

House Bill 3242

Sponsored by Representatives GORSEK, PILUSO

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**.

Requires peace officer to electronically record interview with youth when investigating crime, or allegation that youth committed act that if committed by adult would constitute crime. Requires law enforcement agency to store copy of interview for specified length of time. Requires district attorney to provide copy of recording of interview as discovery.

A BILL FOR AN ACT

1
2 Relating to law enforcement interviews of persons under 18 years of age; creating new provisions;
3 and amending ORS 41.910 and 165.540.

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

5 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 419C.**

6 **SECTION 2. (1) A peace officer conducting an interview of a youth in connection with**
7 **an investigation of a crime, or an allegation that the youth committed an act that if com-**
8 **mitted by an adult would constitute a crime, shall electronically record the interview.**

9 **(2) A law enforcement agency that creates an electronic recording of a youth interview**
10 **shall preserve the recording until:**

11 **(a) The youth has been found to be within the jurisdiction of the court under ORS**
12 **419C.005 or convicted under ORS 137.707 and all appeals are exhausted; or**

13 **(b) Until the adjudication or prosecution of the offense is barred by law.**

14 **(3) The state shall provide an electronic copy of a youth interview to the youth's attorney**
15 **in accordance with ORS 135.805 to 135.873 and 419C.270. Providing an electronic copy of the**
16 **youth interview to the youth's attorney constitutes compliance with ORS 135.815 (1)(b), and**
17 **the state is not required to provide the youth or the youth's attorney with a transcript of**
18 **the contents of the interview. Unless the court orders otherwise, the youth's attorney may**
19 **not copy, disseminate or republish the electronic copy of the youth interview, except to**
20 **provide a copy to an agent of the youth's attorney for the limited purpose of case prepara-**
21 **tion.**

22 **(4) An electronic recording of a youth interview, and any transcription of the recording,**
23 **that is certified as containing a complete recording, or a complete transcription, of the en-**
24 **tirety of the youth interview, from the advisement of constitutional rights to the conclusion**
25 **of the youth interview, is admissible in any hearing for the purpose of establishing the con-**
26 **tents of a statement made in the electronic recording and the identity of the person who**
27 **made the statement, if the statement is otherwise admissible. A certification that complies**
28 **with this subsection satisfies the requirements of ORS 40.505 and 132.320 for the recording**
29 **or transcription. This subsection does not prohibit a party from calling a witness to testify**
30 **regarding the interview.**

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.

SECTION 3. ORS 165.540 is amended to read:

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

(a) Obtain or attempt to obtain the whole or any part of a telecommunication or a radio communication to which the person is not a participant, by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, unless consent is given by at least one participant.

(b) Tamper with the wires, connections, boxes, fuses, circuits, lines or any other equipment or facilities of a telecommunication or radio communication company over which messages are transmitted, with the intent to obtain unlawfully the contents of a telecommunication or radio communication to which the person is not a participant.

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

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

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

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

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

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

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

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

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

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

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

(b) A person who records a conversation in which a law enforcement officer is a participant, if:

(A) The recording is made while the officer is performing official duties;

(B) The recording is made openly and in plain view of the participants in the conversation;

(C) The conversation being recorded is audible to the person by normal unaided hearing; and

(D) The person is in a place where the person lawfully may be;

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

1 **(d) A peace officer who, pursuant to section 2 of this 2017 Act, records an interview with**
 2 **a youth in connection with an investigation into a crime, or an allegation that the youth**
 3 **committed an act that if committed by an adult would constitute a crime;**

4 [(d)] (e) A law enforcement officer who is in uniform and displaying a badge and who is oper-
 5 ating:

6 (A) A vehicle-mounted video camera that records the scene in front of, within or surrounding
 7 a police vehicle, unless the officer has reasonable opportunity to inform participants in the conver-
 8 sation that the conversation is being obtained; or

9 (B) A video camera worn upon the officer’s person that records the officer’s interactions with
 10 members of the public while the officer is on duty, unless:

11 (i) The officer has an opportunity to announce at the beginning of the interaction that the con-
 12 versation is being obtained; and

13 (ii) The announcement can be accomplished without causing jeopardy to the officer or any other
 14 person and without unreasonably impairing a criminal investigation; or

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

18 (6) The prohibitions in subsection (1)(c) of this section do not apply to persons who intercept
 19 or attempt to intercept with an unconcealed recording device the oral communications that are part
 20 of any of the following proceedings:

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

23 (b) Regularly scheduled classes or similar educational activities in public or private institutions;
 24 or

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

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

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

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

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

34 (9) The exception described in subsection (5)(b) of this section does not authorize the person
 35 recording the law enforcement officer to engage in criminal trespass as described in ORS 164.243,
 36 164.245, 164.255, 164.265 or 164.278 or to interfere with a peace officer as described in ORS 162.247.

37 (10) As used in this section:

38 (a) “Electro-Muscular Disruption Technology device” means a device that uses a high-voltage,
 39 low power charge of electricity to induce involuntary muscle contractions intended to cause tem-
 40 porary incapacitation. “Electro-Muscular Disruption Technology device” includes devices commonly
 41 known as tasers.

42 (b) “Law enforcement officer” has the meaning given that term in ORS 133.726.

43 **SECTION 4.** ORS 41.910 is amended to read:

44 41.910. Evidence of the contents of any wire or oral communication intercepted:

45 (1) In violation of ORS 165.540 shall not be admissible in any court of this state, except as evi-

1 dence of unlawful interception or when the evidence was created by the use of a video camera worn
2 upon a law enforcement officer's person and the officer either substantially complied with or at-
3 tempted in good faith to comply with ORS 165.540 [(5)(d)(B)] **(5)(e)(B)**.

4 (2) Under ORS 165.540 (2)(a) shall not be admissible in any court of this state unless:

5 (a) The communication was intercepted by a public official in charge of and at a jail, police
6 premises, sheriff's office, Department of Corrections institution or other penal or correctional insti-
7 tution; and

8 (b) The participant in the communication, against whom the evidence is being offered, had actual
9 notice that the communication was being monitored or recorded.

10 **SECTION 5. Section 2 of this 2017 Act applies to interviews conducted on or after the**
11 **effective date of this 2017 Act.**

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