

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

*Subchapter A. General Provisions*

**ART. 18A.001. DEFINITIONS**

In this chapter:

- (1) "Access," "computer," "computer network," "computer system," and "effective consent" have the meanings assigned by Section 33.01, Penal Code.
- (2) "Aggrieved person" means a person who was a party to an intercepted wire, oral, or electronic communication or a person against whom the interception was directed.
- (3) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.
- (4) "Communication common carrier" means a person engaged as a common carrier for hire in the transmission of wire or electronic communications.
- (5) "Computer trespasser" means a person who accesses a protected computer without effective consent of the owner and has no reasonable expectation of privacy in a communication transmitted to, through, or from the protected computer. The term does not include a person who accesses the protected computer under an existing contractual relationship with the owner or operator of the computer.
- (6) "Contents," with respect to a wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.
- (7) "Covert entry" means an entry that is made into or onto premises and that, if not authorized by a court order under this chapter, would violate the Penal Code.
- (8) "Department" means the Department of Public Safety of the State of Texas.
- (9) "Director" means:
  - (A) the public safety director of the department; or
  - (B) if the public safety director is absent or unable to serve, the assistant director of the department.
- (10) "Electronic communication" means a transfer of any signs, signals, writing, images, sounds, data, or intelligence transmitted wholly or partly by a wire, radio, electromagnetic, photoelectric, 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.
- (11) "Electronic communications service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.
- (12) "ESN reader," "pen register," and "trap and trace device" have the meanings assigned by Article 18B.001.
- (13) "Intercept" means the aural or other acquisition of the contents of a wire, oral, or electronic communication through the use of an interception device.

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

- (A) provided to a subscriber or user by a provider of a wire or electronic communications service in the ordinary course of the service provider's business and used by the subscriber or user in the ordinary course of the subscriber's or user's business;
  - (B) provided by a subscriber or user for connection to the facilities of a wire or electronic communications service for use in the ordinary course of the subscriber's or user's business;
  - (C) used by a communication common carrier in the ordinary course of the carrier's business; or
  - (D) used by an investigative or law enforcement officer in the ordinary course of the officer's duties.
- (15) "Interception order" means an order authorizing the interception of a wire, oral, or electronic communication.
- (16) "Investigative or law enforcement officer" means:
- (A) an officer of this state or a political subdivision of this state who is authorized by law to investigate or make arrests for offenses described by Article 18A.101; or
  - (B) an attorney authorized by law to prosecute or participate in the prosecution of those offenses.
- (17) "Judge of competent jurisdiction" means a judge described by Article 18A.051.
- (18) "Mobile tracking device" has the meaning assigned by Article 18B.201.
- (19) "Oral communication" means a communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation. The term does not include an electronic communication.
- (20) "Prosecutor" means a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney, with jurisdiction in the county within an administrative judicial region described by Article 18A.053.
- (21) "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, if conduct constituting an offense affects that use.
- (22) "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 a temporary absence.
- (23) "User" means a person who uses an electronic communications service and is authorized by the service provider to use the service.
- (24) "Wire communication" means an aural transfer made wholly or partly through the use of facilities for the transmis-

sion of communications by the aid of wire, cable, or other similar connection between the point of origin and the point of reception, including the use of the connection in a switching station, if those facilities are provided or operated by a person authorized to provide or operate the facilities for the transmission of communications as a communication common carrier.

Chapter enacted effective Jan. 1, 2019 (HB 2931, §1.01). Art. 6.01 of HB 2931 provides: "This Act is enacted under Section 43, Article III, Texas Constitution. This Act is intended as a codification only, and no substantive change in the law is intended by this Act."

Section 6.02 of HB 2931 provides: "(a) 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.

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

#### ART. 18A.002. NONAPPLICABILITY

This chapter does not apply to conduct described as an affirmative defense under Section 16.02(c), Penal Code, except as otherwise specifically provided by that section.

### *Subchapter B. Application for Interception Order*

#### ART. 18A.051. JUDGE OF COMPETENT JURISDICTION

- (a) For purposes of this chapter, a judge of competent jurisdiction is a judge from the panel of nine active district judges with criminal jurisdiction who is appointed by the presiding judge of the court of criminal appeals under this article.
- (b) 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 regions of this state to serve at the presiding judge's pleasure as the judge of competent jurisdiction in that administrative judicial region.
- (c) The presiding judge shall fill vacancies as those vacancies occur in the same manner.

#### 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).

#### 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.

#### ART. 18A.054. ALTERNATE JURISDICTION

(a) An application for an interception order may be made to the judge of competent jurisdiction in an administrative judicial region adjacent to a region described by Article 18A.053 if:

- (1) the judge of competent jurisdiction for the administrative judicial region described by Article 18A.053 is absent or unable to serve; or
  - (2) exigent circumstances exist.
- (b) Exigent circumstances under Subsection (a)(2) do not include a denial of a previous application on the same facts and circumstances.

#### ART. 18A.055. APPLICATION FOR INTERCEPTION ORDER

- (a) A prosecutor applying for an interception order must make the application in writing under oath to a judge of competent jurisdiction.
- (b) An application must:
  - (1) identify the prosecutor making the application and state the prosecutor's authority to make the application;
  - (2) identify the officer requesting the application;
  - (3) include a complete statement of the facts and circumstances relied on by the prosecutor to justify the prosecutor's belief that an order should be issued, including:
    - (A) details about the particular offense that has been, is being, or is about to be committed;
    - (B) except as otherwise provided by this chapter, a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;
    - (C) a particular description of the type of communication sought to be intercepted; and
    - (D) the identity of the person, if known, committing the

offense and whose communications are to be intercepted;

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

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

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

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

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

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

(c) In an ex parte hearing in chambers, the judge may require additional testimony or documentary evidence to support the application. The testimony or documentary evidence must be preserved as part of the application.

### ***Subchapter C. Issuance of Interception Order and Related Orders***

#### **ART. 18A.101. OFFENSES FOR WHICH INTERCEPTION ORDER MAY BE ISSUED**

A judge of competent jurisdiction may issue an interception order only if the prosecutor applying for the order shows probable cause to believe that the interception will provide evidence of the commission of:

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

(A) Chapter 481, other than felony possession of marijuana;

(B) Chapter 483; or

(C) Section 485.032;

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

(A) Section 19.02;

(B) Section 19.03;

(C) Section 20.03;

(D) Section 20.04;

(E) Chapter 20A;

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

(G) Section 38.11;

(H) Section 43.04;

(I) Section 43.05; or

(J) Section 43.26; or

(3) an attempt, conspiracy, or solicitation to commit an offense listed in Subdivision (1) or (2).

#### **ART. 18A.102. JUDICIAL DETERMINATIONS REQUIRED FOR ISSUANCE OF INTERCEPTION ORDER**

On receipt of an application under Subchapter B, the judge may issue an ex parte interception order, as requested or as modified, if the judge determines from the evidence submitted by the prosecutor that:

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

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

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

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

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

#### **ART. 18A.103. CONTENTS OF INTERCEPTION ORDER**

(a) An interception order must specify:

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

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

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

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

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

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

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

(c) For purposes of Subsection (b), if the intercepted communication is in code or a foreign language and an expert in that code or language is not reasonably available during the period of interception, minimization may be accomplished as soon as practicable after the interception.

**ART. 18A.104. LIMITATION ON COVERT ENTRY**

(a) An interception order may not authorize a covert entry for the purpose of intercepting an oral communication unless:

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

(A) that:

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

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

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

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

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

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

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

(b) An interception order may not authorize a covert entry into a residence solely for the purpose of intercepting a wire or electronic communication.

**ART. 18A.105. AUTHORITY TO ISSUE CERTAIN ANCILLARY ORDERS**

An interception order may include an order to:

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

(2) disclose a stored communication, information subject to an

administrative subpoena, or information subject to access under Chapter 18B.

**ART. 18A.106. ORDER TO THIRD PARTY TO ASSIST WITH EXECUTION OF INTERCEPTION ORDER**

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

(b) A provider of a wire or electronic communications service, communication common carrier, landlord, custodian, or other person that provides facilities or technical assistance under an order described by Subsection (a) is entitled to compensation, at the prevailing rates, by the prosecutor for reasonable expenses incurred in providing the facilities or assistance.

**ART. 18A.107. DURATION OF INTERCEPTION ORDER**

An interception order may not authorize the interception of a communication for a period that:

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

(2) exceeds 30 days.

**ART. 18A.108. EXTENSION OF INTERCEPTION ORDER**

(a) A judge who issues an interception order may grant extensions of the order.

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

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

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

(c) The period of extension may not:

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

(2) exceed 30 days.

**ART. 18A.109. REPORT ON NEED FOR CONTINUED INTERCEPTION**

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

(b) Reports under this article must be made at any interval the judge requires.

**ART. 18A.110. SUBSEQUENT CRIMINAL PROSECUTION RELATED TO INTERCEPTION ORDER**

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

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

(2) the order may be an issue.

