

B-Engrossed
Senate Bill 641

Ordered by the House June 8
Including Senate Amendments dated April 20 and House Amendments
dated June 8

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 law enforcement agency from obtaining by forensic imaging information from portable electronic device without warrant except when authorized by consent. **Exempts correctional facilities, state hospitals and supervising agencies and officers when information obtained in otherwise lawful manner.** 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 lawful 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**

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 contents of the device; and

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

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

6 (5) Subsection (2) of this section does not apply to:

7 (a) A correctional facility, youth correction facility or state hospital, as those terms are
8 defined in ORS 162.135, when the facility or state hospital obtains information from a port-
9 able electronic device in an otherwise lawful manner.

10 (b) A parole and probation officer, juvenile community supervision officer as defined in
11 ORS 420.905, community corrections agency or agency that supervises youth or youth
12 offenders, when the officer or agency obtains information from a portable electronic device
13 in an otherwise lawful manner.

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

15 133.633. (1) Within 90 days after actual notice of any seizure, or at such later date as the court
16 in its discretion may allow:

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

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

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

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

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

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

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

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

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

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

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

39 133.653. (1) In granting a motion for return or restoration of things seized, the court shall
40 postpone execution of the order until such time as the things in question need no longer remain
41 available for evidentiary use.

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

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

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

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