

BILL ANALYSIS

S.B. 2047
By: Williams
Criminal Jurisprudence
Committee Report (Amended)

BACKGROUND AND PURPOSE

Article 18.20 (Interception and Use of Wire, Oral, or Electronic Communications), Code of Criminal Procedure, governs the interception and use of wire, oral, or electronic communications. It specifies certain actions which judges are authorized to undertake when communications are intercepted, disclosed, or used by law enforcement officers or others.

Changes need to be made to the current electronic surveillance laws to keep apace of changes in technology and close loopholes in the existing standards. Electronic mail, voice mail, cellular telephone text messaging, computer communications, and websites such as MySpace have become tools used by sexual predators to seek out and communicate with young people.

As proposed, S.B. 2047 amends Article 18.20, Code of Criminal Procedure, to strike a provision providing that a wire communication includes the electronic storage of such communication. The bill amends Article 18.21 (Pen Registers and Trap and Trace Devices; Access to Stored Communications; Mobile Tracking Devices), Code of Criminal Procedure, to change the definition of a mobile tracking device, add references to wire communications, and to authorize a judge to issue an order for a mobile tracking device in the same judicial district that is the site of the investigation, the headquarters of the law enforcement agency applying for or executing the order, or of the person or object to be tracked by the device.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Section 1(1), Article 18.20, Code of Criminal Procedure, to redefine "wire communication" by deleting existing text providing that the term includes the electronic storage of a wire communication.

SECTION 2. Amends Section 1(5), Article 18.21, Code of Criminal Procedure, to redefine "mobile tracking device."

SECTION 3. Amends Sections 4(a)-(c), Article 18.21, Code of Criminal Procedure, as follows:

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

(b) and (c) Make conforming changes.

SECTION 4. Amends Sections 7(a) and (b), Article 18.21, Code of Criminal Procedure, as follows:

(a) Authorizes an authorized peace officer seeking a court order to obtain information under Section 4, rather than Section 4(c), of this article to include a request for an order

delaying the notification required under Section 4, rather than Section 4(c), of this article for a period not to exceed 90 days.

(b) Makes a conforming change.

SECTION 5. Amends Section 14(a), Article 18.21, Code of Criminal Procedure, to authorize a district judge to issue an order for the installation and use of a mobile tracking device in the same judicial district as any of the following:

- (1) the site of the investigation or the person, vehicle, container, item, or object the movement of which will be tracked by the mobile tracking device; or
- (2) the headquarters of the law enforcement agency that applies for or executes an order authorizing a device to be installed.

SECTION 6. (a) Makes application of Sections 4 and 7, Article 18.21, Code of Criminal Procedure, prospective.

(b) Makes application of Section 14, Article 18.21, Code of Criminal Procedure, prospective.

SECTION 7. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.

EXPLANATION OF AMENDMENTS

Committee Amendment 1. Amends S.B. 2047 to remove SECTION 5 and replace it with new language that excludes Subsection (2) within SECTION 5 relating to the headquarters of the law enforcement agency that applies for or executes an order authorizing a device to be installed.