***Subchapter D. Interception Order for Communication by Specified Person***

**ART. 18A.151. REQUIREMENTS REGARDING INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED PERSON**

The requirements of Articles 18A.055(b)(3)(B) and 18A.103(a)(2) relating to the specification of the facilities from which or the place where a communication is to be intercepted do not apply if:

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

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

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

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

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

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

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

**ART. 18A.152. IMPLEMENTATION OF INTERCEPTION ORDER**

A person implementing an interception order that authorizes the interception of an oral communication and that, as permitted by this subchapter, does not specify the facility from which or the place where a communication is to be intercepted may begin interception only after the person ascertains the place where the communication is to be intercepted.

**ART. 18A.153. MOTION TO MODIFY OR QUASH INTERCEPTION ORDER**

(a) A provider of a wire or electronic communications service that receives an interception order that authorizes the interception of a wire or electronic communication and that, as permitted by this subchapter, does not specify the facility from which or the place where a communication is to be intercepted may move the court to modify or quash the order on the ground that the service provider's assistance with respect to the interception cannot be performed in a timely or reasonable manner.

(b) On notice to the state, the court shall decide the motion expeditiously.

***Subchapter E. Emergency Installation and Use of Interception Device***

**ART. 18A.201. DEFINITIONS**

In this subchapter:

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

(A) threatens another with death; or

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

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

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

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

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

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

**ART. 18A.202. POSSESSION AND USE OF INTERCEPTION DEVICE IN EMERGENCY SITUATION**

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

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

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

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

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

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

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

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

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

(A) a judge of competent jurisdiction;

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

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

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

- (1) promptly report the installation or use to the prosecutor in the county in which the device is installed or used; and
- (2) within 48 hours after the installation is complete or the interception begins, whichever occurs first, obtain a written interception order from a judge of competent jurisdiction.

(d) A peace officer may certify to a communication common carrier that the officer is acting lawfully under this subchapter.

**ART. 18A.203. CONSENT FOR EMERGENCY INTERCEPTION**

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

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

- (1) 48 hours after the grant of consent; or
- (2) the conclusion of the emergency justifying the interception.

**ART. 18A.204. WRITTEN ORDER AUTHORIZING INTERCEPTION**

(a) A judge of competent jurisdiction under Article 18A.051 or under Article 18A.202(b) may issue a written interception order under this subchapter during the 48-hour period prescribed by Article 18A.202(c)(2).

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

- (1) the 30th day after the date of execution of the order; or
- (2) the conclusion of the emergency that initially justified the interception.

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

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

**ART. 18A.205. CERTAIN EVIDENCE NOT ADMISSIBLE**

The state may not use as evidence in a criminal proceeding information gained through the use of an interception device installed under this subchapter if authorization for the device is not sought or is sought but not obtained.

***Subchapter F. Detection of Cellular Telephone or Other Wireless Communications Device in Correctional or Detention Facility***

**ART. 18A.251. DEFINITION**

In this subchapter, "correctional facility" means:

- (1) a place described by Section 1.07(a)(14), Penal Code; or
- (2) a "secure correctional facility" or "secure detention facility" as defined by Section 51.02, Family Code.

**ART. 18A.252. USE OF INTERCEPTION DEVICE BY INSPECTOR GENERAL**

(a) Notwithstanding any other provision of this chapter or Chapter 18B, the office of inspector general of the Texas Department of Criminal Justice may:

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

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

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

(b) When using an interception device under Subsection (a), the office of inspector general shall minimize the impact of the device on a communication that is not reasonably related to the detection of the presence or use of a cellular telephone or other wireless communications device in a correctional facility.

**ART. 18A.253. REPORTING USE OF INTERCEPTION DEVICE**

Not later than the 30th day after the date on which the office of inspector general uses an interception device under Article 18A.252(a), the inspector general shall report the use of the device to:

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

(2) the special prosecution unit established under Subchapter E, Chapter 41, Government Code, if that unit has jurisdiction in the county in which the device was used.

**ART. 18A.254. NO EXPECTATION OF PRIVACY**

(a) A person confined in a correctional facility does not have an expectation of privacy with respect to the possession or use of a cellular telephone or other wireless communications device located on the premises of the facility.

(b) A person confined in a correctional facility, and any person with whom the confined person communicates through the use of a cellular telephone or other wireless communications device, does not have an expectation of privacy with respect to the contents of a communication transmitted by the telephone or device.

***Subchapter G. Agencies and Personnel Authorized to Possess and Use Interception Devices***

**ART. 18A.301. DEPARTMENT OF PUBLIC SAFETY AUTHORIZED TO POSSESS AND USE INTERCEPTION DEVICE**

(a) Except as otherwise provided by this subchapter and Subchapters E and F, only the department is authorized by this chapter to own, possess, install, operate, or monitor an interception device.

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

- (1) is designated by the director for that purpose; and
- (2) acts in the presence and under the direction of a commissioned officer of the department.

(c) The director shall designate in writing the commissioned officers of the department who are responsible for the possession, installation, operation, and monitoring of interception devices for the department.

**ART. 18A.302. TEXAS DEPARTMENT OF  
CRIMINAL JUSTICE AUTHORIZED TO POSSESS  
AND USE INTERCEPTION DEVICE**

(a) The Texas Department of Criminal Justice may own an interception device for a use or purpose authorized by Section 500.008, Government Code.

(b) The inspector general of the Texas Department of Criminal Justice, a commissioned officer of that office, or a person acting in the presence and under the direction of the commissioned officer may possess, install, operate, or monitor the interception device as provided by Section 500.008, Government Code.

**ART. 18A.303. TEXAS JUVENILE JUSTICE  
DEPARTMENT AUTHORIZED TO POSSESS AND  
USE INTERCEPTION DEVICE**

(a) The Texas Juvenile Justice Department may own an interception device for a use or purpose authorized by Section 242.103, Human Resources Code.

(b) The inspector general of the Texas Juvenile Justice Department, a commissioned officer of that office, or a person acting in the presence and under the direction of the commissioned officer may possess, install, operate, or monitor the interception device as provided by Section 242.103, Human Resources Code.

***Subchapter H. Disclosure and Use of Intercepted  
Communications***

**ART. 18A.351. DISCLOSURE AND USE OF  
INTERCEPTED COMMUNICATIONS**

An investigative or law enforcement officer who, by means authorized by this chapter, obtains knowledge of the contents of a wire, oral, or electronic communication or evidence derived from the communication may:

- (1) use the contents or evidence to the extent the use is appropriate to the proper performance of the officer's official duties; or
- (2) disclose the contents or evidence to another investigative or law enforcement officer, including a law enforcement officer or agent of the United States or of another state, to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

**ART. 18A.352. DISCLOSURE UNDER OATH**

A person who receives, by means authorized by this chapter, information concerning a wire, oral, or electronic communication or evidence derived from a communication intercepted in

accordance with this chapter may disclose the contents of that communication or evidence while giving testimony under oath in any proceeding held under the authority of the United States, this state, or a political subdivision of this state.

**ART. 18A.353. PRIVILEGED COMMUNICATIONS**

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

(b) Evidence derived from a privileged communication described by Subsection (a) against a party to that communication is privileged.

**ART. 18A.354. DISCLOSURE OF USE OF  
INCIDENTALLY INTERCEPTED COMMUNICATIONS**

(a) This article applies only to the contents of and evidence derived from wire, oral, or electronic communications that:

- (1) are intercepted by an investigative or law enforcement officer while engaged in intercepting wire, oral, or electronic communications in a manner authorized by this chapter; and
- (2) relate to offenses other than those specified by the interception order.

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

(c) The contents of and evidence derived from a communication described by Subsection (a) may be used under Article 18A.352 when authorized by a judge of competent jurisdiction if the judge finds, on subsequent application, that the contents were otherwise intercepted in accordance with this chapter.

(d) An application under Subsection (c) must be made as soon as practicable.

**ART. 18A.355. NOTICE AND DISCLOSURE OF  
INTERCEPTION APPLICATION, INTERCEPTION  
ORDER, AND INTERCEPTED COMMUNICATIONS**

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

- (1) the application or the issuance of the order;
- (2) the date of denial of the application, or the date of the issuance of the order and the authorized interception period; and
- (3) whether during any authorized interception period wire, oral, or electronic communications were intercepted.

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

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

(d) Evidence derived from an order under this chapter may not be disclosed in a trial until after the inventory has been served.

**ART. 18A.356. NOTICE OF INTERCEPTION  
REQUIRED**

(a) The contents of an intercepted wire, oral, or electronic communication or evidence derived from the communication may not be received in evidence or otherwise disclosed in a trial, hearing, or other proceeding in a federal or state court unless each party, not later than the 10th day before the date of the trial, hearing, or other proceeding, has been provided with a copy of the interception order and application under which the interception was authorized.

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

- (1) it is not possible to provide the party with the information 10 days before the trial, hearing, or proceeding; and
- (2) the party will not be prejudiced by the delay in receiving the information.

**ART. 18A.357. COMMUNICATIONS RECEIVED IN  
EVIDENCE**

(a) The contents of an intercepted communication and evidence derived from the communication may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, this state, or a political subdivision of this state unless:

- (1) the communication was intercepted in violation of this chapter, Section 16.02, Penal Code, or federal law; or
- (2) the disclosure of the contents of the communication or evidence derived from the communication would violate a law described by Subdivision (1).

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

(c) This article does not prohibit the use or admissibility of the contents of an intercepted communication or evidence derived from the communication if the communication was intercepted in a jurisdiction outside this state in compliance with the law of that jurisdiction.

**ART. 18A.358. SUPPRESSION OF CONTENTS OF  
INTERCEPTED COMMUNICATIONS**

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

- (1) the communication was unlawfully intercepted;
- (2) the interception order is insufficient on its face; or
- (3) the interception was not made in conformity with the interception order.

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

- (1) a ground provided under Subsection (a); or
- (2) the ground that the harm to the person resulting from

the person's identification in court exceeds the value to the prosecution of the disclosure of the contents.

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

- (1) there was not an opportunity to make the motion; or
- (2) the aggrieved person was not aware of the grounds of the motion.

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

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

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

(g) A judge of this state, on hearing a pretrial motion regarding conversations intercepted by wire in accordance with this chapter, or who otherwise becomes informed that there exists on such an intercepted wire, oral, or electronic communication identification of a specific individual who is not a suspect or a party to the subject of interception shall:

- (1) give notice and an opportunity to be heard on the matter of suppression of references to that individual if identification is sufficient to give notice; or
- (2) suppress references to that individual if identification is:
  - (A) sufficient to potentially cause embarrassment or harm that outweighs the probative value, if any, of the mention of that individual; and
  - (B) insufficient to require the notice under Subdivision (1).

***Subchapter I. Use and Disposition of  
Applications and Orders***

**ART. 18A.401. SEALING OF APPLICATION OR  
ORDER**

The judge shall seal each application made and order issued under this chapter.

**ART. 18A.402. CUSTODY OF APPLICATIONS AND  
ORDERS**

Custody of applications and orders issued under this chapter shall be wherever the judge directs.

**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.

**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.

### ***Subchapter J. Creation, Use, and Disposition of Recordings***

#### **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.

**ART. 18A.452. DUPLICATION OF RECORDINGS**  
Recordings under Article 18A.451 may be duplicated for use or disclosure under Article 18A.351 for investigations.

#### **ART. 18A.453. SEALING AND CUSTODY OF RECORDINGS**

(a) Immediately on the expiration of the period of an interception order and all extensions, if any, the recordings under Article 18A.451 shall be:

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

(b) Custody of the recordings shall be wherever the judge orders.

**ART. 18A.454. DESTRUCTION OF RECORDINGS**  
A recording under Article 18A.451 may be destroyed only on or after the 10th anniversary of the date of expiration of the interception order and the last extension, if any, and only if the judge of competent jurisdiction for the administrative judicial region in which the interception was authorized orders the destruction.

#### **ART. 18A.455. PREREQUISITE FOR USE OR DISCLOSURE OF RECORDING IN CERTAIN PROCEEDINGS**

The presence of the seal required by Article 18A.453(a) or a satisfactory explanation of the seal's absence is a prerequisite for the use or disclosure of the contents of a wire, oral, or electronic communication or evidence derived from the communication under Article 18A.352.

### ***Subchapter K. Violation; Sanctions***

#### **ART. 18A.501. CONTEMPT**

A violation of Subchapter I or J may be punished as contempt of court.

#### **ART. 18A.502. RECOVERY OF CIVIL DAMAGES BY AGGRIEVED PERSON**

A person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this chapter or Chapter 16, Penal Code:

- (1) has a civil cause of action against any person who intercepts, discloses, or uses or solicits another person to intercept, disclose, or use the communication; and
- (2) is entitled to recover from the person:
  - (A) actual damages but not less than liquidated damages computed at a rate of \$100 for each day the violation occurs or \$1,000, whichever is higher;

(B) punitive damages; and

(C) reasonable attorney's fees and other litigation costs reasonably incurred.

#### **ART. 18A.503. ACTION BROUGHT BY FEDERAL OR STATE GOVERNMENT; INJUNCTION; PENALTIES**

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

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

(2) involves a radio communication that is:

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

(B) not scrambled or encrypted.

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

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

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

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

(d) Each violation of an injunction ordered under Subsection (a) is punishable by a fine of \$500.

#### **ART. 18A.504. GOOD FAITH DEFENSE AVAILABLE**

A good faith reliance on a court order or legislative authorization constitutes a complete defense to an action brought under Article 18A.502 or 18A.503.

#### **ART. 18A.505. NO CAUSE OF ACTION**

A computer trespasser or a user, aggrieved person, subscriber, or customer of a communication common carrier or provider of an electronic communications service does not have a cause of action against the carrier or service provider, the officers, employees, or agents of the carrier or service provider, or other specified persons for providing information, facilities, or assistance as required by a good faith reliance on:

- (1) legislative authority; or
- (2) a court order, warrant, subpoena, or certification under this chapter.

### ***Subchapter L. Reports***

#### **ART. 18A.551. REPORT OF INTERCEPTED COMMUNICATIONS BY JUDGE**

(a) Within 30 days after the date an interception order or the last extension, if any, expires or after the denial of an interception order, the issuing or denying judge shall report to the Administrative Office of the United States Courts:

- (1) the fact that an order or extension was applied for;
- (2) the kind of order or extension applied for;

- (3) the fact that the order or extension was granted as applied for, was modified, or was denied;
  - (4) the period of interceptions authorized by the order and the number and duration of any extensions of the order;
  - (5) the offense specified in the order or application or extension;
  - (6) the identity of the requesting officer and the prosecutor; and
  - (7) the nature of the facilities from which or the place where communications were to be intercepted.
- (b) A judge required to file a report under this article shall forward a copy of the report to the director.

**ART. 18A.552. REPORT OF INTERCEPTED COMMUNICATIONS BY PROSECUTOR**

- (a) In January of each year each prosecutor shall report to the Administrative Office of the United States Courts the following information for the preceding calendar year:
- (1) the information required by Article 18A.551(a) with respect to each application for an interception order or extension made;
  - (2) a general description of the interceptions made under each order or extension, including:
    - (A) the approximate nature and frequency of incriminating communications intercepted;
    - (B) the approximate nature and frequency of other communications intercepted;
    - (C) the approximate number of persons whose communications were intercepted; and
    - (D) the approximate nature, amount, and cost of the personnel and other resources used in the interceptions;
  - (3) the number of arrests resulting from interceptions made under each order or extension and the offenses for which the arrests were made;
  - (4) the number of trials resulting from interceptions;
  - (5) the number of motions to suppress made with respect to interceptions and the number granted or denied;
  - (6) the number of convictions resulting from interceptions,

- the offenses for which the convictions were obtained, and a general assessment of the importance of the interceptions; and
  - (7) the information required by Subdivisions (2) through (6) with respect to orders or extensions obtained.
- (b) A prosecutor required to file a report under this article shall forward a copy of the report to the director.

**ART. 18A.553. REPORT OF INTERCEPTED COMMUNICATIONS BY DEPARTMENT OF PUBLIC SAFETY**

- (a) On or before March 1 of each year, the director shall submit a report of all intercepts conducted under this chapter and terminated during the preceding calendar year to:
- (1) the governor;
  - (2) the lieutenant governor;
  - (3) the speaker of the house of representatives;
  - (4) the chair of the senate jurisprudence committee; and
  - (5) the chair of the house of representatives criminal jurisprudence committee.
- (b) The report must include:
- (1) the reports of judges and prosecuting attorneys forwarded to the director as required by Articles 18A.551(b) and 18A.552(b);
  - (2) the number of department personnel authorized to possess, install, or operate an interception device;
  - (3) the number of department and other law enforcement personnel who participated or engaged in the seizure of intercepts under this chapter during the preceding calendar year; and
  - (4) the total cost to the department of all activities and procedures relating to the seizure of intercepts during the preceding calendar year, including costs of equipment, personnel, and expenses incurred as compensation for use of facilities or technical assistance provided to the department.

**CCP ART. 18.20 DISPOSITION CHART TO CCP CHAPTER 18A**

<b>18.20 Reference</b>	<b>New number</b>	<b>18.20 Reference</b>	<b>New number</b>	<b>18.20 Reference</b>	<b>New number</b>
<b>Sec. 1</b>		<b>Sec. 7</b>		<b>Sec. 9A</b>	
(1)	18A.001(24)	(a)-(b)	18A.351	(a)	18A.151
(2)	18A.001(19)	(c)	18A.352	(b)	18A.152
(3)	18A.001(13)	(d)	18A.353	(c)	18A.153
(4)	18A.001(14)	(e) S1	18A.354(a)-(b)	<b>Sec. 10</b>	
(5)	18A.001(16)	(e) S2	18A.354(c)	(a)	18A.451
(6)	18A.001(6)	(e) S3	18A.354(d)	(b) S1	18A.453(a)
(7)	18A.001(17) & .051	<b>Sec. 8</b>		(b) S2	18A.453(b)
(8)	18A.001(20)	(a) S1	18A.055(a)	(b) S3	18A.454
(9)	18A.001(9)	(a) S2	18A.055(b)	(c)	18A.452
(10)	18A.001(4)	(a)(1)	18A.055(b)(1)	(d)	18A.455
(11)	18A.001(2)	(a)(2)	18A.055(b)(3)	<b>Sec. 11</b>	
(12)	18A.001(7)	(a)(3)	18A.055(b)(4)	(a) S1	18A.401
(13)	18A.001(22)	(a)(4)	18A.055(b)(5)	(a) S2	18A.402
(14)	18A.001(12)	(a)(5)	18A.055(b)(6)	(a) S3 Cl 1	18A.403
(15)	18A.001(10)	(a)(6)	18A.055(b)(7)	(a) S3 Cl 2 & S4	18A.404
(16)	18A.001(23)	(a)(7)	18A.055(b)(8)	<b>Sec. 12</b>	18A.501
(17)	*18B.001(6)	(b)	18A.055(c)	<b>Sec. 13</b>	
(18)	18A.001(11)	<b>Sec. 8A</b>		(a)	18A.355(a)
(19)	(none)	(a)	18A.202(a)	(b)	18A.355(b)
(20)	*18B.001(8)	(b)	18A.202(b)	(c) Cl 1	18A.355(c)
(21)	18A.001(3)	(c) S1	18A.203(a)	(c) Cl 2	18A.355(d)
(22)	18A.201(1)	(c) S2	18A.203(b)	<b>Sec. 14</b>	
(23)	18A.201(2)	(d)	18A.202(c)	(a) S1	18A.356(a)
(24)	18A.001(1)	(e) S1	18A.204(a)	(a) S2	18A.356(b)
(25)	18A.001(5)	(e) S2	18A.204(b)	(b)	18A.358(a)
(26)	18A.001(21)	(e) S3	18A.204(c)	(c)	18A.358(b)
<b>Sec. 2</b>		(f)	18A.205	(d) S1	18A.358(c)
(a)	18A.357(a)	(g)	18A.202(d)	(d) S2	18A.358(d)
(b)	18A.357(b)	<b>Sec. 8B</b>		(d) S3	18A.358(e)
(c)	18A.357(c)	(a)	18A.251	(d) S4	18A.358(f)
<b>Sec. 3</b>		(b)	18A.252(a)	(e)	18A.358(g)
(a)	18A.051	(c)	18A.253	<b>Sec. 15</b>	
(b)	18A.053	(d)	18A.252(b)	(a)	18A.551(a)
(c) S1	18A.054(a)	(e)	18A.254	(b)	18A.552(a)
(c) S2	18A.054(b)	<b>Sec. 9</b>		(c) S1	18A.551(b)
<b>Sec. 4</b>	18A.101	(a)	18A.102	(c) S2	18A.553(a)
<b>Sec. 5</b>		(b)	18A.103(a)	(c) S3	18A.553(b)
(a) S1	18A.301(a)	(c) S1	18A.106(a)	<b>Sec. 16</b>	
(a) S2	18A.301(b)	(c) S2	18A.106(b)	(a)	18A.502
(b)	18A.301(c)	(c) S3	18A.105	(b)	18A.504
(c)	18A.302(a)-(b)	(d) S1	18A.107	(c)	18A.503(a)
(d)	18A.303(a)-(b)	(d) S2	18A.108(a)-(b)	(d)	18A.503(c)
<b>Sec. 6</b>		(d) S3	18A.108(c)	(e)	18A.503(d)
(a)	18A.052(a)	(d) S4	18A.103(b)	(f)	18A.503(b)
(b) S1	18A.052(b)	(d) S5	18A.103(c)	(g)	18A.505
(b) S2	18A.052(c)	(e)	18A.104(b)	<b>Sec. 17</b>	18A.052
(b) S3	18A.052(d)	(f)	18A.104(a)		
		(g) S1	18A.109(a)		
		(g) S2	18A.109(b)		
		(h)	18A.110		

**Note:** In these charts, "S" = sentence, and "Cl" = clause.

**CCP CHAPTER 18A SOURCE CHART FROM CCP ART. 18.20**

<u>New Art.</u>	<u>18.20 reference</u>	<u>New Art.</u>	<u>18.20 reference</u>	<u>New Art.</u>	<u>18.20 reference</u>
18A.001	§1	18A.104(a)	§9(f)	18A.356(a)	§14(a) S1
(1)	§1(24)	(b)	§9(e)	(b)	§14(a) S2
(2)	§1(11)	18A.105	§9(c) S3	18A.357(a)	§2(a)
(3)	§1(21)	18A.106(a)	§9(c) S1	(b)	§2(b)
(4)	§1(10)	(b)	§9(c) S2	(c)	§2(c)
(5)	§1(25)	18A.107	§9(d) S1	18A.358(a)	§14(b)
(6)	§1(6)	18A.108(a)-(b)	§9(d) S2	(b)	§14(c)
(7)	§1(12)	18A.108(c)	§9(d) S3	(c)	§14(d) S1
(8)	*18.21 §1(3)	18A.109(a)	§9(g) S1	(d)	§14(d) S2
(9)	§1(9)	(b)	§9(g) S2	(e)	§14(d) S3
(10)	§1(15)	18A.110	§9(h)	(f)	§14(d) S4
(11)	§1(18)	18A.151	§9A(a)	(g)	§14(e)
(12)	§1(14)	18A.152	§9A(b)	18A.401	§11 S1
(13)	§1(3)	18A.153	§9A(c)	18A.402	§11 S2
(14)	§1(4)	18A.201(1)	§1(22)	18A.403	§11 S3, Cl 1
(15)	(new)	(2)	§1(23)	18A.404	§11 S3, Cl 2 & S4
(16)	§1(5)	18A.202(a)	§8A(a)	18A.451	§10(a)
(17)	§1(7)	(b)	§8A(b)	18A.452	§10(c)
(18)	*18.21 §1(5)	(c)	§8A(d)	18A.453(a)	§10(b) S1
(19)	§1(2)	(d)	§8A(g)	(b)	§10(b) S2
(20)	§1(8)	18A.203(a)	§8A(c) S1	18A.454	§10(b) S3
(21)	§1(26)	(b)	§8A(c) S2	18A.455	§10(d)
(22)	§1(14)	18A.204(a)	§8A(e) S1	18A.501	§12
(23)	§1(16)	(b)	§8A(e) S2	18A.502	§16(a)
(24)	§1(1)	(c)	§8A(e) S3	18A.503(a)	§16(c)
18A.002	§17	18A.205	§8A(f)	(b)	§16(f)
18A.051	§1(7), §3(a)	18A.251	§8B(a)	(c)	§16(d)
18A.052(a)	§6(a)	18A.252(a)	§8B(b)	(d)	§16(e)
(b)	§6(b) S1	(b)	§8B(d)	18A.504	§16(b)
(c)	§6(b) S2	18A.253	§8B(c)	18A.505	§16(g)
(d)	§6(b) S3	18A.254(a)	§8B(e) S1	18A.551(a)	§15(a)
18A.053	§3(b)	(b)	§8B(e) S2	(b)	§15(c) S1
18A.054(a)	§3(c) S1	18A.301(a)	§5(a) S1	18A.552(a)	§15(b)
(b)	§3(c) S2	(b)	§5(a) S2	(b)	§15(c) S1
18A.055(a)	§8(a) S1	(c)	§5(b)	18A.553(a)	§15(c) S2
(b)	§8(a) S2	18A.302(a)-(b)	§5(c)	(b)	§15(c) S3
(b)(1)	§8(a)(1)	18A.303(a)-(b)	§5(d)		
(b)(2)	(new)	18A.351	§7(a)-(b)		
(b)(3)	§8(a)(2)	18A.352	§7(c)		
(b)(4)	§8(a)(3)	18A.353	§7(d)		
(b)(5)	§8(a)(4)	18A.354(a)-(b)	§7(e) S1		
(b)(6)	§8(a)(5)	(c)	§7(e) S2		
(b)(7)	§8(a)(6)	(d)	§7(e) S3		
(b)(8)	§8(a)(7)	18A.355(a)	§13(a)		
(b)(9)	(new)	(b)	§13(b)		
(c)	§8(c)	(c)	§13(c) Cl 1		
18A.101	§4	(d)	§13(d) Cl 2		
18A.102	§9(a)				
18A.103(a)	§9(b)				
(b)	§9(d) S4				
(c)	§9(d) S5				

**Note:** In these charts, "S" = sentence, and "Cl" = clause.

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

*Subchapter A. General Provisions*

**ART. 18B.001. DEFINITIONS**

In this chapter:

- (1) "Authorized peace officer" means:
  - (A) a sheriff or deputy sheriff;
  - (B) a constable or deputy constable;
  - (C) a marshal or police officer of a municipality;
  - (D) a ranger or officer commissioned by the Public Safety Commission or the director of the department;
  - (E) an investigator of a prosecutor's office;
  - (F) a law enforcement agent of the Texas Alcoholic Beverage Commission;
  - (G) a law enforcement officer commissioned by the Parks and Wildlife Commission;
  - (H) an enforcement officer appointed by the inspector general of the Texas Department of Criminal Justice under Section 493.019, Government Code;
  - (I) an investigator commissioned by the attorney general under Section 402.009, Government Code; or
  - (J) a member of an arson investigating unit commissioned by a municipality, a county, or the state.
- (2) "Communication common carrier," "electronic communication," "electronic communications service," "user," and "wire communication" have the meanings assigned by Article 18A.001.
- (3) "Department" means the Department of Public Safety of the State of Texas.
- (4) "Designated law enforcement office or agency" means:
  - (A) the sheriff's department of a county with a population of 3.3 million or more;
  - (B) a police department in a municipality with a population of 500,000 or more; or
  - (C) the office of inspector general of the Texas Department of Criminal Justice.
- (5) "Domestic entity" has the meaning assigned by Section 1.002, Business Organizations Code.
- (6) "Electronic communications system" means:
  - (A) a wire, radio, electromagnetic, photo-optical, or photo-electronic facility for the transmission of wire or electronic communications; and
  - (B) any computer facility or related electronic equipment for the electronic storage of wire or electronic communications.
- (7) "Electronic customer data" means data or records that:
  - (A) are in the possession, care, custody, or control of a provider of an electronic communications service or provider of a remote computing service; and
  - (B) contain:
    - (i) information revealing the identity of customers of the applicable service;

- (ii) information about a customer's use of the applicable service;
  - (iii) information that identifies the recipient or destination of a wire or electronic communication sent to or by a customer;
  - (iv) the content of a wire or electronic communication sent to or by a customer; and
  - (v) any data stored with the applicable service provider by or on behalf of a customer.
- (8) "Electronic storage" means storage of electronic customer data in a computer, computer network, or computer system, regardless of whether the data is subject to recall, further manipulation, deletion, or transmission. The term includes storage of a wire or electronic communication by an electronic communications service or a remote computing service.
- (9) "ESN reader" means a device that, without intercepting the contents of a communication, records the electronic serial number from the data track of a wireless telephone, cellular telephone, or similar communication device that transmits its operational status to a base site.
- (10) "Pen register" means a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, if the information does not include the contents of the communication. The term does not include a device used by a provider or customer of a wire or electronic communications service in the ordinary course of the service provider's or customer's business for purposes of:
  - (A) billing or recording incident to billing for communications services; or
  - (B) cost accounting, security control, or other ordinary business purposes.
- (11) "Prosecutor" means a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney.
- (12) "Remote computing service" means the provision of computer storage or processing services to the public by means of an electronic communications system.
- (13) "Trap and trace device" means a device or process that records an incoming electronic or other impulse that identifies the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, if the information does not include the contents of the communication. The term does not include a device or telecommunications network used in providing:
  - (A) a caller identification service authorized by the Public Utility Commission of Texas under Subchapter E, Chapter 55, Utilities Code;
  - (B) the services referenced by Section 55.102(b), Utilities Code; or
  - (C) a caller identification service provided by a commercial mobile radio service provider licensed by the Federal Communications Commission.

Enacted effective Jan. 1, 2019 (HB 2931, §1.02). See effective note following Art. 18A.001.

***Subchapter B. Application for Order  
Authorizing Installation and Use of Equipment***

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

(a) A prosecutor with jurisdiction in a county within a judicial district described by Article 18B.052 may file with a district judge in the judicial district an application for the installation and use of a pen register, ESN reader, trap and trace device, or similar equipment that combines the function of a pen register and a trap and trace device.

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

- (1) the prosecutor's own motion; or
- (2) the request of an authorized peace officer, regardless of whether the peace officer is commissioned by the department.

(c) A prosecutor must make an application personally and may not make the application through an assistant or other person acting on the prosecutor's behalf if the prosecutor:

- (1) files an application on the prosecutor's own motion; or
- (2) files an application for the installation and use of a pen register, ESN reader, or similar equipment on the request of an authorized peace officer not commissioned by the department, other than an authorized peace officer employed by a designated law enforcement office or agency.

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

- (1) a pen register, ESN reader, or similar equipment on the request of:
  - (A) an authorized peace officer who is commissioned by the department; or
  - (B) an authorized peace officer of a designated law enforcement office or agency; or
- (2) a trap and trace device or similar equipment on the request of an authorized peace officer, regardless of whether the peace officer is commissioned by the department.

**ART. 18B.052. JURISDICTION**

An application under this subchapter must be filed in a judicial district in which is located:

- (1) the site of the proposed installation or use of the device or equipment;
- (2) the site of the communication device on which the device or equipment is proposed to be installed or used;
- (3) the billing, residential, or business address of the subscriber to the electronic communications service on which the device or equipment is proposed to be installed or used;
- (4) the headquarters of:
  - (A) the office of the prosecutor filing an application under this subchapter; or
  - (B) a law enforcement agency that requests the prosecutor to file an application under this subchapter or that proposes to execute an order authorizing installation and use of the device or equipment; or
- (5) the headquarters of a service provider ordered to install the device or equipment.

**ART. 18B.053. APPLICATION REQUIREMENTS**

An application under this subchapter must:

- (1) be made in writing under oath;
- (2) include the name of the subscriber and the telephone number and location of the communication device on which the pen register, ESN reader, trap and trace device, or similar equipment will be used, to the extent that information is known or is reasonably ascertainable; and
- (3) state that the installation and use of the device or equipment will likely produce information that is material to an ongoing criminal investigation.

***Subchapter C. Order Authorizing Installation  
and Use of Equipment***

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

(a) On presentation of an application under Subchapter B, a judge may order the installation and use of a pen register, ESN reader, or similar equipment by an authorized peace officer commissioned by the department or an authorized peace officer of a designated law enforcement office or agency.

(b) On request of the applicant, the judge shall direct in the order that a communication common carrier or a provider of an electronic communications service provide all information, facilities, and technical assistance necessary to facilitate the installation and use of the device or equipment by the department or designated law enforcement office or agency unobtrusively and with a minimum of interference to the services provided by the carrier or service provider.

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

(a) On presentation of an application under Subchapter B, a judge may order the installation and use of a trap and trace device or similar equipment on the appropriate line by a communication common carrier or other person.

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

(c) Unless otherwise ordered by the court, the results of the device or equipment shall be provided to the applicant, as designated by the court, at reasonable intervals during regular business hours, for the duration of the order.

**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.

**ART. 18B.104. DURATION OF ORDER**

(a) An order for the installation and use of a device or equipment under this subchapter is valid for a period not to exceed 60 days after the earlier of the date the device or equipment is installed or the 10th day after the date the order is entered, unless the prosecutor applies for and obtains an extension of the order from the court before the order expires.

(b) Each extension granted under Subsection (a) may not exceed a period of 60 days, except that the court may extend an order for a period not to exceed one year with the consent of the subscriber or customer of the service on which the device or equipment is used.

**ART. 18B.105. SEALING RECORDS OF APPLICATION AND ORDER**

A district court shall seal an application and order granted under this chapter.

***Subchapter D. Emergency Installation and Use of Certain Equipment***

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

(a) In this article, “immediate life-threatening situation” has the meaning assigned by Article 18A.201.

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

- (1) an immediate life-threatening situation exists that:
  - (A) is within the territorial jurisdiction of the peace officer or another officer the peace officer is assisting; and
  - (B) requires the installation of a pen register or trap and trace device before an order authorizing the installation and use can, with due diligence, be obtained under this chapter; and
- (2) there are sufficient grounds under this chapter on which to obtain an order authorizing the installation and use of a pen register or trap and trace device.

**ART. 18B.152. ORDER AUTHORIZING EMERGENCY INSTALLATION AND USE**

(a) A peace officer who installs or uses a pen register or trap and trace device under Article 18B.151 shall:

- (1) promptly report the installation or use of the device to the prosecutor in the county in which the device is installed or used; and
- (2) within 48 hours after the installation of the device is complete or the use of the device begins, whichever occurs first, obtain an order under Subchapter C authorizing the installation and use of the device.

(b) A judge may issue an order authorizing the installation and use of a device under this subchapter during the 48-hour period prescribed by Subsection (a)(2). If an order is denied or is

not issued within the 48-hour period, the peace officer shall terminate use of and remove the pen register or trap and trace device promptly on the earlier of the denial or the expiration of 48 hours.

**ART. 18B.153. ADMISSIBILITY OF EVIDENCE OBTAINED**

The state may not use as evidence in a criminal proceeding any information gained through the use of a pen register or trap and trace device installed under this subchapter if an authorized peace officer:

- (1) does not apply for authorization for the pen register or trap and trace device; or
- (2) applies for but does not obtain that authorization.

