

SUBJECT:               Revising electronic surveillance laws

COMMITTEE:           Law Enforcement — committee substitute recommended

VOTE:                   6 ayes — Driver, Latham, Allen, Frost, Ortiz, Vo

0 nays

1 absent — West

SENATE VOTE:       On final passage, May 3 — 31-0, on Local and Uncontested Calendar

WITNESSES:       For — Lance Long, Harris County District Attorney's Office; Breck  
McDaniel, Houston Police Department; (*Registered, but did not testify*:  
Gary Tittle, Dallas Department Chief of Police David Kunkle)

Against — None

On — Douglas Kunkle, Texas Department of Public Safety

BACKGROUND:       Code of Criminal Procedure, art. 18.20 governs the interception and use of  
wire, oral, or electronic communications. It specifies which judges may  
consider interception applications; offenses for which interceptions may  
be authorized; when law enforcement officers or others may disclose the  
contents of intercepted communications; emergency installations of  
intercepting devices; procedures for obtaining an interception order and  
for preserving intercepted communications; when the contents of an  
intercepted wire or other communication are admissible in evidence; and  
when civil causes of action are authorized by those whose  
communications are intercepted, disclosed, or used in violation of the law.  
Interception means the aural or other acquisition of the contents of a wire,  
oral, or electronic communication through an electronic, mechanical, or  
other device.

DIGEST:               CSSB 1361 would amend Code of Criminal Procedure, Art. 18.20 in  
several places to add references to a wire communication. The bill would  
also amend Art. 18.21 (a) to provide that a district judge could order

installation of a mobile tracking device if the following were within the judge's judicial district:

- the site of the investigation;
- the site of the interception device to be installed; or
- the headquarters of the law enforcement agency that requested or executed the order for the interception device.

CSSB 1361 also would delete references to electronic storage of wire communication in the definition of "wire communication" and references to pen register, ESN reader, and trap and trace equipment in the description of devices excluded from the definition of "mobile tracking device." The bill would make other changes to make any request for a mobile tracking device be limited to no more than 90 days.

The bill would take effect on September 1, 2007, and would apply to any warrant, subpoena, or court order regarding disclosure of wire communication or electronic communication obtained on or after that date.

**SUPPORTERS  
SAY:**

CSSB 1361 would update current electronic surveillance laws to keep apace of changes in technology and close loopholes in the existing standards. Electronic mail, voice mail, cellular telephone text messaging, computer communications, and websites such as MySpace have become tools used by sexual predators to seek out and communicate with young people. Also, these media have been used by those who traffic in child pornography to contact others for the purpose of selling and distributing their wares. The bill would help law enforcement agencies and prosecutors focus their efforts on newly hazardous electronic venues.

Providing law enforcement officials with the authority to track and preserve information collected from other communication media would help in investigation of other crimes. Police could use the authority to track the victim of an aggravated kidnapping or to gain access to the voice mail records of a murder victim.

The bill would update state statutes to mirror federal law regulating electronic surveillance. The changes in definitions of wire communication and mobile tracking device reflect the provisions of 18 USCA 25.10, and the 90-day limit on orders allowing the surveillance are part of 18 USCA 27.05.

CSSB 1361 also would clarify and limit the authority of district judges to order surveillance outside their judicial districts. The change would help preclude wide-ranging “fishing expeditions” and reach a balance between protecting public safety and preserving individual constitutional rights.

**OPPONENTS  
SAY:**

The bill could continue the erosion of Texans’ constitutional rights against unreasonable searches and invasions of their privacy and rights generally to be left alone by government authorities. The committee substitute provision on limiting the surveillance devices to the location of the law enforcement agency’s headquarters would provide little safeguard because the Department of Public Safety, for example, essentially has statewide jurisdiction. It could seek an order in Austin for surveillance in the Rio Grande Valley or the Panhandle.

**NOTES:**

The House committee substitute added the provision that would limit a district judge’s authority to issue an order for the installation and use of a mobile tracking device only within the judicial district where the investigation would take place or the interception device would be installed or in the location of the headquarters of the law enforcement agency making the request.