

House Committee On Judiciary

**Fiscal:** Has minimal fiscal impact

**Revenue:** No Revenue Impact

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**Action Date:** 06/03/15

**Action:** Do Pass As Amended And Be Printed Engrossed.

**Meeting Dates:** 05/11, 06/03

**Vote:**

Yeas: 7 - Barker, Greenlick, Krieger, Lininger, Olson, Post, Williamson

Nays: 2 - Barton, Sprenger

**Prepared By:** Eric Deitrick, Counsel

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**WHAT THE MEASURE DOES:**

Prohibits law enforcement from duplicating or copying data from portable electronic device without warrant or consent. Defines terms. Authorizes court to order law enforcement to purge certain duplicated data if defendant files motion for return of property. Exempts correctional facilities, state hospital, community corrections, and probation officers from prohibition acting in otherwise lawful manner.

**ISSUES DISCUSSED:**

- Recent United States Supreme Court decision in Riley v. California
- Amount and type of data on a typical cell phone
- Surveillance tools and techniques of law enforcement
- A-engrossed version of bill came from work group that included District Attorneys, the Department of Justice, the Oregon Criminal Defense Lawyers Association, and the American Civil Liberties Union
- Impact of bill on Department of Corrections, Oregon Youth Authority, and Community Corrections

**EFFECT OF COMMITTEE AMENDMENT:**

Changes “appropriate consent” to “lawful consent.” Exempts correctional facilities, state hospital, community corrections, and probation officers from prohibition on forensic imaging to the extent those agencies are engaged in otherwise lawful conduct.

**BACKGROUND:**

The United States and Oregon Constitutions prohibit warrantless searches, unless certain well-founded exceptions to the warrant requirement exist. These exceptions may 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 Riley v. California, 134 S.Ct. 2473 (2014), the United States Supreme Court held that searching a person’s cell phone incident to arrest violates the United States Constitution, unless the search is authorized by warrant or certain exigent circumstances.

Typically, there are two ways in which law enforcement accesses a portable electronic device. The officer may physically examine and search the phone, or the officer may extract data from the phone electronically. Senate Bill 641-B focuses on electronic extraction and prohibits law enforcement from duplicating or copying the data from a portable electronic device without a warrant or consent. Physical examination and searches pursuant to “exigent circumstances” are not prohibited by the bill, and issues arising from physical examination and searches are to be litigated under the Riley standards.