

Senate Bill 640

Sponsored by Senator SHIELDS, Representative WILLIAMSON, Senator KNOPP, Representative HUFFMAN (at the request of ACLU)

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**.

Prohibits public body from obtaining location information of electronic device without warrant except in certain circumstances.

Requires that public body provide notice to person if location information is obtained. Provides for delay of notification and prohibition on disclosure of warrant when ordered by court.

Requires public body to issue annual report to Legislative Assembly if public body requests or obtains location information of electronic device.

Prohibits public body from obtaining contents of communication and certain other information without search warrant except in certain circumstances.

Requires that public body provide notice to person if contents of communication or certain other information is obtained. Provides for delay of notification and prohibition on disclosure of warrant when ordered by court.

Requires public body to issue annual report to Legislative Assembly if public body requests or obtains contents of communication or certain other information.

Provides that information obtained in violation of Act is inadmissible in adjudicative proceeding. Requires that parties be provided with warrant and application when lawfully obtained information is used in adjudicative proceeding.

A BILL FOR AN ACT

1
2 Relating to privacy.

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

4 **SECTION 1. As used in sections 1 to 10 of this 2015 Act:**

5 (1) **"Adverse result" means:**

6 (a) **Endangering the life or physical safety of a person;**

7 (b) **Fleeing from prosecution;**

8 (c) **Destroying or tampering with evidence of an offense;**

9 (d) **Intimidating potential witnesses to an offense; or**

10 (e) **Seriously jeopardizing an investigation or unduly delaying a trial.**

11 (2) **"Contents of a communication" means all information regarding the substance,**
12 **meaning or purpose of a wire or electronic communication.**

13 (3) **"Electronic communication service" has the meaning given that term in 18 U.S.C.**
14 **2510.**

15 (4) **"Electronic device" means any device that enables access to, or use of, an electronic**
16 **communication service, a remote computing service or a location information service.**

17 (5) **"Location information" means any information concerning the location of an elec-**
18 **tronic device that, in whole or in part, is generated by or derived from the operation of that**
19 **device.**

20 (6) **"Location information service" means a global positioning system or other mapping,**
21 **locational or directional information service.**

22 (7) **"Public body" has the meaning given that term in ORS 174.109.**

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 (8) “Remote computing service” has the meaning given that term in 18 U.S.C. 2711.

2 (9) “Service provider” means the provider of an electronic communication service, a re-
3 mote computing service or a location information service.

4 (10) “Subscriber” means a person who is the primary user of an electronic device.

5 **SECTION 2.** A public body may not obtain the location information of an electronic de-
6 vice without a warrant issued under ORS 133.525 to 133.703.

7 **SECTION 3.** (1) If a public body obtains location information under section 2 or 4 (2)(a)
8 of this 2015 Act, the public body shall serve upon the subscriber, deliver by registered, first
9 class or electronic mail to the subscriber or, by some other means reasonably calculated to
10 notify the subscriber, provide:

11 (a) A copy of the warrant or court order; and

12 (b) Notice that informs the subscriber:

13 (A) Of the nature of the public body inquiry with reasonable specificity;

14 (B) That location information for the subscriber’s electronic device was provided to a
15 public body and the dates on which and for which the information was provided;

16 (C) Of the identity of the service provider or other entity from which the location infor-
17 mation was obtained, if applicable; and

18 (D) Whether delayed notification was ordered under subsection (3) of this section and, if
19 applicable, the court that entered the order and the justification for the delay.

20 (2) The public body shall provide, or shall make a good faith effort to provide, the infor-
21 mation required by subsection (1) of this section no later than seven days after receiving the
22 location information, unless a court orders delayed notification under subsection (3) of this
23 section.

24 (3)(a) A public body seeking to obtain location information under section 2 of this 2015
25 Act may include in the warrant application a request for an order delaying the notification
26 required by subsection (1) of this section by a period of time not to exceed 90 days. The court
27 shall issue a delayed notification order if the court determines that there is reason to believe
28 that immediate notification of the warrant may have an adverse result.

29 (b) The court may, upon application by the public body, grant one or more extensions of
30 up to 90 days each of the 90-day time period described in paragraph (a) of this subsection.

31 (c) Upon expiration of the period of delay ordered under this subsection, the public body
32 shall provide the copy of the warrant and the notice, as described in subsection (1) of this
33 section.