***Subchapter E. Mobile Tracking Devices***

**ART. 18B.201. DEFINITION**

In this subchapter, “mobile tracking device” means an electronic or mechanical device that permits tracking the movement of a person, vehicle, container, item, or object.

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

(a) A district judge may issue an order for the installation and use of a mobile tracking device only on the application of an authorized peace officer.

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

(c) The affidavit must:

- (1) state the name, department, agency, and address of the applicant;
- (2) identify the vehicle, container, or item to which, in which, or on which the mobile tracking device is to be attached, placed, or otherwise installed;
- (3) state the name of the owner or possessor of the vehicle, container, or item identified under Subdivision (2);
- (4) state the judicial jurisdictional area in which the vehicle, container, or item identified under Subdivision (2) is expected to be found; and
- (5) state the facts and circumstances that provide the applicant with a reasonable suspicion that:
  - (A) criminal activity has been, is, or will be committed; and
  - (B) the installation and use of a mobile tracking device is likely to produce information that is material to an ongoing criminal investigation of that criminal activity.

**ART. 18B.203. JURISDICTION**

(a) A district judge may issue an order for the installation and use of a mobile tracking device in the same judicial district as the site of:

- (1) the investigation; or
- (2) the person, vehicle, container, item, or object the movement of which will be tracked by the device.

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

**ART. 18B.204. NOTIFICATION OF JUDGE FOLLOWING ACTIVATION OF MOBILE TRACKING DEVICE**

Within 72 hours after the time a mobile tracking device is activated in place on or within a vehicle, container, or item, the applicant for whom an order was issued under this subchapter shall notify in writing the judge who issued the order.

**ART. 18B.205. DURATION OF ORDER**

- (a) An order under this subchapter expires not later than the 90th day after the date that the mobile tracking device was activated in place on or within the vehicle, container, or item.
- (b) For good cause shown, the judge may grant an extension for an additional 90-day period.

**ART. 18B.206. REMOVAL OF DEVICE**

- (a) The applicant shall remove or cause to be removed the mobile tracking device as soon as is practicable after the authorization period expires.
- (b) If removal is not practicable, the device may not be monitored after the expiration of the order.

**ART. 18B.207. NONAPPLICABILITY**

- (a) This subchapter does not apply to a global positioning or similar device installed in or on an item of property by the owner or with the consent of the owner of the property.
- (b) In an emergency, a private entity may monitor a device described by Subsection (a).

***Subchapter F. Law Enforcement Powers and Duties***

**ART. 18B.251. POLICY REQUIRED**

Each designated law enforcement office or agency shall:

- (1) adopt a written policy governing the application of this chapter to the office or agency; and
- (2) submit the policy to the director of the department, or the director's designee, for approval.

**ART. 18B.252. PEACE OFFICERS AUTHORIZED TO POSSESS, INSTALL, OPERATE, OR MONITOR EQUIPMENT**

- (a) A peace officer of a designated law enforcement office or agency is authorized to possess, install, operate, or monitor a pen register, ESN reader, or similar equipment if the peace officer's name is on the list submitted to the director of the department under Subsection (b).
- (b) If the director of the department or the director's designee approves the policy submitted under Article 18B.251, the inspector general of the Texas Department of Criminal Justice or the inspector general's designee, or the sheriff or chief of a designated law enforcement agency or the sheriff's or chief's designee, as applicable, shall submit to the director a written list of all peace officers in the designated law enforcement office or agency who are authorized to possess, install, operate, or monitor pen registers, ESN readers, or similar equipment.

**ART. 18B.253. LIMITATION: PEN REGISTERS**

To prevent inclusion of the contents of a wire or electronic communication, a governmental agency authorized to install and use a pen register under this chapter or other law must use

reasonably available technology to only record and decode electronic or other impulses used to identify the numbers dialed, routed, addressed, or otherwise processed or transmitted by the communication.

**ART. 18B.254. APPLICATION OR ORDER NOT REQUIRED FOR CERTAIN SEARCHES**

A peace officer is not required to file an application under Subchapter B or obtain an order under Subchapter C before the peace officer makes an otherwise lawful search, with or without a warrant, to determine the contents of a caller identification message, pager message, or voice message that is contained within the memory of an end-user's identification, paging, or answering device.

***Subchapter G. Oversight***

**ART. 18B.301. COMPLIANCE AUDIT**

- (a) The department may conduct an audit of a designated law enforcement office or agency to ensure compliance with this chapter.
- (b) If the department determines from the audit that the designated law enforcement office or agency is not in compliance with the policy adopted by the office or agency under Article 18B.251, the department shall notify the office or agency in writing that the office or agency, as applicable, is not in compliance.
- (c) If the department determines that the office or agency still is not in compliance with the policy on the 90th day after the date the office or agency receives written notice under Subsection (b), the office or agency loses the authority granted by this chapter until:
- (1) the office or agency adopts a new written policy governing the application of this chapter to the office or agency; and
  - (2) the department approves that policy.

**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.

***Subchapter H. Access to Stored Communications and Other Stored Customer Data***

**ART. 18B.351. GOVERNMENT ACCESS TO ELECTRONIC CUSTOMER DATA**

- (a) An authorized peace officer may require a provider of an electronic communications service or a provider of a remote computing service to disclose electronic customer data that is in electronic storage by obtaining a warrant under Article 18B.354.
- (b) An authorized peace officer may require a provider of an



electronic communications service or a provider of a remote computing service to disclose only electronic customer data that is information revealing the identity of customers of the applicable service or information about a customer's use of the applicable service, without giving the subscriber or customer notice:

- (1) by obtaining an administrative subpoena authorized by statute;
- (2) by obtaining a grand jury subpoena;
- (3) by obtaining a court order under Article 18B.352;
- (4) by obtaining a warrant under Article 18B.354;
- (5) by obtaining the consent of the subscriber or customer to the disclosure of the data; or
- (6) as otherwise permitted by applicable federal law.

**ART. 18B.352. COURT ORDER FOR  
GOVERNMENT ACCESS TO STORED CUSTOMER  
DATA**

(a) A court shall issue an order authorizing disclosure of contents, records, or other information of a wire or electronic communication held in electronic storage if the court determines that there is a reasonable belief that the information sought is relevant to a legitimate law enforcement inquiry.

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

- (1) the information or records requested are unusually voluminous; or
- (2) compliance with the order would cause an undue burden on the provider.

**ART. 18B.353. WARRANT ISSUED IN THIS  
STATE: APPLICABILITY**

Articles 18B.354-18B.357 apply to a warrant required under Article 18B.351 to obtain electronic customer data, including the contents of a wire or electronic communication.

**ART. 18B.354. WARRANT ISSUED IN THIS  
STATE: APPLICATION AND ISSUANCE OF  
WARRANT**

(a) On the filing of an application by an authorized peace officer, a district judge may issue a search warrant under this article for electronic customer data held in electronic storage, including the contents of and records and other information related to a wire or electronic communication held in electronic storage, by a provider of an electronic communications service or a provider of a remote computing service described by Article 18B.355(b), regardless of whether the customer data is held at a location in this state or another state. An application made under this subsection must demonstrate probable cause for the issuance of the warrant and must be supported by the oath of the authorized peace officer.

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

- (1) a specific offense has been committed; and
- (2) the electronic customer data sought:
  - (A) constitutes evidence of that offense or evidence that a particular person committed that offense; and
  - (B) is held in electronic storage by the service provider on which the warrant is served under Article 18B.355(c).

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

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

(e) Article 18.011 applies to an affidavit presented under Article 18.01(b) for the issuance of a warrant under this article, and the affidavit may be sealed in the manner provided by that article.

**ART. 18B.355. WARRANT ISSUED IN THIS  
STATE: EXECUTION OF WARRANT**

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

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

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

- (1) a person specified by Section 5.255, Business Organizations Code;
- (2) the secretary of state in the case of a company or entity to which Section 5.251, Business Organizations Code, applies; or
- (3) any other person or entity designated to receive the service of process.

(d) The district judge shall hear and decide any motion to quash the warrant not later than the fifth business day after the date the service provider files the motion. The judge may allow the service provider to appear at the hearing by teleconference.

**ART. 18B.356. WARRANT ISSUED IN THIS  
STATE: COMPLIANCE WITH WARRANT**

(a) A district judge shall indicate in a warrant issued under Article 18A.354 that the deadline for compliance by the provider of an electronic communications service or the provider of a remote computing service is the 15th business day after the date the warrant is served if the warrant is to be served on a domestic entity or a company or entity otherwise doing business in this state, except that the deadline for compliance with a warrant served in accordance with Section 5.251, Business Organizations Code, may be extended to a date that is not later than the 30th day after the date the warrant is served.

(b) The judge may indicate in the warrant that the deadline for compliance is earlier than the 15th business day after the date the warrant is served if the authorized peace officer who applies for the warrant makes a showing and the judge finds that failure to comply with the warrant by the earlier deadline would

cause serious jeopardy to an investigation, cause undue delay of a trial, or create a material risk of:

- (1) danger to the life or physical safety of any person;
- (2) flight from prosecution;
- (3) the tampering with or destruction of evidence; or
- (4) intimidation of potential witnesses.

