

## **BILL ANALYSIS**

S.B. 823  
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Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Under current law, only specially trained Texas Department Public Safety (DPS) officers can operate a pen register. A pen register is a device that captures real-time outgoing telephone numbers dialed from a telephone. Currently, DPS must obtain a court order to operate a pen register, and that court order can only be obtained personally by a prosecutor and not an assistant, such as an assistant district attorney. However, they are frequently used in kidnapping cases where time is of the essence, meaning that valuable hours and even days can be lost through the current process.

S.B. 823 would expedite the process by giving local law enforcement in cities with populations of 500,000 or more the ability to operate a pen register, an ESN reader, or similar equipment, and by expanding the list of persons able to file an application for their installation and use.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

Senate Bill 823 amends the Code of Criminal Procedure and defines that "member of a law enforcement unit specially trained to respond to and deal with life-threatening situations" is a peace officer as one who, as evidenced by the submission of appropriate documentation to the Commission on Law Enforcement Officer Standards and Education, has received a minimum of 40 hours a year of training in hostage and barricade suspect situations or is the police chief of a police department in a municipality with a population of 500,000 or more, or the police chief's designee, and has received a minimum of 24 hours of training on kidnapping investigations. Adds the definition of "designated police agency" to mean a police department in a municipality with a population of 500,000 or more.

The bill also provides that 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 assistance or some other person acting on the prosecutor's behalf. An assistant prosecutor or other person acting on the prosecutor's behalf is authorized to file an application for the installation and use of a pen register, ESN reader, or other similar equipment on the request of an authorized peace officer who is commissioned by the department or an authorized peace officer of a designated police agency.

Makes conforming changes in instances of when the judge may order the installation of these equipments. The bill also provides that a designated police agency is authorized to own and possess a pen register, ESN reader, or similar equipment. A peace officer of a designated police agency is authorized to possess, install, operate, or monitor a pen register, ESN reader, or similar equipment if the officer is certified in writing by the chief of the agency to the director of the DPS as being trained in the installation and use of these equipments. The chief of a designated police agency is required to submit to the director of DPS a written list of all officers who are authorized by the chief to possess, install, monitor, or operate these equipments. Adds that an officer authorized by the chief may also install and use a trap and trace device in certain circumstances. Adds that a designated police agency may issue an administrative subpoena to a

communications common carrier or an electronic communications service to compel production of certain records and information.

Makes application of this Act prospective.

**EFFECTIVE DATE**

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.