

BILL ANALYSIS

C.S.H.B. 1457
By: Fletcher
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Many view the interception of wire, oral, or electronic communications by law enforcement as a key investigative tool in the most serious criminal investigations. Intercepts are regularly and successfully used throughout the nation and among state and federal law enforcement. Interested parties assert that it is important that Texas' large law enforcement agencies have the authority to use this investigative tool in a more rapid, efficient, and practical manner.

The current intercept process in Texas requires extensive Department of Public Safety (DPS) involvement in any nonemergency intercept, including the physical presence of a specially designated DPS officer during the intercept. Interested parties note that this is not a practical way to meet the needs of the larger local law enforcement agencies and that it is especially important to modernize the intercept process in today's era of rapidly evolving technology and Internet connectivity and activity. C.S.H.B. 1457 seeks to provide this key investigative tool, with proper and sufficient oversight, by making changes in statutes relating to interception of wire, oral, or electronic communications for law enforcement purposes.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1457 amends the Code of Criminal Procedure to require a designated law enforcement agency, to be eligible to lawfully intercept a wire, oral, or electronic communication in a circumstance that is not an immediate life-threatening situation, to adopt a written policy that addresses the application of provisions of law relating to the detection, interception, and use of wire, oral, or electronic communications to the agency and details the agency's protocol for performing such an interception and to submit the policy to the director of the Department of Public Safety (DPS) for approval. The bill requires the public safety director to approve or deny a submitted policy.

C.S.H.B. 1457 requires the chief law enforcement of a designated law enforcement officer agency that submitted a policy, if the public safety director approves the policy, to submit to the director a written list of the commissioned peace officers of the agency who are authorized to possess, install, monitor, or operate wire, oral, or electronic communications interception equipment in a circumstance that is not an immediate life-threatening situation. The bill requires a commissioned peace officer of a designated law enforcement agency, to be authorized to operate or monitor such an interception in that circumstance, to complete at least 16 hours of training regarding the interception of such communications. The bill requires the chief law enforcement officer of the officer's employing agency to submit appropriate documentation of each authorized peace officer's completion of training to the Commission on Law Enforcement Officer Standards and Education.

C.S.H.B. 1457 authorizes a designated law enforcement agency to intercept wire, oral, or electronic communications in a circumstance that is not an immediate life-threatening situation only if the agency has adopted and submitted the policy to the public safety director as provided and the public safety director has approved the agency's policy. The bill authorizes DPS to conduct an audit of a designated law enforcement agency to ensure compliance with a written policy adopted under the bill's provisions and with the other provisions of law regarding detection, interception, and use of wire, oral, or electronic communications. The bill requires DPS, if after conducting such an audit DPS determines that the designated law enforcement agency is not in compliance, to notify the agency in writing not later than the 30th day after the date of the determination.

C.S.H.B. 1457 specifies that a designated law enforcement agency relinquishes the authority to intercept a wire, oral, or electronic communication in a circumstance that is not an immediate life-threatening situation until the agency is in compliance, if on the 90th day after the date notice is received DPS determines that the agency is not in compliance. The bill limits the authority of a designated law enforcement agency and the peace officers of that agency to intercept a wire, oral, or electronic communication in an immediate life-threatening situation to the authority provided under provisions of law regarding emergency installation and use of an intercepting device.

C.S.H.B. 1457 makes a technical correction in a provision of law relating to the judges authorized to consider applications for authorization to intercept wire, oral, or electronic communications.

C.S.H.B. 1457 extends the public safety director's authority to request an application for an order authorizing interception of wire, oral, or electronic communications to a chief law enforcement officer and makes conforming changes to reflect that extension in provisions of law prescribing the procedures for such a request and application. The bill defines "chief law enforcement officer" as the head law enforcement officer of a designated law enforcement agency that is authorized to intercept a wire, oral, or electronic communication in a circumstance that is not an immediate life-threatening situation, including the chief of police of a municipal police department and the sheriff of the county or the chief law enforcement officer's designee who is an executive manager of the designated law enforcement agency. The bill sets the initial period of interception for an order to intercept a wire, oral, or electronic communication, for purposes of the 30-day limit on interception, to begin on the earlier of the date the investigative or law enforcement officer begins to intercept communications or the 10th day after the date the interception order is entered by the judge.

C.S.H.B. 1457 expands the definition of "prosecutor," for purposes of provisions of law relating to detection, interception, and use of wire, oral, or electronic communications, to include a district attorney's or criminal district attorney's designee who is an assistant district attorney in the designator's jurisdiction. The bill, in the definition of "director," for purposes of those provisions of law and as an alternative to the public safety director, replaces the assistant director of DPS with the director's designee who is an executive manager of DPS, regardless of whether the director is absent or unable to serve. The bill provides for the meaning of "designated law enforcement agency" by reference. The bill makes conforming changes in provisions of law relating to the control of intercepting devices; to a request for an application to intercept wire, oral, or electronic communications; and to reports concerning such interception. The bill makes nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1457 differs from the original in the provision redefining "director" for purposes of provisions of law relating to the detection, interception, and use of wire, oral, or electronic communications, by including in that term the public safety director's designee who is an executive manager of the Department of Public Safety (DPS), rather than the public safety director's designee who is a commissioned peace officer of DPS, as in the original.

C.S.H.B. 1457 differs from the original by defining "chief law enforcement officer" to include the chief law enforcement officer's designee who is an executive manager of a designated law enforcement agency, rather than the chief law enforcement officer's designee who is a commissioned peace officer of the designated law enforcement agency, as in the original.