

1-1 By: Burton S.B. No. 1823  
 1-2 (In the Senate - Filed March 9, 2017; March 23, 2017, read  
 1-3 first time and referred to Committee on Criminal Justice;  
 1-4 April 10, 2017, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 10, 2017,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16			X	
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1823 By: Whitmire

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to a warrant authorizing the search of a cellular  
 1-22 telephone or other wireless communications device.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Articles 18.0215(b), (c), (d), and (e), Code of  
 1-25 Criminal Procedure, are amended to read as follows:

1-26 (b) A warrant under this article may be issued only by a  
 1-27 judge, justice, or other magistrate who is authorized to issue a  
 1-28 search warrant under Article 18.01(c) and is in the same judicial  
 1-29 district as the site of:

1-30 (1) the law enforcement agency that employs the peace  
 1-31 officer, if the cellular telephone or other wireless communications  
 1-32 device is in the officer's possession; or

1-33 (2) the likely location of the telephone or device.

1-34 (c) A judge, justice, or other magistrate may issue a  
 1-35 warrant under this article only on the application of a peace  
 1-36 officer. An application must be written and signed and sworn to or  
 1-37 affirmed before that magistrate [~~the judge~~]. The application must:

1-38 (1) state the name, department, agency, and address of  
 1-39 the applicant;

1-40 (2) identify the cellular telephone or other wireless  
 1-41 communications device to be searched;

1-42 (3) state the name of the owner or possessor of the  
 1-43 telephone or device to be searched;

1-44 (4) state the judicial district in which:

1-45 (A) the law enforcement agency that employs the  
 1-46 peace officer is located, if the telephone or device is in the  
 1-47 officer's possession; or

1-48 (B) the telephone or device is likely to be  
 1-49 located; and

1-50 (5) state the facts and circumstances that provide the  
 1-51 applicant with probable cause to believe that:

1-52 (A) criminal activity has been, is, or will be  
 1-53 committed; and

1-54 (B) searching the telephone or device is likely  
 1-55 to produce evidence in the investigation of the criminal activity  
 1-56 described in Paragraph (A).

1-57 (d) Notwithstanding any other law, a peace officer may  
 1-58 search a cellular telephone or other wireless communications device  
 1-59 without a warrant if:

1-60 (1) the owner or possessor of the telephone or device

2-1 consents to the search;

2-2 (2) the officer reasonably believes that the telephone  
2-3 or device has been [is reported] stolen and:

2-4 (A) limits the search to only the contact list  
2-5 information and device settings necessary to identify the owner of  
2-6 the telephone or device; or

2-7 (B) if the officer is unable to identify the  
2-8 owner of the telephone or device from a search conducted under  
2-9 Paragraph (A), limits the search to only the photographs, social  
2-10 media account information, and e-mail account information  
2-11 necessary to identify the owner of the telephone or device [by the  
2-12 owner or possessor]; or

2-13 (3) the officer reasonably believes that:

2-14 (A) the telephone or device is in the possession  
2-15 of a fugitive from justice for whom an arrest warrant has been  
2-16 issued for committing a felony offense; or

2-17 (B) there exists an immediate life-threatening  
2-18 situation, as defined by Section 1, Article 18.20.

2-19 (e) A peace officer must apply for a warrant to search a  
2-20 cellular telephone or other wireless communications device as soon  
2-21 as practicable after a search is conducted under Subsection  
2-22 (d)(3)(A) or (B). If the magistrate considering the application  
2-23 [judge] finds that the applicable situation under Subsection  
2-24 (d)(3)(A) or (B) did not occur and declines to issue the warrant,  
2-25 any evidence obtained is not admissible in a criminal action.

2-26 SECTION 2. (a) The change in law made by this Act to  
2-27 Articles 18.0215(b) and (c), Code of Criminal Procedure, applies  
2-28 only to a search warrant issued on or after the effective date of  
2-29 this Act. A search warrant issued before the effective date of this  
2-30 Act is governed by the law in effect on the date the warrant was  
2-31 issued, and the former law is continued in effect for that purpose.

2-32 (b) The change in law made by this Act to Articles  
2-33 18.0215(d) and (e), Code of Criminal Procedure, applies only to a  
2-34 search conducted on or after the effective date of this Act. A  
2-35 search conducted before the effective date of this Act is governed  
2-36 by the law in effect on the date the search was conducted, and the  
2-37 former law is continued in effect for that purpose.

2-38 SECTION 3. This Act takes effect September 1, 2017.

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