

1 AN ACT

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

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

5 ARTICLE 1. NONSUBSTANTIVE REVISION OF CERTAIN PROVISIONS OF THE

6 CODE OF CRIMINAL PROCEDURE

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

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

10 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

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

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

7 Art. 18A.053. JURISDICTION. Except as provided by Article
8 18A.054, a judge of competent jurisdiction may act on an
9 application for an interception order if any of the following is
10 located in the administrative judicial region with respect to which
11 the judge is appointed:

- 12 (1) the site of:
13 (A) the proposed interception; or
14 (B) the interception device to be installed or
15 monitored;
16 (2) the communication device to be intercepted;
17 (3) the billing, residential, or business address of
18 the subscriber to the electronic communications service to be
19 intercepted;
20 (4) the headquarters of the law enforcement agency
21 that makes the request for or will execute the interception order;
22 or
23 (5) the headquarters of the service provider. (Code
24 Crim. Proc., Art. 18.20, Sec. 3(b).)

25 Art. 18A.054. ALTERNATE JURISDICTION. (a) An application
26 for an interception order may be made to the judge of competent
27 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

1 (C) Section 485.032;
2 (2) an offense under any of the following provisions
3 of the Penal Code:

4 (A) Section 19.02;

5 (B) Section 19.03;

6 (C) Section 20.03;

7 (D) Section 20.04;

8 (E) Chapter 20A;

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

14 (G) Section 38.11;

15 (H) Section 43.04;

16 (I) Section 43.05; or

17 (J) Section 43.26; or

18 (3) an attempt, conspiracy, or solicitation to commit
19 an offense listed in Subdivision (1) or (2). (Code Crim. Proc., Art.
20 18.20, Sec. 4.)

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

26 (1) there is probable cause to believe that a person is
27 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

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

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

5 (2) the order may be an issue. (Code Crim. Proc., Art.
6 18.20, Sec. 9(h).)

7 SUBCHAPTER D. INTERCEPTION ORDER FOR COMMUNICATION BY
8 SPECIFIED PERSON

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

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

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

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

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

25 (A) the application identifies the person
26 committing or believed to be committing the offense and whose
27 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.

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

3 SUBCHAPTER E. EMERGENCY INSTALLATION AND USE OF INTERCEPTION
4 DEVICE

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

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

9 (A) threatens another with death; or

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

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

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

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

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

23 (ii) the police chief of a police
24 department in a municipality with a population of 500,000 or more or
25 the chief's designee. (Code Crim. Proc., Art. 18.20, Secs. 1(22),
26 (23).)

27 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

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

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

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

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

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

12 (1) the denial;

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

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

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

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

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

27 (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

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

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

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

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

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

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

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

26 (c) The contents of and evidence derived from a
27 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;

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

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

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

8 (4) the number of trials resulting from interceptions;

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

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

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

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

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

25 (1) the governor;

26 (2) the lieutenant governor;

27 (3) the speaker of the house of representatives;

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

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

5 Art. 18B.052. JURISDICTION

6 Art. 18B.053. APPLICATION REQUIREMENTS

7 SUBCHAPTER C. ORDER AUTHORIZING INSTALLATION AND USE OF EQUIPMENT

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

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

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

16 Art. 18B.104. DURATION OF ORDER

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

18 SUBCHAPTER D. EMERGENCY INSTALLATION AND USE OF CERTAIN EQUIPMENT

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

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

23 Art. 18B.153. ADMISSIBILITY OF EVIDENCE OBTAINED

24 SUBCHAPTER E. MOBILE TRACKING DEVICES

25 Art. 18B.201. DEFINITION

26 Art. 18B.202. ORDER AUTHORIZING INSTALLATION AND USE
27 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
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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

1 SUBCHAPTER K. SERVICE PROVIDER POWERS AND DUTIES

2 Art. 18B.501. PRECLUSION OF NOTIFICATION

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

4 PROHIBITED

5 Art. 18B.503. REIMBURSEMENT OF COSTS

6 SUBCHAPTER L. REMEDIES

7 Art. 18B.551. CAUSE OF ACTION

8 Art. 18B.552. NO CAUSE OF ACTION

9 Art. 18B.553. EXCLUSIVITY OF REMEDIES

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

12 SUBCHAPTER A. GENERAL PROVISIONS

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

14 (1) "Authorized peace officer" means:

15 (A) a sheriff or deputy sheriff;

16 (B) a constable or deputy constable;

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

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

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

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

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

26 (H) an enforcement officer appointed by the
27 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

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

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

6 SUBCHAPTER D. EMERGENCY INSTALLATION AND USE OF CERTAIN EQUIPMENT

7 Art. 18B.151. EMERGENCY INSTALLATION AND USE OF PEN
8 REGISTER OR TRAP AND TRACE DEVICE. (a) In this article, "immediate
9 life-threatening situation" has the meaning assigned by Article
10 18A.201.

