

REVISOR'S REPORT

A NONSUBSTANTIVE REVISION
OF PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE

Submitted to the 85th Legislature
as part of the
Texas Legislative Council's
Statutory Revision Program

Austin, Texas

2017

FOREWORD

The Texas Legislative Council is required by Section 323.007, Government Code, to carry out a complete nonsubstantive revision of the Texas statutes as authorized by Section 43, Article III, Texas Constitution. The process involves reclassifying and rearranging the statutes in a more logical order, eliminating repealed, invalid, duplicative, and other ineffective provisions while employing a format and numbering system that will accommodate future expansion of the law, and improving the draftsmanship of the statutes as practicable. The revision is intended to further the legislature's stated purpose of making the statutes "more accessible, understandable, and usable" without altering the sense, meaning, or effect of the law.

Under the classification scheme adopted by the Texas Legislative Council, the statutes will eventually consist of 27 codes, each governing a different subject matter. To date, the council has produced and the legislature has enacted the Agriculture Code, Alcoholic Beverage Code, Business & Commerce Code, Civil Practice and Remedies Code, Education Code, Election Code (a substantive revision), Estates Code, Finance Code, Government Code, Health and Safety Code, Human Resources Code, Insurance Code, Labor Code, Local Government Code, Natural Resources Code, Occupations Code, Parks and Wildlife Code, Property Code, Special District Local Laws Code, Tax Code (Title 1 of which was a substantive revision), Transportation Code, Utilities Code, and Water Code. Council staff also assisted the state bar in the Business Organizations Code, Penal Code, and Family Code projects, which were substantive revisions, and revised miscellaneous criminal procedure provisions as Title 2 of the Code of Criminal Procedure. In addition, as part of its continuing statutory revision program, the council is carrying out a nonsubstantive revision of various portions of the Code of Criminal Procedure.

The revised provisions of the Code of Criminal Procedure included in this revision are placed in Title 1 of the Code of Criminal Procedure. That title is divided into chapters by subject matter and articles for distinct provisions of law. Articles are numbered decimally, with the number to the left of the decimal the same as the number of the chapter in which the article is contained. Except for certain provisions that are added to existing Chapter 1 of the Code of Criminal Procedure, the revised provisions are added as new chapters to Title 1 and include subchapters for organization. Gaps have been left in chapter and article numbering to accommodate later expansions of the law.

This revisor's report reflects the enactment of Chapter 1058 (H.B. 2931), Acts of the 85th Legislature, Regular Session, 2017, the Texas Legislative Council staff's revision of portions of the Code of Criminal Procedure. The revisor's report states the Revised Law, which is the text of the new law, and then provides the Source Law, which is the text of the former law from which the new law was derived. If further explanation of either the revised law or the source law is required, a Revisor's Note is included after the source law. All substance of the source law is revised in the

revised law or the reason for its omission is explained in a revisor's note.

Because of the extensive reorganization of many statutes, and even provisions within a statute, it may be helpful to refer to the source law for a given chapter as a whole, so that it may be read in its former context, and to refer to the disposition table, which shows where the former statutes, as revised, appear in this code. The disposition table is printed as Appendix C to the revisor's report.

The revision required conforming amendments to several statutes. These amendments, also enacted into law by Chapter 1058 (H.B. 2931), Acts of the 85th Legislature, Regular Session, 2017, are printed in Appendix A to the revisor's report. Appendix A also includes a section listing the laws repealed effective January 1, 2019, and a section stating the legislature's intent that the code be a nonsubstantive revision.

In reviewing this revisor's report, the reader should keep in mind that:

(1) Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in the Code of Criminal Procedure that is enacted under Section 43, Article III, Texas Constitution (authorizing the continuing statutory revision program), in the same manner as to a code enacted under the continuing statutory revision program, except as otherwise expressly provided by the Code of Criminal Procedure. Chapter 311 sets out certain principles of statutory construction applicable to the revised law and also provides some definitions. The chapter is printed as Appendix B to this report.

(2) The proposed provisions are written in modern American English. Where possible, the present tense is used, the active voice is used in preference to the passive voice, and the singular is used in preference to the plural.

(3) This is a nonsubstantive revision. The Texas Legislative Council staff's authority does not include improving the substance of the source law. The sole purpose of the revision is to compile all the relevant law, arrange it in a logical fashion, and rewrite it without altering its sense, meaning, or legal effect. If a particular source law statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity is preserved.

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17	(1)	"Access," "computer," "computer network,"	
18		"computer system," and "effective consent" have the meanings	
19		assigned by Section 33.01, Penal Code.	
20	(2)	"Aggrieved person" means a person who was a party	
21		to an intercepted wire, oral, or electronic communication or a	
22		person against whom the interception was directed.	
23	(3)	"Aural transfer" means a transfer containing the	
24		human voice at any point between and including the point of origin	
25		and the point of reception.	
26	(4)	"Communication common carrier" means a person	
27		engaged as a common carrier for hire in the transmission of wire or	
28		electronic communications.	
29	(5)	"Computer trespasser" means a person who accesses	
30		a protected computer without effective consent of the owner and has	
31		no reasonable expectation of privacy in a communication transmitted	
32		to, through, or from the protected computer. The term does not	
33		include a person who accesses the protected computer under an	
34		existing contractual relationship with the owner or operator of the	

1 computer.

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

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

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

10 (9) "Director" means:

11 (A) the public safety director of the department;
12 or

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

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

20 (A) a wire or oral communication;

21 (B) a communication made through a tone-only
22 paging device; or

23 (C) a communication from a tracking device.

24 (11) "Electronic communications service" means a
25 service that provides to users of the service the ability to send or
26 receive wire or electronic communications.

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

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

32 (14) "Interception device" means an electronic,
33 mechanical, or other device that may be used for the nonconsensual
34 interception of wire, oral, or electronic communications. The term

1 does not include a telephone or telegraph instrument, the equipment
2 or a facility used for the transmission of electronic
3 communications, or a component of the equipment or a facility used
4 for the transmission of electronic communications if the
5 instrument, equipment, facility, or component is:

6 (A) provided to a subscriber or user by a
7 provider of a wire or electronic communications service in the
8 ordinary course of the service provider's business and used by the
9 subscriber or user in the ordinary course of the subscriber's or
10 user's business;

11 (B) provided by a subscriber or user for
12 connection to the facilities of a wire or electronic communications
13 service for use in the ordinary course of the subscriber's or user's
14 business;

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

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

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

21 (16) "Investigative or law enforcement officer"
22 means:

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

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

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

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

32 (19) "Oral communication" means a communication
33 uttered by a person exhibiting an expectation that the
34 communication is not subject to interception under circumstances

1 justifying that expectation. The term does not include an
2 electronic communication.

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

7 (21) "Protected computer" means a computer, computer
8 network, or computer system that is:

9 (A) owned by a financial institution or
10 governmental entity; or

11 (B) used by or for a financial institution or
12 governmental entity, if conduct constituting an offense affects
13 that use.

14 (22) "Residence" means a structure or the portion of a
15 structure used as a person's home or fixed place of habitation to
16 which the person indicates an intent to return after a temporary
17 absence.

18 (23) "User" means a person who uses an electronic
19 communications service and is authorized by the service provider to
20 use the service.

21 (24) "Wire communication" means an aural transfer made
22 wholly or partly through the use of facilities for the transmission
23 of communications by the aid of wire, cable, or other similar
24 connection between the point of origin and the point of reception,
25 including the use of the connection in a switching station, if those
26 facilities are provided or operated by a person authorized to
27 provide or operate the facilities for the transmission of
28 communications as a communication common carrier. (Code Crim.
29 Proc., Art. 18.20, Secs. 1(1), (2), (3), (4), (5), (6), (7) (part),
30 (8), (9), (10), (11), (12), (13), (14), (15), (16), (18), (21),
31 (24), (25), (26); New.)

32 Source Law

33 Sec. 1. DEFINITIONS. In this article:

34 (1) "Wire communication" means an aural
35 transfer made in whole or in part through the use of

1 facilities for the transmission of communications by
2 the aid of wire, cable, or other like connection
3 between the point of origin and the point of reception,
4 including the use of such a connection in a switching
5 station, furnished or operated by a person authorized
6 to engage in providing or operating the facilities for
7 the transmission of communications as a communications
8 common carrier.

9 (2) "Oral communication" means an oral
10 communication uttered by a person exhibiting an
11 expectation that the communication is not subject to
12 interception under circumstances justifying that
13 expectation. The term does not include an electronic
14 communication.

15 (3) "Intercept" means the aural or other
16 acquisition of the contents of a wire, oral, or
17 electronic communication through the use of an
18 electronic, mechanical, or other device.

19 (4) "Electronic, mechanical, or other
20 device" means a device that may be used for the
21 nonconsensual interception of wire, oral, or
22 electronic communications. The term does not include
23 a telephone or telegraph instrument, the equipment or
24 a facility used for the transmission of electronic
25 communications, or a component of the equipment or a
26 facility used for the transmission of electronic
27 communications if the instrument, equipment,
28 facility, or component is:

29 (A) furnished to the subscriber or
30 user by a provider of wire or electronic
31 communications service in the ordinary course of the
32 provider's business and being used by the subscriber or
33 user in the ordinary course of its business;

34 (B) furnished by a subscriber or user
35 for connection to the facilities of a wire or
36 electronic communications service for use in the
37 ordinary course of the subscriber's or user's business;

38 (C) being used by a communications
39 common carrier in the ordinary course of its business;
40 or

41 (D) being used by an investigative or
42 law enforcement officer in the ordinary course of the
43 officer's duties.

44 (5) "Investigative or law enforcement
45 officer" means an officer of this state or of a
46 political subdivision of this state who is empowered
47 by law to conduct investigations of or to make arrests
48 for offenses enumerated in Section 4 of this article or
49 an attorney authorized by law to prosecute or
50 participate in the prosecution of the enumerated
51 offenses.

52 (6) "Contents," when used with respect to
53 a wire, oral, or electronic communication, includes
54 any information concerning the substance, purport, or
55 meaning of that communication.

56 (7) "Judge of competent jurisdiction"
57 means a judge [from the panel of nine active district
58 judges with criminal jurisdiction appointed by the
59 presiding judge of the court of criminal appeals] as
60 provided by Section 3 of this article.

61 (8) "Prosecutor" means a district
62 attorney, criminal district attorney, or county
63 attorney performing the duties of a district attorney,
64 with jurisdiction in the county within an
65 administrative judicial district described by Section
66 3(b).

67 (9) "Director" means the director of the
68 Department of Public Safety or, if the director is

absent or unable to serve, the assistant director of the Department of Public Safety.

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

(11) "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.

(12) "Covert entry" means any entry into or onto premises which if made without a court order allowing such an entry under this Act, would be a violation of the Penal Code.

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

(14) "Pen register," "ESN reader," "trap and trace device," and "mobile tracking device" have the meanings assigned by Article 18.21.

(15) "Electronic communication" means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. The term does not include:

- (A) a wire or oral communication;
- (B) a communication made through a tone-only paging device; or
- (C) a communication from a tracking device.

(16) "User" means a person who uses an electronic communications service and is authorized by the provider of the service to use the service.

(18) "Electronic communications service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.

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

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

(25) "Computer trespasser" means a person who:

(A) is accessing a protected computer without effective consent of the owner; and

(B) has no reasonable expectation of privacy in any communication transmitted to, through, or from the protected computer. The term does not include a person who accesses the computer under an existing contractual relationship with the owner or operator of the protected computer.

(26) "Protected computer" means a computer, computer network, or computer system that is:

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

(B) used by or for a financial institution or governmental entity and conduct constituting an offense affects that use.

Revisor's Note

(1) Section 1(1), Article 18.20, Code of Criminal Procedure, refers to a "communications common carrier." Throughout this chapter, the revised law substitutes "communication common carrier" for "communications common carrier" for clarity and consistency in the terminology used within the chapter and because "communication common carrier" is the defined term under Section 1(10), Article 18.20, Code of Criminal Procedure, revised as Subdivision (4) of this article.

(2) Section 1(4), Article 18.20, Code of Criminal Procedure, defines the term "[e]lectronic, mechanical, or other device." Throughout this chapter, the revised law substitutes "interception device" for the defined term because "interception device" is a more accurate description of the purpose and function of the device.

(3) Section 1(5), Article 18.20, Code of Criminal Procedure, refers to an officer "empowered by law" to conduct certain investigations and to make arrests for certain offenses. The revised law substitutes "authorized by law" for "empowered by law" because, in context, the language is synonymous and the former is more commonly used.

(4) Section 1(7), Article 18.20, Code of Criminal Procedure, defines "judge of competent jurisdiction," in part, as a judge appointed under Section 3, Article 18.20, Code of Criminal Procedure. The relevant portion of Section 3, Article 18.20, Code of Criminal Procedure, referring to the appointment of a judge as the judge of competent jurisdiction is Section 3(a), which is revised in Article 18A.051 of the revised law in combination with the remaining

1 portion of Section 1(7), Article 18.20, Code of
2 Criminal Procedure. The revised law is drafted
3 accordingly.

4 (5) Section 1(8), Article 18.20, Code of
5 Criminal Procedure, refers to an "administrative
6 judicial district." Throughout this chapter, the
7 revised law substitutes "administrative judicial
8 region" for "administrative judicial district"
9 because the terms are synonymous and "administrative
10 judicial region" is the term used in Subchapter C,
11 Chapter 74, Government Code.

12 (6) Section 1(9), Article 18.20, Code of
13 Criminal Procedure, refers to the "director" of the
14 Department of Public Safety. The revised law
15 substitutes "public safety director" for "director" to
16 conform with the terminology used in Section 411.001,
17 Government Code.

18 (7) Section 1(12), Article 18.20, Code of
19 Criminal Procedure, refers to an entry made without a
20 court order allowing the entry under "this Act,"
21 meaning Chapter 275 (H.B. 360), Acts of the 67th
22 Legislature, Regular Session, 1981. The revised law
23 substitutes "this chapter" for "this Act" because the
24 provisions of Chapter 275 (H.B. 360), Acts of the 67th
25 Legislature, Regular Session, 1981, relating to a
26 court order authorizing an entry under that Act are
27 revised as various provisions of this chapter. (See,
28 e.g., Section 9, Article 18.20, Code of Criminal
29 Procedure, revised in Subchapter C of this chapter.)

30 (8) Section 1(14), Article 18.20, Code of
31 Criminal Procedure, provides that "[p]en register,"
32 "ESN reader," and "trap and trace device" have the
33 meanings assigned by Article 18.21, Code of Criminal
34 Procedure. The relevant provision of Article 18.21

1 that defines those terms is Section 1, revised as
2 Article 18B.001, Code of Criminal Procedure. The
3 revised law is drafted accordingly.

4 (9) Section 1(14), Article 18.20, Code of
5 Criminal Procedure, provides that "mobile tracking
6 device" has the meaning assigned by Article 18.21,
7 Code of Criminal Procedure. The relevant provision of
8 Article 18.21 that defines that term is Section 1(5),
9 revised as Article 18B.201, Code of Criminal
10 Procedure. The revised law is drafted accordingly.

11 (10) Section 1(15), Article 18.20, Code of
12 Criminal Procedure, refers to a transfer of signs,
13 signals, writing, images, sounds, data, or
14 intelligence "of any nature." The revised law omits
15 the phrase as unnecessary because the quoted language
16 does not add to the clear meaning of the law.

17 (11) Sections 1(17) and (20), Article 18.20,
18 Code of Criminal Procedure, define the terms
19 "[e]lectronic communications system" and "electronic
20 storage," respectively. The revised law for this
21 chapter omits those definitions because "electronic
22 communications system" is not used in Article 18.20
23 and "electronic storage" is only used within the
24 definition of "electronic communications system."
25 However, Section 1, Article 18.21, Code of Criminal
26 Procedure, revised as Article 18B.001 of that code,
27 incorporates the definition of "electronic
28 communications system" by reference for purposes of
29 the definition of "remote computing service" under
30 Section 1(8), Article 18.21, revised as Article
31 18B.001(12). Accordingly, the definitions of
32 "electronic communications system" and "electronic
33 storage" are omitted from this chapter and included in
34 the revised law for Chapter 18B as Articles 18B.001(6)

1 and (8), respectively.

2 (12) Section 1(19), Article 18.20, Code of
3 Criminal Procedure, defines the term "[r]eadily
4 accessible to the general public." The revised law for
5 this chapter omits that definition because the term is
6 not used in Article 18.20. However, Section 16.02,
7 Penal Code, incorporates the definition by reference
8 for purposes of that section. (See Sections 16.02(a)
9 and (c)(7) and (8), Penal Code.) Accordingly, this
10 chapter omits that definition but Section 16.02, Penal
11 Code, is revised by conforming amendment to include
12 the definition. The omitted law reads:

13 (19) "Readily accessible to the
14 general public" means, with respect to a
15 radio communication, a communication that
16 is not:

17 (A) scrambled or
18 encrypted;

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

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

27 (D) transmitted over a
28 communication system provided by a common
29 carrier, unless the communication is a
30 tone-only paging system communication;

31 (E) transmitted on
32 frequencies allocated under Part 25,
33 Subpart D, E, or F of Part 74, or Part 94 of
34 the rules of the Federal Communications
35 Commission, unless, in the case of a
36 communication transmitted on a frequency
37 allocated under Part 74 that is not
38 exclusively allocated to broadcast
39 auxiliary services, the communication is a
40 two-way voice communication by radio; or

41 (F) an electronic
42 communication.

43 (13) The revised law adds a definition of
44 "department" for the convenience of the reader and to
45 avoid the frequent, unnecessary repetition of the
46 substance of the definition.

47 (14) Article 18.20, Code of Criminal Procedure,
48 contains frequent references to an "order authorizing

1 interception of wire, oral, or electronic
2 communications" (see, e.g., Sections 4, 6(a) and (b),
3 8(a), and 9(b), (c), and (h)) and to similar phrases
4 with the same meaning that refer to or describe such an
5 order (see, e.g., Sections 3(b)(4), 8A(b), (d), and
6 (e), and 9(a) and (g)). The revised law adds a
7 definition of "interception order" for drafting
8 convenience and to avoid the frequent, unnecessary
9 repetition of the substance of the definition.

10 Revised Law

11 Art. 18A.002. NONAPPLICABILITY. This chapter does not
12 apply to conduct described as an affirmative defense under Section
13 16.02(c), Penal Code, except as otherwise specifically provided by
14 that section. (Code Crim. Proc., Art. 18.20, Sec. 17.)

15 Source Law

16 Sec. 17. NONAPPLICABILITY. This article does
17 not apply to conduct described as an affirmative
18 defense under Section 16.02(c), Penal Code, except as
19 otherwise specifically provided by that section.

20 SUBCHAPTER B. APPLICATION FOR INTERCEPTION ORDER

21 Revised Law

22 Art. 18A.051. JUDGE OF COMPETENT JURISDICTION. (a) For
23 purposes of this chapter, a judge of competent jurisdiction is a
24 judge from the panel of nine active district judges with criminal
25 jurisdiction who is appointed by the presiding judge of the court of
26 criminal appeals under this article.

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

32 (c) The presiding judge shall fill vacancies as those
33 vacancies occur in the same manner. (Code Crim. Proc., Art. 18.20,
34 Secs. 1(7), 3(a).)

Source Law

[Sec. 1]

(7) "Judge of competent jurisdiction" means a judge from the panel of nine active district judges with criminal jurisdiction appointed by the presiding judge of the court of criminal appeals as provided by Section 3 of this article.

Sec. 3. JUDGES AUTHORIZED TO CONSIDER INTERCEPTION APPLICATIONS. (a) The presiding judge of the court of criminal appeals, by order filed with the clerk of that court, shall appoint one district judge from each of the administrative judicial districts of this state to serve at his pleasure as the judge of competent jurisdiction within that administrative judicial district. The presiding judge shall fill vacancies, as they occur, in the same manner.

Revised Law

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

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

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

(d) A prosecutor may file the application requested under Subsection (b) only after a written positive finding by the director on all of the requirements provided by Subsection (c).

(Code Crim. Proc., Art. 18.20, Sec. 6.)

Source Law

Sec. 6. REQUEST FOR APPLICATION FOR INTERCEPTION. (a) The director may, based on written affidavits, request in writing that a prosecutor apply for an order authorizing interception of wire, oral, or electronic communications.

(b) The head of a local law enforcement agency or, if the head of the local law enforcement agency is absent or unable to serve, the acting head of the local law enforcement agency may, based on written affidavits, request in writing that a prosecutor apply for an order authorizing interception of wire, oral, or electronic communications. Prior to the requesting of an application under this subsection, the head of a local law enforcement agency must submit the request and supporting affidavits to the director, who shall make a finding in writing whether the request and supporting affidavits establish that other investigative procedures have been tried and failed or they reasonably appear unlikely to succeed or to be too dangerous if tried, is feasible, is justifiable, and whether the Department of Public Safety has the necessary resources available. The prosecutor may file the application only after a written positive finding on all the above requirements by the director.

Revised Law

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

(1) the site of:

(A) the proposed interception; or

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

(2) the communication device to be intercepted;

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

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

or

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

1 (5) include a statement of the period for which the
2 interception is required to be maintained and, if the nature of the
3 investigation indicates that the interception order should not
4 automatically terminate when the described type of communication is
5 first obtained, a particular description of facts establishing
6 probable cause to believe that additional communications of the
7 same type will occur after the described type of communication is
8 obtained;

9 (6) include a statement whether a covert entry will be
10 necessary to properly and safely install wiretapping, electronic
11 surveillance, or eavesdropping equipment and, if a covert entry is
12 requested, a statement as to why a covert entry is necessary and
13 proper under the facts of the particular investigation, including a
14 complete statement as to whether other investigative techniques
15 have been attempted and have failed or why those techniques
16 reasonably appear to be unlikely to succeed or to be too dangerous
17 if attempted or are not feasible under the circumstances or
18 exigencies of time;

19 (7) include a complete statement of the facts
20 concerning all applications known to the prosecutor that have been
21 previously made to a judge for an interception order involving any
22 persons, facilities, or places specified in the application and of
23 the action taken by the judge on each application;

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

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

31 (c) In an ex parte hearing in chambers, the judge may
32 require additional testimony or documentary evidence to support the
33 application. The testimony or documentary evidence must be
34 preserved as part of the application. (Code Crim. Proc., Art.

1 18.20, Secs. 3(c) (part), 8.)

2 Source Law

3 [Sec. 3]

4 (c) To be valid, the application must
5 fully explain the circumstances justifying
6 application under this subsection.

7 Sec. 8. APPLICATION FOR INTERCEPTION
8 AUTHORIZATION. (a) To be valid, an application for an
9 order authorizing the interception of a wire, oral, or
10 electronic communication must be made in writing under
11 oath to a judge of competent jurisdiction and must
12 state the applicant's authority to make the
13 application. An applicant must include the following
14 information in the application:

15 (1) the identity of the prosecutor making
16 the application and of the officer requesting the
17 application;

18 (2) a full and complete statement of the
19 facts and circumstances relied on by the applicant to
20 justify his belief that an order should be issued,
21 including:

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

25 (B) a particular description of the
26 nature and location of the facilities from which or the
27 place where the communication is to be intercepted;

28 (C) a particular description of the
29 type of communication sought to be intercepted; and

30 (D) the identity of the person, if
31 known, committing the offense and whose communications
32 are to be intercepted;

33 (3) a full and complete statement as to
34 whether or not other investigative procedures have
35 been tried and failed or why they reasonably appear to
36 be unlikely to succeed or to be too dangerous if tried;

37 (4) a statement of the period of time for
38 which the interception is required to be maintained
39 and, if the nature of the investigation is such that
40 the authorization for interception should not
41 automatically terminate when the described type of
42 communication is first obtained, a particular
43 description of facts establishing probable cause to
44 believe that additional communications of the same
45 type will occur after the described type of
46 communication is obtained;

47 (5) a statement whether a covert entry
48 will be necessary to properly and safely install the
49 wiretapping or electronic surveillance or
50 eavesdropping equipment and, if a covert entry is
51 requested, a statement as to why such an entry is
52 necessary and proper under the facts of the particular
53 investigation, including a full and complete statement
54 as to whether other investigative techniques have been
55 tried and have failed or why they reasonably appear to
56 be unlikely to succeed or to be too dangerous if tried
57 or are not feasible under the circumstances or
58 exigencies of time;

59 (6) a full and complete statement of the
60 facts concerning all applications known to the
61 prosecutor making the application that have been
62 previously made to a judge for authorization to
63 intercept wire, oral, or electronic communications
64 involving any of the persons, facilities, or places

1 specified in the application and of the action taken by
2 the judge on each application; and

3 (7) if the application is for the
4 extension of an order, a statement setting forth the
5 results already obtained from the interception or a
6 reasonable explanation of the failure to obtain
7 results.

8 (b) The judge may, in an ex parte hearing in
9 chambers, require additional testimony or documentary
10 evidence in support of the application, and such
11 testimony or documentary evidence shall be preserved
12 as part of the application.

13 Revisor's Note

14 (1) Sections 3(c) and 8(a), Article 18.20, Code
15 of Criminal Procedure, state that an application
16 "must" be submitted in a certain manner and include
17 certain information in order "[t]o be valid." The
18 provisions of Sections 3(c) and 8(a) that specify the
19 manner in which the application must be submitted and
20 the contents of the application are sufficient to
21 establish the relevant requirements. Also, Section
22 311.016(3), Government Code (Code Construction Act),
23 provides that the definition of "must" creates or
24 recognizes a condition precedent. The Code
25 Construction Act applies to Article 18.20, Code of
26 Criminal Procedure, and the other provisions of that
27 code to the extent that those provisions are amended or
28 reenacted by the 60th or subsequent legislatures. See
29 Ex parte Torres, 943 S.W.2d 469, 473 n.5 (Tex. Crim.
30 App. 1997). For those reasons, it is unnecessary to
31 additionally state that the application must satisfy
32 the relevant requirements in order "to be valid." The
33 revised law is drafted accordingly.

34 (2) Section 3(c), Article 18.20, Code of
35 Criminal Procedure, provides that "the application,"
36 if made to a judge of competent jurisdiction in an
37 adjacent administrative judicial region, must fully
38 explain the circumstances justifying "application
39 under this subsection." The provisions of Section
40 3(c), Article 18.20, Code of Criminal Procedure,

1 relating to the filing of an application in an adjacent
2 administrative judicial region and the circumstances
3 justifying the application are revised in this chapter
4 as Article 18.054, and the revised law is drafted
5 accordingly.

6 (3) Section 8(a), Article 18.20, Code of
7 Criminal Procedure, refers to an "applicant" making an
8 application for an interception order. Throughout
9 this chapter, the revised law substitutes "prosecutor"
10 for "applicant" because it is clear from Sections 6 and
11 8(a)(1), Article 18.20, Code of Criminal Procedure,
12 that the person who applies for the interception order
13 is a prosecutor.

14 (4) Sections 8(a)(2), (3), (5), and (6), Article
15 18.20, Code of Criminal Procedure, refer to a "full and
16 complete" statement. The revised law omits "full"
17 because, in context, "full" is included within the
18 meaning of "complete."

19 (5) Section 8(a)(2)(B), Article 18.20, Code of
20 Criminal Procedure, requires an applicant for an
21 interception order to include a description of the
22 facility or place where a communication is to be
23 intercepted. For the convenience of the reader, the
24 revised law adds "except as otherwise provided by this
25 chapter" to indicate to the reader that exceptions to
26 that requirement are contained in the chapter. (See,
27 e.g., Section 9A, Article 18.20, Code of Criminal
28 Procedure, revised as Subchapter D of this chapter.)

29 SUBCHAPTER C. ISSUANCE OF INTERCEPTION ORDER AND RELATED ORDERS

30 Revised Law

31 Art. 18A.101. OFFENSES FOR WHICH INTERCEPTION ORDER MAY BE
32 ISSUED. A judge of competent jurisdiction may issue an
33 interception order only if the prosecutor applying for the order
34 shows probable cause to believe that the interception will provide

1 evidence of the commission of:

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

4 (A) Chapter 481, other than felony possession of
5 marihuana;

6 (B) Chapter 483; or

7 (C) Section 485.032;

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

10 (A) Section 19.02;

11 (B) Section 19.03;

12 (C) Section 20.03;

13 (D) Section 20.04;

14 (E) Chapter 20A;

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

20 (G) Section 38.11;

21 (H) Section 43.04;

22 (I) Section 43.05; or

23 (J) Section 43.26; or

24 (3) an attempt, conspiracy, or solicitation to commit
25 an offense listed in Subdivision (1) or (2). (Code Crim. Proc., Art.
26 18.20, Sec. 4.)

27 Source Law

28 Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE
29 AUTHORIZED. A judge of competent jurisdiction may
30 issue an order authorizing interception of wire, oral,
31 or electronic communications only if the prosecutor
32 applying for the order shows probable cause to believe
33 that the interception will provide evidence of the
34 commission of:

35 (1) a felony under Section 19.02, 19.03,
36 or 43.26, Penal Code;

37 (2) a felony under:

38 (A) Chapter 481, Health and Safety
39 Code, other than felony possession of marihuana;

40 (B) Section 485.032, Health and

1 Safety Code; or
2 (C) Chapter 483, Health and Safety
3 Code;
4 (3) an offense under Section 20.03 or
5 20.04, Penal Code;
6 (4) an offense under Chapter 20A, Penal
7 Code;
8 (5) an offense under Chapter 34, Penal
9 Code, if the criminal activity giving rise to the
10 proceeds involves the commission of an offense under
11 Title 5, Penal Code, or an offense under federal law or
12 the laws of another state containing elements that are
13 substantially similar to the elements of an offense
14 under Title 5;
15 (6) an offense under Section 38.11, Penal
16 Code;
17 (7) an offense under Section 43.04 or
18 43.05, Penal Code; or
19 (8) an attempt, conspiracy, or
20 solicitation to commit an offense listed in this
21 section.

22 Revisor's Note

23 Section 4(1), Article 18.20, Code of Criminal
24 Procedure, refers to a "felony" under Section 19.02,
25 19.03, or 43.26, Penal Code. The revised law
26 substitutes "offense" for "felony" because Section
27 4(1) uses "felony" to distinguish between felony and
28 misdemeanor offenses and it is unnecessary to make
29 this distinction with respect to an offense under
30 Section 19.02, 19.03, or 43.26, Penal Code, because
31 all offenses under those sections are felonies.

32 Revised Law

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

38 (1) there is probable cause to believe that a person is
39 committing, has committed, or is about to commit a particular
40 offense described by Article 18A.101;

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

44 (3) normal investigative procedures have been

1 attempted and have failed or reasonably appear to be unlikely to
2 succeed or to be too dangerous if attempted;

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

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

12 Source Law

13 Sec. 9. ACTION ON APPLICATION FOR INTERCEPTION
14 ORDER. (a) On receipt of an application, the judge
15 may enter an ex parte order, as requested or as
16 modified, authorizing interception of wire, oral, or
17 electronic communications if the judge determines from
18 the evidence submitted by the applicant that:

19 (1) there is probable cause to believe
20 that a person is committing, has committed, or is about
21 to commit a particular offense enumerated in Section 4
22 of this article;

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

26 (3) normal investigative procedures have
27 been tried and have failed or reasonably appear to be
28 unlikely to succeed or to be too dangerous if tried;

29 (4) there is probable cause to believe
30 that the facilities from which or the place where the
31 wire, oral, or electronic communications are to be
32 intercepted are being used or are about to be used in
33 connection with the commission of an offense or are
34 leased to, listed in the name of, or commonly used by
35 the person; and

36 (5) a covert entry is or is not necessary
37 to properly and safely install the wiretapping or
38 electronic surveillance or eavesdropping equipment.

39 Revisor's Note

40 (1) Section 9(a), Article 18.20, Code of
41 Criminal Procedure, provides that a judge may enter an
42 interception order "[o]n receipt of an application."
43 For the convenience of the reader, the revised law adds
44 a reference to Subchapter B, which contains the
45 requirements for an application for an interception
46 order.

1 communication is in code or a foreign language and an expert in that
2 code or language is not reasonably available during the period of
3 interception, minimization may be accomplished as soon as
4 practicable after the interception. (Code Crim. Proc., Art. 18.20,
5 Secs. 9(b), (d) (part).)

6 Source Law

7 (b) An order authorizing the interception of a
8 wire, oral, or electronic communication must specify:

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

11 (2) the nature and location of the
12 communications facilities as to which or the place
13 where authority to intercept is granted;

14 (3) a particular description of the type
15 of communication sought to be intercepted and a
16 statement of the particular offense to which it
17 relates;

18 (4) the identity of the officer making the
19 request and the identity of the prosecutor;

20 (5) the time during which the interception
21 is authorized, including a statement of whether or not
22 the interception will automatically terminate when the
23 described communication is first obtained; and

24 (6) whether or not a covert entry or
25 surreptitious entry is necessary to properly and
26 safely install wiretapping, electronic surveillance,
27 or eavesdropping equipment.

28 (d) [An order entered pursuant to this section
29 may not authorize the interception of a wire, oral, or
30 electronic communication for longer than is necessary
31 to achieve the objective of the authorization and in no
32 event may it authorize interception for more than 30
33 days.] . . . To be valid, each order and extension of
34 an order must provide that the authorization to
35 intercept be executed as soon as practicable, be
36 conducted in a way that minimizes the interception of
37 communications not otherwise subject to interception
38 under this article, and terminate on obtaining the
39 authorized objective or within 30 days, whichever
40 occurs sooner. If the intercepted communication is in
41 code or a foreign language and an expert in that code
42 or language is not reasonably available during the
43 period of interception, minimization may be
44 accomplished as soon as practicable after the
45 interception.

46 Revisor's Note

47 (1) Section 9(b)(2), Article 18.20, Code of
48 Criminal Procedure, requires that an interception
49 order must specify the nature and location of the
50 facility or place with respect to which authority to
51 intercept a communication is granted. The revised law
52 adds "except as otherwise provided by this chapter"

1 for the reason stated in Revisor's Note (5) to Article
2 18A.055.

3 (2) Section 9(d), Article 18.20, Code of
4 Criminal Procedure, refers to "each order and
5 extension of an order" and provides that the
6 "authorization to intercept be executed as soon as
7 practicable" and "be conducted in a way that minimizes
8 the interception of communications" not subject to the
9 order. The first sentence of Section 9(d) refers to an
10 "order entered pursuant to this section" and specifies
11 that the order "may not authorize the interception of a
12 wire, oral, or electronic communication" for longer
13 than a certain period. Based on its function relating
14 to the interception of communications, the order
15 referenced in the penultimate sentence of Section 9(d)
16 is clearly an interception order and not a separate
17 order such as that described by Section 9(c), Article
18 18.20, Code of Criminal Procedure, revised in relevant
19 part as Article 18A.106 of this chapter. The revised
20 law is drafted accordingly.

21 (3) Section 9(d), Article 18.20, Code of
22 Criminal Procedure, provides that for an interception
23 order and each extension of the order "[t]o be valid,"
24 the order or extension "must" contain certain
25 provisions concerning the execution, manner of
26 conducting, and termination of the order or extension.
27 The provisions of Section 9(d) that specify the
28 contents of the order or extension are sufficient to
29 establish the relevant requirements. The revised law
30 omits the phrase "to be valid" for the reason stated in
31 Revisor's Note (1) to Article 18A.055.

32 Revised Law

33 Art. 18A.104. LIMITATION ON COVERT ENTRY. (a) An
34 interception order may not authorize a covert entry for the purpose

1 of intercepting an oral communication unless:

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

4 (A) that:

5 (i) the premises into or onto which the
6 covert entry is authorized or the person whose communications are
7 to be obtained has been the subject of a pen register previously
8 authorized in connection with the same investigation;

9 (ii) the premises into or onto which the
10 covert entry is authorized or the person whose communications are
11 to be obtained has been the subject of an interception of wire or
12 electronic communications previously authorized in connection with
13 the same investigation; and

14 (iii) the procedures under Subparagraphs
15 (i) and (ii) have failed; or

16 (B) that the procedures under Paragraph (A)
17 reasonably appear to be unlikely to succeed or to be too dangerous
18 if attempted or are not feasible under the circumstances or
19 exigencies of time; and

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

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

24 (B) there is probable cause to believe that the
25 persons described by Paragraph (A) are committing, have committed,
26 or are about to commit a particular offense described by Article
27 18A.101.

28 (b) An interception order may not authorize a covert entry
29 into a residence solely for the purpose of intercepting a wire or
30 electronic communication. (Code Crim. Proc., Art. 18.20, Secs.
31 9(e), (f).)

32 Source Law

33 (e) An order entered pursuant to this section
34 may not authorize a covert entry into a residence
35 solely for the purpose of intercepting a wire or

1 electronic communication.

2 (f) An order entered pursuant to this section
3 may not authorize a covert entry into or onto a
4 premises for the purpose of intercepting an oral
5 communication unless:

6 (1) the judge, in addition to making the
7 determinations required under Subsection (a) of this
8 section, determines that:

9 (A)(i) the premises into or onto
10 which the covert entry is authorized or the person
11 whose communications are to be obtained has been the
12 subject of a pen register previously authorized in
13 connection with the same investigation;

14 (ii) the premises into or onto
15 which the covert entry is authorized or the person
16 whose communications are to be obtained has been the
17 subject of an interception of wire or electronic
18 communications previously authorized in connection
19 with the same investigation; and

20 (iii) that such procedures have
21 failed; or

22 (B) that the procedures enumerated in
23 Paragraph (A) reasonably appear to be unlikely to
24 succeed or to be too dangerous if tried or are not
25 feasible under the circumstances or exigencies of
26 time; and

27 (2) the order, in addition to the matters
28 required to be specified under Subsection (b) of this
29 section, specifies that the covert entry is for the
30 purpose of intercepting oral communications of two or
31 more persons and that there is probable cause to
32 believe they are committing, have committed, or are
33 about to commit a particular offense enumerated in
34 Section 4 of this article.

35 Revisor's Note

36 Sections 9(e) and (f), Article 18.20, Code of
37 Criminal Procedure, refer to an "order entered
38 pursuant to this section," meaning Section 9, Article
39 18.20, Code of Criminal Procedure. The revised law
40 substitutes "interception order" for the quoted
41 language for the following reasons.

