files an application for the installation and use of:

12 (1) a pen register, ESN reader, or similar equipment  
13 on the request of:

14 (A) an authorized peace officer who is  
15 commissioned by the department; or

16 (B) an authorized peace officer of a designated  
17 law enforcement office or agency; or

18 (2) a trap and trace device or similar equipment on the  
19 request of an authorized peace officer, regardless of whether the  
20 peace officer is commissioned by the department. (Code Crim.  
21 Proc., Art. 18.21, Secs. 2(a) (part), (b).)

22 Art. 18B.052. JURISDICTION. An application under this  
23 subchapter must be filed in a judicial district in which is located:

24 (1) the site of the proposed installation or use of the  
25 device or equipment;

26 (2) the site of the communication device on which the  
27 device or equipment is proposed to be installed or used;

1           (3) the billing, residential, or business address of  
2 the subscriber to the electronic communications service on which  
3 the device or equipment is proposed to be installed or used;

4           (4) the headquarters of:

5                 (A) the office of the prosecutor filing an  
6 application under this subchapter; or

7                 (B) a law enforcement agency that requests the  
8 prosecutor to file an application under this subchapter or that  
9 proposes to execute an order authorizing installation and use of  
10 the device or equipment; or

11           (5) the headquarters of a service provider ordered to  
12 install the device or equipment. (Code Crim. Proc., Art. [18.21](#),  
13 Sec. 2(a) (part).)

14         Art. 18B.053. APPLICATION REQUIREMENTS. An application  
15 under this subchapter must:

16           (1) be made in writing under oath;

17           (2) include the name of the subscriber and the  
18 telephone number and location of the communication device on which  
19 the pen register, ESN reader, trap and trace device, or similar  
20 equipment will be used, to the extent that information is known or  
21 is reasonably ascertainable; and

22           (3) state that the installation and use of the device  
23 or equipment will likely produce information that is material to an  
24 ongoing criminal investigation. (Code Crim. Proc., Art. [18.21](#),  
25 Sec. 2(c).)

26         SUBCHAPTER C. ORDER AUTHORIZING INSTALLATION AND USE OF EQUIPMENT

27         Art. 18B.101. ORDER AUTHORIZING INSTALLATION AND USE OF PEN

1 REGISTER, ESN READER, OR SIMILAR EQUIPMENT. (a) On presentation of  
2 an application under Subchapter B, a judge may order the  
3 installation and use of a pen register, ESN reader, or similar  
4 equipment by an authorized peace officer commissioned by the  
5 department or an authorized peace officer of a designated law  
6 enforcement office or agency.

7 (b) On request of the applicant, the judge shall direct in  
8 the order that a communication common carrier or a provider of an  
9 electronic communications service provide all information,  
10 facilities, and technical assistance necessary to facilitate the  
11 installation and use of the device or equipment by the department or  
12 designated law enforcement office or agency unobtrusively and with  
13 a minimum of interference to the services provided by the carrier or  
14 service provider. (Code Crim. Proc., Art. [18.21](#), Sec. 2(d)  
15 (part).)

16 Art. 18B.102. ORDER AUTHORIZING INSTALLATION AND USE OF  
17 TRAP AND TRACE DEVICE OR SIMILAR EQUIPMENT. (a) On presentation of  
18 an application under Subchapter B, a judge may order the  
19 installation and use of a trap and trace device or similar equipment  
20 on the appropriate line by a communication common carrier or other  
21 person.

22 (b) The judge may direct the communication common carrier or  
23 other person, including any landlord or other custodian of  
24 equipment, to provide all information, facilities, and technical  
25 assistance necessary to install or use the device or equipment  
26 unobtrusively and with a minimum of interference to the services  
27 provided by the communication common carrier, landlord, custodian,

1 or other person.

2 (c) Unless otherwise ordered by the court, the results of  
3 the device or equipment shall be provided to the applicant, as  
4 designated by the court, at reasonable intervals during regular  
5 business hours, for the duration of the order. (Code Crim. Proc.,  
6 Art. 18.21, Sec. 2(e) (part).)

7 Art. 18B.103. COMPENSATION FOR CARRIER OR SERVICE PROVIDER.

8 (a) A communication common carrier or a provider of an electronic  
9 communications service that provides facilities and assistance to  
10 the department or a designated law enforcement office or agency  
11 under Article 18B.101(b) is entitled to compensation at the  
12 prevailing rates for the facilities and assistance.

13 (b) A communication common carrier that provides facilities  
14 and assistance to a designated law enforcement office or agency  
15 under Article 18B.102(b) is entitled to compensation at the  
16 prevailing rates for the facilities and assistance. (Code Crim.  
17 Proc., Art. 18.21, Secs. 2(d) (part), (e) (part).)

18 Art. 18B.104. DURATION OF ORDER. (a) An order for the  
19 installation and use of a device or equipment under this subchapter  
20 is valid for a period not to exceed 60 days after the earlier of the  
21 date the device or equipment is installed or the 10th day after the  
22 date the order is entered, unless the prosecutor applies for and  
23 obtains an extension of the order from the court before the order  
24 expires.

25 (b) Each extension granted under Subsection (a) may not  
26 exceed a period of 60 days, except that the court may extend an  
27 order for a period not to exceed one year with the consent of the

subscriber or customer of the service on which the device or equipment is used. (Code Crim. Proc., Art. 18.21, Sec. 2(f).)

Art. 18B.105. SEALING RECORDS OF APPLICATION AND ORDER. A district court shall seal an application and order granted under this chapter. (Code Crim. Proc., Art. 18.21, Sec. 2(g).)

SUBCHAPTER D. EMERGENCY INSTALLATION AND USE OF CERTAIN EQUIPMENT

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

(b) A peace officer authorized to possess, install, operate, or monitor a device under Subchapter E, Chapter 18A, may install and use a pen register or trap and trace device if the peace officer reasonably believes:

(1) an immediate life-threatening situation exists that:

(A) is within the territorial jurisdiction of the peace officer or another officer the peace officer is assisting; and

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

(2) there are sufficient grounds under this chapter on which to obtain an order authorizing the installation and use of a pen register or trap and trace device. (Code Crim. Proc., Art. 18.21, Secs. 1(1) (part), 3(a).)



1           Art. 18B.152. ORDER AUTHORIZING EMERGENCY INSTALLATION AND  
2 USE. (a) A peace officer who installs or uses a pen register or  
3 trap and trace device under Article 18B.151 shall:

4                 (1) promptly report the installation or use of the  
5 device to the prosecutor in the county in which the device is  
6 installed or used; and

7                 (2) within 48 hours after the installation of the  
8 device is complete or the use of the device begins, whichever occurs  
9 first, obtain an order under Subchapter C authorizing the  
10 installation and use of the device.

11           (b) A judge may issue an order authorizing the installation  
12 and use of a device under this subchapter during the 48-hour period  
13 prescribed by Subsection (a)(2). If an order is denied or is not  
14 issued within the 48-hour period, the peace officer shall terminate  
15 use of and remove the pen register or trap and trace device promptly  
16 on the earlier of the denial or the expiration of 48 hours. (Code  
17 Crim. Proc., Art. [18.21](#), Secs. 3(a) (part), (b), (c).)

18           Art. 18B.153. ADMISSIBILITY OF EVIDENCE OBTAINED. The  
19 state may not use as evidence in a criminal proceeding any  
20 information gained through the use of a pen register or trap and  
21 trace device installed under this subchapter if an authorized peace  
22 officer:

23                 (1) does not apply for authorization for the pen  
24 register or trap and trace device; or

25                 (2) applies for but does not obtain that  
26 authorization. (Code Crim. Proc., Art. [18.21](#), Sec. 3(d).)

SUBCHAPTER E. MOBILE TRACKING DEVICES

Art. 18B.201. DEFINITION. In this subchapter, "mobile tracking device" means an electronic or mechanical device that permits tracking the movement of a person, vehicle, container, item, or object. (Code Crim. Proc., Art. 18.21, Sec. 1(5).)

Art. 18B.202. ORDER AUTHORIZING INSTALLATION AND USE OF MOBILE TRACKING DEVICE. (a) A district judge may issue an order for the installation and use of a mobile tracking device only on the application of an authorized peace officer.

(b) An application must be written, signed, and sworn to before the judge.

(c) The affidavit must:

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

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

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

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

(5) state the facts and circumstances that provide the applicant with a reasonable suspicion that:

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

(B) the installation and use of a mobile tracking

1 device is likely to produce information that is material to an  
2 ongoing criminal investigation of that criminal activity. (Code  
3 Crim. Proc., Art. 18.21, Secs. 14(a) (part), (c).)

4 Art. 18B.203. JURISDICTION. (a) A district judge may issue  
5 an order for the installation and use of a mobile tracking device in  
6 the same judicial district as the site of:

7 (1) the investigation; or

8 (2) the person, vehicle, container, item, or object  
9 the movement of which will be tracked by the device.

10 (b) The order may authorize the use of a mobile tracking  
11 device outside the judicial district but within the state, if the  
12 device is installed within the district. (Code Crim. Proc., Art.  
13 18.21, Secs. 14(a), (b).)

14 Art. 18B.204. NOTIFICATION OF JUDGE FOLLOWING ACTIVATION OF  
15 MOBILE TRACKING DEVICE. Within 72 hours after the time a mobile  
16 tracking device is activated in place on or within a vehicle,  
17 container, or item, the applicant for whom an order was issued under  
18 this subchapter shall notify in writing the judge who issued the  
19 order. (Code Crim. Proc., Art. 18.21, Sec. 14(d).)

20 Art. 18B.205. DURATION OF ORDER. (a) An order under this  
21 subchapter expires not later than the 90th day after the date that  
22 the mobile tracking device was activated in place on or within the  
23 vehicle, container, or item.

24 (b) For good cause shown, the judge may grant an extension  
25 for an additional 90-day period. (Code Crim. Proc., Art. 18.21,  
26 Sec. 14(e).)

27 Art. 18B.206. REMOVAL OF DEVICE. (a) The applicant shall

1 remove or cause to be removed the mobile tracking device as soon as  
2 is practicable after the authorization period expires.

3 (b) If removal is not practicable, the device may not be  
4 monitored after the expiration of the order. (Code Crim. Proc.,  
5 Art. 18.21, Sec. 14(f).)

6 Art. 18B.207. NONAPPLICABILITY. (a) This subchapter does  
7 not apply to a global positioning or similar device installed in or  
8 on an item of property by the owner or with the consent of the owner  
9 of the property.

10 (b) In an emergency, a private entity may monitor a device  
11 described by Subsection (a). (Code Crim. Proc., Art. 18.21, Sec.  
12 14(g).)

13 SUBCHAPTER F. LAW ENFORCEMENT POWERS AND DUTIES

14 Art. 18B.251. POLICY REQUIRED. Each designated law  
15 enforcement office or agency shall:

16 (1) adopt a written policy governing the application  
17 of this chapter to the office or agency; and

18 (2) submit the policy to the director of the  
19 department, or the director's designee, for approval. (Code Crim.  
20 Proc., Art. 18.21, Sec. 2(j).)

21 Art. 18B.252. PEACE OFFICERS AUTHORIZED TO POSSESS,  
22 INSTALL, OPERATE, OR MONITOR EQUIPMENT. (a) A peace officer of a  
23 designated law enforcement office or agency is authorized to  
24 possess, install, operate, or monitor a pen register, ESN reader,  
25 or similar equipment if the peace officer's name is on the list  
26 submitted to the director of the department under Subsection (b).

27 (b) If the director of the department or the director's

1 designee approves the policy submitted under Article 18B.251, the  
2 inspector general of the Texas Department of Criminal Justice or  
3 the inspector general's designee, or the sheriff or chief of a  
4 designated law enforcement agency or the sheriff's or chief's  
5 designee, as applicable, shall submit to the director a written  
6 list of all peace officers in the designated law enforcement office  
7 or agency who are authorized to possess, install, operate, or  
8 monitor pen registers, ESN readers, or similar equipment. (Code  
9 Crim. Proc., Art. 18.21, Secs. 2(i), (k).)

10 Art. 18B.253. LIMITATION: PEN REGISTERS. To prevent  
11 inclusion of the contents of a wire or electronic communication, a  
12 governmental agency authorized to install and use a pen register  
13 under this chapter or other law must use reasonably available  
14 technology to only record and decode electronic or other impulses  
15 used to identify the numbers dialed, routed, addressed, or  
16 otherwise processed or transmitted by the communication. (Code  
17 Crim. Proc., Art. 18.21, Sec. 16.)

18 Art. 18B.254. APPLICATION OR ORDER NOT REQUIRED FOR CERTAIN  
19 SEARCHES. A peace officer is not required to file an application  
20 under Subchapter B or obtain an order under Subchapter C before the  
21 peace officer makes an otherwise lawful search, with or without a  
22 warrant, to determine the contents of a caller identification  
23 message, pager message, or voice message that is contained within  
24 the memory of an end-user's identification, paging, or answering  
25 device. (Code Crim. Proc., Art. 18.21, Sec. 2(h).)

26 SUBCHAPTER G. OVERSIGHT

27 Art. 18B.301. COMPLIANCE AUDIT. (a) The department may

1 conduct an audit of a designated law enforcement office or agency to  
2 ensure compliance with this chapter.

3 (b) If the department determines from the audit that the  
4 designated law enforcement office or agency is not in compliance  
5 with the policy adopted by the office or agency under Article  
6 18B.251, the department shall notify the office or agency in  
7 writing that the office or agency, as applicable, is not in  
8 compliance.

9 (c) If the department determines that the office or agency  
10 still is not in compliance with the policy on the 90th day after the  
11 date the office or agency receives written notice under Subsection  
12 (b), the office or agency loses the authority granted by this  
13 chapter until:

14 (1) the office or agency adopts a new written policy  
15 governing the application of this chapter to the office or agency;  
16 and

17 (2) the department approves that policy. (Code Crim.  
18 Proc., Art. [18.21](#), Sec. 2(1).)

19 Art. 18B.302. REPORT OF EXPENDITURES. (a) The inspector  
20 general of the Texas Department of Criminal Justice or the sheriff  
21 or chief of a designated law enforcement agency, as applicable,  
22 shall submit to the director of the department a written report of  
23 expenditures made by the designated law enforcement office or  
24 agency to purchase and maintain a pen register, ESN reader, or  
25 similar equipment authorized under this chapter.

26 (b) The director of the department shall report the  
27 expenditures publicly on an annual basis on the department's

Internet website or by other comparable means. (Code Crim. Proc.,  
Art. 18.21, Sec. 2(m).)

SUBCHAPTER H. ACCESS TO STORED COMMUNICATIONS AND OTHER STORED  
CUSTOMER DATA

Art. 18B.351. GOVERNMENT ACCESS TO ELECTRONIC CUSTOMER  
DATA. (a) An authorized peace officer may require a provider of an  
electronic communications service or a provider of a remote  
computing service to disclose electronic customer data that is in  
electronic storage by obtaining a warrant under Article 18B.354.

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

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

(2) by obtaining a grand jury subpoena;

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

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

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

(6) as otherwise permitted by applicable federal law.  
(Code Crim. Proc., Art. 18.21, Secs. 4(a), (b).)

Art. 18B.352. COURT ORDER FOR GOVERNMENT ACCESS TO STORED  
CUSTOMER DATA. (a) A court shall issue an order authorizing  
disclosure of contents, records, or other information of a wire or

1 electronic communication held in electronic storage if the court  
2 determines that there is a reasonable belief that the information  
3 sought is relevant to a legitimate law enforcement inquiry.

4 (b) A court may grant a motion by the service provider to  
5 quash or modify the order issued under Subsection (a) if the court  
6 determines that:

7 (1) the information or records requested are unusually  
8 voluminous; or

9 (2) compliance with the order would cause an undue  
10 burden on the provider. (Code Crim. Proc., Art. 18.21, Sec. 5.)

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 data, including the contents  
14 of a wire or electronic communication. (Code Crim. Proc.,  
15 Art. 18.21, Sec. 5A(a).)

16 Art. 18B.354. WARRANT ISSUED IN THIS STATE: APPLICATION AND  
17 ISSUANCE OF WARRANT. (a) On the filing of an application by an  
18 authorized peace officer, a district judge may issue a search  
19 warrant under this article for electronic customer data held in  
20 electronic storage, including the contents of and records and other  
21 information related to a wire or electronic communication held in  
22 electronic storage, by a provider of an electronic communications  
23 service or a provider of a remote computing service described by  
24 Article 18B.355(b), regardless of whether the customer data is held  
25 at a location in this state or another state. An application made  
26 under this subsection must demonstrate probable cause for the  
27 issuance of the warrant and must be supported by the oath of the



1 authorized peace officer.

