

# House Bill 2651

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Association Chiefs of Police, Portland Police Bureau)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Exempts law enforcement officers from crime of failing to disclose to participants that conversation is being recorded under certain circumstances.

## A BILL FOR AN ACT

1  
2 Relating to crime; amending ORS 165.540 and 165.542.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 165.540 is amended to read:

5 165.540. (1) Except as otherwise provided in ORS 133.724 or 133.726 or subsections (2) to (7) of  
6 this section, a person may not:

7 (a) Obtain or attempt to obtain the whole or any part of a telecommunication or a radio com-  
8 munication to which the person is not a participant, by means of any device, contrivance, machine  
9 or apparatus, whether electrical, mechanical, manual or otherwise, unless consent is given by at  
10 least one participant.

11 (b) Tamper with the wires, connections, boxes, fuses, circuits, lines or any other equipment or  
12 facilities of a telecommunication or radio communication company over which messages are trans-  
13 mitted, with the intent to obtain unlawfully the contents of a telecommunication or radio communi-  
14 cation to which the person is not a participant.

15 (c) Obtain or attempt to obtain the whole or any part of a conversation by means of any device,  
16 contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if not all  
17 participants in the conversation are specifically informed that their conversation is being obtained.

18 (d) Obtain the whole or any part of a conversation, telecommunication or radio communication  
19 from any person, while knowing or having good reason to believe that the conversation, telecom-  
20 munication or radio communication was initially obtained in a manner prohibited by this section.

21 (e) Use or attempt to use, or divulge to others, any conversation, telecommunication or radio  
22 communication obtained by any means prohibited by this section.

23 (2)(a) The prohibitions in subsection (1)(a), (b) and (c) of this section do not apply to:

24 (A) Officers, employees or agents of a telecommunication or radio communication company who  
25 perform the acts prohibited by subsection (1)(a), (b) and (c) of this section for the purpose of con-  
26 struction, maintenance or conducting of their telecommunication or radio communication service,  
27 facilities or equipment.

28 (B) Public officials in charge of and at jails, police premises, sheriffs' offices, Department of  
29 Corrections institutions and other penal or correctional institutions, except as to communications  
30 or conversations between an attorney and the client of the attorney.

31 (b) Officers, employees or agents of a telecommunication or radio communication company who

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 obtain information under paragraph (a) of this subsection may not use or attempt to use, or divulge  
 2 to others, the information except for the purpose of construction, maintenance, or conducting of  
 3 their telecommunication or radio communication service, facilities or equipment.

4 (3) The prohibitions in subsection (1)(a), (b) or (c) of this section do not apply to subscribers or  
 5 members of their family who perform the acts prohibited in subsection (1) of this section in their  
 6 homes.

7 (4) The prohibitions in subsection (1)(a) of this section do not apply to the receiving or obtaining  
 8 of the contents of any radio or television broadcast transmitted for the use of the general public.

9 (5) The prohibitions in subsection (1)(c) of this section do not apply to:

10 (a) A person who records a conversation during a felony that endangers human life[.]; or

11 (b) **A law enforcement officer, as defined in ORS 133.726, who is in uniform and displaying**  
 12 **a badge and who is operating a vehicle-mounted video camera that records the scene in front**  
 13 **of or surrounding a police vehicle, for the duration of an event that begins as an effort to**  
 14 **enforce a traffic or motor vehicle law.**

15 (6) The prohibitions in subsection (1)(c) of this section do not apply to persons who intercept  
 16 or attempt to intercept with an unconcealed recording device the oral communications that are part  
 17 of any of the following proceedings:

18 (a) Public or semipublic meetings such as hearings before governmental or quasi-governmental  
 19 bodies, trials, press conferences, public speeches, rallies and sporting or other events;

20 (b) Regularly scheduled classes or similar educational activities in public or private institutions;  
 21 or

22 (c) Private meetings or conferences if all others involved knew or reasonably should have known  
 23 that the recording was being made.

24 (7) The prohibitions in subsection (1)(a), (c), (d) and (e) of this section do not apply to any:

25 (a) Radio communication that is transmitted by a station operating on an authorized frequency  
 26 within the amateur or citizens bands; or

27 (b) Person who intercepts a radio communication that is transmitted by any governmental, law  
 28 enforcement, civil defense or public safety communications system, including police and fire, readily  
 29 accessible to the general public provided that the interception is not for purposes of illegal activity.

30 (8) Violation of subsection (1) or (2)(b) of this section is a Class A misdemeanor.

31 **SECTION 2.** ORS 165.542 is amended to read:

32 165.542. (1) Within 30 days after the use of an electronic listening device under ORS 133.726 (7)  
 33 or 165.540 (5)(a), the law enforcement agency using the device shall report to the district attorney  
 34 of the county in the agency's jurisdiction:

35 (a) The number of uses of the device and duration of the interceptions made by the law  
 36 enforcement agency;

37 (b) The offense investigated;

38 (c) The identity of the law enforcement agency intercepting the communication; and

39 (d) Whether the person wearing the device was a law enforcement officer or a person under the  
 40 supervision of the officer and the number of persons in each category who wore the device.

41 (2) During January of each year, the district attorney of a county in which electronic listening  
 42 devices were used under ORS 133.726 (7) or 165.540 (5)(a) shall report to the Department of Justice:

43 (a) The information required by subsection (1) of this section with respect to the use of elec-  
 44 tronic listening devices during the preceding calendar year; and

45 (b) The aggregate number of instances in which electronic listening devices have been used in

1 the county under ORS 133.726 (7) or 165.540 (5)(a) during the preceding calendar year.

2 (3) The law enforcement agency shall include as part of the case file any use of electronic lis-  
3 tening devices under ORS 133.726 (7) or 165.540 (5)(a).

4 (4) During April of each odd-numbered calendar year, the Department of Justice shall transmit  
5 to the Legislative Assembly a report including a summary of the information required by subsections  
6 (1) and (2) of this section.

7 (5) Failure to comply with the reporting requirements of this section shall not affect the  
8 admissibility of evidence.

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