

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 2, Article 18.21, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsection (i) 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 described by Subsection (i), must make the application personally and may not do so through an assistant or some other person acting on the prosecutor's behalf. 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 an authorized peace officer who is commissioned by

1 the department or the request of an authorized peace officer
2 described by Subsection (i); or

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

6 (d) On presentation of the application, the judge may order
7 the installation and use of the pen register, ESN reader, or similar
8 equipment by an authorized peace officer commissioned by the
9 department or by other law enforcement personnel, as applicable,
10 and, on request of the applicant, the judge shall direct in the
11 order that a communication common carrier or a provider of
12 electronic communications service furnish all information,
13 facilities, and technical assistance necessary to facilitate the
14 installation and use of the device or equipment by the department
15 unobtrusively and with a minimum of interference to the services
16 provided by the carrier or service. The carrier or service is
17 entitled to compensation at the prevailing rates for the facilities
18 and assistance provided to the department.

19 (i) A peace officer other than a commissioned officer of the
20 Department of Public Safety may own, possess, install, operate, or
21 monitor a pen register if the officer is trained in the use of a pen
22 register by that department.

23 SECTION 2. Section 3(a), Article 18.21, Code of Criminal
24 Procedure, is amended to read as follows:

25 (a) A peace officer authorized to possess, install,
26 operate, or monitor a device under Section 8A, Article 18.20 or
27 Section 2(i), may install and use a pen register or trap and trace

1 device if the officer:

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

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

6 (B) requires the installation of a pen register
7 or trap and trace device before an order authorizing the
8 installation and use can, with due diligence, be obtained under
9 this article; and

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

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

15 SECTION 4. The changes in law made by this Act in amending
16 Sections 2(b) and (d), Article 18.21, Code of Criminal Procedure,
17 apply only to an application for the installation and use of a pen
18 register filed on or after the effective date of this Act. An
19 application for the installation and use of a pen register filed
20 before the effective date of this Act is governed by the law in
21 effect on the date the application is filed, and the former law is
22 continued in effect for that purpose.

23 SECTION 5. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2005.