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

5 (1) a specific offense has been committed; and

6 (2) the electronic customer data sought:

7 (A) constitutes evidence of that offense or  
8 evidence that a particular person committed that offense; and

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

11 (c) Only the electronic customer data described in the sworn  
12 affidavit required by Article 18.01(b) may be seized under the  
13 warrant.

14 (d) A warrant issued under this article shall run in the  
15 name of "The State of Texas."

16 (e) Article 18.011 applies to an affidavit presented under  
17 Article 18.01(b) for the issuance of a warrant under this article,  
18 and the affidavit may be sealed in the manner provided by that  
19 article. (Code Crim. Proc., Art. 18.21, Secs. 5A(b), (c), (d),  
20 (e), (f).)

21 Art. 18B.355. WARRANT ISSUED IN THIS STATE: EXECUTION OF  
22 WARRANT. (a) Not later than the 11th day after the date of  
23 issuance, an authorized peace officer shall execute a warrant  
24 issued under Article 18B.354, except that the peace officer shall  
25 execute the warrant within a shorter period if the district judge  
26 directs a shorter period in the warrant. For purposes of this  
27 subsection, a warrant is executed when the warrant is served in the

manner described by Subsection (c).

(b) A warrant issued under Article 18B.354 may be served only on a provider of an electronic communications service or a provider of a remote computing service that is a domestic entity or a company or entity otherwise doing business in this state under a contract or a terms of service agreement with a resident of this state, if any part of that contract or agreement is to be performed in this state.

(c) A search warrant issued under Article 18B.354 is served when an authorized peace officer delivers the warrant by hand, by facsimile transmission, or, in a manner allowing proof of delivery, by means of the United States mail or a private delivery service to:

(1) a person specified by Section 5.255, Business Organizations Code;

(2) the secretary of state in the case of a company or entity to which Section 5.251, Business Organizations Code, applies; or

(3) any other person or entity designated to receive the service of process.

(d) The district judge shall hear and decide any motion to quash the warrant not later than the fifth business day after the date the service provider files the motion. The judge may allow the service provider to appear at the hearing by teleconference. (Code Crim. Proc., Art. 18.21, Secs. 5A(b) (part), (g), (h) (part), (i), (m).)

Art. 18B.356. WARRANT ISSUED IN THIS STATE: COMPLIANCE WITH WARRANT. (a) A district judge shall indicate in a warrant

1 issued under Article 18A.354 that the deadline for compliance by  
2 the provider of an electronic communications service or the  
3 provider of a remote computing service is the 15th business day  
4 after the date the warrant is served if the warrant is to be served  
5 on a domestic entity or a company or entity otherwise doing business  
6 in this state, except that the deadline for compliance with a  
7 warrant served in accordance with Section 5.251, Business  
8 Organizations Code, may be extended to a date that is not later than  
9 the 30th day after the date the warrant is served.

10 (b) The judge may indicate in the warrant that the deadline  
11 for compliance is earlier than the 15th business day after the date  
12 the warrant is served if the authorized peace officer who applies  
13 for the warrant makes a showing and the judge finds that failure to  
14 comply with the warrant by the earlier deadline would cause serious  
15 jeopardy to an investigation, cause undue delay of a trial, or  
16 create a material risk of:

17 (1) danger to the life or physical safety of any  
18 person;

19 (2) flight from prosecution;

20 (3) the tampering with or destruction of evidence; or

21 (4) intimidation of potential witnesses.

22 (c) The service provider shall produce all electronic  
23 customer data, contents of communications, and other information  
24 sought, regardless of where the information is held and within the  
25 period allowed for compliance with the warrant, as provided by  
26 Subsection (a) or (b).

27 (d) A court may find any designated officer, designated

1 director, or designated owner of a company or entity in contempt of  
2 court if the person by act or omission is responsible for the  
3 failure of the company or entity to comply with the warrant within  
4 the period allowed for compliance.

5 (e) The failure of a company or entity to timely deliver the  
6 information sought in the warrant does not affect the admissibility  
7 of that evidence in a criminal proceeding.

8 (f) On a service provider's compliance with a warrant issued  
9 under Article 18B.354, an authorized peace officer shall file a  
10 return of the warrant and a copy of the inventory of the seized  
11 property as required under Article 18.10.

12 (g) A provider of an electronic communications service or a  
13 provider of a remote computing service responding to a warrant  
14 issued under Article 18B.354 may request an extension of the period  
15 for compliance with the warrant if extenuating circumstances exist  
16 to justify the extension. The district judge shall grant a request  
17 for an extension based on those circumstances if:

18 (1) the authorized peace officer who applied for the  
19 warrant or another appropriate authorized peace officer agrees to  
20 the extension; or

21 (2) the district judge finds that the need for the  
22 extension outweighs the likelihood that the extension will cause an  
23 adverse circumstance described by Subsection (b). (Code Crim.  
24 Proc., Art. 18.21, Secs. 5A(b) (part), (h) (part), (j), (l), (n).)

25 Art. 18B.357. WARRANT ISSUED IN THIS STATE: AUTHENTICATION  
26 OF RECORDS BY SERVICE PROVIDER. If an authorized peace officer  
27 serving a warrant under Article 18B.355 also delivers an affidavit

1 form to the provider of an electronic communications service or the  
2 provider of a remote computing service responding to the warrant,  
3 and the peace officer also notifies the service provider in writing  
4 that an executed affidavit is required, the service provider shall  
5 verify the authenticity of the customer data, contents of  
6 communications, and other information produced in compliance with  
7 the warrant by including with the information an affidavit form  
8 that:

9           (1) is completed and sworn to by a person who is a  
10 custodian of the information or a person otherwise qualified to  
11 attest to the authenticity of the information; and

12           (2) states that the information was stored in the  
13 course of regularly conducted business of the service provider and  
14 specifies whether the regular practice of the service provider is  
15 to store that information. (Code Crim. Proc., Art. [18.21](#), Sec.  
16 5A(k).)

17       Art. 18B.358. WARRANT ISSUED IN ANOTHER STATE. Any  
18 domestic entity that provides electronic communications services  
19 or remote computing services to the public shall comply with a  
20 warrant issued in another state and seeking information described  
21 by Article 18B.354(a), if the warrant is served on the entity in a  
22 manner equivalent to the service of process requirements provided  
23 by Article 18B.355(b). (Code Crim. Proc., Art. [18.21](#), Sec. 5B.)

24       Art. 18B.359. GOVERNMENT ACCESS TO CERTAIN STORED CUSTOMER  
25 DATA WITHOUT LEGAL PROCESS. (a) A provider of a telephonic  
26 communications service shall disclose to an authorized peace  
27 officer, without legal process, subscriber listing information,

1 including name, address, and telephone number or similar access  
2 code:

3 (1) that the service provider provides to others in  
4 the course of providing publicly available directory or similar  
5 assistance; or

6 (2) that is solely for use in the dispatch of emergency  
7 vehicles and personnel responding to a distress call directed to an  
8 emergency dispatch system or when the information is reasonably  
9 necessary to aid in the dispatching of emergency vehicles and  
10 personnel for the immediate prevention of death, personal injury,  
11 or destruction of property.

12 (b) A provider of a telephonic communications service shall  
13 provide to an authorized peace officer the name of the subscriber of  
14 record whose published telephone number is provided to the service  
15 provider by an authorized peace officer. (Code Crim. Proc., Art.  
16 [18.21](#), Secs. 4(c), (d).)

17 SUBCHAPTER I. BACKUP PRESERVATION OF ELECTRONIC CUSTOMER DATA

18 Art. 18B.401. BACKUP PRESERVATION OF ELECTRONIC CUSTOMER  
19 DATA. (a) A subpoena or court order under Article 18B.351(b) for  
20 disclosure of certain electronic customer data held in electronic  
21 storage by a provider of an electronic communications service or a  
22 provider of a remote computing service may, for the purpose of  
23 preserving the customer data sought by the subpoena or court order,  
24 require that service provider to create a copy of that data.

25 (b) The service provider shall create the copy within a  
26 reasonable period as determined by the court issuing the subpoena  
27 or court order.

1 (c) On creating a copy under this article, the service  
2 provider shall immediately notify the authorized peace officer who  
3 presented the subpoena or court order requesting the copy.

4 (d) The service provider may not inform the subscriber or  
5 customer whose data is being sought that the subpoena or court order  
6 has been issued. (Code Crim. Proc., Art. 18.21, Secs. 6(a), (b).)

7 Art. 18B.402. NOTICE TO SUBSCRIBER OR CUSTOMER. Not later  
8 than the third day after the date of the receipt of the notice under  
9 Article 18B.401(c) from the applicable service provider, the  
10 authorized peace officer who presented the subpoena or court order  
11 requesting the copy shall provide notice of the creation of the copy  
12 to the subscriber or customer whose electronic customer data is the  
13 subject of the subpoena or court order. (Code Crim. Proc., Art.  
14 18.21, Secs. 6(b) (part), (c).)

15 Art. 18B.403. RELEASE OF COPY OF ELECTRONIC CUSTOMER DATA.  
16 The provider of an electronic communications service or the  
17 provider of a remote computing service shall release a copy created  
18 under this subchapter to the requesting authorized peace officer  
19 not earlier than the 14th day after the date of the peace officer's  
20 notice to the subscriber or customer if the service provider has  
21 not:

22 (1) initiated proceedings to challenge the request of  
23 the peace officer for the copy; or

24 (2) received notice from the subscriber or customer  
25 that the subscriber or customer has initiated proceedings to  
26 challenge the request. (Code Crim. Proc., Art. 18.21, Sec. 6(d).)

27 Art. 18B.404. DESTRUCTION OF COPY OF ELECTRONIC CUSTOMER

DATA. The provider of an electronic communications service or the provider of a remote computing service may not destroy or permit the destruction of a copy created under this subchapter until the later of:

(1) the delivery of electronic customer data to the applicable law enforcement agency; or

(2) the resolution of any court proceedings, including appeals of any proceedings, relating to the subpoena or court order requesting the creation of the copy. (Code Crim. Proc., Art. 18.21, Sec. 6(e).)

Art. 18B.405. REQUEST FOR COPY OF ELECTRONIC CUSTOMER DATA BY AUTHORIZED PEACE OFFICER. (a) An authorized peace officer who reasonably believes that notice to a subscriber or customer regarding a subpoena or court order would result in the destruction of or tampering with the electronic customer data sought may request the creation of a copy of the data.

(b) The peace officer's belief is not subject to challenge by the subscriber or customer or by a provider of an electronic communications service or a provider of a remote computing service. (Code Crim. Proc., Art. 18.21, Sec. 6(f).)

Art. 18B.406. PROCEEDINGS TO QUASH SUBPOENA OR VACATE COURT ORDER. (a) Not later than the 14th day after the date a subscriber or customer receives notice under Article 18B.402, the subscriber or customer may file a written motion to quash the subpoena or vacate the court order in the court that issued the subpoena or court order. The motion must contain an affidavit or other sworn statement stating:



1           (1) that the applicant is a subscriber or customer of  
2 the provider of an electronic communications service or the  
3 provider of a remote computing service from which the electronic  
4 customer data held in electronic storage for the subscriber or  
5 customer has been sought; and

6           (2) the applicant's reasons for believing that the  
7 customer data sought is not relevant to a legitimate law  
8 enforcement inquiry or that there has not been substantial  
9 compliance with the provisions of this chapter in some other  
10 respect.

11          (b) The subscriber or customer shall give written notice to  
12 the applicable service provider of the challenge to the subpoena or  
13 court order. The authorized peace officer requesting the subpoena  
14 or court order must be served a copy of the filed papers by personal  
15 delivery or by registered or certified mail.

16          (c) The court shall order the authorized peace officer to  
17 file a sworn response to the motion filed by the subscriber or  
18 customer if the court determines that the subscriber or customer  
19 has complied with the requirements of Subsections (a) and (b). On  
20 request of the peace officer, the court may permit the response to  
21 be filed in camera. The court may conduct any additional  
22 proceedings the court considers appropriate if the court is unable  
23 to make a determination on the motion on the basis of the parties'  
24 initial allegations and response.

25          (d) The court shall rule on the motion as soon as  
26 practicable after the filing of the peace officer's response. The  
27 court shall deny the motion if the court finds that the applicant is

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

11 (e) A court order denying a motion or application under this  
12 article is not a final order, and an interlocutory appeal may not be  
13 taken from the denial. (Code Crim. Proc., Art. [18.21](#), Secs. 6(g),  
14 (h).)

15 SUBCHAPTER J. PRODUCTION OF CERTAIN BUSINESS RECORDS

16 Art. 18B.451. SUBPOENA AUTHORITY. The director of the  
17 department or the director's designee, the inspector general of the  
18 Texas Department of Criminal Justice or the inspector general's  
19 designee, or the sheriff or chief of a designated law enforcement  
20 agency or the sheriff's or chief's designee may issue an  
21 administrative subpoena to a communication common carrier or a  
22 provider of an electronic communications service to compel the  
23 production of any carrier's or service provider's business records  
24 that:

25 (1) disclose information about:

26 (A) the carrier's or service provider's  
27 customers; or

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

(2) are material to a criminal investigation. (Code Crim. Proc., Art. 18.21, Sec. 15(a).)

Art. 18B.452. REPORT OF ISSUANCE OF SUBPOENA. Not later than the 30th day after the date on which an administrative subpoena is issued under Article 18B.451, the inspector general of the Texas Department of Criminal Justice or the sheriff or chief of a designated law enforcement agency, as applicable, shall report to the department the issuance of the subpoena. (Code Crim. Proc., Art. 18.21, Sec. 15(b).)

Art. 18B.453. COMPLIANCE WITH POLICY FOR INSTALLATION AND USE OF EQUIPMENT. (a) If, based on a report received under Article 18B.452, the department determines that a designated law enforcement office or agency is not in compliance with the policy adopted by the office or agency under Article 18B.251, the department shall notify the office or agency in writing that the office or agency, as applicable, is not in compliance.

(b) If the department determines that the office or agency still is not in compliance with the policy on the 90th day after the date the office or agency receives written notice under this article, the office or agency loses the authority granted by this chapter until:

(1) the office or agency adopts a new written policy governing the application of this chapter to the office or agency; and

(2) the department approves that policy. (Code Crim.

Proc., Art. 18.21, Sec. 15(c).)

SUBCHAPTER K. SERVICE PROVIDER POWERS AND DUTIES

Art. 18B.501. PRECLUSION OF NOTIFICATION. (a) An authorized peace officer seeking electronic customer data under Article 18B.351 may apply to the court for an order commanding the service provider to whom a warrant, subpoena, or court order is directed not to disclose to any person the existence of the warrant, subpoena, or court order. The order is effective for the period the court considers appropriate.

(b) The court shall enter the order if the court determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will have an adverse result.

(c) In this article, an "adverse result" means:

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) destruction of or tampering with evidence;
- (4) intimidation of a potential witness; or
- (5) otherwise seriously jeopardizing an investigation or unduly delaying a trial. (Code Crim. Proc., Art. 18.21, Sec. 8.)

Art. 18B.502. DISCLOSURE BY SERVICE PROVIDER PROHIBITED.

(a) Except as provided by Subsection (c), a provider of an electronic communications service may not knowingly divulge the contents of a communication that is in electronic storage.

(b) Except as provided by Subsection (c), a provider of a remote computing service may not knowingly divulge the contents of

1 a communication that:

2 (1) is in electronic storage on behalf of a subscriber  
3 or customer of the service provider;

4 (2) is received by means of electronic transmission  
5 from the subscriber or customer or created by means of computer  
6 processing of communications received by means of electronic  
7 transmission from the subscriber or customer; and

8 (3) is solely for the purpose of providing storage or  
9 computer processing services to the subscriber or customer, if the  
10 service provider is not authorized to obtain access to the contents  
11 of that communication for purposes of providing any service other  
12 than storage or computer processing.

