

1-1 By: Whitmire S.B. No. 823
1-2 (In the Senate - Filed February 22, 2007; March 7, 2007,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 April 2, 2007, reported favorably by the following vote: Yeas 5,
1-5 Nays 0; April 2, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the interception of or the collection of other
1-9 information from certain communications in an investigation of
1-10 criminal conduct.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subdivision (23), Section 1, Article 18.20, Code
1-13 of Criminal Procedure, is amended to read as follows:

1-14 (23) "Member of a law enforcement unit specially
1-15 trained to respond to and deal with life-threatening situations"
1-16 means a peace officer who, as evidenced by the submission of
1-17 appropriate documentation to the Commission on Law Enforcement
1-18 Officer Standards and Education:

1-19 (A) receives a minimum of 40 hours a year of
1-20 training in hostage and barricade suspect situations; or

1-21 (B) is the police chief of a police department in
1-22 a municipality with a population of 500,000 or more, or the police
1-23 chief's designee, and has received a minimum of 24 hours of training
1-24 on kidnapping investigations [as evidenced by the submission of
1-25 appropriate documentation to the Commission on Law Enforcement
1-26 Officer Standards and Education].

1-27 SECTION 2. Section 1, Article 18.21, Code of Criminal
1-28 Procedure, is amended by adding Subdivision (3-a) to read as
1-29 follows:

1-30 (3-a) "Designated police agency" means a police
1-31 department in a municipality with a population of 500,000 or more.

1-32 SECTION 3. Section 2, Article 18.21, Code of Criminal
1-33 Procedure, is amended by amending Subsections (b) and (d) and
1-34 adding Subsections (i), (j), and (k) to read as follows:

1-35 (b) A prosecutor may file an application under this section
1-36 or under federal law on the prosecutor's own motion or on the
1-37 request of an authorized peace officer, regardless of whether the
1-38 officer is commissioned by the department. A prosecutor who files
1-39 an application on the prosecutor's own motion or who files an
1-40 application for the installation and use of a pen register, ESN
1-41 reader, or similar equipment on the request of an authorized peace
1-42 officer not commissioned by the department, other than an
1-43 authorized peace officer employed by a designated police agency,
1-44 must make the application personally and may not do so through an
1-45 assistant or some other person acting on the prosecutor's behalf. A
1-46 prosecutor may make an application through an assistant or other
1-47 person acting on the prosecutor's behalf if the prosecutor files an
1-48 application for the installation and use of:

1-49 (1) a pen register, ESN reader, or similar equipment
1-50 on the request of:

1-51 (A) an authorized peace officer who is
1-52 commissioned by the department; or

1-53 (B) an authorized peace officer of a designated
1-54 police agency; or

1-55 (2) a trap and trace device or similar equipment on the
1-56 request of an authorized peace officer, regardless of whether the
1-57 officer is commissioned by the department.

1-58 (d) On presentation of the application, the judge may order
1-59 the installation and use of the pen register, ESN reader, or similar
1-60 equipment by an authorized peace officer commissioned by the
1-61 department or an authorized peace officer of a designated police
1-62 agency, and, on request of the applicant, the judge shall direct in
1-63 the order that a communication common carrier or a provider of
1-64 electronic communications service furnish all information,

2-1 facilities, and technical assistance necessary to facilitate the
2-2 installation and use of the device or equipment by the department or
2-3 designated police agency unobtrusively and with a minimum of
2-4 interference to the services provided by the carrier or service.
2-5 The carrier or service is entitled to compensation at the
2-6 prevailing rates for the facilities and assistance provided to the
2-7 department or a designated police agency.

2-8 (i) A designated police agency may own and possess a pen
2-9 register, ESN reader, or similar equipment.

2-10 (j) A peace officer of a designated police agency is
2-11 authorized to possess, install, operate, or monitor a pen register,
2-12 ESN reader, or similar equipment if the officer is certified in
2-13 writing by the chief of the agency to the director of the Department
2-14 of Public Safety as being trained in the installation and use of a
2-15 pen register, ESN reader, or similar equipment.

2-16 (k) The chief of a designated police agency shall submit to
2-17 the director of the Department of Public Safety a written list of
2-18 all officers in the agency who are authorized by the chief to
2-19 possess, install, monitor, or operate pen registers, ESN readers,
2-20 or similar equipment.

2-21 SECTION 4. Subsection (a), Section 3, Article 18.21, Code
2-22 of Criminal Procedure, is amended to read as follows:

2-23 (a) A peace officer authorized to possess, install,
2-24 operate, or monitor a device under Section 8A, Article 18.20, or
2-25 Section 2(j) may install and use a pen register or trap and trace
2-26 device if the officer:

2-27 (1) reasonably believes an immediate life-threatening
2-28 situation exists that:

2-29 (A) is within the territorial jurisdiction of the
2-30 officer or another officer the officer is assisting; and

2-31 (B) requires the installation of a pen register
2-32 or trap and trace device before an order authorizing the
2-33 installation and use can, with due diligence, be obtained under
2-34 this article; and

2-35 (2) reasonably believes there are sufficient grounds
2-36 under this article on which to obtain an order authorizing the
2-37 installation and use of a pen register or trap and trace device.

2-38 SECTION 5. Section 15, Article 18.21, Code of Criminal
2-39 Procedure, is amended to read as follows:

2-40 Sec. 15. SUBPOENA AUTHORITY. The director of the
2-41 department, ~~or~~ the director's designee, or a designated police
2-42 agency may issue an administrative subpoena to a communications
2-43 common carrier or an electronic communications service to compel
2-44 the production of the carrier's or service's business records that:

2-45 (1) disclose information about:

2-46 (A) the carrier's or service's customers; or

2-47 (B) users of the services offered by the carrier
2-48 or service; and

2-49 (2) are material to a criminal investigation.

2-50 SECTION 6. The changes in law made by this Act in amending
2-51 Subsections (b) and (d), Section 2, Article 18.21, Code of Criminal
2-52 Procedure, apply only to an application for the installation and
2-53 use of a pen register, ESN reader, or similar equipment filed on or
2-54 after the effective date of this Act. An application for the
2-55 installation and use of a pen register, ESN reader, or similar
2-56 equipment filed before the effective date of this Act is governed by
2-57 the law in effect on the date the application is filed, and the
2-58 former law is continued in effect for that purpose.

2-59 SECTION 7. This Act takes effect immediately if it receives
2-60 a vote of two-thirds of all the members elected to each house, as
2-61 provided by Section 39, Article III, Texas Constitution. If this
2-62 Act does not receive the vote necessary for immediate effect, this
2-63 Act takes effect September 1, 2007.

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