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

(d) A court may find any designated officer, designated director, or designated owner of a company or entity in contempt of court if the person by act or omission is responsible for the failure of the company or entity to comply with the warrant within the period allowed for compliance.

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

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

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

- (1) the authorized peace officer who applied for the warrant or another appropriate authorized peace officer agrees to the extension; or
- (2) the district judge finds that the need for the extension outweighs the likelihood that the extension will cause an adverse circumstance described by Subsection (b).

**ART. 18B.357. WARRANT ISSUED IN THIS STATE: AUTHENTICATION OF RECORDS BY SERVICE PROVIDER**

If an authorized peace officer serving a warrant under Article 18B.355 also delivers an affidavit form to the provider of an electronic communications service or the provider of a remote computing service responding to the warrant, and the peace officer also notifies the service provider in writing that an executed affidavit is required, the service provider shall verify the authenticity of the customer data, contents of communications, and other information produced in compliance with the warrant by including with the information an affidavit form that:

- (1) is completed and sworn to by a person who is a custodian of the information or a person otherwise qualified to attest to the authenticity of the information; and
- (2) states that the information was stored in the course of regularly conducted business of the service provider and specifies whether the regular practice of the service provider is to store that information.

**ART. 18B.358. WARRANT ISSUED IN ANOTHER STATE**

Any domestic entity that provides electronic communications

services or remote computing services to the public shall comply with a warrant issued in another state and seeking information described by Article 18B.354(a), if the warrant is served on the entity in a manner equivalent to the service of process requirements provided by Article 18B.355(b).

**ART. 18B.359. GOVERNMENT ACCESS TO CERTAIN STORED CUSTOMER DATA WITHOUT LEGAL PROCESS**

(a) A provider of a telephonic communications service shall disclose to an authorized peace officer, without legal process, subscriber listing information, including name, address, and telephone number or similar access code:

- (1) that the service provider provides to others in the course of providing publicly available directory or similar assistance; or
- (2) that is solely for use in the dispatch of emergency vehicles and personnel responding to a distress call directed to an emergency dispatch system or when the information is reasonably necessary to aid in the dispatching of emergency vehicles and personnel for the immediate prevention of death, personal injury, or destruction of property.

(b) A provider of a telephonic communications service shall provide to an authorized peace officer the name of the subscriber of record whose published telephone number is provided to the service provider by an authorized peace officer.

***Subchapter I. Backup Preservation of Electronic Customer Data***

**ART. 18B.401. BACKUP PRESERVATION OF ELECTRONIC CUSTOMER DATA**

(a) A subpoena or court order under Article 18B.351(b) for disclosure of certain electronic customer data held in electronic storage by a provider of an electronic communications service or a provider of a remote computing service may, for the purpose of preserving the customer data sought by the subpoena or court order, require that service provider to create a copy of that data.

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

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

(d) The service provider may not inform the subscriber or customer whose data is being sought that the subpoena or court order has been issued.

**ART. 18B.402. NOTICE TO SUBSCRIBER OR CUSTOMER**

Not later than the third day after the date of the receipt of the notice under Article 18B.401(c) from the applicable service provider, the authorized peace officer who presented the subpoena or court order requesting the copy shall provide notice of the creation of the copy to the subscriber or customer whose electronic customer data is the subject of the subpoena or court order.

**ART. 18B.403. RELEASE OF COPY OF ELECTRONIC CUSTOMER DATA**

The provider of an electronic communications service or the provider of a remote computing service shall release a copy created under this subchapter to the requesting authorized peace officer not earlier than the 14th day after the date of the peace officer's notice to the subscriber or customer if the service provider has not:

- (1) initiated proceedings to challenge the request of the peace officer for the copy; or
- (2) received notice from the subscriber or customer that the subscriber or customer has initiated proceedings to challenge the request.

**ART. 18B.404. DESTRUCTION OF COPY OF ELECTRONIC CUSTOMER DATA**

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

- (1) the delivery of electronic customer data to the applicable law enforcement agency; or
- (2) the resolution of any court proceedings, including appeals of any proceedings, relating to the subpoena or court order requesting the creation of the copy.

**ART. 18B.405. REQUEST FOR COPY OF ELECTRONIC CUSTOMER DATA BY AUTHORIZED PEACE OFFICER**

(a) An authorized peace officer who reasonably believes that notice to a subscriber or customer regarding a subpoena or court order would result in the destruction of or tampering with the electronic customer data sought may request the creation of a copy of the data.

(b) The peace officer's belief is not subject to challenge by the subscriber or customer or by a provider of an electronic communications service or a provider of a remote computing service.

**ART. 18B.406. PROCEEDINGS TO QUASH SUBPOENA OR VACATE COURT ORDER**

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

- (1) that the applicant is a subscriber or customer of the provider of an electronic communications service or the provider of a remote computing service from which the electronic customer data held in electronic storage for the subscriber or customer has been sought; and
  - (2) the applicant's reasons for believing that the customer data sought is not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.
- (b) The subscriber or customer shall give written notice to the applicable service provider of the challenge to the subpoena or court order. The authorized peace officer requesting the subpoena or court order must be served a copy of the filed papers by personal delivery or by registered or certified mail.

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

(d) The court shall rule on the motion as soon as practicable after the filing of the peace officer's response. The court shall deny the motion if the court finds that the applicant is not the subscriber or customer whose data is the subject of the subpoena or court order or that there is reason to believe that the peace officer's inquiry is legitimate and that the data sought is relevant to that inquiry. The court shall quash the subpoena or vacate the court order if the court finds that the applicant is the subscriber or customer whose data is the subject of the subpoena or court order and that there is not a reason to believe that the data is relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter.

(e) A court order denying a motion or application under this article is not a final order, and an interlocutory appeal may not be taken from the denial.

***Subchapter J. Production of Certain Business Records*****ART. 18B.451. SUBPOENA AUTHORITY**

The director of the department or the director's designee, the inspector general of the Texas Department of Criminal Justice or the inspector general's designee, or the sheriff or chief of a designated law enforcement agency or the sheriff's or chief's designee may issue an administrative subpoena to a communication common carrier or a provider of an electronic communications service to compel the production of any carrier's or service provider's business records that:

- (1) disclose information about:
  - (A) the carrier's or service provider's customers; or
  - (B) users of the services offered by the carrier or service provider; and
- (2) are material to a criminal investigation.

**ART. 18B.452. REPORT OF ISSUANCE OF SUBPOENA**

Not later than the 30th day after the date on which an administrative subpoena is issued under Article 18B.451, the inspector general of the Texas Department of Criminal Justice or the sheriff or chief of a designated law enforcement agency, as applicable, shall report to the department the issuance of the subpoena.

**ART. 18B.453. COMPLIANCE WITH POLICY FOR INSTALLATION AND USE OF EQUIPMENT**

(a) If, based on a report received under Article 18B.452, the department determines that a designated law enforcement office or agency is not in compliance with the policy adopted by the office or agency under Article 18B.251, the department shall notify the office or agency in writing that the office or agency, as applicable, is not in compliance.

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

- (1) the office or agency adopts a new written policy governing the application of this chapter to the office or agency; and
- (2) the department approves that policy.

### *Subchapter K. Service Provider Powers and Duties*

#### ART. 18B.501. PRECLUSION OF NOTIFICATION

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

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

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

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

#### ART. 18B.502. DISCLOSURE BY SERVICE PROVIDER PROHIBITED

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

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

- (1) is in electronic storage on behalf of a subscriber or customer of the service provider;
- (2) is received by means of electronic transmission from the subscriber or customer or created by means of computer processing of communications received by means of electronic transmission from the subscriber or customer; and
- (3) is solely for the purpose of providing storage or computer processing services to the subscriber or customer, if the service provider is not authorized to obtain access to the contents of that communication for purposes of providing any service other than storage or computer processing.

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

- (1) to an intended recipient of the communication or the intended recipient’s agent;
- (2) to the addressee or the addressee’s agent;
- (3) with the consent of the originator, to the addressee or the intended recipient of the communication, or the subscriber of a remote computing service;

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

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

(6) to a law enforcement agency if the contents were obtained inadvertently by the service provider and the contents appear to pertain to the commission of an offense; or

(7) as authorized under federal or other state law.

#### ART. 18B.503. REIMBURSEMENT OF COSTS

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

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

(c) Subsection (a) does not apply to records or other information that is maintained by a communication common carrier and that relates to telephone toll records or telephone listings obtained under Article 18B.359(a), unless the court determines that:

- (1) the amount of information required was unusually voluminous; or
- (2) an undue burden was imposed on the service provider.

### *Subchapter L. Remedies*

#### ART. 18B.551. CAUSE OF ACTION

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

- (1) injunctive relief;
- (2) reasonable attorney’s fees and other litigation costs reasonably incurred; and
- (3) the amount of the actual damages suffered and any profits made by the violator as a result of the violation or \$1,000, whichever is more.

