

By: Wu

H.B. No. 2841

A BILL TO BE ENTITLED

AN ACT

relating to interception of wire, oral, or electronic communications for law enforcement purposes.

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

SECTION 1. Section 1, Article 18.20, Code of Criminal Procedure, is amended by amending Subdivisions (8), (9), (14), and (22) and adding Subdivision (27) to read as follows:

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

(9) "Director" means the director of the Department of Public Safety or the director's designee who is an executive manager of [~~, if the director is absent or unable to serve, the assistant director of~~] the Department of Public Safety.

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

(22) "Immediate life-threatening situation" means an [~~a hostage, barricade, or other~~] emergency situation that involves an immediate danger of [~~in which a person unlawfully and directly~~].

1 ~~[(A) threatens another with]~~ death~~[,]~~ or
2 ~~[(B) exposes another to a substantial risk of]~~
3 serious bodily injury.

4 (27) "Chief law enforcement officer" means:

5 (A) the head law enforcement officer of a
6 designated law enforcement agency that is authorized to act under
7 Section 5A, including the chief of police of a municipal police
8 department and the sheriff of a county; or

9 (B) the chief law enforcement officer's designee
10 who is an executive manager of the designated law enforcement
11 agency.

12 SECTION 2. Section 3(b), Article 18.20, Code of Criminal
13 Procedure, is amended to read as follows:

14 (b) Except as provided by Subsection (c), a judge appointed
15 under Subsection (a) may act on an application for authorization to
16 intercept wire, oral, or electronic communications if the judge is
17 appointed as the judge of competent jurisdiction within the
18 administrative judicial district in which the following is located:

19 (1) the site of:

20 (A) the proposed interception; or

21 (B) the interception device to be installed or
22 monitored;

23 (2) the communication device to be intercepted;

24 (3) the billing, residential, or business address of
25 the subscriber to the wire or electronic communications service to
26 be intercepted;

27 (4) the headquarters of the law enforcement agency

1 that makes a request for or executes an order authorizing an
2 interception; or

3 (5) the headquarters of the service provider.

4 SECTION 3. Sections 5(a) and (b), Article 18.20, Code of
5 Criminal Procedure, are amended to read as follows:

6 (a) Except as otherwise provided by this section and
7 Sections 8A and 8B, only the Department of Public Safety or, subject
8 to Section 5A, a designated law enforcement agency is authorized by
9 this article to own, possess, install, operate, or monitor an
10 electronic, mechanical, or other device. The Department of Public
11 Safety or designated law enforcement agency may be assisted by an
12 investigative or law enforcement officer or other person in the
13 operation and monitoring of an interception of wire, oral, or
14 electronic communications, provided that the officer or other
15 person:

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

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

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

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

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

1 department or designated law enforcement agency.

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

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

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

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

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

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

27 (1) the agency has complied with Subsections (a) and

1 (b); and

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

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

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

23 (f) A designated law enforcement agency and the peace
24 officers of that agency are not authorized to intercept a wire,
25 oral, or electronic communication in an immediate life-threatening
26 situation except as provided by Section 8A.

27 SECTION 5. Section 6, Article 18.20, Code of Criminal

1 Procedure, is amended to read as follows:

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

7 (b) The head of a local law enforcement agency, other than a
8 designated law enforcement agency authorized to act under Section
9 5A, or, if the head of the local law enforcement agency is absent or
10 unable to serve, the acting head of the local law enforcement agency
11 may, based on written affidavits, request in writing that a
12 prosecutor apply for an order authorizing interception of wire,
13 oral, or electronic communications. Prior to the requesting of an
14 application under this subsection, the head of a local law
15 enforcement agency must submit the request and supporting
16 affidavits to the director or a chief law enforcement officer, who
17 shall make a finding in writing whether the request and supporting
18 affidavits establish that other investigative procedures have been
19 tried and failed or they reasonably appear unlikely to succeed or to
20 be too dangerous if tried, is feasible, is justifiable, and whether
21 the Department of Public Safety or designated law enforcement
22 agency, as applicable, has the necessary resources available. The
23 prosecutor may file the application only after a written positive
24 finding on all the above requirements by the director or a chief law
25 enforcement officer.

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

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

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

27 (c) Any judge or prosecutor required to file a report with

1 the Administrative Office of the United States Courts shall forward
2 a copy of the [~~such~~] report to the director of the Department of
3 Public Safety. On or before March 1 of each year, the director
4 shall submit to the governor; lieutenant governor; speaker of the
5 house of representatives; chairman, senate jurisprudence
6 committee; and chairman, house of representatives criminal
7 jurisprudence committee a report of all intercepts as defined
8 herein conducted pursuant to this article and terminated during the
9 preceding calendar year. The [~~Such~~] report must [~~shall~~] include:

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

12 (2) the number of Department of Public Safety
13 personnel and designated law enforcement agency personnel
14 authorized to possess, install, or operate electronic, mechanical,
15 or other devices;

16 (3) the number of Department of Public Safety and
17 other law enforcement personnel who participated or engaged in the
18 seizure of intercepts pursuant to this article during the preceding
19 calendar year; and

20 (4) the total cost to the Department of Public Safety
21 and designated law enforcement agencies of all activities and
22 procedures relating to the seizure of intercepts during the
23 preceding calendar year, including costs of equipment, manpower,
24 and expenses incurred as compensation for use of facilities or
25 technical assistance provided to the department and designated law
26 enforcement agencies.

27 SECTION 8. Section 1, Article 18.21, Code of Criminal

1 Procedure, is amended by amending Subdivision (1) and adding
2 Subdivision (4-a) to read as follows:

3 (1) "Aural transfer," "communication common carrier,"
4 "computer trespasser," "electronic communication," "electronic
5 communications service," "electronic communications system,"
6 "electronic storage," [~~"immediate life-threatening situation,"~~]
7 "member of a law enforcement unit specially trained to respond to
8 and deal with life-threatening situations," "readily accessible to
9 the general public," "user," and "wire communication" have the
10 meanings assigned by Article 18.20.

11 (4-a) "Immediate life-threatening situation" means a
12 hostage, barricade, or other emergency situation in which a person
13 unlawfully and directly:

14 (A) threatens another with death; or

15 (B) exposes another to a substantial risk of
16 serious bodily injury.

17 SECTION 9. (a) The changes in law made by this Act in
18 amending Sections 1, 3, 5, and 6 and adding Section 5A, Article
19 18.20, Code of Criminal Procedure, apply only to the interception
20 of wire, oral, or electronic communications on or after the
21 effective date of this Act. The interception of wire, oral, or
22 electronic communications before the effective date of this Act is
23 governed by the law in effect when the interception occurred, and
24 the former law is continued in effect for that purpose.

25 (b) The change in law made by this Act in amending Section 9,
26 Article 18.20, Code of Criminal Procedure, applies only to a court
27 order issued on or after the effective date of this Act. A court

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1 order issued before the effective date of this Act is governed by
2 the law in effect on the date the court order was issued, and the
3 former law is continued in effect for that purpose.

4 SECTION 10. This Act takes effect September 1, 2013.