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

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

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

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

24 (2) there are sufficient grounds under this chapter on
25 which to obtain an order authorizing the installation and use of a
26 pen register or trap and trace device. (Code Crim. Proc., Art.
27 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).)

1 SUBCHAPTER E. MOBILE TRACKING DEVICES

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

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

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

12 (c) The affidavit must:

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

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

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

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

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

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

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

1 device 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

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

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

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

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

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

18 (2) by obtaining a grand jury subpoena;

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

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

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

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

24 (Code Crim. Proc., Art. 18.21, Secs. 4(a), (b).)

25 Art. 18B.352. COURT ORDER FOR GOVERNMENT ACCESS TO STORED
26 CUSTOMER DATA. (a) A court shall issue an order authorizing
27 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

1 manner described by Subsection (c).

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

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

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

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

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

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

26 Art. 18B.356. WARRANT ISSUED IN THIS STATE: COMPLIANCE
27 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

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

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

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

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

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

21 Art. 18B.406. PROCEEDINGS TO QUASH SUBPOENA OR VACATE COURT
22 ORDER. (a) Not later than the 14th day after the date a subscriber
23 or customer receives notice under Article 18B.402, the subscriber
24 or customer may file a written motion to quash the subpoena or
25 vacate the court order in the court that issued the subpoena or
26 court order. The motion must contain an affidavit or other sworn
27 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

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

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

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

12 Art. 18B.453. COMPLIANCE WITH POLICY FOR INSTALLATION AND
13 USE OF EQUIPMENT. (a) If, based on a report received under Article
14 18B.452, the department determines that a designated law
15 enforcement office or agency is not in compliance with the policy
16 adopted by the office or agency under Article 18B.251, the
17 department shall notify the office or agency in writing that the
18 office or agency, as applicable, is not in compliance.

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

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

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

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

2 SUBCHAPTER K. SERVICE PROVIDER POWERS AND DUTIES

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

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

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

15 (1) endangering the life or physical safety of an
16 individual;

17 (2) flight from prosecution;

18 (3) destruction of or tampering with evidence;

19 (4) intimidation of a potential witness; or

20 (5) otherwise seriously jeopardizing an investigation
21 or unduly delaying a trial. (Code Crim. Proc., Art. 18.21, Sec. 8.)

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

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

26 (b) Except as provided by Subsection (c), a provider of a
27 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

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

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

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

7 SUBCHAPTER L. REMEDIES

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

15 (1) injunctive relief;

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

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

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

24 (c) A civil action under this article may be presented not
25 later than the second anniversary of the date the claimant first
26 discovered or had reasonable opportunity to discover the violation.

