

BILL ANALYSIS

Senate Research Center
80R2397 HLT-F

S.B. 823
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Criminal Justice
3/26/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Pen register devices are used to capture real time outgoing telephone numbers dialed from a target telephone. Under current law, only specialized Department of Public Safety (DPS) investigators are authorized to own or operate these devices, and only under a court order. The law requires a judge to approve the application for the usage of this device after a law enforcement agency has demonstrated that the installation and usage of the device will likely produce information that is material to an ongoing criminal investigation. Law enforcement agencies have had success using these devices to investigate kidnappings and search for suspects wanted for serious felonies.

As proposed, S.B. 823 authorizes peace officers specially trained by DPS to own and operate pen register devices under the provisions and restrictions of current law on their usage.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1(23), Article 18.20, Code of Criminal Procedure, to redefine "member of a law enforcement unit specially trained to respond to and deal with life-threatening situations."

SECTION 2. Amends Section 1, Article 18.21, Code of Criminal Procedure, by adding Subdivision (3-a), to define "designated police agency."

SECTION 3. Amends Section 2, Article 18.21, Code of Criminal Procedure, by amending Subsections (b) and (d) and adding Subsections (i), (j), and (k), as follows:

(b) Requires a prosecutor who files a certain application for the installation and use of a pen register, ESN reader, or similar equipment (equipment) on the request of an authorized peace officer not commissioned by DPS, other than an authorized peace officer employed by a designated police agency (designated officer), to make the application personally and prohibits said application from being made through an assistant or other person acting on the prosecutor's behalf.

(d) Authorizes a judge to order the installation of such equipment by a designated officer. Makes conforming changes.

(i) Authorizes a designated police agency to own and possess such equipment.

(j) Authorizes a peace officer of a designated police agency to possess and use such equipment if the officer is certified in writing by the chief of the agency to the director of the Department of Public Safety (DPS) as being trained in the installation and use of such equipment.

(k) Requires the chief of a designated police agency to submit to the director of DPS a written list of all officers in the agency who are authorized by the chief to possess, install, or use such equipment.

SECTION 4. Amends Section 3(a), Article 18.21, Code of Criminal Procedure, to make a conforming change.

SECTION 5. Amends Section 15, Article 18.21, Code of Criminal Procedure, to make a conforming change.

SECTION 6. Makes application of Sections 2(b) and (d), Article 18.21, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 7. Effective date: upon passage or September 1, 2007.