AN ACT

relating to the interception of or the collection of other
information from certain communications in an investigation of
criminal conduct.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivision (23), Section 1, Article 18.20, Code
of Criminal Procedure, is amended to read as follows:

(23) "Member of a law enforcement unit specially
trained to respond to and deal with life-threatening situations"
means a peace officer who, as evidenced by the submission of
appropriate documentation to the Commission on Law Enforcement
Officer Standards and Education:

(A) receives a minimum of 40 hours a year of
training in hostage and barricade suspect situations; or

(B) has received a minimum of 24 hours of
training on kidnapping investigations and is:

(i) the sheriff of a county with a
population of 3.3 million or more or the sheriff's designee; or

(ii) the police chief of a police
department in a municipality with a population of 500,000 or more or
the police chief's designee [as evidenced by the submission of
appropriate documentation to the Commission on Law Enforcement
Officer Standards and Education].

SECTION 2. Section 1, Article 18.21, Code of Criminal
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Procedure, is amended by adding Subdivision (3-a) to read as follows:

(3-a) "Designated law enforcement agency" means:

(A) the sheriff's department of a county with a population of 3.3 million or more; or

(B) a police department in a municipality with a population of 500,000 or more.

SECTION 3. Section 2, Article 18.21, Code of Criminal Procedure, is amended by amending Subsections (b) and (d) and adding Subsections (i) through (m) to read as follows:

(b) A prosecutor may file an application under this section or under federal law on the prosecutor's own motion or on the request of an authorized peace officer, regardless of whether the officer is commissioned by the department. 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, other than an authorized peace officer employed by a designated law enforcement agency, must make the application personally and may not do so through an assistant or some other person acting on the prosecutor's behalf. A prosecutor may make an application through an assistant or other person acting on the prosecutor's behalf if the prosecutor files an application for the installation and use of:

(1) a pen register, ESN reader, or similar equipment on the request of:
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(A) an authorized peace officer who is
commissioned by the department; or

(B) an authorized peace officer of a designated
law enforcement agency; or

(2) a trap and trace device or similar equipment on the
request of an authorized peace officer, regardless of whether the
officer is commissioned by the department.

(d) On presentation of the application, the judge may order
the installation and use of the pen register, ESN reader, or similar
equipment by an authorized peace officer commissioned by the
department or an authorized peace officer of a designated law
enforcement agency, and, on request of the applicant, the judge
shall direct in the order that a communication common carrier or a
provider of electronic communications service furnish all
information, facilities, and technical assistance necessary to
facilitate the installation and use of the device or equipment by
the department or designated law enforcement agency unobtrusively
and with a minimum of interference to the services provided by the
carrier or service. The carrier or service is entitled to
compensation at the prevailing rates for the facilities and
assistance provided to the department or a designated law
enforcement agency.

(i) A peace officer of a designated law enforcement agency
is authorized to possess, install, operate, or monitor a pen
register, ESN reader, or similar equipment if the officer's name is
on the list submitted to the director of the department under
Subsection (k).
(j) Each designated law enforcement agency shall:

(1) adopt a written policy governing the application of this article to the agency; and

(2) submit the policy to the director of the department, or the director's designee, for approval.

(k) If the director of the department or the director's designee approves the policy submitted under Subsection (j), the sheriff or chief of a designated law enforcement agency, as applicable, or the sheriff's or chief's designee, shall submit to the director a written list of all officers in the agency who are authorized to possess, install, monitor, or operate pen registers, ESN readers, or similar equipment.

(1) The department may conduct an audit of a designated law enforcement agency to ensure compliance with this article. If the department determines from the audit that the designated law enforcement agency is not in compliance with the policy adopted by the agency under Subsection (j), the department shall notify the agency in writing that it is not in compliance. If the department determines that the agency still is not in compliance with the policy 90 days after the date the agency receives written notice under this subsection, the agency loses the authority granted by this article until:

(1) the agency adopts a new written policy governing the application of this article to the agency; and

(2) the department approves the written policy.

(m) The sheriff or chief of a designated law enforcement agency shall submit to the director of the department a written
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report of expenditures made by the designated law enforcement
agency for the purchase and maintenance of a pen register, ESN
reader, or similar equipment, authorized pursuant to Subsection
(1). The director of the department shall report such expenditures
publicly on an annual basis via the department's website, or other
comparable means.

SECTION 4. Section 15, Article 18.21, Code of Criminal
Procedure, is amended to read as follows:

Sec. 15. SUBPOENA AUTHORITY. (a) The director of the
department, the director's designee, or the sheriff or chief
of a designated law enforcement agency, or the sheriff's or chief's
designee, may issue an administrative subpoena to a communications
common carrier or an electronic communications service to compel
the production of the carrier's or service's business records that:

(1) disclose information about:

(A) the carrier's or service's customers; or

(B) users of the services offered by the carrier
or service; and

(2) are material to a criminal investigation.

(b) Not later than the 30th day after the date on which the
administrative subpoena is issued under Subsection (a), the sheriff
or chief of a designated law enforcement agency shall report the
issuance of the subpoena to the department.

(c) If, based on reports received under Subsection (b), the
department determines that a designated law enforcement agency is
not in compliance with the policy adopted by the agency under
Section 2(j), the department shall notify the agency in writing
that it is not in compliance. If the department determines that the agency still is not in compliance with the policy 90 days after the date the agency receives written notice under this subsection, the agency loses the authority granted by this article until:

(1) the agency adopts a new written policy governing the application of this article to the agency; and

(2) the department approves the written policy.

SECTION 5. The changes in law made by this Act in amending Subsections (b) and (d), Section 2, Article 18.21, Code of Criminal Procedure, apply only to an application for the installation and use of a pen register, ESN reader, or similar equipment filed on or after the effective date of this Act. An application for the installation and use of a pen register, ESN reader, or similar equipment filed before the effective date of this Act is governed by the law in effect on the date the application is filed, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.
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David Dewhurst  
President of the Senate

Tom Craddick  
Speaker of the House

I hereby certify that S.B. No. 823 passed the Senate on April 12, 2007, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 10, 2007, by the following vote: Yeas 31, Nays 0.

Acts Jones  
Secretary of the Senate

I hereby certify that S.B. No. 823 passed the House, with amendments, on May 7, 2007, by the following vote: Yeas 126, Nays 7, one present not voting.

Robert Haney  
Chief Clerk of the House

Approved:

23 May 07  
Date

Rick Perry  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE

8:30 AM O'CLOCK

MAY 23, 2007

Roger Johnson