

## **BILL ANALYSIS**

S.B. 385  
By: Carona  
Criminal Jurisprudence  
Committee Report (Amended)

### **BACKGROUND AND PURPOSE**

Under current law, for an application of interception of wire, oral, or electronic communications to be valid, Sections 8(a)(2)(B) and 9(b)(2), Article 18.20, Code of Criminal Procedure, requires the applicant to provide "a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted." Developments in communications technology have occurred rapidly over the past decade and have rendered the current requirements obsolete in some circumstances. In particular, the increased use of pre-paid mobile telephones by criminal organizations has served to undermine law enforcement's ability to intercept criminal's communications, as criminals may switch among multiple mobile telephones in a short period of time, and because mobile telephones are not subject to a description of the "nature and location of the facilities where the communication is to be intercepted." By definition, mobile telephones are not stationary.

As proposed, S.B. 385 authorizes law enforcement, in certain circumstances, to intercept the communications of a person without specifying a physical location from which the communications originate.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **ANALYSIS**

SECTION 1. Amends Article 18.20, Code of Criminal Procedure, by adding Section 9A, as follows:

Sec. 9A. INTERCEPTION ORDER FOR COMMUNICATION BY SPECIFIED PERSON. (a) Provides that the requirements of Sections 8(a)(2)(B) (regarding a peace officer's authorization in relation to certain forms of communication) and 9(b)(2) (regarding the nature and location of communications facilities) relating to the specification of the facilities from which or the place where a communication is to be intercepted do not apply under certain conditions.

(b) Authorizes a person implementing an order authorizing the interception of an oral communication that, in accordance with this section, does not specify the facility from which or the place where a communication is to be intercepted, to begin interception only after the person ascertains the place where the communication is to be intercepted.

(c) Authorizes a provider of wire or electronic communications that receives an order authorizing the interception of a wire or electronic communication that, in accordance with this section, does not specify the facility from which or the place where a communication is to be intercepted, to move the court to modify or quash the order on the ground that the provider's assistance with respect to the interception cannot be performed in a timely or reasonable fashion. Requires the court, on notice to the state, to decide the motion expeditiously.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.

**EFFECTIVE DATE**

September 1, 2009.

**EXPLANATION OF AMENDMENTS**

Committee Amendment 1. Requires the director of the Department of Public Safety to post the report as describe by Subsection (c) of this section on any public website maintained by the department. The department shall redact all information, including personal information, that could jeopardize any ongoing investigations or endanger the safety of a peace officer who made a request or a prosecutor who filed an application under this article before posting the report online.