13 (c) A provider of an electronic communications service or a  
14 provider of a remote computing service may disclose the contents of  
15 an electronically stored communication:

16 (1) to an intended recipient of the communication or  
17 the intended recipient's agent;

18 (2) to the addressee or the addressee's agent;

19 (3) with the consent of the originator, to the  
20 addressee or the intended recipient of the communication, or the  
21 subscriber of a remote computing service;

22 (4) to a person whose facilities are used to transmit  
23 the communication to its destination or the person's employee or  
24 authorized representative;

25 (5) as may be necessary to provide the service or to  
26 protect the property or rights of the service provider;

27 (6) to a law enforcement agency if the contents were

1 obtained inadvertently by the service provider and the contents  
2 appear to pertain to the commission of an offense; or

3 (7) as authorized under federal or other state law.  
4 (Code Crim. Proc., Art. 18.21, Sec. 11.)

5 Art. 18B.503. REIMBURSEMENT OF COSTS. (a) Except as  
6 provided by Subsection (c), an authorized peace officer who obtains  
7 electronic customer data under Article 18B.351 or 18B.359 or other  
8 information under this chapter shall reimburse the person  
9 assembling or providing the data or information for all costs that  
10 are reasonably necessary and that have been directly incurred in  
11 searching for, assembling, reproducing, or otherwise providing the  
12 data or information, including costs arising from necessary  
13 disruption of normal operations of a provider of an electronic  
14 communications service or a provider of a remote computing service  
15 in which the electronic customer data may be held in electronic  
16 storage or in which the other information may be stored.

17 (b) The authorized peace officer and the person providing  
18 the electronic customer data or other information may agree on the  
19 amount of reimbursement. If there is not an agreement, the court  
20 that issued the order for production of the data or information  
21 shall determine the amount. If a court order was not issued for  
22 production of the data or information, the court before which any  
23 criminal prosecution relating to the data or information would be  
24 brought shall determine the amount.

25 (c) Subsection (a) does not apply to records or other  
26 information that is maintained by a communication common carrier  
27 and that relates to telephone toll records or telephone listings

obtained under Article 18B.359(a), unless the court determines that:

(1) the amount of information required was unusually voluminous; or

(2) an undue burden was imposed on the service provider. (Code Crim. Proc., Art. 18.21, Sec. 9.)

#### SUBCHAPTER L. REMEDIES

Art. 18B.551. CAUSE OF ACTION. (a) Except as provided by Article 18B.552, a provider of an electronic communications service or a provider of a remote computing service, or a subscriber or customer of that service provider, that is aggrieved by a violation of this chapter has a civil cause of action if the conduct constituting the violation was committed knowingly or intentionally and is entitled to:

(1) injunctive relief;

(2) reasonable attorney's fees and other litigation costs reasonably incurred; and

(3) the amount of the actual damages suffered and any profits made by the violator as a result of the violation or \$1,000, whichever is more.

(b) The reliance in good faith on a court order, warrant, subpoena, or legislative authorization is a complete defense to any civil action brought under this chapter.

(c) A civil action under this article may be presented not later than the second anniversary of the date the claimant first discovered or had reasonable opportunity to discover the violation. (Code Crim. Proc., Art. 18.21, Sec. 12.)

1           Art. 18B.552. NO CAUSE OF ACTION. A subscriber or customer  
2 of a provider of an electronic communications service or a provider  
3 of a remote computing service does not have a cause of action  
4 against a service provider or the service provider's officers,  
5 employees, or agents or against other specified persons for  
6 providing information, facilities, or assistance as required by a  
7 court order, warrant, subpoena, or certification under this  
8 chapter. (Code Crim. Proc., Art. [18.21](#), Sec. 10.)

9           Art. 18B.553. EXCLUSIVITY OF REMEDIES. The remedies and  
10 sanctions under this chapter are the exclusive judicial remedies  
11 and sanctions for a violation of this chapter, other than a  
12 violation that infringes on a right of a party that is guaranteed by  
13 a state or federal constitution. (Code Crim. Proc., Art. [18.21](#),  
14 Sec. 13.)

15           SECTION 1.03. Title 1, Code of Criminal Procedure, is  
16 amended by adding Chapter 66 to read as follows:

17                   CHAPTER 66. CRIMINAL HISTORY RECORD SYSTEM

18                           SUBCHAPTER A. GENERAL PROVISIONS

19   Art. 66.001. DEFINITIONS

20                   SUBCHAPTER B. CRIMINAL JUSTICE INFORMATION SYSTEM

21   Art. 66.051. PURPOSE AND FUNCTIONS

22   Art. 66.052. IMPLEMENTATION AND OPERATION OF CRIMINAL  
23 JUSTICE INFORMATION SYSTEM

24   Art. 66.053. INFORMATION COLLECTED

25   Art. 66.054. FINGERPRINT AND ARREST INFORMATION IN  
26 CRIMINAL JUSTICE INFORMATION SYSTEM



SUBCHAPTER C. COMPUTERIZED CRIMINAL HISTORY SYSTEM

Art. 66.101. COMPUTERIZED CRIMINAL HISTORY SYSTEM  
DATABASE

Art. 66.102. INFORMATION CONTAINED IN COMPUTERIZED  
CRIMINAL HISTORY SYSTEM

Art. 66.103. DUTIES OF TEXAS DEPARTMENT OF CRIMINAL  
JUSTICE REGARDING CRIMINAL JUSTICE  
INFORMATION SYSTEM

Art. 66.104. DUTIES OF LICENSING AGENCIES TO PROVIDE  
INFORMATION REGARDING LICENSE HOLDERS

Art. 66.105. INFORMATION RELATED TO MISUSED IDENTITY

Art. 66.106. INFORMATION RELATED TO NON-FINGERPRINT  
SUPPORTED ACTIONS

SUBCHAPTER D. CORRECTIONS TRACKING SYSTEM

Art. 66.151. CORRECTIONS TRACKING SYSTEM DATABASE

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SUBCHAPTER A. GENERAL PROVISIONS

Art. 66.001. DEFINITIONS. In this chapter:

(1) "Administration of criminal justice" means the  
detection, apprehension, detention, pretrial release, post-trial  
release, prosecution, adjudication, correctional supervision, or  
rehabilitation of an offender. The term includes criminal  
identification activities and the collection, storage, and

1 dissemination of criminal history record information.

2 (2) "Computerized criminal history system" means the  
3 database containing arrest, disposition, and other criminal  
4 history maintained by the Department of Public Safety.

5 (3) "Corrections tracking system" means the database  
6 maintained by the Texas Department of Criminal Justice on all  
7 offenders under the department's supervision.

8 (4) "Council" means the Criminal Justice Policy  
9 Council.

10 (5) "Criminal justice agency" means a federal or state  
11 agency that is engaged in the administration of criminal justice  
12 under a statute or executive order and allocates a substantial part  
13 of the agency's annual budget to the administration of criminal  
14 justice.

15 (6) "Criminal justice information system" means the  
16 computerized criminal history system and the corrections tracking  
17 system.

18 (7) "Disposition" means an action that results in the  
19 termination, transfer to another jurisdiction, or indeterminate  
20 suspension of the prosecution of a criminal charge.

21 (8) "Electronic means" means the transmission of data  
22 between word processors, data processors, or similar automated  
23 information equipment over dedicated cables, commercial lines, or  
24 other similar methods of transmission.

25 (9) "Incident number" means the unique number assigned  
26 to a specific person during a specific arrest.

27 (10) "Offender" means any person who is assigned an

1 incident number.

2 (11) "Offense code" means the numeric code for each  
3 offense category.

4 (12) "Release" means the termination of jurisdiction  
5 over an individual by the criminal justice system.

6 (13) "State identification number" means the unique  
7 number assigned by the Department of Public Safety to each person  
8 whose name appears in the criminal justice information system.  
9 (Code Crim. Proc., Arts. 60.01(1), (3), (4), (5), (6), (7), (8),  
10 (9), (10), (11), (13), (14), (16).)

11 SUBCHAPTER B. CRIMINAL JUSTICE INFORMATION SYSTEM

12 Art. 66.051. PURPOSE AND FUNCTIONS. The criminal justice  
13 information system shall be maintained to supply the state with a  
14 system:

15 (1) that provides an accurate criminal history record  
16 depository to:

17 (A) law enforcement officers; and

18 (B) criminal justice agencies for operational  
19 decision making;

20 (2) from which accurate criminal justice system  
21 modeling can be conducted; and

22 (3) that improves:

23 (A) the quality of data used to conduct impact  
24 analyses of proposed legislative changes in the criminal justice  
25 system; and

26 (B) the ability of interested parties to analyze  
27 the functioning of the criminal justice system. (Code Crim. Proc.,

1 Art. 60.02(c).)

2 Art. 66.052. IMPLEMENTATION AND OPERATION OF CRIMINAL  
3 JUSTICE INFORMATION SYSTEM. (a) The Department of Public Safety  
4 shall designate offense codes and has the sole responsibility for  
5 designating the state identification number for each person whose  
6 name appears in the criminal justice information system.

7 (b) The Department of Public Safety and the Texas Department  
8 of Criminal Justice shall implement a system to link the  
9 computerized criminal history system and the corrections tracking  
10 system. (Code Crim. Proc., Arts. 60.02(e), (f) (part).)

11 Art. 66.053. INFORMATION COLLECTED. For each arrest for a  
12 felony or misdemeanor other than a misdemeanor punishable by fine  
13 only, the criminal justice information system must include  
14 information relating to:

- 15 (1) offenders;  
16 (2) arrests;  
17 (3) prosecutions;  
18 (4) the disposition of cases by courts;  
19 (5) sentencing; and  
20 (6) the handling of offenders received by a  
21 correctional agency, facility, or other institution. (Code Crim.  
22 Proc., Art. 60.05.)

23 Art. 66.054. FINGERPRINT AND ARREST INFORMATION IN CRIMINAL  
24 JUSTICE INFORMATION SYSTEM. (a) When a jurisdiction transmits  
25 fingerprints and arrest information by a remote terminal accessing  
26 the statewide automated fingerprint identification system, the  
27 Department of Public Safety shall use that transmission to create:

1           (1) a permanent record in the criminal justice  
2 information system; or

3           (2) a temporary arrest record in the criminal justice  
4 information system to be maintained by the department until the  
5 department receives and processes the physical copy of the arrest  
6 information.

7           (b) The Department of Public Safety shall make available to  
8 a criminal justice agency making a background criminal inquiry any  
9 information contained in a temporary arrest record maintained by  
10 the department, including a statement that a physical copy of the  
11 arrest information was not available at the time the information  
12 was entered in the criminal justice information system. (Code  
13 Crim. Proc., Art. 60.12.)

14           SUBCHAPTER C. COMPUTERIZED CRIMINAL HISTORY SYSTEM

15           Art. 66.101. COMPUTERIZED CRIMINAL HISTORY SYSTEM  
16 DATABASE. (a) The Department of Public Safety shall record data  
17 and maintain the computerized criminal history system that serves  
18 as the record creation point for criminal history information  
19 maintained by the state.

20           (b) The computerized criminal history system must contain  
21 the information required by this chapter.

22           (c) The Department of Public Safety shall operate the  
23 computerized criminal history system and develop the necessary  
24 interfaces in the system to accommodate inquiries from the  
25 statewide automated fingerprint identification system implemented  
26 by the department. (Code Crim. Proc., Arts. 60.02(b), (d), (g).)

27           Art. 66.102. INFORMATION CONTAINED IN COMPUTERIZED

1 CRIMINAL HISTORY SYSTEM. (a) In this article:

2 (1) "Appeal" means the review of a decision of a lower  
3 court by a superior court other than by collateral attack.

4 (2) "Rejected case" means:

5 (A) a charge that, after the arrest of the  
6 offender, the prosecutor declines to include in an information or  
7 present to a grand jury; or

8 (B) an information or indictment that, after the  
9 arrest of the offender, the prosecutor refuses to prosecute.

10 (b) Information in the computerized criminal history system  
11 relating to an offender must include the offender's:

12 (1) name, including other names by which the offender  
13 is known;

14 (2) date of birth;

15 (3) physical description, including sex, weight,  
16 height, race, ethnicity, eye color, hair color, scars, marks, and  
17 tattoos; and

18 (4) state identification number.

19 (c) Information in the computerized criminal history system  
20 relating to an arrest must include:

21 (1) the offender's name;

22 (2) the offender's state identification number;

23 (3) the arresting law enforcement agency;

24 (4) the arrest charge, by offense code and incident  
25 number;

26 (5) whether the arrest charge is a misdemeanor or  
27 felony;

1           (6) the date of the arrest;

2           (7) the exact disposition of the case by a law  
3 enforcement agency following the arrest; and

4           (8) the date of disposition of the case by the law  
5 enforcement agency.

6           (d) Information in the computerized criminal history system  
7 relating to a prosecution must include:

8           (1) each charged offense, by offense code and incident  
9 number;

10           (2) the level of the offense charged or the degree of  
11 the offense charged for each offense in Subdivision (1); and

12           (3) for a rejected case:

13                   (A) the date of rejection;

14                   (B) the offense code;

15                   (C) the incident number; and

16                   (D) whether the rejection is a result of a  
17 successful pretrial diversion program.

18           (e) Information in the computerized criminal history system  
19 relating to the disposition of a case other than a rejected case  
20 must include:

21           (1) the final pleading to each charged offense and the  
22 level of the offense;

23           (2) a listing of each charged offense disposed of by  
24 the court and:

25                   (A) the date of disposition;

26                   (B) the offense code for the disposed charge and  
27 incident number; and



(C) the type of disposition; and

(3) for a conviction that is appealed, the final court decision and the final disposition of the offender's case on appeal.

(f) Information in the computerized criminal history system relating to sentencing must include for each sentence:

(1) the sentencing date;

(2) the sentence for each offense, by offense code and incident number;

(3) if the offender was sentenced to confinement:

(A) the agency that receives custody of the offender;

(B) the length of the sentence for each offense; and

(C) if multiple sentences were ordered, whether the sentences were ordered to be served consecutively or concurrently;

(4) if the offender was sentenced to pay a fine, the amount of the fine;

(5) if a sentence to pay a fine or to confinement was ordered but was deferred, probated, suspended, or otherwise not imposed:

(A) the length of the sentence or the amount of the fine that was deferred, probated, suspended, or otherwise not imposed; and

(B) the offender's name, offense code, and incident number; and

1           (6) if a sentence other than a fine or confinement was  
2 ordered, a description of the sentence ordered.

3           (g) The Department of Public Safety shall maintain in the  
4 computerized criminal history system any information the  
5 department maintains in the central database under Article 62.005.

6           (h) In addition to the information described by this  
7 article, information in the computerized criminal history system  
8 must include the age of the victim of the offense if the offender  
9 was arrested for or charged with an offense under the following  
10 provisions of the Penal Code:

11           (1) Section 20.04(a)(4) (Aggravated Kidnapping), if  
12 the offender committed the offense with the intent to violate or  
13 abuse the victim sexually;

14           (2) Section 20A.02 (Trafficking of Persons), if the  
15 offender:

16               (A) trafficked a person with the intent or  
17 knowledge that the person would engage in sexual conduct, as  
18 defined by Section 43.25, Penal Code; or

19               (B) benefited from participating in a venture  
20 that involved a trafficked person engaging in sexual conduct, as  
21 defined by Section 43.25, Penal Code;

22           (3) Section 21.02 (Continuous Sexual Abuse of Young  
23 Child or Children);

24           (4) Section 21.11 (Indecency with a Child);

25           (5) Section 22.011 (Sexual Assault) or 22.021  
26 (Aggravated Sexual Assault);

27           (6) Section 30.02 (Burglary), if the offense is

1 punishable under Subsection (d) of that section and the offender  
2 committed the offense with the intent to commit an offense  
3 described by Subdivision (1), (4), or (5);

4 (7) Section 43.05(a)(2) (Compelling Prostitution); or

5 (8) Section 43.25 (Sexual Performance by a Child).  
6 (Code Crim. Proc., Arts. 60.01(2), (12), 60.051.)

7 Art. 66.103. DUTIES OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE  
8 REGARDING CRIMINAL JUSTICE INFORMATION SYSTEM. Data received by  
9 the Texas Department of Criminal Justice that is required by the  
10 Department of Public Safety for the preparation of a criminal  
11 history record shall be made available to the computerized criminal  
12 history system not later than the seventh day after the date on  
13 which the Texas Department of Criminal Justice receives the request  
14 for the data from the Department of Public Safety. (Code Crim.  
15 Proc., Art. 60.02(f) (part).)

