

SUBJECT: Extending time for use of a consensual pen register or trap and trace device

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Place, Talton, Greenberg, Nixon, Pickett, Pitts

1 nays — Farrar

2 absent — Hudson, Solis

SENATE VOTE: On final passage, March 27 — 30-0

WITNESSES: None

BACKGROUND: A pen register is a device that attaches to a telephone line and can record outgoing numbers dialed from that line but cannot record the origin of an incoming communication to that line or the content of the communication carried. A trap and trace device attaches to a telephone line and can record an incoming electronic or other impulse that identifies the originating number of an instrument or device where a wire or electronic communication was transmitted. A caller identification service is specifically excluded from the definition of a trap and trace device.

In order for a pen register or trap and trace device to be installed, a district or criminal district attorney must apply to a district court judge. The judge may grant the application for as long as 30 days. Before expiration of the authority, the district or criminal district attorney may apply for an extension of up to 30 days.

DIGEST: SB 322 would provide that if the customer of the service on which a pen register or trap and trace device is installed consents to the installation, a court may extend the order allowing the installation and utilization of such device for up to one year.

The bill would take immediate effect if approved by two-thirds of the membership of each house.

**SUPPORTERS
SAY:**

Pen registers and trap and trace devices are often requested by telephone customers or subscribers in order to monitor their own outgoing or incoming calls. However, even if the installation is consensual, the district or criminal district attorney must appear in person before a district judge every 30 days to extend the order. This is a waste of court resources and personnel. If the order is made with the consent of the subscriber, there is no reason why the order could not be put in place for longer than 30 days.

Trap and trace devices are very similar to caller identification devices that are exempted from this requirement. There is no reason why a court should not be able to order the consensual installation of a device that the customer could place on their phone themselves for as long as they wanted.

**OPPONENTS
SAY:**

These devices are wiretapping surveillance devices that by their nature intrude upon the privacy of the customer on whose phone they are placed and the privacy of anyone that person calls or is called by. Even if the installation of such devices is consensual, they represent such a pervasive intrusion into the privacy of the individual that they should not be allowed for longer than 30 days at a time. Additionally, customers might consent to the installation of such a device initially but reconsider later. There is no provision for the removal of such a device before the expiration of the order if the customer withdraws consent.