

BILL ANALYSIS

Senate Research Center

H.B. 2474
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Administration
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Engrossed

DIGEST AND PURPOSE

H.B. 2474 amends Section 16.02 of the Penal Code and Articles 18.20 and 18.21 of the Code of Criminal Procedure in relation to electronic surveillance.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 16.02(a) and (c), Penal Code, as follows:

- (a) Defines "computer trespasser," "electronic communication," and "protected computer." Removes "electronic communication" from the list of defined terms.

- (c) Replaces the term "article" with "section" in Subdivision (2). Includes in the list of what is an affirmative defense to prosecution under Subsection (b) that a person acting under color of law intercepts certain communications. Deletes language in Subdivision (4) relating to a criminal or tortious act and replaces that language with the phrase "an unlawful act." Makes conforming changes.

SECTION 2. Amends Section 1, Article 18.20, Code of Criminal Procedure, by amending Subdivisions (14) and (22) and adding Subdivisions (24), (25), and (26), as follows:

- (14) Defines "ESN reader," "trap and trace device," and "mobile tracking device" as having the meanings assigned by Article 18.21. Redefines "pen register."

- (22) Redefines "immediate life-threatening situation."

- (24) Defines "access," "computer," "computer network," "computer system," and "effective consent."

- (25) Defines "computer trespasser."

- (26) Defines "protected computer."

SECTION 3. Amends Section 4, Article 18.20, Code of Criminal Procedure, as follows:

- Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE AUTHORIZED.
Includes the phrase "of competent jurisdiction" in relation to a judge.

SECTION 4. Amends Section 7(a), Article 18.20, Code of Criminal Procedure, to include a federal law enforcement officer or agent or a law enforcement officer or agent of another state as an individual who is authorized to receive certain information.

SECTION 5. Amends Section 8A, Article 18.20, Code of Criminal Procedure, by amending Subsections (b), (c), and (e) and adding Subsection (g), as follows:

(b) Adds to list of situations under which a peace officer designated under Subsection (a) or under Section 5(b) is authorized to possess, install, operate, or monitor an electronic, mechanical, or other device to intercept wire, oral, or electronic communications. Removes language stating that consent be obtained from a magistrate.

(c) Authorizes an official described in Subsection (b)(3), rather than a magistrate, to give oral or written consent to the interception of communications under this section 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. Provides that oral or written consent given under this section expires 48 hours after the grant of consent or at the conclusion of the emergency justifying the interception, whichever occurs first.

(e) Authorizes a judge of competent jurisdiction under Section 3 or under Subsection (b) to issue a written order authorizing interception of communications under this section during the 48-hour period prescribed by Subsection (d)(2). Provides that a written order under this section expires on the 30th day after execution of the order or at the conclusion of the emergency that initially justified the interception, whichever occurs first. Requires the officer, if an order is denied or is not issued within the 48-hour period, to terminate use of and remove the device promptly at a certain time.

(g) Authorizes a peace officer to certify to a communications common carrier that the officer is acting lawfully under this section.

SECTION 6. Amends Section 9(c), Article 18.20, Code of Criminal Procedure, as follows:

(c) Provides that any provider of wire or electronic communications service, communication common carrier, landlord, custodian, or other person furnishing facilities or technical assistance is entitled to compensation by the applicant for reasonable expenses incurred in providing the facilities or assistance at the prevailing rates. Authorizes the interception order to 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;
- (2) disclose a stored communication, information subject to an administrative subpoena, or information subject to access under Article 18.21, Code of Criminal Procedure.

SECTION 7. Amends Section 16, Article 18.20, Code of Criminal Procedure, by adding Subsection (g) to provide that a computer trespasser or a user, aggrieved person, subscriber, or customer of a communications common carrier or electronic communications service does not have a cause of action against the carrier or service, its officers, employees, or agents, 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 article.

SECTION 8. Amends Section 1, Article 18.21, Code of Criminal Procedure, as follows:

Sec. 1. DEFINITIONS. Defines "computer trespasser," "ESN reader," "mobile tracking device," "pen register," and "prosecutor." Redefines "authorized peace officer" and "trap and trace device." Deletes definitions for "tracking device," "ESN reader," and "prosecutor." Makes conforming changes.

SECTION 9. Amends Sections 2 (b) and (c), Article 18.21, Code of Criminal Procedure, as follows:

(b) Includes “or under federal law” in relation to the authority of a prosecutor to file an application.

(c) Amends the requirements of an application in Subdivision (3) to state that the installation and use of the device or equipment will likely produce information that is material to an ongoing criminal investigation and deletes the phrase “of a criminal offense.”

SECTION 10. Amends Sections 14(a)-(f), Article 18.21, Code of Criminal Procedure, as follows:

(a) Authorizes a district judge to issue an order for the installation and use within the judge's judicial district of a mobile tracking device, rather than one or more mobile tracking devices.

(b) Makes a conforming change.

(c) Changes the requirements of an affidavit to include “or otherwise installed” in relation to the attachment of a mobile tracking device. Includes a reference to Subdivision (2) in relation to ownership. Replaces “in progress” with “committed” in relation to a criminal activity. Deletes the term “reasonably” in relation to the likelihood of a tracking device to produce certain information. Replaces “relevant” with “that is material.” Includes “described in Paragraph (A)” in relation to criminal activity. Makes conforming changes.

(d) Requires the applicant to notify in writing the judge who issued an order under this section, within 72 hours after the time the mobile tracking device was activated in place on or within the vehicle, container, or item. Makes nonsubstantive changes.

(e) Replaces “authorizing the use of a mobile tracking device” with “under this section” in relation to an order.

(f) Requires the applicant to remove or cause to be removed a mobile tracking device as soon as is practicable after the authorization period expires.

SECTION 11. Amends Section 16, Article 18.21, Code of Criminal Procedure, as follows:

Sec. 16. LIMITATION. Requires a governmental agency authorized to install and use a pen register under this article or other law to 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 a wire or electronic communication so as to not include the contents of the communication.

SECTION 12. Effective date: September 1, 2003.

SECTION 13. Makes application of the changes in law made by this Act by amending Subsections (a) and (c), Section 16.02, Penal Code, prospective.

SECTION 14. Provides that the changes in law made by this Act by amending Section 4, Subsection (e), Section 8A, and Section 9, Article 18.20, and Section 14, Article 18.21, Code of Criminal Procedure, apply only to an interception order granted on or after the effective date of this Act. Provides that an interception order granted before the effective date of this Act is covered by the law in effect when the order was granted, and the former law is continued in effect for that purpose.

SECTION 15. Provides that the changes in law made by this Act by amending Subsections (b) and (c), Section 8A, Article 18.20, Code of Criminal Procedure, apply only to a request for oral or written consent made on or after the effective date of this Act. Provides that a request for oral or written consent made before the effective date of this Act is covered by the law in effect when

the order was granted, and the former law is continued in effect for that purpose.