42 Article 18A.001(15) of this chapter defines
43 "interception order" as an order authorizing the
44 interception of a wire, oral, or electronic
45 communication. It is clear from Sections 9(e) and (f)
46 that an "order entered pursuant to this section"
47 refers to an order to intercept communications and not
48 another type of order authorized by Section 9 because
49 Section 9(e) specifies that the order is "for the
50 purpose of intercepting a wire or electronic
51 communication," and Section 9(f) specifies that the

1 order is "for the purpose of intercepting an oral
2 communication." An order to accomplish either of
3 those purposes falls within the definition of
4 "interception order."

5 Revised Law

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

7 An interception order may include an order to:

8 (1) install or use a pen register, ESN reader, trap and
9 trace device, or mobile tracking device or similar equipment that
10 combines the function of a pen register and trap and trace device;
11 or

12 (2) disclose a stored communication, information
13 subject to an administrative subpoena, or information subject to
14 access under Chapter 18B. (Code Crim. Proc., Art. 18.20, Sec. 9(c)
15 (part).)

16 Source Law

17 (c) . . . The interception order may include an
18 order to:

19 (1) install or use a pen register, ESN
20 reader, trap and trace device, or mobile tracking
21 device, or similar equipment that combines the
22 function of a pen register and trap and trace device;

23 (2) disclose a stored communication,
24 information subject to an administrative subpoena, or
25 information subject to access under Article 18.21,
26 Code of Criminal Procedure.

27 Revised Law

28 Art. 18A.106. ORDER TO THIRD PARTY TO ASSIST WITH EXECUTION

29 OF INTERCEPTION ORDER. (a) On request of the prosecutor applying
30 for an interception order, the judge may issue a separate order
31 directing a provider of a wire or electronic communications
32 service, communication common carrier, landlord, custodian, or
33 other person to provide to the prosecutor all information,
34 facilities, and technical assistance necessary to accomplish the
35 interception unobtrusively and with a minimum of interference with
36 the services that the service provider, carrier, landlord,
37 custodian, or other person is providing the person whose
38 communications are to be intercepted.

1 (b) A provider of a wire or electronic communications
2 service, communication common carrier, landlord, custodian, or
3 other person that provides facilities or technical assistance under
4 an order described by Subsection (a) is entitled to compensation,
5 at the prevailing rates, by the prosecutor for reasonable expenses
6 incurred in providing the facilities or assistance. (Code Crim.
7 Proc., Art. 18.20, Sec. 9(c) (part).)

8 Source Law

9 (c) On request of the applicant for an order
10 authorizing the interception of a wire, oral, or
11 electronic communication, the judge may issue a
12 separate order directing that a provider of wire or
13 electronic communications service, a communication
14 common carrier, landlord, custodian, or other person
15 furnish the applicant all information, facilities, and
16 technical assistance necessary to accomplish the
17 interception unobtrusively and with a minimum of
18 interference with the services that the provider,
19 carrier, landlord, custodian, or other person is
20 providing the person whose communications are to be
21 intercepted. Any provider of wire or electronic
22 communications service, communication common carrier,
23 landlord, custodian, or other person furnishing
24 facilities or technical assistance is entitled to
25 compensation by the applicant for reasonable expenses
26 incurred in providing the facilities or assistance at
27 the prevailing rates. . . .

28 Revised Law

29 Art. 18A.107. DURATION OF INTERCEPTION ORDER. An
30 interception order may not authorize the interception of a
31 communication for a period that:

32 (1) is longer than is necessary to achieve the
33 objective of the authorization; or

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

36 Source Law

37 (d) An order entered pursuant to this section
38 may not authorize the interception of a wire, oral, or
39 electronic communication for longer than is necessary
40 to achieve the objective of the authorization and in no
41 event may it authorize interception for more than 30
42 days. . . .

43 Revisor's Note

44 Section 9(d), Article 18.20, Code of Criminal
45 Procedure, refers to an "order entered pursuant to

1 this section," meaning Section 9, Article 18.20, Code
2 of Criminal Procedure. The revised law substitutes
3 "interception order" for "order" for the reason stated
4 in Revisor's Note (2) to Article 18A.103.

5 Revised Law

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

8 (b) An extension of an interception order may be granted
9 only if:

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

12 (2) the judge makes the findings required by Article
13 18A.102.

14 (c) The period of extension may not:

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

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

19 Source Law

20 (d) . . . The issuing judge may grant
21 extensions of an order, but only on application for an
22 extension made in accordance with Section 8 and the
23 court making the findings required by Subsection (a).
24 The period of extension may not be longer than the
25 authorizing judge deems necessary to achieve the
26 purposes for which it is granted and in no event may
27 the extension be for more than 30 days. . . .

28 Revisor's Note

29 (1) Section 9(d), Article 18.20, Code of
30 Criminal Procedure, refers to granting extensions of
31 an "order." The revised law substitutes "interception
32 order" for "order" for the reason stated in Revisor's
33 Note (2) to Article 18A.103.

34 (2) Section 9(d), Article 18.20, Code of
35 Criminal Procedure, refers to the "judge" granting an
36 extension of an interception order if the "court"
37 makes certain findings. The revised law substitutes

1 "judge" for "court" because in this context the terms
2 are synonymous and "judge" is the term used
3 consistently throughout Section 9.

4 Revised Law

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

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

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

11 Source Law

12 (g) Whenever an order authorizing interception
13 is entered pursuant to this article, the order may
14 require reports to the judge who issued the order
15 showing what progress has been made toward achievement
16 of the authorized objective and the need for continued
17 interception. Reports shall be made at any interval
18 the judge requires.

19 Revised Law

20 Art. 18A.110. SUBSEQUENT CRIMINAL PROSECUTION RELATED TO
21 INTERCEPTION ORDER. A judge who issues an interception order may
22 not hear a criminal prosecution in which:

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

25 (2) the order may be an issue. (Code Crim. Proc., Art.
26 18.20, Sec. 9(h).)

27 Source Law

28 (h) A judge who issues an order authorizing the
29 interception of a wire, oral, or electronic
30 communication may not hear a criminal prosecution in
31 which evidence derived from the interception may be
32 used or in which the order may be an issue.

33 SUBCHAPTER D. INTERCEPTION ORDER FOR COMMUNICATION BY
34 SPECIFIED PERSON

35 Revised Law

36 Art. 18A.151. REQUIREMENTS REGARDING INTERCEPTION ORDER
37 FOR COMMUNICATION BY SPECIFIED PERSON. The requirements of
38 Articles 18A.055(b)(3)(B) and 18A.103(a)(2) relating to the
39 specification of the facilities from which or the place where a

1 communication is to be intercepted do not apply if:

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

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

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

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

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

16 (B) a judge of competent jurisdiction finds that
17 the prosecutor has made an adequate showing of probable cause to
18 believe that the actions of the person identified in the
19 application could have the effect of preventing interception from a
20 specified facility; and

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

26 Source Law

27 Sec. 9A. INTERCEPTION ORDER FOR COMMUNICATION
28 BY SPECIFIED PERSON. (a) The requirements of Sections
29 8(a)(2)(B) and 9(b)(2) relating to the specification
30 of the facilities from which or the place where a
31 communication is to be intercepted do not apply if:

32 (1) in the case of an application for an
33 order authorizing the interception of an oral
34 communication:

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

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

1 (2) in the case of an application for an
2 order authorizing the interception of a wire or
3 electronic communication:

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

8 (B) a judge of competent jurisdiction
9 finds that the applicant has made an adequate showing
10 of probable cause to believe that the actions of the
11 person identified in the application could have the
12 effect of thwarting interception from a specified
13 facility; and

14 (C) the authority to intercept a wire
15 or electronic communication under the order is limited
16 to a period in which it is reasonable to presume that
17 the person identified in the application will be
18 reasonably proximate to the interception device.

19 Revisor's Note

20 Section 9A(a)(1)(A), Article 18.20, Code of
21 Criminal Procedure, refers to a "full and complete"
22 statement. The revised law omits "full" for the reason
23 stated in Revisor's Note (4) to Article 18A.055.

24 Revised Law

25 Art. 18A.152. IMPLEMENTATION OF INTERCEPTION ORDER. A
26 person implementing an interception order that authorizes the
27 interception of an oral communication and that, as permitted by
28 this subchapter, does not specify the facility from which or the
29 place where a communication is to be intercepted may begin
30 interception only after the person ascertains the place where the
31 communication is to be intercepted. (Code Crim. Proc., Art. 18.20,
32 Sec. 9A(b).)

33 Source Law

34 (b) A person implementing an order authorizing
35 the interception of an oral communication that, in
36 accordance with this section, does not specify the
37 facility from which or the place where a communication
38 is to be intercepted may begin interception only after
39 the person ascertains the place where the
40 communication is to be intercepted.

41 Revised Law

42 Art. 18A.153. MOTION TO MODIFY OR QUASH INTERCEPTION ORDER.
43 (a) A provider of a wire or electronic communications service that
44 receives an interception order that authorizes the interception of
45 a wire or electronic communication and that, as permitted by this
46 subchapter, does not specify the facility from which or the place

1 where a communication is to be intercepted may move the court to
2 modify or quash the order on the ground that the service provider's
3 assistance with respect to the interception cannot be performed in
4 a timely or reasonable manner.

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

7 Source Law

8 (c) A provider of wire or electronic
9 communications that receives an order authorizing the
10 interception of a wire or electronic communication
11 that, in accordance with this section, does not
12 specify the facility from which or the place where a
13 communication is to be intercepted may move the court
14 to modify or quash the order on the ground that the
15 provider's assistance with respect to the interception
16 cannot be performed in a timely or reasonable fashion.
17 On notice to the state, the court shall decide the
18 motion expeditiously.

19 Revisor's Note

20 Section 9A(c), Article 18.20, Code of Criminal
21 Procedure, refers to a "provider of wire or electronic
22 communications." The revised law substitutes
23 "provider of a wire or electronic communications
24 service" because a provider under this chapter
25 provides the service with which to send
26 communications, and not the communications
27 themselves. The revised law adds the word "service"
28 for clarity and consistency with the other references
29 in this chapter. (See, e.g., Sections 1(4)(A) and
30 9(c), Article 18.20, Code of Criminal Procedure.)

31 SUBCHAPTER E. EMERGENCY INSTALLATION AND USE OF INTERCEPTION

32 DEVICE

33 Revised Law

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

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

38 (A) threatens another with death; or

39 (B) exposes another to a substantial risk of

1 serious bodily injury.

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

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

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

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

13 (ii) the police chief of a police
14 department in a municipality with a population of 500,000 or more or
15 the chief's designee. (Code Crim. Proc., Art. 18.20, Secs. 1(22),
16 (23).)

17 Source Law

18 (22) "Immediate life-threatening
19 situation" means a hostage, barricade, or other
20 emergency situation in which a person unlawfully and
21 directly:

22 (A) threatens another with death; or
23 (B) exposes another to a substantial
24 risk of serious bodily injury.

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

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

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

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

39 (ii) the police chief of a
40 police department in a municipality with a population
41 of 500,000 or more or the police chief's designee.

42 Revised Law

43 Art. 18A.202. POSSESSION AND USE OF INTERCEPTION DEVICE IN
44 EMERGENCY SITUATION. (a) The prosecutor in a county in which an
45 interception device is to be installed or used shall designate in

1 writing each peace officer in the county, other than a commissioned
2 officer of the department, who is:

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

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

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

12 (1) reasonably believes an immediate life-threatening
13 situation exists that:

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

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

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

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

23 (A) a judge of competent jurisdiction;

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

26 (C) a judge or justice of a court of appeals or of
27 a higher court.

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

30 (1) promptly report the installation or use to the
31 prosecutor in the county in which the device is installed or used;
32 and

33 (2) within 48 hours after the installation is complete
34 or the interception begins, whichever occurs first, obtain a

1 written interception order from a judge of competent jurisdiction.

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

5 Source Law

6 Sec. 8A. EMERGENCY INSTALLATION AND USE OF
7 INTERCEPTING DEVICE. (a) The prosecutor in a county
8 in which an electronic, mechanical, or other device is
9 to be installed or used to intercept wire, oral, or
10 electronic communications shall designate in writing
11 each peace officer in the county, other than a
12 commissioned officer of the Department of Public
13 Safety, who:

14 (1) is a member of a law enforcement unit
15 specially trained to respond to and deal with
16 life-threatening situations; and

17 (2) is authorized to possess such a device
18 and responsible for the installation, operation, and
19 monitoring of the device in an immediate
20 life-threatening situation.

21 (b) A peace officer designated under Subsection
22 (a) or under Section 5(b) may possess, install,
23 operate, or monitor an electronic, mechanical, or
24 other device to intercept wire, oral, or electronic
25 communications if the officer:

26 (1) reasonably believes an immediate
27 life-threatening situation exists that:

28 (A) is within the territorial
29 jurisdiction of the officer or another officer the
30 officer is assisting; and

31 (B) requires interception of
32 communications before an order authorizing the
33 interception can, with due diligence, be obtained
34 under this section;

35 (2) reasonably believes there are
36 sufficient grounds under this section on which to
37 obtain an order authorizing the interception; and

38 (3) obtains oral or written consent to the
39 interception before beginning the interception from:

40 (A) a judge of competent
41 jurisdiction;

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

44 (C) a judge or justice of a court of
45 appeals or of a higher court.

46 (d) If an officer installs or uses a device
47 under Subsection (b), the officer shall:

48 (1) promptly report the installation or
49 use to the prosecutor in the county in which the device
50 is installed or used; and

51 (2) within 48 hours after the installation
52 is complete or the interception begins, whichever
53 occurs first, obtain a written order from a judge of
54 competent jurisdiction authorizing the interception.

55 (g) A peace officer may certify to a
56 communications common carrier that the officer is
57 acting lawfully under this section.

1 Revised Law

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

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

10 (1) 48 hours after the grant of consent; or

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

13 Source Law

14 (c) An official described in Subsection (b)(3)
15 may give oral or written consent to the interception of
16 communications under this section to provide evidence
17 of the commission of a felony, or of a threat, attempt,
18 or conspiracy to commit a felony, in an immediate
19 life-threatening situation. Oral or written consent
20 given under this section expires 48 hours after the
21 grant of consent or at the conclusion of the emergency
22 justifying the interception, whichever occurs first.

23 Revised Law

24 Art. 18A.204. WRITTEN ORDER AUTHORIZING INTERCEPTION. (a)
25 A judge of competent jurisdiction under Article 18A.051 or under
26 Article 18A.202(b) may issue a written interception order under
27 this subchapter during the 48-hour period prescribed by Article
28 18A.202(c)(2).

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

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

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

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

38 (1) the denial;

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

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

5 Source Law

6 (e) A judge of competent jurisdiction under
7 Section 3 or under Subsection (b) may issue a written
8 order authorizing interception of communications
9 under this section during the 48-hour period
10 prescribed by Subsection (d)(2). A written order
11 under this section expires on the 30th day after
12 execution of the order or at the conclusion of the
13 emergency that initially justified the interception,
14 whichever occurs first. If an order is denied or is
15 not issued within the 48-hour period, the officer
16 shall terminate use of and remove the device promptly
17 on the earlier of:

- 18 (1) the denial;
19 (2) the end of the emergency that
20 initially justified the interception; or
21 (3) the expiration of 48 hours.

22 Revisor's Note

23 Section 8A(e), Article 18.20, Code of Criminal
24 Procedure, refers to a "judge of competent
25 jurisdiction under Section 3." The relevant provision
26 of Section 3 relating to the appointment of a judge of
27 competent jurisdiction is Section 3(a), Article 18.20,
28 Code of Criminal Procedure, revised in Article 18A.051
29 of this chapter, and the revised law is drafted
30 accordingly.

31 Revised Law

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

38 Source Law

39 (b) [A peace officer . . . may possess, install,
40 operate, or monitor] an electronic, mechanical, or
41 other device to intercept wire, oral, or electronic
42 communications

43 (f) The state may not use as evidence in a

1 criminal proceeding any information gained through the
2 use of a device installed under this section if
3 authorization for the device is not sought or is sought
4 but not obtained.

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

7 Revised Law

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

10 (1) a place described by Section 1.07(a)(14), Penal
11 Code; or

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

15 Source Law

16 Sec. 8B. DETECTION OF CELLULAR TELEPHONE OR
17 OTHER WIRELESS COMMUNICATIONS DEVICE IN CORRECTIONAL
18 OR DETENTION FACILITY. (a) In this section,
19 "correctional facility" means:

20 (1) any place described by Section
21 1.07(a)(14), Penal Code; or

22 (2) a "secure correctional facility" or
23 "secure detention facility" as defined by Section
24 51.02, Family Code.

25 Revised Law

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

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

33 (2) without a warrant, intercept, monitor, detect, or,
34 as authorized by applicable federal laws and regulations, prevent
35 the transmission of a communication through a cellular telephone or
36 other wireless communications device in a correctional facility;
37 and

38 (3) use, to the extent authorized by law, any
39 information obtained under Subdivision (2), including the contents
40 of an intercepted communication, in a criminal or civil proceeding

1 before a court or other governmental agency or entity.

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

8 Source Law

9 (b) Notwithstanding any other provision of this
10 article or Article 18.21, the office of the inspector
11 general of the Texas Department of Criminal Justice
12 may:

13 (1) without a warrant, use electronic,
14 mechanical, or other devices to detect the presence or
15 use of a cellular telephone or other wireless
16 communications device in a correctional facility;

17 (2) without a warrant, intercept, monitor,
18 detect, or, as authorized by applicable federal laws
19 and regulations, prevent the transmission of any
20 communication transmitted through the use of a
21 cellular telephone or other wireless communications
22 device in a correctional facility; and

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

28 (d) When using an electronic, mechanical, or
29 other device under Subsection (b), the office of the
30 inspector general shall minimize the impact of the
31 device on any communication that is not reasonably
32 related to the detection of the presence or use of a
33 cellular telephone or other wireless communications
34 device in a correctional facility.

35 Revised Law

36 Art. 18A.253. REPORTING USE OF INTERCEPTION DEVICE. Not
37 later than the 30th day after the date on which the office of
38 inspector general uses an interception device under Article
39 18A.252(a), the inspector general shall report the use of the
40 device to:

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

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

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

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

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

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

14 Source Law

15 Sec. 5. CONTROL OF INTERCEPTING DEVICES. (a)
16 Except as otherwise provided by this section and
17 Sections 8A and 8B, only the Department of Public
18 Safety is authorized by this article to own, possess,
19 install, operate, or monitor an electronic,
20 mechanical, or other device. The Department of Public
21 Safety may be assisted by an investigative or law
22 enforcement officer or other person in the operation
23 and monitoring of an interception of wire, oral, or
24 electronic communications, provided that the officer
25 or other person:

26 (1) is designated by the director for that
27 purpose; and

28 (2) acts in the presence and under the
29 direction of a commissioned officer of the Department
30 of Public Safety.

31 (b) The director shall designate in writing the
32 commissioned officers of the Department of Public
33 Safety who are responsible for the possession,
34 installation, operation, and monitoring of
35 electronic, mechanical, or other devices for the
36 department.

37 Revised Law

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

42 (b) The inspector general of the Texas Department of
43 Criminal Justice, a commissioned officer of that office, or a
44 person acting in the presence and under the direction of the

1 commissioned officer may possess, install, operate, or monitor the
2 interception device as provided by Section 500.008, Government
3 Code. (Code Crim. Proc., Art. 18.20, Sec. 5(c).)

4 Source Law

5 (c) The Texas Department of Criminal Justice may
6 own electronic, mechanical, or other devices for a use
7 or purpose authorized by Section 500.008, Government
8 Code, and the inspector general of the Texas
9 Department of Criminal Justice, a commissioned officer
10 of that office, or another person acting in the
11 presence and under the direction of a commissioned
12 officer of that office may possess, install, operate,
13 or monitor those devices as provided by Section
14 500.008.

15 Revised Law

16 Art. 18A.303. TEXAS JUVENILE JUSTICE DEPARTMENT AUTHORIZED
17 TO POSSESS AND USE INTERCEPTION DEVICE. (a) The Texas Juvenile
18 Justice Department may own an interception device for a use or
19 purpose authorized by Section 242.103, Human Resources Code.

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

26 Source Law

27 (d) The Texas Juvenile Justice Department may
28 own electronic, mechanical, or other devices for a use
29 or purpose authorized by Section 242.103, Human
30 Resources Code, and the inspector general of the Texas
31 Juvenile Justice Department, a commissioned officer of
32 that office, or another person acting in the presence
33 and under the direction of a commissioned officer of
34 that office may possess, install, operate, or monitor
35 those devices as provided by Section 242.103.

36 SUBCHAPTER H. DISCLOSURE AND USE OF INTERCEPTED COMMUNICATIONS

37 Revised Law

38 Art. 18A.351. DISCLOSURE OR USE OF INTERCEPTED
39 COMMUNICATIONS. An investigative or law enforcement officer who,
40 by means authorized by this chapter, obtains knowledge of the
41 contents of a wire, oral, or electronic communication or evidence
42 derived from the communication may:

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

4 (2) disclose the contents or evidence to another
5 investigative or law enforcement officer, including a law
6 enforcement officer or agent of the United States or of another
7 state, to the extent that the disclosure is appropriate to the
8 proper performance of the official duties of the officer making or
9 receiving the disclosure. (Code Crim. Proc., Art. 18.20,
10 Secs. 7(a), (b).)

11 Source Law

12 Sec. 7. AUTHORIZATION FOR DISCLOSURE AND USE OF
13 INTERCEPTED COMMUNICATIONS. (a) An investigative or
14 law enforcement officer who, by any means authorized
15 by this article, obtains knowledge of the contents of a
16 wire, oral, or electronic communication or evidence
17 derived from the communication may disclose the
18 contents or evidence to another investigative or law
19 enforcement officer, including a federal law
20 enforcement officer or agent or a law enforcement
21 officer or agent of another state, to the extent that
22 the disclosure is appropriate to the proper
23 performance of the official duties of the officer
24 making or receiving the disclosure.

25 (b) An investigative or law enforcement officer
26 who, by any means authorized by this article, obtains
27 knowledge of the contents of a wire, oral, or
28 electronic communication or evidence derived from the
29 communication may use the contents or evidence to the
30 extent the use is appropriate to the proper
31 performance of his official duties.

32 Revised Law

33 Art. 18A.352. DISCLOSURE UNDER OATH. A person who
34 receives, by means authorized by this chapter, information
35 concerning a wire, oral, or electronic communication or evidence
36 derived from a communication intercepted in accordance with this
37 chapter may disclose the contents of that communication or evidence
38 while giving testimony under oath in any proceeding held under the
39 authority of the United States, this state, or a political
40 subdivision of this state. (Code Crim. Proc., Art. 18.20,
41 Sec. 7(c).)

42 Source Law

43 (c) A person who receives, by any means
44 authorized by this article, information concerning a

1 wire, oral, or electronic communication or evidence
2 derived from a communication intercepted in accordance
3 with the provisions of this article may disclose the
4 contents of that communication or the derivative
5 evidence while giving testimony under oath in any
6 proceeding held under the authority of the United
7 States, of this state, or of a political subdivision of
8 this state.

9 Revised Law

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

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

17 Source Law

18 (d) An otherwise privileged wire, oral, or
19 electronic communication intercepted in accordance
20 with, or in violation of, the provisions of this
21 article does not lose its privileged character and any
22 evidence derived from such privileged communication
23 against the party to the privileged communication
24 shall be considered privileged also.

25 Revised Law

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

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

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

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

39 (c) The contents of and evidence derived from a
40 communication described by Subsection (a) may be used under Article
41 18A.352 when authorized by a judge of competent jurisdiction if the

1 judge finds, on subsequent application, that the contents were
2 otherwise intercepted in accordance with this chapter.

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

5 Source Law

6 (e) When an investigative or law enforcement
7 officer, while engaged in intercepting wire, oral, or
8 electronic communications in a manner authorized by
9 this article, intercepts wire, oral, or electronic
10 communications relating to offenses other than those
11 specified in the order of authorization, the contents
12 of and evidence derived from the communication may be
13 disclosed or used as provided by Subsections (a) and
14 (b) of this section. Such contents and any evidence
15 derived therefrom may be used under Subsection (c) of
16 this section when authorized by a judge of competent
17 jurisdiction where the judge finds, on subsequent
18 application, that the contents were otherwise
19 intercepted in accordance with the provisions of this
20 article. The application shall be made as soon as
21 practicable.

22 Revisor's Note

23 Section 7(e), Article 18.20, Code of Criminal
24 Procedure, refers to the interception of
25 communications relating to offenses other than those
26 specified in the "order of authorization." It is clear
27 from the context that an "order of authorization" that
28 lists offenses for which communications may be
29 intercepted is an interception order. See also
30 Revisor's Note (14) to Article 18A.001. The revised
31 law is drafted accordingly.

32 Revised Law

33 Art. 18A.355. NOTICE AND DISCLOSURE OF INTERCEPTION
34 APPLICATION, INTERCEPTION ORDER, AND INTERCEPTED COMMUNICATIONS.

35 (a) Within a reasonable period but not later than the 90th day
36 after the date an application for an interception order is denied or
37 after the date an interception order or the last extension, if any,
38 expires, the judge who granted or denied the application shall
39 cause to be served on each person named in the order or application
40 and any other party to an intercepted communication, if any, an
41 inventory that must include notice of:

1 (1) the application or the issuance of the order;
2 (2) the date of denial of the application, or the date
3 of the issuance of the order and the authorized interception
4 period; and
5 (3) whether during any authorized interception period
6 wire, oral, or electronic communications were intercepted.
7 (b) The judge may, on motion, make available for inspection
8 to a person or the person's counsel any portion of an intercepted
9 communication, application, or order that the judge determines to
10 disclose to that person in the interest of justice.
11 (c) On an ex parte showing of good cause to the judge, the
12 serving of the inventory required under Subsection (a) may be
13 postponed.
14 (d) Evidence derived from an order under this chapter may
15 not be disclosed in a trial until after the inventory has been
16 served. (Code Crim. Proc., Art. 18.20, Sec. 13.)

17 Source Law

18 Sec. 13. NOTICE AND DISCLOSURE OF INTERCEPTION
19 TO A PARTY. (a) Within a reasonable time but not later
20 than 90 days after the date an application for an order
21 is denied or after the date an order or the last
22 extension, if any, expires, the judge who granted or
23 denied the application shall cause to be served on the
24 persons named in the order or the application and any
25 other parties to intercepted communications, if any,
26 an inventory, which must include notice:

27 (1) of the entry of the order or the
28 application;

29 (2) of the date of the entry and the period
30 of authorized interception or the date of denial of the
31 application; and

32 (3) that during the authorized period
33 wire, oral, or electronic communications were or were
34 not intercepted.

35 (b) The judge, on motion, may in his discretion
36 make available to a person or his counsel for
37 inspection any portion of an intercepted
38 communication, application, or order that the judge
39 determines, in the interest of justice, to disclose to
40 that person.

41 (c) On an ex parte showing of good cause to the
42 judge, the serving of the inventory required by this
43 section may be postponed, but in no event may any
44 evidence derived from an order under this article be
45 disclosed in any trial, until after such inventory has
46 been served.

47 Revisor's Note

48 (1) Section 13(a), Article 18.20, Code of

1 Criminal Procedure, refers to an inventory delivered
2 to certain persons after the date an application for
3 "an order" is denied or after the date the order or its
4 extensions expire. The contents of the inventory
5 include notice of "the period of authorized
6 interception" and "that during the authorized period
7 wire, oral, or electronic communications were or were
8 not intercepted." It is clear from the contents of the
9 inventory that "the order" refers to an interception
10 order and not to any other order issued under Article
11 18.20, Code of Criminal Procedure, revised as this
12 chapter. The revised law is drafted accordingly.

13 (2) Section 13(b), Article 18.20, Code of
14 Criminal Procedure, states that the judge may "in his
15 discretion" make certain disclosures. The revised law
16 omits the quoted language as unnecessary because
17 Section 311.016(1), Government Code (Code
18 Construction Act), provides that "may" creates a
19 discretionary authority. The Code Construction Act
20 applies to Section 13(b), Article 18.20, Code of
21 Criminal Procedure, for the reason stated in Revisor's
22 Note (1) to Article 18A.055.

23 Revised Law

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

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

34 (1) it is not possible to provide the party with the

1 information 10 days before the trial, hearing, or proceeding; and

2 (2) the party will not be prejudiced by the delay in
3 receiving the information. (Code Crim. Proc., Art. 18.20, Sec.
4 14(a).)

5 Source Law

6 Sec. 14. PRECONDITIONS TO USE AS EVIDENCE. (a)
7 The contents of an intercepted wire, oral, or
8 electronic communication or evidence derived from the
9 communication may not be received in evidence or
10 otherwise disclosed in a trial, hearing, or other
11 proceeding in a federal or state court unless each
12 party, not later than the 10th day before the date of
13 the trial, hearing, or other proceeding, has been
14 furnished with a copy of the court order and
15 application under which the interception was
16 authorized or approved. This 10-day period may be
17 waived by the judge if he finds that it is not possible
18 to furnish the party with the information 10 days
19 before the trial, hearing, or proceeding and that the
20 party will not be prejudiced by the delay in receiving
21 the information.

22 Revisor's Note

23 Section 14(a), Article 18.20, Code of Criminal
24 Procedure, refers to a court order and application
25 under which an interception of communications was
26 "authorized or approved." The revised law omits "or
27 approved" for consistency because in Article 18.20,
28 "authorized" is the term more commonly used in that
29 context. (See, e.g., Sections 3(b)(4), 4, 6, 8(a),
30 8A(b), (d), and (e), and 9.)

31 Revised Law

32 Art. 18A.357. COMMUNICATIONS RECEIVED IN EVIDENCE. (a)
33 The contents of an intercepted communication and evidence derived
34 from the communication may be received in evidence in any trial,
35 hearing, or other proceeding in or before any court, grand jury,
36 department, officer, agency, regulatory body, legislative
37 committee, or other authority of the United States, this state, or a
38 political subdivision of this state unless:

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

41 (2) the disclosure of the contents of the

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

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

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

13 Source Law

14 Sec. 2. PROHIBITION OF USE AS EVIDENCE OF
15 INTERCEPTED COMMUNICATIONS. (a) The contents of an
16 intercepted communication and evidence derived from an
17 intercepted communication may be received in evidence
18 in any trial, hearing, or other proceeding in or before
19 any court, grand jury, department, officer, agency,
20 regulatory body, legislative committee, or other
21 authority of the United States or of this state or a
22 political subdivision of this state unless:

23 (1) the communication was intercepted in
24 violation of this article, Section 16.02, Penal Code,
25 or federal law; or

26 (2) the disclosure of the contents of the
27 intercepted communication or evidence derived from the
28 communication would be in violation of this article,
29 Section 16.02, Penal Code, or federal law.

30 (b) The contents of an intercepted
31 communication and evidence derived from an intercepted
32 communication may be received in a civil trial,
33 hearing, or other proceeding only if the civil trial,
34 hearing, or other proceeding arises out of a violation
35 of a penal law.

36 (c) This section does not prohibit the use or
37 admissibility of the contents of a communication or
38 evidence derived from the communication if the
39 communication was intercepted in a jurisdiction
40 outside this state in compliance with the law of that
41 jurisdiction.

42 Revised Law

43 Art. 18A.358. SUPPRESSION OF CONTENTS OF INTERCEPTED
44 COMMUNICATIONS. (a) An aggrieved person charged with an offense in
45 a trial, hearing, or proceeding in or before a court, department,
46 officer, agency, regulatory body, or other authority of the United
47 States, this state, or a political subdivision of this state may

1 move to suppress the contents of an intercepted wire, oral, or
2 electronic communication or evidence derived from the
3 communication on the ground that:

4 (1) the communication was unlawfully intercepted;

5 (2) the interception order is insufficient on its
6 face; or

7 (3) the interception was not made in conformity with
8 the interception order.

9 (b) A person identified by a party to an intercepted wire,
10 oral, or electronic communication during the course of that
11 communication may move to suppress the contents of the
12 communication on:

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

14 (2) the ground that the harm to the person resulting
15 from the person's identification in court exceeds the value to the
16 prosecution of the disclosure of the contents.

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

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

20 (2) the aggrieved person was not aware of the grounds
21 of the motion.

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

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

28 (f) The judge, on the filing of the motion to suppress by the
29 aggrieved person, shall make available to the aggrieved person or
30 the person's counsel for inspection any portion of the intercepted
31 communication or evidence derived from the communication that the
32 judge determines to make available in the interest of justice.

33 (g) A judge of this state, on hearing a pretrial motion
34 regarding conversations intercepted by wire in accordance with this

1 chapter, or who otherwise becomes informed that there exists on
2 such an intercepted wire, oral, or electronic communication
3 identification of a specific individual who is not a suspect or a
4 party to the subject of interception shall:

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

8 (2) suppress references to that individual if
9 identification is:

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

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

16 Source Law

17 (b) An aggrieved person charged with an offense
18 in a trial, hearing, or proceeding in or before a
19 court, department, officer, agency, regulatory body,
20 or other authority of the United States or of this
21 state or a political subdivision of this state may move
22 to suppress the contents of an intercepted wire, oral,
23 or electronic communication or evidence derived from
24 the communication on the ground that:

25 (1) the communication was unlawfully
26 intercepted;

27 (2) the order authorizing the interception
28 is insufficient on its face; or

29 (3) the interception was not made in
30 conformity with the order.

31 (c) A person identified by a party to an
32 intercepted wire, oral, or electronic communication
33 during the course of that communication may move to
34 suppress the contents of the communication on the
35 grounds provided in Subsection (b) of this section or
36 on the ground that the harm to the person resulting
37 from his identification in court exceeds the value to
38 the prosecution of the disclosure of the contents.

39 (d) The motion to suppress must be made before
40 the trial, hearing, or proceeding unless there was no
41 opportunity to make the motion or the person was not
42 aware of the grounds of the motion. The hearing on the
43 motion shall be held in camera upon the written request
44 of the aggrieved person. If the motion is granted, the
45 contents of the intercepted wire, oral, or electronic
46 communication and evidence derived from the
47 communication shall be treated as having been obtained
48 in violation of this article. The judge, on the filing
49 of the motion by the aggrieved person, shall make
50 available to the aggrieved person or his counsel for
51 inspection any portion of the intercepted

1 communication or evidence derived from the
2 communication that the judge determines, in the
3 interest of justice, to make available.

4 (e) Any judge of this state, upon hearing a
5 pretrial motion regarding conversations intercepted
6 by wire pursuant to this article, or who otherwise
7 becomes informed that there exists on such intercepted
8 wire, oral, or electronic communication
9 identification of a specific individual who is not a
10 party or suspect to the subject of interception:

11 (1) shall give notice and an opportunity
12 to be heard on the matter of suppression of references
13 to that person if identification is sufficient so as to
14 give notice; or

15 (2) shall suppress references to that
16 person if identification is sufficient to potentially
17 cause embarrassment or harm which outweighs the
18 probative value, if any, of the mention of such person,
19 but insufficient to require the notice provided for in
20 Subdivision (1), above.

21 SUBCHAPTER I. USE AND DISPOSITION OF APPLICATIONS AND ORDERS

22 Revised Law

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

26 Source Law

27 Sec. 11. SEALING OF ORDERS AND
28 APPLICATIONS. The judge shall seal each application
29 made and order granted under this article. . . .

30 Revisor's Note

31 Section 11, Article 18.20, Code of Criminal
32 Procedure, refers to an order "granted" under that
33 article. Throughout this subchapter, the revised law
34 substitutes "issued" for "granted" in the context of
35 an order under this chapter because in that context the
36 terms are synonymous and "issued" is more commonly
37 used.

38 Revised Law

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

43 Source Law

44 Sec. 11. . . . each application made and order
45 granted under this article. Custody of the
46 applications and orders shall be wherever the judge

directs. . . .

Revised Law

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

Source Law

Sec. 11. . . . each application made and order granted under this article. . . . An application or order may be disclosed only on a showing of good cause before a judge of competent jurisdiction and

Revised Law

Art. 18A.404. DESTRUCTION OF APPLICATION OR ORDER. An application made or order issued under this chapter may be destroyed only on or after the 10th anniversary of the date the application or order was sealed and only if the judge of competent jurisdiction for the administrative judicial region in which the application was made or the order was issued orders the destruction. (Code Crim. Proc., Art. 18.20, Sec. 11 (part).)

Source Law

Sec. 11. . . . each application made or order granted under this article. . . . may not be destroyed until at least 10 years after the date it is sealed. An application or order may be destroyed only by order of the judge of competent jurisdiction for the administrative judicial district in which it was made or granted.

SUBCHAPTER J. CREATION, USE, AND DISPOSITION OF RECORDINGS

Revised Law

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

Source Law

Sec. 10. PROCEDURE FOR PRESERVING INTERCEPTED COMMUNICATIONS. (a) The contents of a wire, oral, or electronic communication intercepted by means authorized by this article shall be recorded on tape, wire, or other comparable device. The recording of the

1 contents of a wire, oral, or electronic communication
2 under this subsection shall be done in a way that
3 protects the recording from editing or other
4 alterations.

5 Revised Law

6 Art. 18A.452. DUPLICATION OF RECORDINGS. Recordings under
7 Article 18A.451 may be duplicated for use or disclosure under
8 Article 18A.351 for investigations. (Code Crim. Proc., Art. 18.20,
9 Sec. 10(c).)

10 Source Law

11 (c) Duplicate recordings may be made for use or
12 disclosure pursuant to Subsections (a) and (b),
13 Section 7, of this article for investigations.

14 Revisor's Note

15 Section 10(c), Article 18.20, Code of Criminal
16 Procedure, refers to duplicate "recordings." Any
17 reference to recordings in Sections 10(b) and (c),
18 Article 18.20, Code of Criminal Procedure, revised in
19 this subchapter, is a reference back to the recording
20 of intercepted communications required under Section
21 10(a), Article 18.20, Code of Criminal Procedure,
22 revised as Article 18A.451 of this chapter.
23 Throughout this subchapter, the revised law adds
24 references to Article 18A.451 for the convenience of
25 the reader.

26 Revised Law

27 Art. 18A.453. SEALING AND CUSTODY OF RECORDINGS. (a)
28 Immediately on the expiration of the period of an interception
29 order and all extensions, if any, the recordings under Article
30 18A.451 shall be:

- 31 (1) made available to the judge issuing the order; and
32 (2) sealed under the judge's directions.

