

By: Burton, et al.

S.B. No. 1864

A BILL TO BE ENTITLED

AN ACT

relating to requiring a peace officer to obtain a warrant to search a cellular telephone or other wireless communications device.

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

SECTION 1. Article 18.02(a), Code of Criminal Procedure, is amended to read as follows:

(a) A search warrant may be issued to search for and seize:

(1) property acquired by theft or in any other manner which makes its acquisition a penal offense;

(2) property specially designed, made, or adapted for or commonly used in the commission of an offense;

(3) arms and munitions kept or prepared for the purposes of insurrection or riot;

(4) weapons prohibited by the Penal Code;

(5) gambling devices or equipment, altered gambling equipment, or gambling paraphernalia;

(6) obscene materials kept or prepared for commercial distribution or exhibition, subject to the additional rules set forth by law;

(7) a drug, controlled substance, immediate precursor, chemical precursor, or other controlled substance property, including an apparatus or paraphernalia kept, prepared, or manufactured in violation of the laws of this state;

(8) any property the possession of which is prohibited

1 by law;

2 (9) implements or instruments used in the commission
3 of a crime;

4 (10) property or items, except the personal writings
5 by the accused, constituting evidence of an offense or constituting
6 evidence tending to show that a particular person committed an
7 offense;

8 (11) persons;

9 (12) contraband subject to forfeiture under Chapter 59
10 of this code; ~~[or]~~

11 (13) electronic customer data held in electronic
12 storage, including the contents of and records and other
13 information related to a wire communication or electronic
14 communication held in electronic storage; or

15 (14) a cellular telephone or other wireless
16 communications device, subject to Article 18.0215.

17 SECTION 2. Chapter 18, Code of Criminal Procedure, is
18 amended by adding Article 18.0215 to read as follows:

19 Art. 18.0215. ACCESS TO CELLULAR TELEPHONE OR OTHER
20 WIRELESS COMMUNICATIONS DEVICE. (a) A peace officer may not search
21 a person's cellular telephone or other wireless communications
22 device, pursuant to a lawful arrest of the person or otherwise,
23 without obtaining a warrant under this article.

24 (b) A warrant under this article may be issued only by a
25 district judge in the same judicial district as the site of:

26 (1) the law enforcement agency that employs the peace
27 officer, if the cellular telephone or other wireless communications

1 device is in the officer's possession; or

2 (2) the likely location of the telephone or device.

3 (c) A district judge may issue a warrant under this article
4 only on the application of a peace officer. An application must be
5 written and signed and sworn to or affirmed before the judge. The
6 application must:

7 (1) state the name, department, agency, and address of
8 the applicant;

9 (2) identify the cellular telephone or other wireless
10 communications device to be searched;

11 (3) state the name of the owner or possessor of the
12 telephone or device to be searched;

13 (4) state the judicial district in which:

14 (A) the law enforcement agency that employs the
15 peace officer is located, if the telephone or device is in the
16 officer's possession; or

17 (B) the telephone or device is likely to be
18 located; and

19 (5) state the facts and circumstances that provide the
20 applicant with probable cause to believe that:

21 (A) criminal activity has been, is, or will be
22 committed; and

23 (B) searching the telephone or device is likely
24 to produce evidence in the investigation of the criminal activity
25 described in Paragraph (A).

26 (d) Notwithstanding any other law, a peace officer may
27 search a cellular telephone or other wireless communications device

1 without a warrant if:

2 (1) the owner or possessor of the telephone or device
3 consents to the search;

4 (2) the telephone or device is reported stolen by the
5 owner or possessor; or

6 (3) the officer reasonably believes that:

7 (A) the telephone or device is in the possession
8 of a fugitive from justice for whom an arrest warrant has been
9 issued for committing a felony offense; or

10 (B) there exists an immediate life-threatening
11 situation, as defined by Section 1, Article 18.20.

12 (e) A peace officer must apply for a warrant to search a
13 cellular telephone or other wireless communications device as soon
14 as practicable after a search is conducted under Subsection
15 (d)(3)(A) or (B). If the district judge finds that the applicable
16 situation under Subsection (d)(3)(A) or (B) did not occur and
17 declines to issue the warrant, any evidence obtained is not
18 admissible in a criminal action.

19 SECTION 3. This Act takes effect September 1, 2015.