

Senate Committee On Judiciary

Fiscal: Has minimal fiscal impact

Revenue: No Revenue Impact

Action Date: 04/17/15

Action: Do Pass With Amendments. (Printed A-Eng.)

Meeting Dates: 03/17, 04/17

Vote:

Yeas: 5 - Burdick, Gelser, Kruse, Prozanski, Thatcher

Prepared By: Eric Deitrick, Counsel

WHAT THE MEASURE DOES:

Prohibits law enforcement from duplicating or copying data from a portable electronic device without a warrant or consent. Defines terms. Authorizes court to order law enforcement to purge certain duplicated data if defendant files motion for return of property.

ISSUES DISCUSSED:

- Recent United States Supreme Court decision in *Riley v. California*
- Amount and type of data on a typical cell phone
- Surveillance tools of the government
- Amendment came from work group that included District Attorneys, the Department of Justice, the Oregon Criminal Defense Lawyers Association, and the American Civil Liberties Union

EFFECT OF COMMITTEE AMENDMENT:

Eliminates prohibition on cell phone searches and focuses prohibition on duplication of cell phone data without a warrant or consent. Limits the scope of the prohibition to law enforcement rather than all public bodies. Clarifies who has standing to challenge evidence obtained in violation of the statute. Authorizes court to order law enforcement to purge duplicated data if defendant files motion for return of property.

BACKGROUND:

The United States and Oregon Constitutions prohibit warrantless searches, unless certain well-founded exceptions to the warrant requirement exist. These exceptions include consent, search incident to arrest, and exigent circumstances. For years, courts have wrestled with the constitutional analysis of when and how these portable electronic devices can be searched by police. In *Riley v. California*, 134 S.Ct. 2473 (2014), the United States Supreme Court held that searching a person's cell phone incident to arrest violated the United States Constitution, unless the search was authorized by warrant or certain exigent circumstances.

Typically, there are two types of ways in which law enforcement accesses a portable electronic device. The officer may physically examine and search the phone, or the officer may extract data from the phone electronically. Senate Bill 641-A prohibits law enforcement from duplicating or copying the data from a portable electronic device without a warrant or consent. Physical examination and searches are not prohibited by the bill, and issues arising from physical examination and searches will be litigated under the *Riley* standards.