

By: Madden

H.B. No. 2354

A BILL TO BE ENTITLED

1 AN ACT

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

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

7 SECTION 1. Article 18.21, Code of Criminal Procedure, is  
8 amended by adding Section 3A to read as follows:

9 Sec. 3A. INSTALLATION AND USE OF PEN REGISTER, ESN READER,  
10 TRAP AND TRACE DEVICE, OR SIMILAR EQUIPMENT IN CORRECTIONAL  
11 FACILITY. (a) In this section, "correctional facility" means a  
12 confinement facility operated by or under contract with the Texas  
13 Department of Criminal Justice.

14 (b) Notwithstanding any other provision of this article,  
15 the office of the inspector general of the Texas Department of  
16 Criminal Justice may:

17 (1) possess, install, operate, or monitor a pen  
18 register, ESN reader, trap and trace device, or similar equipment  
19 that combines the function of a pen register and a trap and trace  
20 device to produce information that is:

21 (A) necessary to prevent the commission of an  
22 offense under Section 38.06 or 38.07, Penal Code; or

23 (B) material to an ongoing investigation  
24 concerning an offense under Section 38.09 or 38.11, Penal Code; and

1           (2) use, to the extent authorized by law, any  
2 information obtained under Subdivision (1) in any criminal or civil  
3 proceeding before a court or other governmental agency or entity.

4           (c) Not later than the 30th day after the date on which the  
5 office of the inspector general uses a pen register, ESN reader,  
6 trap and trace device, or similar equipment under Subsection (b),  
7 the inspector general shall report the use to:

8           (1) a prosecutor with jurisdiction in the county in  
9 which the device or equipment was used; or

10           (2) the special prosecution unit established under  
11 Subchapter E, Chapter 41, Government Code, if that unit has  
12 jurisdiction in the county in which the device or equipment was  
13 used.

14           (d) When using a pen register, ESN reader, trap and trace  
15 device, or similar equipment under Subsection (b), the office of  
16 the inspector general shall minimize the impact of the device or  
17 equipment on any communication that is not reasonably related to  
18 the purposes for which the device or equipment is used.

19           SECTION 2. Section 500.008, Government Code, is amended to  
20 read as follows:

21           Sec. 500.008. DETECTION AND MONITORING OF CELLULAR  
22 TELEPHONES. (a) The department may own and the office of inspector  
23 general may possess, install, operate, or monitor:

24           (1) an electronic, mechanical, or other device, as  
25 defined by Article 18.20, Code of Criminal Procedure; and

26           (2) a pen register, ESN reader, trap and trace device,  
27 as defined by Article 18.21, Code of Criminal Procedure, or similar

1 equipment that combines the function of a pen register and a trap  
2 and trace device.

3 (b) The inspector general shall designate in writing the  
4 commissioned officers of the office of inspector general who are  
5 authorized to possess, install, operate, and monitor [~~electronic,~~  
6 ~~mechanical, or other~~] devices or equipment described by Subsection  
7 (a) for the department.

8 (c) An investigative or law enforcement officer or other  
9 person, on request of the office of inspector general, may assist  
10 the office in the operation and monitoring of a device or equipment  
11 described by Subsection (a) or an interception of wire, oral, or  
12 electronic communications if the investigative or law enforcement  
13 officer or other person:

14 (1) is designated by the executive director for that  
15 purpose; and

16 (2) acts in the presence and under the direction of a  
17 commissioned officer of the inspector general.

18 SECTION 3. This Act takes effect September 1, 2011.