

2013 ORS § 165.540¹

Obtaining contents of communications

- (1) Except as otherwise provided in ORS 133.724 (Order for interception of communications) or 133.726 (Interception of oral communication without order) 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 one participant.
 - (b) Tamper with the wires, connections, boxes, fuses, circuits, lines or any other equipment or facilities of a telecommunication or radio communication company over which messages are transmitted, with the intent to obtain unlawfully the contents of a telecommunication or radio communication to which the person is not a participant.
 - (c) Obtain or attempt to obtain the whole or any part of a conversation by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if not all participants in the conversation are specifically informed that their conversation is being obtained.
 - (d) Obtain the whole or any part of a conversation, telecommunication or radio communication from any person, while knowing or having good reason to believe that the conversation, telecommunication or radio communication was initially obtained in a manner prohibited by this section.
 - (e) Use or attempt to use, or divulge to others, any conversation, telecommunication or radio communication obtained by any means prohibited by this section.
- (2) (a) The prohibitions in subsection (1)(a), (b) and (c) of this section do not apply to:
- (A) Officers, employees or agents of a telecommunication or radio communication company who perform the acts prohibited by subsection (1)(a), (b) and (c) of this section for the purpose of construction, maintenance or conducting of their telecommunication or radio communication service, facilities or equipment.
 - (B) Public officials in charge of and at jails, police premises, sheriffs offices, Department of Corrections institutions and other penal or correctional institutions, except as to communications or conversations between an attorney and the client of the attorney.

- (b) Officers, employees or agents of a telecommunication or radio communication company who obtain information under paragraph (a) of this subsection may not use or attempt to use, or divulge to others, the information 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, pursuant to ORS 133.400 (Recording of custodial interviews), records an interview conducted by a peace officer in a law enforcement facility;
 - (c) A law enforcement officer who is in uniform and displaying a badge and who is operating a vehicle-mounted video camera that records the scene in front of, within or surrounding a police vehicle, unless the officer has reasonable opportunity to inform participants in the conversation that the conversation is being obtained; or
 - (d) A law enforcement officer who, acting in the officers official capacity, deploys an Electro-Muscular Disruption Technology device that contains a built-in monitoring system capable of recording audio or video, for the duration of that deployment.
- (6) The prohibitions in subsection (1)(c) of this section do not apply to persons who intercept or attempt to intercept with an unconcealed recording device the oral communications that are part of any of the following proceedings:
- (a) Public or semipublic meetings such as hearings before governmental or quasi-governmental bodies, trials, press conferences, public speeches, rallies and sporting or other events;
 - (b) Regularly scheduled classes or similar educational activities in public or private institutions; or
 - (c) Private meetings or conferences if all others involved knew or reasonably should have known 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:

- Radio communication that is transmitted by a station operating on an
- (a) 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) 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 (Interception of oral communication without order). [1955 c.675 §§2,7; 1959 c.681 §2; 1961 c.460 §1; 1979 c.744 §9; 1983 c.693 §1; 1983 c.740 §35; 1983 c.824 §1; 1987 c.320 §87; 1989 c.983 §14a; 1989 c.1078 §1; 2001 c.104 §54; 2001 c.385 §4; 2003 c.14 §62; 2007 c.879 §1; 2009 c.488 §2]

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Notes of Decisions

Where officer stopped defendant for suspected use of intoxicants and tape recorded all conversation with defendant from time he approached car until shortly after arrest and tape showed officer informed defendant their conversation was being recorded two minutes after they began talking, error in admitting portion of tape recording which occurred before officer informed defendant of its existence was nonprejudicial. *State v. Cooney*, 36 Or App 217, 584 P2d 329 (1978)

Notwithstanding this section, employer who allegedly eavesdropped on employees telephone call was not necessarily aware that such activity was illegal, and thus employee could not seek discovery of employers consultations with attorneys with respect to such eavesdropping. *State ex rel North Pacific Lumber v. Unis*, 282 Or 457, 579 P2d 1291 (1978)

Proper sanction for failure to minimize interception of communications not covered by warrant is suppression of all intercepted communications. *State v. Tucker*, 62 Or App 512, 662 P2d 345 (1983), Sup Ct review denied

Where defendant called police dispatcher to seek assistance with disabled vehicle and telephone conversation was recorded, recorded message was admissible because it was telecommunication and dispatcher had consented to the recording.

City of Lake Oswego v. Mylander, 84 Or App 15, 733 P2d 455 (1987)

This section provides independent basis for barring use of illegally obtained wiretap evidence for impeachment purposes. State v. Tucker, 90 Or App 506, 753 P2d 427 (1988)

This section is not overbroad or unconstitutionally vague. State v. Knobel, 97 Or App 559, 777 P2d 985 (1989), Sup Ct review denied

Since police broadcasts fall within exception to this section and public has free and ready access, no crime was committed when defendant tape recorded them on scanner. State v. Bichsel, 101 Or App 257, 790 P2d 1142 (1990)

This section requires person recording own conversation with others to give unequivocal warning to that effect. State v. Bichsel, 101 Or App 257, 790 P2d 1142 (1990)

Police officer is authorized to record conversation without ex parte order if officer has probable cause to believe conversation will involve unlawful drug transaction. State v. Evans, 113 Or App 210, 832 P2d 460 (1992); State v. Casteel, 122 Or App 218, 857 P2d 204 (1993)

Admissibility of body wire evidence is governed by ORS 41.910 (Certain intercepted communications inadmissible). State v. Casteel, 122 Or App 218, 857 P2d 204 (1993)

Warning that conversation was being monitored by camera and audio means sufficiently conveyed information that conversation was being recorded. State v. Haase, 134 Or App 416, 895 P2d 813 (1995), Sup Ct review denied

If required information is given, there is no additional requirement that defendant understand warning or consent to recording. State v. Haase, 134 Or App 416, 895 P2d 813 (1995), Sup Ct review denied

Omnidirectional signal broadcast by cordless telephone is not radio broadcast transmitted for use by general public. State v. Carston, 323 Or 75, 913 P2d 709 (1996)

For conversation to be between officer or person under officers control and another person, officer or person under officers control must be engaged in reciprocal conversation with other person. State v. Fleetwood, 331 Or 511, 16 P3d 503 (2000)

Existence of probable cause or exigent circumstances does not make conversations obtained without court order admissible. State v. Fleetwood, 331 Or 511, 16 P3d 503 (2000)

Exception allowing person to record telephone conversation of another in persons own home applies both to recording of conversation and use of recorded conversation. Checkley v. Boyd, 198 Or App 110, 107 P3d 651 (2005), Sup Ct review denied

Where one participant in conversation specifically informs other participants that participant is obtaining conversation, other participants do not violate statute if they

obtain conversation without providing such information. *State v. Neff*, 246 Or App 186, 265 P3d 62 (2011)

Atty. Gen. Opinions

Inapplicability to public meetings of public governing bodies, (1976) Vol 38, p 50

Chapter 165

Law Review Citations

51 OLR 427-637 (1972)

Related Statutes³

- 41.910
Certain intercepted communications inadmissible
- 165.535
Definitions applicable to obtaining contents of communications
- 165.542
Reports required concerning use of electronic listening device
- 165.543
Interception of communications
- 165.545
Prohibitions not applicable to fire or police activities
- 165.659
General prohibition
- 165.669
Duties imposed upon certain persons upon service of order authorizing installation of pen register or trap and trace device
- 165.671
Defense to civil or criminal action
- 166.270
Possession of weapons by certain felons
- 166.715
Definitions for ORS 166.715 to 166.735