

1-1 By: Whitmire S.B. No. 905  
1-2 (In the Senate - Filed March 3, 2005; March 14, 2005, read  
1-3 first time and referred to Committee on Criminal Justice;  
1-4 April 22, 2005, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 22, 2005,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 905 By: Whitmire

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the interception of or the collection of other  
1-11 information from certain communications in an investigation of  
1-12 criminal conduct.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 1, Article 18.21, Code of Criminal  
1-15 Procedure, is amended by adding Subdivision (3-a) to read as  
1-16 follows:

1-17 (3-a) "Designated police agency" means a police  
1-18 department in a municipality with a population of 500,000 or more.

1-19 SECTION 2. Section 2, Article 18.21, Code of Criminal  
1-20 Procedure, is amended by amending Subsections (b) and (d) and  
1-21 adding Subsections (i), (j), and (k) to read as follows:

1-22 (b) A prosecutor may file an application under this section  
1-23 or under federal law on the prosecutor's own motion or on the  
1-24 request of an authorized peace officer, regardless of whether the  
1-25 officer is commissioned by the department. A prosecutor who files  
1-26 an application on the prosecutor's own motion or who files an  
1-27 application for the installation and use of a pen register, ESN  
1-28 reader, or similar equipment on the request of an authorized peace  
1-29 officer not commissioned by the department, other than an  
1-30 authorized peace officer employed by a designated police agency,  
1-31 must make the application personally and may not do so through an  
1-32 assistant or some other person acting on the prosecutor's behalf. A  
1-33 prosecutor may make an application through an assistant or other  
1-34 person acting on the prosecutor's behalf if the prosecutor files an  
1-35 application for the installation and use of:

1-36 (1) a pen register, ESN reader, or similar equipment  
1-37 on the request of:

1-38 (A) an authorized peace officer who is  
1-39 commissioned by the department; or

1-40 (B) an authorized peace officer of a designated  
1-41 police agency; or

1-42 (2) a trap and trace device or similar equipment on the  
1-43 request of an authorized peace officer, regardless of whether the  
1-44 officer is commissioned by the department.

1-45 (d) On presentation of the application, the judge may order  
1-46 the installation and use of the pen register, ESN reader, or similar  
1-47 equipment by an authorized peace officer commissioned by the  
1-48 department or an authorized peace officer of a designated police  
1-49 agency, and, on request of the applicant, the judge shall direct in  
1-50 the order that a communication common carrier or a provider of  
1-51 electronic communications service furnish all information,  
1-52 facilities, and technical assistance necessary to facilitate the  
1-53 installation and use of the device or equipment by the department or  
1-54 designated police agency unobtrusively and with a minimum of  
1-55 interference to the services provided by the carrier or service.  
1-56 The carrier or service is entitled to compensation at the  
1-57 prevailing rates for the facilities and assistance provided to the  
1-58 department or a designated policy agency.

1-59 (i) A designated police agency may own and possess a pen  
1-60 register, ESN reader, or similar equipment.

1-61 (j) A peace officer of a designated police agency is  
1-62 authorized to possess, install, operate, or monitor a pen register,  
1-63 ESN reader, or similar equipment if the officer is certified in

2-1 writing by the chief of the agency to the director of the department  
2-2 as being trained in the installation and use of a pen register, ESN  
2-3 reader, or similar equipment.

2-4 (k) The chief of a designated police agency shall submit to  
2-5 the director of the department a written list of all officers in the  
2-6 agency who are authorized by the chief to possess, install,  
2-7 monitor, or operate pen registers, ESN readers, or similar  
2-8 equipment.

2-9 SECTION 3. Subsection (a), Section 3, Article 18.21, Code  
2-10 of Criminal Procedure, is amended to read as follows:

2-11 (a) A peace officer authorized to possess, install,  
2-12 operate, or monitor a device under Section 8A, Article 18.20 or  
2-13 Section 2(j), may install and use a pen register or trap and trace  
2-14 device if the officer:

2-15 (1) reasonably believes an immediate life-threatening  
2-16 situation exists that:

2-17 (A) is within the territorial jurisdiction of the  
2-18 officer or another officer the officer is assisting; and

2-19 (B) requires the installation of a pen register  
2-20 or trap and trace device before an order authorizing the  
2-21 installation and use can, with due diligence, be obtained under  
2-22 this article; and

2-23 (2) reasonably believes there are sufficient grounds  
2-24 under this article on which to obtain an order authorizing the  
2-25 installation and use of a pen register or trap and trace device.

2-26 SECTION 4. Section 18, Article 18.20, Code of Criminal  
2-27 Procedure, is repealed.

2-28 SECTION 5. The changes in law made by this Act in amending  
2-29 Subsections (b) and (d), Section 2, Article 18.21, Code of Criminal  
2-30 Procedure, apply only to an application for the installation and  
2-31 use of a pen register, ESN reader, or similar equipment filed on or  
2-32 after the effective date of this Act. An application for the  
2-33 installation and use of a pen register, ESN reader, or similar  
2-34 equipment filed before the effective date of this Act is governed by  
2-35 the law in effect on the date the application is filed, and the  
2-36 former law is continued in effect for that purpose.

2-37 SECTION 6. This Act takes effect immediately if it receives  
2-38 a vote of two-thirds of all the members elected to each house, as  
2-39 provided by Section 39, Article III, Texas Constitution. If this  
2-40 Act does not receive the vote necessary for immediate effect, this  
2-41 Act takes effect September 1, 2005.

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