

By: Fletcher

H.B. No. 1457

Substitute the following for H.B. No. 1457:

By: Pena

C.S.H.B. No. 1457

A BILL TO BE ENTITLED

AN ACT

relating to interception of wire, oral, or electronic communications for law enforcement purposes.

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

SECTION 1. Section 1, Article 18.20, Code of Criminal Procedure, is amended by amending Subdivisions (8), (9), and (14) and adding Subdivision (27) to read as follows:

(8) "Prosecutor" means a district attorney, criminal district attorney, district attorney's or criminal district attorney's designee who is an assistant district attorney in the designator's jurisdiction, or county attorney performing the duties of a district attorney, with jurisdiction in the county within an administrative judicial district described by Section 3(b).

(9) "Director" means the director of the Department of Public Safety or the director's designee who is an executive manager of [~~, if the director is absent or unable to serve, the assistant director of~~] the Department of Public Safety.

(14) "Pen register," "ESN reader," "trap and trace device," "designated law enforcement agency," and "mobile tracking device" have the meanings assigned by Article 18.21.

(27) "Chief law enforcement officer" means:

(A) the head law enforcement officer of a designated law enforcement agency that is authorized to act under

1 Section 5A, including the chief of police of a municipal police
2 department and the sheriff of a county; or

3 (B) the chief law enforcement officer's designee
4 who is an executive manager of the designated law enforcement
5 agency.

6 SECTION 2. Section 3(b), Article 18.20, Code of Criminal
7 Procedure, is amended to read as follows:

8 (b) Except as provided by Subsection (c), a judge appointed
9 under Subsection (a) may act on an application for authorization to
10 intercept wire, oral, or electronic communications if the judge is
11 appointed as the judge of competent jurisdiction within the
12 administrative judicial district in which the following is located:

13 (1) the site of:

14 (A) the proposed interception; or

15 (B) the interception device to be installed or
16 monitored;

17 (2) the communication device to be intercepted;

18 (3) the billing, residential, or business address of
19 the subscriber to the wire or electronic communications service to
20 be intercepted;

21 (4) the headquarters of the law enforcement agency
22 that makes a request for or executes an order authorizing an
23 interception; or

24 (5) the headquarters of the service provider.

25 SECTION 3. Sections 5(a) and (b), Article 18.20, Code of
26 Criminal Procedure, are amended to read as follows:

27 (a) Except as otherwise provided by this section and

1 Sections 8A and 8B, only the Department of Public Safety or, subject
2 to Section 5A, a designated law enforcement agency is authorized by
3 this article to own, possess, install, operate, or monitor an
4 electronic, mechanical, or other device. The Department of Public
5 Safety or designated law enforcement agency may be assisted by an
6 investigative or law enforcement officer or other person in the
7 operation and monitoring of an interception of wire, oral, or
8 electronic communications, provided that the officer or other
9 person:

10 (1) is designated by the director or a chief law
11 enforcement officer for that purpose; and

12 (2) acts in the presence and under the direction of:

13 (A) a commissioned officer of the Department of
14 Public Safety; or

15 (B) a commissioned officer of the designated law
16 enforcement agency who is trained for that purpose.

17 (b) The director or a chief law enforcement officer shall
18 designate in writing the commissioned officers of the Department of
19 Public Safety or designated law enforcement agency who are
20 responsible for the possession, installation, operation, and
21 monitoring of electronic, mechanical, or other devices for the
22 department or designated law enforcement agency.

23 SECTION 4. Article 18.20, Code of Criminal Procedure, is
24 amended by adding Section 5A to read as follows:

25 Sec. 5A. OVERSIGHT OF DESIGNATED LAW ENFORCEMENT AGENCIES
26 BY THE DEPARTMENT. (a) To be eligible to intercept a wire, oral, or
27 electronic communication under this article in a circumstance that

1 is not an immediate life-threatening situation, a designated law
2 enforcement agency must:

3 (1) adopt a written policy that addresses the
4 application of this article to the agency and details the agency's
5 protocol for intercepting wire, oral, or electronic
6 communications; and

7 (2) submit the policy to the director for approval.

8 (b) The director shall approve or deny a policy submitted
9 under Subsection (a). If the director approves a policy submitted
10 under Subsection (a), the chief law enforcement officer of the
11 designated law enforcement agency that submitted the policy shall
12 submit to the director a written list of the commissioned peace
13 officers of the agency who are authorized under Subsection (e) to
14 possess, install, monitor, or operate wire, oral, or electronic
15 communications interception equipment in a circumstance that is not
16 an immediate life-threatening situation.

17 (c) A designated law enforcement agency is authorized to
18 intercept wire, oral, or electronic communications under this
19 article in a circumstance that is not an immediate life-threatening
20 situation only if:

21 (1) the agency has complied with Subsections (a) and
22 (b); and

23 (2) the director has approved the agency's policy.

24 (d) The department may conduct an audit of a designated law
25 enforcement agency to ensure compliance with a written policy
26 adopted under Subsection (a) and with the other provisions of this
27 article. If after conducting an audit the department determines

1 that the designated law enforcement agency is not in compliance as
2 described by this subsection, the department shall notify the
3 agency in writing not later than the 30th day after the date of the
4 determination. If on the 90th day after the date the notice is
5 received the department determines that the agency is not in
6 compliance, the agency relinquishes the authority provided by this
7 article until the agency is in compliance.

