

BILL ANALYSIS

C.S.H.B. 2354
By: Madden
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The ability of law enforcement and criminal justice authorities to access telephone communications, both land and cellular, for certain criminal or investigative purposes, has proven critical to the resolution of some investigations. As cellular communications increasingly have become the preferred form of communication, the need to track these communications quickly during certain criminal episodes, such as an escape from custody, has also increased. The Texas Department of Criminal Justice (TDCJ) is currently authorized to possess and use certain electronic, mechanical, or other tracking devices, such as cell phone tracking equipment, to intercept wire, oral, or electronic communications. The pen register, which records phone numbers dialed from a telephone, is sometimes used by prosecutors and law enforcement officers after approval by a judge for investigative or criminal-related purposes. C.S.H.B. 2354 seeks to augment the tracking equipment used in TDCJ facilities in hopes of further preventing the occurrence of crimes and enhancing public safety.

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. 2354 amends the Code of Criminal Procedure to redesignate the term "designated law enforcement agency," for purposes of provisions of law relating to pen registers and trap and trace devices, access to stored communications, and mobile tracking devices, as "designated law enforcement office or agency" and redefines the term to include the office of inspector general of the Texas Department of Criminal Justice (TDCJ). The bill makes provisions of law relating to a prosecutor's application and a judge's order for the installation and use of such a device or equipment apply to the office in the same way that such provisions of law currently apply to a designated law enforcement agency. The bill includes the inspector general or the inspector general's designee among the persons required to submit to the public safety director of the Department of Public Safety (DPS) a written list of all officers in the applicable designated law enforcement office or agency who are authorized to possess, install, monitor, or operate pen registers, ESN readers, or similar equipment if the director approves the office's or agency's policy regarding the use of those devices. The bill makes provisions of law authorizing a peace officer of a designated law enforcement agency included on that list to possess, install, operate, or monitor such a device or equipment apply to a listed peace officer of a designated law enforcement office.

C.S.H.B. 2354 makes provisions of law relating to the audit by DPS of a designated law enforcement agency apply to a designated law enforcement office. The bill includes the inspector general among the persons required to submit to the public safety director a written report of expenditures made by the office or agency, as applicable, for the purchase and maintenance of such a device or equipment.

C.S.H.B. 2354 includes the inspector general or the inspector general's designee among the persons authorized to issue an administrative subpoena to a communications common carrier or an electronic communications service to compel the production of certain business records of the carrier or service. The bill makes provisions of law relating to such subpoenas and provisions of law relating to backup preservation of electronic communications sought by a subpoena or court order for disclosure of contents of the communications apply to the office in the same way such provisions of law currently apply to a designated law enforcement agency.

C.S.H.B. 2354 redefines "authorized peace officer" to include an enforcement officer appointed by the inspector general, rather than the executive director, of TDCJ. The bill makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2354 omits a provision included in the original authorizing the office of the inspector general of the Texas Department of Criminal Justice (TDCJ) to possess, install, operate, or monitor in a correctional facility a pen register, ESN reader, trap and trace device, or similar equipment that combines the function of a pen register and a trap and trace device to produce information that is necessary to prevent the commission of certain offenses relating to an escape from custody or that is material to certain investigations concerning the introduction or provision of a certain implement or prohibited substance or item in a correctional facility.

C.S.H.B. 2354 omits provisions included in the original authorizing the office to use such obtained information in certain criminal or civil proceedings, setting out requirements relating to the office's use of such a device or equipment, and requiring the inspector general to report the use of such a device or equipment to the appropriate prosecutor or the special prosecution unit. The substitute omits a provision included in the original authorizing TDCJ to own such a device or equipment.

C.S.H.B. 2354 contains provisions not included in the original redefining "authorized peace officer" and redesignating and redefining "designated law enforcement office or agency." The substitute contains provisions not included in the original making provisions of law relating to pen registers and trap and trace devices, access to stored communications, and mobile tracking devices apply to the office of inspector general by replacing references to the phrase designated law enforcement agency with the phrase designated law enforcement office or agency.

C.S.H.B. 2354 contains provisions not included in the original including the inspector general or the inspector general's designee, as applicable, among the persons required to submit to the public safety director of the Department of Public Safety a written list of all officers who are authorized to possess, install, monitor, or operate pen registers, ESN readers, or similar equipment and to submit the written report of certain expenditures relating to such a device or equipment.

C.S.H.B. 2354 contains a provision not included in the original including the inspector general or the inspector general's designee among the persons authorized to issue an administrative subpoena to a communications common carrier or an electronic communications service for certain business records. The substitute differs from the original in nonsubstantive ways and by making conforming changes.