

1-1 By: Burton, et al. S.B. No. 1864
1-2 (In the Senate - Filed March 13, 2015; March 25, 2015, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 23, 2015, reported favorably by the following vote: Yeas 7,
1-5 Nays 0; April 23, 2015, sent to printer.)

1-6 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----------|-----|--------|-----|
| 1-7 | | | | |
| 1-8 | Whitmire | X | | |
| 1-9 | Huffman | X | | |
| 1-10 | Burton | X | | |
| 1-11 | Creighton | X | | |
| 1-12 | Hinojosa | X | | |
| 1-13 | Menéndez | X | | |
| 1-14 | Perry | X | | |

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to requiring a peace officer to obtain a warrant to search
1-18 a cellular telephone or other wireless communications device.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Article 18.02(a), Code of Criminal Procedure, is
1-21 amended to read as follows:

1-22 (a) A search warrant may be issued to search for and seize:

1-23 (1) property acquired by theft or in any other manner
1-24 which makes its acquisition a penal offense;

1-25 (2) property specially designed, made, or adapted for
1-26 or commonly used in the commission of an offense;

1-27 (3) arms and munitions kept or prepared for the
1-28 purposes of insurrection or riot;

1-29 (4) weapons prohibited by the Penal Code;

1-30 (5) gambling devices or equipment, altered gambling
1-31 equipment, or gambling paraphernalia;

1-32 (6) obscene materials kept or prepared for commercial
1-33 distribution or exhibition, subject to the additional rules set
1-34 forth by law;

1-35 (7) a drug, controlled substance, immediate
1-36 precursor, chemical precursor, or other controlled substance
1-37 property, including an apparatus or paraphernalia kept, prepared,
1-38 or manufactured in violation of the laws of this state;

1-39 (8) any property the possession of which is prohibited
1-40 by law;

1-41 (9) implements or instruments used in the commission
1-42 of a crime;

1-43 (10) property or items, except the personal writings
1-44 by the accused, constituting evidence of an offense or constituting
1-45 evidence tending to show that a particular person committed an
1-46 offense;

1-47 (11) persons;

1-48 (12) contraband subject to forfeiture under Chapter 59
1-49 of this code; ~~or~~

1-50 (13) electronic customer data held in electronic
1-51 storage, including the contents of and records and other
1-52 information related to a wire communication or electronic
1-53 communication held in electronic storage; or

1-54 (14) a cellular telephone or other wireless
1-55 communications device, subject to Article 18.0215.

1-56 SECTION 2. Chapter 18, Code of Criminal Procedure, is
1-57 amended by adding Article 18.0215 to read as follows:

1-58 Art. 18.0215. ACCESS TO CELLULAR TELEPHONE OR OTHER
1-59 WIRELESS COMMUNICATIONS DEVICE. (a) A peace officer may not

1-60 search a person's cellular telephone or other wireless
1-61 communications device, pursuant to a lawful arrest of the person or

2-1 otherwise, without obtaining a warrant under this article.

2-2 (b) A warrant under this article may be issued only by a
2-3 district judge in the same judicial district as the site of:

2-4 (1) the law enforcement agency that employs the peace
2-5 officer, if the cellular telephone or other wireless communications
2-6 device is in the officer's possession; or

2-7 (2) the likely location of the telephone or device.

2-8 (c) A district judge may issue a warrant under this article
2-9 only on the application of a peace officer. An application must be
2-10 written and signed and sworn to or affirmed before the judge. The
2-11 application must:

2-12 (1) state the name, department, agency, and address of
2-13 the applicant;

2-14 (2) identify the cellular telephone or other wireless
2-15 communications device to be searched;

2-16 (3) state the name of the owner or possessor of the
2-17 telephone or device to be searched;

2-18 (4) state the judicial district in which:

2-19 (A) the law enforcement agency that employs the
2-20 peace officer is located, if the telephone or device is in the
2-21 officer's possession; or

2-22 (B) the telephone or device is likely to be
2-23 located; and

2-24 (5) state the facts and circumstances that provide the
2-25 applicant with probable cause to believe that:

2-26 (A) criminal activity has been, is, or will be
2-27 committed; and

2-28 (B) searching the telephone or device is likely
2-29 to produce evidence in the investigation of the criminal activity
2-30 described in Paragraph (A).

2-31 (d) Notwithstanding any other law, a peace officer may
2-32 search a cellular telephone or other wireless communications device
2-33 without a warrant if:

2-34 (1) the owner or possessor of the telephone or device
2-35 consents to the search;

2-36 (2) the telephone or device is reported stolen by the
2-37 owner or possessor; or

2-38 (3) the officer reasonably believes that:

2-39 (A) the telephone or device is in the possession
2-40 of a fugitive from justice for whom an arrest warrant has been
2-41 issued for committing a felony offense; or

2-42 (B) there exists an immediate life-threatening
2-43 situation, as defined by Section 1, Article 18.20.

2-44 (e) A peace officer must apply for a warrant to search a
2-45 cellular telephone or other wireless communications device as soon
2-46 as practicable after a search is conducted under Subsection
2-47 (d)(3)(A) or (B). If the district judge finds that the applicable
2-48 situation under Subsection (d)(3)(A) or (B) did not occur and
2-49 declines to issue the warrant, any evidence obtained is not
2-50 admissible in a criminal action.

2-51 SECTION 3. This Act takes effect September 1, 2015.

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