

SENATE AMENDMENTS TO SENATE BILL 641

By COMMITTEE ON JUDICIARY

April 20

1 In line 2 of the printed bill, after “privacy” insert “; creating new provisions; and amending ORS
2 133.633 and 133.653”.

3 Delete lines 4 through 21 and insert:

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**

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

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

30 **“SECTION 2. ORS 133.633 is amended to read:**

31 **“133.633. (1) Within 90 days after actual notice of any seizure, or at such later date as the court
32 in its discretion may allow:**

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

35 **“(b) Any other person asserting a claim to rightful possession of the things seized may move the**

1 appropriate court to restore the things seized to the movant.

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

3 “(a) The court having ultimate trial jurisdiction over any crime charged in connection with the
4 seizure;

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

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

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

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

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

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

19 “**SECTION 3.** ORS 133.653 is amended to read:

20 “133.653. (1) In granting a motion for return or restoration of things seized, the court shall
21 postpone execution of the order until such time as the things in question need no longer remain
22 available for evidentiary use.

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

27 “(3)(a) **An order granting a motion for return of raw data obtained from the forensic
28 imaging of a portable electronic device or of a computer shall include a provision that a law
29 enforcement agency may not retain a copy of the raw data to be returned.**

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