

BILL ANALYSIS

Senate Research Center
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S.B. 188
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, only the Department of Public Safety of the State of Texas (DPS) is authorized to intercept wire, oral, or electronic communications on behalf of local law enforcement agencies using state equipment and personnel. Some major metropolitan jurisdictions assert that the authority to conduct these intercepts would lead to more efficient criminal investigations.

In addition, the start date of an intercept is not explicitly defined by current law. While it is presumed to be effective immediately, associated uncertainty has the potential to lessen the length and effectiveness of approved intercepts, particularly in cases where the delay is associated with waiting for DPS resources and manpower to become available.

S.B. 188 allows DPS to grant authority to designated local law enforcement agencies to use intercept methods in investigations where all other investigative methods have been exhausted. Designated local law enforcement agencies are defined as counties with a population of 3.3 million or more (Harris County) or municipalities with a population of 500,000 or more.

Before a local agency is able to conduct its own intercepts, it must submit an initial intercept plan to DPS for approval. This plan details the protocols that the local law enforcement agency will use when conducting intercepts.

Not only does DPS maintain the ability to audit a designated law enforcement agency for compliance with the designated plan and state law, but local agencies must also be granted court approval before each intercept is conducted. This oversight is critical to ensuring that no designated law enforcement agency misuses the authority granted to it under S.B. 188.

The bill also designates that the period of interception becomes effective on the day the officers begin receiving intercepted information or 10 days after the order allowing an intercept is issued, whichever comes first, and that an intercept can last no longer than 30 days.

As proposed, S.B. 188 amends current law relating to interception of wire, oral, or electronic communications for law enforcement purposes.

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, Article 18.20, Code of Criminal Procedure, by amending Subdivisions (8), (9), and (14) and adding Subdivision (27), as follows:

(8) Redefines "prosecutor" as a district attorney, criminal district attorney, district attorney's or criminal district attorney's designee who is an assistant district attorney in the district attorney's or criminal district attorney'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) (relating to a judge acting on an application for authorization to intercept communications).

(9) Redefines "director" as the director of the Department of Public Safety of the State of Texas (DPS) or the director's designee who is an executive manager of, rather than if the director is absent or unable to serve, the assistant director of, the Department of Public Safety (director of DPS).

(14) Defines "designated law enforcement agency" with the meaning assigned by Article 18.21 (Pen Registers and Trap and Trace Devices; Access to Stored Communications; Mobile Tracking Devices).

(27) Defines "chief law enforcement officer" as the head enforcement officer of a designated law enforcement agency that is authorized to act under Section 5A (relating to the Department of Public Safety is authorized to utilize electronic and mechanical devices), including the chief of police of a municipal police department and the sheriff of a county or the chief law enforcement officer's designee who is an executive manager of the designated law enforcement agency.

SECTION 2. Amends Section 3(b), Article 18.20, Code of Criminal Procedure, to authorize a judge appointed under Subsection (a) (relating to the appointment of a judge from each administrative judicial district to serve as the judge of competent jurisdiction within that district), except as provided by Subsection (c) (relating to the application procedure if the judge of competent jurisdiction for an administrative judicial district is absent or unable to serve or if exigent circumstances exist), to act on an application for authorization to intercept wire, oral, or electronic communications if the judge is appointed as the judge of competent jurisdiction within the administrative judicial district in which a certain site or device is located, including the billing, residential, or business address of the subscriber to the wire or electronic communications service to be intercepted.

SECTION 3. Amends Sections 5(a) and (b), Article 18.20, Code of Criminal Procedure, as follows:

(a) Authorizes only DPS, except as otherwise provided by this section and Sections 8A (Emergency Installation and Use of Intercepting Device) and 8B (Detection of Cellular Telephone or Other Wireless Communications Device in Correctional or Detention Facility), or, subject to Section 5A, a designated law enforcement agency, to own, possess, install, operate, or monitor an electronic, mechanical, or other device. Authorizes DPS or a designated law enforcement agency to 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 is designated by the director of DPS or a chief law enforcement officer for that purpose and acts in the presence and under the direction of a commissioned officer of DPS or a commissioned officer of the designated law enforcement agency who is trained for that purpose.

