

AN ACT

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

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

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

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

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

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

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

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

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

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

(a) An authorized peace officer may 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) An authorized peace officer may 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 longer than 180 days:

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

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

(A) an administrative subpoena authorized by statute;

(B) a grand jury subpoena; or

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

(3) as otherwise permitted by applicable federal law.

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

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

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

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

8 (ii) a grand jury subpoena; or

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

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

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

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

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

26 SECTION 4. Subsections (a) and (b), Section 7, Article
27 18.21, Code of Criminal Procedure, are amended to read as follows:

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

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

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

20 (a) A district judge may issue an order for the installation
21 and use [~~within the judge's judicial district~~] of a mobile tracking
22 device in the same judicial district as the site of:

23 (1) the investigation; or

24 (2) the person, vehicle, container, item, or object
25 the movement of which will be tracked by the mobile tracking device.

26 SECTION 6. (a) The changes in law made by this Act in
27 amending Sections 4 and 7, Article 18.21, Code of Criminal

1 Procedure, apply only to a warrant, subpoena, or court order
2 regarding disclosure of a wire communication or electronic
3 communication obtained or issued on or after the effective date of
4 this Act. A warrant, subpoena, or court order obtained or issued
5 before the effective date of this Act is governed by the law in
6 effect on the date the warrant, subpoena, or court order was
7 obtained or issued, and the former law is continued in effect for
8 that purpose.

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

15 SECTION 7. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 2047 passed the Senate on April 24, 2009, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendment on May 30, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 2047 passed the House, with amendment, on May 27, 2009, by the following vote: Yeas 148, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor