

HB 2473 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 2/24

WHAT THE MEASURE DOES:

House Bill 2473 is a criminal law omnibus bill that would amend statutes relating to the authentication of public records for admission into evidence at trial; warrant exceptions for forensic imaging of a portable electronic device; authorization for installation of mobile tracking devices; discovery of grand jury recordings by the prosecution; and authority of the court to conduct pretrial release decisions when a person violates conditions of their release. Takes effect on the 91st day following adjournment sine die.

DETAILED SUMMARY

SECTION 1: AUTHENTICATION OF RECORDS.

Modifies the requirements under ORS 136.583 for providing a declaration for the purposes of authenticating records in response to criminal process. Provides that, upon order of the court or the written request of the applicant, the recipient of the process shall verify the authenticity of the papers, by providing an affidavit or declaration that identifies the custodian rather than provides their contact information. States that an affidavit or declaration that complies with this subsection fulfills the requirements of ORS 40.460 (6), 40.505 and 132.320.

SECTION 2: IMAGING OF DIGITAL DEVICES.

Expands the warrant exceptions provided in ORS 133.539(2) to authorizes a law enforcement agency to use forensic imaging to obtain information from a portable electronic device if the user is deceased and the death is the subject of a law enforcement investigation.

SECTION 3: MOBILE TRACKING DEVICE WARRANTS.

Expands the circumstances when a warrant for the installation or tracking of a mobile tracking device may be issued to include when an individual has committed a crime.

SECTION 4: GRAND JURY RECORDINGS.

Amends timing requirements for when a prosecutor shall provide grand jury recording to a defense attorney under ORS 132.270. Authorizes a prosecuting attorney to discover grand jury recordings as a decision not to file a motion for a protective order has been made.

SECTIONS 5 AND 6: PRETRIAL RELEASE.

Provides that the state may request the court to deny release if a person released pretrial on a violent felony violates a condition of release, regardless of whether the court previously conducted the inquiry or made the findings described under ORS 135.240, if the violation constitutes a new criminal offense. The measure also authorizes the court may make a new release decision after a person is returned to custody for failure to comply with any condition of a release agreement or personal recognizance.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

SECTION 1.

Criminal process authorizing or commanding the seizure or production of documents, records, or other things may be issued to a recipient, regardless of whether the requested items or recipient of process are located within this state. Oregon statute requires the recipient of the process to produce materials to provide, along with the materials requested, an affidavit or declaration as to their authenticity and include in the affidavit the contact information for the custodian. House bill 2473 would remove the requirement that the contact information for the custodian be provided and instead that the affidavit include the identity of the custodian of the produced materials.

SECTION 2.

A law enforcement agency may not use forensic imaging to obtain information contained in a portable electronic device except pursuant to a search warrant or as authorized by lawful consent. House bill 2473 would add a search warrant exception to apply when the user of the device is deceased, and the death is the subject of investigation.

SECTION 3.

Under ORS 133.619, a warrant authorizing the installation or tracking of a mobile tracking device may only be issued when probable cause exists to believe that an individual is committing or is about to commit certain crimes as specified in the statute. House bill 2473 would authorize a warrant to be issued when probable cause exists to believe that the defendant has already committed the crimes specified by the statute.

SECTION 4.

After an indictment has been issued from grand jury proceedings the audio recording of the grand jury proceedings may be released only in the manner prescribed in ORS 132.270. Currently, a district attorney may only provide a copy to the defense attorney of all audio recordings after 10 days have passed since the defendant's arraignment and no protective order concerning the recording has been requested. House bill 2473 would allow a prosecuting attorney, within 10 days after the arraignment, to file with the court a certification of the decision not to seek a protective order for the recording and to immediately provide a copy of the audio recordings to the defense attorney.

SECTION 5.

When a defendant violates a condition of release and the violation 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. If the violation does not constitute a new criminal offense, the court may order the defendant to be taken back into custody and may order the defendant held pending trial or may make a new release decision. House bill 2473 would amend this provision to allow the court, in cases where a defendant is charged with a violent felony and violates a condition of release, to conduct the inquiry required by ORS 135.240(4)(a), if the state requests the defendant be denied release based on the violation.

SECTION 6.

Upon failure of a person to comply with any condition of a release agreement or personal recognizance, the court having jurisdiction may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, conditional or security release. House bill 2473 would provide that after the person is returned to custody, the court may make a new release decision except as otherwise provided in ORS 135.240.