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

35 Source Law

36 (b) Immediately on the expiration of the period
37 of the order and all extensions, if any, the recordings
38 shall be made available to the judge issuing the order

1 and sealed under his directions. Custody of the
2 recordings shall be wherever the judge orders. . . .

3 Revisor's Note

4 Section 10(b), Article 18.20, Code of Criminal
5 Procedure, refers to the disposition of certain
6 recordings on expiration of the period of "the order"
7 and all extensions. Because Section 10(a), Article
8 18.20, Code of Criminal Procedure, immediately
9 precedes Section 10(b) and requires the recording of
10 the contents of a wire, oral, or electronic
11 communication intercepted by means authorized by this
12 chapter, it is clear that "the order" refers to an
13 interception order and not to any other order issued
14 under Article 18.20, Code of Criminal Procedure,
15 revised as this chapter. The revised law is drafted
16 accordingly.

17 Revised Law

18 Art. 18A.454. DESTRUCTION OF RECORDINGS. A recording under
19 Article 18A.451 may be destroyed only on or after the 10th
20 anniversary of the date of expiration of the interception order and
21 the last extension, if any, and only if the judge of competent
22 jurisdiction for the administrative judicial region in which the
23 interception was authorized orders the destruction. (Code Crim.
24 Proc., Art. 18.20, Sec. 10(b) (part).)

25 Source Law

26 (b) . . . The recordings may not be destroyed
27 until at least 10 years after the date of expiration of
28 the order and the last extension, if any. A recording
29 may be destroyed only by order of the judge of
30 competent jurisdiction for the administrative
31 judicial district in which the interception was
32 authorized.

33 Revisor's Note

34 Section 10(b), Article 18.20, Code of Criminal
35 Procedure, provides that certain recordings may not be
36 destroyed until at least 10 years after the date of
37 expiration of "the order." The revised law
38 substitutes "the interception order" for "the order"

1 for the reason stated in the revisor's note to Article
2 18A.453.

3 Revised Law

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

11 Source Law

12 (d) The presence of the seal required by
13 Subsection (b) of this section or a satisfactory
14 explanation of its absence is a prerequisite for the
15 use or disclosure of the contents of a wire, oral, or
16 electronic communication or evidence derived from the
17 communication under Subsection (c), Section 7, of this
18 article.

19 SUBCHAPTER K. VIOLATION; SANCTIONS

20 Revised Law

21 Art. 18A.501. CONTEMPT. A violation of Subchapter I or J
22 may be punished as contempt of court. (Code Crim. Proc., Art.
23 18.20, Sec. 12.)

24 Source Law

25 Sec. 12. CONTEMPT. A violation of Section 10
26 or 11 of this article may be punished as contempt of
27 court.

28 Revised Law

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

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

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

37 (A) actual damages but not less than liquidated
38 damages computed at a rate of \$100 for each day the violation occurs

1 or \$1,000, whichever is higher;

2 (B) punitive damages; and

3 (C) reasonable attorney's fees and other
4 litigation costs reasonably incurred. (Code Crim. Proc., Art.
5 18.20, Sec. 16(a).)

6 Source Law

7 Sec. 16. RECOVERY OF CIVIL DAMAGES AUTHORIZED.

8 (a) A person whose wire, oral, or electronic
9 communication is intercepted, disclosed, or used in
10 violation of this article, or in violation of Chapter
11 16, Penal Code, has a civil cause of action against any
12 person who intercepts, discloses, or uses or solicits
13 another person to intercept, disclose, or use the
14 communication and is entitled to recover from the
15 person:

16 (1) actual damages but not less than
17 liquidated damages computed at a rate of \$100 a day for
18 each day of violation or \$1,000, whichever is higher;

19 (2) punitive damages; and

20 (3) a reasonable attorney's fee and other
21 litigation costs reasonably incurred.

22 Revised Law

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

28 (1) constitutes an offense under Section 16.05, Penal
29 Code, but is not for a tortious or illegal purpose or for the
30 purpose of direct or indirect commercial advantage or private
31 commercial gain; and

32 (2) involves a radio communication that is:

33 (A) transmitted on frequencies allocated under
34 Subpart D of Part 74 of the rules of the Federal Communications
35 Commission; and

36 (B) not scrambled or encrypted.

37 (b) The attorney general or the county or district attorney
38 of the county in which the conduct described by Subsection (a) is
39 occurring may file suit under that subsection on behalf of the
40 state.

41 (c) A defendant is liable for a civil penalty of \$500 if it

1 is shown at the trial of the civil suit brought under Subsection (a)
2 that the defendant has been:

3 (1) convicted of an offense under Section 16.05, Penal
4 Code; or

5 (2) found liable in a civil action brought under
6 Article 18A.502.

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

10 Source Law

11 (c) A person is subject to suit by the federal or
12 state government in a court of competent jurisdiction
13 for appropriate injunctive relief if the person
14 engages in conduct that:

15 (1) constitutes an offense under Section
16 16.05, Penal Code, but is not for a tortious or illegal
17 purpose or for the purpose of direct or indirect
18 commercial advantage or private commercial gain; and

19 (2) involves a radio communication that
20 is:

21 (A) transmitted on frequencies
22 allocated under Subpart D of Part 74 of the rules of
23 the Federal Communications Commission; and

24 (B) not scrambled or encrypted.

25 (d) A defendant is liable for a civil penalty of
26 \$500 if it is shown at the trial of the civil suit
27 brought under Subsection (c) that the defendant:

28 (1) has been convicted of an offense under
29 Section 16.05, Penal Code; or

30 (2) is found liable in a civil action
31 brought under Subsection (a).

32 (e) Each violation of an injunction ordered
33 under Subsection (c) is punishable by a fine of \$500.

34 (f) The attorney general, or the county or
35 district attorney of the county in which the conduct,
36 as described by Subsection (c), is occurring, may file
37 suit under Subsection (c) on behalf of the state.

38 Revised Law

39 Art. 18A.504. GOOD FAITH DEFENSE AVAILABLE. A good faith
40 reliance on a court order or legislative authorization constitutes
41 a complete defense to an action brought under Article 18A.502 or
42 18A.503. (Code Crim. Proc., Art. 18.20, Sec. 16(b).)

43 Source Law

44 (b) A good faith reliance on a court order or
45 legislative authorization constitutes a complete
46 defense to an action brought under this section.

47 Revisor's Note

48 Section 16(b), Article 18.20, Code of Criminal

1 Procedure, refers to an action brought "under this
2 section." Sections 16(a) and (c), revised in Articles
3 18A.502 and 18A.503 of this chapter, relate to the
4 bringing of a civil cause of action by an aggrieved
5 person and the bringing of a civil suit by a
6 governmental entity, respectively. The revised law is
7 drafted accordingly.

8 Revised Law

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 Source Law

21 (g) A computer trespasser or a user, aggrieved
22 person, subscriber, or customer of a communications
23 common carrier or electronic communications service
24 does not have a cause of action against the carrier or
25 service, its officers, employees, or agents, or other
26 specified persons for providing information,
27 facilities, or assistance as required by a good faith
28 reliance on:

- 29 (1) legislative authority; or
30 (2) a court order, warrant, subpoena, or
31 certification under this article.

32 SUBCHAPTER L. REPORTS

33 Revised Law

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

- 39 (1) the fact that an order or extension was applied

1 for;

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

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

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

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

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

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

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

16 Source Law

17 Sec. 15. REPORTS CONCERNING INTERCEPTED WIRE,
18 ORAL, OR ELECTRONIC COMMUNICATIONS. (a) Within 30
19 days after the date an order or the last extension, if
20 any, expires or after the denial of an order, the
21 issuing or denying judge shall report to the
22 Administrative Office of the United States Courts:

23 (1) the fact that an order or extension was
24 applied for;

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

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

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

33 (5) the offense specified in the order or
34 application or extension;

35 (6) the identity of the officer making the
36 request and the prosecutor; and

37 (7) the nature of the facilities from
38 which or the place where communications were to be
39 intercepted.

40 (c) Any judge or . . . required to file a report
41 with the Administrative Office of the United States
42 Courts shall forward a copy of such report to the
43 director of the Department of Public Safety. . . .

44 Revisor's Note

45 Section 15(a), Article 18.20, Code of Criminal
46 Procedure, refers to a report that must be filed by a

1 judge issuing or denying "an order." Section 15(a)(4)
2 provides that the contents of the report must include
3 "the period of interceptions authorized by the order,"
4 and Section 15(a)(7) provides that those contents must
5 include "the nature of the facilities from which or the
6 place where communications were to be intercepted."
7 It is clear from the contents of the report that "an
8 order" refers to an interception order and not to any
9 other order issued under Article 18.20, Code of
10 Criminal Procedure, revised as this chapter. The
11 revised law is drafted accordingly.

12 Revised Law

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

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

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

22 (A) the approximate nature and frequency of
23 incriminating communications intercepted;

24 (B) the approximate nature and frequency of other
25 communications intercepted;

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

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

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

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

34 (5) the number of motions to suppress made with

1 respect to interceptions and the number granted or denied;

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

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

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

11 Source Law

12 (b) In January of each year each prosecutor
13 shall report to the Administrative Office of the
14 United States Courts the following information for the
15 preceding calendar year:

16 (1) the information required by Subsection
17 (a) of this section with respect to each application
18 for an order or extension made;

19 (2) a general description of the
20 interceptions made under each order or extension,
21 including the approximate nature and frequency of
22 incriminating communications intercepted, the
23 approximate nature and frequency of other
24 communications intercepted, the approximate number of
25 persons whose communications were intercepted, and the
26 approximate nature, amount, and cost of the manpower
27 and other resources used in the interceptions;

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

31 (4) the number of trials resulting from
32 interceptions;

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

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

40 (7) the information required by
41 Subdivisions (2) through (6) of this subsection with
42 respect to orders or extensions obtained.

43 (c) Any . . . prosecutor required to file a
44 report with the Administrative Office of the United
45 States Courts shall forward a copy of such report to
46 the director of the Department of Public Safety. . . .

47 Revisor's Note

48 Section 15(b), Article 18.20, Code of Criminal
49 Procedure, refers to a report that must be filed by a
50 prosecutor with respect to each application for "an
51 order" or extension made. Section 15(b)(2) provides

that the contents of the report must include "a general description of the interceptions made under each order or extension," Sections 15(b)(3), (4), and (6) provide that those contents must include the number of arrests, trials, and convictions "resulting from interceptions," and Section 15(b)(5) provides that those contents must include "the number of motions to suppress made with respect to interceptions." It is clear from the contents of the report that "an order" refers to an interception order and not to any other order issued under Article 18.20, Code of Criminal Procedure, revised as this chapter. The revised law is drafted accordingly.

Revised Law

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

- (1) the governor;
- (2) the lieutenant governor;
- (3) the speaker of the house of representatives;
- (4) the chair of the senate jurisprudence committee;

and

- (5) the chair of the house of representatives criminal
ce committee.

(b) The report must include:

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

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

- (3) the number of department and other law enforcement personnel who participated or engaged in the seizure of intercepts

under this chapter during the preceding calendar year; and

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

Source Law

(c) . . . On or before March 1 of each year, the director shall submit to the governor; lieutenant governor; speaker of the house of representatives; chairman, senate jurisprudence committee; and chairman, house of representatives criminal jurisprudence committee a report of all intercepts as defined herein conducted pursuant to this article and terminated during the preceding calendar year. Such report shall include:

(1) the reports of judges and prosecuting attorneys forwarded to the director as required in this section;

(2) the number of Department of Public Safety personnel authorized to possess, install, or operate electronic, mechanical, or other devices;

(3) the number of Department of Public Safety and other law enforcement personnel who participated or engaged in the seizure of intercepts pursuant to this article during the preceding calendar year; and

(4) the total cost to the Department of Public Safety of all activities and procedures relating to the seizure of intercepts during the preceding calendar year, including costs of equipment, manpower, and expenses incurred as compensation for use of facilities or technical assistance provided to the department.

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

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21	Art. 18B.001.	DEFINITIONS. In this chapter:	
22	(1)	"Authorized peace officer" means:	
23		(A) a sheriff or deputy sheriff;	
24		(B) a constable or deputy constable;	
25		(C) a marshal or police officer of a	
26		municipality;	
27		(D) a ranger or officer commissioned by the	
28		Public Safety Commission or the director of the department;	
29		(E) an investigator of a prosecutor's office;	
30		(F) a law enforcement agent of the Texas	
31		Alcoholic Beverage Commission;	
32		(G) a law enforcement officer commissioned by the	
33		Parks and Wildlife Commission;	
34		(H) an enforcement officer appointed by the	

1 inspector general of the Texas Department of Criminal Justice under
2 Section 493.019, Government Code;

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

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

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

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

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

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

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

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

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

22 (6) "Electronic communications system" means:

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

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

29 (7) "Electronic customer data" means data or records
30 that:

31 (A) are in the possession, care, custody, or
32 control of a provider of an electronic communications service or
33 provider of a remote computing service; and

34 (B) contain:

1 (i) information revealing the identity of
2 customers of the applicable service;

3 (ii) information about a customer's use of
4 the applicable service;

5 (iii) information that identifies the
6 recipient or destination of a wire or electronic communication sent
7 to or by a customer;

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

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

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

18 (9) "ESN reader" means a device that, without
19 intercepting the contents of a communication, records the
20 electronic serial number from the data track of a wireless
21 telephone, cellular telephone, or similar communication device
22 that transmits its operational status to a base site.

23 (10) "Pen register" means a device or process that
24 records or decodes dialing, routing, addressing, or signaling
25 information transmitted by an instrument or facility from which a
26 wire or electronic communication is transmitted, if the information
27 does not include the contents of the communication. The term does
28 not include a device used by a provider or customer of a wire or
29 electronic communications service in the ordinary course of the
30 service provider's or customer's business for purposes of:

31 (A) billing or recording incident to billing for
32 communications services; or

33 (B) cost accounting, security control, or other
34 ordinary business purposes.

1 (11) "Prosecutor" means a district attorney, criminal
2 district attorney, or county attorney performing the duties of a
3 district attorney.

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

7 (13) "Trap and trace device" means a device or process
8 that records an incoming electronic or other impulse that
9 identifies the originating number or other dialing, routing,
10 addressing, or signaling information reasonably likely to identify
11 the source of a wire or electronic communication, if the
12 information does not include the contents of the communication.
13 The term does not include a device or telecommunications network
14 used in providing:

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

18 (B) the services referenced by Section
19 55.102(b), Utilities Code; or

20 (C) a caller identification service provided by a
21 commercial mobile radio service provider licensed by the Federal
22 Communications Commission. (Code Crim. Proc., Art. 18.20, Secs.
23 1(17), (20); Art. 18.21, Secs. 1(1) (part), (2), (3), (3-a), (3-b),
24 (3-c), (4), (6), (7), (8), (10).)

25 Source Law

26 [Art. 18.20, Sec. 1]

27 (17) "Electronic communications system"
28 means a wire, radio, electromagnetic, photo-optical or
29 photoelectronic facility for the transmission of wire
30 or electronic communications, and any computer
31 facility or related electronic equipment for the
32 electronic storage of those communications.

33 (20) "Electronic storage" means any
34 storage of electronic customer data in a computer,
35 computer network, or computer system, regardless of
36 whether the data is subject to recall, further
37 manipulation, deletion, or transmission, and includes
38 any storage of a wire or electronic communication by
39 an electronic communications service or a remote
40 computing service.

1 [Art. 18.21]

2 Sec. 1. DEFINITIONS. In this article:

3 (1) "Aural transfer," "communication
4 common carrier," "computer trespasser," "electronic
5 communication," "electronic communications service,"
6 "electronic communications system," "electronic
7 storage," . . . "member of a law enforcement unit
8 specially trained to respond to and deal with
9 life-threatening situations," "readily accessible to
10 the general public," "user," and "wire communication"
11 have the meanings assigned by Article 18.20.

12 (2) "Authorized peace officer" means:

13 (A) a sheriff or a sheriff's deputy;
14 (B) a constable or deputy constable;
15 (C) a marshal or police officer of an
16 incorporated city;

17 (D) a ranger or officer commissioned
18 by the Public Safety Commission or the director of the
19 Department of Public Safety;

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

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

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

26 (H) an enforcement officer appointed
27 by the inspector general of the Texas Department of
28 Criminal Justice under Section 493.019, Government
29 Code;

30 (I) an investigator commissioned by
31 the attorney general under Section 402.009, Government
32 Code; or

33 (J) a member of an arson
34 investigating unit commissioned by a municipality, a
35 county, or the state.

36 (3) "Department" means the Department of
37 Public Safety.

38 (3-a) "Designated law enforcement office
39 or agency" means:

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

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

44 (C) the office of inspector general
45 of the Texas Department of Criminal Justice.

46 (3-b) "Domestic entity" has the meaning
47 assigned by Section 1.002, Business Organizations
48 Code.

49 (3-c) "Electronic customer data" means
50 data or records that:

51 (A) are in the possession, care,
52 custody, or control of a provider of an electronic
53 communications service or a remote computing service;
54 and

55 (B) contain:

56 (i) information revealing the
57 identity of customers of the applicable service;

58 (ii) information about a
59 customer's use of the applicable service;

60 (iii) information that
61 identifies the recipient or destination of a wire
62 communication or electronic communication sent to or
63 by the customer;

64 (iv) the content of a wire
65 communication or electronic communication sent to or
66 by the customer; and

67 (v) any data stored by or on
68 behalf of the customer with the applicable service

1 provider.

2 (4) "ESN reader" means a device that
3 records the electronic serial number from the data
4 track of a wireless telephone, cellular telephone, or
5 similar communication device that transmits its
6 operational status to a base site, if the device does
7 not intercept the contents of a communication.

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

18 (A) billing or recording as an
19 incident to billing for communications services; or

20 (B) cost accounting, security
21 control, or other ordinary business purposes.

22 (7) "Prosecutor" means a district
23 attorney, criminal district attorney, or county
24 attorney performing the duties of a district attorney.

25 (8) "Remote computing service" means the
26 provision to the public of computer storage or
27 processing services by means of an electronic
28 communications system.

29 (10) "Trap and trace device" means a
30 device or process that records an incoming electronic
31 or other impulse that identifies the originating
32 number or other dialing, routing, addressing, or
33 signaling information reasonably likely to identify
34 the source of a wire or electronic communication, if
35 the information does not include the contents of the
36 communication. The term does not include a device or
37 telecommunications network used in providing:

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

41 (B) the services referenced in
42 Section 55.102(b), Utilities Code; or

43 (C) a caller identification service
44 provided by a commercial mobile radio service provider
45 licensed by the Federal Communications Commission.

46 Revisor's Note

47 (1) Section 1(1), Article 18.21, Code of
48 Criminal Procedure, provides that "[a]ural transfer,"
49 "computer trespasser," "member of a law enforcement
50 unit specially trained to respond to and deal with
51 life-threatening situations," and "readily accessible
52 to the general public," have the meanings assigned by
53 Article 18.20, Code of Criminal Procedure. The
54 revised law omits those references as unnecessary
55 because those terms are not used by Article 18.21,

1 revised as this chapter.

2 (2) Section 1(1), Article 18.21, Code of
3 Criminal Procedure, provides that "communication
4 common carrier," "electronic communication,"
5 "electronic communications service," "user," and
6 "wire communication" have the meanings assigned by
7 Article 18.20, Code of Criminal Procedure. The
8 relevant provision of Article 18.20 that defines those
9 terms is Section 1, revised as Article 18A.001, Code of
10 Criminal Procedure. The revised law is drafted
11 accordingly.

12 (3) Section 1(1), Article 18.21, Code of
13 Criminal Procedure, provides that "electronic
14 communications system" and "electronic storage" have
15 the meanings assigned by Article 18.20, Code of
16 Criminal Procedure. The revised law omits the quoted
17 language as unnecessary because Sections 1(17) and
18 (20), Article 18.20, defining "electronic
19 communications system" and "electronic storage," are
20 revised as Subdivisions (6) and (8) of this article,
21 respectively.

22 (4) Section 1(2)(A), Article 18.21, Code of
23 Criminal Procedure, provides that a "sheriff's deputy"
24 is an authorized peace officer. The revised law
25 substitutes "deputy sheriff" for "sheriff's deputy"
26 because, in this context, the terms are synonymous and
27 "deputy sheriff" is more commonly used.

28 (5) Section 1(2)(C), Article 18.21, Code of
29 Criminal Procedure, refers to an "incorporated city."
30 The revised law substitutes "municipality" for "city"
31 because the meaning of "municipality" includes cities
32 and because that is the term used in the Local
33 Government Code. The revised law omits "incorporated"
34 because, under the Local Government Code, all

1 municipalities must be incorporated.

2 (6) Section 1(2)(F), Article 18.21, Code of
3 Criminal Procedure, refers to a law enforcement agent
4 of the "Alcoholic Beverage Commission." The revised
5 law substitutes "Texas Alcoholic Beverage Commission"
6 for the quoted language because under Chapter 1,
7 Alcoholic Beverage Code, that is the official name of
8 the agency.

9 (7) Section 1(3), Article 18.21, Code of
10 Criminal Procedure, defines "[d]epartment" as the
11 "Department of Public Safety." The revised law
12 substitutes "Department of Public Safety of the State
13 of Texas" for "Department of Public Safety" because
14 under Chapter 411, Government Code, that is the
15 official name of the agency.

16 (8) Section 1(6), Article 18.21, Code of
17 Criminal Procedure, refers to an "electronic
18 communication service." The revised law substitutes
19 "electronic communications service" for "electronic
20 communication service" for clarity and consistency in
21 the terminology used within the chapter and because
22 "electronic communications service" is the defined
23 term under Section 1(18), Article 18.20, Code of
24 Criminal Procedure, that is referenced by Section
25 1(1), Article 18.21, Code of Criminal Procedure, which
26 is revised as Subdivision (2) of this article.

27 (9) Section 1(9), Article 18.21, Code of
28 Criminal Procedure, defines "[s]upervisory official."
29 The revised law omits the definition as unnecessary
30 because that term is not used by Article 18.21, revised
31 as this chapter. The omitted law reads:

32 (9) "Supervisory official"
33 means:
34 (A) an investigative agent
35 or an assistant investigative agent who is
36 in charge of an investigation;

1 (B) an equivalent person
2 at an investigating agency's headquarters
3 or regional office; and

4 (C) the principal
5 prosecuting attorney of the state or of a
6 political subdivision of the state or the
7 first assistant or chief assistant
8 prosecuting attorney in the office of
9 either.

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

12 Revised Law

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

29 (1) files an application on the prosecutor's own
30 motion; or

31 (2) files an application for the installation and use
32 of a pen register, ESN reader, or similar equipment on the request
33 of an authorized peace officer not commissioned by the department,
34 other than an authorized peace officer employed by a designated law
35 enforcement office or agency.

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

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

3 (A) an authorized peace officer who is
4 commissioned by the department; or

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

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

11 Source Law

12 Sec. 2. APPLICATION AND ORDER. (a) A
13 prosecutor with jurisdiction in a county within a
14 judicial district described by this subsection may
15 file an application for the installation and use of a
16 pen register, ESN reader, trap and trace device, or
17 similar equipment that combines the function of a pen
18 register and a trap and trace device with a district
19 judge in the judicial district. . . .

20 (b) A prosecutor may file an application under
21 this section or under federal law on the prosecutor's
22 own motion or on the request of an authorized peace
23 officer, regardless of whether the officer is
24 commissioned by the department. A prosecutor who files
25 an application on the prosecutor's own motion or who
26 files an application for the installation and use of a
27 pen register, ESN reader, or similar equipment on the
28 request of an authorized peace officer not
29 commissioned by the department, other than an
30 authorized peace officer employed by a designated law
31 enforcement office or agency, must make the
32 application personally and may not do so through an
33 assistant or some other person acting on the
34 prosecutor's behalf. A prosecutor may make an
35 application through an assistant or other person
36 acting on the prosecutor's behalf if the prosecutor
37 files an application for the installation and use of:

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

40 (A) an authorized peace officer who
41 is commissioned by the department; or

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

44 (2) a trap and trace device or similar
45 equipment on the request of an authorized peace
46 officer, regardless of whether the officer is
47 commissioned by the department.

48 Revisor's Note

49 (1) Section 2(a), Article 18.21, Code of
50 Criminal Procedure, refers to a judicial district
51 "described by this subsection." The provision of

1 Section 2(a) describing the judicial districts is
2 revised in relevant part as Article 18B.052 of this
3 chapter, and the revised law is drafted accordingly.

4 (2) Section 2(b), Article 18.21, Code of
5 Criminal Procedure, refers to an application filed
6 "under this section." Throughout this subchapter,
7 which revises Sections 2(a), (b), and (c), the revised
8 law substitutes "under this subchapter" for the quoted
9 language because the provisions of Section 2 relating
10 to the filing of an application for the installation
11 and use of certain interception equipment are revised
12 as this subchapter.

13 Revised Law

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

16 (1) the site of the proposed installation or use of the
17 device or equipment;

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

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

23 (4) the headquarters of:

24 (A) the office of the prosecutor filing an
25 application under this subchapter; or

26 (B) a law enforcement agency that requests the
27 prosecutor to file an application under this subchapter or that
28 proposes to execute an order authorizing installation and use of
29 the device or equipment; or

30 (5) the headquarters of a service provider ordered to
31 install the device or equipment. (Code Crim. Proc., Art. 18.21,
32 Sec. 2(a) (part).)

33 Source Law

34 (a) [A prosecutor with jurisdiction in a county

1 within a judicial district described by this
2 subsection may] file an application for the
3 installation and use of a pen register, ESN reader,
4 trap and trace device, or similar equipment that
5 combines the function of a pen register and a trap and
6 trace device . . . in the judicial district. The
7 judicial district must be a district in which is
8 located:

9 (1) the site of the proposed installation
10 or use of the device or equipment;

11 (2) the site of the communication device
12 on which the device or equipment is proposed to be
13 installed or used;

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

18 (4) the headquarters of:

19 (A) the office of the prosecutor
20 filing an application under this section; or

21 (B) a law enforcement agency that
22 requests the prosecutor to file an application under
23 this section or that proposes to execute an order
24 authorizing installation and use of the device or
25 equipment; or

26 (5) the headquarters of a service provider
27 ordered to install the device or equipment.

28 Revisor's Note

29 Section 2(a), Article 18.21, Code of Criminal
30 Procedure, describes the requirements for the judicial
31 district in which an "application for the installation
32 and use of a pen register, ESN reader, trap and trace
33 device, or similar equipment that combines the
34 function of a pen register and a trap and trace device"
35 is filed. The provisions of Section 2 relating to the
36 filing of the application described by the quoted
37 language are revised as this subchapter, and the
38 revised law substitutes "application under this
39 subchapter" for that language for clarity and to avoid
40 unnecessary repetition of the content of the
41 application.

42 Revised Law

43 Art. 18B.053. APPLICATION REQUIREMENTS. An application
44 under this subchapter must:

45 (1) be made in writing under oath;

46 (2) include the name of the subscriber and the
47 telephone number and location of the communication device on which

1 the pen register, ESN reader, trap and trace device, or similar
2 equipment will be used, to the extent that information is known or
3 is reasonably ascertainable; and

4 (3) state that the installation and use of the device
5 or equipment will likely produce information that is material to an
6 ongoing criminal investigation. (Code Crim. Proc., Art. 18.21,
7 Sec. 2(c).)

8 Source Law

9 (c) The application must:
10 (1) be made in writing under oath;
11 (2) include the name of the subscriber and
12 the telephone number and location of the communication
13 device on which the pen register, ESN reader, trap and
14 trace device, or similar equipment will be used, to the
15 extent that information is known or is reasonably
16 ascertainable; and
17 (3) state that the installation and use of
18 the device or equipment will likely produce
19 information that is material to an ongoing criminal
20 investigation.

21 Revisor's Note

22 Section 2(c), Article 18.21, Code of Criminal
23 Procedure, describes the requirements for "[t]he
24 application," which is a reference to the "application
25 for the installation and use of a pen register, ESN
26 reader, trap and trace device, or similar equipment
27 that combines the function of a pen register and a trap
28 and trace device" described by Section 2(a), Article
29 18.21, Code of Criminal Procedure, revised in relevant
30 part as Article 18B.051(a) of this chapter. The
31 revised law substitutes "[a]n application under this
32 subchapter" for the reason stated in the revisor's note
33 to Article 18B.052.

34 SUBCHAPTER C. ORDER AUTHORIZING INSTALLATION AND USE OF EQUIPMENT

35 Revised Law

36 Art. 18B.101. ORDER AUTHORIZING INSTALLATION AND USE OF PEN
37 REGISTER, ESN READER, OR SIMILAR EQUIPMENT. (a) On presentation of
38 an application under Subchapter B, a judge may order the
39 installation and use of a pen register, ESN reader, or similar

1 equipment by an authorized peace officer commissioned by the
2 department or an authorized peace officer of a designated law
3 enforcement office or agency.

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

13 Source Law

14 (d) On presentation of the application, the
15 judge may order the installation and use of the pen
16 register, ESN reader, or similar equipment by an
17 authorized peace officer commissioned by the
18 department or an authorized peace officer of a
19 designated law enforcement office or agency, and, on
20 request of the applicant, the judge shall direct in the
21 order that a communication common carrier or a
22 provider of electronic communications service furnish
23 all information, facilities, and technical assistance
24 necessary to facilitate the installation and use of
25 the device or equipment by the department or
26 designated law enforcement office or agency
27 unobtrusively and with a minimum of interference to
28 the services provided by the carrier or service. . . .

29 Revisor's Note

30 Section 2(d), Article 18.21, Code of Criminal
31 Procedure, refers to "the application." It is clear
32 that any reference in Section 2 to an "application" is
33 a reference to the "application for the installation
34 and use of a pen register, ESN reader, trap and trace
35 device, or similar equipment that combines the
36 function of a pen register and a trap and trace device"
37 described by Section 2(a), Article 18.21, Code of
38 Criminal Procedure, revised in relevant part as
39 Article 18.051(a) of this chapter. Throughout this
40 subchapter, which revises Sections 2(d), (e), (f), and
41 (g), the revised law substitutes "application under

1 Subchapter B" for the quoted language in this context
2 because the provisions of Section 2 relating to the
3 filing of an application for the installation and use
4 of certain interception equipment are revised as
5 Subchapter B of this chapter.

6 Revised Law

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

13 (b) The judge may direct the communication common carrier or
14 other person, including any landlord or other custodian of
15 equipment, to provide all information, facilities, and technical
16 assistance necessary to install or use the device or equipment
17 unobtrusively and with a minimum of interference to the services
18 provided by the communication common carrier, landlord, custodian,
19 or other person.

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

25 Source Law

26 (e) On presentation of the application, the
27 judge may order the installation and use of the trap
28 and trace device or similar equipment by the
29 communication common carrier or other person on the
30 appropriate line. The judge may direct the
31 communication common carrier or other person,
32 including any landlord or other custodian of
33 equipment, to furnish all information, facilities, and
34 technical assistance necessary to install or use the
35 device or equipment unobtrusively and with a minimum
36 of interference to the services provided by the
37 communication common carrier, landlord, custodian, or
38 other person. Unless otherwise ordered by the court,
39 the results of the trap and trace device or similar
40 equipment shall be furnished to the applicant,
41 designated by the court, at reasonable intervals
42 during regular business hours, for the duration of the

order. . . .

Revised Law

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

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

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

Source Law

(d) . . . a communication common carrier or a provider of electronic communications service The carrier or service is entitled to compensation at the prevailing rates for the facilities and assistance provided to the department or a designated law enforcement office or agency.

(e) . . . the communication common carrier The carrier is entitled to compensation at the prevailing rates for the facilities and assistance provided to the designated law enforcement office or agency.

Revisor's Note

(1) Section 2(d), Article 18.21, Code of Criminal Procedure, states that a communication common carrier or a provider of an electronic communications service is entitled to compensation for the "facilities and assistance" provided to the department or a designated law enforcement office or agency. The quoted language refers to the provision of the "information, facilities, and technical assistance" by the carrier or service provider as described in the preceding sentence of Subsection (d), revised in relevant part as Article 18B.101(b) of this chapter. The revised law adds a cross-reference to Article 18B.101(b) for clarity and the convenience of the

1 reader.

2 (2) Section 2(e), Article 18.21, Code of
3 Criminal Procedure, states that a communication common
4 carrier is entitled to compensation for the
5 "facilities and assistance" provided to a designated
6 law enforcement office or agency. The quoted language
7 refers to the provision of the "information,
8 facilities, and technical assistance" by the carrier
9 as described in the second sentence of Subsection (e),
10 revised as Article 18B.102(b) of this chapter. The
11 revised law adds a cross-reference to Article
12 18B.102(b) for clarity and the convenience of the
13 reader.

14 Revised Law

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

22 (b) Each extension granted under Subsection (a) may not
23 exceed a period of 60 days, except that the court may extend an
24 order for a period not to exceed one year with the consent of the
25 subscriber or customer of the service on which the device or
26 equipment is used. (Code Crim. Proc., Art. 18.21, Sec. 2(f).)

27 Source Law

28 (f) Except as otherwise provided by this
29 subsection, an order for the installation and use of a
30 device or equipment under this section is valid for not
31 more than 60 days after the earlier of the date the
32 device or equipment is installed or the 10th day after
33 the date the order is entered, unless the prosecutor
34 applies for and obtains from the court an extension of
35 the order before the order expires. The period of
36 extension may not exceed 60 days for each extension
37 granted, except that with the consent of the
38 subscriber or customer of the service on which the
39 device or equipment is used, the court may extend an
40 order for a period not to exceed one year.

1 Revisor's Note

2 (1) Section 2(f), Article 18.21, Code of
3 Criminal Procedure, states that "[e]xcept as otherwise
4 provided by this subsection," an order for the
5 installation and use of a device or equipment under
6 Section 2 is valid for a certain period, "unless the
7 prosecutor applies for and obtains from the court an
8 extension of the order before the order expires." The
9 revised law omits "[e]xcept as otherwise provided by
10 this subsection" as redundant because the quoted
11 language authorizing an extension of the order
12 provides the only exception to the initial period
13 specified for the order by Section 2(f) and because the
14 revised law retains that exception within the same
15 sentence as the language specifying the initial
16 period.

17 (2) Section 2(f), Article 18.21, Code of
18 Criminal Procedure, refers to an order for the
19 installation and use of certain interception devices
20 or equipment "under this section." The revised law
21 substitutes "under this subchapter" for the quoted
22 language because the provisions of Section 2 relating
23 to the issuance of the order are revised as this
24 subchapter.

25 Revised Law

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

29 Source Law

30 (g) The district court shall seal an application
31 and order granted under this article.

32 SUBCHAPTER D. EMERGENCY INSTALLATION AND USE OF CERTAIN EQUIPMENT

33 Revised Law

34 Art. 18B.151. EMERGENCY INSTALLATION AND USE OF PEN

1 REGISTER OR TRAP AND TRACE DEVICE. (a) In this article, "immediate
2 life-threatening situation" has the meaning assigned by Article
3 18A.201.

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

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

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

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

17 (2) there are sufficient grounds under this chapter on
18 which to obtain an order authorizing the installation and use of a
19 pen register or trap and trace device. (Code Crim. Proc., Art.
20 18.21, Secs. 1(1) (part), 3(a).)

21 Source Law

22 [Sec. 1]

23 (1) . . . "immediate life-threatening
24 situation," . . . have the meanings assigned by
25 Article 18.20.

26 Sec. 3. EMERGENCY INSTALLATION AND USE OF PEN
27 REGISTER OR TRAP AND TRACE DEVICE. (a) A peace
28 officer authorized to possess, install, operate, or
29 monitor a device under Section 8A, Article 18.20, may
30 install and use a pen register or trap and trace device
31 if the officer:

32 (1) reasonably believes an immediate
33 life-threatening situation exists that:

34 (A) is within the territorial
35 jurisdiction of the officer or another officer the
36 officer is assisting; and

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

41 (2) reasonably believes there are
42 sufficient grounds under this article on which to
43 obtain an order authorizing the installation and use
44 of a pen register or trap and trace device.

1 Revisor's Note

2 Section 1(1), Article 18.21, Code of Criminal
3 Procedure, provides that "immediate life-threatening
4 situation" has the meaning assigned by Article 18.20,
5 Code of Criminal Procedure. The relevant provision of
6 Article 18.20 that defines that term is Section 1(22),
7 revised as Article 18A.201(1), Code of Criminal
8 Procedure, and the revised law is drafted accordingly.

9 Revised Law

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

13 (1) promptly report the installation or use of the
14 device to the prosecutor in the county in which the device is
15 installed or used; and

16 (2) within 48 hours after the installation of the
17 device is complete or the use of the device begins, whichever occurs
18 first, obtain an order under Subchapter C authorizing the
19 installation and use of the device.

20 (b) A judge may issue an order authorizing the installation
21 and use of a device under this subchapter during the 48-hour period
22 prescribed by Subsection (a)(2). If an order is denied or is not
23 issued within the 48-hour period, the peace officer shall terminate
24 use of and remove the pen register or trap and trace device promptly
25 on the earlier of the denial or the expiration of 48 hours. (Code
26 Crim. Proc., Art. 18.21, Secs. 3(a) (part), (b), (c).)

27 Source Law

28 (a) A peace officer . . . install and use a pen
29 register or trap and trace device

30 (b) If an officer installs or uses a pen
31 register or trap and trace device under Subsection
32 (a), the officer shall:

33 (1) promptly report the installation or
34 use to the prosecutor in the county in which the device
35 is installed or used; and

36 (2) within 48 hours after the installation
37 is complete or the use of the device begins, whichever
38 occurs first, obtain an order under Section 2
39 authorizing the installation and use.

40 (c) A judge may issue an order authorizing the

1 installation and use of a device under this section
2 during the 48-hour period prescribed by Subsection
3 (b)(2). If an order is denied or is not issued within
4 the 48-hour period, the officer shall terminate use of
5 and remove the pen register or the trap and trace
6 device promptly on the earlier of the denial or the
7 expiration of 48 hours.

8 Revisor's Note

9 Section 3(b), Article 18.21, Code of Criminal
10 Procedure, refers to an order "under Section 2"
11 authorizing the installation and use of a pen register
12 or trap and trace device. The revised law substitutes
13 "under Subchapter C" for the quoted language because
14 the provisions of Section 2 relating to the issuance of
15 the order are revised as Subchapter C of this chapter.

