

## **BILL ANALYSIS**

C.S.S.B. 1361  
By: Williams  
Law Enforcement  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Electronic mail, voice mail, cellular telephone text messaging, computer communications, and websites such as MySpace have become tools of sexual predators to seek out and communicate with young people. In addition, the Internet has been long used by persons involved in the child pornography trade to further that trade.

C.S.S.B. 1361 authorizes a law enforcement agency to seek a court order authorizing the agency to collect and protect these communications as evidence for prosecution.

### **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**

SECTION 1. Amends Section 1(1), Article 18.20, Code of Criminal Procedure, to delete electronic storage of a wire communication from the definition of "wire communication."

SECTION 2. Amends Section 1(5), Article 18.21, Code of Criminal Procedure, to delete text providing that a device designed, made, adapted, or capable of intercepting the content of a communication or functioning as a pen register, ESN reader, trap and trace device, or similar equipment is not included in the definition of "mobile tracking device."

SECTION 3. Amends Sections 4(a), (b), and (c), Article 18.21, Code of Criminal Procedure, as follows:

(a) Authorizes an authorized peace officer to require a provider of electronic communications service to disclose the contents of a wire communication that has been in electronic storage for not longer than 180 days by obtaining a warrant. Makes a conforming change.

(b) Authorizes an authorized peace officer to require a provider of electronic communications service to disclose the contents of a wire communication that has been in electronic storage for longer than 180 days by obtaining a warrant if notice is not being given to the subscriber or customer; by obtaining an administrative subpoena authorized by statute, by obtaining a grand jury subpoena, or by obtaining a court order issued under Section 5 of this article, if notice is being given to the subscriber or customer; or as otherwise permitted by applicable federal law.

(c) Authorizes an authorized peace officer to require a provider of a remote computing service to disclose the contents of a wire communication as described in Subdivision (2) of this subsection by obtaining a warrant issued under this code if notice is not being given to the subscriber or customer; by an administrative subpoena authorized by statute, by a grand jury subpoena, or by a court order issued under Section 5 of this article, if notice is being given to the subscriber or customer; or as otherwise permitted by applicable federal law. Provides that Subdivision (1) of this subsection applies only to a wire communication that is in electronic storage under certain circumstances.

SECTION 4. Amends Sections 7(a) and (b), Article 18.21, Code of Criminal Procedure, as follows:

(a) Authorizes an authorized peace officer seeking a court order to obtain information under Section 4 (authorizing an authorized peace officer to require a certain providers of electronic communications or remote computing services to disclose the contents or a wire communication or electronic communication as set forth in that section), rather than Section 4(c) (regarding remote computing service providers), of this article, to include a request for an order delaying the notification required under Section 4, of this article, for a period not to exceed 90 days. Makes conforming changes.

(b) Authorizes an authorized peace officer who has obtained a subpoena authorized by statute or a grand jury subpoena to seek information under Section 4 (authorizing an authorized peace officer to require a certain providers of electronic communications or remote computing services to disclose the contents or a wire communication or electronic communication as set forth in that section), rather than Section 4(c) (regarding remote computing service providers), of this article, to delay the notification required under that section for a period not to exceed 90 days on the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result as described in Subsection (c) of this section. Makes a conforming change.

SECTION 5. Amends Section 14(a), Article 18.21, Code of Criminal Procedure, to authorize a district judge to issue an order for the installation and use of a mobile tracking device within the judicial district in which the site of the investigation; the site of the interception device to be installed; or the headquarters of the law enforcement agency that makes a request for or executes an order authorizing a device to be installed are located. Strikes language stating that a district judge is only authorized to issue an order for the installation and use of a mobile tracking device within the judge's judicial district.

SECTION 6. (a) Makes application of Sections 4 and 7, Article 18.21, Code of Criminal Procedure, as amended by this Act, prospective.

(b) Makes application of Section 14, Article 18.21, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 7. Effective date: September 1, 2007.

#### **EFFECTIVE DATE**

September 1, 2007

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute differs from the original in that the substitute authorizes a district judge to issue an order for the installation and use of a mobile tracking device only within the judicial district in which the site of the investigation; the site of the interception device to be installed; or the headquarters of the law enforcement agency that makes a request for or executes an order authorizing a device to be installed are located. The original does not specify that a district judge is only authorized to issue an order for the installation and use of a mobile tracking device within the judicial district in which the site of the investigation; the site of the interception device to be installed; or the headquarters of the law enforcement agency that makes a request for or executes an order authorizing a device to be installed are located.