



**ELECTRONIC FRONTIER FOUNDATION**  
Protecting Rights and Promoting Freedom on the Electronic Frontier

March 17, 2015

Senator Floyd Prozanski  
Senate Committee on Judiciary  
900 Court St. NE, S-415  
Salem, OR 97301  
503-986-1704

**RE: Electronic Frontier Foundation Support of SB 316, 640, 641 and 904**

Dear Senator Prozanski and Committee members,

The Electronic Frontier Foundation (“EFF”) submits this brief letter in support of a suite of electronic privacy bills— SB 316, 640, 641 and 904—currently being considered by the Committee.

EFF is a non-profit, member-supported civil liberties organization based in San Francisco, California, that works to protect human and constitutional rights in the digital world. We have more than 25,000 active donors and dues-paying members nationwide, including members in Oregon.

As the advances of technology permeate everyday life, it becomes crucial to protect the privacy rights enshrined in Article I, section 9 of the Oregon Constitution, which provides stronger privacy guarantees than the Fourth Amendment to the U.S. Constitution. Yet even under the Fourth Amendment, the U.S. Supreme Court recently reaffirmed the need to protect digital data. This past summer, its decision in *Riley v. California* confirmed that electronic devices like cell phones, and specifically the digital data stored on the phone, differ in both “a quantitative and a qualitative sense” from other physical objects accessible to law enforcement. These devices, and the digital data contained within, is “not just another technological convenience” but, given “all they contain and all they may reveal...hold for many Americans ‘the privacies of life.’”

Of course, digital data like the contents of communications and location information—whether stored with an online service provider or on a personal electronic device itself—also gives law enforcement a powerful investigative tool for solving crimes, and police should be permitted to use this wealth of information in order to solve crimes and keep the public safe. But the sensitive nature of modern digital data requires a balance between security and privacy.

Fortunately, these bills strike the right balance by requiring not only a search warrant, but also accountability and transparency, in order for law enforcement to obtain this private information.

Following the spirit of *Riley*, which ruled law enforcement needed a warrant to search the data on a cell phone incident to arrest, SB 316, 640 and 641 require law enforcement to obtain a warrant to access the contents of electronic communications and location information, sensitive information about who we are, who we communicate and associate with, and where we’ve been.

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All three bills contain reasonable exceptions that allow the government to obtain this digital information without a warrant during an emergency.

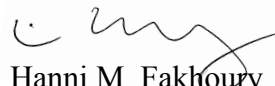
These bills also provide much needed law enforcement accountability and transparency to the courts, legislature and most importantly, the public. All require suppression of evidence obtained in violation of statutes, providing a strong incentive for law enforcement to follow the law. All require law enforcement notify users that their data has been taken, but only if notification will not jeopardize a law enforcement investigation. And all require annual reporting to inform the public about what data government agencies are collecting, as well as how often and the reasons why this data is being collected.

Finally, SB 904—which establishes the Joint Committee on Privacy and Civil Liberties Oversight—ensures the legislature, acting on behalf of the public, is informed about the surveillance equipment and technologies used by law enforcement agencies and the sorts of data being collected by these agencies. That helps ensure law enforcement is operating within the boundaries of the law and allows the public to understand how surveillance is being conducted in their communities.

The balance between allowing law enforcement access to effective investigatory tools, and protecting the public's privacy rights is oftentimes a delicate one. But these bills strike the right balance in light of the strong privacy protections in the Oregon constitution. For these reasons, EFF asks for you to support these bills.

Thank you for your consideration.

Sincerely,



Hanni M. Fakhoury  
EFF Senior Staff Attorney

cc: Senate Committee on Judiciary Members  
Senator Jeff Kruse  
Senator Ginny Burdick  
Senator Sara Gelser  
Senator Kim Thatcher