34 (4)(a) A public body seeking to obtain location information under section 2 of this 2015
35 Act may include in the warrant application a request for an order directing the service pro-
36 vider, or other entity providing location information, named in the warrant not to disclose
37 to any person the existence of the warrant for a period of time not to exceed 90 days. The
38 court shall issue an order prohibiting disclosure if the court determines that there is reason
39 to believe that disclosure of the existence of the warrant may have an adverse result.

40 (b) The court may, upon application by the public body, grant one or more extensions of
41 up to 90 days each of the 90-day time period described in paragraph (a) of this subsection.

42 **SECTION 4.** (1) Notwithstanding section 2 of this 2015 Act, a public body may obtain lo-
43 cation information without a warrant in the following circumstances:

44 (a) To respond to a request for emergency services;

45 (b) With the subscriber’s specific express consent;

1 (c) If the subscriber reports that the electronic device has been stolen;

2 (d) If the public body has reason to believe that the electronic device is contraband and
3 is located within a correctional facility; or

4 (e) If the public body has reason to believe that there exists an emergency involving im-
5 minent danger of death or serious physical injury to a person and that obtaining the location
6 information without delay is necessary to address or effectively respond to the emergency.

7 (2)(a) Notwithstanding section 2 of this 2015 Act, a magistrate authorized to issue search
8 warrants under ORS 133.525 to 133.703 may, upon application by any public officer or an
9 agent or employee of a public body, acting in the course of official duties, issue a court order
10 authorizing the public body to obtain location information if the court finds that there is
11 probable cause to believe that the information sought contains evidence that a violation of
12 law punishable by a civil penalty has occurred.

13 (b) An application for a court order described in paragraph (a) of this subsection shall
14 be supported by a sworn affidavit describing with particularity the applicant's official position
15 within the public body, the offense for which evidence is sought, the information to be in-
16 vestigated and the purpose for which the investigation is to be made, including the basis
17 upon which probable cause exists.

18 (3) If location information is obtained under subsection (1)(e) of this section, the public
19 body shall, within 48 hours after obtaining the information, file with the appropriate court
20 a written report signed by a supervisory official of the public body setting forth the reasons
21 for obtaining the location information and the circumstances of the emergency.

22 **SECTION 5.** By January 31 of each calendar year, a public body that applies for a warrant
23 for location information under section 2 of this 2015 Act, or otherwise obtains location in-
24 formation under section 4 of this 2015 Act, during the preceding calendar year shall provide
25 to the Legislative Assembly a report containing the following information from the preceding
26 calendar year:

27 (1) A list of applications for warrants for location information, the dates on which the
28 applications were made and whether the warrants were issued or denied;

29 (2) A list of circumstances in which the public body obtained location information without
30 a warrant, the dates on which and for which the information was obtained and whether a
31 warrant was eventually issued;

32 (3) A list of warrants that were accompanied by an order delaying notification or an or-
33 der prohibiting disclosure, as described in section 3 of this 2015 Act;

34 (4) The offense specified in each warrant application, if applicable;

35 (5) The method by which the location information was obtained, if applicable; and

36 (6) The identities of the service providers and other entities from which the location in-
37 formation was or would have been obtained.

38 **SECTION 6.** (1) Except as provided in subsections (2) and (3) of this section, a public body
39 may not obtain from a service provider:

40 (a) The contents of a communication stored, maintained or transmitted by the service
41 provider; or

42 (b) Any record or other information pertaining to a subscriber or customer of the service
43 provider.

44 (2) A public body may obtain the contents of a communication or the records or other
45 information pertaining to a subscriber or customer of a service provider in any of the fol-

1 **lowing circumstances:**

2 (a) Pursuant to a warrant issued under ORS 133.525 to 133.703;

3 (b) With the specific consent of the author, originator, addressee or intended recipient
4 of the communication or of the subscriber or customer of the service provider;

5 (c) When only the name and address of the subscriber are obtained by the public body;

6 (d) Pursuant to discovery in a civil action or proceeding; or

7 (e)(A) If the public body reasonably believes that an emergency involving imminent dan-
8 ger of death or serious physical injury to a person requires obtaining without delay the
9 contents of a communication relating to the emergency;

10 (B) Only the contents of the communication are obtained; and

11 (C) The public body requests the information in writing and documents the factual basis
12 for the belief that the emergency exists and requires the disclosure without delay.