16 Revised Law

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

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

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

26 Source Law

27 (d) The state may not use as evidence in a
28 criminal proceeding any information gained through the
29 use of a pen register or trap and trace device
30 installed under this section if an authorized peace
31 officer does not apply for or applies for but does not
32 obtain authorization for the pen register or trap and
33 trace device.

34 SUBCHAPTER E. MOBILE TRACKING DEVICES

35 Revised Law

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

1 affirmed before the judge. The affidavit must:

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

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

8 (3) state the name of the owner or
9 possessor of the vehicle, container, or item described
10 in Subdivision (2);

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

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

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

19 (B) the installation and use of a
20 mobile tracking device is likely to produce
21 information that is material to an ongoing criminal
22 investigation of the criminal activity described in
23 Paragraph (A).

24 Revisor's Note

25 Section 14(c), Article 18.21, Code of Criminal
26 Procedure, requires an application to be "sworn to or
27 affirmed" before a district judge. The revised law
28 omits the reference to "affirmed" because Section
29 311.005(8), Government Code (Code Construction Act),
30 provides that "swear" includes "affirm." The Code
31 Construction Act applies to Section 14(c), Article
32 18.21, Code of Criminal Procedure, and the other
33 provisions of that code to the extent that those
34 provisions are amended or reenacted by the 60th or
35 subsequent legislatures. See Ex parte Torres, 943
36 S.W.2d 469, 473 n.5 (Tex. Crim. App. 1997).

37 Revised Law

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

41 (1) the investigation; or

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

44 (b) The order may authorize the use of a mobile tracking
45 device outside the judicial district but within the state, if the

1 device is installed within the district. (Code Crim. Proc., Art.
2 18.21, Secs. 14(a), (b).)

3 Source Law

4 Sec. 14. MOBILE TRACKING DEVICES. (a) A
5 district judge may issue an order for the installation
6 and use of a mobile tracking device in the same
7 judicial district as the site of:

8 (1) the investigation; or
9 (2) the person, vehicle, container, item,
10 or object the movement of which will be tracked by the
11 mobile tracking device.

12 (b) The order may authorize the use of a mobile
13 tracking device outside the judicial district but
14 within the state, if the device is installed within the
15 district.

16 Revised Law

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

23 Source Law

24 (d) Within 72 hours after the time the mobile
25 tracking device was activated in place on or within the
26 vehicle, container, or item, the applicant shall
27 notify in writing the judge who issued an order under
28 this section.

29 Revisor's Note

30 Section 14(d), Article 18.21, Code of Criminal
31 Procedure, refers to notice given by the "applicant"
32 to a judge who issued an order under Section 14,
33 Article 18.21, Code of Criminal Procedure, revised as
34 this subchapter. The revised law adds "[applicant]
35 for whom an order was issued under this subchapter" to
36 provide context for the convenience of the reader.

37 Revised Law

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

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

4 Source Law

5 (e) An order under this section expires not
6 later than the 90th day after the date that the device
7 has been activated in place on or within the vehicle,
8 container, or item. For good cause shown, the judge
9 may grant an extension for an additional 90-day
10 period.

11 Revised Law

12 Art. 18B.206. REMOVAL OF DEVICE. (a) The applicant shall
13 remove or cause to be removed the mobile tracking device as soon as
14 is practicable after the authorization period expires.

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

18 Source Law

19 (f) The applicant shall remove or cause to be
20 removed a mobile tracking device as soon as is
21 practicable after the authorization period expires.
22 If removal is not practicable, monitoring of the
23 device shall cease on expiration of the authorization
24 order.

25 Revised Law

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

30 (b) In an emergency, a private entity may monitor a device
31 described by Subsection (a). (Code Crim. Proc., Art. 18.21, Sec.
32 14(g).)

33 Source Law

34 (g) This section does not apply to a global
35 positioning or similar device installed in or on an
36 item of property by the owner or with the consent of
37 the owner of the property. A device described by this
38 subsection may be monitored by a private entity in an
39 emergency.

1 SUBCHAPTER F. LAW ENFORCEMENT POWERS AND DUTIES

2 Revised Law

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

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

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

10 Source Law

11 (j) Each designated law enforcement office or
12 agency shall:

13 (1) adopt a written policy governing the
14 application of this article to the office or agency;
15 and

16 (2) submit the policy to the director of
17 the department, or the director's designee, for
18 approval.

19 Revised Law

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

26 (b) If the director of the department or the director's
27 designee approves the policy submitted under Article 18B.251, the
28 inspector general of the Texas Department of Criminal Justice or
29 the inspector general's designee, or the sheriff or chief of a
30 designated law enforcement agency or the sheriff's or chief's
31 designee, as applicable, shall submit to the director a written
32 list of all peace officers in the designated law enforcement office
33 or agency who are authorized to possess, install, operate, or
34 monitor pen registers, ESN readers, or similar equipment. (Code
35 Crim. Proc., Art. 18.21, Secs. 2(i), (k).)

36 Source Law

37 (i) A peace officer of a designated law
38 enforcement office or agency is authorized to possess,

1 install, operate, or monitor a pen register, ESN
2 reader, or similar equipment if the officer's name is
3 on the list submitted to the director of the department
4 under Subsection (k).

5 (k) If the director of the department or the
6 director's designee approves the policy submitted
7 under Subsection (j), the inspector general of the
8 Texas Department of Criminal Justice or the inspector
9 general's designee, or the sheriff or chief of a
10 designated law enforcement agency or the sheriff's or
11 chief's designee, as applicable, shall submit to the
12 director a written list of all officers in the
13 designated law enforcement office or agency who are
14 authorized to possess, install, monitor, or operate
15 pen registers, ESN readers, or similar equipment.

16 Revisor's Note

17 Section 2(k), Article 18.21, Code of Criminal
18 Procedure, refers to a written list of all "officers"
19 in a designated law enforcement office or agency who
20 are authorized to possess, install, monitor, or
21 operate certain interception equipment. The revised
22 law substitutes "peace officers" for "officers"
23 because under Section 2(d), Article 18.21, Code of
24 Criminal Procedure, revised in relevant part as
25 Article 18B.101 of this chapter, only an "authorized
26 peace officer" may install and use the interception
27 equipment and because under Section 2(i), Article
28 18.21, Code of Criminal Procedure, revised as
29 Subsection (a) of this article, a "peace officer" of a
30 designated law enforcement office or agency is
31 authorized to possess, install, operate, or monitor
32 the interception equipment only if the peace officer's
33 name is on the list described by Section 2(k).

34 Revised Law

35 Art. 18B.253. LIMITATION: PEN REGISTERS. To prevent
36 inclusion of the contents of a wire or electronic communication, a
37 governmental agency authorized to install and use a pen register
38 under this chapter or other law must use reasonably available
39 technology to only record and decode electronic or other impulses
40 used to identify the numbers dialed, routed, addressed, or
41 otherwise processed or transmitted by the communication. (Code

1 Crim. Proc., Art. 18.21, Sec. 16.)

2 Source Law

3 Sec. 16. LIMITATION. A governmental agency
4 authorized to install and use a pen register under this
5 article or other law must use reasonably available
6 technology to only record and decode electronic or
7 other impulses used to identify the numbers dialed,
8 routed, addressed, or otherwise processed or
9 transmitted by a wire or electronic communication so
10 as to not include the contents of the communication.

11 Revised Law

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

20 Source Law

21 (h) A peace officer is not required to file an
22 application or obtain an order under this section
23 before the officer makes an otherwise lawful search,
24 with or without a warrant, to determine the contents of
25 a caller identification message, pager message, or
26 voice message that is contained within the memory of an
27 end-user's identification, paging, or answering
28 device.

29 Revisor's Note

30 Section 2(h), Article 18.21, Code of Criminal
31 Procedure, states that a peace officer is not required
32 to file an application or obtain an order "under this
33 section." The revised law substitutes "application
34 under Subchapter B" for "application . . . under this
35 section" because the provisions of Section 2 relating
36 to the filing of an application for the installation
37 and use of certain interception equipment are revised
38 as Subchapter B of this chapter. The revised law
39 substitutes "order under Subchapter C" for "order
40 under this section" because the provisions of Section
41 2 relating to the issuance of an order authorizing the

1 installation and use of certain interception equipment
2 are revised as Subchapter C of this chapter.

3 SUBCHAPTER G. OVERSIGHT

4 Revised Law

5 Art. 18B.301. COMPLIANCE AUDIT. (a) The department may
6 conduct an audit of a designated law enforcement office or agency to
7 ensure compliance with this chapter.

8 (b) If the department determines from the audit that the
9 designated law enforcement office or agency is not in compliance
10 with the policy adopted by the office or agency under Article
11 18B.251, the department shall notify the office or agency in
12 writing that the office or agency, as applicable, is not in
13 compliance.

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

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

22 (2) the department approves that policy. (Code Crim.
23 Proc., Art. 18.21, Sec. 2(1).)

24 Source Law

25 (1) The department may conduct an audit of a
26 designated law enforcement office or agency to ensure
27 compliance with this article. If the department
28 determines from the audit that the designated law
29 enforcement office or agency is not in compliance with
30 the policy adopted by the office or agency under
31 Subsection (j), the department shall notify the office
32 or agency in writing that it is not in compliance. If
33 the department determines that the office or agency
34 still is not in compliance with the policy 90 days
35 after the date the office or agency receives written
36 notice under this subsection, the office or agency
37 loses the authority granted by this article until:

38 (1) the office or agency adopts a new
39 written policy governing the application of this
40 article to the office or agency; and

41 (2) the department approves the written
42 policy.

Revised Law

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

(b) The director of the department shall report the expenditures publicly on an annual basis on the department's Internet website or by other comparable means. (Code Crim. Proc., Art. 18.21, Sec. 2(m).)

Source Law

(m) The inspector general of the Texas Department of Criminal Justice or the sheriff or chief of a designated law enforcement agency, as applicable, shall submit to the director of the department a written report of expenditures made by the designated law enforcement office or agency for the purchase and maintenance of a pen register, ESN reader, or similar equipment, authorized under this article. The director of the department shall report those expenditures publicly on an annual basis via the department's website, or other comparable means.

SUBCHAPTER H. ACCESS TO STORED COMMUNICATIONS AND OTHER STORED

CUSTOMER DATA

Revised Law

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

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

(1) by obtaining an administrative subpoena

1 authorized by statute;

2 (2) by obtaining a grand jury subpoena;

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

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

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

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

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

9 Source Law

10 Sec. 4. REQUIREMENTS FOR GOVERNMENT ACCESS TO
11 STORED COMMUNICATIONS. (a) An authorized peace
12 officer may require a provider of an electronic
13 communications service or a provider of a remote
14 computing service to disclose electronic customer data
15 that is in electronic storage by obtaining a warrant
16 under Section 5A.

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

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

27 (2) by obtaining a grand jury subpoena;

28 (3) by obtaining a warrant under Section
29 5A;

30 (4) by obtaining the consent of the
31 subscriber or customer to the disclosure of the data;

32 (5) by obtaining a court order under
33 Section 5; or

34 (6) as otherwise permitted by applicable
35 federal law.

36 Revisor's Note

37 Sections 4(a) and (b), Article 18.21, Code of
38 Criminal Procedure, refer to "obtaining a warrant
39 under Section 5A" of that article. The provisions of
40 Section 5A relating to the issuance of a warrant are
41 revised as Article 18B.354 of this chapter, and the
42 revised law is drafted accordingly.

43 Revised Law

44 Art. 18B.352. COURT ORDER FOR GOVERNMENT ACCESS TO STORED
45 CUSTOMER DATA. (a) A court shall issue an order authorizing
46 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 Source Law

12 Sec. 5. COURT ORDER TO OBTAIN ACCESS TO STORED
13 COMMUNICATIONS. (a) A court shall issue an order
14 authorizing disclosure of contents, records, or other
15 information of a wire or electronic communication held
16 in electronic storage if the court determines that
17 there is reasonable belief that the information sought
18 is relevant to a legitimate law enforcement inquiry.

19 (b) A court may grant a motion by the service
20 provider to quash or modify the order issued under
21 Subsection (a) of this section if the court determines
22 that the information or records requested are
23 unusually voluminous in nature or that compliance with
24 the order would cause an undue burden on the provider.

25 Revisor's Note

26 Section 5(b), Article 18.21, Code of Criminal
27 Procedure, refers to information or records requested
28 that are "unusually voluminous in nature." The
29 revised law omits "in nature" as unnecessary because
30 the quoted language does not add to the clear meaning
31 of the law.

32 Revised Law

33 Art. 18B.353. WARRANT ISSUED IN THIS STATE: APPLICABILITY.
34 Articles 18B.354-18B.357 apply to a warrant required under Article
35 18B.351 to obtain electronic customer data, including the contents
36 of a wire or electronic communication. (Code Crim. Proc.,
37 Art. 18.21, Sec. 5A(a).)

38 Source Law

39 Sec. 5A. WARRANT ISSUED IN THIS STATE FOR STORED
40 CUSTOMER DATA OR COMMUNICATIONS. (a) This section
41 applies to a warrant required under Section 4 to obtain

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

3 Revisor's Note

4 Section 5A(a), Article 18.21, Code of Criminal
5 Procedure, refers to "a warrant required under Section
6 4" of that article. The provisions of Section 4
7 relating to the requirement of a warrant are Sections
8 4(a) and (b), revised as Article 18B.351 of this
9 chapter, and the revised law is drafted accordingly.

10 Revised Law

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

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

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

28 (2) the electronic customer data sought:

29 (A) constitutes evidence of that offense or
30 evidence that a particular person committed that offense; and

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

33 (c) Only the electronic customer data described in the sworn
34 affidavit required by Article 18.01(b) may be seized under the
35 warrant.

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

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

8 Source Law

9 (b) On the filing of an application by an
10 authorized peace officer, a district judge may issue a
11 search warrant under this section for electronic
12 customer data held in electronic storage, including
13 the contents of and records and other information
14 related to a wire communication or electronic
15 communication held in electronic storage, by a
16 provider of an electronic communications service or a
17 provider of a remote computing service described by
18 Subsection (h), regardless of whether the customer
19 data is held at a location in this state or at a
20 location in another state. An application made under
21 this subsection must demonstrate probable cause for
22 the issuance of the warrant and must be supported by
23 the oath or affirmation of the authorized peace
24 officer.

25 (c) A search warrant may not be issued under
26 this section unless the sworn affidavit required by
27 Article 18.01(b) sets forth sufficient and substantial
28 facts to establish probable cause that:

29 (1) a specific offense has been committed;
30 and

31 (2) the electronic customer data sought:

32 (A) constitutes evidence of that
33 offense or evidence that a particular person committed
34 that offense; and

35 (B) is held in electronic storage by
36 the service provider on which the warrant is served
37 under Subsection (i).

38 (d) Only the electronic customer data described
39 in the sworn affidavit required by Article 18.01(b)
40 may be seized under the warrant.

41 (e) A warrant issued under this section shall
42 run in the name of "The State of Texas."

43 (f) Article 18.011 applies to an affidavit
44 presented under Article 18.01(b) for the issuance of a
45 warrant under this section, and the affidavit may be
46 sealed in the manner provided by that article.

47 Revisor's Note

48 (1) Section 5A(b), Article 18.21, Code of
49 Criminal Procedure, refers to a provider of an
50 electronic communications service or a provider of a
51 remote computing service "described by Subsection
52 (h)," meaning Section 5A(h), Article 18.21, Code of

1 Criminal Procedure. The provision of Section 5A(h)
2 that describes those service providers is revised as
3 Article 18B.355(b) of this chapter, and the revised
4 law is drafted accordingly.

5 (2) Section 5A(b), Article 18.21, Code of
6 Criminal Procedure, refers to an "oath or
7 affirmation." The revised law omits the reference to
8 "affirmation" because Section 311.005(1), Government
9 Code (Code Construction Act), states that an oath
10 includes an affirmation. The Code Construction Act
11 applies to Section 5A, Article 18.21, Code of Criminal
12 Procedure, for the reason stated in the revisor's note
13 to Article 18B.202.

14 Revised Law

15 Art. 18B.355. WARRANT ISSUED IN THIS STATE: EXECUTION OF
16 WARRANT. (a) Not later than the 11th day after the date of
17 issuance, an authorized peace officer shall execute a warrant
18 issued under Article 18B.354, except that the peace officer shall
19 execute the warrant within a shorter period if the district judge
20 directs a shorter period in the warrant. For purposes of this
21 subsection, a warrant is executed when the warrant is served in the
22 manner described by Subsection (c).

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

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

34 (1) a person specified by Section 5.255, Business

1 Organizations Code;

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

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

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

13 Source Law

14 (b) . . . an authorized peace officer . . . a
15 provider of an electronic communications service or a
16 provider of a remote computing service

17 (g) The peace officer shall execute the warrant
18 not later than the 11th day after the date of issuance,
19 except that the officer shall execute the warrant
20 within a shorter period if so directed in the warrant
21 by the district judge. For purposes of this
22 subsection, a warrant is executed when the warrant is
23 served in the manner described by Subsection (i).

24 (h) A warrant under this section may be served
25 only on a service provider that is a domestic entity or
26 a company or entity otherwise doing business in this
27 state under a contract or a terms of service agreement
28 with a resident of this state, if any part of that
29 contract or agreement is to be performed in this state.
30 . . .

31 (i) A search warrant issued under this section
32 is served when the authorized peace officer delivers
33 the warrant by hand, by facsimile transmission, or, in
34 a manner allowing proof of delivery, by means of the
35 United States mail or a private delivery service to:

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

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

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

43 (m) The district judge shall hear and decide any
44 motion to quash the warrant not later than the fifth
45 business day after the date the service provider files
46 the motion. The judge may allow the service provider to
47 appear at the hearing by teleconference.

48 Revisor's Note

49 Section 5A(g), Article 18.21, Code of Criminal

1 Procedure, refers to the execution of "the warrant,"
2 and Sections 5A(h) and (i), Article 18.21, Code of
3 Criminal Procedure, refer to the service of a "warrant
4 under this section" and a "warrant . . . under this
5 section," respectively. In each instance, the revised
6 law substitutes a "warrant issued under Article
7 18B.354" for clarity and the convenience of the reader
8 because it is clear that the warrant referenced by
9 Sections 5A(g), (h), and (i) is the search warrant
10 issued under Section 5A(b), which is revised as
11 Article 18B.354(a) of this chapter.

12 Revised Law

13 Art. 18B.356. WARRANT ISSUED IN THIS STATE: COMPLIANCE
14 WITH WARRANT. (a) A district judge shall indicate in a warrant
15 issued under Article 18A.354 that the deadline for compliance by
16 the provider of an electronic communications service or the
17 provider of a remote computing service is the 15th business day
18 after the date the warrant is served if the warrant is to be served
19 on a domestic entity or a company or entity otherwise doing business
20 in this state, except that the deadline for compliance with a
21 warrant served in accordance with Section 5.251, Business
22 Organizations Code, may be extended to a date that is not later than
23 the 30th day after the date the warrant is served.

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

31 (1) danger to the life or physical safety of any
32 person;

33 (2) flight from prosecution;

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

1 (4) intimidation of potential witnesses.

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

7 (d) A court may find any designated officer, designated
8 director, or designated owner of a company or entity in contempt of
9 court if the person by act or omission is responsible for the
10 failure of the company or entity to comply with the warrant within
11 the period allowed for compliance.

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

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

19 (g) A provider of an electronic communications service or a
20 provider of a remote computing service responding to a warrant
21 issued under Article 18B.354 may request an extension of the period
22 for compliance with the warrant if extenuating circumstances exist
23 to justify the extension. The district judge shall grant a request
24 for an extension based on those circumstances if:

25 (1) the authorized peace officer who applied for the
26 warrant or another appropriate authorized peace officer agrees to
27 the extension; or

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

32 Source Law

33 (b) On the filing of an application by an
34 authorized peace officer, ...

1 (h) . . . The service provider shall produce
2 all electronic customer data, contents of
3 communications, and other information sought,
4 regardless of where the information is held and within
5 the period allowed for compliance with the warrant, as
6 provided by Subsection (j). A court may find any
7 designated officer, designated director, or
8 designated owner of a company or entity in contempt of
9 court if the person by act or omission is responsible
10 for the failure of the company or entity to comply with
11 the warrant within the period allowed for compliance.
12 The failure of a company or entity to timely deliver
13 the information sought in the warrant does not affect
14 the admissibility of that evidence in a criminal
15 proceeding.

16 (j) The district judge shall indicate in the
17 warrant that the deadline for compliance by the
18 provider of an electronic communications service or
19 the provider of a remote computing service is the 15th
20 business day after the date the warrant is served if
21 the warrant is to be served on a domestic entity or a
22 company or entity otherwise doing business in this
23 state, except that the deadline for compliance with a
24 warrant served in accordance with Section 5.251,
25 Business Organizations Code, may be extended to a date
26 that is not later than the 30th day after the date the
27 warrant is served. The judge may indicate in a warrant
28 that the deadline for compliance is earlier than the
29 15th business day after the date the warrant is served
30 if the officer makes a showing and the judge finds that
31 failure to comply with the warrant by the earlier
32 deadline would cause serious jeopardy to an
33 investigation, cause undue delay of a trial, or create
34 a material risk of:

- 35 (1) danger to the life or physical safety
36 of any person;
37 (2) flight from prosecution;
38 (3) the tampering with or destruction of
39 evidence; or
40 (4) intimidation of potential witnesses.

41 (1) On a service provider's compliance with a
42 warrant under this section, an authorized peace
43 officer shall file a return of the warrant and a copy
44 of the inventory of the seized property as required
45 under Article 18.10.

46 (n) A provider of an electronic communications
47 service or a provider of a remote computing service
48 responding to a warrant issued under this section may
49 request an extension of the period for compliance with
50 the warrant if extenuating circumstances exist to
51 justify the extension. The district judge shall grant
52 a request for an extension based on those
53 circumstances if:

- 54 (1) the authorized peace officer who
55 applied for the warrant or another appropriate
56 authorized peace officer agrees to the extension; or
57 (2) the district judge finds that the need
58 for the extension outweighs the likelihood that the
59 extension will cause an adverse circumstance described
60 by Subsection (j).

61 Revisor's Note

62 Section 5A(j), Article 18.21, Code of Criminal

1 Procedure, refers to the compliance deadline indicated
2 in "the warrant," and Sections 5A(1) and (n), Article
3 18.21, Code of Criminal Procedure, refer to a service
4 provider's compliance with a "warrant under this
5 section" or response to a "warrant . . . under this
6 section," respectively. In each instance, the revised
7 law substitutes a "warrant issued under Article
8 18B.354" for the quoted language for the reason stated
9 in the revisor's note to Article 18B.355.

10 Revised Law

11 Art. 18B.357. WARRANT ISSUED IN THIS STATE: AUTHENTICATION
12 OF RECORDS BY SERVICE PROVIDER. If an authorized peace officer
13 serving a warrant under Article 18B.355 also delivers an affidavit
14 form to the provider of an electronic communications service or the
15 provider of a remote computing service responding to the warrant,
16 and the peace officer also notifies the service provider in writing
17 that an executed affidavit is required, the service provider shall
18 verify the authenticity of the customer data, contents of
19 communications, and other information produced in compliance with
20 the warrant by including with the information an affidavit form
21 that:

22 (1) is completed and sworn to by a person who is a
23 custodian of the information or a person otherwise qualified to
24 attest to the authenticity of the information; and

25 (2) states that the information was stored in the
26 course of regularly conducted business of the service provider and
27 specifies whether the regular practice of the service provider is
28 to store that information. (Code Crim. Proc., Art. 18.21, Sec.
29 5A(k).)

30 Source Law

31 (k) If the authorized peace officer serving the
32 warrant under this section also delivers an affidavit
33 form to the provider of an electronic communications
34 service or the provider of a remote computing service
35 responding to the warrant, and the peace officer also
36 notifies the provider in writing that an executed
37 affidavit is required, then the provider shall verify

1 the authenticity of the customer data, contents of
2 communications, and other information produced in
3 compliance with the warrant by including with the
4 information the affidavit form completed and sworn to
5 by a person who is a custodian of the information or a
6 person otherwise qualified to attest to its
7 authenticity that states that the information was
8 stored in the course of regularly conducted business
9 of the provider and specifies whether it is the regular
10 practice of the provider to store that information.

11 Revisor's Note

12 Section 5A(k), Article 18.21, Code of Criminal
13 Procedure, refers to the service of a "warrant under
14 this section." The revised law substitutes a "warrant
15 under Article 18B.355" for the quoted language for
16 clarity and convenience of the reader because it is
17 clear that the warrant referenced by Section 5A(k) is
18 the search warrant served under Sections 5A(g), (h),
19 and (i), which are revised in Article 18B.355 of this
20 chapter.

21 Revised Law

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

29 Source Law

30 Sec. 5B. WARRANT ISSUED IN ANOTHER STATE FOR
31 STORED CUSTOMER DATA OR COMMUNICATIONS. Any domestic
32 entity that provides electronic communications
33 services or remote computing services to the public
34 shall comply with a warrant issued in another state and
35 seeking information described by Section 5A(b), if the
36 warrant is served on the entity in a manner equivalent
37 to the service of process requirements provided in
38 Section 5A(h).

39 Revisor's Note

40 Section 5B, Article 18.21, Code of Criminal
41 Procedure, refers to the "service of process
42 requirements provided in Section 5A(h)," meaning
43 Section 5A(h), Article 18.21, Code of Criminal

1 Procedure. The provision of Section 5A(h) relating to
2 service of process is revised as Article 18B.355(b) of
3 this chapter, and the revised law is drafted
4 accordingly.

5 Revised Law

6 Art. 18B.359. GOVERNMENT ACCESS TO CERTAIN STORED CUSTOMER
7 DATA WITHOUT LEGAL PROCESS. (a) A provider of a telephonic
8 communications service shall disclose to an authorized peace
9 officer, without legal process, subscriber listing information,
10 including name, address, and telephone number or similar access
11 code:

12 (1) that the service provider provides to others in
13 the course of providing publicly available directory or similar
14 assistance; or

15 (2) that is solely for use in the dispatch of emergency
16 vehicles and personnel responding to a distress call directed to an
17 emergency dispatch system or when the information is reasonably
18 necessary to aid in the dispatching of emergency vehicles and
19 personnel for the immediate prevention of death, personal injury,
20 or destruction of property.

21 (b) A provider of a telephonic communications service shall
22 provide to an authorized peace officer the name of the subscriber of
23 record whose published telephone number is provided to the service
24 provider by an authorized peace officer. (Code Crim. Proc., Art.
25 18.21, Secs. 4(c), (d).)

26 Source Law

27 (c) A provider of telephonic communications
28 service shall disclose to an authorized peace officer,
29 without any form of legal process, subscriber listing
30 information, including name, address, and telephone
31 number or similar access code that:

32 (1) the service provides to others in the
33 course of providing publicly available directory or
34 similar assistance; or

35 (2) is solely for use in the dispatch of
36 emergency vehicles and personnel responding to a
37 distress call directed to an emergency dispatch system
38 or when the information is reasonably necessary to aid
39 in the dispatching of emergency vehicles and personnel
40 for the immediate prevention of death, personal
41 injury, or destruction of property.

1 (d) A provider of telephonic communications
2 service shall provide an authorized peace officer with
3 the name of the subscriber of record whose published
4 telephone number is provided to the service by an
5 authorized peace officer.

6 SUBCHAPTER I. BACKUP PRESERVATION OF ELECTRONIC CUSTOMER DATA

7 Revised Law

8 Art. 18B.401. BACKUP PRESERVATION OF ELECTRONIC CUSTOMER
9 DATA. (a) A subpoena or court order under Article 18B.351(b) for
10 disclosure of certain electronic customer data held in electronic
11 storage by a provider of an electronic communications service or a
12 provider of a remote computing service may, for the purpose of
13 preserving the customer data sought by the subpoena or court order,
14 require that service provider to create a copy of that data.

15 (b) The service provider shall create the copy within a
16 reasonable period as determined by the court issuing the subpoena
17 or court order.

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

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

24 Source Law

25 Sec. 6. BACKUP PRESERVATION. (a) A subpoena or
26 court order for disclosure of certain electronic
27 customer data held in electronic storage by a provider
28 of an electronic communications service or a provider
29 of a remote computing service under Section 4(b) may
30 require that provider to create a copy of the customer
31 data sought by the subpoena or court order for the
32 purpose of preserving that data. The provider may not
33 inform the subscriber or customer whose data is being
34 sought that the subpoena or court order has been
35 issued. The provider shall create the copy within a
36 reasonable time as determined by the court issuing the
37 subpoena or court order.

38 (b) The provider of an electronic
39 communications service or the provider of a remote
40 computing service shall immediately notify the
41 authorized peace officer who presented the subpoena or
42 court order requesting the copy when the copy has been
43 created.

44 Revised Law

45 Art. 18B.402. NOTICE TO SUBSCRIBER OR CUSTOMER. Not later

1 than the third day after the date of the receipt of the notice under
2 Article 18B.401(c) from the applicable service provider, the
3 authorized peace officer who presented the subpoena or court order
4 requesting the copy shall provide notice of the creation of the copy
5 to the subscriber or customer whose electronic customer data is the
6 subject of the subpoena or court order. (Code Crim. Proc., Art.
7 18.21, Secs. 6(b) (part), (c).)

8 Source Law

9 (b) . . . the authorized peace officer who
10 presented the subpoena or court order requesting the
11 copy

12 (c) The authorized peace officer shall notify
13 the subscriber or customer whose electronic customer
14 data is the subject of the subpoena or court order of
15 the creation of the copy not later than three days
16 after the date of the receipt of the notification from
17 the applicable provider that the copy was created.

18 Revisor's Note

19 Section 6(c), Article 18.21, Code of Criminal
20 Procedure, refers to the "notification from the
21 applicable provider that the copy was created." The
22 provision relating to the notice to a peace officer by
23 a service provider is in Section 6(b), Article 18.21,
24 Code of Criminal Procedure, revised as Section
25 18B.401(c) of this chapter, and the revised law adds a
26 cross-reference to that provision for the convenience
27 of the reader.

28 Revised Law

29 Art. 18B.403. RELEASE OF COPY OF ELECTRONIC CUSTOMER DATA.

30 The provider of an electronic communications service or the
31 provider of a remote computing service shall release a copy created
32 under this subchapter to the requesting authorized peace officer
33 not earlier than the 14th day after the date of the peace officer's
34 notice to the subscriber or customer if the service provider has
35 not:

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

38 (2) received notice from the subscriber or customer

1 that the subscriber or customer has initiated proceedings to
2 challenge the request. (Code Crim. Proc., Art. 18.21, Sec. 6(d).)

3 Source Law

4 (d) The provider of an electronic
5 communications service or the provider of a remote
6 computing service shall release the copy to the
7 requesting authorized peace officer not earlier than
8 the 14th day after the date of the peace officer's
9 notice to the subscriber or customer if the provider
10 has not:

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

13 (2) received notice from the subscriber or
14 customer that the subscriber or customer has initiated
15 proceedings to challenge the request.

16 Revisor's Note

17 Section 6(d), Article 18.21, Code of Criminal
18 Procedure, refers to the release of "the copy." This
19 is a reference to the copy of electronic customer data
20 that a subpoena or court order may require a service
21 provider to create under Section 6(a), Article 18.21,
22 Code of Criminal Procedure, revised in relevant part
23 as Article 18B.401(a) of this chapter. Throughout
24 this subchapter, which revises provisions of Section 6
25 relating to a service provider's creation of a copy of
26 electronic customer data, the revised law substitutes
27 "a copy created under this subchapter" for the quoted
28 language to provide context for the convenience of the
29 reader.

30 Revised Law

31 Art. 18B.404. DESTRUCTION OF COPY OF ELECTRONIC CUSTOMER
32 DATA. The provider of an electronic communications service or the
33 provider of a remote computing service may not destroy or permit the
34 destruction of a copy created under this subchapter until the later
35 of:

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

38 (2) the resolution of any court proceedings, including
39 appeals of any proceedings, relating to the subpoena or court order

1 requesting the creation of the copy. (Code Crim. Proc., Art. 18.21,
2 Sec. 6(e).)

3 Source Law

4 (e) The provider of an electronic
5 communications service or the provider of a remote
6 computing service may not destroy or permit the
7 destruction of the copy until the electronic customer
8 data has been delivered to the applicable law
9 enforcement agency or until the resolution of any
10 court proceedings, including appeals of any
11 proceedings, relating to the subpoena or court order
12 requesting the creation of the copy, whichever occurs
13 last.

14 Revised Law

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

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

25 Source Law

26 (f) An authorized peace officer who reasonably
27 believes that notification to the subscriber or
28 customer of the subpoena or court order would result in
29 the destruction of or tampering with electronic
30 customer data sought may request the creation of a copy
31 of the data. The peace officer's belief is not subject
32 to challenge by the subscriber or customer or by a
33 provider of an electronic communications service or a
34 provider of a remote computing service.

35 Revised Law

36 Art. 18B.406. PROCEEDINGS TO QUASH SUBPOENA OR VACATE COURT
37 ORDER. (a) Not later than the 14th day after the date a subscriber
38 or customer receives notice under Article 18B.402, the subscriber
39 or customer may file a written motion to quash the subpoena or
40 vacate the court order in the court that issued the subpoena or
41 court order. The motion must contain an affidavit or other sworn
42 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
28 not the subscriber or customer whose data is the subject of the
29 subpoena or court order or that there is reason to believe that the
30 peace officer's inquiry is legitimate and that the data sought is
31 relevant to that inquiry. The court shall quash the subpoena or
32 vacate the court order if the court finds that the applicant is the
33 subscriber or customer whose data is the subject of the subpoena or
34 court order and that there is not a reason to believe that the data

1 is relevant to a legitimate law enforcement inquiry or that there
2 has not been substantial compliance with the provisions of this
3 chapter.

4 (e) A court order denying a motion or application under this
5 article is not a final order, and an interlocutory appeal may not be
6 taken from the denial. (Code Crim. Proc., Art. 18.21, Secs. 6(g),
7 (h).)

8 Source Law

9 (g)(1) A subscriber or customer who receives
10 notification as described in Subsection (c) may file a
11 written motion to quash the subpoena or vacate the
12 court order in the court that issued the subpoena or
13 court order not later than the 14th day after the date
14 of the receipt of the notice. The motion must contain
15 an affidavit or sworn statement stating:

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

22 (B) the applicant's reasons for
23 believing that the customer data sought is not
24 relevant to a legitimate law enforcement inquiry or
25 that there has not been substantial compliance with
26 the provisions of this article in some other respect.

27 (2) The subscriber or customer shall give
28 written notice to the provider of an electronic
29 communications service or the provider of a remote
30 computing service of the challenge to the subpoena or
31 court order. The authorized peace officer requesting
32 the subpoena or court order must be served a copy of
33 the papers filed by personal delivery or by registered
34 or certified mail.

35 (h)(1) The court shall order the authorized
36 peace officer to file a sworn response to the motion
37 filed by the subscriber or customer if the court
38 determines that the subscriber or customer has
39 complied with the requirements of Subsection (g). On
40 request of the peace officer, the court may permit the
41 response to be filed in camera. The court may conduct
42 any additional proceedings the court considers
43 appropriate if the court is unable to make a
44 determination on the motion on the basis of the
45 parties' initial allegations and response.

46 (2) The court shall rule on the motion as
47 soon after the filing of the officer's response as
48 practicable. The court shall deny the motion if the
49 court finds that the applicant is not the subscriber or
50 customer whose electronic customer data held in
51 electronic storage is the subject of the subpoena or
52 court order or that there is reason to believe that the
53 peace officer's inquiry is legitimate and that the
54 customer data sought is relevant to that inquiry. The
55 court shall quash the subpoena or vacate the order if
56 the court finds that the applicant is the subscriber or
57 customer whose data is the subject of the subpoena or
58 court order and that there is not a reason to believe
59 that the data is relevant to a legitimate law

1 enforcement inquiry or that there has not been
2 substantial compliance with the provisions of this
3 article.

4 (3) A court order denying a motion or
5 application under this section is not a final order and
6 no interlocutory appeal may be taken from the denial.

7 Revisor's Note

8 Section 6(h)(3), Article 18.21, Code of Criminal
9 Procedure, refers to a court order denying a motion or
10 application under "this section." The revised law
11 substitutes "this article" for the quoted language
12 because the provision of Section 6 relating to a court
13 ruling on a motion or application is revised in this
14 article.

15 SUBCHAPTER J. PRODUCTION OF CERTAIN BUSINESS RECORDS

16 Revised Law

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

26 (1) disclose information about:

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

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

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

33 Source Law

34 Sec. 15. SUBPOENA AUTHORITY. (a) The director
35 of the department or the director's designee, the
36 inspector general of the Texas Department of Criminal
37 Justice or the inspector general's designee, or the
38 sheriff or chief of a designated law enforcement
39 agency or the sheriff's or chief's designee may issue
40 an administrative subpoena to a communications common

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

4 (1) disclose information about:
5 (A) the carrier's or service's
6 customers; or
7 (B) users of the services offered by
8 the carrier or service; and
9 (2) are material to a criminal
10 investigation.

11 Revisor's Note

12 Section 15(a), Article 18.21, Code of Criminal
13 Procedure, refers to a "communications common
14 carrier." Throughout this chapter, the revised law
15 substitutes "communication common carrier" for
16 "communications common carrier" for clarity and
17 consistency in the terminology used within the chapter
18 and because "communication common carrier" is the
19 defined term under Section 1(10), Article 18.20, Code
20 of Criminal Procedure, that is referenced by Section
21 1(1), Article 18.21, Code of Criminal Procedure, which
22 is revised as Article 18B.001(2) of this chapter.

23 Revised Law

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

31 Source Law

32 (b) Not later than the 30th day after the date on
33 which the administrative subpoena is issued under
34 Subsection (a), the inspector general of the Texas
35 Department of Criminal Justice or the sheriff or chief
36 of a designated law enforcement agency, as applicable,
37 shall report the issuance of the subpoena to the
38 department.

