

By: White

H.B. No. 3759

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the criminal offenses for which and the circumstances
3 under which certain communication devices may be detected and
4 communications may be intercepted.

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

6 SECTION 1. Section 4, Article 18.20, Code of Criminal
7 Procedure, is amended to read as follows:

8 Sec. 4. OFFENSES FOR WHICH INTERCEPTIONS MAY BE AUTHORIZED.
9 A judge of competent jurisdiction may issue an order authorizing
10 interception of wire, oral, or electronic communications only if
11 the prosecutor applying for the order shows probable cause to
12 believe that the interception will provide evidence of the
13 commission of:

- 14 (1) a felony under Section 19.02, 19.03, or 43.26,
15 Penal Code;
- 16 (2) a felony under:
- 17 (A) Chapter 481, Health and Safety Code, other
18 than felony possession of marihuana;
- 19 (B) Section 485.032, Health and Safety Code; or
20 (C) Chapter 483, Health and Safety Code;
- 21 (3) an offense under Section 20.03 or 20.04, Penal
22 Code;
- 23 (4) an offense under Chapter 20A, Penal Code;
- 24 (5) an offense under Chapter 34, Penal Code, if the

1 criminal activity giving rise to the proceeds involves the
2 commission of an offense under Title 5, Penal Code, or an offense
3 under federal law or the laws of another state containing elements
4 that are substantially similar to the elements of an offense under
5 Title 5;

6 (6) an offense under Section 38.09 or 38.11, Penal
7 Code; [~~or~~]

8 (7) a felony under Section 38.06 or 38.07, Penal Code,
9 if the escape relates to a person serving a sentence in a
10 correctional facility following conviction of a felony; or

11 (8) an attempt, conspiracy, or solicitation to commit
12 an offense listed in this section.

13 SECTION 2. The heading to Section 8B, Article 18.20, Code of
14 Criminal Procedure, is amended to read as follows:

15 Sec. 8B. DETECTION OF CELLULAR TELEPHONE OR OTHER WIRELESS
16 COMMUNICATIONS DEVICE IN OR NEAR CORRECTIONAL OR DETENTION
17 FACILITY.

18 SECTION 3. Sections 8B(b), (d), and (e), Article 18.20,
19 Code of Criminal Procedure, are amended to read as follows:

20 (b) Notwithstanding any other provision of this article or
21 Article 18.21, the office of the inspector general of the Texas
22 Department of Criminal Justice may:

23 (1) without a warrant, use electronic, mechanical, or
24 other devices to detect the presence or use of a cellular telephone
25 or other wireless communications device in:

26 (A) a correctional facility; or

27 (B) the immediate vicinity of a correctional

1 facility during the commission or attempted commission of an
2 offense under Section 38.06 or 38.07, Penal Code;

3 (2) without a warrant, intercept, monitor, detect, or,
4 as authorized by applicable federal laws and regulations, prevent
5 the transmission of any communication transmitted through the use
6 of a cellular telephone or other wireless communications device in
7 a location described by Subdivision (1) [~~correctional facility~~];
8 and

9 (3) use, to the extent authorized by law, any
10 information obtained under Subdivision (2), including the contents
11 of an intercepted communication, in any criminal or civil
12 proceeding before a court or other governmental agency or entity.

13 (d) When using an electronic, mechanical, or other device
14 under Subsection (b), the office of the inspector general shall
15 minimize the impact of the device on any communication that is not
16 reasonably related to the detection of the presence or use of a
17 cellular telephone or other wireless communications device in a
18 location described by Subsection (b)(1) [~~correctional facility~~].

19 (e) A person confined in a correctional facility does not
20 have an expectation of privacy with respect to the possession or use
21 of a cellular telephone or other wireless communications device
22 located on the premises or in the immediate vicinity of the
23 facility. The person who is confined, and any person with whom that
24 person communicates through the use of a cellular telephone or
25 other wireless communications device, does not have an expectation
26 of privacy with respect to the contents of any communication
27 transmitted by the cellular telephone or wireless communications

1 device.

2 SECTION 4. This Act takes effect September 1, 2011.