

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 1864  
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Criminal Justice  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In 2014, the Supreme Court of the United States, in a 9-0 decision, ruled that law enforcement agencies must procure a warrant in order to access a cellular phone found on or around a person under arrest.

Chief Justice Roberts stated that, "The search incident to arrest exemption rests not only on the heightened government interests at stake in a volatile arrest situation, but also on an arrestee's reduced privacy interests upon being taken into police custody ... A decade ago officers might have occasionally stumbled across a highly personal item such as a diary, but today many of the more than 90% of American adults who own cell phones keep on their person a digital record of nearly every aspect of their lives." – Chief Justice John Roberts, *Riley v California* (2014)

The court created a warrant requirement for cellular phones obtained incident to an arrest, but did not speak directly to devices obtained under other circumstances.

S.B. 1864 amends Article 18.02 of the Code of Criminal Procedure by adding cellular phones and other wireless communications devices as items requiring a warrant to search and establishing the rules therein.

Since an arrestee has "reduced privacy interests upon being taken into custody," this bill extends at least that same level of privacy protection to those who are not under arrest whose mobile devices fall into the possession of police or other law enforcement entities.

According to Justice Alito, "Since that time, electronic surveillance has been governed primarily, not by decision of this court, but by the statute, which authorizes but imposes detailed restrictions on electronic surveillance ... Because of the role that these devices have come to play in contemporary life, searching their contents implicates very sensitive privacy interests that this court is poorly positioned to understand and evaluate.

"In light of these developments, it would be very unfortunate if privacy protection in the 21st century were left primarily to the federal courts using the blunt instrument of the 4th amendment. Legislatures, elected by the people, are in a better position than we are to assess and respond to the changes that have already occurs and those that almost certainly will take place in the future."

The legislature has a responsibility to keep up with the rapid advance in technology. This bill places into statue a broad warrant requirement in order to ensure all Texans have at least the same privacy protections as a person under arrest. As the ruling in *Riley v California* demonstrated, these devices contain so much of our personal data that every one of them should require a warrant to search, every time.

As proposed, S.B. 1864 amends current law relating to requiring a peace officer to obtain a warrant to search a cellular telephone or other wireless communications device.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 18.02(a), Code of Criminal Procedure, as follows:

(a) Authorizes a search warrant to be issued to search for and seize a cellular telephone or other wireless communications device, subject to Article 18.0215. Makes nonsubstantive changes.

SECTION 2. Amends Chapter 18, Code of Criminal Procedure, by adding Article 18.0215, as follows:

Art. 18.0215. ACCESS TO CELLULAR TELEPHONE OR OTHER WIRELESS COMMUNICATIONS DEVICE. (a) Prohibits a peace officer from searching a person's cellular telephone or other wireless communications device, pursuant to a lawful arrest of the person or otherwise, without obtaining a warrant under this article.

(b) Authorizes a warrant under this article to be issued only by a district judge 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) Authorizes a district judge to issue a warrant under this article only on the application of a peace officer. Requires that an application be written and signed and sworn to or affirmed before the judge. Requires that the application:

(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) Authorizes a peace officer, notwithstanding any other law, to 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 telephone or device is reported stolen 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 (Definitions), Article 18.20 (Detection, Interception, and Use of Wire, Oral, or Electronic Communications).

(e) Requires a peace officer to 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). Provides that any evidence obtained, if the district judge finds that the applicable situation under Subsection (d)(3)(A) or (B) did not occur and declines to issue the warrant, is not admissible in a criminal action.

SECTION 3. Effective date: September 1, 2015.