13 (3)(a) A magistrate authorized to issue search warrants under ORS 133.525 to 133.703
14 may, upon application by any public officer or an agent or employee of a public body, acting
15 in the course of official duties, issue a court order authorizing the public body to obtain the
16 contents of a communication stored, maintained or transmitted by a service provider or any
17 record or other information pertaining to a subscriber or customer of a service provider if
18 the court finds that there is probable cause to believe that the information sought contains
19 evidence that a violation of law punishable by a civil penalty has occurred.

20 (b) An application for a court order described in paragraph (a) of this subsection shall
21 be supported by a sworn affidavit describing with particularity the applicant's official position
22 within the public body, the offense for which evidence is sought, the information to be in-
23 vestigated and the purpose for which the investigation is to be made, including the basis
24 upon which probable cause exists.

25 (4) No later than 48 hours after the public body obtains the contents of the communi-
26 cation or the records or other information pertaining to a subscriber or customer of the
27 service provider under subsection (2)(e) of this section, the public body shall file with the
28 appropriate court a written report signed by a supervisory official of the public body setting
29 forth the reasons for obtaining the contents, records or information and the circumstances
30 of the emergency.

31 **SECTION 7.** (1) The court shall indicate in a warrant issued as described in section 6
32 (2)(a) of this 2015 Act a deadline for compliance by the service provider.

33 (2) A warrant issued as described in section 6 (2)(a) of this 2015 Act may be served only
34 on a service provider that is doing business in this state under a contract or under a
35 terms-of-service agreement with a resident of this state, if any part of that contract or
36 agreement is to be performed in this state. The service provider shall produce all information
37 described in the warrant, regardless of whether the information is held at a location within
38 or outside of this state, and shall produce the information by the compliance deadline de-
39 scribed in subsection (1) of this section.

40 (3) A service provider responding to a warrant issued as described in section 6 (2)(a) of
41 this 2015 Act may request an extension of the compliance deadline. The court shall grant a
42 request for an extension if the court determines that circumstances justify the extension
43 and:

44 (a) The person who applied for the warrant agrees to the extension; or

45 (b) The court finds that the need for the extension outweighs the likelihood that the ex-

1 tension will cause an adverse result.

2 (4) A service provider within this state shall comply with a warrant issued in another
 3 state seeking the contents of a communication stored, maintained or transmitted by the
 4 service provider or the records or other information pertaining to a subscriber or customer
 5 of the service provider if the warrant is lawful and is issued and served on the service pro-
 6 vider in a manner consistent with ORS 133.525 to 133.703.

7 (5) The service provider shall provide only the information described in the warrant.

8 **SECTION 8.** (1) If a public body obtains the contents of a communication or the records
 9 or other information pertaining to a subscriber or customer of a service provider under
 10 section 6 of this 2015 Act, the public body shall serve upon the subscriber or customer, de-
 11 liver by registered, first class or electronic mail to the subscriber or customer or, by some
 12 other means reasonably calculated to notify the subscriber or customer, provide:

13 (a) A copy of the warrant, if applicable; and

14 (b) Notice that informs the subscriber or customer:

15 (A) Of the nature of the public body inquiry with reasonable specificity;

16 (B) That the contents of a communication or the records or other information was pro-
 17 vided to a public body and the date on which the contents, records or information was pro-
 18 vided;

19 (C) Of the contents of any communication provided;

20 (D) Of the nature of any records or other information provided;

21 (E) Of the identity of the service provider or other entity from which the contents of a
 22 communication or the records or other information was obtained, if applicable; and

23 (F) Whether delayed notification was ordered under subsection (3) of this section and, if
 24 applicable, the court that entered the order and the justification for the delay.

25 (2) The public body shall provide, or shall make a good faith effort to provide, the infor-
 26 mation required by subsection (1) of this section no later than three days after obtaining the
 27 contents of a communication or the records or other information pertaining to a subscriber
 28 or a customer of a service provider, unless a court orders delayed notification under sub-
 29 section (3) of this section.

