

SUBJECT: Intercepting police communications on mobile data terminals

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Place, Talton, Dunnam, Galloway, Hinojosa, Keel, Nixon, A. Reyna
0 nays
1 absent — Farrar

WITNESSES: For — Ted Wilson, Harris County District Attorney's Office; Larry Mikel, Houston Police Department; Calvin Enderli, Sr.
Against — None

BACKGROUND : It is a criminal offense to intentionally intercept a wire, oral or electronic communication. There are numerous affirmative defenses to prosecution for the offense, including for persons intercepting radio communications readily accessible to the general public and transmitted by a governmental, law enforcement, civil defense, private land mobile or public safety communications system.

DIGEST: HB 3373 would alter the current affirmative defense for prosecution for unlawful interception of wire, oral or electronic communications to exclude persons who intercepted radio communications transmitted by law enforcement representatives to or from a mobile data terminal.

HB 3373 would take effect September 1, 1997.

SUPPORTERS SAY: HB 3373 is necessary to combat criminals and others who are monitoring communications among law enforcement authorities and who could use the information to aid and abet crimes by giving criminals advance warning of law enforcement actions. In most cases, communications on mobile data terminals fall under current definitions of readily accessible information. Because current law allows an affirmative defense to prosecution for intercepting readily accessible radio communications transmitted by law enforcement agencies, prosecutors cannot bring cases against these persons.

This interception of law enforcement communications makes it difficult for police to maintain necessary secrecy in their communications and for them to adequately protect the public.

Many police officers and sheriffs now transmit information through mobile data terminals in their cars, sending the information out in code. Dispatch systems are linked directly with the terminals so that officers are dispatched to calls through their mobile data terminals rather than over the voice radio communications. This is a more efficient way to communicate; in some police departments with a high volume of calls, it is the only practical way to dispatch officers.

Persons have broken the secrecy codes used for this information and are transmitting the information to others for pay. This could seriously jeopardize the public safety and hamper law enforcement. For example, someone could monitor the information being sent over the terminals and notify a burglar that the police were on their way to investigate an alarm or drug dealers that police of an impending raid. Likewise, a terrorist could receive information transmitted over the terminals about the whereabouts of a diplomat. Information sent over the terminals by the Houston Police Department has been used to notify wreckers of an automobile accidents so that they can get to wreck scenes and solicit business. In the future, it might be possible for persons who have broken the secrecy codes to transmit back to police headquarters as if they were the police officer who received the call. HB 3373 is necessary to put a stop to this type of activity and give police a secure method of communications and prosecutors a tool to go after persons intercepting sensitive police information.

HB 3373 would not damage the public's right to information. It would carve out only one narrow exception to the current affirmative defenses to prosecution for illegally intercepting communications. It would apply only to radio communications transmitted by law enforcement authorities to or from mobile data terminals. The current exception for readily accessible radio communications by governmental, law enforcement and others would remain. Persons could continue to use scanners to listen to police voice communications that law enforcement authorities still use for transmitting information once they have arrived at a crime scene, to call for additional help or for other communications that do not warrant such a degree of

privacy.

It would be prohibitively expensive for law enforcement authorities to shift to another type of communications. The Houston Police Department estimates it would cost several million dollars to change its system to one that used encrypted information, which can be more secure, or to another communications system.

OPPONENTS
SAY:

HB 3373 could result in an unwise restriction of what has historically been considered public information. The public, the news media, and others currently can monitor police radio communications that are readily accessible to the general public. Monitoring these communications is done to gather information for news stories, to monitor the actions of law enforcement officers, or simply for entertainment. HB 3373 would make this action illegal if done by monitoring transmissions from mobile data terminals. As police and sheriffs use these terminals for more and more of their communications, it could become increasingly important that information transmitted over the terminals be available to the public, just as are regular radio communications. Monitoring police radio communications that are readily accessible is a legitimate activity in a free society and should not be restricted absent a compelling public interest.

A fear that sensitive information would be misused by the media or the public is unfounded and does not occur with current monitoring of radio communications. For example, the news media do not now report that money stolen in a bank robbery contained a transmitter or a die bomb. There is no need to restrict information transmitted over mobile data terminals because these same precautions would be used.

It is unlikely that HB 3373 would deter serious criminals, such as burglars or drug dealers, from monitoring police communications if they are doing it to further their crime.

OTHER
OPPONENTS
SAY:

The Legislature could address the problem of criminal monitoring of police communications without lessening access to public information by stipulating that the current affirmative defense to prosecution would not apply if done with criminal intent. Another method would be to create an exception for activities protected under the First Amendment.

HB 3373
House Research Organization
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