16 Art. 66.104. DUTIES OF LICENSING AGENCIES TO PROVIDE  
17 INFORMATION REGARDING LICENSE HOLDERS. (a) The Texas Medical  
18 Board, the Texas State Board of Podiatric Medical Examiners, the  
19 State Board of Dental Examiners, the Texas State Board of Pharmacy,  
20 the Texas State Board of Examiners of Psychologists, and the State  
21 Board of Veterinary Medical Examiners shall provide to the  
22 Department of Public Safety through electronic means, magnetic  
23 tape, or disk, as specified by the department, a list of each person  
24 licensed by the respective agency, including the person's name and  
25 date of birth and any other personal descriptive information  
26 required by the department. Each agency shall update the  
27 information and submit the updated information quarterly to the

1 department.

2 (b) The Department of Public Safety shall:

3 (1) perform at least quarterly a computer match of the  
4 licensing list against the convictions maintained in the  
5 computerized criminal history system; and

6 (2) report to the appropriate licensing agency for  
7 verification and administrative action, as considered appropriate  
8 by the licensing agency, the name of any person found to have a  
9 record of conviction, other than a defendant whose prosecution is  
10 deferred during a period of community supervision without an  
11 adjudication of guilt or a plea of guilty.

12 (c) The Department of Public Safety may charge a licensing  
13 agency a fee not to exceed the actual direct cost incurred by the  
14 department in performing a computer match and reporting to the  
15 agency under Subsection (b).

16 (d) The transmission of information by electronic means  
17 under Subsection (a) does not affect whether the information is  
18 subject to disclosure under Chapter 552, Government Code. (Code  
19 Crim. Proc., Art. 60.061.)

20 Art. 66.105. INFORMATION RELATED TO MISUSED IDENTITY. (a)  
21 On receipt of information from a local law enforcement agency under  
22 Article 2.28, the Department of Public Safety shall:

23 (1) provide the notice described by Article 2.28(1) to  
24 the person whose identity was misused, if the local law enforcement  
25 agency was unable to notify the person under that subdivision;

26 (2) take action to ensure that the information  
27 maintained in the computerized criminal history system reflects the

1 use of the person's identity as a stolen alias; and

2 (3) notify the Texas Department of Criminal Justice  
3 that the person's identifying information may have been falsely  
4 used by an inmate in the custody of the Texas Department of Criminal  
5 Justice.

6 (b) On receipt of a declaration under Section [411.0421](#),  
7 Government Code, or on receipt of information similar to that  
8 contained in a declaration filed under that section, the Department  
9 of Public Safety shall separate information maintained in the  
10 computerized criminal history system regarding an individual whose  
11 identity has been misused from information maintained in that  
12 system regarding the person who misused the identity. (Code Crim.  
13 Proc., Art. 60.19.)

14 Art. 66.106. INFORMATION RELATED TO NON-FINGERPRINT  
15 SUPPORTED ACTIONS. (a) On receipt of a report of prosecution or  
16 court disposition information from a jurisdiction for which  
17 corresponding arrest data does not exist in the computerized  
18 criminal history system, the Department of Public Safety shall  
19 enter the report into a non-fingerprint supported file that is  
20 separate from the computerized criminal history system.

21 (b) The Department of Public Safety shall grant access to  
22 records in a non-fingerprint supported file created under  
23 Subsection (a) that include the subject's name or other identifier  
24 in the same manner as the department is required to grant access to  
25 criminal history record information under Subchapter F, Chapter  
26 [411](#), Government Code.

27 (c) On receipt of a report of arrest information that

corresponds to a record in a non-fingerprint supported file created under Subsection (a), the Department of Public Safety shall transfer the record from the non-fingerprint supported file to the computerized criminal history system. (Code Crim. Proc., Art. 60.20.)

SUBCHAPTER D. CORRECTIONS TRACKING SYSTEM

Art. 66.151. CORRECTIONS TRACKING SYSTEM DATABASE. (a) The Texas Department of Criminal Justice shall record data and establish and maintain the corrections tracking system.

(b) The corrections tracking system must contain the information required by this chapter. (Code Crim. Proc., Arts. 60.02(a), (d).)

Art. 66.152. INFORMATION CONTAINED IN CORRECTIONS TRACKING SYSTEM. (a) Information in the corrections tracking system relating to a sentence to be served under the jurisdiction of the Texas Department of Criminal Justice must include:

- (1) the offender's name;
  - (2) the offender's state identification number;
  - (3) the sentencing date;
  - (4) the sentence for each offense, by offense code and incident number;
  - (5) if the offender was sentenced to imprisonment:
    - (A) the unit of imprisonment;
    - (B) the length of the sentence for each offense;
- and
- (C) if multiple sentences were ordered, whether the sentences were ordered to be served consecutively or

1 concurrently; and

2 (6) if a sentence other than a fine or imprisonment was  
3 ordered, a description of the sentence ordered.

4 (b) Sentencing information in the corrections tracking  
5 system must also include the following information about each  
6 community supervision, including deferred adjudication community  
7 supervision, or other alternative to imprisonment ordered:

8 (1) each conviction for which a sentence was ordered  
9 but was deferred, probated, suspended, or otherwise not imposed, by  
10 offense code and incident number; and

11 (2) if a sentence or portion of a sentence of  
12 imprisonment was deferred, probated, suspended, or otherwise not  
13 imposed:

14 (A) the offense, the sentence, and the amount of  
15 the sentence deferred, probated, suspended, or otherwise not  
16 imposed;

17 (B) a statement of whether any return to  
18 imprisonment or confinement was a condition of community  
19 supervision or an alternative sentence;

20 (C) the community supervision and corrections  
21 department exercising jurisdiction over the offender;

22 (D) the date the offender was received by a  
23 community supervision and corrections department;

24 (E) any program in which the offender is placed  
25 or has previously been placed and the level of supervision on which  
26 the offender is placed while under the jurisdiction of a community  
27 supervision and corrections department;

1 (F) the date a program described by Paragraph (E)  
2 begins, the date the program ends, and whether the program was  
3 completed successfully;

4 (G) the date a level of supervision described by  
5 Paragraph (E) begins and the date the level of supervision ends;

6 (H) if the offender's community supervision is  
7 revoked:

8 (i) the reason for the revocation and the  
9 date of revocation, by offense code and incident number; and

10 (ii) other current sentences of community  
11 supervision or other alternatives to confinement that have not been  
12 revoked, by offense code and incident number; and

13 (I) the date of the offender's release from the  
14 community supervision and corrections department.

15 (c) Information in the corrections tracking system relating  
16 to the handling of offenders must include the following information  
17 about each imprisonment, confinement, or execution of an offender:

18 (1) the date of the imprisonment or confinement;

19 (2) if the offender was sentenced to death:

20 (A) the date of execution; and

21 (B) if the death sentence was commuted, the  
22 sentence to which the sentence of death was commuted and the date of  
23 commutation;

24 (3) the date the offender was released from  
25 imprisonment or confinement and whether the release was a discharge  
26 or a release on parole or to mandatory supervision;

27 (4) if the offender is released on parole or to



1 mandatory supervision:

2 (A) the offense for which the offender was  
3 convicted, by offense code and incident number;

4 (B) the date the offender was received by an  
5 office of the parole division of the Texas Department of Criminal  
6 Justice;

7 (C) the county in which the offender resides  
8 while under supervision;

9 (D) any program in which the offender is placed  
10 or has previously been placed and the level of supervision on which  
11 the offender is placed while under the jurisdiction of the parole  
12 division;

13 (E) the date a program described by Paragraph (D)  
14 begins, the date the program ends, and whether the program was  
15 completed successfully;

16 (F) the date a level of supervision described by  
17 Paragraph (D) begins and the date the level of supervision ends;

18 (G) if the offender's release status is revoked,  
19 the reason for the revocation and the date of revocation;

20 (H) the expiration date of the sentence; and

21 (I) the date on which the offender is:

22 (i) released from the parole division; or

23 (ii) granted clemency; and

24 (5) if the offender is released under Article  
25 42A.202(b), the date of the offender's release. (Code Crim. Proc.,  
26 Art. 60.052.)

27 SUBCHAPTER E. ACCESS TO INFORMATION IN CRIMINAL JUSTICE

INFORMATION SYSTEM

Art. 66.201. ACCESS TO DATABASES BY CRIMINAL JUSTICE AGENCIES AND OTHER ENTITIES. (a) Criminal justice agencies, the Legislative Budget Board, and the council are entitled to access the databases of the Department of Public Safety, the Texas Juvenile Justice Department, and the Texas Department of Criminal Justice in accordance with applicable state or federal law or regulations.

(b) The access granted by this article does not entitle a criminal justice agency, the Legislative Budget Board, or the council to add, delete, or alter data maintained by another agency. (Code Crim. Proc., Art. 60.03(a).)

Art. 66.202. REQUEST FOR DATA FILE FROM DATABASES. (a) The council or the Legislative Budget Board may submit to the Department of Public Safety, the Texas Juvenile Justice Department, and the Texas Department of Criminal Justice an annual request for a data file containing data elements from the departments' systems.

(b) The Department of Public Safety, the Texas Juvenile Justice Department, and the Texas Department of Criminal Justice shall provide the council and the Legislative Budget Board with the data file for the period requested, in accordance with state and federal law and regulations.

(c) If the council submits a data file request other than the annual data file request, the director of the agency maintaining the requested records must approve the request.

(d) The Legislative Budget Board may submit a data file request other than the annual data file request without the

1 approval of the director of the agency maintaining the requested  
2 records. (Code Crim. Proc., Art. 60.03(b).)

3 Art. 66.203. PUBLIC DISCLOSURE OF DATA PROHIBITED. A  
4 criminal justice agency, the council, and the Legislative Budget  
5 Board may not disclose to the public information in an individual's  
6 criminal history record if the record is protected by state or  
7 federal law or regulation. (Code Crim. Proc., Art. 60.03(c).)

8 SUBCHAPTER F. DATA COLLECTION AND SUBMISSION

9 Art. 66.251. UNIFORM INCIDENT FINGERPRINT CARD. (a) The  
10 Department of Public Safety, in consultation with the council,  
11 shall design, print, and distribute a uniform incident fingerprint  
12 card to each law enforcement agency in this state.

13 (b) The uniform incident fingerprint card must be:

14 (1) serially numbered with an incident number in such  
15 a manner that the individual incident of arrest may be readily  
16 ascertained; and

17 (2) a multiple-part form that:

18 (A) has space for information relating to each  
19 charge for which a person is arrested, the person's fingerprints,  
20 and other information relevant to the arrest;

21 (B) can be transmitted with the offender through  
22 the criminal justice process; and

23 (C) allows each law enforcement agency to report  
24 required data to the Department of Public Safety or the Texas  
25 Department of Criminal Justice.

26 (c) Subject to available telecommunications capacity, the  
27 Department of Public Safety shall develop the capability to receive

1 the information on the uniform incident fingerprint card by  
2 electronic means from a law enforcement agency. The information  
3 must be in a form that is compatible with the form required for data  
4 supplied to the criminal justice information system. (Code Crim.  
5 Proc., Arts. [60.01](#)(15), 60.07.)

6 Art. 66.252. REPORTING OF INFORMATION BY LOCAL ENTITIES.

7 (a) The Department of Public Safety and the Texas Department of  
8 Criminal Justice by rule shall develop reporting procedures that:

9 (1) ensure that the offender processing data is  
10 reported from the time an offender is arrested until the time an  
11 offender is released; and

12 (2) provide measures and policies designed to identify  
13 and eliminate redundant reporting of information to the criminal  
14 justice information system.

15 (b) The arresting law enforcement agency shall prepare a  
16 uniform incident fingerprint card described by Article 66.251 and  
17 initiate the reporting process for each offender charged with a  
18 felony or a misdemeanor other than a misdemeanor punishable by fine  
19 only.

20 (c) The clerk of the court exercising jurisdiction over a  
21 case shall report the disposition of the case to the Department of  
22 Public Safety.

23 (d) Except as provided by Subsection (e) or as otherwise  
24 required by applicable state law or rule, information or data  
25 required by this chapter to be reported to the Department of Public  
26 Safety or the Texas Department of Criminal Justice shall be  
27 reported promptly but not later than the 30th day after the date on

1 which the information or data is received by the agency responsible  
2 for reporting it.

3 (e) An offender's arrest shall be reported to the Department  
4 of Public Safety not later than the seventh day after the date of  
5 the arrest.

6 (f) A court that orders the release of an offender under  
7 Article 42A.202(b) when the offender is under a bench warrant and  
8 not physically imprisoned in the Texas Department of Criminal  
9 Justice shall report the release to the department not later than  
10 the seventh day after the date of the release. (Code Crim. Proc.,  
11 Art. 60.08.)

12 Art. 66.253. COMPATIBILITY OF DATA. (a) Data supplied to  
13 the criminal justice information system must:

- 14 (1) be compatible with the system; and  
15 (2) contain both incident numbers and state  
16 identification numbers.

17 (b) A discrete submission of information under this chapter  
18 must contain, in conjunction with the required information, the  
19 person's name and state identification number. (Code Crim. Proc.,  
20 Art. 60.04.)

21 Art. 66.254. ELECTRONIC REPORTING OF INFORMATION. Whenever  
22 possible, information relating to dispositions and subsequent  
23 offender processing data shall be reported electronically. (Code  
24 Crim. Proc., Art. [60.02](#)(h).)

25 Art. 66.255. INFORMATION ON SUBSEQUENT ARRESTS. The  
26 Department of Public Safety and the Texas Department of Criminal  
27 Justice shall develop the capability to send by electronic means

1 information about the subsequent arrest of a person under  
2 supervision to:

3 (1) the community supervision and corrections  
4 department serving the court of original jurisdiction; or

5 (2) the district parole office supervising the person.  
6 (Code Crim. Proc., Art. 60.18.)

7 SUBCHAPTER G. DUTIES OF CRIMINAL JUSTICE AGENCIES AND CERTAIN  
8 COURT CLERKS

9 Art. 66.301. DUTIES OF CRIMINAL JUSTICE AGENCIES. (a) Each  
10 criminal justice agency shall:

11 (1) compile and maintain records needed for reporting  
12 data required by the Department of Public Safety and the Texas  
13 Department of Criminal Justice;

14 (2) transmit to the Department of Public Safety and  
15 the Texas Department of Criminal Justice, when and in the manner  
16 each department directs, all data required by the appropriate  
17 department;

18 (3) give the Department of Public Safety and the Texas  
19 Department of Criminal Justice, or the departments' accredited  
20 agents, access to the agency for the purpose of inspection to  
21 determine the completeness and accuracy of data reported;

22 (4) cooperate with the Department of Public Safety and  
23 the Texas Department of Criminal Justice so that each department  
24 may properly and efficiently perform the department's duties under  
25 this chapter; and

26 (5) cooperate with the Department of Public Safety  
27 and the Texas Department of Criminal Justice to identify and

1 eliminate redundant reporting of information to the criminal  
2 justice information system.

3 (b) An optical disk or other technology may be used instead  
4 of microfilm as a medium to store information if allowed by the  
5 applicable state laws or rules relating to the archiving of state  
6 agency information. (Code Crim. Proc., Arts. 60.06(a), (d).)

7 Art. 66.302. PUBLIC DISCLOSURE NOT AUTHORIZED. (a) An  
8 individual's identifiable description or a notation of an  
9 individual's arrest, detention, indictment, information, or other  
10 formal criminal charge and of any disposition of the charge,  
11 including sentencing, correctional supervision, and release, that  
12 is collected and compiled by the Department of Public Safety or the  
13 Texas Department of Criminal Justice from criminal justice agencies  
14 and maintained in a central location is not subject to public  
15 disclosure except as authorized by federal or state law or  
16 regulation.

17 (b) Subsection (a) does not apply to a document maintained  
18 by a criminal justice agency that is the source of information  
19 collected by the Department of Public Safety or the Texas  
20 Department of Criminal Justice. Each criminal justice agency shall  
21 retain the documents described by this subsection. (Code Crim.  
22 Proc., Arts. 60.06(b), (c).)

23 Art. 66.303. PROHIBITED ACTS. An agency official may not  
24 intentionally conceal or destroy any record with the intent to  
25 violate this subchapter. (Code Crim. Proc., Art. 60.06(e).)

26 Art. 66.304. APPLICABILITY TO DISTRICT COURT AND COUNTY  
27 COURT CLERKS. The duties imposed on a criminal justice agency under

1 this subchapter are also imposed on district court and county court  
2 clerks. (Code Crim. Proc., Art. 60.06(f).)

3 SUBCHAPTER H. OVERSIGHT AND REPORTING

4 Art. 66.351. BIENNIAL PLANS. The Department of Public  
5 Safety and the Texas Department of Criminal Justice, with advice  
6 from the council and the Department of Information Resources, shall  
7 develop biennial plans to:

8 (1) improve the reporting and accuracy of the criminal  
9 justice information system; and

10 (2) develop and maintain monitoring systems capable of  
11 identifying missing information. (Code Crim. Proc., Art.  
12 60.02(i).)

13 Art. 66.352. EXAMINATION OF RECORDS AND OPERATIONS. (a) At  
14 least once during each five-year period, the council shall  
15 coordinate an examination of the records and operations of the  
16 criminal justice information system to ensure:

17 (1) the accuracy and completeness of information in  
18 the system; and

19 (2) the promptness of information reporting.

20 (b) The state auditor or other appropriate entity selected  
21 by the council shall conduct the examination under Subsection (a)  
22 with the cooperation of the council, the Department of Public  
23 Safety, and the Texas Department of Criminal Justice.

24 (c) The council, the Department of Public Safety, and the  
25 Texas Department of Criminal Justice may examine the records of the  
26 agencies required to report information to the Department of Public  
27 Safety or the Texas Department of Criminal Justice.



1           (d) The examining entity under Subsection (b) shall submit  
2 to the legislature and the council a report that summarizes the  
3 findings of each examination and contains recommendations for  
4 improving the criminal justice information system.

5           (e) Not later than the first anniversary of the date the  
6 examining entity under Subsection (b) submits a report under  
7 Subsection (d), the Department of Public Safety shall report to the  
8 Legislative Budget Board, the governor, and the council the  
9 department's progress in implementing the examining entity's  
10 recommendations, including the reason for not implementing any  
11 recommendation.

12           (f) Each year following the submission of the report  
13 described by Subsection (e), the Department of Public Safety shall  
14 submit a similar report until each of the examining entity's  
15 recommendations is implemented.

16           (g) Notwithstanding any other provision of this article,  
17 work performed under this article by the state auditor is subject to  
18 approval by the legislative audit committee for inclusion in the  
19 audit plan under Section [321.013](#)(c), Government Code. (Code Crim.  
20 Proc., Arts. [60.02](#)(j), (m).)

21           Art. 66.353. MONITORING AND REPORTING DUTIES OF DEPARTMENT  
22 OF PUBLIC SAFETY. (a) The Department of Public Safety shall:

23                   (1) monitor the submission of arrest and disposition  
24 information by local jurisdictions;

25                   (2) annually submit to the Legislative Budget Board,  
26 the governor, the lieutenant governor, the state auditor, and the  
27 standing committees in the senate and house of representatives with

1 primary jurisdiction over criminal justice and the department a  
2 report regarding the level of reporting by local jurisdictions;

3 (3) identify local jurisdictions that do not report  
4 arrest or disposition information or that partially report  
5 information; and

6 (4) for use in determining the status of outstanding  
7 dispositions, publish monthly on the department's Internet website  
8 or in another electronic publication a report listing by local  
9 jurisdiction each arrest for which there is no corresponding final  
10 court disposition.

11 (b) The report described by Subsection (a)(2) must contain a  
12 disposition completeness percentage for each county in this state.  
13 For purposes of this subsection, "disposition completeness  
14 percentage" means the percentage of arrest charges a county reports  
15 to the Department of Public Safety, to be entered in the  
16 computerized criminal history system under this chapter, that were  
17 brought against a person in the county and for which a disposition  
18 has been subsequently reported and entered in the computerized  
19 criminal history system. (Code Crim. Proc., Arts. 60.21(b), (c).)

20 Art. 66.354. LOCAL DATA ADVISORY BOARDS. (a) The  
21 commissioners court of each county may create a local data advisory  
22 board to:

23 (1) analyze the structure of local automated and  
24 manual data systems to identify redundant data entry and data  
25 storage;

26 (2) develop recommendations for the commissioners to  
27 improve the local data systems;

1           (3) develop recommendations, when appropriate, for  
2 the effective electronic transfer of required data from local  
3 agencies to state agencies; and

4           (4) perform any related duties to be determined by the  
5 commissioners court.

6           (b) Local officials responsible for collecting, storing,  
7 reporting, and using data may be appointed to a local data advisory  
8 board.

9           (c) The council and the Department of Public Safety shall,  
10 to the extent that resources allow, provide technical assistance  
11 and advice on the request of a local data advisory board. (Code  
12 Crim. Proc., Art. 60.09.)

13                               SUBCHAPTER I. GRANTS

14           Art. 66.401. GRANTS FOR CRIMINAL JUSTICE PROGRAMS. The  
15 council, the Department of Public Safety, the criminal justice  
16 division of the governor's office, and the Department of  
17 Information Resources cooperatively shall develop and adopt a grant  
18 program, to be implemented by the criminal justice division at a  
19 time and in a manner determined by the division, to aid local law  
20 enforcement agencies, prosecutors, and court personnel in  
21 obtaining equipment and training necessary to operate a  
22 telecommunications network capable of:

23           (1) making inquiries to and receiving responses from  
24 the statewide automated fingerprint identification system and from  
25 the computerized criminal history system; and

26           (2) transmitting information to those systems. (Code  
27 Crim. Proc., Art. [60.02](#)(k).)



SUBCHAPTER D. REMOVAL OF INFORMATION

Art. 67.151. REMOVAL OF INFORMATION RELATING TO  
INDIVIDUAL OTHER THAN CHILD

Art. 67.152. REMOVAL OF INFORMATION RELATING TO CHILD

SUBCHAPTER E. RIGHTS OF SUBJECT OF CRIMINAL INFORMATION

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SUBCHAPTER G. TEXAS VIOLENT GANG TASK FORCE

Art. 67.301. DEFINITION

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CHAPTER 67. COMPILATION OF INFORMATION PERTAINING TO COMBINATIONS  
AND CRIMINAL STREET GANGS

SUBCHAPTER A. GENERAL PROVISIONS

Art. 67.001. DEFINITIONS. In this chapter:

(1) "Administration of criminal justice" has the meaning assigned by Article 66.001.

(2) "Child" has the meaning assigned by Section 51.02, Family Code.

(3) "Combination" has the meaning assigned by Section 71.01, Penal Code.

(4) "Criminal activity" means conduct that is subject to prosecution.

(5) "Criminal information" means facts, material, photographs, or data reasonably related to the investigation or prosecution of criminal activity.

(6) "Criminal justice agency" means:

(A) an entity defined as a criminal justice agency under Article 66.001; or

(B) a municipal or county agency, or school district law enforcement agency, that is engaged in the administration of criminal justice under a statute or executive order.

(7) "Criminal street gang" has the meaning assigned by Section 71.01, Penal Code.

(8) "Department" means the Department of Public Safety of the State of Texas.

(9) "Intelligence database" means a collection or compilation of data organized for search and retrieval to evaluate, analyze, disseminate, or use intelligence information relating to a combination or criminal street gang for the purpose of

1 investigating or prosecuting a criminal offense.

2 (10) "Juvenile justice agency" has the meaning  
3 assigned by Section 58.101, Family Code.

4 (11) "Law enforcement agency" does not include the  
5 Texas Department of Criminal Justice, the Texas Juvenile Justice  
6 Department, or a local juvenile probation department. (Code Crim.  
7 Proc., Art. 61.01.)

8 SUBCHAPTER B. INTELLIGENCE DATABASES

9 Art. 67.051. INTELLIGENCE DATABASES REQUIRED. (a) Subject  
10 to Subsection (b), a criminal justice agency or juvenile justice  
11 agency shall compile criminal information into an intelligence  
12 database for the purpose of investigating or prosecuting the  
13 criminal activities of combinations or criminal street gangs.

14 (b) A law enforcement agency in a municipality with a  
15 population of 50,000 or more or in a county with a population of  
16 100,000 or more shall compile and maintain in a local or regional  
17 intelligence database criminal information relating to a criminal  
18 street gang as provided by Subsection (a). The agency must compile  
19 and maintain the information in accordance with the criminal  
20 intelligence systems operating policies established under 28  
21 C.F.R. Section 23.1 et seq. and the submission criteria established  
22 under Article 67.054(b).

23 (c) Information described by this article may be compiled on  
24 paper, by computer, or in any other useful manner by a criminal  
25 justice agency, juvenile justice agency, or law enforcement agency.

26 (d) A local law enforcement agency described by Subsection  
27 (b) shall send to the department information the agency compiles

1 and maintains under this chapter. (Code Crim. Proc., Arts.  
2 61.02(a), (b), (b-1), 61.03(c).)

3 Art. 67.052. DEPARTMENT INTELLIGENCE DATABASE. (a) The  
4 department shall establish an intelligence database and shall  
5 maintain information received from an agency under Article  
6 67.051(d) in the database in accordance with the criminal  
7 intelligence systems operating policies established under 28  
8 C.F.R. Section 23.1 et seq. and the submission criteria under  
9 Article 67.054(b).

10 (b) The department shall designate a code to distinguish  
11 criminal information relating to a child and contained in the  
12 department's intelligence database from criminal information  
13 relating to an adult offender and contained in the database. (Code  
14 Crim. Proc., Arts. 61.02(b) (part), 61.03(d), (e).)

15 Art. 67.053. INTELLIGENCE DATABASE USER TRAINING; RULES.  
16 (a) The department shall enter into a memorandum of understanding  
17 with the United States Department of Justice or other appropriate  
18 federal department or agency to provide any person in this state who  
19 enters information into or retrieves information from an  
20 intelligence database described by this chapter with training  
21 regarding the operating principles described by 28 C.F.R. Part 23,  
22 as those principles relate to an intelligence database established  
23 or maintained under this chapter.

24 (b) A person in this state who enters information into or  
25 retrieves information from an intelligence database described by  
26 this chapter shall complete continuing education training on the  
27 material described by Subsection (a) at least once for each



1 continuous two-year period the person has primary responsibility  
2 for performing a function described by this subsection.

3 (c) The department shall adopt rules necessary to implement  
4 this article. (Code Crim. Proc., Art. [61.12.](#))

5 Art. 67.054. SUBMISSION CRITERIA. (a) In this article:

6 (1) "Family member" means a person related to another  
7 person within the third degree by consanguinity or affinity, as  
8 described by Subchapter B, Chapter [573](#), Government Code, except  
9 that the term does not include a person who is considered to be  
10 related to another person by affinity only as described by Section  
11 [573.024\(b\)](#), Government Code.

12 (2) "Penal institution" means:

13 (A) a confinement facility operated by or under  
14 contract with any division of the Texas Department of Criminal  
15 Justice;

16 (B) a confinement facility operated by or under  
17 contract with the Texas Juvenile Justice Department;

18 (C) a juvenile secure pre-adjudication or  
19 post-adjudication facility operated by or under a local juvenile  
20 probation department; or

21 (D) a county jail.

22 (b) Criminal information collected under this chapter  
23 relating to a criminal street gang must:

24 (1) be relevant to the identification of an  
25 organization that is reasonably suspected of involvement in  
26 criminal activity; and

27 (2) consist of:

1 (A) a judgment under any law that includes, as a  
2 finding or as an element of a criminal offense, participation in a  
3 criminal street gang;

4 (B) a self-admission by an individual of criminal  
5 street gang membership that is made during a judicial proceeding;  
6 or

7 (C) except as provided by Subsection (c), any two  
8 of the following:

9 (i) a self-admission by the individual of  
10 criminal street gang membership that is not made during a judicial  
11 proceeding, including the use of the Internet or other electronic  
12 format or medium to post photographs or other documentation  
13 identifying the individual as a member of a criminal street gang;

14 (ii) an identification of the individual as  
15 a criminal street gang member by a reliable informant or other  
16 individual;

17 (iii) a corroborated identification of the  
18 individual as a criminal street gang member by an informant or other  
19 individual of unknown reliability;

20 (iv) evidence that the individual frequents  
21 a documented area of a criminal street gang and associates with  
22 known criminal street gang members;

23 (v) evidence that the individual uses, in  
24 more than an incidental manner, criminal street gang dress, hand  
25 signals, tattoos, or symbols, including expressions of letters,  
26 numbers, words, or marks, regardless of how or the means by which  
27 the symbols are displayed, that are associated with a criminal

1 street gang that operates in an area frequented by the individual  
2 and described by Subparagraph (iv);

3 (vi) evidence that the individual has been  
4 arrested or taken into custody with known criminal street gang  
5 members for an offense or conduct consistent with criminal street  
6 gang activity;

7 (vii) evidence that the individual has  
8 visited a known criminal street gang member, other than a family  
9 member of the individual, while the gang member is confined in or  
10 committed to a penal institution; or

11 (viii) evidence of the individual's use of  
12 technology, including the Internet, to recruit new criminal street  
13 gang members.

14 (c) Evidence described by Subsections (b)(2)(C)(iv) and  
15 (vii) is not sufficient to create the eligibility of a person's  
16 information to be included in an intelligence database described by  
17 this chapter unless the evidence is combined with information  
18 described by another subparagraph of Subsection (b)(2)(C). (Code  
19 Crim. Proc., Arts. [61.02](#)(c), (d), (e).)

20 SUBCHAPTER C. RELEASE AND USE OF INFORMATION

21 Art. 67.101. RELEASE AND USE OF INFORMATION. (a) On  
22 request, a criminal justice agency may release information  
23 maintained under this chapter to:

- 24 (1) another criminal justice agency;  
25 (2) a court; or  
26 (3) a defendant in a criminal proceeding who is  
27 entitled to the discovery of the information under Chapter [39](#).

1 (b) A criminal justice agency or court may use information  
2 received under this article or Article 67.051(d) or 67.052 only for  
3 the administration of criminal justice.

4 (c) A defendant may use information received under this  
5 article or Article 67.051(d) or 67.052 only for a defense in a  
6 criminal proceeding. (Code Crim. Proc., Arts. 61.03(a), (b).)

7 Art. 67.102. CRIMINAL INFORMATION RELATING TO CHILD. (a)  
8 Notwithstanding Chapter 58, Family Code, criminal information  
9 relating to a child associated with a combination or criminal  
10 street gang may be compiled and released under this chapter  
11 regardless of the age of the child.

12 (b) A criminal justice agency or juvenile justice agency may  
13 release information maintained under this chapter to an attorney  
14 representing a child who is a party to a proceeding under Title 3,  
15 Family Code, if the juvenile court determines the information:

16 (1) is material to the proceeding; and

17 (2) is not privileged under law.

18 (c) An attorney may use information received under this  
19 article only for a child's defense in a proceeding under Title 3,  
20 Family Code.

21 (d) The governing body of a county or municipality served by  
22 a law enforcement agency described by Article 67.051(b) may adopt a  
23 policy to notify the parent or guardian of a child of the agency's  
24 observations relating to the child's association with a criminal  
25 street gang. (Code Crim. Proc., Art. 61.04.)

26 Art. 67.103. UNAUTHORIZED RELEASE OR USE OF CRIMINAL  
27 INFORMATION; PENALTY. (a) A person commits an offense if the

1 person knowingly:

2 (1) uses criminal information obtained under this  
3 chapter for an unauthorized purpose; or

4 (2) releases the information to a person who is not  
5 entitled to the information.

6 (b) An offense under this article is a Class A misdemeanor.  
7 (Code Crim. Proc., Art. 61.05.)

8 SUBCHAPTER D. REMOVAL OF INFORMATION

9 Art. 67.151. REMOVAL OF INFORMATION RELATING TO INDIVIDUAL  
10 OTHER THAN CHILD. (a) This article does not apply to information  
11 collected under this chapter by the Texas Department of Criminal  
12 Justice or the Texas Juvenile Justice Department.

13 (b) Subject to Subsection (c), information collected under  
14 this chapter relating to a criminal street gang must be removed  
15 after five years from an intelligence database established under  
16 Article 67.051 and the intelligence database maintained by the  
17 department under Article 67.052 if:

18 (1) the information relates to the investigation or  
19 prosecution of criminal activity engaged in by an individual other  
20 than a child; and

21 (2) the individual who is the subject of the  
22 information has not been arrested for criminal activity reported to  
23 the department under Chapter 66.

