



The ACLU of Oregon Urges a Yes Vote on SB 641

Data stored on a smartphone or other portable electronic device can paint a near-complete picture of even the most intimate and personal details of our lives. Before the age of smartphones, it was impossible for police to gather this much information about a person's communications, historical movements, and private life. Today, police officers routinely search the contents of a person's cell phone during an arrest or after a cell phone seizure. With increasing frequency, officers perform such searches with the aid of electronic devices that strip a cell phone of its data on the scene. This type of highly intrusive data mining implicates significant privacy concerns.

Tech companies are now marketing a wide variety of forensic devices and software to law enforcement that extract and duplicate the contents of portable electronic devices. Examples of these include MSAB's XRY Kiosk (a forensic tool designed to easily extract data in the field) and CelleBrite's UFED Touch (a standalone mobile forensic extraction device).

These devices and software can:

- Crack passwords and user locks
- Decode encrypted data
- Recover deleted files
- Access remotely-stored data
- Access private online accounts, email, calendar and contact files
- Decode and compile location data to create detailed maps of where the portable electronic device has been



SB 641 contains the following provisions to protect Oregonians' privacy:

- Prohibits law enforcement from duplicating or copying data from a portable electronic device without a warrant or consent.
- Provides a remedy for violations: no information obtained without a warrant or consent can be used in a court or other proceeding, nor used to establish reasonable suspicion or probable cause that an offense has been committed. This remedy is available to the owner of the portable electronic device and other persons with a reasonable expectation of privacy in the contents of the device.
- Authorizes court to order law enforcement to purge duplicated data if defendant files motion for return of property.

Please note that SB 641 has been amended to exempt (1) portable electronic devices found in correctional facilities, whether those devices are confiscated contraband or devices issued to inmates; and (2) lawful searches by OYA and DOC employees of devices possessed by parolees and probationers. These amendments do not expand correctional officer authority, but simply allow them to continue to search devices in a manner that they are already authorized to do.

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