

By: Williams

S.B. No. 1361

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the interception or the collection of information from  
3 certain communications in an investigation of criminal conduct.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 1(1), Article 18.20, Code of Criminal  
6 Procedure, is amended to read as follows:

7 (1) "Wire communication" means an aural transfer made  
8 in whole or in part through the use of facilities for the  
9 transmission of communications by the aid of wire, cable, or other  
10 like connection between the point of origin and the point of  
11 reception, including the use of such a connection in a switching  
12 station, furnished or operated by a person authorized to engage in  
13 providing or operating the facilities for the transmission of  
14 communications as a communications common carrier. [~~The term~~  
15 ~~includes the electronic storage of a wire communication.~~]

16 SECTION 2. Section 1(5), Article 18.21, Code of Criminal  
17 Procedure, is amended to read as follows:

18 (5) "Mobile tracking device" means an electronic or  
19 mechanical device that permits tracking the movement of a person,  
20 vehicle, container, item, or object. [~~The term does not include a~~  
21 ~~device designed, made, adapted, or capable of:~~

22 [~~(A) intercepting the content of a~~  
23 ~~communication, or~~

24 [~~(B) functioning as a pen register, ESN reader,~~

1 ~~trap and trace device, or similar equipment.]~~

2 SECTION 3. Sections 4(a), (b), and (c), Article 18.21, Code  
3 of Criminal Procedure, are amended to read as follows:

4 (a) An authorized peace officer may require a provider of  
5 electronic communications service to disclose the contents of a  
6 wire communication or an electronic communication that has been in  
7 electronic storage for not longer than 180 days by obtaining a  
8 warrant.

9 (b) An authorized peace officer may require a provider of  
10 electronic communications service to disclose the contents of a  
11 wire communication or an electronic communication that has been in  
12 electronic storage for longer than 180 days:

13 (1) if notice is not being given to the subscriber or  
14 customer, by obtaining a warrant;

15 (2) if notice is being given to the subscriber or  
16 customer, by obtaining:

17 (A) an administrative subpoena authorized by  
18 statute;

19 (B) a grand jury subpoena; or

20 (C) a court order issued under Section 5 of this  
21 article; or

22 (3) as otherwise permitted by applicable federal law.

23 (c)(1) An authorized peace officer may require a provider of  
24 a remote computing service to disclose the contents of a wire  
25 communication or an electronic communication as described in  
26 Subdivision (2) of this subsection:

27 (A) if notice is not being given to the

1 subscriber or customer, by obtaining a warrant issued under this  
2 code;

3 (B) if notice is being given to the subscriber or  
4 customer, by:

5 (i) an administrative subpoena authorized  
6 by statute;

7 (ii) a grand jury subpoena; or

8 (iii) a court order issued under Section 5  
9 of this article; or

10 (C) as otherwise permitted by applicable federal  
11 law.

12 (2) Subdivision (1) of this subsection applies only to  
13 a wire communication or an electronic communication that is in  
14 electronic storage:

15 (A) on behalf of a subscriber or customer of the  
16 service and is received by means of electronic transmission from or  
17 created by means of computer processing of communications received  
18 by means of electronic transmission from the subscriber or  
19 customer; and

20 (B) solely for the purpose of providing storage  
21 or computer processing services to the subscriber or customer if  
22 the provider of the service is not authorized to obtain access to  
23 the contents of those communications for purposes of providing any  
24 service other than storage or computer processing.

25 SECTION 4. Sections 7(a) and (b), Article 18.21, Code of  
26 Criminal Procedure, are amended to read as follows:

27 (a) An authorized peace officer seeking a court order to

1 obtain information under Section 4 [~~4(e)~~] of this article may  
2 include a request for an order delaying the notification required  
3 under Section 4 [~~4(e)~~] of this article for a period not to exceed 90  
4 days. The court shall grant the request if the court determines  
5 that there is reason to believe that notification of the existence  
6 of the court order may have an adverse result, as described in  
7 Subsection (c) of this section.

8 (b) An authorized peace officer who has obtained a subpoena  
9 authorized by statute or a grand jury subpoena to seek information  
10 under Section 4 [~~4(e)~~] of this article may delay the notification  
11 required under that section for a period not to exceed 90 days on  
12 the execution of a written certification of a supervisory official  
13 that there is reason to believe that notification of the existence  
14 of the subpoena may have an adverse result as described in  
15 Subsection (c) of this section. The peace officer shall maintain a  
16 true copy of the certification.

17 SECTION 5. Section 14(a), Article 18.21, Code of Criminal  
18 Procedure, is amended to read as follows:

19 (a) A district judge may issue an order for the installation  
20 and use [~~within the judge's judicial district~~] of a mobile tracking  
21 device.

22 SECTION 6. (a) The changes in law made by this Act in  
23 amending Sections 4 and 7, Article 18.21, Code of Criminal  
24 Procedure, apply only to a warrant, subpoena, or court order  
25 regarding disclosure of a wire communication or electronic  
26 communication obtained or issued on or after the effective date of  
27 this Act. A warrant, subpoena, or court order obtained or issued

1 before the effective date of this Act is governed by the law in  
2 effect on the date the warrant, subpoena, or court order was  
3 obtained or issued, and the former law is continued in effect for  
4 that purpose.

5 (b) The changes in law made by this Act in amending Section  
6 14, Article 18.21, Code of Criminal Procedure, apply only to a court  
7 order issued on or after the effective date of this Act. A court  
8 order issued before the effective date of this Act is governed by  
9 the law in effect on the date the court order was issued, and the  
10 former law is continued in effect for that purpose.

11 SECTION 7. This Act takes effect September 1, 2007.