24 (c) The five-year period described by Subsection (b) does  
25 not include any period during which the individual who is the  
26 subject of the information is:

27 (1) confined in a correctional facility operated by or

1 under contract with the Texas Department of Criminal Justice;

2 (2) committed to a secure correctional facility, as  
3 defined by Section 51.02, Family Code, operated by or under  
4 contract with the Texas Juvenile Justice Department; or

5 (3) confined in a county jail or confined in or  
6 committed to a facility operated by a juvenile board in lieu of  
7 being confined in a correctional facility described by Subdivision  
8 (1) or committed to a secure correctional facility described by  
9 Subdivision (2). (Code Crim. Proc., Art. 61.06.)

10 Art. 67.152. REMOVAL OF INFORMATION RELATING TO CHILD. (a)  
11 This article does not apply to information collected under this  
12 chapter by the Texas Department of Criminal Justice or the Texas  
13 Juvenile Justice Department.

14 (b) Subject to Subsection (c), information collected under  
15 this chapter relating to a criminal street gang must be removed  
16 after two years from an intelligence database established under  
17 Article 67.051 and the intelligence database maintained by the  
18 department under Article 67.052 if:

19 (1) the information relates to the investigation or  
20 prosecution of criminal activity engaged in by a child; and

21 (2) the child who is the subject of the information has  
22 not been:

23 (A) arrested for criminal activity reported to  
24 the department under Chapter 66; or

25 (B) taken into custody for delinquent conduct  
26 reported to the department under Chapter 58, Family Code.

27 (c) The two-year period described by Subsection (b) does not

1 include any period during which the child who is the subject of the  
2 information is:

3 (1) committed to the Texas Juvenile Justice Department  
4 for conduct that violates a penal law of the grade of felony; or

5 (2) confined in the Texas Department of Criminal  
6 Justice. (Code Crim. Proc., Art. [61.07.](#))

7 SUBCHAPTER E. RIGHTS OF SUBJECT OF CRIMINAL INFORMATION

8 Art. 67.201. RIGHT TO REQUEST EXISTENCE OF CRIMINAL  
9 INFORMATION. (a) A person or the parent or guardian of a child may  
10 request that a law enforcement agency determine whether the agency  
11 has collected or is maintaining, under submission criteria  
12 established under Article 67.054(b), criminal information relating  
13 solely to the person or child. The law enforcement agency shall  
14 respond to the request not later than the 10th business day after  
15 the date the agency receives the request.

16 (b) Before responding to a request under Subsection (a), a  
17 law enforcement agency may require reasonable written verification  
18 of the identity of the person making the request and the  
19 relationship between the parent or guardian and the child, if  
20 applicable, including written verification of an address, date of  
21 birth, driver's license number, state identification card number,  
22 or social security number. (Code Crim. Proc., Art. [61.075.](#))

23 Art. 67.202. RIGHT TO REQUEST REVIEW OF CRIMINAL  
24 INFORMATION. (a) On receipt of a written request of a person or the  
25 parent or guardian of a child that includes a showing by the person  
26 or the parent or guardian that a law enforcement agency may have  
27 collected criminal information under this chapter relating to the

1 person or child that is inaccurate or does not comply with the  
2 submission criteria under Article 67.054(b), the head of the agency  
3 or the designee of the agency head shall review criminal  
4 information collected by the agency under this chapter relating to  
5 the person or child to determine if:

6 (1) reasonable suspicion exists to believe that the  
7 information is accurate; and

8 (2) the information complies with the submission  
9 criteria established under Article 67.054(b).

10 (b) If, after conducting a review of criminal information  
11 under Subsection (a), the agency head or designee determines that  
12 reasonable suspicion does not exist to believe that the information  
13 is accurate, or determines that the information does not comply  
14 with the submission criteria, the agency shall:

15 (1) destroy all records containing the information;  
16 and

17 (2) notify the department and the person who requested  
18 the review of the agency's determination and the destruction of the  
19 records.

20 (c) If, after conducting a review of criminal information  
21 under Subsection (a), the agency head or designee determines that  
22 reasonable suspicion exists to believe that the information is  
23 accurate, and determines that the information complies with the  
24 submission criteria, the agency shall notify the person who  
25 requested the review:

26 (1) of the agency's determination; and

27 (2) that the person is entitled to seek judicial



1 review of the agency's determination under Article 67.203.

2 (d) On receipt of notice under Subsection (b)(2), the  
3 department immediately shall destroy all records containing the  
4 information that is the subject of the notice in the intelligence  
5 database maintained by the department under Article 67.052.

6 (e) A person who is committed to the Texas Juvenile Justice  
7 Department or confined in the Texas Department of Criminal Justice  
8 does not, while committed or confined, have the right to request  
9 review of criminal information under this article. (Code Crim.  
10 Proc., Art. 61.08.)

11 Art. 67.203. JUDICIAL REVIEW. (a) A person who is entitled  
12 to seek judicial review of a determination made under Article  
13 67.202(c) may file a petition for review in district court in the  
14 county in which the person resides.

15 (b) On the filing of a petition for review under Subsection  
16 (a), the district court shall conduct an in camera review of the  
17 criminal information that is the subject of the determination to  
18 determine if:

19 (1) reasonable suspicion exists to believe that the  
20 information is accurate; and

21 (2) the information complies with the submission  
22 criteria under Article 67.054(b).

23 (c) If, after conducting an in camera review of criminal  
24 information under Subsection (b), the court finds that reasonable  
25 suspicion does not exist to believe that the information is  
26 accurate, or finds that the information does not comply with the  
27 submission criteria, the court shall:

1           (1) order the law enforcement agency that collected  
2 the information to destroy all records containing the information;  
3 and

4           (2) notify the department of the court's determination  
5 and the destruction of the records.

6           (d) A petitioner may appeal a final judgment of a district  
7 court conducting an in camera review under this article.

8           (e) Information that is the subject of an in camera review  
9 under this article is confidential and may not be disclosed. (Code  
10 Crim. Proc., Art. [61.09](#).)

11                   SUBCHAPTER F. GANG RESOURCE SYSTEM

12           Art. 67.251. ESTABLISHMENT OF GANG RESOURCE SYSTEM. The  
13 office of the attorney general shall establish an electronic gang  
14 resource system to provide criminal justice agencies and juvenile  
15 justice agencies with information about criminal street gangs in  
16 this state. (Code Crim. Proc., Art. [61.11](#)(a) (part).)

17           Art. 67.252. INFORMATION INCLUDED IN GANG RESOURCE SYSTEM.

18 (a) The gang resource system established under Article 67.251 may  
19 include the following information with regard to any gang:

- 20           (1) gang name;  
21           (2) gang identifiers, such as colors used, tattoos,  
22 and clothing preferences;  
23           (3) criminal activities;  
24           (4) migration trends;  
25           (5) recruitment activities; and  
26           (6) a local law enforcement contact.

27 (b) Information in the gang resource system shall be

1 accessible according to:

2 (1) municipality or county; and

3 (2) gang name.

4 (c) The office of the attorney general may coordinate with  
5 the Texas Department of Criminal Justice to include information in  
6 the gang resource system regarding groups that have been identified  
7 by the Security Threat Group Management Office of the Texas  
8 Department of Criminal Justice. (Code Crim. Proc., Arts. [61.11](#)(a)  
9 (part), (g), (h).)

10 Art. 67.253. INCLUSION OF CERTAIN INFORMATION PROHIBITED.  
11 Information relating to the identity of a specific offender or  
12 alleged offender may not be maintained in the gang resource system.  
13 (Code Crim. Proc., Art. [61.11](#)(d).)

14 Art. 67.254. COLLECTION OF INFORMATION. (a) On request by  
15 the office of the attorney general, a criminal justice agency or  
16 juvenile justice agency shall make a reasonable attempt to provide  
17 gang information to the office of the attorney general for the  
18 purpose of maintaining an updated, comprehensive gang resource  
19 system.

20 (b) The office of the attorney general shall cooperate with  
21 criminal justice agencies and juvenile justice agencies in  
22 collecting and maintaining the accuracy of the information included  
23 in the gang resource system. (Code Crim. Proc., Arts. [61.11](#)(b),  
24 (c).)

25 Art. 67.255. USE OF INFORMATION. Information in the gang  
26 resource system may be used in investigating gang-related crimes.  
27 Information from the system may be included in an affidavit or

1 subpoena or used in connection with any other legal or judicial  
2 proceeding only if the information is corroborated by information  
3 not provided by or maintained in the system. (Code Crim. Proc.,  
4 Art. 61.11(e).)

5 Art. 67.256. ACCESS TO INFORMATION. Access to the gang  
6 resource system shall be limited to criminal justice agency  
7 personnel and juvenile justice agency personnel. (Code Crim.  
8 Proc., Art. 61.11(f).)

9 SUBCHAPTER G. TEXAS VIOLENT GANG TASK FORCE

10 Art. 67.301. DEFINITION. In this subchapter, "task force"  
11 means the Texas Violent Gang Task Force. (Code Crim. Proc., Art.  
12 61.10(a).)

13 Art. 67.302. PURPOSE. The purpose of the task force is to  
14 form a strategic partnership among local, state, and federal  
15 criminal justice, juvenile justice, and correctional agencies to  
16 better enable those agencies to take a proactive stance toward  
17 tracking gang activity and the growth and spread of gangs  
18 statewide. (Code Crim. Proc., Art. 61.10(b).)

19 Art. 67.303. TASK FORCE MEMBERS. The task force shall  
20 consist of:

21 (1) a representative of the department designated by  
22 the director of the department;

23 (2) two representatives of the Texas Department of  
24 Criminal Justice, including a representative of the parole  
25 division, designated by the executive director of that agency;

26 (3) a representative of the office of the inspector  
27 general of the Texas Department of Criminal Justice designated by

1 the inspector general;

2 (4) two representatives of the Texas Juvenile Justice  
3 Department designated by the executive director of that agency;

4 (5) a representative of the office of the attorney  
5 general designated by the attorney general;

6 (6) six representatives who are local law enforcement  
7 officers or local community supervision personnel, including  
8 juvenile probation personnel, designated by the governor;

9 (7) two representatives who are local prosecutors  
10 designated by the governor; and

11 (8) a representative of the Texas Alcoholic Beverage  
12 Commission designated by the executive director of that agency.  
13 (Code Crim. Proc., Art. [61.10](#)(f).)

14 Art. 67.304. DUTIES OF TASK FORCE. (a) The task force  
15 shall focus its efforts on:

16 (1) developing, through regional task force meetings,  
17 a statewide networking system that will provide timely access to  
18 gang information;

19 (2) establishing communication between different  
20 criminal justice, juvenile justice, and correctional agencies,  
21 combining independent agency resources, and joining agencies  
22 together in a cooperative effort to focus on gang membership, gang  
23 activity, and gang migration trends; and

24 (3) forming a working group of criminal justice,  
25 juvenile justice, and correctional representatives from throughout  
26 this state to discuss specific cases and investigations involving  
27 gangs and other related gang activities.

(b) The task force may take any other actions necessary to accomplish the purposes of this subchapter.

(c) If practicable, the task force shall consult with representatives from one or more United States attorneys' offices in this state and with representatives from the following federal agencies who are available and assigned to a duty station in this state:

- (1) the Federal Bureau of Investigation;
- (2) the Federal Bureau of Prisons;
- (3) the United States Drug Enforcement Administration;
- (4) United States Immigration and Customs Enforcement;
- (5) United States Customs and Border Protection;
- (6) the Bureau of Alcohol, Tobacco, Firearms and Explosives;
- (7) the United States Marshals Service; and
- (8) the United States Probation and Pretrial Services System. (Code Crim. Proc., Arts. [61.10](#)(c), (d), (g).)

Art. 67.305. DUTIES OF DEPARTMENT REGARDING TASK FORCE. The department shall support the task force to assist in coordinating statewide antigang initiatives. (Code Crim. Proc., Art. [61.10](#)(e).)

ARTICLE 2. CONFORMING AMENDMENTS FOR ARTICLES 18.20 AND 18.21, CODE OF CRIMINAL PROCEDURE: CHAPTER 16, PENAL CODE SECTION 2.01. Sections [16.02](#)(a), (b), (c), (d), (e), and (e-1), Penal Code, are amended to read as follows:

(a) In this section:

(1) "Communication [,"computer trespasser," "covert entry," "communication] common carrier," "computer trespasser," "contents," "covert entry," "electronic communication," ["electronic, mechanical, or other device," "immediate life-threatening situation,"] "intercept," "interception device," "investigative or law enforcement officer," ["member of a law enforcement unit specially trained to respond to and deal with life-threatening situations,"] "oral communication," "protected computer," ["readily accessible to the general public,"] and "wire communication" have the meanings assigned by [~~given those terms in~~] Article 18A.001 [~~18.20~~], Code of Criminal Procedure.

(2) "Immediate life-threatening situation" and "member of a law enforcement unit specially trained to respond to and deal with life-threatening situations" have the meanings assigned by Article 18A.201, Code of Criminal Procedure.

(3) "Readily accessible to the general public" means, with respect to a radio communication, a communication that is not:

- (A) scrambled or encrypted;
- (B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of the communication;
- (C) carried on a subcarrier or other signal subsidiary to a radio transmission;
- (D) transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication;

1                   (E) transmitted on frequencies allocated under  
2 Part 25, Subpart D, E, or F of Part 74, or Part 94 of the rules of the  
3 Federal Communications Commission, unless, in the case of a  
4 communication transmitted on a frequency allocated under Part 74  
5 that is not exclusively allocated to broadcast auxiliary services,  
6 the communication is a two-way voice communication by radio; or  
7                   (F) an electronic communication.

8           (b) A person commits an offense if the person:

9                   (1) intentionally intercepts, endeavors to intercept,  
10 or procures another person to intercept or endeavor to intercept a  
11 wire, oral, or electronic communication;

12                   (2) intentionally discloses or endeavors to disclose  
13 to another person the contents of a wire, oral, or electronic  
14 communication if the person knows or has reason to know the  
15 information was obtained through the interception of a wire, oral,  
16 or electronic communication in violation of this subsection;

17                   (3) intentionally uses or endeavors to use the  
18 contents of a wire, oral, or electronic communication if the person  
19 knows or is reckless about whether the information was obtained  
20 through the interception of a wire, oral, or electronic  
21 communication in violation of this subsection;

22                   (4) knowingly or intentionally effects a covert entry  
23 for the purpose of intercepting wire, oral, or electronic  
24 communications without court order or authorization; or

25                   (5) intentionally uses, endeavors to use, or procures  
26 any other person to use or endeavor to use any interception  
27 [~~electronic, mechanical, or other~~] device to intercept any oral



1 communication when the device:

2 (A) is affixed to, or otherwise transmits a  
3 signal through a wire, cable, or other connection used in wire  
4 communications; or

5 (B) transmits communications by radio or  
6 interferes with the transmission of communications by radio.

