

BILL ANALYSIS

Senate Research Center
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S.B. 905
By: Whitmire
Criminal Justice
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As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Current Texas law authorizes the Department of Public Safety (DPS) to possess and operate pen registers, yet requires other peace officers to have special permission from the DPS director. The county or district attorney is also required to apply personally for a pen register on behalf of other peace officers. Limited authority to operate pen registers impedes investigations including kidnappings and searches for suspects wanted for felonies. The expanded role of the assistant District Attorneys facilitate quicker authorization to operate the pen registers.

As proposed, S.B. 905 expands the authority of peace officers to possess and operate, install, or monitor a pen register. It repeals Article 18.20, Code of Criminal Procedure, which requires the act to expire in September 2005.

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 2, Article 18.21, Code of Criminal Procedure, by amending Subsections (b) and (d) and adding Subsection (i), as follows:

(b) Requires a prosecutor who files an application on the prosecutor's own motion or who files an application for installation and use of a pen register, ESN reader, or similar equipment on the request of an authorized peace officer not commissioned by the Department of Public Safety (DPS), other than an authorized peace officer described by Subsection (i), to make the application in person and prohibits the prosecutor from doing so through an assistant or some other person acting on the prosecutor's behalf. Makes a conforming change.

(d) Authorizes the judge, on presentation of the application, to order the installation and use of the pen register, ESN reader, or similar equipment by an authorized peace officer commissioned by DPS or by other law enforcement personnel, as applicable.

(i) Authorizes a peace officer other than a commissioned officer of DPS to own, possess, install, operate, or monitor a pen register if the officer is trained in the use of a pen register by that department.

SECTION 2. Amends Section 3(a), Article 18.21, Code of Criminal Procedure, to include Section 2(i) in the authorization for a peace officer to possess, install, operate, or monitor a device.

SECTION 3. Repealer: Section 18, Article 18.20 (Interception and use of wire, oral, or electronic communications), Code of Criminal Procedure.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: upon passage or September 1, 2005.