

By: Whitmire

S.B. No. 823

A BILL TO BE ENTITLED

AN ACT

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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. Subdivision (23), Section 1, Article 18.20, Code of Criminal Procedure, is amended to read as follows:

(23) "Member of a law enforcement unit specially trained to respond to and deal with life-threatening situations" means a peace officer who, as evidenced by the submission of appropriate documentation to the Commission on Law Enforcement Officer Standards and Education:

(A) receives a minimum of 40 hours a year of training in hostage and barricade suspect situations; or

(B) 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 ~~[as evidenced by the submission of appropriate documentation to the Commission on Law Enforcement Officer Standards and Education]~~.

SECTION 2. Section 1, Article 18.21, Code of Criminal Procedure, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Designated police agency" means a police

1 department in a municipality with a population of 500,000 or more.

2 SECTION 3. Section 2, Article 18.21, Code of Criminal
3 Procedure, is amended by amending Subsections (b) and (d) and
4 adding Subsections (i), (j), and (k) to read as follows:

5 (b) A prosecutor may file an application under this section
6 or under federal law on the prosecutor's own motion or on the
7 request of an authorized peace officer, regardless of whether the
8 officer is commissioned by the department. A prosecutor who files
9 an application on the prosecutor's own motion or who files an
10 application for the installation and use of a pen register, ESN
11 reader, or similar equipment on the request of an authorized peace
12 officer not commissioned by the department, other than an
13 authorized peace officer employed by a designated police agency,
14 must make the application personally and may not do so through an
15 assistant or some other person acting on the prosecutor's behalf. A
16 prosecutor may make an application through an assistant or other
17 person acting on the prosecutor's behalf if the prosecutor files an
18 application for the installation and use of:

19 (1) a pen register, ESN reader, or similar equipment
20 on the request of:

21 (A) an authorized peace officer who is
22 commissioned by the department; or

23 (B) an authorized peace officer of a designated
24 police agency; or

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

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

15 (i) A designated police agency may own and possess a pen
16 register, ESN reader, or similar equipment.

17 (j) A peace officer of a designated police agency is
18 authorized to possess, install, operate, or monitor a pen register,
19 ESN reader, or similar equipment if the officer is certified in
20 writing by the chief of the agency to the director of the Department
21 of Public Safety as being trained in the installation and use of a
22 pen register, ESN reader, or similar equipment.

23 (k) The chief of a designated police agency shall submit to
24 the director of the Department of Public Safety a written list of
25 all officers in the agency who are authorized by the chief to
26 possess, install, monitor, or operate pen registers, ESN readers,
27 or similar equipment.

1 SECTION 4. Subsection (a), Section 3, Article 18.21, Code
2 of Criminal Procedure, is amended to read as follows:

3 (a) A peace officer authorized to possess, install,
4 operate, or monitor a device under Section 8A, Article 18.20, or
5 Section 2(j) may install and use a pen register or trap and trace
6 device if the officer:

7 (1) reasonably believes an immediate life-threatening
8 situation exists that:

9 (A) is within the territorial jurisdiction of the
10 officer or another officer the officer is assisting; and

11 (B) requires the installation of a pen register
12 or trap and trace device before an order authorizing the
13 installation and use can, with due diligence, be obtained under
14 this article; and

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

18 SECTION 5. Section 15, Article 18.21, Code of Criminal
19 Procedure, is amended to read as follows:

20 Sec. 15. SUBPOENA AUTHORITY. The director of the
21 department, ~~or~~ the director's designee, or a designated police
22 agency may issue an administrative subpoena to a communications
23 common carrier or an electronic communications service to compel
24 the production of the carrier's or service's business records that:

25 (1) disclose information about:

26 (A) the carrier's or service's customers; or

27 (B) users of the services offered by the carrier

1 or service; and

2 (2) are material to a criminal investigation.

3 SECTION 6. The changes in law made by this Act in amending
4 Subsections (b) and (d), Section 2, Article 18.21, Code of Criminal
5 Procedure, apply only to an application for the installation and
6 use of a pen register, ESN reader, or similar equipment filed on or
7 after the effective date of this Act. An application for the
8 installation and use of a pen register, ESN reader, or similar
9 equipment filed before the effective date of this Act is governed by
10 the law in effect on the date the application is filed, and the
11 former law is continued in effect for that purpose.

12 SECTION 7. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2007.