

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1823
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Last session, the legislature passed H.B. 1396, which codified a 2014 Supreme Court decision stating that law enforcement agencies must procure a warrant in order to access a cellular phone found on or around a person under arrest. H.B. 1396 passed the Senate unanimously. However, interested parties recently raised concern that the language prohibited police from obtaining an evidentiary search warrant for a wireless device from any judge other than a district judge. The original legislation did not intend to create this limitation.

S.B. 1823 amends Articles 18.0215(b), (c), (d), and (e), Code of Criminal Procedure, to specify that a judge, justice, or other magistrate authorized to issue a search warrant under current law may issue a search warrant for a wireless device. It also narrows an existing exception to the warrant requirement in situations where an officer believes the phone has been stolen to state that this search may only occur if an officer "reasonably" believes the device has been stolen and the search is limited to only the contact list information, photographs, social media account information, and e-mail account information necessary to determine the device's owner.

The committee substitute adds "device settings" to the list of searchable items without a warrant if an officer reasonably believes a device has been stolen. It further specifies that an officer must first search the contact list and device settings to attempt to determine ownership. If ownership cannot be determined after that search, then an officer can search the email, photos, and social media information necessary to determine ownership.

These changes simply clarify language that provided unnecessary confusion for officers seeking warrants for wireless devices. It also expounds on existing exceptions to the warrant requirement and requires more specificity in these warrantless searches to protect the privacy of the device's owner.

C.S.S.B. 1823 amends current law relating to a warrant authorizing the search of 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 Articles 18.0215(b), (c), (d), and (e), Code of Criminal Procedure, as follows:

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

(c) Authorizes a judge, justice, or other magistrate to issue, rather than authorizing a judge to issue, a warrant under this article only on the application of a peace officer. Requires an application to be written and signed and sworn to or affirmed before that magistrate, rather than the judge.

(d) Authorizes a peace officer, notwithstanding any other law, to search a cellular telephone or other wireless communications device without a warrant if the officer reasonably believes that the telephone or device has been stolen, rather than is reported stolen by the owner or possessor, and:

(A) limits the search to only the contact list 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.

(e) Provides that if the magistrate considering the application, rather than the judge, finds that certain applicable situations did not occur and declines to issue the warrant, any evidence obtained is not admissible in a criminal action.

SECTION 2. (a) Makes application of Articles 18.0215(b) and (c), Code of Criminal Procedure, as amended by this Act, prospective.

(b) Makes application of Articles 18.0215(d) and (e), Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 3. Effective date: September 1, 2017.