7 (c) It is an affirmative defense to prosecution under  
8 Subsection (b) that:

9 (1) an operator of a switchboard or an officer,  
10 employee, or agent of a communication common carrier whose  
11 facilities are used in the transmission of a wire or electronic  
12 communication intercepts a communication or discloses or uses an  
13 intercepted communication in the normal course of employment while  
14 engaged in an activity that is a necessary incident to the rendition  
15 of service or to the protection of the rights or property of the  
16 carrier of the communication, unless the interception results from  
17 the communication common carrier's use of service observing or  
18 random monitoring for purposes other than mechanical or service  
19 quality control checks;

20 (2) an officer, employee, or agent of a communication  
21 common carrier provides information, facilities, or technical  
22 assistance to an investigative or law enforcement officer who is  
23 authorized as provided by this section to intercept a wire, oral, or  
24 electronic communication;

25 (3) a person acting under color of law intercepts:

26 (A) a wire, oral, or electronic communication, if  
27 the person is a party to the communication or if one of the parties

1 to the communication has given prior consent to the interception;

2 (B) a wire, oral, or electronic communication, if  
3 the person is acting under the authority of Chapter 18A [~~Article~~  
4 ~~18.20~~], Code of Criminal Procedure; or

5 (C) a wire or electronic communication made by a  
6 computer trespasser and transmitted to, through, or from a  
7 protected computer, if:

8 (i) the interception did not acquire a  
9 communication other than one transmitted to or from the computer  
10 trespasser;

11 (ii) the owner of the protected computer  
12 consented to the interception of the computer trespasser's  
13 communications on the protected computer; and

14 (iii) the actor was lawfully engaged in an  
15 ongoing criminal investigation and the actor had reasonable  
16 suspicion to believe that the contents of the computer trespasser's  
17 communications likely to be obtained would be material to the  
18 investigation;

19 (4) a person not acting under color of law intercepts a  
20 wire, oral, or electronic communication, if:

21 (A) the person is a party to the communication;  
22 or

23 (B) one of the parties to the communication has  
24 given prior consent to the interception, unless the communication  
25 is intercepted for the purpose of committing an unlawful act;

26 (5) a person acting under color of law intercepts a  
27 wire, oral, or electronic communication if:

1 (A) oral or written consent for the interception  
2 is given by a magistrate before the interception;

3 (B) an immediate life-threatening situation  
4 exists;

5 (C) the person is a member of a law enforcement  
6 unit specially trained to:

7 (i) respond to and deal with  
8 life-threatening situations; or

9 (ii) install interception [~~electronic,~~  
10 ~~mechanical, or other~~] devices; and

11 (D) the interception ceases immediately on  
12 termination of the life-threatening situation;

13 (6) an officer, employee, or agent of the Federal  
14 Communications Commission intercepts a communication transmitted  
15 by radio or discloses or uses an intercepted communication in the  
16 normal course of employment and in the discharge of the monitoring  
17 responsibilities exercised by the Federal Communications  
18 Commission in the enforcement of Chapter 5, Title 47, United States  
19 Code;

20 (7) a person intercepts or obtains access to an  
21 electronic communication that was made through an electronic  
22 communication system that is configured to permit the communication  
23 to be readily accessible to the general public;

24 (8) a person intercepts radio communication, other  
25 than a cordless telephone communication that is transmitted between  
26 a cordless telephone handset and a base unit, that is transmitted:

27 (A) by a station for the use of the general

1 public;

2 (B) to ships, aircraft, vehicles, or persons in  
3 distress;

4 (C) by a governmental, law enforcement, civil  
5 defense, private land mobile, or public safety communications  
6 system that is readily accessible to the general public, unless the  
7 radio communication is transmitted by a law enforcement  
8 representative to or from a mobile data terminal;

9 (D) by a station operating on an authorized  
10 frequency within the bands allocated to the amateur, citizens band,  
11 or general mobile radio services; or

12 (E) by a marine or aeronautical communications  
13 system;

14 (9) a person intercepts a wire or electronic  
15 communication the transmission of which causes harmful  
16 interference to a lawfully operating station or consumer electronic  
17 equipment, to the extent necessary to identify the source of the  
18 interference;

19 (10) a user of the same frequency intercepts a radio  
20 communication made through a system that uses frequencies monitored  
21 by individuals engaged in the provision or the use of the system, if  
22 the communication is not scrambled or encrypted; or

23 (11) a provider of an electronic communications  
24 service records the fact that a wire or electronic communication  
25 was initiated or completed in order to protect the provider,  
26 another provider furnishing service towards the completion of the  
27 communication, or a user of that service from fraudulent, unlawful,

1 or abusive use of the service.

2 (d) A person commits an offense if the person:

3 (1) intentionally manufactures, assembles, possesses,  
4 or sells an interception [~~electronic, mechanical, or other~~] device  
5 knowing or having reason to know that the device is designed  
6 primarily for nonconsensual interception of wire, electronic, or  
7 oral communications and that the device or a component of the device  
8 has been or will be used for an unlawful purpose; or

9 (2) places in a newspaper, magazine, handbill, or  
10 other publication an advertisement of an interception [~~electronic,~~  
11 ~~mechanical, or other~~] device:

12 (A) knowing or having reason to know that the  
13 device is designed primarily for nonconsensual interception of  
14 wire, electronic, or oral communications;

15 (B) promoting the use of the device for the  
16 purpose of nonconsensual interception of wire, electronic, or oral  
17 communications; or

18 (C) knowing or having reason to know that the  
19 advertisement will promote the use of the device for the purpose of  
20 nonconsensual interception of wire, electronic, or oral  
21 communications.

22 (e) It is an affirmative defense to prosecution under  
23 Subsection (d) that the manufacture, assembly, possession, or sale  
24 of an interception [~~electronic, mechanical, or other~~] device that  
25 is designed primarily for the purpose of nonconsensual interception  
26 of wire, electronic, or oral communication is by:

27 (1) a communication common carrier or a provider of

1 wire or electronic communications service or an officer, agent, or  
2 employee of or a person under contract with a communication common  
3 carrier or service provider acting in the normal course of the  
4 provider's or [~~communication~~] carrier's business;

5 (2) an officer, agent, or employee of a person under  
6 contract with, bidding on contracts with, or doing business with  
7 the United States or this state acting in the normal course of the  
8 activities of the United States or this state;

9 (3) a member of the Department of Public Safety who is  
10 specifically trained to install wire, oral, or electronic  
11 communications intercept equipment; or

12 (4) a member of a local law enforcement agency that has  
13 an established unit specifically designated to respond to and deal  
14 with life-threatening situations.

15 (e-1) It is a defense to prosecution under Subsection (d)(1)  
16 that the interception [~~electronic, mechanical, or other~~] device is  
17 possessed by a person authorized to possess the device under  
18 Section 500.008, Government Code, or Section 242.103, Human  
19 Resources Code.

20 SECTION 2.02. Sections 16.03(b) and (c), Penal Code, are  
21 amended to read as follows:

22 (b) In this section:

23 (1) "Authorized" [~~,"authorized"~~] peace officer,"  
24 [~~"communications common carrier,"~~] "pen register," and "trap and  
25 trace device" have the meanings assigned by Article 18B.001  
26 [~~18.21~~], Code of Criminal Procedure.

27 (2) "Communication common carrier" has the meaning

1 assigned by Article 18A.001, Code of Criminal Procedure.

2 (c) It is an affirmative defense to prosecution under  
3 Subsection (a) that the actor is:

4 (1) an officer, employee, or agent of a communication  
5 ~~[communications]~~ common carrier and the actor installs or uses a  
6 device or equipment to record a number dialed from or to a telephone  
7 instrument in the normal course of business of the carrier for  
8 purposes of:

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

11 (B) assisting another who the actor reasonably  
12 believes to be a peace officer authorized to install or use a pen  
13 register or trap and trace device under Chapter 18B ~~[Article~~  
14 ~~18.21]~~, Code of Criminal Procedure;

15 (2) an officer, employee, or agent of a lawful  
16 enterprise and the actor installs or uses a device or equipment  
17 while engaged in an activity that:

18 (A) is a necessary incident to the rendition of  
19 service or to the protection of property of or services provided by  
20 the enterprise; and

21 (B) is not made for the purpose of gathering  
22 information for a law enforcement agency or private investigative  
23 agency, other than information related to the theft of  
24 communication or information services provided by the enterprise;  
25 or

26 (3) a person authorized to install or use a pen  
27 register or trap and trace device under Chapter 18B ~~[Article~~

~~18.21~~], Code of Criminal Procedure.

SECTION 2.03. Sections 16.04(a) and (e), Penal Code, are amended to read as follows:

(a) In this section:

(1) "Electronic~~[, "electronic]~~ communication," ~~["electronic storage,"]~~ "user," and "wire communication" have the meanings assigned by ~~[to those terms in]~~ Article 18A.001 ~~[18.21]~~, Code of Criminal Procedure.

(2) "Electronic storage" has the meaning assigned by Article 18B.001, Code of Criminal Procedure.

(e) It is an affirmative defense to prosecution under Subsection (b) that the conduct was authorized by:

(1) the provider of the wire or electronic communications service;

(2) the user of the wire or electronic communications service;

(3) the addressee or intended recipient of the wire or electronic communication; or

(4) Chapter 18B ~~[Article 18.21]~~, Code of Criminal Procedure.

SECTION 2.04. Section 16.05(a), Penal Code, is amended to read as follows:

(a) In this section, "electronic ~~[communication," "electronic]~~ communications service" has ~~[service," and "electronic communications system" have]~~ the meaning assigned by ~~[meanings given those terms in]~~ Article 18A.001 ~~[18.20]~~, Code of Criminal Procedure.



ARTICLE 3. OTHER CONFORMING AMENDMENTS FOR ARTICLES 18.20 AND  
18.21, CODE OF CRIMINAL PROCEDURE

SECTION 3.01. Section 71.0083(b), Agriculture Code, is amended to read as follows:

(b) An agriculture warrant may be issued only by a magistrate authorized to issue a search warrant under Chapter 18, 18A, or 18B, Code of Criminal Procedure, only after the department has exercised reasonable efforts to obtain consent to conduct a search, and on application by the department accompanied by a supporting affidavit that establishes probable cause for the issuance of the warrant. The warrant must describe:

(1) the street address and municipality or the parcel number and county of each place or premises subject to the warrant; and

(2) each type of plant pest or disease that is the subject of the warrant.

SECTION 3.02. Section 123.001(2), Civil Practice and Remedies Code, is amended to read as follows:

(2) "Interception" means the aural acquisition of the contents of a communication through the use of an interception ~~[electronic, mechanical, or other]~~ device that is made without the consent of a party to the communication, but does not include the ordinary use of:

(A) a telephone or telegraph instrument or facility or telephone and telegraph equipment;

(B) a hearing aid designed to correct subnormal hearing to not better than normal;

(C) a radio, television, or other wireless receiver; or

(D) a cable system that relays a public wireless broadcast from a common antenna to a receiver.

SECTION 3.03. Article 18.02(b), Code of Criminal Procedure, is amended to read as follows:

(b) For purposes of Subsection (a)(13):

(1) "Electronic communication" [~~,""electronic communication," "electronic storage,"~~] and "wire communication" have the meanings assigned by Article 18A.001.

(2) "Electronic [18.20, and "electronic] customer data" and "electronic storage" have [has] the meanings [meaning] assigned by Article 18B.001 [~~18.21~~].

SECTION 3.04. Article 18.0215(d), Code of Criminal Procedure, is amended to read as follows:

(d) Notwithstanding any other law, a peace officer may search a cellular telephone or other wireless communications device without a warrant if:

(1) the owner or possessor of the telephone or device consents to the search;

(2) the telephone or device is reported stolen by the owner or possessor; or

(3) the officer reasonably believes that:

(A) the telephone or device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense; or

(B) there exists an immediate life-threatening

1 situation, as defined by [~~Section 17,~~] Article 18A.201 [~~18.20~~].

2 SECTION 3.05. Article 18.04, Code of Criminal Procedure, is  
3 amended to read as follows:

4 Art. 18.04. CONTENTS OF WARRANT. A search warrant issued  
5 under this chapter, Chapter 18A, or Chapter 18B shall be sufficient  
6 if it contains the following requisites:

7 (1) that it run in the name of "The State of Texas";

8 (2) that it identify, as near as may be, that which is  
9 to be seized and name or describe, as near as may be, the person,  
10 place, or thing to be searched;

11 (3) that it command any peace officer of the proper  
12 county to search forthwith the person, place, or thing named;

13 (4) that it be dated and signed by the magistrate; and

14 (5) that the magistrate's name appear in clearly  
15 legible handwriting or in typewritten form with the magistrate's  
16 signature.

17 SECTION 3.06. Article 18.06(a), Code of Criminal Procedure,  
18 is amended to read as follows:

19 (a) A peace officer to whom a search warrant is delivered  
20 shall execute the warrant without delay and forthwith return the  
21 warrant to the proper magistrate. A search warrant issued under  
22 [~~Section 5A,~~] Article 18B.354 [~~18.21,~~] must be executed in the  
23 manner provided by Article 18B.355 [~~that section~~] not later than  
24 the 11th day after the date of issuance. In all other cases, a  
25 search warrant must be executed within three days from the time of  
26 its issuance. A warrant issued under this chapter, Chapter 18A, or  
27 Chapter 18B shall be executed within a shorter period if so directed

1 in the warrant by the magistrate.

2 SECTION 3.07. Articles 18.07(a) and (b), Code of Criminal  
3 Procedure, are amended to read as follows:

4 (a) The period allowed for the execution of a search  
5 warrant, exclusive of the day of its issuance and of the day of its  
6 execution, is:

7 (1) 15 whole days if the warrant is issued solely to  
8 search for and seize specimens from a specific person for DNA  
9 analysis and comparison, including blood and saliva samples;

10 (2) 10 whole days if the warrant is issued under  
11 ~~[Section 5A,]~~ Article 18B.354 ~~[18.21]~~; or

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

14 (b) The magistrate issuing a search warrant under this  
15 chapter, Chapter 18A, or Chapter 18B shall endorse on the search  
16 warrant the date and hour of its issuance.

17 SECTION 3.08. Section 54.978(e), Government Code, is  
18 amended to read as follows:

19 (e) In this subsection, ~~["pen register,"]~~ "ESN reader,"  
20 "pen register," and "trap and trace device" ~~[device," and "mobile~~  
21 ~~tracking device"]~~ have the meanings assigned by Article 18B.001  
22 ~~[Section 18.21]~~, Code of Criminal Procedure, and "mobile tracking  
23 device" has the meaning assigned by Article 18B.201, Code of  
24 Criminal Procedure. A magistrate may:

25 (1) notwithstanding ~~[Section 2(a),]~~ Article 18B.051  
26 or 18B.052 ~~[18.21]~~, Code of Criminal Procedure, issue an order  
27 under Subchapter C, Chapter 18B ~~[Section 2, Article 18.21]~~, Code of

1 Criminal Procedure, for the installation and use of:

2 (A) a pen register;

3 (B) an ESN reader;

4 (C) a trap and trace device; or

5 (D) equipment that combines the function of a pen  
6 register and a trap and trace device;

7 (2) issue an order to obtain access to stored  
8 communications under [~~Section 5,~~] Article 18B.352 [18.21], Code of  
9 Criminal Procedure; and

10 (3) notwithstanding [~~Section 14(a),~~] Article  
11 18B.203(a) [18.21], Code of Criminal Procedure, issue an order for  
12 the installation and use of a mobile tracking device under  
13 Subchapter E, Chapter 18B [~~Section 14, Article 18.21~~], Code of  
14 Criminal Procedure.

15 SECTION 3.09. Section 421.004, Government Code, is amended  
16 to read as follows:

17 Sec. 421.004. PROVISIONS GOVERNING MOBILE TRACKING  
18 DEVICES. In the event of a conflict between Subchapter E, Chapter  
19 18B [~~Section 14, Article 18.21~~], Code of Criminal Procedure, and  
20 this chapter or a rule adopted under this chapter, Subchapter E,  
21 Chapter 18B [~~Section 14, Article 18.21~~], Code of Criminal  
22 Procedure, controls.

23 SECTION 3.10. Section 493.0191, Government Code, is amended  
24 to read as follows:

25 Sec. 493.0191. ADMINISTRATIVE SUBPOENAS. (a) The  
26 inspector general may issue an administrative subpoena to a  
27 communication [~~communications~~] common carrier or an electronic

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

(1) disclose information about:

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

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

(2) are material to a criminal investigation of an escape or a potential escape or a violation of Section 38.11, Penal Code.

(b) In this section:

(1) "Communication [~~"Communications]~~ common carrier" means a person that:

(A) for a fee, provides directly to the public or to certain members of the public the ability to transmit between or among points specified by the person who uses that ability, regardless of the technology used, information of the person's choosing without change in the form or content of the information transmitted; or

(B) is a provider that bills customers for services described by Paragraph (A).

(2) "Electronic communications service provider" means a service provider that provides to users of the service the ability to send or receive wire or electronic communications, as those terms are defined by Article 18A.001 [~~18.20~~], Code of Criminal Procedure.

SECTION 3.11. Sections 500.008(a) and (b), Government Code,

1 are amended to read as follows:

2 (a) The department may own and the office of inspector  
3 general may possess, install, operate, or monitor an interception  
4 [~~electronic, mechanical, or other~~] device, as defined by Article  
5 18A.001 [~~18.20~~], Code of Criminal Procedure.

6 (b) The inspector general shall designate in writing the  
7 commissioned officers of the office of inspector general who are  
8 authorized to possess, install, operate, and monitor interception  
9 [~~electronic, mechanical, or other~~] devices for the department.

