

BILL ANALYSIS

S.B. 1864
By: Burton
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

According to a recent U.S. Supreme Court ruling, law enforcement agencies are required to procure a warrant in order to access a cellular phone found on or around a person under arrest. Interested parties contend that the state legislature has a responsibility to keep up with the rapid advancement in technology when upholding the law and should therefore ensure that all Texans have privacy protections when it comes to personal information stored on cell phones. S.B. 1864 seeks to address this issue by revising provisions relating to the grounds for issuance of a search warrant.

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

S.B. 1864 amends the Code of Criminal Procedure to include a cellular telephone or other wireless communications device among the items for which a search warrant may be issued for search and seizure. The bill prohibits a peace officer from searching a person's cellular telephone or other wireless communications device without obtaining a warrant issued by a district judge in the same judicial district as the site of 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 in the same judicial district as the likely location of the telephone or device. The bill authorizes a district judge to issue such a warrant only on the application of a peace officer; requires such an application to be written and signed and sworn to or affirmed before the judge; and sets out content requirements for the application.

S.B. 1864 authorizes a peace officer to search a cellular telephone or other wireless communications device without a warrant if the owner or possessor of the telephone or device consents to the search, if the telephone or device is reported stolen by the owner or possessor, or if the officer reasonably believes that 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 if the officer reasonably believes that there exists an immediate life-threatening situation. The bill requires a peace officer to apply for a warrant to search a cellular telephone or other wireless communications device as soon as practicable after conducting the search of a telephone or device in the possession of a suspected fugitive from justice or after conducting the search on the basis of a perceived immediate life-threatening situation. The bill establishes that if the district judge finds that the applicable situation did not occur and declines to issue the warrant, any evidence obtained is not admissible in a criminal action.

EFFECTIVE DATE

September 1, 2015.