

House Bill 2129

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen F. Rosenblum)

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 prosecution for unlawfully obtaining contents of communication person who did not participate in initially obtaining communication regarding matter of public concern.

A BILL FOR AN ACT

1
2 Relating to obtaining contents of communications; creating new provisions; and amending ORS
3 165.540.

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)]
7 **(8)** of 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,
28 facilities or equipment.

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

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

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

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

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

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

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

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

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

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

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

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

19 (B) A person who, pursuant to ORS 133.402, records a custodial interview, as defined ORS
 20 133.402;

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

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

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

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

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

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

34 (6)(a) The prohibitions in subsection (1)(c) of this section do not apply to persons who intercept
 35 or attempt to intercept oral communications that are part of any of the following proceedings, if the
 36 person uses an unconcealed recording device or if the communications occur through a video con-
 37 ferencing program:

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

40 (B) Regularly scheduled classes or similar educational activities in public or private institutions;
 41 or

42 (C) Private meetings or conferences if all others involved knew or reasonably should have
 43 known that the recording was being made.

44 (b) The prohibitions in subsection (1)(c) of this section do not apply to a person who, with the
 45 intent to capture alleged unlawful activity, obtains or attempts to obtain a conversation occurring

1 through a video conferencing program if the person is a participant in the conversation, or at least
2 one participant in the conversation consents to the recording, and:

3 (A) The person is a law enforcement officer or is acting in coordination with a law enforcement
4 officer;

5 (B) The person is acting in coordination with an attorney or an enforcement or regulatory en-
6 tity; or

7 (C) The person reasonably believes that the recording may be used as evidence in a judicial or
8 administrative proceeding.

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

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

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

15 **(8) The prohibitions in subsection (1)(d) and (e) of this section do not apply to a person**
16 **who did not participate in initially obtaining the conversation, telecommunication or radio**
17 **communication if the conversation, telecommunication or radio communication is regarding**
18 **a matter of public concern.**

19 [(8)] (9) Violation of subsection (1) or (2)(b) of this section is a Class A misdemeanor.

20 [(9)] (10) The exception described in subsection (5)(b) of this section does not authorize the
21 person recording the law enforcement officer to engage in criminal trespass as described in ORS
22 164.243, 164.245, 164.255, 164.265 or 164.278 or to interfere with a peace officer as described in ORS
23 162.247.

24 [(10)] (11) As used in this section:

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

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

30 **SECTION 2. The amendments to ORS 165.540 by section 1 of this 2023 Act apply to con-**
31 **duct occurring on or after the effective date of this 2023 Act.**

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