10 SECTION 3.12. Section 242.841(2), Health and Safety Code,  
11 is amended to read as follows:

12 (2) "Electronic monitoring device":

13 (A) includes:

14 (i) video surveillance cameras installed in  
15 the room of a resident; and

16 (ii) audio devices installed in the room of  
17 a resident designed to acquire communications or other sounds  
18 occurring in the room; and

19 (B) does not include an interception  
20 [~~electronic, mechanical, or other~~] device that is specifically used  
21 for the nonconsensual interception of wire or electronic  
22 communications.

23 SECTION 3.13. Section 242.842(c), Health and Safety Code,  
24 is amended to read as follows:

25 (c) A communication or other sound acquired by an audio  
26 electronic monitoring device installed under the provisions of this  
27 subchapter concerning authorized electronic monitoring is not

1 considered to be:

2 (1) an oral communication as defined by [~~Section 17,~~  
3 Article 18A.001 [~~18.20~~], Code of Criminal Procedure; or

4 (2) a communication as defined by Section 123.001,  
5 Civil Practice and Remedies Code.

6 SECTION 3.14. Section 555.151(2), Health and Safety Code,  
7 is amended to read as follows:

8 (2) "Electronic monitoring device":

9 (A) includes:

10 (i) video surveillance cameras installed in  
11 a resident's room; and

12 (ii) audio devices installed in a  
13 resident's room designed to acquire communications or other sounds  
14 occurring in the room; and

15 (B) does not include an interception  
16 [~~electronic, mechanical, or other~~] device that is specifically used  
17 for the nonconsensual interception of wire or electronic  
18 communications.

19 SECTION 3.15. Section 555.152(c), Health and Safety Code,  
20 is amended to read as follows:

21 (c) A communication or other sound acquired by an audio  
22 electronic monitoring device installed under the provisions of this  
23 subchapter concerning authorized electronic monitoring is not  
24 considered to be:

25 (1) an oral communication as defined by [~~Section 17,~~  
26 Article 18A.001 [~~18.20~~], Code of Criminal Procedure; or

27 (2) a communication as defined by Section 123.001,



1 Civil Practice and Remedies Code.

2 SECTION 3.16. Sections 242.103(a) and (b), Human Resources  
3 Code, are amended to read as follows:

4 (a) The department may own and the office of the inspector  
5 general may possess, install, operate, or monitor an interception  
6 ~~[electronic, mechanical, or other]~~ device, as defined by Article  
7 18A.001 ~~[18.20]~~, Code of Criminal Procedure.

8 (b) The inspector general shall designate in writing the  
9 commissioned officers of the office of inspector general who are  
10 authorized to possess, install, operate, and monitor interception  
11 ~~[electronic, mechanical, or other]~~ devices for the department.

12 SECTION 3.17. Section 33.01(3), Penal Code, is amended to  
13 read as follows:

14 (3) "Communication ~~["Communications"]~~ common carrier"  
15 means a person who owns or operates a telephone system in this state  
16 that includes equipment or facilities for the conveyance,  
17 transmission, or reception of communications and who receives  
18 compensation from persons who use that system.

19 SECTION 3.18. Section 33.03, Penal Code, is amended to read  
20 as follows:

21 Sec. 33.03. DEFENSES. It is an affirmative defense to  
22 prosecution under Section 33.02 that the actor was an officer,  
23 employee, or agent of a communication ~~[communications]~~ common  
24 carrier or electric utility and committed the proscribed act or  
25 acts in the course of employment while engaged in an activity that  
26 is a necessary incident to the rendition of service or to the  
27 protection of the rights or property of the communication

1 ~~[communications]~~ common carrier or electric utility.

2 SECTION 3.19. Section 38.11(k), Penal Code, is amended to  
3 read as follows:

4 (k) A person commits an offense if, with the intent to  
5 provide to or make a cellular telephone or other wireless  
6 communications device or a component of one of those devices  
7 available for use by a person in the custody of a correctional  
8 facility, the person:

9 (1) acquires a cellular telephone or other wireless  
10 communications device or a component of one of those devices to be  
11 delivered to the person in custody;

12 (2) provides a cellular telephone or other wireless  
13 communications device or a component of one of those devices to  
14 another person for delivery to the person in custody; or

15 (3) makes a payment to a communication common carrier,  
16 as defined by Article 18A.001 ~~[18.20]~~, Code of Criminal Procedure,  
17 or to any communication service that provides to its users the  
18 ability to send or receive wire or electronic communications.

19 ARTICLE 4. CONFORMING AMENDMENTS FOR CHAPTERS 60 AND 61, CODE OF  
20 CRIMINAL PROCEDURE

21 SECTION 4.01. Article 2.021, Code of Criminal Procedure, is  
22 amended to read as follows:

23 Art. 2.021. DUTIES OF ATTORNEY GENERAL. The attorney  
24 general may offer to a county or district attorney the assistance of  
25 the attorney general's office in the prosecution of an offense  
26 described by Article 66.102(h) ~~[60.051(g)]~~ the victim of which is  
27 younger than 17 years of age at the time the offense is committed.

1 On request of a county or district attorney, the attorney general  
2 shall assist in the prosecution of an offense described by Article  
3 66.102(h) [~~60.051(g)~~] the victim of which is younger than 17 years  
4 of age at the time the offense is committed. For purposes of this  
5 article, assistance includes investigative, technical, and  
6 litigation assistance of the attorney general's office.

7 SECTION 4.02. Section 1, Article 42.01, Code of Criminal  
8 Procedure, is amended to read as follows:

9 Sec. 1. A judgment is the written declaration of the court  
10 signed by the trial judge and entered of record showing the  
11 conviction or acquittal of the defendant. The sentence served  
12 shall be based on the information contained in the judgment. The  
13 judgment shall reflect:

- 14 1. The title and number of the case;
- 15 2. That the case was called and the parties appeared,  
16 naming the attorney for the state, the defendant, and the attorney  
17 for the defendant, or, where a defendant is not represented by  
18 counsel, that the defendant knowingly, intelligently, and  
19 voluntarily waived the right to representation by counsel;
- 20 3. The plea or pleas of the defendant to the offense  
21 charged;
- 22 4. Whether the case was tried before a jury or a jury  
23 was waived;
- 24 5. The submission of the evidence, if any;
- 25 6. In cases tried before a jury that the jury was  
26 charged by the court;
- 27 7. The verdict or verdicts of the jury or the finding

1 or findings of the court;

2           8. In the event of a conviction that the defendant is  
3 adjudged guilty of the offense as found by the verdict of the jury  
4 or the finding of the court, and that the defendant be punished in  
5 accordance with the jury's verdict or the court's finding as to the  
6 proper punishment;

7           9. In the event of conviction where death or any  
8 punishment is assessed that the defendant be sentenced to death, a  
9 term of confinement or community supervision, or to pay a fine, as  
10 the case may be;

11           10. In the event of conviction where the imposition of  
12 sentence is suspended and the defendant is placed on community  
13 supervision, setting forth the punishment assessed, the length of  
14 community supervision, and the conditions of community  
15 supervision;

16           11. In the event of acquittal that the defendant be  
17 discharged;

18           12. The county and court in which the case was tried  
19 and, if there was a change of venue in the case, the name of the  
20 county in which the prosecution was originated;

21           13. The offense or offenses for which the defendant  
22 was convicted;

23           14. The date of the offense or offenses and degree of  
24 offense for which the defendant was convicted;

25           15. The term of sentence;

26           16. The date judgment is entered;

27           17. The date sentence is imposed;

1           18. The date sentence is to commence and any credit for  
2 time served;

3           19. The terms of any order entered pursuant to Article  
4 42.08 that the defendant's sentence is to run cumulatively or  
5 concurrently with another sentence or sentences;

6           20. The terms of any plea bargain;

7           21. Affirmative findings entered pursuant to Article  
8 42A.054(c) or (d);

9           22. The terms of any fee payment ordered under Article  
10 42.151;

11           23. The defendant's thumbprint taken in accordance  
12 with Article 38.33;

13           24. In the event that the judge orders the defendant to  
14 repay a reward or part of a reward under Articles 37.073 and 42.152,  
15 a statement of the amount of the payment or payments required to be  
16 made;

17           25. In the event that the court orders restitution to  
18 be paid to the victim, a statement of the amount of restitution  
19 ordered and:

20                   (A) the name and address of a person or agency  
21 that will accept and forward restitution payments to the victim; or

22                   (B) if the court specifically elects to have  
23 payments made directly to the crime victim, the name and permanent  
24 address of the victim at the time of judgment;

25           26. In the event that a presentence investigation is  
26 required by Subchapter F, Chapter 42A, a statement that the  
27 presentence investigation was done according to the applicable

1 provision;

2           27. In the event of conviction of an offense for which  
3 registration as a sex offender is required under Chapter 62, a  
4 statement that the registration requirement of that chapter applies  
5 to the defendant and a statement of the age of the victim of the  
6 offense;

7           28. The defendant's state identification number  
8 required by Article 66.152(a)(2) [~~Section 60.052(a)(2)~~], if that  
9 number has been assigned at the time of the judgment; and

10           29. The incident number required by Article  
11 66.152(a)(4) [~~Section 60.052(a)(4)~~], if that number has been  
12 assigned at the time of the judgment.

13           SECTION 4.03. Article 42A.507(a), Code of Criminal  
14 Procedure, is amended to read as follows:

15           (a) This article applies only to a defendant who:

16               (1) is identified as a member of a criminal street gang  
17 in an intelligence database established under Chapter 67 [~~61~~]; and

18               (2) has two or more times been previously convicted  
19 of, or received a grant of deferred adjudication community  
20 supervision or another functionally equivalent form of community  
21 supervision or probation for, a felony offense under the laws of  
22 this state, another state, or the United States.

23           SECTION 4.04. Section 3(b), Article 55.02, Code of Criminal  
24 Procedure, is amended to read as follows:

25           (b) The order of expunction entered by the court shall have  
26 attached and incorporate by reference a copy of the judgment of  
27 acquittal and shall include:

(1) the following information on the person who is the subject of the expunction order:

- (A) full name;
- (B) sex;
- (C) race;
- (D) date of birth;
- (E) driver's license number; and
- (F) social security number;

(2) the offense charged against the person who is the subject of the expunction order;

(3) the date the person who is the subject of the expunction order was arrested;

(4) the case number and court of offense; and

(5) the tracking incident number (TRN) assigned to the individual incident of arrest under Article 66.251(b)(1) ~~[60.07(b)(1)]~~ by the Department of Public Safety.

SECTION 4.05. Section 58.111, Family Code, is amended to read as follows:

Sec. 58.111. LOCAL DATA ADVISORY BOARDS. The commissioners court of each county may create a local data advisory board to perform the same duties relating to the juvenile justice information system as the duties performed by a local data advisory board in relation to the criminal history record system under Article 66.354 ~~[60.09]~~, Code of Criminal Procedure.

SECTION 4.06. Section 58.202, Family Code, is amended to read as follows:

Sec. 58.202. EXEMPTED RECORDS. The following records are

exempt from this subchapter:

(1) sex offender registration records maintained by the department or a local law enforcement agency under Chapter 62, Code of Criminal Procedure; and

(2) records relating to a criminal combination or criminal street gang maintained by the department or a local law enforcement agency under Chapter 67 [~~61~~], Code of Criminal Procedure.

SECTION 4.07. Section 411.048(a)(1), Government Code, is amended to read as follows:

(1) "Criminal justice agency" has the meaning assigned by Article 66.001 [~~60.01~~], Code of Criminal Procedure.

SECTION 4.08. Section 411.048(g), Government Code, is amended to read as follows:

(g) An individual who is the subject of information collected under this section may request that the director, the director's designee, or a court review the information to determine whether the information complies with rules adopted by the director. The review shall be conducted using the same procedure for reviewing criminal information collected under Chapter 67 [~~61~~], Code of Criminal Procedure.

SECTION 4.09. Section 411.0601, Government Code, is amended to read as follows:

Sec. 411.0601. DEFINITION. In this subchapter, "criminal justice agency" has the meaning assigned by Article 66.001 [~~60.01~~], Code of Criminal Procedure.

SECTION 4.10. Section 411.082(1), Government Code, is



1 amended to read as follows:

2 (1) "Administration of criminal justice" has the  
3 meaning assigned by Article 66.001 [~~60.01~~], Code of Criminal  
4 Procedure.

5 SECTION 4.11. Section 493.0155, Government Code, is amended  
6 to read as follows:

7 Sec. 493.0155. PROPER IDENTIFICATION OF INMATES USING  
8 ALIAS. On receipt of information from the Department of Public  
9 Safety under Article 66.105 [~~60.19~~], Code of Criminal Procedure,  
10 that a person's identifying information may have been falsely used  
11 by an inmate as the inmate's identifying information, regardless of  
12 whether the inmate is in the custody of the department, is serving a  
13 period of supervised release, or has been discharged, the  
14 department shall:

15 (1) make a reasonable effort to identify the inmate's  
16 actual identity; and

17 (2) take action to ensure that any information  
18 maintained in the department's records and files regarding the  
19 inmate reflects the inmate's use of the person's identity as a  
20 stolen alias and refers to available information concerning the  
21 inmate's actual identity.

22 SECTION 4.12. Section 508.227(a), Government Code, is  
23 amended to read as follows:

24 (a) This section applies only to a releasee who:

25 (1) is identified as a member of a criminal street gang  
26 in an intelligence database established under Chapter 67 [~~61~~], Code  
27 of Criminal Procedure; and

1           (2) has three or more times been convicted of, or  
2 received a grant of deferred adjudication community supervision or  
3 another functionally equivalent form of community supervision or  
4 probation for, a felony offense under the laws of this state,  
5 another state, or the United States.

6           SECTION 4.13. Section 509.004(b), Government Code, is  
7 amended to read as follows:

8           (b) The division shall develop an automated tracking system  
9 that:

10           (1) is capable of receiving tracking data from  
11 community supervision and corrections departments' caseload  
12 management and accounting systems;

13           (2) is capable of tracking the defendant and the  
14 sentencing event at which the defendant was placed on community  
15 supervision by name, arrest charge code, and incident number;

16           (3) provides the division with the statistical data it  
17 needs to support budget requests and satisfy requests for  
18 information; and

19           (4) is compatible with the requirements of Chapter 66  
20 [~~60~~], Code of Criminal Procedure, and the information systems used  
21 by the institutional division and the pardons and paroles division  
22 of the Texas Department of Criminal Justice.

23           SECTION 4.14. Section 244.003(b), Human Resources Code, is  
24 amended to read as follows:

25           (b) Except as provided by Section 243.051(c), these records  
26 and all other information concerning a child, including personally  
27 identifiable information, are not public and are available only

1 according to the provisions of Section 58.005, Family Code, Section  
2 244.051 of this code, and Chapter 67 [~~61~~], Code of Criminal  
3 Procedure.

4 SECTION 4.15. Section 109.001(1), Occupations Code, is  
5 amended to read as follows:

6 (1) "Administration of criminal justice" and  
7 "criminal justice agency" have the meanings assigned by Article  
8 66.001 [~~60.01~~], Code of Criminal Procedure.

9 SECTION 4.16. Section 160.101(b), Occupations Code, is  
10 amended to read as follows:

11 (b) Not later than the 30th day after the date a person  
12 described by Subsection (a) is convicted of an offense listed in  
13 that subsection or is placed on deferred adjudication for an  
14 offense listed in that subsection, the clerk of the court in which  
15 the person is convicted or placed on deferred adjudication shall  
16 prepare and forward to the Department of Public Safety the  
17 information required by Chapter 66 [~~60~~], Code of Criminal  
18 Procedure.

19 SECTION 4.17. Section 521.061(e), Transportation Code, is  
20 amended to read as follows:

21 (e) In this section, "criminal justice agency" has the  
22 meaning assigned by Article 66.001 [~~60.01~~], Code of Criminal  
23 Procedure.

#### 24 ARTICLE 5. REPEALER

25 SECTION 5.01. The following provisions of the Code of  
26 Criminal Procedure are repealed:

27 (1) Article 18.20;

- (2) Article 18.21;
- (3) Chapter 60; and
- (4) Chapter 61.

ARTICLE 6. GENERAL MATTERS

SECTION 6.01. This Act is enacted under Section 43, Article III, Texas Constitution. This Act is intended as a codification only, and no substantive change in the law is intended by this Act.

SECTION 6.02. This Act takes effect April 1, 2019.