

By: Laubenberg

H.B. No. 1578

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to certain exceptions to the statutory exclusionary rule  
3 in criminal prosecutions.

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

5 SECTION 1. Article 38.23, Code of Criminal Procedure, is  
6 amended by amending Subsection (b) and adding Subsection (c) to  
7 read as follows:

8 (b) It is an exception to the provisions of Subsection (a)  
9 [~~of this Article~~] that the evidence was obtained by a law  
10 enforcement officer acting in objective good faith reliance upon a  
11 warrant issued by a neutral magistrate unless the affidavit upon  
12 which the warrant was issued:

13 (1) contained a false statement that was made  
14 recklessly or knowingly and was material to the determination of  
15 probable cause;

16 (2) lacked the information necessary to allow a  
17 neutral magistrate to determine the existence of probable cause; or

18 (3) was technically or facially deficient in a manner  
19 other than a manner described by Subdivision (1) or (2) [~~based on~~  
20 ~~probable cause~~].

21 (c) It is an exception to the provisions of Subsection (a)  
22 that the evidence would inevitably have been discovered in a manner  
23 not prohibited by Subsection (a). The state must establish  
24 inevitability under this subsection by a preponderance of the

1 evidence.

2           SECTION 2. This Act applies only to evidence obtained on or  
3 after the effective date of this Act. Evidence obtained before the  
4 effective date of this Act is governed by the law in effect at the  
5 time the evidence was obtained, and the former law is continued in  
6 effect for that purpose.

7           SECTION 3. This Act takes effect September 1, 2007.