

Senate Bill 296

Sponsored by Senator HANSELL (Presession filed.)

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**.

Creates exception to prohibition on recording communications for person who records conversation during or regarding commission of offense against person.

Creates exception to rule against hearsay for translation by qualified interpreter.

Requires release assistance officer or release assistance deputy to make reasonable efforts to contact victim before making release recommendation or decision. Prohibits officer or deputy from making release decision if victim opposes release.

Provides that district attorney and victim have specified rights at release hearing when defendant charged with violent felony.

Requires court to take into account safety of public and victim when setting security amount for release.

A BILL FOR AN ACT

1
2 Relating to legal proceedings; creating new provisions; and amending ORS 40.450, 41.910, 135.235,
3 135.240, 135.245, 135.265 and 165.540.

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

5 **SECTION 1.** ORS 165.540 is amended to read:

6 165.540. (1) Except as otherwise provided in ORS 133.724 or 133.726 or subsections (2) to (7) of
7 this section, a person may not:

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

12 (b) Tamper with the wires, connections, boxes, fuses, circuits, lines or any other equipment or
13 facilities of a telecommunication or radio communication company over which messages are trans-
14 mitted, with the intent to obtain unlawfully the contents of a telecommunication or radio communi-
15 cation to which the person is not a participant.

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

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

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

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

25 (A) Officers, employees or agents of a telecommunication or radio communication company who
26 perform the acts prohibited by subsection (1)(a), (b) and (c) of this section for the purpose of con-
27 struction, maintenance or conducting of their telecommunication or radio communication service,

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 facilities or equipment.

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

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

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

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

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

15 (a) A person who records a conversation during [*a felony that endangers human life*] **or re-**
16 **garding the commission of an offense against any person;**

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

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

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

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

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

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

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

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

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

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

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

34 (e) A law enforcement officer who, acting in the officer's official capacity, deploys an Electro-
35 Muscular Disruption Technology device that contains a built-in monitoring system capable of re-
36 cording audio or video, for the duration of that deployment.

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

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

42 (b) Regularly scheduled classes or similar educational activities in public or private institutions;
43 or

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

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

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

(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) 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) “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*] **is not** 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).

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

(a) The interception is otherwise permitted under ORS 165.540 (5)(a); or

[(a)] **(A)** The communication was intercepted by a public official in charge of and at a jail, police premises, sheriff’s office, Department of Corrections institution or other penal or correctional institution; and

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

SECTION 3. ORS 40.450 is amended to read:

40.450. As used in ORS 40.450 to 40.475, unless the context requires otherwise:

(1) A “statement” is:

(a) An oral or written assertion; or

(b) Nonverbal conduct of a person, if intended as an assertion.

(2) A “declarant” is a person who makes a statement.

(3) “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(4) A statement is not hearsay if:

(a) The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(A) Inconsistent with the testimony of the witness and was given under oath subject to the penalty of perjury at a trial, hearing or other proceeding, or in a deposition;

(B) Consistent with the testimony of the witness and is offered to rebut an inconsistent statement or an express or implied charge against the witness of recent fabrication or improper influence or motive; or

1 (C) One of identification of a person made after perceiving the person.

2 (b) The statement is offered against a party and is:

3 (A) That party's own statement, in either an individual or a representative capacity;

4 (B) A statement of which the party has manifested the party's adoption or belief in its truth;

5 (C) A statement by a person authorized by the party to make a statement concerning the sub-
6 ject;

7 (D) A statement by the party's agent or servant concerning a matter within the scope of the
8 agency or employment, made during the existence of the relationship; or

9 (E) A statement by a coconspirator of a party during the course and in furtherance of the con-
10 spiracy.

11 (c) The statement is made in a deposition taken in the same proceeding pursuant to ORCP 39
12 I.

13 **(d) The statement is a translation by a qualified interpreter, as defined in ORS 45.275 or**
14 **45.285, of a statement made by or to a party or a witness.**

15 **SECTION 4.** ORS 135.235 is amended to read:

16 135.235. (1) If directed by the presiding judge for a judicial district, a release assistance officer,
17 and release assistance deputies who shall be responsible to the release assistance officer, shall be
18 appointed under a personnel plan established by the Chief Justice of the Supreme Court.

19 (2) The release assistance officer shall, except when impracticable, interview every person de-
20 tained pursuant to law and charged with an offense.

21 **(3) The release assistance officer or release assistance deputy shall make reasonable ef-**
22 **forts to personally contact the victim before making a release recommendation or decision.**

23 ~~[(3)]~~ **(4) Except as provided in subsection (5) of this section,** the release assistance officer
24 shall verify release criteria information and may either:

25 (a) Timely submit a written report to the magistrate containing, but not limited to, an evaluation
26 of the release criteria and a recommendation for the form of release; or

27 (b) If delegated release authority by the presiding judge for the judicial district, make the re-
28 lease decision.

29 **(5) If the victim opposes release, or if the victim cannot be contacted concerning release,**
30 **the release assistance officer or release assistance deputy shall include that information in**
31 **a written report submitted under subsection (4)(a) of this section and may not make the**
32 **release decision under subsection (4)(b) of this section.**

33 **SECTION 5.** ORS 135.240 is amended to read:

34 135.240. (1) Except as provided in subsections (2), (4) and (5) of this section, a defendant shall
35 be released in accordance with ORS 135.230 to 135.290.

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

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

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

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

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

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

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

10 (c) At the release hearing, unless the state stipulates to the setting of security or release, the
11 court shall make the inquiry set forth in paragraph (a) of this subsection. The state has the burden
12 of producing evidence at the release hearing subject to ORS 40.015 (4).

13 (d) The defendant may be represented by counsel and may present evidence on any relevant is-
14 sue. However, the hearing may not be used for purposes of discovery.

15 **(e) At the release hearing:**

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

18 **(B) The victim has the right:**

19 **(i) Upon request made within the time period prescribed in the notice required by ORS**
20 **147.417, to be notified by the district attorney of the release hearing;**

21 **(ii) To appear personally at the hearing; and**

22 **(iii) If present, to reasonably express any views relevant to the issues before the**
23 **magistrate.**

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

26 [(f)] (g) When a defendant who has been released violates a condition of release and the vio-
27 lation:

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

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

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

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

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

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

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

1 (A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into
2 custody, shall order the defendant held pending trial and shall set a security amount of not less than
3 \$250,000.

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

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

9 **SECTION 6.** ORS 135.245 is amended to read:

10 135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to immediate
11 security release or to be taken before a magistrate without undue delay. If the person is not released
12 under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person
13 of the right of the person to a security release as provided in ORS 135.265.

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

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

22 (a) Release criteria show to the satisfaction of the magistrate that such a release is unwar-
23 ranted; or

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

25 (4) Upon a finding that release of the person on personal recognizance is unwarranted, the
26 magistrate shall impose either conditional release or security release.

27 (5) At the release hearing:

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

30 (b) The victim has the right:

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

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

34 (C) If present, to reasonably express any views relevant to the issues before the magistrate.

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

39 (7) This section shall be liberally construed to carry out the purpose of:

40 (a) Relying upon criminal sanctions instead of financial loss to assure the appearance of the
41 defendant; **and**

42 (b) **Ensuring the safety of the public and the victim.**

43 **SECTION 7.** ORS 135.265 is amended to read:

44 135.265. (1) If the defendant is not released on personal recognizance under ORS 135.255, or
45 granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional

1 release, the magistrate shall set a security amount that will reasonably assure the defendant's ap-
2 pearance **and reasonably be likely to ensure the safety of the public and the victim.** The de-
3 fendant shall execute the security release in the amount set by the magistrate.

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

23 (3) Instead of the security deposit provided for in subsection (2) of this section the defendant
24 may deposit with the clerk of the court an amount equal to the security amount in cash, stocks,
25 bonds, or real or personal property situated in this state with equity not exempt owned by the de-
26 fendant or sureties worth double the amount of security set by the magistrate. The stocks, bonds,
27 real or personal property shall in all cases be justified by affidavit. The magistrate may further ex-
28 amine the sufficiency of the security as the magistrate considers necessary.

29 **SECTION 8. (1) The amendments to ORS 41.910, 135.235, 135.240, 135.245, 135.265 and**
30 **165.540 by sections 1, 2 and 4 to 7 of this 2019 Act apply to offenses alleged to have been**
31 **committed on or after the effective date of this 2019 Act.**

32 **(2) The amendments to ORS 40.450 by section 3 of this 2019 Act apply to translations**
33 **occurring on or after the effective date of this 2019 Act.**

34