

AN ACT

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) has received a minimum of 24 hours of training on kidnapping investigations and is:

(i) the sheriff of a county with a population of 3.3 million or more or the sheriff's designee; or

(ii) the police chief of a police department in a municipality with a population of 500,000 or more or the police chief's designee [~~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

1 Procedure, is amended by adding Subdivision (3-a) to read as
2 follows:

3 (3-a) "Designated law enforcement agency" means:

4 (A) the sheriff's department of a county with a
5 population of 3.3 million or more; or

6 (B) a police department in a municipality with a
7 population of 500,000 or more.

8 SECTION 3. Section 2, Article 18.21, Code of Criminal
9 Procedure, is amended by amending Subsections (b) and (d) and
10 adding Subsections (i) through (m) to read as follows:

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

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

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

3 (B) an authorized peace officer of a designated
4 law enforcement agency; or

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

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

23 (i) A peace officer of a designated law enforcement agency
24 is authorized to possess, install, operate, or monitor a pen
25 register, ESN reader, or similar equipment if the officer's name is
26 on the list submitted to the director of the department under
27 Subsection (k).

1 (j) Each designated law enforcement agency shall:

2 (1) adopt a written policy governing the application
3 of this article to the agency; and

4 (2) submit the policy to the director of the
5 department, or the director's designee, for approval.

6 (k) If the director of the department or the director's
7 designee approves the policy submitted under Subsection (j), the
8 sheriff or chief of a designated law enforcement agency, as
9 applicable, or the sheriff's or chief's designee, shall submit to
10 the director a written list of all officers in the agency who are
11 authorized to possess, install, monitor, or operate pen registers,
12 ESN readers, or similar equipment.

13 (l) The department may conduct an audit of a designated law
14 enforcement agency to ensure compliance with this article. If the
15 department determines from the audit that the designated law
16 enforcement agency is not in compliance with the policy adopted by
17 the agency under Subsection (j), the department shall notify the
18 agency in writing that it is not in compliance. If the department
19 determines that the agency still is not in compliance with the
20 policy 90 days after the date the agency receives written notice
21 under this subsection, the agency loses the authority granted by
22 this article until:

23 (1) the agency adopts a new written policy governing
24 the application of this article to the agency; and

25 (2) the department approves the written policy.

26 (m) The sheriff or chief of a designated law enforcement
27 agency shall submit to the director of the department a written

1 report of expenditures made by the designated law enforcement
2 agency for the purchase and maintenance of a pen register, ESN
3 reader, or similar equipment, authorized pursuant to Subsection
4 (i). The director of the department shall report such expenditures
5 publicly on an annual basis via the department's website, or other
6 comparable means.

7 SECTION 4. Section 15, Article 18.21, Code of Criminal
8 Procedure, is amended to read as follows:

9 Sec. 15. SUBPOENA AUTHORITY. (a) The director of the
10 department, ~~or~~ the director's designee, or the sheriff or chief
11 of a designated law enforcement agency, or the sheriff's or chief's
12 designee, may issue an administrative subpoena to a communications
13 common carrier or an electronic communications service to compel
14 the production of the carrier's or service's business records that:

- 15 (1) disclose information about:
- 16 (A) the carrier's or service's customers; or
- 17 (B) users of the services offered by the carrier
18 or service; and

19 (2) are material to a criminal investigation.

20 (b) Not later than the 30th day after the date on which the
21 administrative subpoena is issued under Subsection (a), the sheriff
22 or chief of a designated law enforcement agency shall report the
23 issuance of the subpoena to the department.

24 (c) If, based on reports received under Subsection (b), the
25 department determines that a designated law enforcement agency is
26 not in compliance with the policy adopted by the agency under
27 Section 2(j), the department shall notify the agency in writing

1 that it is not in compliance. If the department determines that the
2 agency still is not in compliance with the policy 90 days after the
3 date the agency receives written notice under this subsection, the
4 agency loses the authority granted by this article until:

5 (1) the agency adopts a new written policy governing
6 the application of this article to the agency; and

7 (2) the department approves the written policy.

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

17 SECTION 6. This Act takes effect immediately if it receives
18 a vote of two-thirds of all the members elected to each house, as
19 provided by Section 39, Article III, Texas Constitution. If this
20 Act does not receive the vote necessary for immediate effect, this
21 Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 823 passed the Senate on April 12, 2007, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 10, 2007, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 823 passed the House, with amendments, on May 7, 2007, by the following vote: Yeas 126, Nays 7, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor