

A-Engrossed
Senate Bill 641

Ordered by the Senate April 20
Including Senate Amendments dated April 20

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.

Prohibits [*public body*] **law enforcement agency** from obtaining **by forensic imaging** information from portable electronic device without warrant except when [*imminent threat to public safety exists*] **authorized by consent**. Provides that information obtained in violation of prohibition is not admissible in adjudicatory proceeding.

Provides that raw data from forensic imaging of portable electronic device may be subject of motion for return of seized property.

A BILL FOR AN ACT

1
2 Relating to privacy; creating new provisions; and amending ORS 133.633 and 133.653.

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

4 **SECTION 1. (1) As used in this section:**

5 (a)(A) **"Forensic imaging" means using an electronic device to download or transfer raw**
6 **data from a portable electronic device onto another medium of digital storage.**

7 (B) **"Forensic imaging" does not include photographing or transcribing information ob-**
8 **servable from the portable electronic device by normal unaided human senses.**

9 (b) **"Location information service" means a global positioning service or other mapping,**
10 **locational or directional information service.**

11 (c) **"Portable electronic device" means any device designed to be easily moved from one**
12 **location to another and that contains electronic data or that enables access to, or use of,**
13 **an electronic communication service as defined in 18 U.S.C. 2510, remote computing service**
14 **as defined in 18 U.S.C. 2711 or location information service.**

15 (d) **"Raw data" means data collected from a source that has not been subsequently al-**
16 **tered or manipulated after collection.**

17 (2) **A law enforcement agency may not use forensic imaging to obtain information con-**
18 **tained in a portable electronic device except:**

19 (a) **Pursuant to a search warrant issued under ORS 133.525 to 133.703; or**

20 (b) **As authorized by appropriate consent.**

21 (3) **Information obtained in violation of this section:**

22 (a) **Is not admissible in and may not be disclosed in a judicial proceeding, administrative**
23 **proceeding, arbitration proceeding or other adjudicatory proceeding, against either the owner**
24 **of the portable electronic device or a person with a reasonable expectation of privacy in the**
25 **contents of the device; and**

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 **(b) May not be used to establish reasonable suspicion or probable cause to believe that**
2 **an offense has been committed.**

3 **(4) A portable electronic device that has been forensically imaged pursuant to subsection**
4 **(2) of this section may be returned as described in ORS 133.633 and 133.643.**

5 **SECTION 2.** ORS 133.633 is amended to read:

6 133.633. (1) Within 90 days after actual notice of any seizure, or at such later date as the court
7 in its discretion may allow:

8 (a) An individual from whose person, property or premises things have been seized may move
9 the appropriate court to return things seized to the person or premises from which they were seized.

10 (b) Any other person asserting a claim to rightful possession of the things seized may move the
11 appropriate court to restore the things seized to the movant.

12 (2) The appropriate court to consider such motion is:

13 (a) The court having ultimate trial jurisdiction over any crime charged in connection with the
14 seizure;

15 (b) If no crime is charged in connection with the seizure, the court to which the warrant was
16 returned; or

17 (c) If the seizure was not made under a warrant and no crime is charged in connection with the
18 seizure, any court having authority to issue search warrants in the county in which the seizure was
19 made.

20 (3) The movant shall serve a copy of the motion upon the district attorney or the city attorney,
21 whichever is appropriate, of the jurisdiction in which the property is in custody.

22 (4) No filing, appearance or hearing fees may be charged for filing or hearing a motion under
23 this section.

24 **(5)(a) The things seized that are the subject of a motion for return under this section**
25 **may include raw data obtained from the forensic imaging of a portable electronic device or**
26 **of a computer.**

27 **(b) As used in this subsection, “forensic imaging,” “portable electronic device” and “raw**
28 **data” have the meanings given those terms in section 1 of this 2015 Act.**

29 **SECTION 3.** ORS 133.653 is amended to read:

30 133.653. (1) In granting a motion for return or restoration of things seized, the court shall
31 postpone execution of the order until such time as the things in question need no longer remain
32 available for evidentiary use.

33 (2) An order granting a motion for return or restoration of things seized shall be reviewable on
34 appeal in regular course. An order denying such a motion or entered under ORS 133.663 shall be
35 reviewable on appeal upon certification by the court having custody of the things in question that
36 they are no longer needed for evidentiary purposes.

37 **(3)(a) An order granting a motion for return of raw data obtained from the forensic im-**
38 **aging of a portable electronic device or of a computer shall include a provision that a law**
39 **enforcement agency may not retain a copy of the raw data to be returned.**

40 **(b) As used in this subsection, “forensic imaging,” “portable electronic device” and “raw**
41 **data” have the meanings given those terms in section 1 of this 2015 Act.**

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