

## **BILL ANALYSIS**

Senate Research Center

S.B. 1223  
By: Bettencourt  
Criminal Justice  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

United States federal law only requires one-party consent for the recording of conversations, but many states have accepted different laws. In some states all parties must give their consent or at least be notified that the conversation is about to be recorded. A total of 12 states have "all-party" consent laws in place.

While only one person in a conversation needs to be knowledgeable that it is being recorded in a one-party consent state, everyone involved in a conversation is required to be given notice in all-party states.

In today's digital age, there is an affinity for people to record daily events. Texans enjoy an expectation of privacy and S.B. 1223 will help to ensure their freedom of expression without concern of being recorded without knowledge or approval.

As proposed, S.B. 1223 amends current law relating to requiring the consent of all parties to legally intercept certain communications.

### **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 123.001(2), Civil Practice and Remedies Code, to redefine "interception."

SECTION 2. Amends Section 16.02, Penal Code, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Provides that it is an affirmative defense to prosecution under Subsection (b) (relating to the interception or the endeavor to intercept a wire, oral, or electronic communication as a commission of an offense) that:

(1) and (2) Makes no change to these subdivisions;

(3) Makes a nonsubstantive change;

(4) a person not acting under color of law intercepts a wire, oral, or electronic communication, if:

(A) the person alleges that the communication:

(i) is of an emergency nature, such as the reporting of a fire, medical emergency, crime, or disaster;

(ii) conveys a threat to themselves or others or makes other unlawful requests or demands;

(B) the person is an employee of a communication common carrier requested to intercept a wire, oral, or electronic communication for the sole purpose of tracing the origin of such communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication:

(i) is obscene, harassing, or threatening in nature; or

(ii) occurs anonymously, repeatedly, or at an extremely inconvenient hour; or

(C) all of the parties to the communication have given prior consent to the interception, unless the communication is intercepted for the purpose of committing an unlawful act;

(5)-(11) Makes no change to these subdivisions.

Deletes existing text providing that it is an affirmative defense to prosecution under Subsection (b) that a person not acting under color of law intercepts a wire, oral, or electronic communication, if the person is a party to the communication or one of the parties to the communication have given prior consent to the interception, unless the communication is intercepted for the purpose of committing an unlawful act.

(c-1) Requires a person conducting an interception under Subsection (c)(4)(B) to notify local police authorities within 48 hours after the time of the interception.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2015.