27 (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

1 SUBCHAPTER C. COMPUTERIZED CRIMINAL HISTORY SYSTEM

2 Art. 66.101. COMPUTERIZED CRIMINAL HISTORY SYSTEM
3 DATABASE

4 Art. 66.102. INFORMATION CONTAINED IN COMPUTERIZED
5 CRIMINAL HISTORY SYSTEM

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

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

11 Art. 66.105. INFORMATION RELATED TO MISUSED IDENTITY

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

14 SUBCHAPTER D. CORRECTIONS TRACKING SYSTEM

15 Art. 66.151. CORRECTIONS TRACKING SYSTEM DATABASE

16 Art. 66.152. INFORMATION CONTAINED IN CORRECTIONS
17 TRACKING SYSTEM

18 SUBCHAPTER E. ACCESS TO INFORMATION IN CRIMINAL JUSTICE
19 INFORMATION SYSTEM

20 Art. 66.201. ACCESS TO DATABASES BY CRIMINAL JUSTICE
21 AGENCIES AND OTHER ENTITIES

22 Art. 66.202. REQUEST FOR DATA FILE FROM DATABASES

23 Art. 66.203. PUBLIC DISCLOSURE OF DATA PROHIBITED

24 SUBCHAPTER F. DATA COLLECTION AND SUBMISSION

25 Art. 66.251. UNIFORM INCIDENT FINGERPRINT CARD

26 Art. 66.252. REPORTING OF INFORMATION BY LOCAL
27 ENTITIES

1 Art. 66.253. COMPATIBILITY OF DATA

2 Art. 66.254. ELECTRONIC REPORTING OF INFORMATION

3 Art. 66.255. INFORMATION ON SUBSEQUENT ARRESTS

4 SUBCHAPTER G. DUTIES OF CRIMINAL JUSTICE AGENCIES AND CERTAIN
5 COURT CLERKS

6 Art. 66.301. DUTIES OF CRIMINAL JUSTICE AGENCIES

7 Art. 66.302. PUBLIC DISCLOSURE NOT AUTHORIZED

8 Art. 66.303. PROHIBITED ACTS

9 Art. 66.304. APPLICABILITY TO DISTRICT COURT AND
10 COUNTY COURT CLERKS

11 SUBCHAPTER H. OVERSIGHT AND REPORTING

12 Art. 66.351. BIENNIAL PLANS

13 Art. 66.352. EXAMINATION OF RECORDS AND OPERATIONS

14 Art. 66.353. MONITORING AND REPORTING DUTIES OF
15 DEPARTMENT OF PUBLIC SAFETY

16 Art. 66.354. LOCAL DATA ADVISORY BOARDS

17 SUBCHAPTER I. GRANTS

18 Art. 66.401. GRANTS FOR CRIMINAL JUSTICE PROGRAMS

19 Art. 66.402. CERTIFICATION REQUIRED

20 CHAPTER 66. CRIMINAL HISTORY RECORD SYSTEM

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Art. 66.001. DEFINITIONS. In this chapter:

23 (1) "Administration of criminal justice" means the
24 detection, apprehension, detention, pretrial release, post-trial
25 release, prosecution, adjudication, correctional supervision, or
26 rehabilitation of an offender. The term includes criminal
27 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

1 (C) the type of disposition; and

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

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

7 (1) the sentencing date;

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

10 (3) if the offender was sentenced to confinement:

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

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

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

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

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

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

26 (B) the offender's name, offense code, and
27 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

1 corresponds to a record in a non-fingerprint supported file created
2 under Subsection (a), the Department of Public Safety shall
3 transfer the record from the non-fingerprint supported file to the
4 computerized criminal history system. (Code Crim. Proc., Art.
5 60.20.)

6 SUBCHAPTER D. CORRECTIONS TRACKING SYSTEM

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

10 (b) The corrections tracking system must contain the
11 information required by this chapter. (Code Crim. Proc., Arts.
12 60.02(a), (d).)

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

- 17 (1) the offender's name;
- 18 (2) the offender's state identification number;
- 19 (3) the sentencing date;
- 20 (4) the sentence for each offense, by offense code and
21 incident number;
- 22 (5) if the offender was sentenced to imprisonment:
 - 23 (A) the unit of imprisonment;
 - 24 (B) the length of the sentence for each offense;
 - 25 and

26 (C) if multiple sentences were ordered, whether
27 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

1 INFORMATION SYSTEM

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

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

13 Art. 66.202. REQUEST FOR DATA FILE FROM DATABASES.

14 (a) The council or the Legislative Budget Board may submit to the
15 Department of Public Safety, the Texas Juvenile Justice Department,
16 and the Texas Department of Criminal Justice an annual request for a
17 data file containing data elements from the departments' systems.