(b) Requires the director of DPS or a chief law enforcement officer to designate in writing the commissioned officers of DPS 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. Amends Article 18.20, Code of Criminal Procedure, by adding Section 5A, as follows:

Sec. 5A. OVERSIGHT OF DESIGNATED LAW ENFORCEMENT AGENCIES BY THE DEPARTMENT. (a) Requires a designated law enforcement agency, 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, to 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 submit the policy to the director of DPS for approval.

(b) Requires the director of DPS to approve or deny a policy submitted under Subsection (a). Requires the chief law enforcement agency that submitted the policy, if the director of DPS approves a policy submitted under Subsection (a), to 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) Authorizes a designated law enforcement agency to intercept wire, oral, or electronic communications under this article in a circumstance that is not an immediate life-threatening situation only if the agency has complied with Subsections (a) and (b) and the director of DPS has approved the agency's policy.

(d) Authorizes DPS to 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. Requires DPS, if after conducting an audit DPS determines that the designated law enforcement agency is not in compliance as described by this subsection, to notify the agency in writing not later than the 30th day after the date of the determination. Provides that the agency relinquishes the authority provided by this article until the agency is in compliance, if on the 90th day after the date the notice is received DPS determines that the agency is not in compliance.

(e) Requires a commissioned peace officer of a designated law enforcement agency, 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, to complete at least 16 hours of training regarding the interception of such communications. Requires the chief law enforcement officer of the officer's employing agency to submit appropriate documentation of each authorized peace officer's completion of training to the Commission on Law Enforcement Officer Standards and Education.

(f) Prohibits a designated law enforcement agency and the peace officers of that agency from intercepting a wire, oral, or electronic communication in an immediate life-threatening situation except as provided by Section 8A.

SECTION 5. Amends Section 6, Article 18.20, Code of Criminal Procedure, as follows:

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

(b) Authorizes 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 to, based on written affidavits, request in writing that a prosecutor apply for an order authorizing interception of wire, oral, or electronic communications. Requires the head of a local law enforcement agency, prior to the requesting of an application under this subsection, to submit the request and supporting affidavits to the director of DPS or a chief law enforcement officer, who is required to 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 DPS or designated law enforcement agency, as applicable, has the necessary resources available. Authorizes the prosecutor to file the application only after a written positive

finding on all the above requirements by the director of DPS or a chief law enforcement officer

SECTION 6. Amends Section 9(d), Article 18.20, Code of Criminal Procedure, to provide that the initial period of interception of a wire, oral, or electronic communication 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.

SECTION 7. Amends Section 15(c), Article 18.20, Code of Criminal Procedure, as follows:

(c) Requires any judge or prosecutor required to file a report with the Administrative Office of the United States Courts to forward a copy of the report to the director of DPS. Requires the director of DPS, on or before March 1 of each year, to 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. Requires that the report include the reports of judges and prosecuting attorneys forwarded to the director of DPS as required in this section; the number of DPS personnel and designated law enforcement agency personnel authorized to possess, install, or operate electronic, mechanical, or other devices; the number of DPS and other law enforcement personnel who participated or engaged in the seizure of intercepts pursuant to this article during the preceding calendar year; and the total cost to DPS and designated law enforcement agencies of all activities and procedures relating to the seizure of intercepts during the preceding calendar year, including costs of equipment, manpower, and expenses incurred as compensation for use of facilities or technical assistance provided to the department and designated law enforcement agencies.

SECTION 8. (a) Provides that the changes in law made by this Act in amending Sections 1, 3, 5, and 6 and adding Section 5A, Article 18.20, Code of Criminal Procedure, are prospective.

(b) Makes application of Section 9, Article 18.20, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 9. Effective date: September 1, 2013.