30 (3)(a) A public body seeking to obtain the contents of a communication or the records
 31 or other information pertaining to a subscriber or a customer of a service provider under
 32 section 6 (2)(a) of this 2015 Act may include in the warrant application a request for an order
 33 delaying the notification required by subsection (1) of this section by a period of time not to
 34 exceed 90 days.

35 (b) The court shall issue a delayed notification order if the court determines that there
 36 is reason to believe that immediate notification of the warrant may have an adverse result.

37 (c) The court may, upon application by the public body, grant one or more extensions of
 38 up to 90 days each of the 90-day time period described in paragraph (a) of this subsection.

39 (d) Upon expiration of the period of delay ordered under this subsection, the public body
 40 shall provide the copy of the warrant and the notice, as described in subsection (1) of this
 41 section.

42 (4)(a) A public body seeking to obtain the contents of a communication or the records
 43 or other information pertaining to a subscriber or a customer of a service provider under
 44 section 6 (2)(a) of this 2015 Act may include in the warrant application a request for an order
 45 directing the service provider or other entity named in the warrant not to disclose to any

1 person the existence of the warrant for a period of time not to exceed 90 days.

2 (b) The court shall issue an order prohibiting disclosure for a period not to exceed 90 days
3 if the court determines that there is reason to believe that disclosure of the existence of the
4 warrant may have an adverse result.

5 (c) The court may, upon application by the public body, grant one or more extensions of
6 up to 90 days each of the 90-day time period described in paragraph (a) of this subsection.

7 **SECTION 9.** By January 31 of each calendar year, a public body that applies for a warrant
8 for the contents of a communication or the records or other information pertaining to a
9 subscriber or a customer of a service provider, or otherwise obtains the information, under
10 section 6 of this 2015 Act during the preceding calendar year shall provide to the Legislative
11 Assembly a report containing the following information from the preceding calendar year:

12 (1) A list of applications for warrants for the contents, records or information, the dates
13 on which the applications were made and whether the warrants were issued or denied;

14 (2) A list of circumstances in which the public body obtained the contents, records or
15 information without a warrant, the dates that the contents, records or information was ob-
16 tained and whether a warrant was eventually issued;

17 (3) A list of warrants that were accompanied by an order delaying notification or an or-
18 der prohibiting disclosure as described in section 8 of this 2015 Act;

19 (4) The offense specified in each warrant application, if applicable;

20 (5) The method by which the contents of each communication were obtained, if applica-
21 ble;

22 (6) The identities of the service providers and other entities from which the contents,
23 records or information was or would have been obtained;

24 (7) An assessment of the number of arrests that resulted from obtaining the contents,
25 records and information;

26 (8) The result of the arrests described in subsection (7) of this section; and

27 (9) An estimate of the cost to all public bodies of requesting and obtaining the contents,
28 records and information from service providers and other entities.

29 **SECTION 10.** (1) Except in a judicial proceeding alleging a violation of sections 1 to 10
30 of this 2015 Act, location information, the contents of a communication or the records or
31 other information pertaining to a subscriber or a customer of a service provider obtained in
32 violation of sections 1 to 10 of this 2015 Act is not admissible in, and may not be disclosed
33 in, a judicial proceeding, administrative proceeding, arbitration proceeding or other
34 adjudicatory proceeding, and the location information, contents, records or information may
35 not be used to establish reasonable suspicion or probable cause to believe that an offense has
36 been committed.

37 (2) Location information obtained pursuant to section 2 or 4 of this 2015 Act, or the
38 contents of a communication or the records or other information pertaining to a subscriber
39 or a customer of a service provider obtained pursuant to section 6 of this 2015 Act, and evi-
40 dence derived from the location information, contents, records or information are not ad-
41 missible as evidence in any trial, hearing or other proceeding unless, at least 10 days before
42 the trial, hearing or proceeding, each party has been provided with a copy of the warrant and
43 warrant application by which the location information, contents, records or information was
44 obtained. The 10-day requirement may be waived by the court if the court finds that it was
45 not possible to provide a party with the warrant and application within the required time

1 **period and that the party is not prejudiced by the delay.**

2 **SECTION 11. Nothing in sections 1 to 10 of this 2015 Act modifies or supersedes the re-**
3 **quirements described in ORS 133.721 to 133.739 for the interception of wire, electronic or oral**
4 **communications.**

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