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

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

26 (d) The Legislative Budget Board may submit a data file
27 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 SUBCHAPTER D. REMOVAL OF INFORMATION
2 Art. 67.151. REMOVAL OF INFORMATION RELATING TO
3 INDIVIDUAL OTHER THAN CHILD
4 Art. 67.152. REMOVAL OF INFORMATION RELATING TO CHILD
5 SUBCHAPTER E. RIGHTS OF SUBJECT OF CRIMINAL INFORMATION
6 Art. 67.201. RIGHT TO REQUEST EXISTENCE OF CRIMINAL
7 INFORMATION
8 Art. 67.202. RIGHT TO REQUEST REVIEW OF CRIMINAL
9 INFORMATION
10 Art. 67.203. JUDICIAL REVIEW
11 SUBCHAPTER F. GANG RESOURCE SYSTEM
12 Art. 67.251. ESTABLISHMENT OF GANG RESOURCE SYSTEM
13 Art. 67.252. INFORMATION INCLUDED IN GANG RESOURCE
14 SYSTEM
15 Art. 67.253. INCLUSION OF CERTAIN INFORMATION PROHIBITED
16 Art. 67.254. COLLECTION OF INFORMATION
17 Art. 67.255. USE OF INFORMATION
18 Art. 67.256. ACCESS TO INFORMATION
19 SUBCHAPTER G. TEXAS VIOLENT GANG TASK FORCE
20 Art. 67.301. DEFINITION
21 Art. 67.302. PURPOSE
22 Art. 67.303. TASK FORCE MEMBERS
23 Art. 67.304. DUTIES OF TASK FORCE
24 Art. 67.305. DUTIES OF DEPARTMENT REGARDING TASK FORCE
25 CHAPTER 67. COMPILATION OF INFORMATION PERTAINING TO COMBINATIONS
26 AND CRIMINAL STREET GANGS
27 SUBCHAPTER A. GENERAL PROVISIONS

1 Art. 67.001. DEFINITIONS. In this chapter:

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

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

6 (3) "Combination" has the meaning assigned by Section
7 71.01, Penal Code.

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

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

13 (6) "Criminal justice agency" means:

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

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

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

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

24 (9) "Intelligence database" means a collection or
25 compilation of data organized for search and retrieval to evaluate,
26 analyze, disseminate, or use intelligence information relating to a
27 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.

1 (b) The task force may take any other actions necessary to
2 accomplish the purposes of this subchapter.

3 (c) If practicable, the task force shall consult with
4 representatives from one or more United States attorneys' offices
5 in this state and with representatives from the following federal
6 agencies who are available and assigned to a duty station in this
7 state:

8 (1) the Federal Bureau of Investigation;

9 (2) the Federal Bureau of Prisons;

10 (3) the United States Drug Enforcement
11 Administration;

12 (4) United States Immigration and Customs
13 Enforcement;

14 (5) United States Customs and Border Protection;

15 (6) the Bureau of Alcohol, Tobacco, Firearms and
16 Explosives;

17 (7) the United States Marshals Service; and

18 (8) the United States Probation and Pretrial Services
19 System. (Code Crim. Proc., Arts. 61.10(c), (d), (g).)

20 Art. 67.305. DUTIES OF DEPARTMENT REGARDING TASK FORCE.
21 The department shall support the task force to assist in
22 coordinating statewide antigang initiatives. (Code Crim. Proc.,
23 Art. 61.10(e).)

24 ARTICLE 2. CONFORMING AMENDMENTS FOR ARTICLES 18.20 AND 18.21,

25 CODE OF CRIMINAL PROCEDURE: CHAPTER 16, PENAL CODE

26 SECTION 2.01. Sections 16.02(a), (b), (c), (d), (e), and
27 (e-1), Penal Code, are amended to read as follows:

1 (a) In this section:

2 (1) "Communication [~~," "computer trespasser," "covert~~
3 ~~entry," "communication]~~ common carrier," "computer trespasser,"
4 "contents," "covert entry," "electronic communication,"
5 ~~["electronic, mechanical, or other device," "immediate~~
6 ~~life-threatening situation,"]~~ "intercept," "interception device,"
7 "investigative or law enforcement officer," [~~"member of a law~~
8 ~~enforcement unit specially trained to respond to and deal with~~
9 ~~life-threatening situations,"]~~ "oral communication," "protected
10 computer," [~~"readily accessible to the general public,"]~~ and "wire
11 communication" have the meanings assigned by [~~given those terms in~~
12 Article 18A.001 [18.20], Code of Criminal Procedure.

13 (2) "Immediate life-threatening situation" and
14 "member of a law enforcement unit specially trained to respond to
15 and deal with life-threatening situations" have the meanings
16 assigned by Article 18A.201, Code of Criminal Procedure.

17 (3) "Readily accessible to the general public" means,
18 with respect to a radio communication, a communication that is not:

19 (A) scrambled or encrypted;

20 (B) transmitted using modulation techniques
21 whose essential parameters have been withheld from the public with
22 the intention of preserving the privacy of the communication;

23 (C) carried on a subcarrier or other signal
24 subsidiary to a radio transmission;

25 (D) transmitted over a communication system
26 provided by a common carrier, unless the communication is a
27 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~~

1 ~~18.21~~], Code of Criminal Procedure.

