

By: Whitmire

S.B. No. 905

A BILL TO BE ENTITLED

AN ACT

relating to the interception of or the collection of other information from certain communications in an investigation of criminal conduct.

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

SECTION 1. Section 1, Article 18.21, Code of Criminal Procedure, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Designated police agency" means a police department in a municipality with a population of 500,000 or more.

SECTION 2. Section 2, Article 18.21, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsections (i), (j), and (k) to read as follows:

(b) A prosecutor may file an application under this section or under federal law on the prosecutor's own motion or on the request of an authorized peace officer, regardless of whether the officer is commissioned by the department. A prosecutor who files an application on the prosecutor's own motion or who 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 police agency, must make the application personally and may not do so through an assistant or some other person acting on the prosecutor's behalf. A

1 prosecutor may make an application through an assistant or other
2 person acting on the prosecutor's behalf if the prosecutor files an
3 application for the installation and use of:

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

6 (A) an authorized peace officer who is
7 commissioned by the department; or

8 (B) an authorized peace officer of a designated
9 police agency; or

10 (2) a trap and trace device or similar equipment on the
11 request of an authorized peace officer, regardless of whether the
12 officer is commissioned by the department.

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

27 (i) A designated police agency may own and possess a pen

1 register, ESN reader, or similar equipment.

2 (j) A peace officer of a designated police agency is
3 authorized to possess, install, operate, or monitor a pen register,
4 ESN reader, or similar equipment if the officer is certified in
5 writing by the chief of the agency to the director of the department
6 as being trained in the installation and use of a pen register, ESN
7 reader, or similar equipment.

8 (k) The chief of a designated police agency shall submit to
9 the director of the department a written list of all officers in the
10 agency who are authorized by the chief to possess, install,
11 monitor, or operate pen registers, ESN readers, or similar
12 equipment.

13 SECTION 3. Subsection (a), Section 3, Article 18.21, Code
14 of Criminal Procedure, is amended to read as follows:

15 (a) A peace officer authorized to possess, install,
16 operate, or monitor a device under Section 8A, Article 18.20 or
17 Section 2(j), may install and use a pen register or trap and trace
18 device if the officer:

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

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

23 (B) requires the installation of a pen register
24 or trap and trace device before an order authorizing the
25 installation and use can, with due diligence, be obtained under
26 this article; and

27 (2) reasonably believes there are sufficient grounds

1 under this article on which to obtain an order authorizing the
2 installation and use of a pen register or trap and trace device.

3 SECTION 4. Section 18, Article 18.20, Code of Criminal
4 Procedure, is repealed.

5 SECTION 5. The changes in law made by this Act in amending
6 Subsections (b) and (d), Section 2, Article 18.21, Code of Criminal
7 Procedure, apply only to an application for the installation and
8 use of a pen register, ESN reader, or similar equipment filed on or
9 after the effective date of this Act. An application for the
10 installation and use of a pen register, ESN reader, or similar
11 equipment filed before the effective date of this Act is governed by
12 the law in effect on the date the application is filed, and the
13 former law is continued in effect for that purpose.

14 SECTION 6. This Act takes effect immediately if it receives
15 a vote of two-thirds of all the members elected to each house, as
16 provided by Section 39, Article III, Texas Constitution. If this
17 Act does not receive the vote necessary for immediate effect, this
18 Act takes effect September 1, 2005.