

CODE OF CRIMINAL PROCEDURE

TITLE 1. CODE OF CRIMINAL PROCEDURE

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 200,000 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 photoelectronic 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;

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

(vi) location information.

(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.

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

(9-b) "Location information" means data, records, or other information that is created by or accessible to a provider of an electronic communications service or a provider of a remote computing service and may be used to identify the geographic physical location of a communication device, including the current, real-time, or prospective geographic physical location of a communication device.

(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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 917 (H.B. 4157), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 488 (H.B. 3363), Sec. 4, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 536 (S.B. 112), Sec. 4, eff. September 1, 2021.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. [2931](#)), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

Art. 18B.105. SEALING RECORDS OF APPLICATION AND ORDER. A district court shall seal an application and order granted under this chapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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) Repealed by Acts 2021, 87th Leg., R.S., Ch. 488 (H.B. 3363), Sec. 6, eff. September 1, 2021.

(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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 488 (H.B. 3363), Sec. 6, eff. September 1, 2021.

Acts 2021, 87th Leg., R.S., Ch. 536 (S.B. 112), Sec. 7, eff. September 1, 2021.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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 probable cause to believe 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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 536 (S.B. 112), Sec. 5, eff. September 1, 2021.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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).

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. [2931](#)), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. [2931](#)), Sec. 1.02, eff. January 1, 2019.

SUBCHAPTER G-1. PROSPECTIVE LOCATION INFORMATION

Art. 18B.321. APPLICABILITY. (a) This subchapter applies only to a warrant described by Article [18B.322](#) for the required disclosure of location information that is:

(1) held in electronic storage in the possession, care, custody, or control of a provider of an electronic communications service or a provider of a remote computing service; and

(2) created after the issuance of the warrant.

(b) Articles [18B.355](#), [18B.356](#), and [18B.357](#) apply to a warrant issued under this subchapter in the same manner as those articles apply to a warrant issued under Article [18B.354](#).

Added by Acts 2021, 87th Leg., R.S., Ch. 488 (H.B. [3363](#)), Sec. 5, eff. September 1, 2021.

Added by Acts 2021, 87th Leg., R.S., Ch. 536 (S.B. [112](#)), Sec. 6, eff. September 1, 2021.

Art. 18B.322. WARRANT REQUIRED FOR CERTAIN LOCATION INFORMATION HELD IN ELECTRONIC STORAGE. (a) A warrant is required to obtain the disclosure of location information described by Article [18B.321\(a\)](#) by a provider of an electronic communications service or a provider of a remote computing service.

(b) Only a prosecutor or a prosecutor's assistant with jurisdiction in a county within a judicial district described by Article [18B.052\(4\)](#) may file an application for a warrant under this subchapter. The application must be supported by the sworn affidavit required by Article [18.01\(b\)](#).

(c) The application must be filed with a district judge in the applicable judicial district on:

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

(2) the request of an authorized peace officer of a designated law enforcement office or agency or an authorized peace officer commissioned by the department.

Added by Acts 2021, 87th Leg., R.S., Ch. 488 (H.B. [3363](#)), Sec. 5, eff. September 1, 2021.

Added by Acts 2021, 87th Leg., R.S., Ch. 536 (S.B. [112](#)), Sec. 6, eff. September 1, 2021.

Art. 18B.323. ISSUANCE OF WARRANT. (a) On the filing of an application for a warrant under this subchapter, a district judge may issue the warrant to obtain the disclosure of location

information by a provider described by Article 18B.355(b), regardless of whether the location information is held at a location in this state or another state.

(b) A 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) the disclosure of the location information sought will:

(A) produce evidence of an offense under investigation; or

(B) result in the apprehension of a fugitive from justice; and

(2) the location information sought is held in electronic storage in the possession, care, custody, or control of the service provider on which the warrant is served.

Added by Acts 2021, 87th Leg., R.S., Ch. 488 (H.B. 3363), Sec. 5, eff. September 1, 2021.

Added by Acts 2021, 87th Leg., R.S., Ch. 536 (S.B. 112), Sec. 6, eff. September 1, 2021.

Art. 18B.324. DURATION; SEALING. (a) A warrant issued under this subchapter is valid for a period not to exceed 60 days after the date the warrant is issued, unless the prosecutor or prosecutor's assistant applies for and obtains an extension of that period from the court before the warrant expires.

(b) Each extension granted under Subsection (a) may not exceed a period of 60 days.

(c) A district court that issues a warrant under this subchapter shall order the warrant and the application for the warrant sealed and may not unseal the warrant and application until after the warrant expires.

Added by Acts 2021, 87th Leg., R.S., Ch. 488 (H.B. 3363), Sec. 5, eff. September 1, 2021.

Added by Acts 2021, 87th Leg., R.S., Ch. 536 (S.B. 112), Sec. 6, eff. September 1, 2021.

Art. 18B.325. EMERGENCY DISCLOSURE. (a) An authorized

peace officer of a designated law enforcement office or agency or an authorized peace officer commissioned by the department may, without a warrant, require the disclosure of location information described by Article [18B.321\(a\)](#) if:

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

(A) is within the officer's territorial jurisdiction; and

(B) requires the disclosure of the location information before a warrant can, with due diligence, be obtained under this subchapter; and

(2) there are sufficient grounds under this subchapter on which to obtain a warrant requiring the disclosure of the location information.

(b) Not later than 48 hours after requiring disclosure of location information without a warrant under Subsection (a), the authorized peace officer shall obtain a warrant for that purpose in accordance with this subchapter.

Added by Acts 2021, 87th Leg., R.S., Ch. 488 (H.B. [3363](#)), Sec. 5, eff. September 1, 2021.

Added by Acts 2021, 87th Leg., R.S., Ch. 536 (S.B. [112](#)), Sec. 6, eff. September 1, 2021.

Art. 18B.326. CERTAIN EVIDENCE NOT ADMISSIBLE. The state may not use as evidence in a criminal proceeding any information obtained through the required disclosure of location information described by Article [18B.321\(a\)](#), unless:

(1) a warrant is obtained before requiring the disclosure; or

(2) if the disclosure is required under Article [18B.325](#) before a warrant can be obtained, the authorized peace officer who required the disclosure obtains a warrant as required by Subsection (b) of that article.

Added by Acts 2021, 87th Leg., R.S., Ch. 488 (H.B. [3363](#)), Sec. 5, eff. September 1, 2021.

Added by Acts 2021, 87th Leg., R.S., Ch. 536 (S.B. [112](#)), Sec. 6, eff. September 1, 2021.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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).

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. [2931](#)), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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).

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec.

1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

SUBCHAPTER L. REMEDIES

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

(1) injunctive relief;

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

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

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. 2931), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. [2931](#)), Sec. 1.02, eff. January 1, 2019.

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.

Added by Acts 2017, 85th Leg., R.S., Ch. 1058 (H.B. [2931](#)), Sec. 1.02, eff. January 1, 2019.