

BILL ANALYSIS

Senate Research Center
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S.B. 1838
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Criminal Justice
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, when a member of a city, county, or state arson investigation unit is seeking access to electronic customer data, such as historical cell site location data, they must coordinate with an authorized peace officer as defined by Section 18.21 (Pen Registers and Trap and Trace Devices; Access to Stored Communications; Mobile Tracking Devices), Code of Criminal Procedure, in order to obtain a search warrant.

An arson investigator is defined as a peace officer under Article 2.12 (Who Are Peace Officers), Code of Criminal Procedure, but is not recognized as an authorized peace officer under Section 18.21 of the same code. Arson investigators may directly seek a search warrant for all other scenarios, but because of this inconsistency, cannot themselves apply for a search warrant in the case of stored communications.

Due to this limitation, arson investigators are unable to coordinate directly with the district attorney when seeking to legally obtain data. This data has routinely led to confessions, arrests, and prosecutions of those responsible for arson fires. Additionally, although less frequent, this information has been successful in excluding persons of interest.

S.B. 1838 adds members of arson investigation units under the definition of authorized peace officers in regards to the authority such officers have in reviewing cell phone data to conduct their investigations with a warrant. This would give arson investigators more capability to conduct their investigations at the level of police officers, increasing thorough investigation practices.

As proposed, S.B. 1838 amends current law relating to the definition of peace officer for purposes of intercepting or collecting information in relation to certain communications in an investigation conducted by an arson investigating unit.

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 Section 1(2), Article 18.21, Code of Criminal Procedure, to redefine "authorized peace officer" to include a member of an arson investigating unit commissioned by a municipality, a county, or the state. Makes a nonsubstantive change.

SECTION 2. Effective date: upon passage or September 1, 2015.