

## HOUSE AMENDMENTS TO HOUSE BILL 2134

By COMMITTEE ON JUDICIARY

April 20

1 On page 1 of the printed bill, line 2, after the semicolon delete the rest of the line and line 3  
2 and insert “creating new provisions; and amending ORS 133.724 and 133.726.”

3 Delete line 18.

4 In line 19, delete “(C)” and insert “(B)”.

5 In line 21, delete “(D)” and insert “(C)”.

6 On page 3, delete lines 26 through 29 and insert:

7 “(b) A statement demonstrating that:

8 “(A) There is probable cause to believe that a person whose oral communication is to be inter-  
9 cepted is engaged in committing, has committed or is about to commit a particular felony, or a  
10 misdemeanor under ORS 167.007, and that intercepting the oral communication will yield evidence  
11 thereof; or

12 “(B)(i) There is reasonable suspicion to believe that a person whose oral communication is to  
13 be intercepted is engaged in committing, has committed or is about to commit a crime;

14 “(ii) There is reasonable suspicion to believe that the circumstances in which the oral commu-  
15 nication is to be intercepted present a substantial risk of death, serious physical injury or sexual  
16 assault to a law enforcement officer or a person under the direct supervision of the officer;

17 “(iii) Interception of the oral communication is necessary to protect the safety of the person  
18 who may be endangered; and

19 “(iv) Other investigative procedures have been tried and have failed or reasonably appear to be  
20 unlikely to succeed if tried or are likely to be too dangerous; and”.

21 Delete lines 37 through 40 and insert:

22 “(a)(A) There is probable cause to believe that a person is engaged in committing, has committed  
23 or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and

24 “(B) There is probable cause to believe that the oral communication to be obtained will contain  
25 evidence concerning that crime; or

26 “(b)(A) There is reasonable suspicion to believe that a person whose oral communication is to  
27 be intercepted is engaged in committing, has committed or is about to commit a crime;

28 “(B) There is reasonable suspicion to believe that the circumstances in which the oral commu-  
29 nication is to be intercepted present a substantial risk of death, serious physical injury or sexual  
30 assault to a law enforcement officer or a person under the direct supervision of the officer;

31 “(C) Interception of the oral communication is necessary to protect the safety of the person who  
32 may be endangered; and

33 “(D) Other investigative procedures have been tried and have failed or reasonably appear to be  
34 unlikely to succeed if tried or are likely to be too dangerous.”.

35 On page 4, line 9, delete “if.”.

1 In line 10, delete “(a)” and restore “If”.  
2 In line 12, restore the bracketed material and delete the boldfaced material.  
3 In line 14, restore “(b)” and delete “(B)”.  
4 In line 16, restore the period and delete “; or”.  
5 Delete lines 17 through 25.  
6 In line 26, restore “(8)” and delete “(9)”.  
7 In line 32, restore “(9)” and delete “(10)”.  
8 In line 40, restore “(10)” and delete “(11)”.  
9 In line 42, restore “(11)” and delete “(12)”.  
10 In line 45, restore “(12)” and delete “(13)” and restore “(9)” and delete “(10)”.  
11 After line 45, insert:

12 “**SECTION 3.** ORS 133.726, as amended by section 2 of this 2007 Act, is amended to read:

13 “133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a  
14 law enforcement officer is authorized to intercept an oral communication to which the officer or a  
15 person under the direct supervision of the officer is a party, without obtaining an order for the in-  
16 terception of a wire, electronic or oral communication under ORS 133.724.

17 “(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication  
18 if the oral communication is made in the person’s immediate presence and is audible to the person  
19 regardless of whether the communication is specifically directed to the person.

20 “(3) An ex parte order for intercepting an oral communication in any county of this state under  
21 this section may be issued by any judge as defined in ORS 133.525 upon written application made  
22 upon oath or affirmation of the district attorney or a deputy district attorney authorized by the  
23 district attorney for the county in which the order is sought or upon the oath or affirmation of any  
24 peace officer as defined in ORS 133.005. The application shall include:

25 “(a) The name of the applicant and the applicant’s authority to make the application;

26 “[*(b) A statement demonstrating that:*]

27 “[*(A) There is probable cause to believe that a person whose oral communication is to be inter-*  
28 *cepted is engaged in committing, has committed or is about to commit a particular felony, or a*  
29 *misdemeanor under ORS 167.007, and that intercepting the oral communication will yield evidence*  
30 *thereof; or]*

31 “[*(B)(i) There is reasonable suspicion to believe that a person whose oral communication is to be*  
32 *intercepted is engaged in committing, has committed or is about to commit a crime;*]

33 “[*(ii) There is reasonable suspicion to believe that the circumstances in which the oral communi-*  
34 *cation is to be intercepted present a substantial risk of death, serious physical injury or sexual assault*  
35 *to a law enforcement officer or a person under the direct supervision of the officer;*]

36 “[*(iii) Interception of the oral communication is necessary to protect the safety of the person who*  
37 *may be endangered; and]*

38 “[*(iv) Other investigative procedures have been tried and have failed or reasonably appear to be*  
39 *unlikely to succeed if tried or are likely to be too dangerous; and]*

40 “**(b) A statement demonstrating that there is probable cause to believe that a person**  
41 **whose oral communication is to be intercepted is engaged in committing, has committed or**  
42 **is about to commit a particular felony, or a misdemeanor under ORS 167.007, and that in-**  
43 **tercepting the oral communication will yield evidence thereof; and**

44 “(c) The identity of the person, if known, suspected of committing the crime and whose oral  
45 communication is to be intercepted.

1           “(4) The judge may require the applicant to furnish further testimony or documentary evidence  
2 in support of the application.

3           “(5) Upon examination of the application and evidence, the judge may enter an ex parte order,  
4 as requested or as modified, authorizing or approving the interception of an oral communication  
5 within the state if the judge determines on the basis of the facts submitted by the applicant that:

6           “[(a)(A) *There is probable cause to believe that a person is engaged in committing, has committed*  
7 *or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and]*

8           “[(B) *There is probable cause to believe that the oral communication to be obtained will contain*  
9 *evidence concerning that crime; or]*

10           “[(b)(A) *There is reasonable suspicion to believe that a person whose oral communication is to be*  
11 *intercepted is engaged in committing, has committed or is about to commit a crime;]*

12           “[(B) *There is reasonable suspicion to believe that the circumstances in which the oral communi-*  
13 *cation is to be intercepted present a substantial risk of death, serious physical injury or sexual assault*  
14 *to a law enforcement officer or a person under the direct supervision of the officer;]*

15           “[(C) *Interception of the oral communication is necessary to protect the safety of the person who*  
16 *may be endangered; and]*

17           “[(D) *Other investigative procedures have been tried and have failed or reasonably appear to be*  
18 *unlikely to succeed if tried or are likely to be too dangerous.]*

19           “**(a) There is probable cause to believe that a person is engaged in committing, has**  
20 **committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007;**  
21 **and**

22           “**(b) There is probable cause to believe that the oral communication to be obtained will**  
23 **contain evidence concerning that crime.**

24           “(6) An order authorizing or approving the interception of an oral communication under this  
25 section must specify:

26           “(a) The identity of the person, if known, whose oral communication is to be intercepted;

27           “(b) A statement identifying the particular crime to which the oral communication is expected  
28 to relate;

29           “(c) The agency authorized under the order to intercept the oral communication;

30           “(d) The name and office of the applicant and the signature and title of the issuing judge;

31           “(e) A period of time after which the order shall expire; and

32           “(f) A statement that the order authorizes only the interception of an oral communication to  
33 which a law enforcement officer or a person under the direct supervision of a law enforcement of-  
34 ficer is a party.

35           “(7) An order under ORS 133.724 or this section is not required when a law enforcement officer  
36 intercepts an oral communication to which the officer or a person under the direct supervision of  
37 the officer is a party if the oral communication is made by a person whom the officer has probable  
38 cause to believe has committed, is engaged in committing or is about to commit:

39           “(a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or [475.904 to  
40 475.910] **475.906** or as a misdemeanor under ORS 167.007; or

41           “(b) Any other crime punishable as a felony if the circumstances at the time the oral communi-  
42 cation is intercepted are of such exigency that it would be unreasonable to obtain a court order  
43 under ORS 133.724 or this section.

44           “(8) A law enforcement officer who intercepts an oral communication pursuant to this section  
45 may not intentionally fail to record and preserve the oral communication in its entirety. A law

1 enforcement officer, or a person under the direct supervision of the officer, who is authorized under  
2 this section to intercept an oral communication is not required to exclude from the interception an  
3 oral communication made by a person for whom probable cause does not exist if the officer or the  
4 person under the officer's direct supervision is a party to the oral communication.

5 "(9) A law enforcement officer may not divulge the contents of an oral communication inter-  
6 cepted under this section before a preliminary hearing or trial in which an oral communication is  
7 going to be introduced as evidence against a person except:

8 "(a) To a superior officer or other official with whom the law enforcement officer is cooperating  
9 in the enforcement of the criminal laws of this state or the United States;

10 "(b) To a magistrate;

11 "(c) In a presentation to a federal or state grand jury; or

12 "(d) In compliance with a court order.

13 "(10) A law enforcement officer may intercept an oral communication under this section only  
14 when acting within the scope of the officer's employment and as a part of assigned duties.

15 "(11) As used in this section, 'law enforcement officer' means an officer employed by the United  
16 States, this state or a municipal government within this state, or a political subdivision, agency,  
17 department or bureau of those governments, to enforce criminal laws.

18 "(12) Violation of subsection (9) of this section is a Class A misdemeanor.

19 "**SECTION 4. The amendments to ORS 133.726 by section 3 of this 2007 Act become op-**  
20 **erative on January 2, 2012.**".

21 Delete pages 5 and 6.

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