

BILL ANALYSIS

H.B. 3493
By: Moody
Criminal Procedure Reform, Select
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law imposes several restrictions and requirements on the interception of wire, oral, or electronic communications by law enforcement officers. Interested parties suggest that some of these restrictions and requirements have not kept pace with modern technology and are no longer relevant. In particular, those familiar with modern wiretap technology assert that there is no longer a functional distinction between trap and trace devices and pen registers because one device currently performs both functions and that maintaining the traditional definitions and different standards applicable to each device in the law creates confusion and additional expenses in practice. Another concern has been raised in the law enforcement community regarding the requirement that a Department of Public Safety officer be physically present at all times while a wiretap is being operated and monitored. H.B. 3493 addresses these concerns by revising provisions regarding the interception of wire, oral, or electronic communication for law enforcement purposes.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3493 amends the Code of Criminal Procedure to remove the requirement that an investigative or law enforcement officer or other person assisting the Department of Public Safety (DPS) in the operation and monitoring of an interception of wire, oral, or electronic communications act in the presence of a DPS-commissioned officer. The bill redefines "designated law enforcement office or agency," for purposes of statutory provisions regarding the installation and use of pen registers and trap and trace devices and access to stored communications by certain entities, to include the sheriff's department of a county with a population of 500,000 or more, rather than a population of 3.3 million or more.

H.B. 3493 expands a judge's authorization to order the installation and use of a trap and trace device or similar equipment by certain entities and persons to include a provider of an electronic communications service among those entities encompassed by a judge's order and clarifies that a communication common carrier's entitlement to compensation for the facilities and assistance provided to the designated law enforcement office or agency for such installation and use applies also to any other person who provides information, facilities, and assistance for that purpose. The bill authorizes a judge, if for technical reasons pen register information is obtained from an electronic communications service provider through the installation of a trap and trace device and if the pen register information for those technical reasons will be delivered directly to law enforcement across a secure line, to order, on an application for such installation and use, the applicable service provider to install the device and deliver to the appropriate law enforcement agency the pen register information in addition to the other information acquired as a result of the device's installation and use. The bill expressly does not require separate applications to obtain the pen register information and information from the trap and trace device.

EFFECTIVE DATE

September 1, 2013.