39 Revised Law

40 Art. 18B.453. COMPLIANCE WITH POLICY FOR INSTALLATION AND
41 USE OF EQUIPMENT. (a) If, based on a report received under Article
42 18B.452, the department determines that a designated law

1 enforcement office or agency is not in compliance with the policy
2 adopted by the office or agency under Article 18B.251, the
3 department shall notify the office or agency in writing that the
4 office or agency, as applicable, is not in compliance.

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

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

13 (2) the department approves that policy. (Code Crim.
14 Proc., Art. 18.21, Sec. 15(c).)

15 Source Law

16 (c) If, based on reports received under
17 Subsection (b), the department determines that a
18 designated law enforcement office or agency is not in
19 compliance with the policy adopted by the office or
20 agency under Section 2(j), the department shall notify
21 the office or agency in writing that it is not in
22 compliance. If the department determines that the
23 office or agency still is not in compliance with the
24 policy 90 days after the date the office or agency
25 receives written notice under this subsection, the
26 office or agency loses the authority granted by this
27 article until:

28 (1) the office or agency adopts a new
29 written policy governing the application of this
30 article to the office or agency; and

31 (2) the department approves the written
32 policy.

33 SUBCHAPTER K. SERVICE PROVIDER POWERS AND DUTIES

34 Revised Law

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

42 (b) The court shall enter the order if the court determines

1 that there is reason to believe that notification of the existence
2 of the warrant, subpoena, or court order will have an adverse
3 result.

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

5 (1) endangering the life or physical safety of an
6 individual;

7 (2) flight from prosecution;

8 (3) destruction of or tampering with evidence;

9 (4) intimidation of a potential witness; or

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

12 Source Law

13 Sec. 8. PRECLUSION OF NOTIFICATION. (a) An
14 authorized peace officer seeking electronic customer
15 data under Section 4 may apply to the court for an
16 order commanding the service provider to whom a
17 warrant, subpoena, or court order is directed not to
18 disclose to any person the existence of the warrant,
19 subpoena, or court order. The order is effective for
20 the period the court considers appropriate. The court
21 shall enter the order if the court determines that
22 there is reason to believe that notification of the
23 existence of the warrant, subpoena, or court order
24 will have an adverse result.

25 (b) In this section, an "adverse result" means:

26 (1) endangering the life or physical
27 safety of an individual;

28 (2) flight from prosecution;

29 (3) destruction of or tampering with
30 evidence;

31 (4) intimidation of a potential witness;
32 or

33 (5) otherwise seriously jeopardizing an
34 investigation or unduly delaying a trial.

35 Revisor's Note

36 Section 8(a), Article 18.21, Code of Criminal
37 Procedure, states that an authorized peace officer
38 "seeking electronic customer data under Section 4" may
39 apply to the court for an order applicable to a service
40 provider to whom a warrant, subpoena, or court order is
41 directed. Sections 4(a) and (b), Article 18.21, Code
42 of Criminal Procedure, revised as Article 18B.351 of
43 this chapter, relate to the legal process by which an
44 authorized peace officer seeks data from a service

1 provider. Sections 4(c) and (d), Article 18.21, Code
2 of Criminal Procedure, revised as Article 18B.359 of
3 this chapter, apply to an authorized peace officer
4 seeking data from a service provider without legal
5 process, and therefore those provisions of Section 4
6 are inapplicable in this context. The revised law is
7 drafted accordingly.

8 Revised Law

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

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

13 (b) Except as provided by Subsection (c), a provider of a
14 remote computing service may not knowingly divulge the contents of
15 a communication that:

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

18 (2) is received by means of electronic transmission
19 from the subscriber or customer or created by means of computer
20 processing of communications received by means of electronic
21 transmission from the subscriber or customer; and

22 (3) is solely for the purpose of providing storage or
23 computer processing services to the subscriber or customer, if the
24 service provider is not authorized to obtain access to the contents
25 of that communication for purposes of providing any service other
26 than storage or computer processing.

27 (c) A provider of an electronic communications service or a
28 provider of a remote computing service may disclose the contents of
29 an electronically stored communication:

30 (1) to an intended recipient of the communication or
31 the intended recipient's agent;

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

33 (3) with the consent of the originator, to the
34 addressee or the intended recipient of the communication, or the

1 subscriber of a remote computing service;

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

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

7 (6) to a law enforcement agency if the contents were
8 obtained inadvertently by the service provider and the contents
9 appear to pertain to the commission of an offense; or

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

12 Source Law

13 Sec. 11. DISCLOSURE OF STORED COMMUNICATIONS.

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

18 (b) Except as provided by Subsection (c) of this
19 section, a provider of remote computing service may
20 not knowingly divulge the contents of any
21 communication that is:

22 (1) in electronic storage;

23 (2) stored on behalf of a subscriber or
24 customer of the service and is received by means of
25 electronic transmission from or created by means of
26 computer processing of communications received by
27 means of electronic transmission from the subscriber
28 or customer; and

29 (3) solely for the purpose of providing
30 storage or computer processing services to the
31 subscriber or customer if the provider of the service
32 is not authorized to obtain access to the contents of
33 those communications for purposes of providing any
34 service other than storage or computer processing.

35 (c) A provider of an electronic communications
36 or remote computing service may divulge the contents
37 of an electronically stored communication:

38 (1) to an intended recipient of the
39 communication or that person's agent;

40 (2) to the addressee or that person's
41 agent;

42 (3) with the consent of the originator, to
43 the addressee or the intended recipient of the
44 communication, or the subscriber of a remote computing
45 service;

46 (4) to a person whose facilities are used
47 to transmit the communication to its destination or
48 the person's employee or authorized representative;

49 (5) as may be necessary to provide the
50 service or to protect the property or rights of the
51 provider of the service;

52 (6) to a law enforcement agency if the
53 contents were obtained inadvertently by the service
54 provider and the contents appear to pertain to the
55 commission of a crime; or

1 (7) as authorized under federal or other
2 state law.

3 Revisor's Note

4 Section 11(c)(6), Article 18.21, Code of Criminal
5 Procedure, refers to the commission of a "crime." The
6 revised law substitutes "offense" for "crime" in this
7 context because the terms are synonymous and because
8 "offense" is the term more commonly used in the Code of
9 Criminal Procedure and Penal Code to describe a
10 violation of a penal law of this state or a political
11 subdivision of this state or of the United States.

12 Revised Law

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

25 (b) The authorized peace officer and the person providing
26 the electronic customer data or other information may agree on the
27 amount of reimbursement. If there is not an agreement, the court
28 that issued the order for production of the data or information
29 shall determine the amount. If a court order was not issued for
30 production of the data or information, the court before which any
31 criminal prosecution relating to the data or information would be
32 brought shall determine the amount.

33 (c) Subsection (a) does not apply to records or other
34 information that is maintained by a communication common carrier
35 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 Source Law

8 Sec. 9. REIMBURSEMENT OF COSTS. (a) Except as
9 provided by Subsection (c) of this section, an
10 authorized peace officer who obtains electronic
11 customer data under Section 4 or other information
12 under this article shall reimburse the person
13 assembling or providing the data or information for
14 all costs that are reasonably necessary and that have
15 been directly incurred in searching for, assembling,
16 reproducing, or otherwise providing the data or
17 information. These costs include costs arising from
18 necessary disruption of normal operations of a
19 provider of an electronic communications service or a
20 provider of a remote computing service in which the
21 electronic customer data may be held in electronic
22 storage or in which the other information may be
23 stored.

24 (b) The authorized peace officer and the person
25 providing the electronic customer data or other
26 information may agree on the amount of
27 reimbursement. If there is no agreement, the court
28 that issued the order for production of the data or
29 information shall determine the amount. If no court
30 order was issued for production of the data or
31 information, the court before which the criminal
32 prosecution relating to the data or information would
33 be brought shall determine the amount.

34 (c) Subsection (a) of this section does not
35 apply to records or other information maintained by a
36 communications common carrier that relate to telephone
37 toll records or telephone listings obtained under
38 Section 4(e) of this article unless the court
39 determines that the amount of information required was
40 unusually voluminous or that an undue burden was
41 imposed on the provider.

42 Revisor's Note

43 Section 9(c), Article 18.21, Code of Criminal
44 Procedure, refers to "telephone toll records or
45 telephone listings obtained under Section 4(e)" of
46 that article. Section 4, Article 18.21, Code of
47 Criminal Procedure, was amended by Chapter 1289, Acts
48 of the 83rd Legislature, Regular Session, 2013,
49 resulting in a relettering of Section 4, including
50 relettering Subsection (e) as Subsection (c).

1 However, the cross-reference to Section 4(e) in
2 Section 9(c) was not amended to reflect the
3 relettering. The revised law is drafted to correct the
4 error.

5 SUBCHAPTER L. REMEDIES

6 Revised Law

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

14 (1) injunctive relief;

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

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

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

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

27 Source Law

28 Sec. 12. CAUSE OF ACTION. (a) Except as
29 provided by Section 10 of this article, a provider of
30 an electronic communications service or a provider of
31 a remote computing service, or a subscriber or
32 customer of that provider, that is aggrieved by a
33 violation of this article has a civil cause of action
34 if the conduct constituting the violation was
35 committed knowingly or intentionally and is entitled
36 to:

37 (1) injunctive relief;

38 (2) a reasonable attorney's fee and other
39 litigation costs reasonably incurred; and

40 (3) the sum of the actual damages suffered

1 and any profits made by the violator as a result of the
2 violation or \$1,000, whichever is more.

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

7 (c) A civil action under this section may be
8 presented within two years after the date the claimant
9 first discovered or had reasonable opportunity to
10 discover the violation, and not afterward.

11 Revised Law

12 Art. 18B.552. NO CAUSE OF ACTION. A subscriber or customer
13 of a provider of an electronic communications service or a provider
14 of a remote computing service does not have a cause of action
15 against a service provider or the service provider's officers,
16 employees, or agents or against other specified persons for
17 providing information, facilities, or assistance as required by a
18 court order, warrant, subpoena, or certification under this
19 chapter. (Code Crim. Proc., Art. 18.21, Sec. 10.)

20 Source Law

21 Sec. 10. NO CAUSE OF ACTION. A subscriber or
22 customer of a provider of an electronic communications
23 service or a provider of a remote computing service
24 does not have a cause of action against a provider or
25 its officers, employees, or agents or against other
26 specified persons for providing information,
27 facilities, or assistance as required by a court
28 order, warrant, subpoena, or certification under this
29 article.

30 Revised Law

31 Art. 18B.553. EXCLUSIVITY OF REMEDIES. The remedies and
32 sanctions under this chapter are the exclusive judicial remedies
33 and sanctions for a violation of this chapter, other than a
34 violation that infringes on a right of a party that is guaranteed by
35 a state or federal constitution. (Code Crim. Proc., Art. 18.21,
36 Sec. 13.)

37 Source Law

38 Sec. 13. EXCLUSIVITY OF REMEDIES. The remedies
39 and sanctions described in this article are the
40 exclusive judicial remedies and sanctions for a
41 violation of this article other than a violation that
42 infringes on a right of a party guaranteed by a state
43 or federal constitution.

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25	SUBCHAPTER A. GENERAL PROVISIONS	
26	<u>Revised Law</u>	
27	Art. 66.001. DEFINITIONS. In this chapter:	
28	(1) "Administration of criminal justice" means the	
29	detection, apprehension, detention, pretrial release, post-trial	
30	release, prosecution, adjudication, correctional supervision, or	
31	rehabilitation of an offender. The term includes criminal	
32	identification activities and the collection, storage, and	
33	dissemination of criminal history record information.	
34	(2) "Computerized criminal history system" means the	

1 database containing arrest, disposition, and other criminal
2 history maintained by the Department of Public Safety.

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

6 (4) "Council" means the Criminal Justice Policy
7 Council.

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

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

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

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

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

25 (10) "Offender" means any person who is assigned an
26 incident number.

27 (11) "Offense code" means the numeric code for each
28 offense category.

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

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

(9), (10), (11), (13), (14), (16).)

Source Law

Art. 60.01. DEFINITIONS. In this chapter:

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

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

(4) "Corrections tracking system" means the data base maintained by the Texas Department of Criminal Justice on all offenders under its supervision.

(5) "Council" means the Criminal Justice Policy Council.

(6) "Criminal justice agency" means a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice.

(7) "Criminal justice information system" means the computerized criminal history system and the corrections tracking system.

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

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

(10) "Offender" means any person who is assigned an incident number.

(11) "Offense code" means a numeric code for each offense category.

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

(14) "State identification number" means a unique number assigned by the Department of Public Safety to each person whose name appears in the criminal justice information system.

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

SUBCHAPTER B. CRIMINAL JUSTICE INFORMATION SYSTEM

Revised Law

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

1 system:

2 (1) that provides an accurate criminal history record
3 depository to:

4 (A) law enforcement officers; and

5 (B) criminal justice agencies for operational
6 decision making;

7 (2) from which accurate criminal justice system
8 modeling can be conducted; and

9 (3) that improves:

10 (A) the quality of data used to conduct impact
11 analyses of proposed legislative changes in the criminal justice
12 system; and

13 (B) the ability of interested parties to analyze
14 the functioning of the criminal justice system. (Code Crim. Proc.,
15 Art. 60.02(c).)

16 Source Law

17 (c) The criminal justice information system
18 shall be established and maintained to supply the
19 state with a system:

20 (1) that provides law enforcement officers
21 with an accurate criminal history record depository;

22 (2) that provides criminal justice
23 agencies with an accurate criminal history record
24 depository for operational decision making;

25 (3) from which accurate criminal justice
26 system modeling can be conducted;

27 (4) that improves the quality of data used
28 to conduct impact analyses of proposed legislative
29 changes in the criminal justice system; and

30 (5) that improves the ability of
31 interested parties to analyze the functioning of the
32 criminal justice system.

33 Revisor's Note

34 Article 60.02(c), Code of Criminal Procedure,
35 requires the criminal justice information system to be
36 "established." The revised law omits "established" as
37 executed.

38 Revised Law

39 Art. 66.052. IMPLEMENTATION AND OPERATION OF CRIMINAL
40 JUSTICE INFORMATION SYSTEM. (a) The Department of Public Safety
41 shall designate offense codes and has the sole responsibility for

1 designating the state identification number for each person whose
2 name appears in the criminal justice information system.

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

7 Source Law

8 (e) The Department of Public Safety shall
9 designate the offense codes and has the sole
10 responsibility for designating the state
11 identification number for each person whose name
12 appears in the criminal justice information system.

13 (f) The Department of Public Safety and the
14 Texas Department of Criminal Justice shall implement a
15 system to link the computerized criminal history
16 system and the corrections tracking system. . . .

17 Revised Law

18 Art. 66.053. INFORMATION COLLECTED. For each arrest for a
19 felony or misdemeanor other than a misdemeanor punishable by fine
20 only, the criminal justice information system must include
21 information relating to:

- 22 (1) offenders;
23 (2) arrests;
24 (3) prosecutions;
25 (4) the disposition of cases by courts;
26 (5) sentencing; and
27 (6) the handling of offenders received by a
28 correctional agency, facility, or other institution. (Code Crim.
29 Proc., Art. 60.05.)

30 Source Law

31 Art. 60.05. TYPES OF INFORMATION COLLECTED.
32 The criminal justice information system must contain
33 but is not limited to the following types of
34 information for each arrest for a felony or a
35 misdemeanor not punishable by fine only:

- 36 (1) information relating to offenders;
37 (2) information relating to arrests;
38 (3) information relating to prosecutions;
39 (4) information relating to the
40 disposition of cases by courts;
41 (5) information relating to sentencing;
42 and
43 (6) information relating to the handling
44 of offenders received by a correctional agency,
45 facility, or other institution.

Revisor's Note

(1) Article 60.05, Code of Criminal Procedure, states that the criminal justice information system "must contain but is not limited to" certain types of information. The revised law substitutes "must include" for the quoted language because the phrases are synonymous in this context and the latter phrase is more commonly used in statutory codes in this state. It is unnecessary to revise "but is not limited to" because Section 311.005(13), Government Code (Code Construction Act), provides that "includes" and "including" are terms of enlargement and not of limitation and do not create a presumption that components not expressed are excluded. The Code Construction Act applies to Article 60.05, Code of Criminal Procedure, and the other provisions of that code to the extent that those provisions are amended or reenacted by the 60th or subsequent legislatures. See Ex parte Torres, 943 S.W.2d 469, 473 n.5 (Tex. Crim. App. 1997).

(2) Article 60.05, Code of Criminal Procedure, requires the criminal justice information system to include information for each arrest for a felony or a "misdemeanor not punishable by fine only." Throughout this chapter, the revised law substitutes "misdemeanor other than a misdemeanor punishable by fine only" for the quoted language because the phrases are synonymous in this context and the latter phrase is more commonly used.

Revised Law

Art. 66.054. FINGERPRINT AND ARREST INFORMATION IN CRIMINAL JUSTICE INFORMATION SYSTEM. (a) When a jurisdiction transmits fingerprints and arrest information by a remote terminal accessing the statewide automated fingerprint identification system, the

1 Department of Public Safety shall use that transmission to create:

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

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

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

15 Source Law

16 Art. 60.12. FINGERPRINT AND ARREST INFORMATION
17 IN COMPUTERIZED SYSTEM. (a) The Department of Public
18 Safety shall, when a jurisdiction transmits
19 fingerprints and arrest information by a remote
20 terminal accessing the statewide automated
21 fingerprint identification system, use that
22 transmission either to create a permanent record in
23 the criminal justice information system or to create a
24 temporary arrest record in the criminal justice
25 information system to be maintained by the department
26 until the department receives and processes the
27 physical copy of the arrest information.

28 (b) The Department of Public Safety shall make
29 available to a criminal justice agency making a
30 background criminal inquiry any information contained
31 in a temporary arrest record maintained by the
32 department, including a statement that a physical copy
33 of the arrest information was not available at the time
34 the information was entered in the system.

35 Revisor's Note

36 Article 60.12(a), Code of Criminal Procedure,
37 requires the Department of Public Safety to enter
38 arrest information temporarily in the criminal justice
39 information system if the physical copy of the arrest
40 information is not yet available. Article 60.12(b),
41 Code of Criminal Procedure, requires the Department of
42 Public Safety to specify, in responding to a criminal
43 background check, each instance in which a physical

1 copy of arrest information was not yet available at the
2 time that the arrest information was temporarily
3 entered in "the system," but does not specify whether
4 this "system" is the criminal justice information
5 system referenced in Article 60.12(a), Code of
6 Criminal Procedure, or the statewide automated
7 fingerprint identification system referenced in that
8 same subsection. In reading Articles 60.12(a) and (b)
9 together, it is clear from the context that the system
10 into which arrest information is temporarily entered
11 in Article 60.12(b) is the criminal justice
12 information system and not the statewide automated
13 fingerprint identification system. The revised law
14 has been drafted accordingly.

15 SUBCHAPTER C. COMPUTERIZED CRIMINAL HISTORY SYSTEM

16 Revised Law

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

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

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

29 Source Law

30 (b) The Department of Public Safety is
31 responsible for recording data and maintaining a data
32 base for a computerized criminal history system that
33 serves as the record creation point for criminal
34 history information maintained by the state.

35 (d) The data bases must contain the information
36 required by this chapter.

1 (g) The Department of Public Safety is
2 responsible for the operation of the computerized
3 criminal history system and shall develop the
4 necessary interfaces in the system to accommodate
5 inquiries from a statewide automated fingerprint
6 identification system, if such a system is implemented
7 by the department.

8 Revisor's Note

9 (1) Article 60.02(b), Code of Criminal
10 Procedure, requires the Department of Public Safety to
11 maintain a "data base" for the computerized criminal
12 history system. The revised law omits "data base" as
13 unnecessary because, according to the definition of
14 "computerized criminal history system" in Article
15 60.01(3), Code of Criminal Procedure, revised in this
16 chapter as Article 66.001(2), the computerized
17 criminal history system is a database.

18 (2) Article 60.02(d), Code of Criminal
19 Procedure, states that "[t]he data bases must contain
20 the information required by this chapter." The
21 relevant databases are the computerized criminal
22 history system maintained by the Department of Public
23 Safety and the corrections tracking system maintained
24 by the Texas Department of Criminal Justice. Article
25 60.02(d) is revised in this chapter as both this
26 article, applicable only to the computerized criminal
27 history system, and Article 66.151, applicable only to
28 the corrections tracking system. For clarity, the
29 revised law substitutes a reference to the appropriate
30 database in each article of the revised law.

31 (3) Article 60.02(g), Code of Criminal
32 Procedure, requires the Department of Public Safety to
33 develop the necessary interfaces in the computerized
34 criminal history system to accommodate inquiries from
35 a statewide automated fingerprint identification
36 system "if such a system is implemented by the
37 department." The revised law substitutes "implemented

1 by the department" for the quoted language because the
2 Department of Public Safety has implemented a
3 statewide automated fingerprint identification
4 system.

5 Revised Law

6 Art. 66.102. INFORMATION CONTAINED IN COMPUTERIZED
7 CRIMINAL HISTORY SYSTEM. (a) In this article:

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

10 (2) "Rejected case" means:

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

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

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

18 (1) name, including other names by which the offender
19 is known;

20 (2) date of birth;

21 (3) physical description, including sex, weight,
22 height, race, ethnicity, eye color, hair color, scars, marks, and
23 tattoos; and

24 (4) state identification number.

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

27 (1) the offender's name;

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

29 (3) the arresting law enforcement agency;

30 (4) the arrest charge, by offense code and incident
31 number;

32 (5) whether the arrest charge is a misdemeanor or
33 felony;

34 (6) the date of the arrest;

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

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

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

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

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

11 (3) for a rejected case:

12 (A) the date of rejection;

13 (B) the offense code;

14 (C) the incident number; and

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

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

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

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

24 (A) the date of disposition;

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

27 (C) the type of disposition; and

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

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

33 (1) the sentencing date;

34 (2) the sentence for each offense, by offense code and

1 incident number;

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

3 (A) the agency that receives custody of the

4 offender;

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

6 and

7 (C) if multiple sentences were ordered, whether

8 the sentences were ordered to be served consecutively or

9 concurrently;

10 (4) if the offender was sentenced to pay a fine, the

11 amount of the fine;

12 (5) if a sentence to pay a fine or to confinement was

13 ordered but was deferred, probated, suspended, or otherwise not

14 imposed:

15 (A) the length of the sentence or the amount of

16 the fine that was deferred, probated, suspended, or otherwise not

17 imposed; and

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

19 incident number; and

20 (6) if a sentence other than a fine or confinement was

21 ordered, a description of the sentence ordered.

22 (g) The Department of Public Safety shall maintain in the

23 computerized criminal history system any information the

24 department maintains in the central database under Article 62.005.

25 (h) In addition to the information described by this

26 article, information in the computerized criminal history system

27 must include the age of the victim of the offense if the offender

28 was arrested for or charged with an offense under the following

29 provisions of the Penal Code:

30 (1) Section 20.04(a)(4) (Aggravated Kidnapping), if

31 the offender committed the offense with the intent to violate or

32 abuse the victim sexually;

33 (2) Section 20A.02 (Trafficking of Persons), if the

34 offender:

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

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

7 (3) Section 21.02 (Continuous Sexual Abuse of Young
8 Child or Children);

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

10 (5) Section 22.011 (Sexual Assault) or 22.021
11 (Aggravated Sexual Assault);

12 (6) Section 30.02 (Burglary), if the offense is
13 punishable under Subsection (d) of that section and the offender
14 committed the offense with the intent to commit an offense
15 described by Subdivision (1), (4), or (5);

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

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

19 Source Law

20 Art. 60.01. DEFINITIONS. In this chapter:

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

24 (12) "Rejected case" means:

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

28 (B) an information or indictment
29 that, after the arrest of the offender, the prosecutor
30 refuses to prosecute.

31 Art. 60.051. INFORMATION IN COMPUTERIZED
32 CRIMINAL HISTORY SYSTEM. (a) Information in the
33 computerized criminal history system relating to an
34 offender must include:

35 (1) the offender's name, including other
36 names by which the offender is known;

37 (2) the offender's date of birth;

38 (3) the offender's physical description,
39 including sex, weight, height, race, ethnicity, eye
40 color, hair color, scars, marks, and tattoos; and

41 (4) the offender's state identification
42 number.

43 (b) Information in the computerized criminal
44 history system relating to an arrest must include:

45 (1) the name of the offender;

1 (2) the offender's state identification
2 number;
3 (3) the arresting agency;
4 (4) the arrest charge by offense code and
5 incident number;
6 (5) whether the arrest charge is a
7 misdemeanor or felony;
8 (6) the date of the arrest;
9 (7) the exact disposition of the case by a
10 law enforcement agency following the arrest; and
11 (8) the date of disposition of the case by
12 the law enforcement agency.

13 (c) Information in the computerized criminal
14 history system relating to a prosecution must include:

15 (1) each charged offense by offense code
16 and incident number;
17 (2) the level of the offense charged or the
18 degree of the offense charged for each offense in
19 Subdivision (1) of this subsection; and
20 (3) for a rejected case, the date of
21 rejection, offense code, and incident number, and
22 whether the rejection is a result of a successful
23 pretrial diversion program.

24 (d) Information in the computerized criminal
25 history system relating to the disposition of a case
26 that was not rejected must include:

27 (1) the final pleading to each charged
28 offense and the level of the offense;

29 (2) a listing of each charged offense
30 disposed of by the court and:

31 (A) the date of disposition;
32 (B) the offense code for the disposed
33 charge and incident number; and

34 (C) the type of disposition; and
35 (3) for a conviction that is appealed the
36 final court decision and the final disposition of the
37 offender on appeal.

38 (e) Information in the computerized criminal
39 history system relating to sentencing must include for
40 each sentence:

41 (1) the sentencing date;
42 (2) the sentence for each offense by
43 offense code and incident number;

44 (3) if the offender was sentenced to
45 confinement:

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

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

50 (C) if multiple sentences were
51 ordered, whether they were ordered to be served
52 consecutively or concurrently;

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

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

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

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

63 (6) if a sentence other than fine or
64 confinement was ordered, a description of the sentence
65 ordered.

66 (f) The department shall maintain in the
67 computerized criminal history system any information
68 the department maintains in the central database under

1 Article 62.005.

2 (g) In addition to the information described by
3 Subsections (a)-(f), information in the computerized
4 criminal history system must include the age of the
5 victim of the offense if the defendant was arrested for
6 or charged with an offense under:

7 (1) Section 21.02 (Continuous sexual abuse
8 of young child or children), Penal Code;

9 (2) Section 21.11 (Indecency with a
10 child), Penal Code;

11 (3) Section 22.011 (Sexual assault) or
12 22.021 (Aggravated sexual assault), Penal Code;

13 (4) Section 43.25 (Sexual performance by a
14 child), Penal Code;

15 (5) Section 20.04(a)(4) (Aggravated
16 kidnapping), Penal Code, if the defendant committed
17 the offense with intent to violate or abuse the victim
18 sexually;

19 (6) Section 30.02 (Burglary), Penal Code,
20 if the offense is punishable under Subsection (d) of
21 that section and the defendant committed the offense
22 with intent to commit an offense described by
23 Subdivision (2), (3), or (5);

24 (7) Section 20A.02 (Trafficking of
25 persons), Penal Code, if the defendant:

26 (A) trafficked a person with the
27 intent or knowledge that the person would engage in
28 sexual conduct, as defined by Section 43.25, Penal
29 Code; or

30 (B) benefited from participating in a
31 venture that involved a trafficked person engaging in
32 sexual conduct, as defined by Section 43.25, Penal
33 Code; or

34 (8) Section 43.05(a)(2) (Compelling
35 prostitution), Penal Code.

36 Revisor's Note

37 (1) Article 60.051(b)(3), Code of Criminal
38 Procedure, refers to the "arresting agency." For
39 clarity and consistency of terminology, the revised
40 law substitutes "arresting law enforcement agency" for
41 the quoted language.

42 (2) Article 60.051(f), Code of Criminal
43 Procedure, requires "[t]he department" to maintain in
44 the computerized criminal history system any
45 information the department maintains in the central
46 database under Article 62.005, Code of Criminal
47 Procedure. From the context of that subsection, it is
48 clear that the reference means the Department of
49 Public Safety because the Department of Public Safety
50 is the entity that maintains the computerized criminal
51 history system under this chapter and the central

1 database under Article 62.005. The revised law is
2 drafted accordingly.

3 (3) Articles 60.051(a) through (f), Code of
4 Criminal Procedure, require certain information
5 relating to an offender to be entered in the
6 computerized criminal history system. Article
7 60.051(g), Code of Criminal Procedure, requires
8 additional information relating to certain
9 "defendant[s]" to be entered in that system. It is
10 clear from the context that the defendant about whom
11 additional information is required to be entered under
12 Article 60.051(g) is necessarily an offender whose
13 information was entered in the system under Articles
14 60.051(a) through (f). The revised law substitutes
15 "offender" for "defendant" for consistency of
16 terminology within the article and because "offender"
17 is the term defined under Article 60.01(10), Code of
18 Criminal Procedure, revised in this chapter as Article
19 66.001(10).

20 Revised Law

21 Art. 66.103. DUTIES OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE
22 REGARDING CRIMINAL JUSTICE INFORMATION SYSTEM. Data received by
23 the Texas Department of Criminal Justice that is required by the
24 Department of Public Safety for the preparation of a criminal
25 history record shall be made available to the computerized criminal
26 history system not later than the seventh day after the date on
27 which the Texas Department of Criminal Justice receives the request
28 for the data from the Department of Public Safety. (Code Crim.
29 Proc., Art. 60.02(f) (part).)

30 Source Law

31 (f) . . . Data received by the Texas Department
32 of Criminal Justice that is required by the Department
33 of Public Safety for the preparation of a criminal
34 history record shall be made available to the
35 computerized criminal history system not later than
36 the seventh day after the date on which the Texas
37 Department of Criminal Justice receives the request

1 for the data from the Department of Public Safety.

2 Revised Law

3 Art. 66.104. DUTIES OF LICENSING AGENCIES TO PROVIDE
4 INFORMATION REGARDING LICENSE HOLDERS. (a) The Texas Medical
5 Board, the Texas State Board of Podiatric Medical Examiners, the
6 State Board of Dental Examiners, the Texas State Board of Pharmacy,
7 the Texas State Board of Examiners of Psychologists, and the State
8 Board of Veterinary Medical Examiners shall provide to the
9 Department of Public Safety through electronic means, magnetic
10 tape, or disk, as specified by the department, a list of each person
11 licensed by the respective agency, including the person's name and
12 date of birth and any other personal descriptive information
13 required by the department. Each agency shall update the
14 information and submit the updated information quarterly to the
15 department.

16 (b) The Department of Public Safety shall:

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

20 (2) report to the appropriate licensing agency for
21 verification and administrative action, as considered appropriate
22 by the licensing agency, the name of any person found to have a
23 record of conviction, other than a defendant whose prosecution is
24 deferred during a period of community supervision without an
25 adjudication of guilt or a plea of guilty.

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

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

Source Law

Art. 60.061. INFORMATION ON PERSONS LICENSED BY CERTAIN AGENCIES. (a) The Texas State Board of Medical Examiners, the Texas State Board of Podiatric Medical Examiners, the State Board of Dental Examiners, the Texas State Board of Pharmacy, the Texas State Board of Examiners of Psychologists, and the State Board of Veterinary Medical Examiners shall provide to the Department of Public Safety through electronic means, magnetic tape, or disk, as specified by the department, a list including the name, date of birth, and any other personal descriptive information required by the department for each person licensed by the respective agency. Each agency shall update this information and submit to the Department of Public Safety the updated information quarterly.

(b) The Department of Public Safety shall perform at least quarterly a computer match of the licensing list against the convictions maintained in the computerized criminal history system. The Department of Public Safety shall report to the appropriate licensing agency for verification and administrative action, as considered appropriate by the licensing agency, the name of any person found to have a record of conviction, except a defendant whose prosecution is deferred during a period of community supervision without an adjudication or plea of guilt. The Department of Public Safety may charge the licensing agency a fee not to exceed the actual direct cost incurred by the department in performing a computer match and reporting to the agency.

(c) The transmission of information by electronic means under Subsection (a) of this article does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

Revisor's Note

Article 60.061(a), Code of Criminal Procedure, refers to the "Texas State Board of Medical Examiners." The revised law substitutes "Texas Medical Board" for "Texas State Board of Medical Examiners" to reflect a change in the agency's name. The name of the Texas State Board of Medical Examiners was changed to the Texas Medical Board by Chapter 269, Acts of the 79th Legislature, Regular Session, 2005. The revised law is drafted accordingly.

Revised Law

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

(1) provide the notice described by Article 2.28(1) to

1 the person whose identity was misused, if the local law enforcement
2 agency was unable to notify the person under that subdivision;

3 (2) take action to ensure that the information
4 maintained in the computerized criminal history system reflects the
5 use of the person's identity as a stolen alias; and

6 (3) notify the Texas Department of Criminal Justice
7 that the person's identifying information may have been falsely
8 used by an inmate in the custody of the Texas Department of Criminal
9 Justice.

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

18 Source Law

19 Art. 60.19. INFORMATION RELATED TO MISUSED
20 IDENTITY. (a) On receipt of information from a local
21 law enforcement agency under Article 2.28, the
22 department shall:

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

28 (2) take action to ensure that the
29 information maintained in the computerized criminal
30 history system reflects the use of the person's
31 identity as a stolen alias; and

32 (3) notify the Texas Department of
33 Criminal Justice that the person's identifying
34 information may have been falsely used by an inmate in
35 the custody of the department.

36 (b) On receipt of a declaration under Section
37 411.0421, Government Code, or on receipt of
38 information similar to that contained in a
39 declaration, the department shall separate
40 information maintained in the computerized criminal
41 history system regarding an individual whose identity
42 has been misused from information maintained in that
43 system regarding the person who misused the identity.

44 Revisor's Note

45 (1) Article 60.19(a), Code of Criminal
46 Procedure, refers to the receipt of information under

1 Article 2.28, Code of Criminal Procedure, by "the
2 department." The entity that receives information
3 under that article is the Department of Public Safety,
4 and the revised law is drafted accordingly.

5 (2) Article 60.19(b), Code of Criminal
6 Procedure, refers to the receipt of a declaration
7 under Section 411.0421, Government Code, by "the
8 department." The entity that receives a declaration
9 under that section is the Department of Public Safety,
10 and the revised law is drafted accordingly.

11 Revised Law

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

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

25 (c) On receipt of a report of arrest information that
26 corresponds to a record in a non-fingerprint supported file created
27 under Subsection (a), the Department of Public Safety shall
28 transfer the record from the non-fingerprint supported file to the
29 computerized criminal history system. (Code Crim. Proc., Art.
30 60.20.)

31 Source Law

32 Art. 60.20. INFORMATION RELATED TO
33 NON-FINGERPRINT SUPPORTED ACTIONS. On receipt of a
34 report of prosecution or court disposition information
35 from a jurisdiction for which corresponding arrest
36 data does not exist in the computerized criminal

1 history system, the Department of Public Safety shall
2 enter the report into a non-fingerprint supported file
3 that is separate from the computerized criminal
4 history system. The department shall grant access to
5 records in the non-fingerprint supported file that
6 include the subject's name or other identifier in the
7 same manner as the department is required to grant
8 access to criminal history record information under
9 Subchapter F, Chapter 411, Government Code. On
10 receipt of a report of arrest information that
11 corresponds to a record in the non-fingerprint
12 supported file, the department shall transfer the
13 record from the non-fingerprint supported file to the
14 computerized criminal history system.

15 SUBCHAPTER D. CORRECTIONS TRACKING SYSTEM

16 Revised Law

17 Art. 66.151. CORRECTIONS TRACKING SYSTEM DATABASE. (a)

18 The Texas Department of Criminal Justice shall record data and
19 establish and maintain the corrections tracking system.

20 (b) The corrections tracking system must contain the
21 information required by this chapter. (Code Crim. Proc., Arts.
22 60.02(a), (d).)

23 Source Law

24 Art. 60.02. INFORMATION SYSTEMS. (a) The Texas
25 Department of Criminal Justice is responsible for
26 recording data and establishing and maintaining a data
27 base for a corrections tracking system.

28 (d) The data bases must contain the information
29 required by this chapter.

30 Revisor's Note

31 (1) Article 60.02(a), Code of Criminal
32 Procedure, requires the Texas Department of Criminal
33 Justice to maintain a "data base" for the corrections
34 tracking system. The revised law omits "data base" as
35 unnecessary because, according to the definition of
36 "corrections tracking system" in Article 60.01(4),
37 Code of Criminal Procedure, revised in this chapter as
38 Article 66.001(3), the corrections tracking system is
39 a database.

40 (2) Article 60.02(d), Code of Criminal
41 Procedure, states that "[t]he data bases must contain
42 the information required by this chapter." The
43 relevant databases are the computerized criminal

1 history system maintained by the Department of Public
2 Safety and the corrections tracking system maintained
3 by the Texas Department of Criminal Justice. The
4 revised law substitutes a reference to the appropriate
5 database for the reason stated in Revisor's Note (2) to
6 Article 66.101.

7 Revised Law

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

- 12 (1) the offender's name;
- 13 (2) the offender's state identification number;
- 14 (3) the sentencing date;
- 15 (4) the sentence for each offense, by offense code and
16 incident number;
- 17 (5) if the offender was sentenced to imprisonment:
 - 18 (A) the unit of imprisonment;
 - 19 (B) the length of the sentence for each offense;
 - 20 and
 - 21 (C) if multiple sentences were ordered, whether
22 the sentences were ordered to be served consecutively or
23 concurrently; and
- 24 (6) if a sentence other than a fine or imprisonment was
25 ordered, a description of the sentence ordered.

