

## BILL ANALYSIS

Senate Research Center

S.B. 823  
By: Whitmire  
Criminal Justice  
8/16/2007  
Enrolled

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Pen register devices are used to capture real time outgoing telephone numbers dialed from a target telephone. Under current law, only specialized Department of Public Safety (DPS) investigators are authorized to own or operate these devices, and only under a court order. The law requires a judge to approve the application for the usage of this device after a law enforcement agency has demonstrated that the installation and usage of the device will likely produce information that is material to an ongoing criminal investigation. Law enforcement agencies have had success using these devices to investigate kidnappings and search for suspects wanted for serious felonies.

S.B. 823 authorizes peace officers specially trained by DPS to own and operate pen register devices under the provisions and restrictions of current law on their usage.

### 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 Section 1(23), Article 18.20, Code of Criminal Procedure, to redefine "member of a law enforcement unit specially trained to respond to and deal with life-threatening situations."

SECTION 2. Amends Section 1, Article 18.21, Code of Criminal Procedure, by adding Subdivision (3-a), to define "designated law enforcement agency" (agency).

SECTION 3. Amends Section 2, Article 18.21, Code of Criminal Procedure, by amending Subsections (b) and (d) and adding Subsections (i) through (m), as follows:

(b) Requires a prosecutor who files a certain application for the installation and use of a pen register, ESN reader, or similar equipment (equipment) on the request of an authorized peace officer not commissioned by the Department of Public Safety (DPS), other than an authorized peace officer employed by a designated law enforcement agency (designated officer), to make the application personally and prohibits said application from being made through an assistant or other person acting on the prosecutor's behalf.

(d) Authorizes a judge to order the installation of such equipment by a designated officer. Makes conforming changes.

(i) Authorizes a designated officer to possess, install, operate, or monitor equipment if the officer's name is on the list submitted to the director of DPS (director) under Subsection (k).

(j) Requires the agency to adopt a written policy governing the application of this article to the agency and submit the policy to the director, or the director's designee, for approval.

(k) Requires the sheriff or chief of an agency, as applicable, or the sheriff's or chief's designee, if the director or the director's designee approves the policy submitted under

Subsection (j), to submit to the director a written list of all officers in the agency who are authorized to possess, install, monitor, or operate equipment.

(l) Authorizes DPS to conduct an audit of an agency to ensure compliance with this article. Requires DPS, if it determines from the audit that the agency is not in compliance with the policy adopted by the agency under Subsection (j), to notify the agency in writing that it is not in compliance. Provides that, if DPS determines that the agency still is not in compliance with the policy 90 days after the date the agency receives written notice under this subsection, the agency loses the authority granted by this article until certain conditions set forth in this subsection are met.

(m) Requires the sheriff or chief of an agency to submit to the director a written report of expenditures made by the agency for the purchase and maintenance of such equipment, authorized pursuant to Subsection (i). Requires the director to report such expenditures publicly on an annual basis via DPS's website, or other comparable means.

SECTION 4. Amends Section 15, Article 18.21, Code of Criminal Procedure, as follows:

Sec. 15. SUBPOENA AUTHORITY. (a) Makes conforming changes.

(b) Requires the sheriff or chief of an agency to report the issuance of an administrative subpoena to DPS not later than the 30<sup>th</sup> day after the date on which the subpoena is issued under Subsection (a).

(c) Requires DPS, if, based on reports received under Subsection (b), it determines from the audit that the agency is not in compliance with the policy adopted by the agency under Section 2(j), to notify the agency in writing that it is not in compliance. Provides that, if DPS determines that the agency still is not in compliance with the policy 90 days after the date the agency receives written notice under this subsection, the agency loses the authority granted by this article until certain conditions set forth in this subsection are met.

SECTION 5. Makes application of Sections 2(b) and (d), Article 18.21, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 6. Effective date: upon passage or September 1, 2007.