

House Bill 2704

Sponsored by Representative FREDERICK (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that recording of peace officer or parole and probation officer does not constitute crime of interfering with peace officer or parole and probation officer unless recording actually prevents officer from performing lawful duties.

Creates exemption to prohibition on recording conversations for person recording law enforcement officer while officer is performing official duties.

A BILL FOR AN ACT

1
2 Relating to the recording of law enforcement officers; creating new provisions; and amending ORS
3 162.247 and 165.540.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 162.247 is amended to read:

6 162.247. (1) A person commits the crime of interfering with a peace officer or parole and pro-
7 bation officer if the person, knowing that another person is a peace officer or a parole and probation
8 officer as defined in ORS 181.610:

9 (a) Intentionally acts in a manner that prevents, or attempts to prevent, a peace officer or parole
10 and probation officer from performing the lawful duties of the officer with regards to another person;
11 or

12 (b) Refuses to obey a lawful order by the peace officer or parole and probation officer.

13 (2) Interfering with a peace officer or parole and probation officer is a Class A misdemeanor.

14 (3) This section does not apply in situations in which the person is engaging in:

15 (a) Activity that would constitute resisting arrest under ORS 162.315; [*or*]

16 (b) Passive resistance[.]; **or**

17 (c) **The recording of still or motion pictures or sound of a peace officer or a parole and**
18 **probation officer while the officer is engaged in official duties that does not, by itself, actu-**
19 **ally prevent a peace officer or a parole and probation officer from performing the lawful**
20 **duties of the officer.**

21 (4) **An order by a peace officer or a parole and probation officer to cease recording still**
22 **or motion pictures or sound of a peace officer or a parole and probation officer while the**
23 **officer is engaged in official duties is not a lawful order as described in subsection (1)(b) of**
24 **this section unless the recording is actually preventing a peace officer or a parole and pro-**
25 **bation officer from performing the lawful duties of the officer.**

26 **SECTION 2.** ORS 165.540 is amended to read:

27 165.540. (1) Except as otherwise provided in ORS 133.724 or 133.726 or subsections (2) to (7) of
28 this section, a person may not:

29 (a) Obtain or attempt to obtain the whole or any part of a telecommunication or a radio com-
30 munication to which the person is not a participant, by means of any device, contrivance, machine

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 or apparatus, whether electrical, mechanical, manual or otherwise, unless consent is given by at
 2 least one participant.

3 (b) Tamper with the wires, connections, boxes, fuses, circuits, lines or any other equipment or
 4 facilities of a telecommunication or radio communication company over which messages are trans-
 5 mitted, with the intent to obtain unlawfully the contents of a telecommunication or radio communi-
 6 cation to which the person is not a participant.

7 (c) Obtain or attempt to obtain the whole or any part of a conversation by means of any device,
 8 contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if not all
 9 participants in the conversation are specifically informed that their conversation is being obtained.

10 (d) Obtain the whole or any part of a conversation, telecommunication or radio communication
 11 from any person, while knowing or having good reason to believe that the conversation, telecom-
 12 munication or radio communication was initially obtained in a manner prohibited by this section.

13 (e) Use or attempt to use, or divulge to others, any conversation, telecommunication or radio
 14 communication obtained by any means prohibited by this section.

15 (2)(a) The prohibitions in subsection (1)(a), (b) and (c) of this section do not apply to:

16 (A) Officers, employees or agents of a telecommunication or radio communication company who
 17 perform the acts prohibited by subsection (1)(a), (b) and (c) of this section for the purpose of con-
 18 struction, maintenance or conducting of their telecommunication or radio communication service,
 19 facilities or equipment.

20 (B) Public officials in charge of and at jails, police premises, sheriffs' offices, Department of
 21 Corrections institutions and other penal or correctional institutions, except as to communications
 22 or conversations between an attorney and the client of the attorney.

23 (b) Officers, employees or agents of a telecommunication or radio communication company who
 24 obtain information under paragraph (a) of this subsection may not use or attempt to use, or divulge
 25 to others, the information except for the purpose of construction, maintenance, or conducting of
 26 their telecommunication or radio communication service, facilities or equipment.

27 (3) The prohibitions in subsection (1)(a), (b) or (c) of this section do not apply to subscribers or
 28 members of their family who perform the acts prohibited in subsection (1) of this section in their
 29 homes.

30 (4) The prohibitions in subsection (1)(a) of this section do not apply to the receiving or obtaining
 31 of the contents of any radio or television broadcast transmitted for the use of the general public.

32 (5) The prohibitions in subsection (1)(c) of this section do not apply to:

33 (a) A person who records a conversation during a felony that endangers human life;

34 **(b) A person who records a law enforcement officer while the officer is performing offi-**
 35 **cial duties;**

36 [(b)] (c) A person who, pursuant to ORS 133.400, records an interview conducted by a peace
 37 officer in a law enforcement facility;

38 [(c)] (d) A law enforcement officer who is in uniform and displaying a badge and who is oper-
 39 ating a vehicle-mounted video camera that records the scene in front of, within or surrounding a
 40 police vehicle, unless the officer has reasonable opportunity to inform participants in the conversa-
 41 tion that the conversation is being obtained; or

42 [(d)] (e) A law enforcement officer who, acting in the officer's official capacity, deploys an
 43 Electro-Muscular Disruption Technology device that contains a built-in monitoring system capable
 44 of recording audio or video, for the duration of that deployment.

45 (6) The prohibitions in subsection (1)(c) of this section do not apply to persons who intercept

1 or attempt to intercept with an unconcealed recording device the oral communications that are part
2 of any of the following proceedings:

3 (a) Public or semipublic meetings such as hearings before governmental or quasi-governmental
4 bodies, trials, press conferences, public speeches, rallies and sporting or other events;

5 (b) Regularly scheduled classes or similar educational activities in public or private institutions;
6 or

7 (c) Private meetings or conferences if all others involved knew or reasonably should have known
8 that the recording was being made.

9 (7) The prohibitions in subsection (1)(a), (c), (d) and (e) of this section do not apply to any:

10 (a) Radio communication that is transmitted by a station operating on an authorized frequency
11 within the amateur or citizens bands; or

12 (b) Person who intercepts a radio communication that is transmitted by any governmental, law
13 enforcement, civil defense or public safety communications system, including police and fire, readily
14 accessible to the general public provided that the interception is not for purposes of illegal activity.

15 (8) Violation of subsection (1) or (2)(b) of this section is a Class A misdemeanor.

16 (9) As used in this section:

17 (a) "Electro-Muscular Disruption Technology device" means a device that uses a high-voltage,
18 low power charge of electricity to induce involuntary muscle contractions intended to cause tem-
19 porary incapacitation. "Electro-Muscular Disruption Technology device" includes devices commonly
20 known as tasers.

21 (b) "Law enforcement officer" has the meaning given that term in ORS 133.726.

22 **SECTION 3. The amendments to ORS 162.247 and 165.540 by sections 1 and 2 of this 2015**
23 **Act apply to conduct occurring on or after the effective date of this 2015 Act.**

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