8 (e) To be authorized to operate or monitor the interception
9 of a wire, oral, or electronic communication in a circumstance that
10 is not an immediate life-threatening situation, a commissioned
11 peace officer of a designated law enforcement agency must complete
12 at least 16 hours of training regarding the interception of such
13 communications. The chief law enforcement officer of the officer's
14 employing agency shall submit appropriate documentation of each
15 authorized peace officer's completion of training to the Commission
16 on Law Enforcement Officer Standards and Education.

17 (f) A designated law enforcement agency and the peace
18 officers of that agency are not authorized to intercept a wire,
19 oral, or electronic communication in an immediate life-threatening
20 situation except as provided by Section 8A.

21 SECTION 5. Section 6, Article 18.20, Code of Criminal
22 Procedure, is amended to read as follows:

23 Sec. 6. REQUEST FOR APPLICATION FOR INTERCEPTION. (a) The
24 director or a chief law enforcement officer may, based on written
25 affidavits, request in writing that a prosecutor apply for an order
26 authorizing interception of wire, oral, or electronic
27 communications.

1 (b) The head of a local law enforcement agency, other than a
2 designated law enforcement agency authorized to act under Section
3 5A, or, if the head of the local law enforcement agency is absent or
4 unable to serve, the acting head of the local law enforcement agency
5 may, based on written affidavits, request in writing that a
6 prosecutor apply for an order authorizing interception of wire,
7 oral, or electronic communications. Prior to the requesting of an
8 application under this subsection, the head of a local law
9 enforcement agency must submit the request and supporting
10 affidavits to the director or a chief law enforcement officer, who
11 shall make a finding in writing whether the request and supporting
12 affidavits establish that other investigative procedures have been
13 tried and failed or they reasonably appear unlikely to succeed or to
14 be too dangerous if tried, is feasible, is justifiable, and whether
15 the Department of Public Safety or designated law enforcement
16 agency, as applicable, has the necessary resources available. The
17 prosecutor may file the application only after a written positive
18 finding on all the above requirements by the director or a chief law
19 enforcement officer.

20 SECTION 6. Section 9(d), Article 18.20, Code of Criminal
21 Procedure, is amended to read as follows:

22 (d) An order entered pursuant to this section may not
23 authorize the interception of a wire, oral, or electronic
24 communication for longer than is necessary to achieve the objective
25 of the authorization and in no event may it authorize interception
26 for more than 30 days. The initial period of interception begins on
27 the earlier of the date the investigative or law enforcement

1 officer begins to intercept communications or the 10th day after
2 the date the interception order is entered. The issuing judge may
3 grant extensions of an order, but only on application for an
4 extension made in accordance with Section 8 and the court making the
5 findings required by Subsection (a). The period of extension may
6 not be longer than the authorizing judge deems necessary to achieve
7 the purposes for which it is granted and in no event may the
8 extension be for more than 30 days. To be valid, each order and
9 extension of an order must provide that the authorization to
10 intercept be executed as soon as practicable, be conducted in a way
11 that minimizes the interception of communications not otherwise
12 subject to interception under this article, and terminate on
13 obtaining the authorized objective or within 30 days, whichever
14 occurs sooner. If the intercepted communication is in code or a
15 foreign language and an expert in that code or language is not
16 reasonably available during the period of interception,
17 minimization may be accomplished as soon as practicable after the
18 interception.

19 SECTION 7. Section 15(c), Article 18.20, Code of Criminal
20 Procedure, is amended to read as follows:

21 (c) Any judge or prosecutor required to file a report with
22 the Administrative Office of the United States Courts shall forward
23 a copy of the [~~such~~] report to the director of the Department of
24 Public Safety. On or before March 1 of each year, the director
25 shall submit to the governor; lieutenant governor; speaker of the
26 house of representatives; chairman, senate jurisprudence
27 committee; and chairman, house of representatives criminal

1 jurisprudence committee a report of all intercepts as defined
2 herein conducted pursuant to this article and terminated during the
3 preceding calendar year. The [~~Such~~] report must [~~shall~~] include:

4 (1) the reports of judges and prosecuting attorneys
5 forwarded to the director as required in this section;

6 (2) the number of Department of Public Safety
7 personnel and designated law enforcement agency personnel
8 authorized to possess, install, or operate electronic, mechanical,
9 or other devices;

10 (3) the number of Department of Public Safety and
11 other law enforcement personnel who participated or engaged in the
12 seizure of intercepts pursuant to this article during the preceding
13 calendar year; and

14 (4) the total cost to the Department of Public Safety
15 and designated law enforcement agencies of all activities and
16 procedures relating to the seizure of intercepts during the
17 preceding calendar year, including costs of equipment, manpower,
18 and expenses incurred as compensation for use of facilities or
19 technical assistance provided to the department and designated law
20 enforcement agencies.

21 SECTION 8. (a) The changes in law made by this Act in
22 amending Sections 1, 3, 5, and 6 and adding Section 5A, Article
23 18.20, Code of Criminal Procedure, apply only to the interception
24 of wire, oral, or electronic communications on or after the
25 effective date of this Act. The interception of wire, oral, or
26 electronic communications before the effective date of this Act is
27 governed by the law in effect when the interception occurred, and

1 the former law is continued in effect for that purpose.

2 (b) The change in law made by this Act in amending Section 9,
3 Article 18.20, Code of Criminal Procedure, applies only to a court
4 order issued on or after the effective date of this Act. A court
5 order issued before the effective date of this Act is governed by
6 the law in effect on the date the court order was issued, and the
7 former law is continued in effect for that purpose.

8 SECTION 9. This Act takes effect September 1, 2011.