26 (b) Sentencing information in the corrections tracking
27 system must also include the following information about each
28 community supervision, including deferred adjudication community
29 supervision, or other alternative to imprisonment ordered:

- 30 (1) each conviction for which a sentence was ordered
31 but was deferred, probated, suspended, or otherwise not imposed, by
32 offense code and incident number; and
- 33 (2) if a sentence or portion of a sentence of
34 imprisonment was deferred, probated, suspended, or otherwise not

1 imposed:

2 (A) the offense, the sentence, and the amount of
3 the sentence deferred, probated, suspended, or otherwise not
4 imposed;

5 (B) a statement of whether any return to
6 imprisonment or confinement was a condition of community
7 supervision or an alternative sentence;

8 (C) the community supervision and corrections
9 department exercising jurisdiction over the offender;

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

12 (E) any program in which the offender is placed
13 or has previously been placed and the level of supervision on which
14 the offender is placed while under the jurisdiction of a community
15 supervision and corrections department;

16 (F) the date a program described by Paragraph (E)
17 begins, the date the program ends, and whether the program was
18 completed successfully;

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

21 (H) if the offender's community supervision is
22 revoked:

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

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

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

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

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

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

1 (A) the date of execution; and

2 (B) if the death sentence was commuted, the
3 sentence to which the sentence of death was commuted and the date of
4 commutation;

5 (3) the date the offender was released from
6 imprisonment or confinement and whether the release was a discharge
7 or a release on parole or to mandatory supervision;

8 (4) if the offender is released on parole or to
9 mandatory supervision:

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

12 (B) the date the offender was received by an
13 office of the parole division of the Texas Department of Criminal
14 Justice;

15 (C) the county in which the offender resides
16 while under supervision;

17 (D) any program in which the offender is placed
18 or has previously been placed and the level of supervision on which
19 the offender is placed while under the jurisdiction of the parole
20 division;

21 (E) the date a program described by Paragraph (D)
22 begins, the date the program ends, and whether the program was
23 completed successfully;

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

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

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

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

30 (i) released from the parole division; or
31 (ii) granted clemency; and

32 (5) if the offender is released under Article
33 42A.202(b), the date of the offender's release. (Code Crim. Proc.,
34 Art. 60.052.)

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1 have not been revoked, by offense code and incident
2 number; and

3 (I) the date of the offender's
4 release from the community supervision and corrections
5 department.

6 (c) Information in the corrections tracking
7 system relating to the handling of offenders must
8 include the following information about each
9 imprisonment, confinement, or execution of an
10 offender:

11 (1) the date of the imprisonment or
12 confinement;

13 (2) if the offender was sentenced to
14 death:

15 (A) the date of execution; and

16 (B) if the death sentence was
17 commuted, the sentence to which the sentence of death
18 was commuted and the date of commutation;

19 (3) the date the offender was released
20 from imprisonment or confinement and whether the
21 release was a discharge or a release on parole or
22 mandatory supervision;

23 (4) if the offender is released on parole
24 or mandatory supervision:

25 (A) the offense for which the
26 offender was convicted by offense code and incident
27 number;

28 (B) the date the offender was
29 received by an office of the parole division;

30 (C) the county in which the offender
31 resides while under supervision;

32 (D) any program in which an offender
33 is placed or has previously been placed and the level
34 of supervision the offender is placed on while under
35 the jurisdiction of the parole division;

36 (E) the date a program described by
37 Paragraph (D) begins, the date the program ends, and
38 whether the program was completed successfully;

39 (F) the date a level of supervision
40 described by Paragraph (D) begins and the date the
41 level of supervision ends;

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

45 (H) the expiration date of the
46 sentence; and

47 (I) the date of the offender's
48 release from the parole division or the date on which
49 the offender is granted clemency; and

50 (5) if the offender is released under
51 Article 42A.202(b), the date of the offender's
52 release.

53 Revisor's Note

54 (1) Article 60.052(b), Code of Criminal
55 Procedure, requires information about each "deferred
56 adjudication, probation, or other alternative to
57 imprisonment ordered" to be entered in the corrections
58 tracking system. The revised law substitutes
59 "community supervision, including deferred
60 adjudication community supervision, or other

1 alternative to imprisonment ordered" for the quoted
2 language for the following reasons.

3 The revised law substitutes "deferred
4 adjudication community supervision" for "deferred
5 adjudication" because, in this context, the terms are
6 synonymous and "deferred adjudication community
7 supervision" is the term used in Subchapter C, Chapter
8 42A, Code of Criminal Procedure.

9 The revised law substitutes "community
10 supervision" for "probation" because, in this context,
11 the terms are synonymous and "community supervision"
12 is the term used in Chapter 42A, Code of Criminal
13 Procedure.

14 Deferred adjudication community supervision
15 under Subchapter C, Chapter 42A, Code of Criminal
16 Procedure, is a form of community supervision. See
17 Article 42A.001(1)(A), Code of Criminal Procedure.
18 Accordingly, to better clarify the relationship
19 between deferred adjudication community supervision
20 and community supervision, the revised law substitutes
21 "community supervision, including deferred
22 adjudication community supervision" for "deferred
23 adjudication, probation."

24 (2) Article 60.052(b)(2)(B), Code of Criminal
25 Procedure, refers to "confinement or other
26 imprisonment" while Article 60.052(c), Code of
27 Criminal Procedure, revised as Subsection (c) of this
28 article, refers to "imprisonment or confinement." In
29 context, the quoted phrases are synonymous. Article
30 66.152(b)(2)(B) of the revised law substitutes
31 "imprisonment or confinement" for "confinement or
32 other imprisonment" for clarity and consistency in the
33 terminology used within the article.

34 (3) Article 60.052(c)(4)(B), Code of Criminal

1 Procedure, refers to an office of "the parole
2 division." In Texas law, no parole division exists
3 other than the parole division of the Texas Department
4 of Criminal Justice. For clarity, the revised law
5 substitutes "the parole division of the Texas
6 Department of Criminal Justice" for the quoted
7 language.

8 SUBCHAPTER E. ACCESS TO INFORMATION IN CRIMINAL JUSTICE
9 INFORMATION SYSTEM

10 Revised Law

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

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

22 Source Law

23 Art. 60.03. INTERAGENCY COOPERATION;
24 CONFIDENTIALITY. (a) Criminal justice agencies, the
25 Legislative Budget Board, and the council are entitled
26 to access to the data bases of the Department of Public
27 Safety, the Texas Juvenile Justice Department, and the
28 Texas Department of Criminal Justice in accordance
29 with applicable state or federal law or regulations.
30 The access granted by this subsection does not grant an
31 agency, the Legislative Budget Board, or the council
32 the right to add, delete, or alter data maintained by
33 another agency.

34 Revisor's Note

35 Article 60.03(a), Code of Criminal Procedure,
36 states that the entitlement of certain entities to
37 access specific databases "does not grant . . . the
38 right" to those entities to perform certain actions
39 with respect to information in those databases. The

1 revised law substitutes "does not entitle" for the
2 quoted language because Section 311.016(6),
3 Government Code (Code Construction Act), provides that
4 "is not entitled to" is the phrase commonly used in
5 statutory codes in this state to negate a right. The
6 Code Construction Act applies to Article 60.03(a),
7 Code of Criminal Procedure, for the reason stated in
8 Revisor's Note (1) to Article 66.053.

9 Revised Law

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

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

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

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

23 (d) The Legislative Budget Board may submit a data file
24 request other than the annual data file request without the
25 approval of the director of the agency maintaining the requested
26 records. (Code Crim. Proc., Art. 60.03(b).)

27 Source Law

28 (b) The council or the Legislative Budget Board
29 may submit to the Department of Public Safety, the
30 Texas Juvenile Justice Department, and the Texas
31 Department of Criminal Justice an annual request for a
32 data file containing data elements from the
33 departments' systems. The Department of Public
34 Safety, the Texas Juvenile Justice Department, and the
35 Texas Department of Criminal Justice shall provide the
36 council and the Legislative Budget Board with that
37 data file for the period requested, in accordance with
38 state and federal law and regulations. If the council
39 submits data file requests other than the annual data
40 file request, the director of the agency maintaining

1 the requested records must approve the request. The
2 Legislative Budget Board may submit data file requests
3 other than the annual data file request without the
4 approval of the director of the agency maintaining the
5 requested records.

6 Revised Law

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

12 Source Law

13 (c) Neither a criminal justice agency, the
14 council, nor the Legislative Budget Board may disclose
15 to the public information in an individual's criminal
16 history record if the record is protected by state or
17 federal law or regulation.

18 SUBCHAPTER F. DATA COLLECTION AND SUBMISSION

19 Revised Law

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

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

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

28 (2) a multiple-part form that:

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

32 (B) can be transmitted with the offender through
33 the criminal justice process; and

34 (C) allows each law enforcement agency to report
35 required data to the Department of Public Safety or the Texas
36 Department of Criminal Justice.

37 (c) Subject to available telecommunications capacity, the
38 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 Source Law

7 [Art. 60.01]

8 (15) "Uniform incident fingerprint card"
9 means a multiple part form containing a unique
10 incident number with space for information relating to
11 the charge or charges for which a person is being
12 arrested, the person's fingerprints, and other
13 information relevant to the arrest.

14 Art. 60.07. UNIFORM INCIDENT FINGERPRINT CARD.

15 (a) The Department of Public Safety, in consultation
16 with the council, shall design, print, and distribute
17 to each law enforcement agency in the state a uniform
18 incident fingerprint card.

19 (b) The incident card must:

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

23 (2) be a multiple part form that can be
24 transmitted with the offender through the criminal
25 justice process and that allows each agency to report
26 required data to the Department of Public Safety or the
27 Texas Department of Criminal Justice.

28 (c) Subject to available telecommunications
29 capacity, the Department of Public Safety shall
30 develop the capability to receive by electronic means
31 from a law enforcement agency the information on the
32 uniform incident fingerprint card. The information
33 must be in a form that is compatible to the form
34 required of data supplied to the criminal justice
35 information system.

36 Revisor's Note

37 (1) Article 60.01(15), Code of Criminal
38 Procedure, provides that a uniform incident
39 fingerprint card contains "a unique incident number."
40 The quoted language is omitted as unnecessary because
41 Article 60.07(b)(1), Code of Criminal Procedure,
42 revised as Subsection (b)(1) of this article, requires
43 the card to be serially numbered with an incident
44 number, and under Article 60.01(9), Code of Criminal
45 Procedure, revised in this chapter as Article
46 66.001(9), an incident number is unique.

47 (2) Article 60.07(b)(2), Code of Criminal

1 Procedure, requires a uniform incident fingerprint
2 card to be a form that allows "each agency" to report
3 required data to the Department of Public Safety or the
4 Texas Department of Criminal Justice, as appropriate.
5 For clarity and consistency of terminology, the
6 revised law substitutes "each law enforcement agency"
7 for the quoted language because law enforcement
8 agencies receive the uniform incident fingerprint
9 cards distributed under Article 60.07(a), Code of
10 Criminal Procedure, revised as Subsection (a) of this
11 article.

12 Revised Law

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

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

16 (1) ensure that the offender processing data is
17 reported from the time an offender is arrested until the time an
18 offender is released; and

19 (2) provide measures and policies designed to identify
20 and eliminate redundant reporting of information to the criminal
21 justice information system.

22 (b) The arresting law enforcement agency shall prepare a
23 uniform incident fingerprint card described by Article 66.251 and
24 initiate the reporting process for each offender charged with a
25 felony or a misdemeanor other than a misdemeanor punishable by fine
26 only.

27 (c) The clerk of the court exercising jurisdiction over a
28 case shall report the disposition of the case to the Department of
29 Public Safety.

30 (d) Except as provided by Subsection (e) or as otherwise
31 required by applicable state law or rule, information or data
32 required by this chapter to be reported to the Department of Public
33 Safety or the Texas Department of Criminal Justice shall be
34 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 Source Law

13 Art. 60.08. REPORTING. (a) The Department of
14 Public Safety and the Texas Department of Criminal
15 Justice shall, by rule, develop reporting procedures
16 that:

17 (1) ensure that the offender processing
18 data is reported from the time an offender is arrested
19 until the time an offender is released; and

20 (2) provide measures and policies designed
21 to identify and eliminate redundant reporting of
22 information to the criminal justice information
23 system.

24 (b) The arresting agency shall prepare a uniform
25 incident fingerprint card and initiate the reporting
26 process for each offender charged with a felony or a
27 misdemeanor not punishable by fine only.

28 (c) The clerk of the court exercising
29 jurisdiction over a case shall report the disposition
30 of the case to the Department of Public Safety.

31 (d) Except as otherwise required by applicable
32 state laws or regulations, information or data
33 required by this chapter to be reported to the Texas
34 Department of Criminal Justice or the Department of
35 Public Safety shall be reported promptly but not later
36 than the 30th day after the date on which the
37 information or data is received by the agency
38 responsible for reporting it except in the case of an
39 arrest. An offender's arrest shall be reported to the
40 Department of Public Safety not later than the seventh
41 day after the date of the arrest.

42 (e) A court that orders the release of an
43 offender under Article 42A.202(b) at a time when the
44 offender is under a bench warrant and not physically
45 imprisoned in the Texas Department of Criminal Justice
46 shall report the release to the department not later
47 than the seventh day after the date of the release.

48 Revisor's Note

49 (1) Article 60.08(b), Code of Criminal
50 Procedure, refers to the "arresting agency." The
51 revised law substitutes "arresting law enforcement

1 agency" for the reason stated in Revisor's Note (1) to
2 Article 66.102.

3 (2) Article 60.08(b), Code of Criminal
4 Procedure, refers to a "uniform incident fingerprint
5 card," which is defined by Article 60.01(15), Code of
6 Criminal Procedure. The substance of Article
7 60.01(15) and the substance of similar provisions
8 imposing certain requirements with respect to a
9 uniform incident fingerprint card are revised in this
10 chapter as Article 66.251. Accordingly, the revised
11 law adds a cross-reference to that article for the
12 convenience of the reader.

13 (3) Article 60.08(d), Code of Criminal
14 Procedure, refers to applicable state laws or
15 "regulations." Throughout this chapter, the revised
16 law substitutes "rule" for "regulation" because in
17 context the terms are synonymous, and under Section
18 311.005(5), Government Code (Code Construction Act), a
19 rule is defined to include a regulation. The Code
20 Construction Act applies to Article 60.08(d), Code of
21 Criminal Procedure, for the reason stated in Revisor's
22 Note (1) to Article 66.053.

23 Revised Law

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

26 (1) be compatible with the system; and

27 (2) contain both incident numbers and state
28 identification numbers.

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

33 Source Law

34 Art. 60.04. COMPATIBILITY OF DATA. (a) Data

1 supplied to the criminal justice information system
2 must be compatible with the system and must contain
3 both incident numbers and state identification
4 numbers.

5 (b) A discrete submission of information under
6 any article of this chapter must contain, in
7 conjunction with information required, the defendant's
8 name and state identification number.

9 Revisor's Note

10 Article 60.04(b), Code of Criminal Procedure,
11 requires a discrete submission of information under
12 Chapter 60, Code of Criminal Procedure, to contain the
13 "defendant's" name and state identification number.
14 The revised law substitutes "person's" for
15 "defendant's" to conform with the terminology used in
16 the definition of "state identification number"
17 provided by Article 60.01(14), Code of Criminal
18 Procedure, revised in this chapter as Article
19 66.001(13).

20 Revised Law

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 Source Law

26 (h) Whenever possible, the reporting of
27 information relating to dispositions and subsequent
28 offender processing data shall be conducted
29 electronically.

30 Revised Law

31 Art. 66.255. INFORMATION ON SUBSEQUENT ARRESTS. The
32 Department of Public Safety and the Texas Department of Criminal
33 Justice shall develop the capability to send by electronic means
34 information about the subsequent arrest of a person under
35 supervision to:

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

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

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1 agency information. (Code Crim. Proc., Arts. 60.06(a), (d).)

2 Source Law

3 Art. 60.06. DUTIES OF AGENCIES. (a) Each
4 criminal justice agency shall:

5 (1) compile and maintain records needed
6 for reporting data required by the Texas Department of
7 Criminal Justice and the Department of Public Safety;

8 (2) transmit to the Texas Department of
9 Criminal Justice and the Department of Public Safety,
10 when and in the manner the Texas Department of Criminal
11 Justice and the Department of Public Safety direct,
12 all data required by the Texas Department of Criminal
13 Justice and the Department of Public Safety;

14 (3) give the Department of Public Safety
15 and the Texas Department of Criminal Justice or their
16 accredited agents access to the agency for the purpose
17 of inspection to determine the completeness and
18 accuracy of data reported;

19 (4) cooperate with the Department of
20 Public Safety and the Texas Department of Criminal
21 Justice so that the Department of Public Safety and the
22 Texas Department of Criminal Justice may properly and
23 efficiently perform their duties under this chapter;
24 and

25 (5) cooperate with the Department of
26 Public Safety and the Texas Department of Criminal
27 Justice to identify and eliminate redundant reporting
28 of information to the criminal justice information
29 system.

30 (d) An optical disk or other technology may be
31 used instead of microfilm as a medium to store
32 information if allowed by the applicable state laws or
33 regulations relating to the archiving of state agency
34 information.

35 Revised Law

36 Art. 66.302. PUBLIC DISCLOSURE NOT AUTHORIZED. (a) An
37 individual's identifiable description or a notation of an
38 individual's arrest, detention, indictment, information, or other
39 formal criminal charge and of any disposition of the charge,
40 including sentencing, correctional supervision, and release, that
41 is collected and compiled by the Department of Public Safety or the
42 Texas Department of Criminal Justice from criminal justice agencies
43 and maintained in a central location is not subject to public
44 disclosure except as authorized by federal or state law or
45 regulation.

46 (b) Subsection (a) does not apply to a document maintained
47 by a criminal justice agency that is the source of information
48 collected by the Department of Public Safety or the Texas
49 Department of Criminal Justice. Each criminal justice agency shall

1 retain the documents described by this subsection. (Code Crim.
2 Proc., Arts. 60.06(b), (c).)

3 Source Law

4 (b) Information on an individual that consists
5 of an identifiable description and notation of an
6 arrest, detention, indictment, information, or other
7 formal criminal charge and a disposition of the
8 charge, including sentencing, correctional
9 supervision, and release that is collected and
10 compiled by the Department of Public Safety and the
11 Texas Department of Criminal Justice from criminal
12 justice agencies and maintained in a central location
13 is not subject to public disclosure except as
14 authorized by federal or state law or regulation.

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

22 Revised Law

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 Source Law

27 (e) An official of an agency may not
28 intentionally conceal or destroy any record with
29 intent to violate this section.

30 Revisor's Note

31 Article 60.06(e), Code of Criminal Procedure,
32 refers to the intentional concealment or destruction
33 of a record with the intent to violate "this section."
34 The quoted language is a drafting error because
35 Chapter 60, Code of Criminal Procedure, is organized
36 in articles rather than sections. The revised law
37 substitutes "this subchapter" for the quoted language
38 because the entirety of Article 60.06 is revised as
39 this subchapter.

40 Revised Law

41 Art. 66.304. APPLICABILITY TO DISTRICT COURT AND COUNTY
42 COURT CLERKS. The duties imposed on a criminal justice agency under
43 this subchapter are also imposed on district court and county court

1 clerks. (Code Crim. Proc., Art. 60.06(f).)

2 Source Law

3 (f) The duties imposed on a criminal justice
4 agency under this article are also imposed on district
5 court and county court clerks.

6 SUBCHAPTER H. OVERSIGHT AND REPORTING

7 Revised Law

8 Art. 66.351. BIENNIAL PLANS. The Department of Public
9 Safety and the Texas Department of Criminal Justice, with advice
10 from the council and the Department of Information Resources, shall
11 develop biennial plans to:

12 (1) improve the reporting and accuracy of the criminal
13 justice information system; and

14 (2) develop and maintain monitoring systems capable of
15 identifying missing information. (Code Crim. Proc., Art.
16 60.02(i).)

17 Source Law

18 (i) The Department of Public Safety and the
19 Texas Department of Criminal Justice, with advice from
20 the council and the Department of Information
21 Resources, shall develop biennial plans to improve the
22 reporting and accuracy of the criminal justice
23 information system and to develop and maintain
24 monitoring systems capable of identifying missing
25 information.

26 Revised Law

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

31 (1) the accuracy and completeness of information in
32 the system; and

33 (2) the promptness of information reporting.

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

38 (c) The council, the Department of Public Safety, and the

1 Texas Department of Criminal Justice may examine the records of the
2 agencies required to report information to the Department of Public
3 Safety or the Texas Department of Criminal Justice.

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

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

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

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

24 Source Law

25 (j) At least once during each five-year period
26 the council shall coordinate an examination of the
27 records and operations of the criminal justice
28 information system to ensure the accuracy and
29 completeness of information in the system and to
30 ensure the promptness of information reporting. The
31 state auditor, or other appropriate entity selected by
32 the council, shall conduct the examination with the
33 cooperation of the council, the Department of Public
34 Safety, and the Texas Department of Criminal Justice.
35 The Department of Public Safety, the council, and the
36 Texas Department of Criminal Justice may examine the
37 records of the agencies required to report information
38 to the Department of Public Safety or the Texas
39 Department of Criminal Justice. The examining entity
40 shall submit to the legislature and the council a
41 report that summarizes the findings of each
42 examination and contains recommendations for
43 improving the system. Not later than the first

1 anniversary after the date the examining entity
2 submits its report, the Department of Public Safety
3 shall report to the Legislative Budget Board, the
4 governor, and the council on the department's progress
5 in implementing the examining entity's
6 recommendations, including for each recommendation
7 not implemented the reason for not implementing the
8 recommendation. The Department of Public Safety shall
9 submit a similar report each year following the
10 submission of the first report until each of the
11 examining entity's recommendations is implemented.

12 (m) Notwithstanding Subsection (j), work
13 performed under this section by the state auditor is
14 subject to approval by the legislative audit committee
15 for inclusion in the audit plan under Section
16 321.013(c), Government Code.

17 Revisor's Note

18 Article 60.02(m), Code of Criminal Procedure,
19 refers to work performed by the state auditor "under
20 this section." The quoted language is a drafting error
21 because Chapter 60, Code of Criminal Procedure, is
22 organized in articles rather than sections. The
23 revised law substitutes "under this article" for the
24 quoted language because the relevant provision of
25 Article 60.02 that refers to work performed by the
26 state auditor is contained in Subsection (j), revised
27 as Subsections (a) through (f) of this article.

28 Revised Law

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

31 (1) monitor the submission of arrest and disposition
32 information by local jurisdictions;

33 (2) annually submit to the Legislative Budget Board,
34 the governor, the lieutenant governor, the state auditor, and the
35 standing committees in the senate and house of representatives with
36 primary jurisdiction over criminal justice and the department a
37 report regarding the level of reporting by local jurisdictions;

38 (3) identify local jurisdictions that do not report
39 arrest or disposition information or that partially report
40 information; and

41 (4) for use in determining the status of outstanding

1 dispositions, publish monthly on the department's Internet website
2 or in another electronic publication a report listing by local
3 jurisdiction each arrest for which there is no corresponding final
4 court disposition.

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

14 Source Law

15 (b) The Department of Public Safety shall:
16 (1) monitor the submission of arrest and
17 disposition information by local jurisdictions;
18 (2) annually submit to the Legislative
19 Budget Board, the governor, the lieutenant governor,
20 the state auditor, and the standing committees in the
21 senate and house of representatives that have primary
22 jurisdiction over criminal justice and the Department
23 of Public Safety a report regarding the level of
24 reporting by local jurisdictions;
25 (3) identify local jurisdictions that do
26 not report arrest or disposition information or that
27 partially report information; and
28 (4) for use in determining the status of
29 outstanding dispositions, publish monthly on the
30 Department of Public Safety's Internet website or on
31 another electronic publication a report listing each
32 arrest by local jurisdiction for which there is no
33 corresponding final court disposition.
34 (c) The report described by Subsection (b)(2)
35 must contain a disposition completeness percentage for
36 each county in this state. For purposes of this
37 subsection, "disposition completeness percentage"
38 means the percentage of arrest charges a county
39 reports to the Department of Public Safety to be
40 entered in the computerized criminal history system
41 under this chapter that were brought against a person
42 in the county for which a disposition has been
43 subsequently reported and entered into the
44 computerized criminal history system.

45 Revised Law

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

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

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

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

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

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

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

Source Law

Art. 60.09. LOCAL DATA ADVISORY BOARDS. (a)
The commissioners court of each county may create
local data advisory boards to, among other duties:

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

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

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

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

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

(c) The council and the Department of Public Safety shall, to the extent that resources allow, provide technical assistance and advice on the request of the local data advisory board.

Revisor's Note

REVISOR'S NOTE
(End of Subchapter)

Article 60.21(a), Code of Criminal Procedure, requires the Department of Information Resources to monitor the development of the corrections tracking

1 system to ensure implementation by June 1, 2005. The
2 revised law omits the provision as executed. The
3 omitted law reads:

4 Art. 60.21. MONITORING TRACKING;
5 INFORMATION SUBMISSION. (a) The
6 Department of Information Resources shall
7 monitor the development of the corrections
8 tracking system by the Texas Department of
9 Criminal Justice to ensure implementation
10 of the system not later than June 1, 2005.

11 SUBCHAPTER I. GRANTS

12 Revised Law

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

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

25 (2) transmitting information to those systems. (Code
26 Crim. Proc., Art. 60.02(k).)

27 Source Law

28 (k) The council, the Department of Public
29 Safety, the criminal justice division of the
30 governor's office, and the Department of Information
31 Resources cooperatively shall develop and adopt a
32 grant program, to be implemented by the criminal
33 justice division at a time and in a manner determined
34 by the division, to aid local law enforcement
35 agencies, prosecutors, and court personnel in
36 obtaining equipment and training necessary to operate
37 a telecommunications network capable of:

38 (1) making inquiries to and receiving
39 responses from the statewide automated fingerprint
40 identification system and from the computerized
41 criminal history system; and

42 (2) transmitting information to those
43 systems.

1 Revised Law
2 Art. 66.402. CERTIFICATION REQUIRED. Before allocating
3 money to a county from any federal or state grant program for the
4 enhancement of criminal justice programs, an agency of the state
5 must certify that, using all or part of the allocated money, the
6 county has taken or will take all action necessary to provide the
7 Department of Public Safety and the Texas Department of Criminal
8 Justice any criminal history records maintained by the county in
9 the manner specified for purposes of those departments. (Code
10 Crim. Proc., Art. 60.14.)

11 Source Law
12 Art. 60.14. ALLOCATION OF GRANT PROGRAM MONEY
13 FOR CRIMINAL JUSTICE PROGRAMS. An agency of the state,
14 before allocating money to a county from any federal or
15 state grant program for the enhancement of criminal
16 justice programs, shall certify that the county has
17 taken or will take, using all or part of the allocated
18 funds, all action necessary to provide the Texas
19 Department of Criminal Justice and the Department of
20 Public Safety any criminal history records maintained
21 by the county in the manner specified for purposes of
22 those departments.

23 CHAPTER 67. COMPILATION OF INFORMATION PERTAINING TO COMBINATIONS
24 AND CRIMINAL STREET GANGS
25 SUBCHAPTER A. GENERAL PROVISIONS
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28	SUBCHAPTER A. GENERAL PROVISIONS	
29	<u>Revised Law</u>	
30	Art. 67.001.	DEFINITIONS. In this chapter:
31	(1)	"Administration of criminal justice" has the
32		meaning assigned by Article 66.001.
33	(2)	"Child" has the meaning assigned by Section 51.02,
34		Family Code.

1 (3) "Combination" has the meaning assigned by Section
2 71.01, Penal Code.

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

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

8 (6) "Criminal justice agency" means:

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

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

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

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

19 (9) "Intelligence database" means a collection or
20 compilation of data organized for search and retrieval to evaluate,
21 analyze, disseminate, or use intelligence information relating to a
22 combination or criminal street gang for the purpose of
23 investigating or prosecuting a criminal offense.

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

26 (11) "Law enforcement agency" does not include the
27 Texas Department of Criminal Justice, the Texas Juvenile Justice
28 Department, or a local juvenile probation department. (Code Crim.
29 Proc., Art. 61.01.)

30 Source Law

31 Art. 61.01. DEFINITIONS. In this chapter:

32 (1) "Combination" and "criminal street
33 gang" have the meanings assigned by Section 71.01,
34 Penal Code.

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

37 (3) "Criminal information" means facts,

1 material, photograph, or data reasonably related to
2 the investigation or prosecution of criminal activity.

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

5 (5) "Criminal justice agency" has the
6 meaning assigned by Article 60.01 and also means a
7 municipal or county agency, or school district law
8 enforcement agency, that is engaged in the
9 administration of criminal justice under a statute or
10 executive order.

11 (6) "Administration of criminal justice"
12 has the meaning assigned by Article 60.01.

13 (7) "Department" means the Department of
14 Public Safety of the State of Texas.

15 (8) "Intelligence database" means a
16 collection or compilation of data organized for search
17 and retrieval to evaluate, analyze, disseminate, or
18 use intelligence information relating to a criminal
19 combination or a criminal street gang for the purpose
20 of investigating or prosecuting criminal offenses.

21 (9) "Law enforcement agency" does not
22 include the Texas Department of Criminal Justice, the
23 Texas Juvenile Justice Department, or a local juvenile
24 probation department.

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

27 Revisor's Note

28 Article 61.01(8), Code of Criminal Procedure,
29 refers to a "criminal combination." "Combination" is
30 a defined term under Article 61.01(1), Code of
31 Criminal Procedure, revised in this article as
32 Subdivision (3), which provides by reference that a
33 combination consists of persons collaborating in
34 carrying on criminal activity. Because a combination,
35 by definition, is necessarily criminal in nature, the
36 use of the descriptor "criminal" preceding
37 "combination" is unnecessary. The revised law
38 substitutes "combination" for "criminal combination"
39 throughout this chapter.

40 SUBCHAPTER B. INTELLIGENCE DATABASES

41 Revised Law

42 Art. 67.051. INTELLIGENCE DATABASES REQUIRED. (a) Subject
43 to Subsection (b), a criminal justice agency or juvenile justice
44 agency shall compile criminal information into an intelligence
45 database for the purpose of investigating or prosecuting the
46 criminal activities of combinations or criminal street gangs.

47 (b) A law enforcement agency in a municipality with a

1 population of 50,000 or more or in a county with a population of
2 100,000 or more shall compile and maintain in a local or regional
3 intelligence database criminal information relating to a criminal
4 street gang as provided by Subsection (a). The agency must compile
5 and maintain the information in accordance with the criminal
6 intelligence systems operating policies established under 28
7 C.F.R. Section 23.1 et seq. and the submission criteria established
8 under Article 67.054(b).

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

12 (d) A local law enforcement agency described by Subsection
13 (b) shall send to the department information the agency compiles
14 and maintains under this chapter. (Code Crim. Proc., Arts.
15 61.02(a), (b), (b-1), 61.03(c).)

16 Source Law

17 Art. 61.02. CRIMINAL COMBINATION AND CRIMINAL
18 STREET GANG INTELLIGENCE DATABASE; SUBMISSION
19 CRITERIA. (a) Subject to Subsection (b), a criminal
20 justice agency or a juvenile justice agency shall
21 compile criminal information into an intelligence
22 database for the purpose of investigating or
23 prosecuting the criminal activities of criminal
24 combinations or criminal street gangs.

25 (b) A law enforcement agency in a municipality
26 with a population of 50,000 or more or in a county with
27 a population of 100,000 or more shall compile and
28 maintain in a local or regional intelligence database
29 criminal information relating to a criminal street
30 gang as provided by Subsection (a). The information
31 must be compiled and maintained in accordance with the
32 criminal intelligence systems operating policies
33 established under 28 C.F.R. Section 23.1 et seq. and
34 the submission criteria established under Subsection
35 (c).

36 (b-1) Information described by this article may
37 be compiled on paper, by computer, or in any other
38 useful manner by a criminal justice agency, juvenile
39 justice agency, or law enforcement agency.

40 [Art. 61.03]

41 (c) A local law enforcement agency described by
42 Article 61.02(b) shall send to the department
43 information compiled and maintained under this
44 chapter.

45 Revised Law

46 Art. 67.052. DEPARTMENT INTELLIGENCE DATABASE. (a) The
47 department shall establish an intelligence database and shall

1 maintain information received from an agency under Article
2 67.051(d) in the database in accordance with the criminal
3 intelligence systems operating policies established under 28
4 C.F.R. Section 23.1 et seq. and the submission criteria under
5 Article 67.054(b).

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

11 Source Law

12 [Art. 61.02]

13 (b) . . . the criminal intelligence systems
14 operating policies established under 28 C.F.R. Section
15 23.1 et seq. . . .

16 [Art. 61.03]

17 (d) The department shall establish an
18 intelligence database and shall maintain information
19 received from an agency under Subsection (c) in the
20 database in accordance with the policies established
21 under 28 C.F.R. Section 23.1 et seq. and the submission
22 criteria under Article 61.02(c).

23 (e) The department shall designate a code to
24 distinguish criminal information contained in the
25 intelligence database relating to a child from
26 criminal information contained in the database
27 relating to an adult offender.

28 Revised Law

29 Art. 67.053. INTELLIGENCE DATABASE USER TRAINING; RULES.

30 (a) The department shall enter into a memorandum of understanding
31 with the United States Department of Justice or other appropriate
32 federal department or agency to provide any person in this state who
33 enters information into or retrieves information from an
34 intelligence database described by this chapter with training
35 regarding the operating principles described by 28 C.F.R. Part 23,
36 as those principles relate to an intelligence database established
37 or maintained under this chapter.

38 (b) A person in this state who enters information into or
39 retrieves information from an intelligence database described by
40 this chapter shall complete continuing education training on the
41 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 Source Law

6 Art. 61.12. DATABASE USER TRAINING. (a) The
7 department shall enter into a memorandum of
8 understanding with the United States Department of
9 Justice or other appropriate federal department or
10 agency to provide any person in this state who enters
11 information into or retrieves information from an
12 intelligence database described by this chapter with
13 training regarding the operating principles described
14 by 28 C.F.R. Part 23, as those principles relate to an
15 intelligence database established or maintained under
16 this chapter.

17 (b) A person in this state who enters
18 information into or retrieves information from an
19 intelligence database described by this chapter shall
20 complete continuing education training on the material
21 described by Subsection (a) at least once for each
22 continuous two-year period the person has primary
23 responsibility for performing a function described by
24 this subsection.

25 (c) The department shall adopt the rules
26 necessary to implement this article.

27 Revised Law

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

29 (1) "Family member" means a person related to another
30 person within the third degree by consanguinity or affinity, as
31 described by Subchapter B, Chapter 573, Government Code, except
32 that the term does not include a person who is considered to be
33 related to another person by affinity only as described by Section
34 573.024(b), Government Code.

35 (2) "Penal institution" means:

36 (A) a confinement facility operated by or under
37 contract with any division of the Texas Department of Criminal
38 Justice;

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

41 (C) a juvenile secure pre-adjudication or
42 post-adjudication facility operated by or under a local juvenile
43 probation department; or

44 (D) a county jail.

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

3 (1) be relevant to the identification of an
4 organization that is reasonably suspected of involvement in
5 criminal activity; and

6 (2) consist of:

7 (A) a judgment under any law that includes, as a
8 finding or as an element of a criminal offense, participation in a
9 criminal street gang;

10 (B) a self-admission by an individual of criminal
11 street gang membership that is made during a judicial proceeding;
12 or

13 (C) except as provided by Subsection (c), any two
14 of the following:

15 (i) a self-admission by the individual of
16 criminal street gang membership that is not made during a judicial
17 proceeding, including the use of the Internet or other electronic
18 format or medium to post photographs or other documentation
19 identifying the individual as a member of a criminal street gang;

20 (ii) an identification of the individual as
21 a criminal street gang member by a reliable informant or other
22 individual;

23 (iii) a corroborated identification of the
24 individual as a criminal street gang member by an informant or other
25 individual of unknown reliability;

26 (iv) evidence that the individual frequents
27 a documented area of a criminal street gang and associates with
28 known criminal street gang members;

29 (v) evidence that the individual uses, in
30 more than an incidental manner, criminal street gang dress, hand
31 signals, tattoos, or symbols, including expressions of letters,
32 numbers, words, or marks, regardless of how or the means by which
33 the symbols are displayed, that are associated with a criminal
34 street gang that operates in an area frequented by the individual

1 and described by Subparagraph (iv);

2 (vi) evidence that the individual has been
3 arrested or taken into custody with known criminal street gang
4 members for an offense or conduct consistent with criminal street
5 gang activity;

6 (vii) evidence that the individual has
7 visited a known criminal street gang member, other than a family
8 member of the individual, while the gang member is confined in or
9 committed to a penal institution; or

10 (viii) evidence of the individual's use of
11 technology, including the Internet, to recruit new criminal street
12 gang members.

13 (c) Evidence described by Subsections (b)(2)(C)(iv) and
14 (vii) is not sufficient to create the eligibility of a person's
15 information to be included in an intelligence database described by
16 this chapter unless the evidence is combined with information
17 described by another subparagraph of Subsection (b)(2)(C). (Code
18 Crim. Proc., Arts. 61.02(c), (d), (e).)

19 Source Law

20 (c) Criminal information collected under this
21 chapter relating to a criminal street gang must:

22 (1) be relevant to the identification of
23 an organization that is reasonably suspected of
24 involvement in criminal activity; and

25 (2) consist of:

26 (A) a judgment under any law that
27 includes, as a finding or as an element of a criminal
28 offense, participation in a criminal street gang;

29 (B) a self-admission by the
30 individual of criminal street gang membership that is
31 made during a judicial proceeding; or

32 (C) except as provided by Subsection
33 (d), any two of the following:

34 (i) a self-admission by the
35 individual of criminal street gang membership that is
36 not made during a judicial proceeding, including the
37 use of the Internet or other electronic format or
38 medium to post photographs or other documentation
39 identifying the individual as a member of a criminal
40 street gang;

41 (ii) an identification of the
42 individual as a criminal street gang member by a
43 reliable informant or other individual;

44 (iii) a corroborated
45 identification of the individual as a criminal street
46 gang member by an informant or other individual of
47 unknown reliability;

48 (iv) evidence that the

1 individual frequents a documented area of a criminal
2 street gang and associates with known criminal street
3 gang members;

4 (v) evidence that the
5 individual uses, in more than an incidental manner,
6 criminal street gang dress, hand signals, tattoos, or
7 symbols, including expressions of letters, numbers,
8 words, or marks, regardless of how or the means by
9 which the symbols are displayed, that are associated
10 with a criminal street gang that operates in an area
11 frequented by the individual and described by
12 Subparagraph (iv);

13 (vi) evidence that the
14 individual has been arrested or taken into custody
15 with known criminal street gang members for an offense
16 or conduct consistent with criminal street gang
17 activity;

18 (vii) evidence that the
19 individual has visited a known criminal street gang
20 member, other than a family member of the individual,
21 while the gang member is confined in or committed to a
22 penal institution; or

23 (viii) evidence of the
24 individual's use of technology, including the
25 Internet, to recruit new criminal street gang members.