2 SECTION 2.03. Sections 16.04(a) and (e), Penal Code, are
3 amended to read as follows:

4 (a) In this section:

5 (1) "Electronic~~[, "electronic]~~ communication,"
6 ~~["electronic storage,"]~~ "user," and "wire communication" have the
7 meanings assigned by by ~~[to those terms in]~~ Article 18A.001 ~~[18.21]~~,
8 Code of Criminal Procedure.

9 (2) "Electronic storage" has the meaning assigned by
10 Article 18B.001, Code of Criminal Procedure.

11 (e) It is an affirmative defense to prosecution under
12 Subsection (b) that the conduct was authorized by:

13 (1) the provider of the wire or electronic
14 communications service;

15 (2) the user of the wire or electronic communications
16 service;

17 (3) the addressee or intended recipient of the wire or
18 electronic communication; or

19 (4) Chapter 18B ~~[Article 18.21]~~, Code of Criminal
20 Procedure.

21 SECTION 2.04. Section 16.05(a), Penal Code, is amended to
22 read as follows:

23 (a) In this section, "electronic ~~[communication,"~~
24 ~~"electronic]~~ communications service" has ~~[service," and~~
25 ~~"electronic communications system" have]~~ the meaning assigned by
26 ~~[meanings given those terms in]~~ Article 18A.001 ~~[18.20]~~, Code of
27 Criminal Procedure.

1 ARTICLE 3. OTHER CONFORMING AMENDMENTS FOR ARTICLES 18.20 AND
2 18.21, CODE OF CRIMINAL PROCEDURE

3 SECTION 3.01. Section 71.0083(b), Agriculture Code, is
4 amended to read as follows:

5 (b) An agriculture warrant may be issued only by a
6 magistrate authorized to issue a search warrant under Chapter 18,
7 18A, or 18B, Code of Criminal Procedure, only after the department
8 has exercised reasonable efforts to obtain consent to conduct a
9 search, and on application by the department accompanied by a
10 supporting affidavit that establishes probable cause for the
11 issuance of the warrant. The warrant must describe:

12 (1) the street address and municipality or the parcel
13 number and county of each place or premises subject to the warrant;
14 and

15 (2) each type of plant pest or disease that is the
16 subject of the warrant.

17 SECTION 3.02. Section 123.001(2), Civil Practice and
18 Remedies Code, is amended to read as follows:

19 (2) "Interception" means the aural acquisition of the
20 contents of a communication through the use of an interception
21 [~~electronic, mechanical, or other~~] device that is made without the
22 consent of a party to the communication, but does not include the
23 ordinary use of:

24 (A) a telephone or telegraph instrument or
25 facility or telephone and telegraph equipment;

26 (B) a hearing aid designed to correct subnormal
27 hearing to not better than normal;

1 (C) a radio, television, or other wireless
2 receiver; or

3 (D) a cable system that relays a public wireless
4 broadcast from a common antenna to a receiver.

5 SECTION 3.03. Article 18.02(b), Code of Criminal Procedure,
6 is amended to read as follows:

7 (b) For purposes of Subsection (a)(13):

8 (1) "Electronic communication" [~~,"electronic~~
9 ~~communication," "electronic storage,"~~] and "wire communication"
10 have the meanings assigned by Article 18A.001.

11 (2) "Electronic [18.20, and "electronic] customer
12 data" and "electronic storage" have [has] the meanings [meaning]
13 assigned by Article 18B.001 [18.21].

14 SECTION 3.04. Article 18.0215(d), Code of Criminal
15 Procedure, is amended to read as follows:

16 (d) Notwithstanding any other law, a peace officer may
17 search a cellular telephone or other wireless communications device
18 without a warrant if:

19 (1) the owner or possessor of the telephone or device
20 consents to the search;

21 (2) the telephone or device is reported stolen by the
22 owner or possessor; or

23 (3) the officer reasonably believes that:

24 (A) the telephone or device is in the possession
25 of a fugitive from justice for whom an arrest warrant has been
26 issued for committing a felony offense; or

27 (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

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

3 (1) disclose information about:

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

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

8 (2) are material to a criminal investigation of an
9 escape or a potential escape or a violation of Section 38.11, Penal
10 Code.

