

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 687
By: Huffman
Criminal Justice
4/14/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 687 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."
- (9) Redefines "director."
- (14) Defines "designated law enforcement agency."
- (27) Defines "chief law enforcement officer."

SECTION 2. Amends Section 3(b), Article 18.20, Code of Criminal Procedure, as follows:

(b) Authorizes a judge appointed under Subsection (a) (relating to one district judge from each administrative judicial district appointed by the presiding judge of the court of criminal appeals as the judge of competent jurisdiction within that administrative judicial district), except as provided by Subsection (c) (relating to applying to a judge of competent jurisdiction in an adjacent administrative judicial district if the judge of competent jurisdiction for a district is absent, 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 the following is located:

- (1) the site of:
 - (A) the proposed interception; or
 - (B) the interception device to be installed or monitored;
- (2) the communication device to be intercepted;
- (3) the billing, residential, or business address of the subscriber to the wire or electronic communications service to be intercepted;
- (4) the headquarters of the law enforcement agency that makes a request for or executes an order authorizing an interception; or

(5) the headquarters of the service provider.

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

(a) Provides that only the Department of Public Safety (DPS) or, subject to Section 5A, a designated law enforcement agency is authorized by this article to own, possess, install, operate, or monitor an electronic, mechanical, or other device, except as otherwise provided by this section and Sections 8A (relating to certain peace officers designated by the prosecutor) and 8B (Detection of Cellular Telephone or Other Wireless Communications Device in Correctional or Detention Facility). Authorizes DPS or the 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:

(1) is designated by the director of DPS (director) or a chief law enforcement officer for that purpose; and

(2) acts in the presence and under the direction of:

(A) a commissioned officer of DPS; or

(B) a commissioned officer of the designated law enforcement agency who is trained for that purpose.

(b) Requires the director 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 DPS 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:

(1) 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

(2) submit the policy to the director for approval.

(b) Requires the director to approve or deny a policy submitted under Subsection (a). Requires the chief law enforcement officer of the designated law enforcement agency that submitted the policy, if the director 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:

(1) the agency has complied with Subsections (a) and (b); and

(2) the director 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 to notify the agency in writing not later than the 30th day after the date of the determination if, after conducting an audit, DPS determines that the designated law enforcement agency is not in compliance as described by this subsection. 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 complete at least 16 hours of training regarding the interception of such communications in order 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. 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 or a chief law enforcement officer, rather than the director, to, 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 or a chief law enforcement officer, who shall 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 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 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 that the report include:

(1) the reports of judges and prosecuting attorneys forwarded to the director as required in this section;

(2) the number of DPS personnel and designated law enforcement agency personnel authorized to possess, install, or operate electronic, mechanical, or other devices;

(3) 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

(4) 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 DPS and designated law enforcement agencies.

Makes nonsubstantive changes.

SECTION 8. (a) Makes application of 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, prospective.

(b) Makes application of the change in law made by this Act in amending Section 9, Article 18.20, Code of Criminal Procedure, prospective.

SECTION 9. Effective date: September 1, 2011.