26 (d) Evidence described by Subsections
27 (c)(2)(C)(iv) and (vii) is not sufficient to create
28 the eligibility of a person's information to be
29 included in an intelligence database described by this
30 chapter unless the evidence is combined with
31 information described by another subparagraph of
32 Subsection (c)(2)(C).

33 (e) In this article:

34 (1) "Family member" means a person related
35 to another person within the third degree by
36 consanguinity or affinity, as described by Subchapter
37 B, Chapter 573, Government Code, except that the term
38 does not include a person who is considered to be
39 related to another person by affinity only as
40 described by Section 573.024(b), Government Code.

41 (2) "Penal institution" means a
42 confinement facility operated by or under a contract
43 with any division of the Texas Department of Criminal
44 Justice, a confinement facility operated by or under
45 contract with the Texas Juvenile Justice Department,
46 or a juvenile secure pre-adjudication or
47 post-adjudication facility operated by or under a
48 local juvenile probation department, or a county jail.

49 Revisor's Note

50 Article 61.02(e), Code of Criminal Procedure,
51 provides definitions that are applicable "[i]n this
52 article." The defined terms are used only by Article
53 61.02(c), revised as Subsection (b) of this article,
54 and the revised law is drafted accordingly.

55 SUBCHAPTER C. RELEASE AND USE OF INFORMATION

56 Revised Law

57 Art. 67.101. RELEASE AND USE OF INFORMATION. (a) On
58 request, a criminal justice agency may release information

1 maintained under this chapter to:

- 2 (1) another criminal justice agency;
- 3 (2) a court; or
- 4 (3) a defendant in a criminal proceeding who is
- 5 entitled to the discovery of the information under Chapter 39.

6 (b) A criminal justice agency or court may use information

7 received under this article or Article 67.051(d) or 67.052 only for

8 the administration of criminal justice.

9 (c) A defendant may use information received under this

10 article or Article 67.051(d) or 67.052 only for a defense in a

11 criminal proceeding. (Code Crim. Proc., Arts. 61.03(a), (b).)

12 Source Law

13 Art. 61.03. RELEASE OF INFORMATION. (a) A

14 criminal justice agency may release on request

15 information maintained under this chapter to:

- 16 (1) another criminal justice agency;
- 17 (2) a court; or
- 18 (3) a defendant in a criminal proceeding
- 19 who is entitled to the discovery of the information
- 20 under Chapter 39.

21 (b) A criminal justice agency or court may use

22 information received under this article only for the

23 administration of criminal justice. A defendant may

24 use information received under this article only for a

25 defense in a criminal proceeding.

26 Revisor's Note

27 Article 61.03(b), Code of Criminal Procedure,

28 refers to a criminal justice agency's, court's, or

29 defendant's use of information received "under this

30 article." The provisions of Article 61.03 relating to

31 the receipt of information are Subsections (a), (c),

32 and (d), revised as Subsection (a) of this article and

33 Articles 67.051(d) and 67.052(a) of this chapter, and

34 the revised law is drafted accordingly.

35 Revised Law

36 Art. 67.102. CRIMINAL INFORMATION RELATING TO CHILD. (a)

37 Notwithstanding Chapter 58, Family Code, criminal information

38 relating to a child associated with a combination or criminal

39 street gang may be compiled and released under this chapter

40 regardless of the age of the child.

1 (b) A criminal justice agency or juvenile justice agency may
2 release information maintained under this chapter to an attorney
3 representing a child who is a party to a proceeding under Title 3,
4 Family Code, if the juvenile court determines the information:

5 (1) is material to the proceeding; and

6 (2) is not privileged under law.

7 (c) An attorney may use information received under this
8 article only for a child's defense in a proceeding under Title 3,
9 Family Code.

10 (d) The governing body of a county or municipality served by
11 a law enforcement agency described by Article 67.051(b) may adopt a
12 policy to notify the parent or guardian of a child of the agency's
13 observations relating to the child's association with a criminal
14 street gang. (Code Crim. Proc., Art. 61.04.)

15 Source Law

16 Art. 61.04. CRIMINAL INFORMATION RELATING TO
17 CHILD. (a) Notwithstanding Chapter 58, Family Code,
18 criminal information relating to a child associated
19 with a combination or a criminal street gang may be
20 compiled and released under this chapter regardless of
21 the age of the child.

22 (b) A criminal justice agency or a juvenile
23 justice agency may release information maintained
24 under this chapter to an attorney representing a child
25 who is a party to a proceeding under Title 3, Family
26 Code, if the juvenile court determines the
27 information:

28 (1) is material to the proceeding; and

29 (2) is not privileged under law.

30 (c) An attorney may use information received
31 under this article only for a child's defense in a
32 proceeding under Title 3, Family Code.

33 (d) The governing body of a county or
34 municipality served by a law enforcement agency
35 described by Article 61.02(b) may adopt a policy to
36 notify the parent or guardian of a child of the
37 agency's observations relating to the child's
38 association with a criminal street gang.

39 Revised Law

40 Art. 67.103. UNAUTHORIZED RELEASE OR USE OF CRIMINAL
41 INFORMATION; PENALTY. (a) A person commits an offense if the
42 person knowingly:

43 (1) uses criminal information obtained under this
44 chapter for an unauthorized purpose; or

45 (2) releases the information to a person who is not

1 entitled to the information.

2 (b) An offense under this article is a Class A misdemeanor.
3 (Code Crim. Proc., Art. 61.05.)

4 Source Law

5 Art. 61.05. UNAUTHORIZED USE OR RELEASE OF
6 CRIMINAL INFORMATION. (a) A person commits an offense
7 if the person knowingly:

8 (1) uses criminal information obtained
9 under this chapter for an unauthorized purpose; or

10 (2) releases the information to a person
11 who is not entitled to the information.

12 (b) An offense under this article is a Class A
13 misdemeanor.

14 SUBCHAPTER D. REMOVAL OF INFORMATION

15 Revised Law

16 Art. 67.151. REMOVAL OF INFORMATION RELATING TO INDIVIDUAL
17 OTHER THAN CHILD. (a) This article does not apply to information
18 collected under this chapter by the Texas Department of Criminal
19 Justice or the Texas Juvenile Justice Department.

20 (b) Subject to Subsection (c), information collected under
21 this chapter relating to a criminal street gang must be removed
22 after five years from an intelligence database established under
23 Article 67.051 and the intelligence database maintained by the
24 department under Article 67.052 if:

25 (1) the information relates to the investigation or
26 prosecution of criminal activity engaged in by an individual other
27 than a child; and

28 (2) the individual who is the subject of the
29 information has not been arrested for criminal activity reported to
30 the department under Chapter 66.

31 (c) The five-year period described by Subsection (b) does
32 not include any period during which the individual who is the
33 subject of the information is:

34 (1) confined in a correctional facility operated by or
35 under contract with the Texas Department of Criminal Justice;

36 (2) committed to a secure correctional facility, as
37 defined by Section 51.02, Family Code, operated by or under
38 contract with the Texas Juvenile Justice Department; or

1 (3) confined in a county jail or confined in or
2 committed to a facility operated by a juvenile board in lieu of
3 being confined in a correctional facility described by Subdivision
4 (1) or committed to a secure correctional facility described by
5 Subdivision (2). (Code Crim. Proc., Art. 61.06.)

6 Source Law

7 Art. 61.06. REMOVAL OF RECORDS RELATING TO AN
8 INDIVIDUAL OTHER THAN A CHILD. (a) This article does
9 not apply to information collected under this chapter
10 by the Texas Department of Criminal Justice or the
11 Texas Juvenile Justice Department.

12 (b) Subject to Subsection (c), information
13 collected under this chapter relating to a criminal
14 street gang must be removed from an intelligence
15 database established under Article 61.02 and the
16 intelligence database maintained by the department
17 under Article 61.03 after five years if:

18 (1) the information relates to the
19 investigation or prosecution of criminal activity
20 engaged in by an individual other than a child; and

21 (2) the individual who is the subject of
22 the information has not been arrested for criminal
23 activity reported to the department under Chapter 60.

24 (c) In determining whether information is
25 required to be removed from an intelligence database
26 under Subsection (b), the five-year period does not
27 include any period during which the individual who is
28 the subject of the information is:

29 (1) confined in a correctional facility
30 operated by or under contract with the Texas
31 Department of Criminal Justice;

32 (2) committed to a secure correctional
33 facility operated by or under contract with the Texas
34 Juvenile Justice Department, as defined by Section
35 51.02, Family Code; or

36 (3) confined in a county jail or confined
37 in or committed to a facility operated by a juvenile
38 board in lieu of being confined in a correctional
39 facility operated by or under contract with the Texas
40 Department of Criminal Justice or being committed to a
41 secure correctional facility operated by or under
42 contract with the Texas Juvenile Justice Department.

43 Revisor's Note

44 (1) Article 61.06(b), Code of Criminal
45 Procedure, refers to "an intelligence database
46 established under Article 61.02." The provisions of
47 Article 61.02 that require the establishment of
48 intelligence databases are Subsections (a) and (b),
49 revised in relevant part in Article 67.051 of this
50 chapter, and throughout this chapter, the revised law
51 is drafted accordingly.

1 (2) Article 61.06(b), Code of Criminal
2 Procedure, refers to "the intelligence database
3 maintained by the department under Article 61.03." The
4 provision of Article 61.03 that provides for
5 maintenance of an intelligence database by the
6 department is Subsection (d), revised in relevant part
7 in Article 67.052 of this chapter, and throughout this
8 chapter, the revised law is drafted accordingly.

9 Revised Law

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
28 include any period during which the child who is the subject of the
29 information is:

30 (1) committed to the Texas Juvenile Justice Department
31 for conduct that violates a penal law of the grade of felony; or

32 (2) confined in the Texas Department of Criminal
33 Justice. (Code Crim. Proc., Art. 61.07.)

Source Law

Art. 61.07. REMOVAL OF RECORDS RELATING TO A CHILD. (a) This article does not apply to information collected under this chapter by the Texas Department of Criminal Justice or the Texas Juvenile Justice Department.

(b) Subject to Subsection (c), information collected under this chapter relating to a criminal street gang must be removed from an intelligence database established under Article 61.02 and the intelligence database maintained by the department under Article 61.03 after two years if:

(1) the information relates to the investigation or prosecution of criminal activity engaged in by a child; and

(2) the child who is the subject of the information has not been:

(A) arrested for criminal activity reported to the department under Chapter 60; or

(B) taken into custody for delinquent conduct reported to the department under Chapter 58, Family Code.

(c) In determining whether information is required to be removed from an intelligence database under Subsection (b), the two-year period does not include any period during which the child who is the subject of the information is:

(1) committed to the Texas Juvenile Justice Department for conduct that violates a penal law of the grade of felony; or

(2) confined in the Texas Department of Criminal Justice.

SUBCHAPTER E. RIGHTS OF SUBJECT OF CRIMINAL INFORMATION

Revised Law

Art. 67.201. RIGHT TO REQUEST EXISTENCE OF CRIMINAL INFORMATION. (a) A person or the parent or guardian of a child may request that a law enforcement agency determine whether the agency has collected or is maintaining, under submission criteria established under Article 67.054(b), criminal information relating solely to the person or child. The law enforcement agency shall respond to the request not later than the 10th business day after the date the agency receives the request.

(b) Before responding to a request under Subsection (a), a law enforcement agency may require reasonable written verification of the identity of the person making the request and the relationship between the parent or guardian and the child, if applicable, including written verification of an address, date of birth, driver's license number, state identification card number, or social security number. (Code Crim. Proc., Art. 61.075.)

Source Law

Art. 61.075. RIGHT TO REQUEST EXISTENCE OF CRIMINAL INFORMATION. (a) A person or the parent or guardian of a child may request a law enforcement agency to determine whether the agency has collected or is maintaining, under criteria established under Article 61.02(c), criminal information relating solely to the person or child. The law enforcement agency shall respond to the request not later than the 10th business day after the date the agency receives the request.

(b) Before responding to a request under Subsection (a), a law enforcement agency may require reasonable written verification of the identity of the person making the request and the relationship between the parent or guardian and the child, if applicable, including written verification of an address, date of birth, driver's license number, state identification card number, or social security number.

Revised Law

Art. 67.202. RIGHT TO REQUEST REVIEW OF CRIMINAL INFORMATION. (a) On receipt of a written request of a person or the parent or guardian of a child that includes a showing by the person or the parent or guardian that a law enforcement agency may have collected criminal information under this chapter relating to the person or child that is inaccurate or does not comply with the submission criteria under Article 67.054(b), the head of the agency or the designee of the agency head shall review criminal information collected by the agency under this chapter relating to the person or child to determine if:

(1) reasonable suspicion exists to believe that the information is accurate; and

(2) the information complies with the submission criteria established under Article 67.054(b).

(b) If, after conducting a review of criminal information under Subsection (a), the agency head or designee determines that reasonable suspicion does not exist to believe that the information is accurate, or determines that the information does not comply with the submission criteria, the agency shall:

(1) destroy all records containing the information;

and

(2) notify the department and the person who requested

1 the review of the agency's determination and the destruction of the
2 records.

3 (c) If, after conducting a review of criminal information
4 under Subsection (a), the agency head or designee determines that
5 reasonable suspicion exists to believe that the information is
6 accurate, and determines that the information complies with the
7 submission criteria, the agency shall notify the person who
8 requested the review:

9 (1) of the agency's determination; and

10 (2) that the person is entitled to seek judicial
11 review of the agency's determination under Article 67.203.

12 (d) On receipt of notice under Subsection (b)(2), the
13 department immediately shall destroy all records containing the
14 information that is the subject of the notice in the intelligence
15 database maintained by the department under Article 67.052.

16 (e) A person who is committed to the Texas Juvenile Justice
17 Department or confined in the Texas Department of Criminal Justice
18 does not, while committed or confined, have the right to request
19 review of criminal information under this article. (Code Crim.
20 Proc., Art. 61.08.)

21 Source Law

22 Art. 61.08. RIGHT TO REQUEST REVIEW OF CRIMINAL
23 INFORMATION. (a) On receipt of a written request of a
24 person or the parent or guardian of a child that
25 includes a showing by the person or the parent or
26 guardian that a law enforcement agency may have
27 collected criminal information under this chapter
28 relating to the person or child that is inaccurate or
29 that does not comply with the submission criteria
30 under Article 61.02(c), the head of the agency or the
31 designee of the agency head shall review criminal
32 information collected by the agency under this chapter
33 relating to the person or child to determine if:

34 (1) reasonable suspicion exists to believe
35 that the information is accurate; and

36 (2) the information complies with the
37 submission criteria established under Article
38 61.02(c).

39 (b) If, after conducting a review of criminal
40 information under Subsection (a), the agency head or
41 designee determines that:

42 (1) reasonable suspicion does not exist to
43 believe that the information is accurate or the
44 information does not comply with the submission
45 criteria, the agency shall:

46 (A) destroy all records containing

1 the information; and

2 (B) notify the department and the
3 person who requested the review of the agency's
4 determination and the destruction of the records; or

5 (2) reasonable suspicion does exist to
6 believe that the information is accurate and the
7 information complies with the submission criteria, the
8 agency shall notify the person who requested the
9 review of the agency's determination and that the
10 person is entitled to seek judicial review of the
11 agency's determination under Article 61.09.

12 (c) On receipt of notice under Subsection (b),
13 the department shall immediately destroy all records
14 containing the information that is the subject of the
15 notice in the intelligence database maintained by the
16 department under Article 61.03.

17 (d) A person who is committed to the Texas
18 Juvenile Justice Department or confined in the Texas
19 Department of Criminal Justice does not while
20 committed or confined have the right to request review
21 of criminal information under this article.

22 Revised Law

23 Art. 67.203. JUDICIAL REVIEW. (a) A person who is entitled
24 to seek judicial review of a determination made under Article
25 67.202(c) may file a petition for review in district court in the
26 county in which the person resides.

27 (b) On the filing of a petition for review under Subsection
28 (a), the district court shall conduct an in camera review of the
29 criminal information that is the subject of the determination to
30 determine if:

31 (1) reasonable suspicion exists to believe that the
32 information is accurate; and

33 (2) the information complies with the submission
34 criteria under Article 67.054(b).

35 (c) If, after conducting an in camera review of criminal
36 information under Subsection (b), the court finds that reasonable
37 suspicion does not exist to believe that the information is
38 accurate, or finds that the information does not comply with the
39 submission criteria, the court shall:

40 (1) order the law enforcement agency that collected
41 the information to destroy all records containing the information;
42 and

43 (2) notify the department of the court's determination
44 and the destruction of the records.

1 (d) A petitioner may appeal a final judgment of a district
2 court conducting an in camera review under this article.

3 (e) Information that is the subject of an in camera review
4 under this article is confidential and may not be disclosed. (Code
5 Crim. Proc., Art. 61.09.)

6 Source Law

7 Art. 61.09. JUDICIAL REVIEW. (a) A person who
8 is entitled to seek judicial review of a determination
9 made under Article 61.08(b)(2) may file a petition for
10 review in district court in the county in which the
11 person resides.

12 (b) On the filing of a petition for review under
13 Subsection (a), the district court shall conduct an in
14 camera review of the criminal information that is the
15 subject of the determination to determine if:

16 (1) reasonable suspicion exists to believe
17 that the information is accurate; and

18 (2) the information complies with the
19 submission criteria under Article 61.02(c).

20 (c) If, after conducting an in camera review of
21 criminal information under Subsection (b), the court
22 finds that reasonable suspicion does not exist to
23 believe that the information is accurate or that the
24 information does not comply with the submission
25 criteria, the court shall:

26 (1) order the law enforcement agency that
27 collected the information to destroy all records
28 containing the information; and

29 (2) notify the department of the court's
30 determination and the destruction of the records.

31 (d) A petitioner may appeal a final judgment of
32 a district court conducting an in camera review under
33 this article.

34 (e) Information that is the subject of an in
35 camera review under this article is confidential and
36 may not be disclosed.

37 SUBCHAPTER F. GANG RESOURCE SYSTEM

38 Revised Law

39 Art. 67.251. ESTABLISHMENT OF GANG RESOURCE SYSTEM. The
40 office of the attorney general shall establish an electronic gang
41 resource system to provide criminal justice agencies and juvenile
42 justice agencies with information about criminal street gangs in
43 this state. (Code Crim. Proc., Art. 61.11(a) (part).)

44 Source Law

45 Art. 61.11. GANG RESOURCE SYSTEM. (a) The
46 office of the attorney general shall establish an
47 electronic gang resource system to provide criminal
48 justice agencies and juvenile justice agencies with
49 information about criminal street gangs in the state.
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(a) The gang resource system established under Article 67.251 may include the following information with regard to any gang:

- (b) Information in the gang resource system shall be accessible according to:

- (c) The office of the attorney general may coordinate with the Texas Department of Criminal Justice to include information in the gang resource system regarding groups that have been identified by the Security Threat Group Management Office of the Texas Department of Criminal Justice. (Code Crim. Proc., Arts. 61.11(a) (part), (g), (h).)

(a) [The office of the attorney general shall establish an electronic gang resource system to provide criminal justice agencies and juvenile justice agencies with information about criminal street gangs in the state.] The system may include the following information with regard to any gang:

- (g) Information in the gang resource system shall be accessible by:

- (h) The office of the attorney general may coordinate with the Texas Department of Criminal Justice to include information in the gang resource system regarding groups which have been identified by the Security Threat Group Management Office of the

1 Texas Department of Criminal Justice.

2 Revised Law

3 Art. 67.253. INCLUSION OF CERTAIN INFORMATION PROHIBITED.

4 Information relating to the identity of a specific offender or
5 alleged offender may not be maintained in the gang resource system.
6 (Code Crim. Proc., Art. 61.11(d).)

7 Source Law

8 (d) Information relating to the identity of a
9 specific offender or alleged offender may not be
10 maintained in the gang resource system.

11 Revised Law

12 Art. 67.254. COLLECTION OF INFORMATION. (a) On request by
13 the office of the attorney general, a criminal justice agency or
14 juvenile justice agency shall make a reasonable attempt to provide
15 gang information to the office of the attorney general for the
16 purpose of maintaining an updated, comprehensive gang resource
17 system.

18 (b) The office of the attorney general shall cooperate with
19 criminal justice agencies and juvenile justice agencies in
20 collecting and maintaining the accuracy of the information included
21 in the gang resource system. (Code Crim. Proc., Arts. 61.11(b),
22 (c).)

23 Source Law

24 (b) Upon request by the office of the attorney
25 general, criminal justice agencies and juvenile
26 justice agencies shall make a reasonable attempt to
27 provide gang information to the office of the attorney
28 general for the purpose of maintaining an updated,
29 comprehensive gang resource system.

30 (c) The office of the attorney general shall
31 cooperate with criminal justice agencies and juvenile
32 justice agencies in collecting and maintaining the
33 accuracy of the information included in the gang
34 resource system.

35 Revised Law

36 Art. 67.255. USE OF INFORMATION. Information in the gang
37 resource system may be used in investigating gang-related crimes.
38 Information from the system may be included in an affidavit or
39 subpoena or used in connection with any other legal or judicial
40 proceeding only if the information is corroborated by information

not provided by or maintained in the system. (Code Crim. Proc.,
Art. 61.11(e).)

Source Law

(e) Information in the gang resource system may
be used in investigating gang-related crimes but may
be included in affidavits or subpoenas or used in
connection with any other legal or judicial proceeding
only if the information from the system is
corroborated by information not provided or maintained
in the system.

Revised Law

Art. 67.256. ACCESS TO INFORMATION. Access to the gang
resource system shall be limited to criminal justice agency
personnel and juvenile justice agency personnel. (Code Crim.
Proc., Art. 61.11(f).)

Source Law

(f) Access to the gang resource system shall be
limited to criminal justice agency personnel and
juvenile justice agency personnel.

SUBCHAPTER G. TEXAS VIOLENT GANG TASK FORCE

Revised Law

Art. 67.301. DEFINITION. In this subchapter, "task force"
means the Texas Violent Gang Task Force. (Code Crim. Proc., Art.
61.10(a).)

Source Law

Art. 61.10. TEXAS VIOLENT GANG TASK FORCE. (a)
In this article, "task force" means the Texas Violent
Gang Task Force.

Revised Law

Art. 67.302. PURPOSE. The purpose of the task force is to
form a strategic partnership among local, state, and federal
criminal justice, juvenile justice, and correctional agencies to
better enable those agencies to take a proactive stance toward
tracking gang activity and the growth and spread of gangs
statewide. (Code Crim. Proc., Art. 61.10(b).)

Source Law

(b) The purpose of the task force is to form a
strategic partnership among local, state, and federal
criminal justice, juvenile justice, and correctional
agencies to better enable those agencies to take a
proactive stance towards tracking gang activity and

1 the growth and spread of gangs statewide.

2 Revised Law

3 Art. 67.303. TASK FORCE MEMBERS. The task force shall
4 consist of:

5 (1) a representative of the department designated by
6 the director of the department;

7 (2) two representatives of the Texas Department of
8 Criminal Justice, including a representative of the parole
9 division, designated by the executive director of that agency;

10 (3) a representative of the office of the inspector
11 general of the Texas Department of Criminal Justice designated by
12 the inspector general;

13 (4) two representatives of the Texas Juvenile Justice
14 Department designated by the executive director of that agency;

15 (5) a representative of the office of the attorney
16 general designated by the attorney general;

17 (6) six representatives who are local law enforcement
18 officers or local community supervision personnel, including
19 juvenile probation personnel, designated by the governor;

20 (7) two representatives who are local prosecutors
21 designated by the governor; and

22 (8) a representative of the Texas Alcoholic Beverage
23 Commission designated by the executive director of that agency.

24 (Code Crim. Proc., Art. 61.10(f).)

25 Source Law

26 (f) The task force shall consist of:

27 (1) a representative of the Department of
28 Public Safety designated by the director of that
29 agency;

30 (2) two representatives of the Texas
31 Department of Criminal Justice, including a
32 representative of the parole division, designated by
33 the executive director of that agency;

34 (3) a representative of the office of the
35 inspector general of the Texas Department of Criminal
36 Justice designated by the inspector general;

37 (4) two representatives of the Texas
38 Juvenile Justice Department designated by the
39 executive director of that agency;

40 (5) a representative of the office of the
41 attorney general designated by the attorney general;

42 (6) six representatives who are local law
43 enforcement officers or local community supervision

1 personnel, including juvenile probation personnel,
2 designated by the governor;
3 (7) two representatives who are local
4 prosecutors designated by the governor; and
5 (8) a representative of the Texas
6 Alcoholic Beverage Commission designated by the
7 executive director of that agency.

8 Revised Law

9 Art. 67.304. DUTIES OF TASK FORCE. (a) The task force
10 shall focus its efforts on:

11 (1) developing, through regional task force meetings,
12 a statewide networking system that will provide timely access to
13 gang information;

14 (2) establishing communication between different
15 criminal justice, juvenile justice, and correctional agencies,
16 combining independent agency resources, and joining agencies
17 together in a cooperative effort to focus on gang membership, gang
18 activity, and gang migration trends; and

19 (3) forming a working group of criminal justice,
20 juvenile justice, and correctional representatives from throughout
21 this state to discuss specific cases and investigations involving
22 gangs and other related gang activities.

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

25 (c) If practicable, the task force shall consult with
26 representatives from one or more United States attorneys' offices
27 in this state and with representatives from the following federal
28 agencies who are available and assigned to a duty station in this
29 state:

- 30 (1) the Federal Bureau of Investigation;
31 (2) the Federal Bureau of Prisons;
32 (3) the United States Drug Enforcement
33 Administration;
34 (4) United States Immigration and Customs
35 Enforcement;
36 (5) United States Customs and Border Protection;
37 (6) the Bureau of Alcohol, Tobacco, Firearms and

1 Explosives;

2 (7) the United States Marshals Service; and

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

5 Source Law

6 (c) The task force shall focus its efforts on:

7 (1) developing, through regional task
8 force meetings, a statewide networking system that
9 will provide timely access to gang information;

10 (2) establishing communication between
11 different criminal justice, juvenile justice, and
12 correctional agencies, combining independent agency
13 resources, and joining agencies together in a
14 cooperative effort to focus on gang membership, gang
15 activity, and gang migration trends; and

16 (3) forming a working group of criminal
17 justice, juvenile justice, and correctional
18 representatives from throughout the state to discuss
19 specific cases and investigations involving gangs and
20 other related gang activities.

21 (d) The task force may take any other actions as
22 necessary to accomplish the purposes of this article.

23 (g) If practicable, the task force shall consult
24 with representatives from one or more United States
25 Attorneys' Offices in this state and with
26 representatives from the following federal agencies
27 who are available and assigned to a duty station in
28 this state:

29 (1) the Federal Bureau of Investigation;

30 (2) the Federal Bureau of Prisons;

31 (3) the United States Drug Enforcement
32 Administration;

33 (4) United States Immigration and Customs
34 Enforcement;

35 (5) United States Customs and Border
36 Protection;

37 (6) the Bureau of Alcohol, Tobacco,
38 Firearms and Explosives;

39 (7) the United States Marshals Service;
40 and

41 (8) the United States Probation and
42 Pretrial Services System.

43 Revised Law

44 Art. 67.305. DUTIES OF DEPARTMENT REGARDING TASK FORCE.

45 The department shall support the task force to assist in
46 coordinating statewide antigang initiatives. (Code Crim. Proc.,
47 Art. 61.10(e).)

48 Source Law

49 (e) The Department of Public Safety shall
50 support the task force to assist in coordinating
51 statewide antigang initiatives.

1 APPENDIX A

2 CONFORMING AMENDMENTS FOR ARTICLES 18.20 AND 18.21, CODE OF

3 CRIMINAL PROCEDURE: CHAPTER 16, PENAL CODE

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

6 (a) In this section:

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

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

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

24 (A) scrambled or encrypted;

25 (B) transmitted using modulation techniques
26 whose essential parameters have been withheld from the public with
27 the intention of preserving the privacy of the communication;

28 (C) carried on a subcarrier or other signal
29 subsidiary to a radio transmission;

30 (D) transmitted over a communication system
31 provided by a common carrier, unless the communication is a
32 tone-only paging system communication;

33 (E) transmitted on frequencies allocated under
34 Part 25, Subpart D, E, or F of Part 74, or Part 94 of the rules of the

1 Federal Communications Commission, unless, in the case of a
2 communication transmitted on a frequency allocated under Part 74
3 that is not exclusively allocated to broadcast auxiliary services,
4 the communication is a two-way voice communication by radio; or
5 (F) an electronic communication.

6 (b) A person commits an offense if the person:

7 (1) intentionally intercepts, endeavors to intercept,
8 or procures another person to intercept or endeavor to intercept a
9 wire, oral, or electronic communication;

10 (2) intentionally discloses or endeavors to disclose
11 to another person the contents of a wire, oral, or electronic
12 communication if the person knows or has reason to know the
13 information was obtained through the interception of a wire, oral,
14 or electronic communication in violation of this subsection;

15 (3) intentionally uses or endeavors to use the
16 contents of a wire, oral, or electronic communication if the person
17 knows or is reckless about whether the information was obtained
18 through the interception of a wire, oral, or electronic
19 communication in violation of this subsection;

20 (4) knowingly or intentionally effects a covert entry
21 for the purpose of intercepting wire, oral, or electronic
22 communications without court order or authorization; or

23 (5) intentionally uses, endeavors to use, or procures
24 any other person to use or endeavor to use any interception
25 ~~[electronic, mechanical, or other]~~ device to intercept any oral
26 communication when the device:

27 (A) is affixed to, or otherwise transmits a
28 signal through a wire, cable, or other connection used in wire
29 communications; or

30 (B) transmits communications by radio or
31 interferes with the transmission of communications by radio.

32 (c) It is an affirmative defense to prosecution under
33 Subsection (b) that:

34 (1) an operator of a switchboard or an officer,

1 employee, or agent of a communication common carrier whose
2 facilities are used in the transmission of a wire or electronic
3 communication intercepts a communication or discloses or uses an
4 intercepted communication in the normal course of employment while
5 engaged in an activity that is a necessary incident to the rendition
6 of service or to the protection of the rights or property of the
7 carrier of the communication, unless the interception results from
8 the communication common carrier's use of service observing or
9 random monitoring for purposes other than mechanical or service
10 quality control checks;

11 (2) an officer, employee, or agent of a communication
12 common carrier provides information, facilities, or technical
13 assistance to an investigative or law enforcement officer who is
14 authorized as provided by this section to intercept a wire, oral, or
15 electronic communication;

16 (3) a person acting under color of law intercepts:

17 (A) a wire, oral, or electronic communication, if
18 the person is a party to the communication or if one of the parties
19 to the communication has given prior consent to the interception;

20 (B) a wire, oral, or electronic communication, if
21 the person is acting under the authority of Chapter 18A [~~Article~~
22 ~~18-20~~], Code of Criminal Procedure; or

23 (C) a wire or electronic communication made by a
24 computer trespasser and transmitted to, through, or from a
25 protected computer, if:

26 (i) the interception did not acquire a
27 communication other than one transmitted to or from the computer
28 trespasser;

29 (ii) the owner of the protected computer
30 consented to the interception of the computer trespasser's
31 communications on the protected computer; and

32 (iii) the actor was lawfully engaged in an
33 ongoing criminal investigation and the actor had reasonable
34 suspicion to believe that the contents of the computer trespasser's

1 communications likely to be obtained would be material to the
2 investigation;

3 (4) a person not acting under color of law intercepts a
4 wire, oral, or electronic communication, if:

5 (A) the person is a party to the communication;
6 or

7 (B) one of the parties to the communication has
8 given prior consent to the interception, unless the communication
9 is intercepted for the purpose of committing an unlawful act;

10 (5) a person acting under color of law intercepts a
11 wire, oral, or electronic communication if:

12 (A) oral or written consent for the interception
13 is given by a magistrate before the interception;

14 (B) an immediate life-threatening situation
15 exists;

16 (C) the person is a member of a law enforcement
17 unit specially trained to:

18 (i) respond to and deal with
19 life-threatening situations; or

20 (ii) install interception [~~electronic,~~
21 ~~mechanical, or other~~] devices; and

22 (D) the interception ceases immediately on
23 termination of the life-threatening situation;

24 (6) an officer, employee, or agent of the Federal
25 Communications Commission intercepts a communication transmitted
26 by radio or discloses or uses an intercepted communication in the
27 normal course of employment and in the discharge of the monitoring
28 responsibilities exercised by the Federal Communications
29 Commission in the enforcement of Chapter 5, Title 47, United States
30 Code;

31 (7) a person intercepts or obtains access to an
32 electronic communication that was made through an electronic
33 communication system that is configured to permit the communication
34 to be readily accessible to the general public;

1 (8) a person intercepts radio communication, other
2 than a cordless telephone communication that is transmitted between
3 a cordless telephone handset and a base unit, that is transmitted:

4 (A) by a station for the use of the general
5 public;

6 (B) to ships, aircraft, vehicles, or persons in
7 distress;

8 (C) by a governmental, law enforcement, civil
9 defense, private land mobile, or public safety communications
10 system that is readily accessible to the general public, unless the
11 radio communication is transmitted by a law enforcement
12 representative to or from a mobile data terminal;

13 (D) by a station operating on an authorized
14 frequency within the bands allocated to the amateur, citizens band,
15 or general mobile radio services; or

16 (E) by a marine or aeronautical communications
17 system;

18 (9) a person intercepts a wire or electronic
19 communication the transmission of which causes harmful
20 interference to a lawfully operating station or consumer electronic
21 equipment, to the extent necessary to identify the source of the
22 interference;

23 (10) a user of the same frequency intercepts a radio
24 communication made through a system that uses frequencies monitored
25 by individuals engaged in the provision or the use of the system, if
26 the communication is not scrambled or encrypted; or

27 (11) a provider of an electronic communications
28 service records the fact that a wire or electronic communication
29 was initiated or completed in order to protect the provider,
30 another provider furnishing service towards the completion of the
31 communication, or a user of that service from fraudulent, unlawful,
32 or abusive use of the service.

33 (d) A person commits an offense if the person:

34 (1) intentionally manufactures, assembles, possesses,

1 or sells an interception [~~electronic, mechanical, or other~~] device
2 knowing or having reason to know that the device is designed
3 primarily for nonconsensual interception of wire, electronic, or
4 oral communications and that the device or a component of the device
5 has been or will be used for an unlawful purpose; or

6 (2) places in a newspaper, magazine, handbill, or
7 other publication an advertisement of an interception [~~electronic,~~
8 ~~mechanical, or other~~] device:

9 (A) knowing or having reason to know that the
10 device is designed primarily for nonconsensual interception of
11 wire, electronic, or oral communications;

12 (B) promoting the use of the device for the
13 purpose of nonconsensual interception of wire, electronic, or oral
14 communications; or

15 (C) knowing or having reason to know that the
16 advertisement will promote the use of the device for the purpose of
17 nonconsensual interception of wire, electronic, or oral
18 communications.

19 (e) It is an affirmative defense to prosecution under
20 Subsection (d) that the manufacture, assembly, possession, or sale
21 of an interception [~~electronic, mechanical, or other~~] device that
22 is designed primarily for the purpose of nonconsensual interception
23 of wire, electronic, or oral communication is by:

24 (1) a communication common carrier or a provider of
25 wire or electronic communications service or an officer, agent, or
26 employee of or a person under contract with a communication common
27 carrier or service provider acting in the normal course of the
28 provider's or [~~communication~~] carrier's business;

29 (2) an officer, agent, or employee of a person under
30 contract with, bidding on contracts with, or doing business with
31 the United States or this state acting in the normal course of the
32 activities of the United States or this state;

33 (3) a member of the Department of Public Safety who is
34 specifically trained to install wire, oral, or electronic

1 communications intercept equipment; or

2 (4) a member of a local law enforcement agency that has
3 an established unit specifically designated to respond to and deal
4 with life-threatening situations.

5 (e-1) It is a defense to prosecution under Subsection (d)(1)
6 that the interception [~~electronic, mechanical, or other~~] device is
7 possessed by a person authorized to possess the device under
8 Section 500.008, Government Code, or Section 242.103, Human
9 Resources Code.

10 SECTION 2.02. Sections 16.03(b) and (c), Penal Code, are
11 amended to read as follows:

12 (b) In this section:

13 (1) "Authorized [~~authorized~~] peace officer,"
14 [~~"communications common carrier,"~~] "pen register," and "trap and
15 trace device" have the meanings assigned by Article 18B.001
16 [~~18.21~~], Code of Criminal Procedure.

17 (2) "Communication common carrier" has the meaning
18 assigned by Article 18A.001, Code of Criminal Procedure.

19 (c) It is an affirmative defense to prosecution under
20 Subsection (a) that the actor is:

21 (1) an officer, employee, or agent of a communication
22 [~~communications~~] common carrier and the actor installs or uses a
23 device or equipment to record a number dialed from or to a telephone
24 instrument in the normal course of business of the carrier for
25 purposes of:

26 (A) protecting property or services provided by
27 the carrier; or

28 (B) assisting another who the actor reasonably
29 believes to be a peace officer authorized to install or use a pen
30 register or trap and trace device under Chapter 18B [~~Article~~
31 ~~18.21~~], Code of Criminal Procedure;

32 (2) an officer, employee, or agent of a lawful
33 enterprise and the actor installs or uses a device or equipment
34 while engaged in an activity that:

1 (A) is a necessary incident to the rendition of
2 service or to the protection of property of or services provided by
3 the enterprise; and

4 (B) is not made for the purpose of gathering
5 information for a law enforcement agency or private investigative
6 agency, other than information related to the theft of
7 communication or information services provided by the enterprise;
8 or

9 (3) a person authorized to install or use a pen
10 register or trap and trace device under Chapter 18B [~~Article~~
11 ~~18.21~~], Code of Criminal Procedure.

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

14 (a) In this section:

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

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

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

23 (1) the provider of the wire or electronic
24 communications service;

25 (2) the user of the wire or electronic communications
26 service;

27 (3) the addressee or intended recipient of the wire or
28 electronic communication; or

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

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

33 (a) In this section, "electronic [~~communication,~~"
34 ~~"electronic~~] communications service" has [~~service," and~~

1 ~~"electronic communications system" have]~~ the meaning assigned by
2 ~~[meanings given those terms in]~~ Article 18A.001 ~~[18.20]~~, Code of
3 Criminal Procedure.

