

By: Burton

S.B. No. 1823

A BILL TO BE ENTITLED

AN ACT

relating to a warrant authorizing the search of a cellular telephone or other wireless communications device.

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

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

1 telephone or device to be searched;

2 (4) state the judicial district in which:

3 (A) the law enforcement agency that employs the
4 peace officer is located, if the telephone or device is in the
5 officer's possession; or

6 (B) the telephone or device is likely to be
7 located; and

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

10 (A) criminal activity has been, is, or will be
11 committed; and

12 (B) searching the telephone or device is likely
13 to produce evidence in the investigation of the criminal activity
14 described in Paragraph (A).

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

18 (1) the owner or possessor of the telephone or device
19 consents to the search;

20 (2) the officer reasonably believes that the telephone
21 or device has been ~~[is reported]~~ stolen and limits the search to
22 only the contact list information, photographs, social media
23 account information, and e-mail account information necessary to
24 identify the owner of the telephone or device ~~[by the owner or~~
25 ~~possessor]~~; or

26 (3) the officer reasonably believes that:

27 (A) the telephone or device is in the possession

1 of a fugitive from justice for whom an arrest warrant has been
2 issued for committing a felony offense; or

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

5 (e) A peace officer must apply for a warrant to search a
6 cellular telephone or other wireless communications device as soon
7 as practicable after a search is conducted under Subsection
8 (d)(3)(A) or (B). If the magistrate considering the application
9 ~~[judge]~~ finds that the applicable situation under Subsection
10 (d)(3)(A) or (B) did not occur and declines to issue the warrant,
11 any evidence obtained is not admissible in a criminal action.

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

18 (b) The change in law made by this Act to Articles
19 18.0215(d) and (e), Code of Criminal Procedure, applies only to a
20 search conducted on or after the effective date of this Act. A
21 search conducted before the effective date of this Act is governed
22 by the law in effect on the date the search was conducted, and the
23 former law is continued in effect for that purpose.

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