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

(c) A civil action under this article may be presented not later than the second anniversary of the date the claimant first dis-

covered or had reasonable opportunity to discover the violation.

**ART. 18B.552. NO CAUSE OF ACTION**

A subscriber or customer of a provider of an electronic communications service or a provider of a remote computing service does not have a cause of action against a service provider or the service provider's officers, employees, or agents or against other specified persons for providing information, facilities, or assistance as required by a court order, warrant, subpoena, or certification under this chapter.

**ART. 18B.553. EXCLUSIVITY OF REMEDIES**

The remedies and sanctions under this chapter are the exclusive judicial remedies and sanctions for a violation of this chapter, other than a violation that infringes on a right of a party that is guaranteed by a state or federal constitution.

**CCP ART. 18.21 DISPOSITION CHART TO CCP CHAPTER 18B**

<u>18.21 Reference</u>	<u>New number</u>	<u>18.21 Reference</u>	<u>New number</u>	<u>18.21 Reference</u>	<u>New number</u>
<b>Sec. 1</b>		<b>Sec. 4</b>		<b>Sec. 8</b>	
(1)	18B.001(2) (part)	(a)	18B.351(a)	(a) S1-2	18B.501(a)
(2)	18B.001(1)	(b)	18B.351(b)	(a) S3	18B.501(b)
(3)	18B.001(3)	(c)	18B.359(a)	(b)	18B.501(c)
(3-a)	18B.001(4)	(d)	18B.359(b)		
(3-b)	18B.001(5)	<b>Sec. 5</b>		<b>Sec. 9</b>	
(3-c)	18B.001(7)	(a)	18B.352(a)	(a)	18B.503(a)
(4)	18B.001(9)	(b)	18B.352(b)	(b)	18B.503(b)
(5)	18A.001(18)			(c)	18B.503(c)
	& 18B.201	<b>Sec. 5A</b>		<b>Sec. 10</b>	18B.552
(6)	18B.001(10)	(a)	18B.353	<b>Sec. 11</b>	
(7)	18B.001(11)	(b)	18B.354(a)	(a)	18B.502(a)
(8)	18B.001(12)	(c)	18B.354(b)	(b)	18B.502(b)
(9)	-----	(d)	18B.354(c)	(c)	18B.502(c)
(10)	18B.001(13)	(e)	18B.354(d)	<b>Sec. 12</b>	
		(f)	18B.354(e)	(a)	18B.551(a)
<b>Sec. 2</b>		(g)	18B.355(a)	(b)	18B.551(b)
(a) S1	18B.051(a)	(h) S1	18B.355(b)	(c)	18B.551(c)
(a) S2	18B.052	(h) S2	18B.356(c)	<b>Sec. 13</b>	18B.553
(b) S1	18B.051(b)	(h) S3	18B.356(d)	<b>Sec. 14</b>	
(b) S2	18B.051(c)	(h) S4	18B.356(e)	(a)	18B.203(a)
(b) S3	18B.051(d)	(i)	18B.355(c)	(b)	18B.203(b)
(c)	18B.053	(j) S1	18B.356(a)	(c) S1	18B.202(a)
(d) S1, Cl 1	18B.101(a)	(j) S2	18B.356(b)	(c) S2	18B.202(b)
(d) S1, Cl 2	18B.101(b)	(k)	18B.357	(c) S3	18B.202(c)
(d) S2	18B.103(b)	(l)	18B.356(f)	(d)	18A.204
(e) S1	18B.102(a)	(m)	18B.355(d)	(e) S1	18B.205(a)
(e) S2	18B.102(b)	(n)	18B.356(g)	(e) S2	18B.205(b)
(e) S3	18B.102(c)	<b>Sec. 5B</b>	18B.358	(f) S1	18B.206(a)
(e) S4	18B.103(a)	<b>Sec. 6</b>		(f) S2	18B.206(b)
(f) S1	18B.104(a)	(a) S1	18B.401(a)	(g) S1	18B.207(a)
(f) S2	18B.104(b)	(a) S2	18B.401(d)	(g) S2	18B.207(b)
(g)	18B.105	(a) S3	18B.401(b)	<b>Sec. 15</b>	
(h)	18B.254	(b)	18B.401(c)	(a)	18B.451
(i)	18B.252(a)	(c)	18B.402	(b)	18B.452
(j)	18B.251	(d)	18B.403	(c) S1	18B.453(a)
(k)	18B.252(b)	(e)	18B.404	(c) S2	18B.453(b)
(l) S1	18B.301(a)	(f) S1	18B.405(a)	<b>Sec. 16</b>	18B.253
(l) S2	18B.301(b)	(f) S2	18B.405(b)		
(l) S3	18B.301(c)	(g)(1)	18B.406(a)		
(m) S1	18B.302(a)	(g)(2)	18B.406(b)		
(m) S2	18B.302(b)	(h)(1)	18B.406(c)		
<b>Sec. 3</b>		(h)(2)	18B.406(d)		
(a)	18B.151(b)	(h)(3)	18B.406(e)		
(b)	18B.152(a)				
(c)	18B.152(b)				
(d)	18B.153				

**Note:** In these charts, "S" = sentence, and "Cl" = clause.

**CCP CHAPTER 18B SOURCE CHART FROM CCP ART. 18.21**

<u>New Art.</u>	<u>18.21 reference</u>	<u>New Art.</u>	<u>18.21 reference</u>	<u>New Art.</u>	<u>18.21 reference</u>
18B.001		18B.206(a)	§14(f) S1	18B.403	§6(d)
(1)	§1(2)	(b)	§14(f) S2	18B.404	§6(e)
(2)	§1(1) (part)	18B.207(a)	§14(g) S1	18B.405(a)	§6(f) S1
(3)	§1(3)	(f)	§14(g) S2	(b)	§6(f) S2
(4)	§1(3-a)	18B.251	§2(j)	18B.406(a)	§6(g)(1)
(5)	§1(3-b)	18B.252(a)	§2(i)	(b)	§6(g)(2)
(6)	18.20 §1(17)	(b)	§2(k)	(c)	§6(h)(1)
(7)	§1(3-c)	18B.253	§16	(d)	§6(h)(2)
(8)	18.20 §1(20)	18B.254	§2(h)	(e)	§6(h)(3)
(9)	§1(4)	18B.301(a)	§2(l) S1	18B.451	§15(a)
(10)	§1(6)	(b)	§2(l) S2	18B.452	§15(b)
(11)	§1(7)	(c)	§2(l) S3	18B.453(a)	§15(c) S1
(12)	§1(8)	18B.302(a)	§2(m) S1	(b)	§15(c) S2
(13)	§1(10)	(b)	§2(m) S2	18B.501(a)	§8(a) S1-2
18B.051(a)	§2(a) S1	18B.351(a)	§4(a)	(b)	§8(a) S3
(b)	§2(b) S1	(b)	§4(b)	(c)	§8(b)
(c)	§2(b) S2	18B.352(a)	§5(a)	18B.502(a)	§11(a)
(d)	§2(b) S3	(b)	§5(b)	(b)	§11(b)
18B.052	§2(a) S2	18B.353	§5A(a)	(c)	§11(c)
18B.053	§2(c)	18B.354(a)	§5A(b)	18B.503(a)	§9(a)
18B.101(a)	§2(d) S1 Cl 1	(b)	§5A(c)	(b)	§9(b)
(b)	§2(d) S1 Cl 2	(c)	§5A(d)	(c)	§9(c)
18B.102(a)	§2(e) S1	(d)	§5A(e)	18B.551(a)	§12(a)
(b)	§2(e) S2	(e)	§5A(f)	(b)	§12(b)
(c)	§2(e) S3	18B.355(a)	§5A(g)	(c)	§12(c)
18B.103(a)	§2(e) S4	(b)	§5A(h) S1	18B.552	§10
(b)	§2(d) S2	(c)	§5A(i)	18B.553	§13
18B.104(a)	§2(f) S1	(d)	§5A(j)		
(b)	§2(f) S2	18B.356(a)	§5A(j) S1		
18B.105	§2(g)	(b)	§5A(j) S2		
18B.151(a)	§1(1)	(c)	§5A(h) S2		
(b)	§3(a)	(d)	§5A(h) S3		
18B.152(a)	§3(b)	(e)	§5A(h) S4		
(b)	§3(c)	(f)	§5A(l)		
18B.153	§3(d)	(g)	§5A(g)		
18B.201	§1(15)	18B.357	§5A(k)		
18B.202(a)	§14(c) S1	18B.358	§5B		
(b)	§14(c) S2	18B.359(a)	§4(c)		
(c)	§14(c) S3	(b)	§4(d)		
18B.203(a)	§14(a)	18B.401(a)	§6(a) S1		
(b)	§14(b)	(b)	§6(a) S3		
18B.204	§14(d)	(c)	§6(b)		
18B.205(a)	§14(e) S1	(d)	§6(a) S2		
(b)	§14(e) S2	18B.402	§6(c)		

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