

BILL ANALYSIS

Senate Research Center
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H.B. 2354
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The ability of law enforcement and criminal justice authorities to access telephone communications, both land and cellular, for certain criminal or investigative purposes, has proven critical to the resolution of some investigations. As cellular communications increasingly have become the preferred form of communication, the need to track these communications quickly during certain criminal episodes, such as an escape from custody, has also increased. The Texas Department of Criminal Justice (TDCJ) is currently authorized to possess and use certain electronic, mechanical, or other tracking devices, such as cell phone tracking equipment, to intercept wire, oral, or electronic communications. The pen register, which records phone numbers dialed from a telephone, is sometimes used by prosecutors and law enforcement officers after approval by a judge for investigative or criminal-related purposes. H.B. 2354 seeks to augment the tracking equipment used in TDCJ facilities in hopes of further preventing the occurrence of crimes and enhancing public safety.

H.B. 2354 amends the Code of Criminal Procedure to re-designate the term "designated law enforcement agency," for purposes of provisions of law relating to pen registers and trap and trace devices, access to stored communications, and mobile tracking devices, as "designated law enforcement office or agency" and redefines the term to include the office of inspector general of TDCJ. The bill makes provisions of law relating to a prosecutor's application and a judge's order for the installation and use of such a device or equipment apply to the office in the same way that such provisions of law currently apply to a designated law enforcement agency. The bill includes the inspector general or the inspector general's designee among the persons required to submit to the public safety director of the Department of Public Safety of the State of Texas (public safety director; DPS) a written list of officers in the applicable designated law enforcement office or agency who are authorized to possess, install, monitor, or operate pen registers, ESN readers, or similar equipment if the director approves the office's or agency's policy regarding the use of those devices. The bill makes provisions of law authorizing a peace officer of a designated law enforcement agency included on that list to possess, install, operate, or monitor such a device or equipment apply to a listed peace officer of a designated law enforcement office.

H.B. 2354 makes provisions of law relating to the audit by DPS of a designated law enforcement agency apply to a designated law enforcement office. The bill includes the inspector general among the persons required to submit to the public safety director a written report of expenditures made by the office or agency, as applicable, for the purchase and maintenance of such a device or equipment.

H.B. 2354 includes the inspector general or the inspector general's designee among the persons authorized to issue an administrative subpoena to a communications common carrier or an electronic communications service to compel the production of certain business records of the carrier or service. The bill makes provisions of law relating to such subpoenas and provisions of law relating to backup preservation of electronic communications sought by a subpoena or court order for disclosure of contents of the communications apply to the office in the same way such provisions of law currently apply to a designated law enforcement agency.

H.B. 2354 redefines "authorized peace officer" to include an enforcement officer appointed by the inspector general, rather than the executive director, of TDCJ. The bill makes conforming and nonsubstantive changes.

H.B. 2354 amends current law relating to the installation and use of a pen register, ESN reader, trap and trace device, mobile tracking device, or similar equipment in a correctional facility operated by or under contract with the Texas Department of Criminal Justice.

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 Sections 1(2) and (3-a), Article 18.21, Code of Criminal Procedure, as follows:

(2) Redefines "authorized peace officer" to include an enforcement officer appointed by the inspector general of the Texas Department of Criminal Justice (TDCJ), rather than appointed by the executive director of TDCJ, under Section 493.019 (Enforcement Officers), Government Code.

(3-a) Defines "designated law enforcement office or agency," rather than "designated law enforcement agency" to mean

- (A) the sheriff's department of a county with a population of 3.3 million or more;
- (B) a police department in a municipality with a population of 500,000 or more;
- (C) the office of inspector general of TDCJ.

Makes nonsubstantive changes.

SECTION 2. Amends Sections 2(b), (d), (e), (i), (j), (k), (l), and (m), Article 18.21, Code of Criminal Procedure, as follows:

(b) Requires a prosecutor who files an application on the prosecutor's own motion or who files an application for the 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 law enforcement office or agency, rather than by a designated law enforcement agency, to make the application personally and prohibits a prosecutor from doing so through an assistant or some other person acting on the prosecutor's behalf. Makes a conforming change.

(d) Makes conforming changes.

(e) Entitles the carrier to compensation at the prevailing rates for the facilities and assistance provided to the designated law enforcement office or agency, rather than to the law enforcement agency.

(i) Makes a conforming change.

(j) Makes conforming changes.

(k) Requires the inspector general of TDCJ or the inspector general's designee, or the sheriff or chief of a designated law enforcement agency or the sheriff's or chief's designee, as applicable, to submit to the director of DPS (director) a written list of all officers in the designated law enforcement office or agency who are authorized to possess, install, monitor, or operate pen registers, ESN readers, or similar equipment if the director of DPS or the director's designee approves the policy submitted under Subsection (j) (relating to requiring each designated law enforcement office or agency to

adopt a written policy governing the application of this article to the office or agency and to submit the policy to the director or the director's designee for approval). Makes a nonsubstantive change.

(l) Makes conforming changes.

(m) Requires the inspector general of TDCJ or the sheriff or chief of a designated law enforcement agency, as applicable, to submit to the director a written report of expenditures made by the designated law enforcement office or agency for the purchase and maintenance of a pen register, ESN reader, or similar equipment, authorized under this article, rather than authorized pursuant to Subsection (i) (relating to authorizing certain peace officers to possess, install, operate, or monitor a pen register, ESN reader, or similar equipment). Makes a nonsubstantive change.

SECTION 3. Amends Section 6(e), Article 18.21, Code of Criminal Procedure, to make conforming changes.

SECTION 4. Amends Section 6(g)(2), Article 18.21, Code of Criminal Procedure, to make conforming changes.

SECTION 5. Amends Section 15, Article 18.21, Code of Criminal Procedure, as follows:

Sec. 15. SUBPOENA AUTHORITY. (a) Authorizes the director or the director's designee, the inspector general of TDCJ or the inspector general's designee, or the sheriff or chief of a designated law enforcement agency or the sheriff's or chief's designee to issue an administrative subpoena to a communications common carrier or an electronic communications service to compel the production of certain business records. Makes nonsubstantive changes.

(b) Requires the inspector general of TDCJ or the sheriff or chief of a designated law enforcement agency, as applicable, to report the issuance of the subpoena to DPS not later than the 30th day after the date on which the administrative subpoena is issued under Subsection (a).

(c) Makes conforming changes

SECTION 6. Effective date: September 1, 2011.