

By: Madden

H.B. No. 2354

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the installation and use of a pen register, ESN reader,
3 trap and trace device, mobile tracking device, or similar equipment
4 in a correctional facility operated by or under contract with the
5 Texas Department of Criminal Justice.

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

7 SECTION 1. Sections 1(2) and (3-a), Article 18.21, Code of
8 Criminal Procedure, are amended to read as follows:

9 (2) "Authorized peace officer" means:

10 (A) a sheriff or a sheriff's deputy;

11 (B) a constable or deputy constable;

12 (C) a marshal or police officer of an
13 incorporated city;

14 (D) a ranger or officer commissioned by the
15 Public Safety Commission or the director of the Department of
16 Public Safety;

17 (E) an investigator of a prosecutor's office;

18 (F) a law enforcement agent of the Alcoholic
19 Beverage Commission;

20 (G) a law enforcement officer commissioned by the
21 Parks and Wildlife Commission; or

22 (H) an enforcement officer appointed by the
23 inspector general [~~executive director~~] of the Texas Department of
24 Criminal Justice under Section 493.019, Government Code.

1 (3-a) "Designated law enforcement office or agency"

2 means:

3 (A) the sheriff's department of a county with a
4 population of 3.3 million or more; [~~or~~]

5 (B) a police department in a municipality with a
6 population of 500,000 or more; or

7 (C) the office of inspector general of the Texas
8 Department of Criminal Justice.

9 SECTION 2. Sections 2(b), (d), (e), (i), (j), (k), (l), and
10 (m), Article 18.21, Code of Criminal Procedure, are amended to read
11 as follows:

12 (b) A prosecutor may file an application under this section
13 or under federal law on the prosecutor's own motion or on the
14 request of an authorized peace officer, regardless of whether the
15 officer is commissioned by the department. A prosecutor who files
16 an application on the prosecutor's own motion or who files an
17 application for the installation and use of a pen register, ESN
18 reader, or similar equipment on the request of an authorized peace
19 officer not commissioned by the department, other than an
20 authorized peace officer employed by a designated law enforcement
21 office or agency, must make the application personally and may not
22 do so through an assistant or some other person acting on the
23 prosecutor's behalf. A prosecutor may make an application through
24 an assistant or other person acting on the prosecutor's behalf if
25 the prosecutor files an application for the installation and use
26 of:

27 (1) a pen register, ESN reader, or similar equipment

1 on the request of:

2 (A) an authorized peace officer who is
3 commissioned by the department; or

4 (B) an authorized peace officer of a designated
5 law enforcement office or agency; or

6 (2) a trap and trace device or similar equipment on the
7 request of an authorized peace officer, regardless of whether the
8 officer is commissioned by the department.

9 (d) On presentation of the application, the judge may order
10 the installation and use of the pen register, ESN reader, or similar
11 equipment by an authorized peace officer commissioned by the
12 department or an authorized peace officer of a designated law
13 enforcement office or agency, and, on request of the applicant, the
14 judge shall direct in the order that a communication common carrier
15 or a provider of electronic communications service furnish all
16 information, facilities, and technical assistance necessary to
17 facilitate the installation and use of the device or equipment by
18 the department or designated law enforcement office or agency
19 unobtrusively and with a minimum of interference to the services
20 provided by the carrier or service. The carrier or service is
21 entitled to compensation at the prevailing rates for the facilities
22 and assistance provided to the department or a designated law
23 enforcement office or agency.

24 (e) On presentation of the application, the judge may order
25 the installation and use of the trap and trace device or similar
26 equipment by the communication common carrier or other person on
27 the appropriate line. The judge may direct the communication

1 common carrier or other person, including any landlord or other
2 custodian of equipment, to furnish all information, facilities, and
3 technical assistance necessary to install or use the device or
4 equipment unobtrusively and with a minimum of interference to the
5 services provided by the communication common carrier, landlord,
6 custodian, or other person. Unless otherwise ordered by the court,
7 the results of the trap and trace device or similar equipment shall
8 be furnished to the applicant, designated by the court, at
9 reasonable intervals during regular business hours, for the
10 duration of the order. The carrier is entitled to compensation at
11 the prevailing rates for the facilities and assistance provided to
12 the designated law enforcement office or agency.

13 (i) A peace officer of a designated law enforcement office
14 or agency is authorized to possess, install, operate, or monitor a
15 pen register, ESN reader, or similar equipment if the officer's
16 name is on the list submitted to the director of the department
17 under Subsection (k).