4 OTHER CONFORMING AMENDMENTS FOR ARTICLES 18.20 AND 18.21, CODE OF
5 CRIMINAL PROCEDURE

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

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

15 (1) the street address and municipality or the parcel
16 number and county of each place or premises subject to the warrant;
17 and

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

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

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

27 (A) a telephone or telegraph instrument or
28 facility or telephone and telegraph equipment;

29 (B) a hearing aid designed to correct subnormal
30 hearing to not better than normal;

31 (C) a radio, television, or other wireless
32 receiver; or

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

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

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

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

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

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

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

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

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

(3) the officer reasonably believes that:

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

(B) there exists an immediate life-threatening situation, as defined by [~~Section 17,~~] Article 18A.201 [18.20].

SECTION 3.05. Article 18.04, Code of Criminal Procedure, is amended to read as follows:

Art. 18.04. CONTENTS OF WARRANT. A search warrant issued under this chapter, Chapter 18A, or Chapter 18B shall be sufficient if it contains the following requisites:

(1) that it run in the name of "The State of Texas";

(2) that it identify, as near as may be, that which is to be seized and name or describe, as near as may be, the person, place, or thing to be searched;

(3) that it command any peace officer of the proper

1 county to search forthwith the person, place, or thing named;

2 (4) that it be dated and signed by the magistrate; and

3 (5) that the magistrate's name appear in clearly
4 legible handwriting or in typewritten form with the magistrate's
5 signature.

6 SECTION 3.06. Article 18.06(a), Code of Criminal Procedure,
7 is amended to read as follows:

8 (a) A peace officer to whom a search warrant is delivered
9 shall execute the warrant without delay and forthwith return the
10 warrant to the proper magistrate. A search warrant issued under
11 ~~[Section 5A,]~~ Article 18B.354 ~~[18.21,]~~ must be executed in the
12 manner provided by Article 18B.355 ~~[that section]~~ not later than
13 the 11th day after the date of issuance. In all other cases, a
14 search warrant must be executed within three days from the time of
15 its issuance. A warrant issued under this chapter, Chapter 18A, or
16 Chapter 18B shall be executed within a shorter period if so directed
17 in the warrant by the magistrate.

18 SECTION 3.07. Articles 18.07(a) and (b), Code of Criminal
19 Procedure, are amended to read as follows:

20 (a) The period allowed for the execution of a search
21 warrant, exclusive of the day of its issuance and of the day of its
22 execution, is:

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

26 (2) 10 whole days if the warrant is issued under
27 ~~[Section 5A,]~~ Article 18B.354 ~~[18.21]~~; or

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

30 (b) The magistrate issuing a search warrant under this
31 chapter, Chapter 18A, or Chapter 18B shall endorse on the search
32 warrant the date and hour of its issuance.

33 SECTION 3.08. Section 54.978(e), Government Code, is
34 amended to read as follows:

1 (e) In this subsection, [~~"pen register,"~~] "ESN reader,"
2 "pen register," and "trap and trace device" [~~device,"~~ and "~~mobile~~
3 ~~tracking device~~"] have the meanings assigned by Article 18B.001
4 [~~Section 18.21~~], Code of Criminal Procedure, and "mobile tracking
5 device" has the meaning assigned by Article 18B.201, Code of
6 Criminal Procedure. A magistrate may:

7 (1) notwithstanding [~~Section 2(a),~~] Article 18B.051
8 or 18B.052 [~~18.21~~], Code of Criminal Procedure, issue an order
9 under Subchapter C, Chapter 18B [~~Section 2, Article 18.21~~], Code of
10 Criminal Procedure, for the installation and use of:

11 (A) a pen register;
12 (B) an ESN reader;
13 (C) a trap and trace device; or
14 (D) equipment that combines the function of a pen
15 register and a trap and trace device;

16 (2) issue an order to obtain access to stored
17 communications under [~~Section 5,~~] Article 18B.352 [~~18.21~~], Code of
18 Criminal Procedure; and

19 (3) notwithstanding [~~Section 14(a),~~] Article
20 18B.203(a) [~~18.21~~], Code of Criminal Procedure, issue an order for
21 the installation and use of a mobile tracking device under
22 Subchapter E, Chapter 18B [~~Section 14, Article 18.21~~], Code of
23 Criminal Procedure.

24 SECTION 3.09. Section 421.004, Government Code, is amended
25 to read as follows:

26 Sec. 421.004. PROVISIONS GOVERNING MOBILE TRACKING
27 DEVICES. In the event of a conflict between Subchapter E, Chapter
28 18B [~~Section 14, Article 18.21~~], Code of Criminal Procedure, and
29 this chapter or a rule adopted under this chapter, Subchapter E,
30 Chapter 18B [~~Section 14, Article 18.21~~], Code of Criminal
31 Procedure, controls.

32 SECTION 3.10. Section 493.0191, Government Code, is amended
33 to read as follows:

34 Sec. 493.0191. ADMINISTRATIVE SUBPOENAS. (a) The

1 inspector general may issue an administrative subpoena to a
2 communication [~~communications~~] common carrier or an electronic
3 communications service provider to compel the production of the
4 carrier's or service provider's business records that:

5 (1) disclose information about:

6 (A) the carrier's or service provider's
7 customers; or

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

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

13 (b) In this section:

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

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

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

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

29 SECTION 3.11. Sections 500.008(a) and (b), Government Code,
30 are amended to read as follows:

31 (a) The department may own and the office of inspector
32 general may possess, install, operate, or monitor an interception
33 [~~electronic, mechanical, or other~~] device, as defined by Article
34 18A.001 [~~18.20~~], Code of Criminal Procedure.

1 (b) The inspector general shall designate in writing the
2 commissioned officers of the office of inspector general who are
3 authorized to possess, install, operate, and monitor interception
4 ~~[electronic, mechanical, or other]~~ devices for the department.

5 SECTION 3.12. Section 242.841(2), Health and Safety Code,
6 is amended to read as follows:

7 (2) "Electronic monitoring device":

8 (A) includes:

9 (i) video surveillance cameras installed in
10 the room of a resident; and

11 (ii) audio devices installed in the room of
12 a resident designed to acquire communications or other sounds
13 occurring in the room; and

14 (B) does not include an interception
15 ~~[electronic, mechanical, or other]~~ device that is specifically used
16 for the nonconsensual interception of wire or electronic
17 communications.

18 SECTION 3.13. Section 242.842(c), Health and Safety Code,
19 is amended to read as follows:

20 (c) A communication or other sound acquired by an audio
21 electronic monitoring device installed under the provisions of this
22 subchapter concerning authorized electronic monitoring is not
23 considered to be:

24 (1) an oral communication as defined by ~~[Section 17]~~
25 Article 18A.001 ~~[18.20]~~, Code of Criminal Procedure; or

26 (2) a communication as defined by Section 123.001,
27 Civil Practice and Remedies Code.

28 SECTION 3.14. Section 555.151(2), Health and Safety Code,
29 is amended to read as follows:

30 (2) "Electronic monitoring device":

31 (A) includes:

32 (i) video surveillance cameras installed in
33 a resident's room; and

34 (ii) audio devices installed in a

1 resident's room designed to acquire communications or other sounds
2 occurring in the room; and

3 (B) does not include an interception
4 ~~[electronic, mechanical, or other]~~ device that is specifically used
5 for the nonconsensual interception of wire or electronic
6 communications.

7 SECTION 3.15. Section 555.152(c), Health and Safety Code,
8 is amended to read as follows:

9 (c) A communication or other sound acquired by an audio
10 electronic monitoring device installed under the provisions of this
11 subchapter concerning authorized electronic monitoring is not
12 considered to be:

13 (1) an oral communication as defined by ~~[Section 17]~~
14 Article 18A.001 ~~[18.20]~~, Code of Criminal Procedure; or

15 (2) a communication as defined by Section 123.001,
16 Civil Practice and Remedies Code.

17 SECTION 3.16. Sections 242.103(a) and (b), Human Resources
18 Code, are amended to read as follows:

19 (a) The department may own and the office of the inspector
20 general may possess, install, operate, or monitor an interception
21 ~~[electronic, mechanical, or other]~~ device, as defined by Article
22 18A.001 ~~[18.20]~~, Code of Criminal Procedure.

23 (b) The inspector general shall designate in writing the
24 commissioned officers of the office of inspector general who are
25 authorized to possess, install, operate, and monitor interception
26 ~~[electronic, mechanical, or other]~~ devices for the department.

27 SECTION 3.17. Section 33.01(3), Penal Code, is amended to
28 read as follows:

29 (3) "Communication ~~["Communications]~~ common carrier"
30 means a person who owns or operates a telephone system in this state
31 that includes equipment or facilities for the conveyance,
32 transmission, or reception of communications and who receives
33 compensation from persons who use that system.

34 SECTION 3.18. Section 33.03, Penal Code, is amended to read

1 younger than 17 years of age at the time the offense is committed.
2 On request of a county or district attorney, the attorney general
3 shall assist in the prosecution of an offense described by Article
4 66.102(h) [~~60.051(g)~~] the victim of which is younger than 17 years
5 of age at the time the offense is committed. For purposes of this
6 article, assistance includes investigative, technical, and
7 litigation assistance of the attorney general's office.

8 SECTION 4.02. Section 1, Article 42.01, Code of Criminal
9 Procedure, is amended to read as follows:

10 Sec. 1. A judgment is the written declaration of the court
11 signed by the trial judge and entered of record showing the
12 conviction or acquittal of the defendant. The sentence served
13 shall be based on the information contained in the judgment. The
14 judgment shall reflect:

- 15 1. The title and number of the case;
- 16 2. That the case was called and the parties appeared,
17 naming the attorney for the state, the defendant, and the attorney
18 for the defendant, or, where a defendant is not represented by
19 counsel, that the defendant knowingly, intelligently, and
20 voluntarily waived the right to representation by counsel;
- 21 3. The plea or pleas of the defendant to the offense
22 charged;
- 23 4. Whether the case was tried before a jury or a jury
24 was waived;
- 25 5. The submission of the evidence, if any;
- 26 6. In cases tried before a jury that the jury was
27 charged by the court;
- 28 7. The verdict or verdicts of the jury or the finding
29 or findings of the court;
- 30 8. In the event of a conviction that the defendant is
31 adjudged guilty of the offense as found by the verdict of the jury
32 or the finding of the court, and that the defendant be punished in
33 accordance with the jury's verdict or the court's finding as to the
34 proper punishment;

1 9. In the event of conviction where death or any
2 punishment is assessed that the defendant be sentenced to death, a
3 term of confinement or community supervision, or to pay a fine, as
4 the case may be;

5 10. In the event of conviction where the imposition of
6 sentence is suspended and the defendant is placed on community
7 supervision, setting forth the punishment assessed, the length of
8 community supervision, and the conditions of community
9 supervision;

10 11. In the event of acquittal that the defendant be
11 discharged;

12 12. The county and court in which the case was tried
13 and, if there was a change of venue in the case, the name of the
14 county in which the prosecution was originated;

15 13. The offense or offenses for which the defendant
16 was convicted;

17 14. The date of the offense or offenses and degree of
18 offense for which the defendant was convicted;

19 15. The term of sentence;

20 16. The date judgment is entered;

21 17. The date sentence is imposed;

22 18. The date sentence is to commence and any credit for
23 time served;

24 19. The terms of any order entered pursuant to Article
25 42.08 that the defendant's sentence is to run cumulatively or
26 concurrently with another sentence or sentences;

27 20. The terms of any plea bargain;

28 21. Affirmative findings entered pursuant to Article
29 42A.054(c) or (d);

30 22. The terms of any fee payment ordered under Article
31 42.151;

32 23. The defendant's thumbprint taken in accordance
33 with Article 38.33;

34 24. In the event that the judge orders the defendant to

1 repay a reward or part of a reward under Articles 37.073 and 42.152,
2 a statement of the amount of the payment or payments required to be
3 made;

4 25. In the event that the court orders restitution to
5 be paid to the victim, a statement of the amount of restitution
6 ordered and:

7 (A) the name and address of a person or agency
8 that will accept and forward restitution payments to the victim; or

9 (B) if the court specifically elects to have
10 payments made directly to the crime victim, the name and permanent
11 address of the victim at the time of judgment;

12 26. In the event that a presentence investigation is
13 required by Subchapter F, Chapter 42A, a statement that the
14 presentence investigation was done according to the applicable
15 provision;

16 27. In the event of conviction of an offense for which
17 registration as a sex offender is required under Chapter 62, a
18 statement that the registration requirement of that chapter applies
19 to the defendant and a statement of the age of the victim of the
20 offense;

21 28. The defendant's state identification number
22 required by Article 66.152(a)(2) [~~Section 60.052(a)(2)~~], if that
23 number has been assigned at the time of the judgment; and

24 29. The incident number required by Article
25 66.152(a)(4) [~~Section 60.052(a)(4)~~], if that number has been
26 assigned at the time of the judgment.

27 SECTION 4.03. Article 42A.507(a), Code of Criminal
28 Procedure, is amended to read as follows:

29 (a) This article applies only to a defendant who:

30 (1) is identified as a member of a criminal street gang
31 in an intelligence database established under Chapter 67 [~~61~~]; and

32 (2) has two or more times been previously convicted
33 of, or received a grant of deferred adjudication community
34 supervision or another functionally equivalent form of community

1 supervision or probation for, a felony offense under the laws of
2 this state, another state, or the United States.

3 SECTION 4.04. Section 3(b), Article 55.02, Code of Criminal
4 Procedure, is amended to read as follows:

5 (b) The order of expunction entered by the court shall have
6 attached and incorporate by reference a copy of the judgment of
7 acquittal and shall include:

8 (1) the following information on the person who is the
9 subject of the expunction order:

10 (A) full name;

11 (B) sex;

12 (C) race;

13 (D) date of birth;

14 (E) driver's license number; and

15 (F) social security number;

16 (2) the offense charged against the person who is the
17 subject of the expunction order;

18 (3) the date the person who is the subject of the
19 expunction order was arrested;

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

21 (5) the tracking incident number (TRN) assigned to the
22 individual incident of arrest under Article 66.251(b)(1)
23 [~~60.07(b)(1)~~] by the Department of Public Safety.

24 SECTION 4.05. Section 58.111, Family Code, is amended to
25 read as follows:

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

32 SECTION 4.06. Section 58.202, Family Code, is amended to
33 read as follows:

34 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
28 amended to read as follows:

29 (1) "Administration of criminal justice" has the
30 meaning assigned by Article 66.001 [~~60.01~~], Code of Criminal
31 Procedure.

32 SECTION 4.11. Section 493.0155, Government Code, is amended
33 to read as follows:

34 Sec. 493.0155. PROPER IDENTIFICATION OF INMATES USING

1 ALIAS. On receipt of information from the Department of Public
2 Safety under Article 66.105 [~~60.19~~], Code of Criminal Procedure,
3 that a person's identifying information may have been falsely used
4 by an inmate as the inmate's identifying information, regardless of
5 whether the inmate is in the custody of the department, is serving a
6 period of supervised release, or has been discharged, the
7 department shall:

8 (1) make a reasonable effort to identify the inmate's
9 actual identity; and

10 (2) take action to ensure that any information
11 maintained in the department's records and files regarding the
12 inmate reflects the inmate's use of the person's identity as a
13 stolen alias and refers to available information concerning the
14 inmate's actual identity.

15 SECTION 4.12. Section 508.227(a), Government Code, is
16 amended to read as follows:

17 (a) This section applies only to a releasee who:

18 (1) is identified as a member of a criminal street gang
19 in an intelligence database established under Chapter 67 [~~64~~], Code
20 of Criminal Procedure; and

21 (2) has three or more times been convicted of, or
22 received a grant of deferred adjudication community supervision or
23 another functionally equivalent form of community supervision or
24 probation for, a felony offense under the laws of this state,
25 another state, or the United States.

26 SECTION 4.13. Section 509.004(b), Government Code, is
27 amended to read as follows:

28 (b) The division shall develop an automated tracking system
29 that:

30 (1) is capable of receiving tracking data from
31 community supervision and corrections departments' caseload
32 management and accounting systems;

33 (2) is capable of tracking the defendant and the
34 sentencing event at which the defendant was placed on community

1 supervision by name, arrest charge code, and incident number;

2 (3) provides the division with the statistical data it
3 needs to support budget requests and satisfy requests for
4 information; and

5 (4) is compatible with the requirements of Chapter 66
6 ~~[60]~~, Code of Criminal Procedure, and the information systems used
7 by the institutional division and the pardons and paroles division
8 of the Texas Department of Criminal Justice.

9 SECTION 4.14. Section 244.003(b), Human Resources Code, is
10 amended to read as follows:

11 (b) Except as provided by Section 243.051(c), these records
12 and all other information concerning a child, including personally
13 identifiable information, are not public and are available only
14 according to the provisions of Section 58.005, Family Code, Section
15 244.051 of this code, and Chapter 67 ~~[61]~~, Code of Criminal
16 Procedure.

17 SECTION 4.15. Section 109.001(1), Occupations Code, is
18 amended to read as follows:

19 (1) "Administration of criminal justice" and
20 "criminal justice agency" have the meanings assigned by Article
21 66.001 ~~[60.01]~~, Code of Criminal Procedure.

22 SECTION 4.16. Section 160.101(b), Occupations Code, is
23 amended to read as follows:

24 (b) Not later than the 30th day after the date a person
25 described by Subsection (a) is convicted of an offense listed in
26 that subsection or is placed on deferred adjudication for an
27 offense listed in that subsection, the clerk of the court in which
28 the person is convicted or placed on deferred adjudication shall
29 prepare and forward to the Department of Public Safety the
30 information required by Chapter 66 ~~[60]~~, Code of Criminal
31 Procedure.

32 SECTION 4.17. Section 521.061(e), Transportation Code, is
33 amended to read as follows:

34 (e) In this section, "criminal justice agency" has the

1 meaning assigned by Article 66.001 [~~60.01~~], Code of Criminal
2 Procedure.

3 REPEALER

4 SECTION 5.01. The following provisions of the Code of
5 Criminal Procedure are repealed:

- 6 (1) Article 18.20;
7 (2) Article 18.21;
8 (3) Chapter 60; and
9 (4) Chapter 61.

10 GENERAL MATTERS

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

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

21 (b) A reference in a law to a statute or a part of a statute
22 in the Code of Criminal Procedure enacted under Section 43, Article
23 III, Texas Constitution (authorizing the continuing statutory
24 revision program), is considered to be a reference to the part of
25 that code that revises that statute or part of that statute.

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

1 APPENDIX B

2 CHAPTER 311. CODE CONSTRUCTION ACT

3 (current as of end of 85th Legislature, First Called
4 Session, 2017)

5 SUBCHAPTER A. GENERAL PROVISIONS

6 Sec. 311.001. SHORT TITLE. This chapter may be cited as the
7 Code Construction Act.

8 Sec. 311.002. APPLICATION. This chapter applies to:

9 (1) each code enacted by the 60th or a subsequent
10 legislature as part of the state's continuing statutory revision
11 program;

12 (2) each amendment, repeal, revision, and reenactment
13 of a code or code provision by the 60th or a subsequent legislature;

14 (3) each repeal of a statute by a code; and

15 (4) each rule adopted under a code.

16 Sec. 311.003. RULES NOT EXCLUSIVE. The rules provided in
17 this chapter are not exclusive but are meant to describe and clarify
18 common situations in order to guide the preparation and
19 construction of codes.

20 Sec. 311.004. CITATION OF CODES. A code may be cited by its
21 name preceded by the specific part concerned. Examples of
22 citations are:

23 (1) Title 1, Business & Commerce Code;

24 (2) Chapter 5, Business & Commerce Code;

25 (3) Section 9.304, Business & Commerce Code;

26 (4) Section 15.06(a), Business & Commerce Code; and

27 (5) Section 17.18(b)(1)(B)(ii), Business & Commerce
28 Code.

29 Sec. 311.005. GENERAL DEFINITIONS. The following
30 definitions apply unless the statute or context in which the word or
31 phrase is used requires a different definition:

32 (1) "Oath" includes affirmation.

33 (2) "Person" includes corporation, organization,
34 government or governmental subdivision or agency, business trust,

1 estate, trust, partnership, association, and any other legal
2 entity.

3 (3) "Population" means the population shown by the
4 most recent federal decennial census.

5 (4) "Property" means real and personal property.

6 (5) "Rule" includes regulation.

7 (6) "Signed" includes any symbol executed or adopted
8 by a person with present intention to authenticate a writing.

9 (7) "State," when referring to a part of the United
10 States, includes any state, district, commonwealth, territory, and
11 insular possession of the United States and any area subject to the
12 legislative authority of the United States of America.

13 (8) "Swear" includes affirm.

14 (9) "United States" includes a department, bureau, or
15 other agency of the United States of America.

16 (10) "Week" means seven consecutive days.

17 (11) "Written" includes any representation of words,
18 letters, symbols, or figures.

19 (12) "Year" means 12 consecutive months.

20 (13) "Includes" and "including" are terms of
21 enlargement and not of limitation or exclusive enumeration, and use
22 of the terms does not create a presumption that components not
23 expressed are excluded.

24 Sec. 311.006. INTERNAL REFERENCES. In a code:

25 (1) a reference to a title, chapter, or section
26 without further identification is a reference to a title, chapter,
27 or section of the code; and

28 (2) a reference to a subtitle, subchapter, subsection,
29 subdivision, paragraph, or other numbered or lettered unit without
30 further identification is a reference to a unit of the next larger
31 unit of the code in which the reference appears.

32 SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

33 Sec. 311.011. COMMON AND TECHNICAL USAGE OF WORDS. (a)
34 Words and phrases shall be read in context and construed according

1 to the rules of grammar and common usage.

2 (b) Words and phrases that have acquired a technical or
3 particular meaning, whether by legislative definition or
4 otherwise, shall be construed accordingly.

5 Sec. 311.012. TENSE, NUMBER, AND GENDER. (a) Words in the
6 present tense include the future tense.

7 (b) The singular includes the plural and the plural includes
8 the singular.

9 (c) Words of one gender include the other genders.

10 Sec. 311.013. AUTHORITY AND QUORUM OF PUBLIC BODY. (a) A
11 grant of authority to three or more persons as a public body confers
12 the authority on a majority of the number of members fixed by
13 statute.

14 (b) A quorum of a public body is a majority of the number of
15 members fixed by statute.

16 Sec. 311.014. COMPUTATION OF TIME. (a) In computing a
17 period of days, the first day is excluded and the last day is
18 included.

19 (b) If the last day of any period is a Saturday, Sunday, or
20 legal holiday, the period is extended to include the next day that
21 is not a Saturday, Sunday, or legal holiday.

22 (c) If a number of months is to be computed by counting the
23 months from a particular day, the period ends on the same numerical
24 day in the concluding month as the day of the month from which the
25 computation is begun, unless there are not that many days in the
26 concluding month, in which case the period ends on the last day of
27 that month.

28 Sec. 311.015. REFERENCE TO A SERIES. If a statute refers to
29 a series of numbers or letters, the first and last numbers or
30 letters are included.

31 Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following
32 constructions apply unless the context in which the word or phrase
33 appears necessarily requires a different construction or unless a
34 different construction is expressly provided by statute:

1 (1) "May" creates discretionary authority or grants
2 permission or a power.

3 (2) "Shall" imposes a duty.

4 (3) "Must" creates or recognizes a condition
5 precedent.

6 (4) "Is entitled to" creates or recognizes a right.

7 (5) "May not" imposes a prohibition and is synonymous
8 with "shall not."

9 (6) "Is not entitled to" negates a right.

10 (7) "Is not required to" negates a duty or condition
11 precedent.

12 SUBCHAPTER C. CONSTRUCTION OF STATUTES

13 Sec. 311.021. INTENTION IN ENACTMENT OF STATUTES. In
14 enacting a statute, it is presumed that:

15 (1) compliance with the constitutions of this state
16 and the United States is intended;

17 (2) the entire statute is intended to be effective;

18 (3) a just and reasonable result is intended;

19 (4) a result feasible of execution is intended; and

20 (5) public interest is favored over any private
21 interest.

22 Sec. 311.022. PROSPECTIVE OPERATION OF STATUTES. A statute
23 is presumed to be prospective in its operation unless expressly
24 made retrospective.

25 Sec. 311.023. STATUTE CONSTRUCTION AIDS. In construing a
26 statute, whether or not the statute is considered ambiguous on its
27 face, a court may consider among other matters the:

28 (1) object sought to be attained;

29 (2) circumstances under which the statute was enacted;

30 (3) legislative history;

31 (4) common law or former statutory provisions,
32 including laws on the same or similar subjects;

33 (5) consequences of a particular construction;

34 (6) administrative construction of the statute; and

1 (7) title (caption), preamble, and emergency
2 provision.

3 Sec. 311.024. HEADINGS. The heading of a title, subtitle,
4 chapter, subchapter, or section does not limit or expand the
5 meaning of a statute.

6 Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS. (a)
7 Except as provided by Section 311.031(d), if statutes enacted at
8 the same or different sessions of the legislature are
9 irreconcilable, the statute latest in date of enactment prevails.

10 (b) Except as provided by Section 311.031(d), if amendments
11 to the same statute are enacted at the same session of the
12 legislature, one amendment without reference to another, the
13 amendments shall be harmonized, if possible, so that effect may be
14 given to each. If the amendments are irreconcilable, the latest in
15 date of enactment prevails.

16 (c) In determining whether amendments are irreconcilable,
17 text that is reenacted because of the requirement of Article III,
18 Section 36, of the Texas Constitution is not considered to be
19 irreconcilable with additions or omissions in the same text made by
20 another amendment. Unless clearly indicated to the contrary, an
21 amendment that reenacts text in compliance with that constitutional
22 requirement does not indicate legislative intent that the reenacted
23 text prevail over changes in the same text made by another
24 amendment, regardless of the relative dates of enactment.

25 (d) In this section, the date of enactment is the date on
26 which the last legislative vote is taken on the bill enacting the
27 statute.

28 (e) If the journals or other legislative records fail to
29 disclose which of two or more bills in conflict is latest in date of
30 enactment, the date of enactment of the respective bills is
31 considered to be, in order of priority:

32 (1) the date on which the last presiding officer
33 signed the bill;

34 (2) the date on which the governor signed the bill; or

1 (3) the date on which the bill became law by operation
2 of law.

3 Sec. 311.026. SPECIAL OR LOCAL PROVISION PREVAILS OVER
4 GENERAL. (a) If a general provision conflicts with a special or
5 local provision, the provisions shall be construed, if possible, so
6 that effect is given to both.

7 (b) If the conflict between the general provision and the
8 special or local provision is irreconcilable, the special or local
9 provision prevails as an exception to the general provision, unless
10 the general provision is the later enactment and the manifest
11 intent is that the general provision prevail.

12 Sec. 311.027. STATUTORY REFERENCES. Unless expressly
13 provided otherwise, a reference to any portion of a statute or rule
14 applies to all reenactments, revisions, or amendments of the
15 statute or rule.

16 Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A
17 uniform act included in a code shall be construed to effect its
18 general purpose to make uniform the law of those states that enact
19 it.

20 Sec. 311.029. ENROLLED BILL CONTROLS. If the language of
21 the enrolled bill version of a statute conflicts with the language
22 of any subsequent printing or reprinting of the statute, the
23 language of the enrolled bill version controls.

24 Sec. 311.030. REPEAL OF REPEALING STATUTE. The repeal of a
25 repealing statute does not revive the statute originally repealed
26 nor impair the effect of any saving provision in it.

27 Sec. 311.031. SAVING PROVISIONS. (a) Except as provided by
28 Subsection (b), the reenactment, revision, amendment, or repeal of
29 a statute does not affect:

30 (1) the prior operation of the statute or any prior
31 action taken under it;

32 (2) any validation, cure, right, privilege,
33 obligation, or liability previously acquired, accrued, accorded,
34 or incurred under it;

1 (3) any violation of the statute or any penalty,
2 forfeiture, or punishment incurred under the statute before its
3 amendment or repeal; or

4 (4) any investigation, proceeding, or remedy
5 concerning any privilege, obligation, liability, penalty,
6 forfeiture, or punishment; and the investigation, proceeding, or
7 remedy may be instituted, continued, or enforced, and the penalty,
8 forfeiture, or punishment imposed, as if the statute had not been
9 repealed or amended.

10 (b) If the penalty, forfeiture, or punishment for any
11 offense is reduced by a reenactment, revision, or amendment of a
12 statute, the penalty, forfeiture, or punishment, if not already
13 imposed, shall be imposed according to the statute as amended.

14 (c) The repeal of a statute by a code does not affect an
15 amendment, revision, or reenactment of the statute by the same
16 legislature that enacted the code. The amendment, revision, or
17 reenactment is preserved and given effect as part of the code
18 provision that revised the statute so amended, revised, or
19 reenacted.

20 (d) If any provision of a code conflicts with a statute
21 enacted by the same legislature that enacted the code, the statute
22 controls.

23 Sec. 311.032. SEVERABILITY OF STATUTES. (a) If any statute
24 contains a provision for severability, that provision prevails in
25 interpreting that statute.

26 (b) If any statute contains a provision for
27 nonseverability, that provision prevails in interpreting that
28 statute.

29 (c) In a statute that does not contain a provision for
30 severability or nonseverability, if any provision of the statute or
31 its application to any person or circumstance is held invalid, the
32 invalidity does not affect other provisions or applications of the
33 statute that can be given effect without the invalid provision or
34 application, and to this end the provisions of the statute are

1 severable.

2 Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY. In order to
3 preserve the legislature's interest in managing state fiscal
4 matters through the appropriations process, a statute shall not be
5 construed as a waiver of sovereign immunity unless the waiver is
6 effected by clear and unambiguous language. In a statute, the use
7 of "person," as defined by Section 311.005 to include governmental
8 entities, does not indicate legislative intent to waive sovereign
9 immunity unless the context of the statute indicates no other
10 reasonable construction. Statutory prerequisites to a suit,
11 including the provision of notice, are jurisdictional requirements
12 in all suits against a governmental entity.

13 Sec. 311.035. CONSTRUCTION OF STATUTE OR RULE INVOLVING
14 CRIMINAL OFFENSE OR PENALTY. (a) In this section, "actor" and
15 "element of offense" have the meanings assigned by Section 1.07,
16 Penal Code.

17 (b) Except as provided by Subsection (c), a statute or rule
18 that creates or defines a criminal offense or penalty shall be
19 construed in favor of the actor if any part of the statute or rule is
20 ambiguous on its face or as applied to the case, including:

21 (1) an element of offense; or

22 (2) the penalty to be imposed.

23 (c) Subsection (b) does not apply to a criminal offense or
24 penalty under the Penal Code or under the Texas Controlled
25 Substances Act.

26 (d) The ambiguity of a part of a statute or rule to which
27 this section applies is a matter of law to be resolved by the judge.

APPENDIX C
DISPOSITION TABLE

CODE OF CRIMINAL PROCEDURE

SOURCE LAW	REVISED LAW
Ch. 18	
Art. 18.20	
Sec. 1(1)-(6)	18A.001
(7) (part)	18A.001
(7)	18A.051
(8)-(16)	18A.001
(17)	18B.001
(18)	18A.001
(19)	RN (12) 18A.001
(20)	18B.001
(21)	18A.051
(22), (23)	18A.201
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Sec. 2	18A.357
Sec. 3(a)	18A.051
(b)	18A.053
(b) (part)	18A.054
(c) (part)	18A.054
(c) (part)	18A.055
Sec. 4	18A.101
Sec. 5(a)	18A.301
(b)	18A.301
(c)	18A.302
(d)	18A.303
Sec. 6	18A.052
Sec. 7(a)	18A.351
(b)	18A.351
(c)	18A.352
(d)	18A.353
(e)	18A.354
Sec. 8	18A.055
Sec. 8A(a)	18A.202
(b)	18A.202
(b) (part)	18A.205
(c)	18A.203
(d)	18A.202
(e)	18A.204
(f)	18A.205
(g)	18A.202
Sec. 8B(a)	18A.251
(b)	18A.252
(c)	18A.253
(d)	18A.252
(e)	18A.254
Sec. 9(a)	18A.102
(b)	18A.103
(c) (part)	18A.105
(c) (part)	18A.106
(d) (part)	18A.103
(d) (part)	18A.107
(d) (part)	18A.108
(e)	18A.104
(f)	18A.104
(g)	18A.109
(h)	18A.110
Sec. 9A(a)	18A.151
(b)	18A.152
(c)	18A.153
Sec. 10(a)	18A.451

1	(b) (part)	18A.453
2	(b) (part)	18A.454
3	(c)	18A.452
4	(d)	18A.455
5	Sec. 11 (part)	18A.401
6	(part)	18A.402
7	(part)	18A.403
8	(part)	18A.404
9	Sec. 12	18A.501
10	Sec. 13	18A.355
11	Sec. 14(a)	18A.356
12	(b)	18A.358
13	(c)	18A.358
14	(d)	18A.358
15	(e)	18A.358
16	Sec. 15(a)	18A.551
17	(b)	18A.552
18	(c) (part)	18A.551
19	(c) (part)	18A.552
20	(c) (part)	18A.553
21	Sec. 16(a)	18A.502
22	(b)	18A.504
23	(c)	18A.503
24	(d)	18A.503
25	(e)	18A.503
26	(f)	18A.503
27	(g)	18A.505
28	Sec. 17	18A.002
29	Art. 18.21	
30	Sec. 1(1) (part)	18B.001
31	(1) (part)	18B.151
32	(2), (3), (3-a), (3-b), (3-c), (4)	18B.001
33	(5)	18B.201
34	(6), (7), (8)	18B.001
35	(9)	RN (9) 18B.001
36	(10)	18B.001
37	Sec. 2(a) (part)	18B.051
38	(a) (part)	18B.052
39	(b)	18B.051
40	(c)	18B.053
41	(d) (part)	18B.101
42	(d) (part)	18B.103
43	(e) (part)	18B.102
44	(e) (part)	18B.103
45	(f)	18B.104
46	(g)	18B.105
47	(h)	18B.254
48	(i)	18B.252
49	(j)	18B.251
50	(k)	18B.252
51	(l)	18B.301
52	(m)	18B.302
53	Sec. 3(a)	18B.151
54	(a) (part)	18B.152
55	(b)	18B.152
56	(c)	18B.152
57	(d)	18B.153
58	Sec. 4(a)	18B.351
59	(b)	18B.351
60	(c)	18B.359
61	(d)	18B.359
62	Sec. 5	18B.352
63	Sec. 5A(a)	18B.353
64	(b)	18B.354
65	(b) (part)	18B.355
66	(b) (part)	18B.356
67	(c)	18B.354

1	(d)	18B.354
2	(e)	18B.354
3	(f)	18B.354
4	(g)	18B.355
5	(h) (part)	18B.355
6	(h) (part)	18B.356
7	(i)	18B.355
8	(j)	18B.356
9	(k)	18B.357
10	(l)	18B.356
11	(m)	18B.355
12	(n)	18B.356
13	Sec. 5B	18B.358
14	Sec. 6(a)	18B.401
15	(b)	18B.401
16	(b) (part)	18B.402
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21	(g)	18B.406
22	(h)	18B.406
23	Sec. 8	18B.501
24	Sec. 9	18B.503
25	Sec. 10	18B.552
26	Sec. 11	18B.502
27	Sec. 12	18B.551
28	Sec. 13	18B.553
29	Sec. 14(a) (part)	18B.202
30	(a)	18B.203
31	(b)	18B.203
32	(c)	18B.202
33	(d)	18B.204
34	(e)	18B.205
35	(f)	18B.206
36	(g)	18B.207
37	Sec. 15(a)	18B.451
38	(b)	18B.452
39	(c)	18B.453
40	Sec. 16	18B.253
41	Ch. 60	
42	Art. 60.01(1), (3)-(11), (13), (14), (16)	66.001
43	(2), (12)	66.102
44	(15)	66.251
45	Art. 60.02(a)	66.151
46	(b)	66.101
47	(c)	66.051
48	(d)	66.101; 66.151
49	(e)	66.052
50	(f) (part)	66.052
51	(f) (part)	66.103
52	(g)	66.101
53	(h)	66.254
54	(i)	66.351
55	(j)	66.352
56	(k)	66.401
57	(m)	66.352
58	Art. 60.03(a)	66.201
59	(b)	66.202
60	(c)	66.203
61	Art. 60.04	66.253
62	Art. 60.05	66.053
63	Art. 60.051	66.102
64	Art. 60.052	66.152
65	Art. 60.06(a)	66.301
66	(b)	66.302
67	(c)	66.302

1	(d)	66.301
2	(e)	66.303
3	(f)	66.304
4	Art. 60.061	66.104
5	Art. 60.07.	66.251
6	Art. 60.08.	66.252
7	Art. 60.09.	66.354
8	Art. 60.12.	66.054
9	Art. 60.14.	66.402
10	Art. 60.18.	66.255
11	Art. 60.19.	66.105
12	Art. 60.20.	66.106
13	Art. 60.21(a)	RN Subch. H 66.354
14	(b)	66.353
15	(c)	66.353
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17	Art. 61.01.	67.001
18	Art. 61.02(a)	67.051
19	(b)	67.051
20	(b) (part)	67.052
21	(b-1)	67.051
22	(c)	67.054
23	(d)	67.054
24	(e)	67.054
25	Art. 61.03(a)	67.101
26	(b)	67.101
27	(c)	67.051
28	(d)	67.052
29	(e)	67.052
30	Art. 61.04.	67.102
31	Art. 61.05.	67.103
32	Art. 61.06.	67.151
33	Art. 61.07.	67.152
34	Art. 61.075	67.201
35	Art. 61.08.	67.202
36	Art. 61.09.	67.203
37	Art. 61.10(a)	67.301
38	(b)	67.302
39	(c)	67.304
40	(d)	67.304
41	(e)	67.305
42	(f)	67.303
43	(g)	67.304
44	Art. 61.11(a) (part)	67.251
45	(a) (part)	67.252
46	(b)	67.254
47	(c)	67.254
48	(d)	67.253
49	(e)	67.255
50	(f)	67.256
51	(g)	67.252
52	(h)	67.252
53	Art. 61.12.	67.053