

D R A F T

SUMMARY

Exempts from criminal liability person who records conversation during or regarding commission of crime, attempted crime or solicitation to commit crime, against person, household member or certain relatives of person. Provides that any recording of communication exempt from criminal liability is admissible as evidence.

Requires release assistance officer to make effort to contact victim prior to submitting report or making release decision. Prohibits officer from making release decision if victim opposes release or cannot be contacted. Specifies victim rights at release hearing when defendant charged with violent felony.

Modifies manner of determining proper venue for purposes of criminal trials.

A BILL FOR AN ACT

Relating to public safety; creating new provisions; and amending ORS 41.910, 131.315, 131.325, 135.235, 135.240, 135.245, 135.265 and 165.540.

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

RECORDATION OF COMMUNICATIONS

SECTION 1. 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

1 one participant.

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

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

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

15 (e) Use or attempt to use, or divulge to others, any conversation, tele-
16 communication or radio communication obtained by any means prohibited
17 by this section.

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

20 (A) Officers, employees or agents of a telecommunication or radio com-
21 munication company who perform the acts prohibited by subsection (1)(a), (b)
22 and (c) of this section for the purpose of construction, maintenance or con-
23 ducting of their telecommunication or radio communication service, facilities
24 or equipment.

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

29 (b) Officers, employees or agents of a telecommunication or radio com-
30 munication company who obtain information under paragraph (a) of this
31 subsection may not use or attempt to use, or divulge to others, the informa-

tion 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 during or regarding the commission of a crime, attempted commission of a crime or solicitation to commit a crime, against the person or the person's family or household member, parent or stepparent, child or stepchild;

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

(B) A person who, pursuant to ORS 133.402, records a custodial interview, as defined ORS 133.402;

[(d)] (e) A law enforcement officer who is in uniform and displaying a badge and who is operating:

(A) A vehicle-mounted video camera that records the scene in front of,

1 within or surrounding a police vehicle, unless the officer has reasonable op-
2 portunity to inform participants in the conversation that the conversation
3 is being obtained; or

4 (B) A video camera worn upon the officer's person that records the
5 officer's interactions with members of the public while the officer is on duty,
6 unless:

7 (i) The officer has an opportunity to announce at the beginning of the
8 interaction that the conversation is being obtained; and

9 (ii) The announcement can be accomplished without causing jeopardy to
10 the officer or any other person and without unreasonably impairing a crim-
11 inal investigation; or

12 [(e)] (f) A law enforcement officer who, acting in the officer's official ca-
13 pacity, deploys an Electro-Muscular Disruption Technology device that con-
14 tains a built-in monitoring system capable of recording audio or video, for
15 the duration of that deployment.

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

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

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

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

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

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

31 (b) Person who intercepts a radio communication that is transmitted by

any governmental, law enforcement, civil defense or public safety communications system, including police and fire, readily accessible to the general public provided that the interception is not for purposes of illegal activity.

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

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

(10) As used in this section:

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

(b) “Family or household member” has the meaning given that term in ORS 135.230.

[(b)] **(c)** “Law enforcement officer” has the meaning given that term in ORS 133.726.

SECTION 2. ORS 41.910 is amended to read:

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

[(1)] in violation of ORS 165.540 shall not be admissible in any court of this state, except as evidence of unlawful interception or when the evidence was created by the use of a video camera worn upon a law enforcement officer’s person and the officer either substantially complied with or attempted in good faith to comply with ORS 165.540 [(5)(d)(B)] **(5)(e)(B)**.

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

[(a) *The communication was intercepted by a public official in charge of*

1 *and at a jail, police premises, sheriff's office, Department of Corrections insti-*
2 *tution or other penal or correctional institution; and]*

3 *[(b) The participant in the communication, against whom the evidence is*
4 *being offered, had actual notice that the communication was being monitored*
5 *or recorded.]*

6
7 **RELEASE OF DEFENDANTS**
8

9 **SECTION 3.** ORS 135.235 is amended to read:

10 135.235. (1) If directed by the presiding judge for a judicial district, a re-
11 lease assistance officer, and release assistance deputies who shall be re-
12 sponsible to the release assistance officer, shall be appointed under a
13 personnel plan established by the Chief Justice of the Supreme Court.

14 (2) The release assistance officer shall, except when impracticable, inter-
15 view every person detained pursuant to law and charged with an offense.

16 (3)(a) **Except as provided in paragraph (b) of this subsection,** the re-
17 lease assistance officer shall verify release criteria information and may ei-
18 ther:

19 [(a)] **(A)** Timely submit a written report to the magistrate containing, but
20 not limited to, an evaluation of the release criteria and a recommendation
21 for the form of release; or

22 [(b)] **(B)** If delegated release authority by the presiding judge for the ju-
23 dicial district, make the release decision.

24 **(b) The release assistance officer shall make reasonable efforts to**
25 **personally contact the victim prior to submitting a report or making**
26 **a release decision under this subsection. If the victim opposes release**
27 **or a reduction in bail, or if the victim cannot be contacted, the release**
28 **assistance officer shall include the information in the report submitted**
29 **to the magistrate and may not make a release decision.**

30 **SECTION 4.** ORS 135.240 is amended to read:

31 135.240. (1) Except as provided in subsections (2), (4) and (5) of this sec-

tion, a defendant shall be released in accordance with ORS 135.230 to 135.290.

(2)(a) When the defendant is charged with murder, aggravated murder or treason, release shall be denied when the proof is evident or the presumption strong that the person is guilty.

(b) When the defendant is charged with murder or aggravated murder and the proof is not evident nor the presumption strong that the defendant is guilty, the court shall determine the issue of release as provided in subsection (4) of this section. In determining the issue of release under subsection (4) of this section, the court may consider any evidence used in making the determination required by this subsection.

(3) The magistrate may conduct such hearing as the magistrate considers necessary to determine whether, under subsection (2) of this section, the proof is evident or the presumption strong that the person is guilty.

(4)(a) Except as otherwise provided in subsection (5) of this section, when the defendant is charged with a violent felony, release shall be denied if the court finds:

(A) Except when the defendant is charged by indictment, that there is probable cause to believe that the defendant committed the crime; and

(B) By clear and convincing evidence, that there is a danger of physical injury or sexual victimization to the victim or members of the public by the defendant while on release.

(b) If the defendant wants to have a hearing on the issue of release, the defendant must request the hearing at the time of arraignment in circuit court. If the defendant requests a release hearing, the court must hold the hearing within five days of the request.

(c) If a request by the victim is made within the time period prescribed by the notice required by ORS 147.417, the victim has the right to be notified by the district attorney of a release hearing held under this subsection.

[(c)] (d) At the release hearing, unless the state stipulates to the setting of security or release, the court shall make the inquiry set forth in paragraph

(a) of this subsection. The state has the burden of producing evidence at the release hearing subject to ORS 40.015 (4).

[(d)] (e) The defendant may be represented by counsel and may present evidence on any relevant issue. However, the hearing may not be used for purposes of discovery.

(f) At the release hearing:

(A) The district attorney has a right to be heard in relation to issues relevant to the release decision; and

(B) The victim has the right to appear personally and to reasonably express any views relevant to the issues before the court.

[(e)] (g) If the court determines that the defendant is eligible for release in accordance with this subsection, the court shall set security or other appropriate conditions of release.

[(f)] (h) When a defendant who has been released violates a condition of release and the violation:

(A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into custody and shall order the defendant held pending trial without release.

(B) Does not constitute a new criminal offense, the court may order the defendant to be taken back into custody, may order the defendant held pending trial and may set a security amount of not less than \$250,000.

(5)(a) Notwithstanding any other provision of law, the court shall set a security amount of not less than \$50,000 for a defendant charged with an offense listed in ORS 137.700 or 137.707 unless the court determines that amount to be unconstitutionally excessive, and may not release the defendant on any form of release other than a security release if:

(A) The United States Constitution or the Oregon Constitution prohibits the denial of release under subsection (4) of this section;

(B) The court determines that the defendant is eligible for release under subsection (4) of this section; or

(C) The court finds that the offense is not a violent felony.

(b) In addition to the security amount described in paragraph (a) of this subsection, the court may impose any supervisory conditions deemed necessary for the protection of the victim and the community. When a defendant who has been released violates a condition of release and the violation:

(A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into custody, shall order the defendant held pending trial and shall set a security amount of not less than \$250,000.

(B) Does not constitute a new criminal offense, the court may order the defendant to be taken back into custody, may order the defendant held pending trial and may set a security amount of not less than \$250,000.

(6) For purposes of this section, “violent felony” means a felony offense in which there was an actual or threatened serious physical injury to the victim, or a felony sexual offense.

SECTION 5. ORS 135.245 is amended to read:

135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to immediate security release or to be taken before a magistrate without undue delay. If the person is not released under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person of the right of the person to a security release as provided in ORS 135.265.

(2) If a person in custody does not request a security release at the time of arraignment, the magistrate shall make a release decision regarding the person within 48 hours after the arraignment.

(3) If the magistrate, having given priority to the primary release criteria, decides to release a defendant or to set security, the magistrate shall impose the least onerous condition reasonably likely to ensure the safety of the public and the victim and the person’s later appearance and, if the person is charged with an offense involving domestic violence, ensure that the person does not engage in domestic violence while on release. A person in custody, otherwise having a right to release, shall be released upon the personal recognizance unless:

(a) Release criteria show to the satisfaction of the magistrate that such

1 a release is unwarranted; or

2 (b) Subsection (6) of this section applies to the person.

3 (4) Upon a finding that release of the person on personal recognizance is
4 unwarranted, the magistrate shall impose either conditional release or secu-
5 rity release.

6 (5) At the release hearing:

7 (a) The district attorney has a right to be heard in relation to issues
8 relevant to the release decision; and

9 (b) The victim has the right:

10 (A) Upon request made within the time period prescribed in the notice
11 required by ORS 147.417, to be notified by the district attorney of the release
12 hearing;

13 (B) To appear personally at the hearing; and

14 (C) If present, to reasonably express any views relevant to the issues be-
15 fore the magistrate.

16 (6) If a person refuses to provide a true name under the circumstances
17 described in ORS 135.060 and 135.065, the magistrate may not release the
18 person on personal recognizance or on conditional release. The magistrate
19 may release the person on security release under ORS 135.265 except that the
20 magistrate shall require the person to deposit the full security amount set
21 by the magistrate.

22 (7) This section shall be liberally construed to carry out the purpose of
23 relying upon criminal sanctions instead of financial loss to assure the ap-
24 pearance of the defendant **and ensure the safety of the victim and the**
25 **public.**

26 **SECTION 6.** ORS 135.265 is amended to read:

27 135.265. (1) If the defendant is not released on personal recognizance un-
28 der ORS 135.255, or granted conditional release under ORS 135.260, or fails
29 to agree to the provisions of the conditional release, the magistrate shall set
30 a security amount that will reasonably assure the defendant's appearance
31 **and reasonably be likely to ensure the safety of the victim and the**

1 **public.** The defendant shall execute the security release in the amount set
2 by the magistrate.

3 (2) The defendant shall execute a release agreement and deposit with the
4 clerk of the court before which the proceeding is pending a sum of money
5 equal to 10 percent of the security amount, but in no event shall such deposit
6 be less than \$25. The clerk shall issue a receipt for the sum deposited. Upon
7 depositing this sum the defendant shall be released from custody subject to
8 the condition that the defendant appear to answer the charge in the court
9 having jurisdiction on a day certain and thereafter as ordered by the court
10 until discharged or final order of the court. Once security has been given
11 and a charge is pending or is thereafter filed in or transferred to a court of
12 competent jurisdiction the latter court shall continue the original security
13 in that court subject to ORS 135.280 and 135.285. When conditions of the
14 release agreement have been performed and the defendant has been dis-
15 charged from all obligations in the cause, the clerk of the court shall return
16 to the person shown by the receipt to have made the deposit, unless the court
17 orders otherwise, 85 percent of the sum which has been deposited and shall
18 retain as security release costs 15 percent, but not less than \$5 nor more
19 than \$750, of the amount deposited. The interest that has accrued on the full
20 amount deposited shall also be retained by the clerk. The amount retained
21 by the clerk of a circuit court shall be paid over as directed by the State
22 Court Administrator for deposit in the General Fund. The amount retained
23 by a justice of the peace shall be deposited in the county treasury. The
24 amount retained by the clerk of a municipal court shall be deposited in the
25 municipal corporation treasury. At the request of the defendant the court
26 may order whatever amount is repayable to defendant from such security
27 amount to be paid to defendant's attorney of record.

28 (3) Instead of the security deposit provided for in subsection (2) of this
29 section the defendant may deposit with the clerk of the court an amount
30 equal to the security amount in cash, stocks, bonds, or real or personal
31 property situated in this state with equity not exempt owned by the defend-

ant or sureties worth double the amount of security set by the magistrate. The stocks, bonds, real or personal property shall in all cases be justified by affidavit. The magistrate may further examine the sufficiency of the security as the magistrate considers necessary.

VENUE

SECTION 7. ORS 131.325 is amended to read:

131.325. If an offense is committed within the state and it cannot readily be determined within which county the commission took place, or a statute that governs conduct outside the state is violated, trial may be held in the county in which the defendant resides **or in which the victim resides**, or if the defendant has no fixed residence in this state, in the county in which the defendant is apprehended or to which the defendant is extradited.

SECTION 8. ORS 131.315 is amended to read:

131.315. (1) If conduct constituting elements of an offense or results constituting elements of an offense occur in two or more counties, trial of the offense may be held in any of the counties concerned.

(2) If a cause of death is inflicted on a person in one county and the person dies therefrom in another county, trial of the offense may be held in either county.

(3) If the commission of an offense commenced outside this state is consummated within this state, trial of the offense shall be held in the county in which the offense is consummated or the interest protected by the criminal statute in question is impaired.

(4) If an offense is committed on any body of water located in, or adjacent to, two or more counties or forming the boundary between two or more counties, trial of the offense may be held in any nearby county bordering on the body of water.

(5) If an offense is committed in or upon any railroad car, vehicle, aircraft, boat or other conveyance in transit and it cannot readily be deter-

1 mined in which county the offense was committed, trial of the offense may
2 be held in any county through or over which the conveyance passed.

3 (6) If an offense is committed on the boundary of two or more counties
4 or within one mile thereof, trial of the offense may be held in any of the
5 counties concerned.

6 (7) A person who commits theft, burglary or robbery may be tried in any
7 county in which the person exerts control over the property that is the
8 subject of the crime.

9 (8) If the offense is an attempt or solicitation to commit a crime, trial of
10 the offense may be held in any county in which any act that is an element
11 of the offense is committed.

12 (9) If the offense is criminal conspiracy, trial of the offense may be held
13 in any county in which any act or agreement that is an element of the of-
14 fense occurs.

15 (10) A person who in one county commits an inchoate offense that results
16 in the commission of an offense by another person in another county, or who
17 commits the crime of hindering prosecution of the principal offense, may be
18 tried in either county.

19 (11) A criminal nonsupport action may be tried in any county in which
20 the dependent child is found, irrespective of the domicile of the parent,
21 guardian or other person lawfully charged with support of the child.

22 (12) If the offense is theft, forgery or identity theft and the offense con-
23 sists of an aggregate transaction involving more than one county, trial of the
24 offense may be held in any county in which one of the acts of theft, forgery
25 or identity theft was committed.

26 (13) When a prosecution is for violation of the Oregon Securities Law, the
27 trial of the offense may be held in the county in which:

28 (a) The offer to purchase or sell securities took place or where the sale
29 or purchase of securities took place; or

30 (b) Any act that is an element of the offense occurred.

31 (14) When a prosecution under ORS 165.692 and 165.990 or 411.675 and

411.990 (2) and (3) involves Medicaid funds, the trial of the offense may be held in the county in which the claim was submitted for payment or in the county in which the claim was paid.

(15)(a) If the offense is stalking under ORS 163.732 and involves contacts as defined in ORS 163.730 in more than one county, trial of the offense may be held in any county in which a contact occurred.

(b) If the offense is violating a court's stalking protective order under ORS 163.750, trial of the offense may be held in the county in which the defendant engaged in conduct prohibited by the order or in the county in which the order was issued.

(16)(a) If any of the offenses listed in paragraph (b) of this subsection are committed by the same defendant against the same victim within a 180-day period, the offenses may be tried in any county in which one of the offenses was committed.

(b) The crimes to which paragraph (a) of this subsection applies are:

(A) Theft in the second degree under ORS 164.045;

(B) Theft in the first degree under ORS 164.055;

(C) Aggravated theft in the first degree under ORS 164.057;

(D) Unauthorized use of a vehicle under ORS 164.135;

(E) Mail theft or receipt of stolen mail under ORS 164.162;

(F) Burglary in the second degree under ORS 164.215;

(G) Burglary in the first degree under ORS 164.225;

(H) Computer crime under ORS 164.377;

(I) Robbery in the third degree under ORS 164.395;

(J) Robbery in the second degree under ORS 164.405;

(K) Robbery in the first degree under ORS 164.415;

(L) Forgery in the second degree under ORS 165.007;

(M) Forgery in the first degree under ORS 165.013;

(N) Criminal possession of a forged instrument in the second degree under ORS 165.017;

(O) Criminal possession of a forged instrument in the first degree

1 under ORS 165.022;

2 (P) Fraudulent use of a credit card under ORS 165.055;

3 (Q) Identity theft under ORS 165.800;

4 (R) Aggravated identity theft under ORS 165.803;

5 (S) Possession of a stolen vehicle under ORS 819.300; or

6 (T) An attempt to commit a crime described in subparagraphs (A)
7 to (S) of this paragraph.

8
9 **APPLICABILITY**

10
11 **SECTION 9.** (1) The amendments to ORS 165.540 and 41.910 by
12 sections 1 and 2 of this 2021 Act apply to conduct occurring on or after
13 the effective date of this 2021 Act.

14 (2) The amendments to ORS 135.235, 135.240, 135.245 and 135.265 by
15 sections 3 to 6 of this 2021 Act apply to crimes alleged to have been
16 committed on or after the effective date of this 2021 Act.

17 (3) The amendments to ORS 131.315 and 131.325 by sections 7 and 8
18 of this 2021 Act apply to crimes alleged to have been committed on or
19 after the effective date of this 2021 Act.

20
21 **CAPTIONS**

22
23 **SECTION 10.** The unit captions used in this 2021 Act are provided
24 only for the convenience of the reader and do not become part of the
25 statutory law of this state or express any legislative intent in the
26 enactment of this 2021 Act.