18 (j) Each designated law enforcement office or agency shall:

19 (1) adopt a written policy governing the application
20 of this article to the office or agency; and

21 (2) submit the policy to the director of the
22 department, or the director's designee, for approval.

23 (k) If the director of the department or the director's
24 designee approves the policy submitted under Subsection (j), the
25 inspector general of the Texas Department of Criminal Justice or
26 the inspector general's designee, or the sheriff or chief of a
27 designated law enforcement agency[~~, as applicable,~~] or the

1 sheriff's or chief's designee, as applicable, shall submit to the
2 director a written list of all officers in the designated law
3 enforcement office or agency who are authorized to possess,
4 install, monitor, or operate pen registers, ESN readers, or similar
5 equipment.

6 (1) The department may conduct an audit of a designated law
7 enforcement office or agency to ensure compliance with this
8 article. If the department determines from the audit that the
9 designated law enforcement office or agency is not in compliance
10 with the policy adopted by the office or agency under Subsection
11 (j), the department shall notify the office or agency in writing
12 that it is not in compliance. If the department determines that the
13 office or agency still is not in compliance with the policy 90 days
14 after the date the office or agency receives written notice under
15 this subsection, the office or agency loses the authority granted
16 by this article until:

17 (1) the office or agency adopts a new written policy
18 governing the application of this article to the office or agency;
19 and

20 (2) the department approves the written policy.

21 (m) The inspector general of the Texas Department of
22 Criminal Justice or the sheriff or chief of a designated law
23 enforcement agency, as applicable, shall submit to the director of
24 the department a written report of expenditures made by the
25 designated law enforcement office or agency for the purchase and
26 maintenance of a pen register, ESN reader, or similar equipment,
27 authorized under this article [~~pursuant to Subsection (i)~~]. The

1 director of the department shall report those [~~such~~] expenditures
2 publicly on an annual basis via the department's website, or other
3 comparable means.

4 SECTION 3. Section 6(e), Article 18.21, Code of Criminal
5 Procedure, is amended to read as follows:

6 (e) The service provider may not destroy or permit the
7 destruction of the copy until the information has been delivered to
8 the designated law enforcement office or agency or until the
9 resolution of any court proceedings, including appeals of any
10 proceedings, relating to the subpoena or court order requesting the
11 creation of the copy, whichever occurs last.

12 SECTION 4. Section 6(g)(2), Article 18.21, Code of Criminal
13 Procedure, is amended to read as follows:

14 (2) The subscriber or customer shall give written
15 notice to the service provider of the challenge to the subpoena or
16 court order. The authorized peace officer or designated law
17 enforcement office or agency requesting the subpoena or court order
18 shall be served a copy of the papers filed by personal delivery or
19 by registered or certified mail.

20 SECTION 5. Section 15, Article 18.21, Code of Criminal
21 Procedure, is amended to read as follows:

22 Sec. 15. SUBPOENA AUTHORITY. (a) The director of the
23 department or [] the director's designee, the inspector general of
24 the Texas Department of Criminal Justice or the inspector general's
25 designee, or the sheriff or chief of a designated law enforcement
26 agency[] or the sheriff's or chief's designee[] may issue an
27 administrative subpoena to a communications common carrier or an

1 electronic communications service to compel the production of the
2 carrier's or service's business records that:

3 (1) disclose information about:

4 (A) the carrier's or service's customers; or

5 (B) users of the services offered by the carrier
6 or service; and

7 (2) are material to a criminal investigation.

8 (b) Not later than the 30th day after the date on which the
9 administrative subpoena is issued under Subsection (a), the
10 inspector general of the Texas Department of Criminal Justice or
11 the sheriff or chief of a designated law enforcement agency, as
12 applicable, shall report the issuance of the subpoena to the
13 department.

14 (c) If, based on reports received under Subsection (b), the
15 department determines that a designated law enforcement office or
16 agency is not in compliance with the policy adopted by the office or
17 agency under Section 2(j), the department shall notify the office
18 or agency in writing that it is not in compliance. If the department
19 determines that the office or agency still is not in compliance with
20 the policy 90 days after the date the office or agency receives
21 written notice under this subsection, the office or agency loses
22 the authority granted by this article until:

23 (1) the office or agency adopts a new written policy
24 governing the application of this article to the office or agency;
25 and

26 (2) the department approves the written policy.

27 SECTION 6. This Act takes effect September 1, 2011.