

1-1 By: Williams S.B. No. 1361  
1-2 (In the Senate - Filed March 7, 2007; March 20, 2007, read  
1-3 first time and referred to Committee on Criminal Justice;  
1-4 April 25, 2007, reported favorably by the following vote: Yeas 5,  
1-5 Nays 0; April 25, 2007, sent to printer.)

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

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

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subdivision (1), Section 1, Article 18.20, Code  
1-12 of Criminal Procedure, is amended to read as follows:

1-13 (1) "Wire communication" means an aural transfer made  
1-14 in whole or in part through the use of facilities for the  
1-15 transmission of communications by the aid of wire, cable, or other  
1-16 like connection between the point of origin and the point of  
1-17 reception, including the use of such a connection in a switching  
1-18 station, furnished or operated by a person authorized to engage in  
1-19 providing or operating the facilities for the transmission of  
1-20 communications as a communications common carrier. [~~The term~~  
1-21 ~~includes the electronic storage of a wire communication.~~]

1-22 SECTION 2. Subdivision (5), Section 1, Article 18.21, Code  
1-23 of Criminal Procedure, is amended to read as follows:

1-24 (5) "Mobile tracking device" means an electronic or  
1-25 mechanical device that permits tracking the movement of a person,  
1-26 vehicle, container, item, or object. [~~The term does not include a~~  
1-27 ~~device designed, made, adapted, or capable of:~~

1-28 [~~(A) intercepting the content of a~~  
1-29 ~~communication; or~~

1-30 [~~(B) functioning as a pen register, ESN reader,~~  
1-31 ~~trap and trace device, or similar equipment.~~]

1-32 SECTION 3. Subsections (a), (b), and (c), Section 4,  
1-33 Article 18.21, Code of Criminal Procedure, are amended to read as  
1-34 follows:

1-35 (a) An authorized peace officer may require a provider of  
1-36 electronic communications service to disclose the contents of a  
1-37 wire communication or an electronic communication that has been in  
1-38 electronic storage for not longer than 180 days by obtaining a  
1-39 warrant.

1-40 (b) An authorized peace officer may require a provider of  
1-41 electronic communications service to disclose the contents of a  
1-42 wire communication or an electronic communication that has been in  
1-43 electronic storage for longer than 180 days:

1-44 (1) if notice is not being given to the subscriber or  
1-45 customer, by obtaining a warrant;

1-46 (2) if notice is being given to the subscriber or  
1-47 customer, by obtaining:

1-48 (A) an administrative subpoena authorized by  
1-49 statute;

1-50 (B) a grand jury subpoena; or

1-51 (C) a court order issued under Section 5 of this  
1-52 article; or

1-53 (3) as otherwise permitted by applicable federal law.

1-54 (c)(1) An authorized peace officer may require a provider of  
1-55 a remote computing service to disclose the contents of a wire  
1-56 communication or an electronic communication as described in  
1-57 Subdivision (2) of this subsection:

1-58 (A) if notice is not being given to the  
1-59 subscriber or customer, by obtaining a warrant issued under this  
1-60 code;

1-61 (B) if notice is being given to the subscriber or  
1-62 customer, by:

1-63 (i) an administrative subpoena authorized  
1-64 by statute;

2-1 (ii) a grand jury subpoena; or  
2-2 (iii) a court order issued under Section 5  
2-3 of this article; or  
2-4 (C) as otherwise permitted by applicable federal  
2-5 law.

2-6 (2) Subdivision (1) of this subsection applies only to  
2-7 a wire communication or an electronic communication that is in  
2-8 electronic storage:

2-9 (A) on behalf of a subscriber or customer of the  
2-10 service and is received by means of electronic transmission from or  
2-11 created by means of computer processing of communications received  
2-12 by means of electronic transmission from the subscriber or  
2-13 customer; and

2-14 (B) solely for the purpose of providing storage  
2-15 or computer processing services to the subscriber or customer if  
2-16 the provider of the service is not authorized to obtain access to  
2-17 the contents of those communications for purposes of providing any  
2-18 service other than storage or computer processing.

2-19 SECTION 4. Subsections (a) and (b), Section 7, Article  
2-20 18.21, Code of Criminal Procedure, are amended to read as follows:

2-21 (a) An authorized peace officer seeking a court order to  
2-22 obtain information under Section 4 [~~4(c)~~] of this article may  
2-23 include a request for an order delaying the notification required  
2-24 under Section 4 [~~4(c)~~] of this article for a period not to exceed 90  
2-25 days. The court shall grant the request if the court determines  
2-26 that there is reason to believe that notification of the existence  
2-27 of the court order may have an adverse result, as described in  
2-28 Subsection (c) of this section.

2-29 (b) An authorized peace officer who has obtained a subpoena  
2-30 authorized by statute or a grand jury subpoena to seek information  
2-31 under Section 4 [~~4(c)~~] of this article may delay the notification  
2-32 required under that section for a period not to exceed 90 days on  
2-33 the execution of a written certification of a supervisory official  
2-34 that there is reason to believe that notification of the existence  
2-35 of the subpoena may have an adverse result as described in  
2-36 Subsection (c) of this section. The peace officer shall maintain a  
2-37 true copy of the certification.

2-38 SECTION 5. Subsection (a), Section 14, Article 18.21, Code  
2-39 of Criminal Procedure, is amended to read as follows:

2-40 (a) A district judge may issue an order for the installation  
2-41 and use [~~within the judge's judicial district~~] of a mobile tracking  
2-42 device.

2-43 SECTION 6. (a) The changes in law made by this Act in  
2-44 amending Sections 4 and 7, Article 18.21, Code of Criminal  
2-45 Procedure, apply only to a warrant, subpoena, or court order  
2-46 regarding disclosure of a wire communication or electronic  
2-47 communication obtained or issued on or after the effective date of  
2-48 this Act. A warrant, subpoena, or court order obtained or issued  
2-49 before the effective date of this Act is governed by the law in  
2-50 effect on the date the warrant, subpoena, or court order was  
2-51 obtained or issued, and the former law is continued in effect for  
2-52 that purpose.

2-53 (b) The changes in law made by this Act in amending Section  
2-54 14, Article 18.21, Code of Criminal Procedure, apply only to a court  
2-55 order issued on or after the effective date of this Act. A court  
2-56 order issued before the effective date of this Act is governed by  
2-57 the law in effect on the date the court order was issued, and the  
2-58 former law is continued in effect for that purpose.

2-59 SECTION 7. This Act takes effect September 1, 2007.

\* \* \* \* \*