

TO: Chair Barker and members of the House Committee on Judiciary

FROM: Christi Winters, Probation/Parole Officer and Computer Forensics Examiner
Multnomah County Department of Community Justice

DATE: May 11, 2015

RE: Testimony on SB 641A

My name is Christi Winters, and I am a Probation/Parole Officer and a Computer Forensics Examiner with the Department of Community Justice's Computer Forensics Laboratory at Multnomah County. Thank you for the opportunity to testify. My goal in testifying today is to share some concerns we have with the current version of SB 641A.

We live in the age of technology, where essentially everyone interacts with electronic devices on a daily basis. This applies to people who are supervised by community corrections agencies as well. At Multnomah County, we have a fully operational computer forensics lab that provides critical forensics support to community justice agencies throughout the state of Oregon. The goal of our lab is to provide forensics services in order for Probation/Parole Officers to make evidence-based, best practices decisions regarding offender supervision, in the interest of positive behavioral changes and public safety. Lab operations are intended to provide information to officers regarding electronic data that remains hidden deep within the digital world of cyberspace, which are only discovered through computer forensics analysis.

One of the essential duties of Probation/Parole Officers is to monitor and enforce conditions of supervision that are ordered by the court and the Oregon Board of Parole and Post Prison Supervision. These conditions are based on the likelihood to reoffend and criminal histories, which increasingly involve the use of electronic devices. As a result, supervision orders often direct reasonable searches of electronic equipment, which include portable electronic devices, by our officers, as a way to evaluate supervision compliance, protect the safety of victims and promote overall community safety.

This bill specifically refers to a "law enforcement agency", and Oregon Administrative Rules designate Probation/Parole Officers as law enforcement officers. The provisions in this bill prohibit a law enforcement agency from obtaining data from portable electronic devices without consent or a search warrant. This bill does not take into account supervision conditions that call for the search of electronic devices that are based on reasonable grounds that evidence of a violation will be found.

Definitions in Senate Bill 641A encompass virtually all types of computers and other electronic devices. This bill's impact may seriously jeopardize community correction's public safety mission, and our ability

to apply best practice supervision by severely limiting our ability to forensically examine a vast array of electronic devices under the proposed “portable electronic device” umbrella in all of the searches that do not involve consent. These types of devices include not only cell phones but iPads, iPods, electronic readers, gaming consoles, GPS devices, USB flash drives, laptop computers, external hard drives and the list goes on and on.

Senate Bill 641A allows for the search of electronic data that is “observable from the portable electronic device by normal unaided human senses.” This type of search violates a key premise of forensic science regarding data preservation because it will make changes to digital evidence – especially key file dates and times. As a result, it increases the risk that digital evidence may be ruled inadmissible in judicial proceedings. Furthermore, because of the way electronic devices store data, files are easily hidden from direct view and require forensic analysis to uncover the facts.

The provision in this bill that prohibits a law enforcement agency from retaining copies of the raw data to be returned runs diametrically opposed to best-practice forensics standards. Like other scientific forensics labs, we retain extracted data from electronic devices for a defined period of time in a secure manner for future appeals.

This bill mandates the return of equipment and extracted raw data with no regard for the digital contents. This provision is especially concerning because it includes digital evidence that is identified by treatment professionals as harmful to victims and the community or violates conditions of supervision and/or state/federal laws - as is the case with child pornography. For example, with cases involving dangerous child sex offenders who have histories of possessing child pornography on portable electronic devices, SB 641A would prohibit our ability to examine the contents of these devices because this bill does not account for conditions of supervision that direct the search of electronic devices.

In summary, I respectfully request that you consider amending SB 641A.

Thank you for the opportunity to testify before you today. I would be happy to answer any questions.

Submitted by:

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