

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, 4/14

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:

- Recent United States Supreme Court decision in Riley v. California
- Amount and type of data on a typical cell phone
- Surveillance tools of the government

EFFECT OF COMMITTEE AMENDMENT: Proposed (-4) amendment eliminates prohibition on cell phone searches and focuses prohibition on duplication of cell phone data without a warrant or consent. The amendment limits the scope of the prohibition to law enforcement rather than all public bodies. It clarifies who has standing to challenge evidence obtained in violation of the statute. It requires law enforcement to purge data obtained outside the scope of the search warrant.

Proposed (-5) amendment clarifies language from the proposed (-4) amendment and defines “forensic imaging.” In addition, the amendment clarifies that law enforcement does not need to purge the forensically imaged data automatically. Rather, the amendment modifies ORS 133.643 – 133.653 so that the data possessed by law enforcement can be deleted only at the request of the individual whose data has been forensically imaged.

Proposed (-6) amendment incorporates (-5) amendment but clarifies definition of data..

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.

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This summary has not been adopted or officially endorsed by action of the committee.

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