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COMMENTS IN SUPPORT OF 14-H 7189 – SEARCH WARRANTS

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The ACLU of Rhode Island strongly supports this legislation and the codification of the need for a warrant before law enforcement may conduct a search of a cell phone or other portable electronic device. As technology advances, cell phones have begun to carry immense amounts of information about our lives, from text records of our conversations, to our e-mails, photos, and records of our whereabouts. At the same time, they present no risk to law enforcement once confiscated, and we understand it is considered a best practice for law enforcement to seek a warrant before conducting a search of a cell phone. Yet, as court records show, this is not always the case; codification of the warrant requirement is critical to protecting the privacy of information contained within the cell phones we all carry.

In 2012, the General Assembly overwhelmingly approved this legislation with no public opposition and only two Representatives and three Senators voting against the bill. Unexpectedly, the bill was vetoed by Governor Chafee, but it is unlikely that veto would have occurred had Governor Chafee had the guidance of a court case that followed just three months later and underscored the need for this legislation. In September 2012, Judge Savage ruled in *State v. Patino* that the search of a cell phone without a warrant is an unconstitutional violation of the Fourth Amendment. While this case is on appeal, other courts across the country have begun to agree that warrantless searches of cell phones are intolerable violations of an individual's privacy including, just last week, the Supreme Court of Washington State.

For the past two years, then, Rhode Island's law enforcement entities have been required by law to obtain a warrant before searching a cell phone or portable electronic device, indicating that the burden on law enforcement of this requirement is minimal. Codification of this requirement is critical to provide clarity to the law and ensure that the contents of our cell phones remain private from here on out. We understand there is a temptation to wait and see what happens to the case on appeal, but the conclusion of the court can only be whether or not the warrantless search of a cell phone is blatantly unconstitutional. Regardless of the resolution of that case – a case which has now been working its way through the courts for more than four years – the General Assembly can and should make it clear that warrantless searches of cell phones are an unnecessary intrusion into an individual's privacy that should never be tolerated.

The ACLU of Rhode Island supports this legislation and encourages its swift passage.