

BILL ANALYSIS

Senate Research Center
79R12928 EMT-F

C.S.S.B. 905
By: Whitmire
Criminal Justice
4/22/2005
Committee Report (Substituted)

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.

C.S.S.B. 905 expands the authority of peace officers to possess and operate a pen register, ESN reader, or similar equipment. 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 1, Article 18.21, Code of Criminal Procedure, by adding Subdivision (3-a), to define "designated police agency."

SECTION 2. Amends Section 2, Article 18.21, Code of Criminal Procedure, by amending Subsections (b) and (d) and adding Subsections (i), (j), and (k), 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 employed by a designated police agency, 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 and nonsubstantive change.

(d) Makes conforming changes.

(i) Authorizes a designated police agency to own and possess a pen register, ESN reader, or similar equipment.

(j) Provides that a peace officer of a designated police agency is authorized to possess, install, operate, or monitor a pen register, ESN reader, or similar equipment if the officer is certified, in writing, by the chief of the agency to the director of DPS as being trained in the installation and use of a pen register, ESN reader, or similar equipment.

(k) Requires the chief of a designated police agency to submit to the director of DPS a written list of all officers in the agency who are authorized by the chief to possess, install, monitor, or operate pen registers, ESN readers, or similar equipment.

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

SECTION 4. Repealer: Section 18, Article 18.20 (Interception and use of wire, oral, or electronic communications), Code of Criminal Procedure.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: upon passage or September 1, 2005.