

1-1 By: Huffman S.B. No. 687
1-2 (In the Senate - Filed February 14, 2011; February 23, 2011,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 April 18, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 18, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 687 By: Huffman

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to interception of wire, oral, or electronic
1-11 communications for law enforcement purposes.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 1, Article 18.20, Code of Criminal
1-14 Procedure, is amended by amending Subdivisions (8), (9), and (14)
1-15 and adding Subdivision (27) to read as follows:

1-16 (8) "Prosecutor" means a district attorney, criminal
1-17 district attorney, district attorney's or criminal district
1-18 attorney's designee who is an assistant district attorney in the
1-19 designator's jurisdiction, or county attorney performing the
1-20 duties of a district attorney, with jurisdiction in the county
1-21 within an administrative judicial district described by Section
1-22 3(b).

1-23 (9) "Director" means the director of the Department of
1-24 Public Safety or the director's designee who is an executive
1-25 manager of, ~~if the director is absent or unable to serve, the~~
1-26 ~~assistant director of~~ the Department of Public Safety.

1-27 (14) "Pen register," "ESN reader," "trap and trace
1-28 device," "designated law enforcement agency," and "mobile tracking
1-29 device" have the meanings assigned by Article 18.21.

1-30 (27) "Chief law enforcement officer" means:

1-31 (A) the head law enforcement officer of a
1-32 designated law enforcement agency that is authorized to act under
1-33 Section 5A, including the chief of police of a municipal police
1-34 department and the sheriff of a county; or

1-35 (B) the chief law enforcement officer's designee
1-36 who is an executive manager of the designated law enforcement
1-37 agency.

1-38 SECTION 2. Subsection (b), Section 3, Article 18.20, Code
1-39 of Criminal Procedure, is amended to read as follows:

1-40 (b) Except as provided by Subsection (c), a judge appointed
1-41 under Subsection (a) may act on an application for authorization to
1-42 intercept wire, oral, or electronic communications if the judge is
1-43 appointed as the judge of competent jurisdiction within the
1-44 administrative judicial district in which the following is located:

1-45 (1) the site of:

1-46 (A) the proposed interception; or

1-47 (B) the interception device to be installed or
1-48 monitored;

1-49 (2) the communication device to be intercepted;

1-50 (3) the billing, residential, or business address of
1-51 the subscriber to the wire or electronic communications service to
1-52 be intercepted;

1-53 (4) the headquarters of the law enforcement agency
1-54 that makes a request for or executes an order authorizing an
1-55 interception; or

1-56 (5) the headquarters of the service provider.

1-57 SECTION 3. Subsections (a) and (b), Section 5, Article
1-58 18.20, Code of Criminal Procedure, are amended to read as follows:

1-59 (a) Except as otherwise provided by this section and
1-60 Sections 8A and 8B, only the Department of Public Safety or, subject
1-61 to Section 5A, a designated law enforcement agency is authorized by
1-62 this article to own, possess, install, operate, or monitor an
1-63 electronic, mechanical, or other device. The Department of Public

Safety or designated law enforcement agency may be assisted by an investigative or law enforcement officer or other person in the operation and monitoring of an interception of wire, oral, or electronic communications, provided that the officer or other person:

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

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

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

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

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

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

Sec. 5A. OVERSIGHT OF DESIGNATED LAW ENFORCEMENT AGENCIES BY THE DEPARTMENT. (a) To be eligible to intercept a wire, oral, or electronic communication under this article in a circumstance that is not an immediate life-threatening situation, a designated law enforcement agency must:

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

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

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

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

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

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

(d) The department may conduct an audit of a designated law enforcement agency to ensure compliance with a written policy adopted under Subsection (a) and with the other provisions of this article. If after conducting an audit the department determines that the designated law enforcement agency is not in compliance as described by this subsection, the department shall notify the agency in writing not later than the 30th day after the date of the determination. If on the 90th day after the date the notice is received the department determines that the agency is not in compliance, the agency relinquishes the authority provided by this article until the agency is in compliance.

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

(f) A designated law enforcement agency and the peace officers of that agency are not authorized to intercept a wire, oral, or electronic communication in an immediate life-threatening

situation except as provided by Section 8A.

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

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

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

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

(d) An order entered pursuant to this section may not authorize the interception of a wire, oral, or electronic communication for longer than is necessary to achieve the objective of the authorization and in no event may it authorize interception for more than 30 days. The initial period of interception begins on the earlier of the date the investigative or law enforcement officer begins to intercept communications or the 10th day after the date the interception order is entered. The issuing judge may grant extensions of an order, but only on application for an extension made in accordance with Section 8 and the court making the findings required by Subsection (a). The period of extension may not be longer than the authorizing judge deems necessary to achieve the purposes for which it is granted and in no event may the extension be for more than 30 days. To be valid, each order and extension of an order must provide that the authorization to intercept be executed as soon as practicable, be conducted in a way that minimizes the interception of communications not otherwise subject to interception under this article, and terminate on obtaining the authorized objective or within 30 days, whichever occurs sooner. If the intercepted communication is in code or a foreign language and an expert in that code or language is not reasonably available during the period of interception, minimization may be accomplished as soon as practicable after the interception.

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

(c) Any judge or prosecutor required to file a report with the Administrative Office of the United States Courts shall forward a copy of the ~~[such]~~ report to the director of the Department of Public Safety. On or before March 1 of each year, the director shall submit to the governor; lieutenant governor; speaker of the house of representatives; chairman, senate jurisprudence committee; and chairman, house of representatives criminal jurisprudence committee a report of all intercepts as defined herein conducted pursuant to this article and terminated during the preceding calendar year. The ~~[Such]~~ report must ~~[shall]~~ include:

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

(2) the number of Department of Public Safety personnel and designated law enforcement agency personnel

4-1 authorized to possess, install, or operate electronic, mechanical,
4-2 or other devices;

4-3 (3) the number of Department of Public Safety and
4-4 other law enforcement personnel who participated or engaged in the
4-5 seizure of intercepts pursuant to this article during the preceding
4-6 calendar year; and

4-7 (4) the total cost to the Department of Public Safety
4-8 and designated law enforcement agencies of all activities and
4-9 procedures relating to the seizure of intercepts during the
4-10 preceding calendar year, including costs of equipment, manpower,
4-11 and expenses incurred as compensation for use of facilities or
4-12 technical assistance provided to the department and designated law
4-13 enforcement agencies.

4-14 SECTION 8. (a) The changes in law made by this Act in
4-15 amending Sections 1, 3, 5, and 6 and adding Section 5A, Article
4-16 18.20, Code of Criminal Procedure, apply only to the interception
4-17 of wire, oral, or electronic communications on or after the
4-18 effective date of this Act. The interception of wire, oral, or
4-19 electronic communications before the effective date of this Act is
4-20 governed by the law in effect when the interception occurred, and
4-21 the former law is continued in effect for that purpose.

4-22 (b) The change in law made by this Act in amending Section 9,
4-23 Article 18.20, Code of Criminal Procedure, applies only to a court
4-24 order issued on or after the effective date of this Act. A court
4-25 order issued before the effective date of this Act is governed by
4-26 the law in effect on the date the court order was issued, and the
4-27 former law is continued in effect for that purpose.

4-28 SECTION 9. This Act takes effect September 1, 2011.

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