

PRELIMINARY STAFF MEASURE SUMMARY

CARRIER:

Senate Committee on Judiciary

REVENUE: May have revenue impact, statement not yet issued

FISCAL: May have fiscal impact, statement not yet issued

SUBSEQUENT REFERRAL TO:

Action:

Vote:

Yeas:

Nays:

Exc.:

Prepared By: Eric Deitrick, Counsel

Meeting Dates: 3/17

WHAT THE MEASURE DOES: Prohibits public body from searching portable electronic devices unless there is a warrant or imminent threat to public safety. Requires public body to return device to owner as soon as practicable.

ISSUES DISCUSSED:

EFFECT OF COMMITTEE AMENDMENT:

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 State v. Nix, 236 Or App 32 (2010), the Oregon Court of Appeals held that searching a person’s cell phone incident to arrest was permissible under Article I, section 9 of the Oregon Constitution. Four years later, 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.

Senate Bill 641 prohibits public bodies from searching portable electronic devices unless there is a warrant or imminent threat to public safety.