

Please file this addendum with the email below. The examples identified below are from Clackamas County, not Washington county.

Please file this email with the Senate Judiciary Committee tomorrow, February 12, 2015 (before the 8:45 am hearing if possible) as the written testimony of the Oregon District Attorneys Association and the Association of Oregon Counties in opposition to SB 391.

On its face Senate Bill 391 sounds good but as applied it will curtail constitutionally seizing bail money when there is probable cause to believe it is proceeds of drug trafficking. The bill aims to prohibit seizure of property (cash, stocks, bonds or real or personal property) without a warrant. This seizure of property is *currently allowed* by ORS 131A.065. Under the current law, money can be seized without a warrant based on probable cause and exigent circumstances. ORS 131A.065(1)(a) specifically states:

131A.065 Seizure without court order. (1) Property may be seized for forfeiture by a police officer without a court order if:

(a) There is probable cause to believe that property is subject to forfeiture, **and the property may constitutionally be seized without a warrant;** (emphasis added)

All constitutional requirements for a warrant less seizure must be met. The exigent circumstances are created by the attempt to convert the money from drug money to bail money. Practically, once the money is accepted as bail money it is immediately converted to that purpose and becomes the property of the state. For example, I am advised in Washington County there have been several cases where the police had probable cause and successfully seized bail money under this theory. (Example: known drug associate brings money in paper bag bundled in denominations consistent with drug transactions; drug dog alerts on the money; drug associate runs out of jail lobby saying the inmate is a drug dealer and he wants nothing to do with the money – police seize it without a warrant.) Under the current law, the inmate and the person tendering the bail money are served with a notice of seizure which informs them that he/she has a right to file a claim and motion for expedited hearing on probable cause. The civil forfeiture notice and supporting laws in ORS 131A provide adequate remedies and rights.

In short, the current law requires that all constitutional rights be enforced during the seizure of this property. There is no need for the proposed law embodied in SB 391.

Respectfully submitted,

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