

## **BILL ANALYSIS**

C.S.H.B. 2450  
By: Koop  
Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that there is ambiguity in current law as to which judges may issue a warrant for the search of a cellular telephone or other wireless communication device. The purpose of C.S.H.B. 2450 is to remove this ambiguity.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2450 amends the Code of Criminal Procedure to extend the authority of a judge to issue a search warrant to access a cellular telephone or other wireless communications device to a justice or other magistrate who is authorized under state law to issue a search warrant for certain property or items constituting evidence of an offense or tending to show a person committed an offense and who is in the requisite judicial district. The bill replaces the authorization for a peace officer to search a cellular telephone or other wireless communications device without a warrant if the telephone or device is reported stolen by the owner or possessor with the authorization for the officer to do so if the officer reasonably believes that the telephone or device has been stolen and limits the search to only the contact list information and device settings necessary to identify the owner of the telephone or device or, if the officer is unable to identify the owner of the telephone or device from such a search, to only the photographs, social media account information, and email account information necessary to identify the owner of the telephone or device.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2450 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Articles 18.0215(b), (c), (d), and (e), Code of Criminal Procedure, are amended to read as follows:

(b) A warrant under this article may be issued only by a judge, justice, or other magistrate who is authorized to issue a search warrant under Article 18.01(c) and is in the same judicial district as the site of:

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

(c) A judge, justice, or other magistrate may issue a warrant under this article only on the application of a peace officer. An application must be written and signed and sworn to or affirmed before that magistrate [~~the judge~~]. The application must:

- (1) state the name, department, agency, and address of the applicant;
- (2) identify the cellular telephone or other wireless communications device to be searched;
- (3) state the name of the owner or possessor of the telephone or device to be searched;
- (4) state the judicial district in which:
  - (A) the law enforcement agency that employs the peace officer is located, if the telephone or device is in the officer's possession; or
  - (B) the telephone or device is likely to be located; and
- (5) state the facts and circumstances that provide the applicant with probable cause to believe that:
  - (A) criminal activity has been, is, or will be committed; and
  - (B) searching the telephone or device is likely to produce evidence in the investigation of the criminal activity described in Paragraph (A).

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

- (1) the owner or possessor of the telephone or device consents to the search;
- (2) the officer reasonably believes that the telephone or device has been [is reported] stolen and limits the search to only the contact list information, photographs, social

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Articles 18.0215(b), (c), (d), and (e), Code of Criminal Procedure, are amended to read as follows:

(b) A warrant under this article may be issued only by a judge, justice, or other magistrate who is authorized to issue a search warrant under Article 18.01(c) and is in the same judicial district as the site of:

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

(c) A judge, justice, or other magistrate may issue a warrant under this article only on the application of a peace officer. An application must be written and signed and sworn to or affirmed before that magistrate [~~the judge~~]. The application must:

- (1) state the name, department, agency, and address of the applicant;
- (2) identify the cellular telephone or other wireless communications device to be searched;
- (3) state the name of the owner or possessor of the telephone or device to be searched;
- (4) state the judicial district in which:
  - (A) the law enforcement agency that employs the peace officer is located, if the telephone or device is in the officer's possession; or
  - (B) the telephone or device is likely to be located; and
- (5) state the facts and circumstances that provide the applicant with probable cause to believe that:
  - (A) criminal activity has been, is, or will be committed; and
  - (B) searching the telephone or device is likely to produce evidence in the investigation of the criminal activity described in Paragraph (A).

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

- (1) the owner or possessor of the telephone or device consents to the search;
- (2) the officer reasonably believes that the telephone or device has been [is reported] stolen and:
  - (A) limits the search to only the contact list

media account information, and e-mail account information necessary to identify the owner of the telephone or device [by the owner or possessor]; or

- (3) the officer reasonably believes that:
- (A) the telephone or device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense; or
  - (B) there exists an immediate life-threatening situation, as defined by Section 1, Article 18.20.
- (e) A peace officer must apply for a warrant to search a cellular telephone or other wireless communications device as soon as practicable after a search is conducted under Subsection (d)(3)(A) or (B). If the magistrate considering the application [judge] finds that the applicable situation under Subsection (d)(3)(A) or (B) did not occur and declines to issue the warrant, any evidence obtained is not admissible in a criminal action.

SECTION 2. (a) The change in law made by this Act to Articles 18.0215(b) and (c), Code of Criminal Procedure, applies only to a search warrant issued on or after the effective date of this Act. A search warrant issued before the effective date of this Act is governed by the law in effect on the date the warrant was issued, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act to Articles 18.0215(d) and (e), Code of Criminal Procedure, applies only to a search conducted on or after the effective date of this Act. A search conducted before the effective date of this Act is governed by the law in effect on the date the search was conducted, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2017.

information and device settings necessary to identify the owner of the telephone or device; or

(B) if the officer is unable to identify the owner of the telephone or device from a search conducted under Paragraph (A), limits the search to only the photographs, social media account information, and e-mail account information necessary to identify the owner of the telephone or device [by the owner or possessor]; or

- (3) the officer reasonably believes that:
- (A) the telephone or device is in the possession of a fugitive from justice for whom an arrest warrant has been issued for committing a felony offense; or
  - (B) there exists an immediate life-threatening situation, as defined by Section 1, Article 18.20.
- (e) A peace officer must apply for a warrant to search a cellular telephone or other wireless communications device as soon as practicable after a search is conducted under Subsection (d)(3)(A) or (B). If the magistrate considering the application [judge] finds that the applicable situation under Subsection (d)(3)(A) or (B) did not occur and declines to issue the warrant, any evidence obtained is not admissible in a criminal action.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.