

House Bill 3064

Sponsored by Representative THOMPSON (at the request of Mike Nearman)

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**.

Creates exception to prohibition on obtaining conversations by means of device, contrivance, machine or apparatus for person who records public official or law enforcement officer acting in official capacity in public place.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to obtaining conversations; creating new provisions; amending ORS 165.540 and 165.543;
3 and declaring an emergency.

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

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

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

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

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

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

20 (d) Obtain the whole or [*any*] **a** part of a conversation, telecommunication or radio communi-
21 cation from any person, while knowing or having good reason to believe that the conversation,
22 telecommunication or radio communication was initially obtained in a manner prohibited by this
23 section.

24 (e) Use or attempt to use, or divulge to others, [*any*] **a** conversation, telecommunication or radio
25 communication obtained by [*any*] **a** means prohibited [*by*] **under** this section.

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

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

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

4 (b) Officers, employees or agents of a telecommunication or radio communication company who
 5 obtain information under paragraph (a) of this subsection may not use or attempt to use, or divulge
 6 to others, the information except for the purpose of [*construction, maintenance, or conducting of*]
 7 **constructing, maintaining or conducting** their telecommunication or radio communication ser-
 8 vice, facilities or equipment.

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

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

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

15 (a) A person who records a conversation during a felony that endangers human life;

16 (b) A person who, pursuant to ORS 133.400, records an interview conducted by a peace officer
 17 in a law enforcement facility;

18 (c) A law enforcement officer who is in uniform and displaying a badge and who is operating a
 19 vehicle-mounted video camera that records the scene in front of, within or surrounding a police ve-
 20 hicle, unless the officer has reasonable opportunity to inform participants in the conversation that
 21 the conversation is being obtained; [*or*]

22 (d) A law enforcement officer who, acting in the officer's official capacity, deploys an Electro-
 23 Muscular Disruption Technology device that contains a built-in monitoring system capable of re-
 24 cording audio or video, for the duration of that deployment[.]; **or**

25 **(e) A person who records a public official or law enforcement officer who is acting in the**
 26 **official capacity of the official or officer in a public place. A recording authorized under this**
 27 **paragraph becomes the personal property of the person who recorded it.**

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

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

33 (b) Regularly scheduled classes or similar educational activities in public or private institutions;
 34 or

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

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

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

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

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

45 (9) As used in this section:

1 (a) “Electro-Muscular Disruption Technology device” means a device that uses a high-voltage,
2 low power charge of electricity to induce involuntary muscle contractions intended to cause tem-
3 porary incapacitation. “Electro-Muscular Disruption Technology device” includes devices commonly
4 known as tasers.

5 (b) “Law enforcement officer” has the meaning given that term in ORS 133.726.

6 (c) **“Public official” means a person who is serving the State of Oregon, any political**
7 **subdivision of this state, or any other public body as defined in ORS 174.109, as an elected**
8 **official, appointed official, employee or agent.**

9 (d) **“Public place” has the meaning given that term in ORS 161.015.**

10 **SECTION 2.** ORS 165.543 is amended to read:

11 165.543. (1) Except as provided in ORS 133.724 or as provided in ORS 165.540 (2)(a) **or (5)(e)**,
12 any person who willfully intercepts, attempts to intercept or procures any other person to intercept
13 or attempt to intercept any wire or oral communication where such person is not a party to the
14 communication and where none of the parties to the communication has given prior consent to the
15 interception, is guilty of a Class A misdemeanor.

16 (2) As used in this section, the terms “intercept” and “wire or oral communication” have the
17 meanings provided under ORS 133.721.

18 **SECTION 3. The amendments to ORS 165.540 and 165.543 by sections 1 and 2 of this 2013**
19 **Act apply to recordings made on or after the effective date of this 2013 Act.**

20 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**
21 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
22 **on its passage.**