11 (b) In this section:

12 (1) "Communication [~~"Communications]~~ common carrier"
13 means a person that:

14 (A) for a fee, provides directly to the public or
15 to certain members of the public the ability to transmit between or
16 among points specified by the person who uses that ability,
17 regardless of the technology used, information of the person's
18 choosing without change in the form or content of the information
19 transmitted; or

20 (B) is a provider that bills customers for
21 services described by Paragraph (A).

22 (2) "Electronic communications service provider"
23 means a service provider that provides to users of the service the
24 ability to send or receive wire or electronic communications, as
25 those terms are defined by Article 18A.001 [~~18.20~~], Code of
26 Criminal Procedure.

27 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 (1) the following information on the person who is the
2 subject of the expunction order:

- 3 (A) full name;
- 4 (B) sex;
- 5 (C) race;
- 6 (D) date of birth;
- 7 (E) driver's license number; and
- 8 (F) social security number;

9 (2) the offense charged against the person who is the
10 subject of the expunction order;

11 (3) the date the person who is the subject of the
12 expunction order was arrested;

13 (4) the case number and court of offense; and

14 (5) the tracking incident number (TRN) assigned to the
15 individual incident of arrest under Article 66.251(b)(1)
16 [~~60.07(b)(1)~~] by the Department of Public Safety.

17 SECTION 4.05. Section 58.111, Family Code, is amended to
18 read as follows:

19 Sec. 58.111. LOCAL DATA ADVISORY BOARDS. The commissioners
20 court of each county may create a local data advisory board to
21 perform the same duties relating to the juvenile justice
22 information system as the duties performed by a local data advisory
23 board in relation to the criminal history record system under
24 Article 66.354 [~~60.09~~], Code of Criminal Procedure.

25 SECTION 4.06. Section 58.202, Family Code, is amended to
26 read as follows:

27 Sec. 58.202. EXEMPTED RECORDS. The following records are

1 exempt from this subchapter:

2 (1) sex offender registration records maintained by
3 the department or a local law enforcement agency under Chapter 62,
4 Code of Criminal Procedure; and

5 (2) records relating to a criminal combination or
6 criminal street gang maintained by the department or a local law
7 enforcement agency under Chapter 67 [~~61~~], Code of Criminal
8 Procedure.

9 SECTION 4.07. Section 411.048(a)(1), Government Code, is
10 amended to read as follows:

11 (1) "Criminal justice agency" has the meaning assigned
12 by Article 66.001 [~~60.01~~], Code of Criminal Procedure.

13 SECTION 4.08. Section 411.048(g), Government Code, is
14 amended to read as follows:

15 (g) An individual who is the subject of information
16 collected under this section may request that the director, the
17 director's designee, or a court review the information to determine
18 whether the information complies with rules adopted by the
19 director. The review shall be conducted using the same procedure
20 for reviewing criminal information collected under Chapter 67 [~~61~~],
21 Code of Criminal Procedure.

22 SECTION 4.09. Section 411.0601, Government Code, is amended
23 to read as follows:

24 Sec. 411.0601. DEFINITION. In this subchapter, "criminal
25 justice agency" has the meaning assigned by Article 66.001 [~~60.01~~],
26 Code of Criminal Procedure.

27 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;

- 1 (2) Article 18.21;
- 2 (3) Chapter 60; and
- 3 (4) Chapter 61.

4 ARTICLE 6. GENERAL MATTERS

5 SECTION 6.01. This Act is enacted under Section 43, Article
6 III, Texas Constitution. This Act is intended as a codification
7 only, and no substantive change in the law is intended by this Act.

8 SECTION 6.02. (a) Chapter 311, Government Code (Code
9 Construction Act), applies to the construction of each provision in
10 the Code of Criminal Procedure that is enacted under Section 43,
11 Article III, Texas Constitution (authorizing the continuing
12 statutory revision program), in the same manner as to a code enacted
13 under the continuing statutory revision program, except as
14 otherwise expressly provided by the Code of Criminal Procedure.

15 (b) A reference in a law to a statute or a part of a statute
16 in the Code of Criminal Procedure enacted under Section 43, Article
17 III, Texas Constitution (authorizing the continuing statutory
18 revision program), is considered to be a reference to the part of
19 that code that revises that statute or part of that statute.

20 SECTION 6.03. This Act takes effect January 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 2931 was passed by the House on May 3, 2017, by the following vote: Yeas 144, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2931 was passed by the Senate on May 24, 2017, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor