

Senate Bill 216

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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**.

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

1
2 Relating to public safety; creating new provisions; and amending ORS 41.910, 131.315, 131.325,
3 135.235, 135.240, 135.245, 135.265 and 165.540.

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

RECORDATION OF COMMUNICATIONS

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

9 165.540. (1) Except as otherwise provided in ORS 133.724 or 133.726 or subsections (2) to (7) of
10 this section, a person may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **(b) A person who records a conversation during or regarding the commission of a crime,**
21 **attempted commission of a crime or solicitation to commit a crime, against the person or**
22 **the person's family or household member, parent or stepparent, child or stepchild;**

23 [(b)] (c) A person who records a conversation in which a law enforcement officer is a partic-
24 ipant, if:

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

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

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

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

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

31 (B) A person who, pursuant to ORS 133.402, records a custodial interview, as defined ORS
32 133.402;

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

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

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

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

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

44 [(e)] (f) A law enforcement officer who, acting in the officer's official capacity, deploys an
45 Electro-Muscular Disruption Technology device that contains a built-in monitoring system capable

1 of recording audio or video, for the duration of that deployment.

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

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

7 (b) Regularly scheduled classes or similar educational activities in public or private institutions;
 8 or

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

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

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

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

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

18 (9) The exception described in subsection [(5)(b)] **(5)(c)** of this section does not authorize the
 19 person recording the law enforcement officer to engage in criminal trespass as described in ORS
 20 164.243, 164.245, 164.255, 164.265 or 164.278 or to interfere with a peace officer as described in ORS
 21 162.247.

22 (10) As used in this section:

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

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

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

29 **SECTION 2.** ORS 41.910 is amended to read:

30 41.910. Evidence of the contents of any wire or oral communication intercepted[:]

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

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

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

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

41
 42 **RELEASE OF DEFENDANTS**

43
 44 **SECTION 3.** ORS 135.235 is amended to read:

45 135.235. (1) If directed by the presiding judge for a judicial district, a release assistance officer,

1 and release assistance deputies who shall be responsible to the release assistance officer, shall be
2 appointed under a personnel plan established by the Chief Justice of the Supreme Court.

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

5 (3)(a) **Except as provided in paragraph (b) of this subsection**, the release assistance officer
6 shall verify release criteria information and may either:

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

9 [(b)] (B) If delegated release authority by the presiding judge for the judicial district, make the
10 release decision.

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

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

17 135.240. (1) Except as provided in subsections (2), (4) and (5) of this section, a defendant shall
18 be released in accordance with ORS 135.230 to 135.290.

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

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

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

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

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

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

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

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

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

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

1 **(f) At the release hearing:**

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

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

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

8 [(f)] **(h)** When a defendant who has been released violates a condition of release and the vio-
9 lation:

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

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

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

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

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

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

24 (b) In addition to the security amount described in paragraph (a) of this subsection, the court
25 may impose any supervisory conditions deemed necessary for the protection of the victim and the
26 community. 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, shall order the defendant held pending trial and shall set a security amount of not less than
30 \$250,000.

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

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

36 **SECTION 5.** ORS 135.245 is amended to read:

37 135.245. (1) Except as provided in ORS 135.240, a person in custody has the right to immediate
38 security release or to be taken before a magistrate without undue delay. If the person is not released
39 under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person
40 of the right of the person to a security release as provided in ORS 135.265.

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

43 (3) If the magistrate, having given priority to the primary release criteria, decides to release a
44 defendant or to set security, the magistrate shall impose the least onerous condition reasonably
45 likely to ensure the safety of the public and the victim and the person’s later appearance and, if the

1 person is charged with an offense involving domestic violence, ensure that the person does not en-
 2 gage in domestic violence while on release. A person in custody, otherwise having a right to re-
 3 lease, shall be released upon the personal recognizance unless:

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

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

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

9 (5) At the release hearing:

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

12 (b) The victim has the right:

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

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

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

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

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

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

25 135.265. (1) If the defendant is not released on personal recognizance under ORS 135.255, or
 26 granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional
 27 release, the magistrate shall set a security amount that will reasonably assure the defendant's ap-
 28 pearance **and reasonably be likely to ensure the safety of the victim and the public.** The de-
 29 fendant shall execute the security release in the amount set by the magistrate.

30 (2) The defendant shall execute a release agreement and deposit with the clerk of the court
 31 before which the proceeding is pending a sum of money equal to 10 percent of the security amount,
 32 but in no event shall such deposit be less than \$25. The clerk shall issue a receipt for the sum de-
 33 posited. Upon depositing this sum the defendant shall be released from custody subject to the con-
 34 dition that the defendant appear to answer the charge in the court having jurisdiction on a day
 35 certain and thereafter as ordered by the court until discharged or final order of the court. Once
 36 security has been given and a charge is pending or is thereafter filed in or transferred to a court
 37 of competent jurisdiction the latter court shall continue the original security in that court subject
 38 to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the
 39 defendant has been discharged from all obligations in the cause, the clerk of the court shall return
 40 to the person shown by the receipt to have made the deposit, unless the court orders otherwise, 85
 41 percent of the sum which has been deposited and shall retain as security release costs 15 percent,
 42 but not less than \$5 nor more than \$750, of the amount deposited. The interest that has accrued on
 43 the full amount deposited shall also be retained by the clerk. The amount retained by the clerk of
 44 a circuit court shall be paid over as directed by the State Court Administrator for deposit in the
 45 General Fund. The amount retained by a justice of the peace shall be deposited in the county

1 treasury. The amount retained by the clerk of a municipal court shall be deposited in the municipal
 2 corporation treasury. At the request of the defendant the court may order whatever amount is re-
 3 payable to defendant from such security amount to be paid to defendant's attorney of record.

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

11 VENUE

12
 13 **SECTION 7.** ORS 131.325 is amended to read:

14 131.325. If an offense is committed within the state and it cannot readily be determined within
 15 which county the commission took place, or a statute that governs conduct outside the state is vi-
 16 olated, trial may be held in the county in which the defendant resides **or in which the victim re-**
 17 **sides**, or if the defendant has no fixed residence in this state, in the county in which the defendant
 18 is apprehended or to which the defendant is extradited.

19 **SECTION 8.** ORS 131.315 is amended to read:

20 131.315. (1) If conduct constituting elements of an offense or results constituting elements of an
 21 offense occur in two or more counties, trial of the offense may be held in any of the counties con-
 22 cerned.

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

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

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

31 (5) If an offense is committed in or upon any railroad car, vehicle, aircraft, boat or other
 32 conveyance in transit and it cannot readily be determined in which county the offense was com-
 33 mitted, trial of the offense may be held in any county through or over which the conveyance passed.

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

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

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

40 (9) If the offense is criminal conspiracy, trial of the offense may be held in any county in which
 41 any act or agreement that is an element of the offense occurs.

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

45 (11) A criminal nonsupport action may be tried in any county in which the dependent child is

1 found, irrespective of the domicile of the parent, guardian or other person lawfully charged with
2 support of the child.

3 (12) If the offense is theft, forgery or identity theft and the offense consists of an aggregate
4 transaction involving more than one county, trial of the offense may be held in any county in which
5 one of the acts of theft, forgery or identity theft was committed.

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

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

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

11 (14) When a prosecution under ORS 165.692 and 165.990 or 411.675 and 411.990 (2) and (3) in-
12 volves Medicaid funds, the trial of the offense may be held in the county in which the claim was
13 submitted for payment or in the county in which the claim was paid.

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

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

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

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

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

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

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

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

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

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

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

31 **(H) Computer crime under ORS 164.377;**

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

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

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

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

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

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

38 **(O) Criminal possession of a forged instrument in the first degree under ORS 165.022;**

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

40 **(Q) Identity theft under ORS 165.800;**

41 **(R) Aggravated identity theft under ORS 165.803;**

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

43 **(T) An attempt to commit a crime described in subparagraphs (A) to (S) of this para-**
44 **graph.**

45

APPLICABILITY

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

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

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

CAPTIONS

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