

D R A F T

SUMMARY

Allows circuit court judge to authorize execution of search warrant outside judicial district for interrelated conduct carried on in more than one county. Defines “interrelated conduct.” Allows judge assigned to judicial district to authorize execution of search warrant in that judicial district regardless of whether regularly elected or appointed judge for that judicial district is available.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; amending ORS 133.525, 133.545, 133.575 and 166.725; and
3 declaring an emergency.

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

5 **SECTION 1.** ORS 133.525 is amended to read:

6 133.525. As used in ORS 133.525 to 133.703, unless the context requires
7 otherwise:

8 (1) **“Interrelated conduct” means engaging in at least two incidents**
9 **of activity that:**

10 (a) **Have the same or similar intents, results, accomplices, victims**
11 **or methods of commission, or are otherwise interrelated by distin-**
12 **guishing characteristics, including a connection to the same enter-**
13 **prise; and**

14 (b) **Are not isolated incidents.**

15 (2) **“Judge” means any judge of the circuit court, the Court of Appeals,**
16 **the Supreme Court, any justice of the peace or municipal judge authorized**
17 **to exercise the powers and perform the duties of a justice of the peace.**

18 [(2)] (3) **“Police officer” means:**

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 (a) A member of the Oregon State Police;
- 2 (b) A sheriff or municipal police officer, a police officer commissioned by
3 a university under ORS 352.121 or 353.125 or an authorized tribal police of-
4 ficer as defined in ORS 181A.940;
- 5 (c) An investigator of a district attorney's office if the investigator is or
6 has been certified as a peace officer in this or any other state;
- 7 (d) An investigator of the Criminal Justice Division of the Department
8 of Justice;
- 9 (e) A humane special agent as defined in ORS 181A.345; or
- 10 (f) A regulatory specialist exercising authority described in ORS 471.775
- 11 (2).

12 **SECTION 2.** ORS 133.545 is amended to read:

13 133.545. (1) A search warrant may be issued only by a judge. A search
14 warrant issued by a judge of the Supreme Court or the Court of Appeals may
15 be executed anywhere in the state. Except as otherwise provided in sub-
16 sections (2), (3) and (4) of this section, a search warrant issued by a judge
17 of a circuit court may be executed only within the judicial district in which
18 the court is located. A search warrant issued by a justice of the peace may
19 be executed only within the county in which the justice court is located. A
20 search warrant issued by a municipal judge authorized to exercise the powers
21 and perform the duties of a justice of the peace may be executed only in the
22 municipality in which the court is located.

23 (2) Notwithstanding subsection (1) of this section, a circuit court judge
24 may authorize execution of a search warrant outside the judicial district in
25 which the court is located, if the judge finds from the application that one
26 or more of the objects of the search relate to an offense committed or triable
27 within the judicial district in which the court is located, **or that the search**
28 **involves interrelated conduct carried on in more than one county in**
29 **this state, including the judicial district in which the court is located.**
30 If the warrant authorizes the installation or tracking of a mobile tracking
31 device, the officer may track the device in any county to which it is trans-

1 ported.

2 (3) Notwithstanding subsection (1) of this section, a circuit court judge
3 duly assigned pursuant to ORS 1.615 to serve as a judge pro tempore in a
4 circuit court [*may authorize execution of a search warrant in any judicial*
5 *district in which the judge serves as judge pro tempore if the application re-*
6 *questing the warrant includes an affidavit showing that a regularly elected or*
7 *appointed circuit court judge for the judicial district is not available, whether*
8 *by reason of conflict of interest or other reason, to issue the warrant within a*
9 *reasonable time*] **or a senior judge duly assigned to serve in a circuit**
10 **court under ORS 1.300, may, with consent from the presiding judge of**
11 **that judicial district, authorize execution of a search warrant in any**
12 **judicial district in which the judge is assigned to serve as judge pro**
13 **tempore or senior judge.**

14 (4) Notwithstanding subsection (1) of this section, a circuit court judge
15 may authorize execution of a search warrant outside the judicial district in
16 which the court is located if the judge finds that:

17 (a) The search relates to one of the following offenses involving a victim
18 who was 65 years of age or older at the time of the offense:

19 (A) Criminal mistreatment in the first degree as described in ORS 163.205
20 (1)(b)(D) or (E);

21 (B) Identity theft;

22 (C) Aggravated identity theft;

23 (D) Computer crime;

24 (E) Fraudulent use of a credit card;

25 (F) Forgery in any degree;

26 (G) Criminal possession of a forged instrument in any degree;

27 (H) Theft in any degree; or

28 (I) Aggravated theft in the first degree;

29 (b) The objects of the search consist of financial records; and

30 (c) The person making application for the search warrant is not able to
31 ascertain at the time of the application the proper place of trial for the of-

1 fense described in paragraph (a) of this subsection.

2 (5) Application for a search warrant may be made only by a district at-
3 torney, a police officer or a special agent employed under ORS 131.805.

4 (6) The application shall consist of a proposed warrant in conformance
5 with ORS 133.565, and shall be supported by one or more affidavits partic-
6 ularly setting forth the facts and circumstances tending to show that the
7 objects of the search are in the places, or in the possession of the individ-
8 uals, to be searched. If an affidavit is based in whole or in part on hearsay,
9 the affiant shall set forth facts bearing on any unnamed informant's reli-
10 ability and shall disclose, as far as possible, the means by which the infor-
11 mation was obtained.

12 (7) Instead of the written affidavit described in subsection (6) of this
13 section, the judge may take an oral statement under oath. The oral statement
14 shall be recorded and a copy of the recording submitted to the judge who
15 took the oral statement. In such cases, the judge shall certify that the re-
16 cording of the sworn oral statement is a true recording of the oral statement
17 under oath and shall retain the recording as part of the record of proceedings
18 for the issuance of the warrant. The recording shall constitute an affidavit
19 for the purposes of this section. The applicant shall retain a copy of the re-
20 cording and shall provide a copy of the recording to the district attorney if
21 the district attorney is not the applicant.

22 (8)(a) In addition to the procedure set out in subsection (7) of this section,
23 the proposed warrant and the affidavit may be sent to the court by facsimile
24 transmission or any similar electronic transmission that delivers a complete
25 printable image of the signed affidavit and proposed warrant. The affidavit
26 may have a notarized acknowledgment, or the affiant may swear to the affi-
27 davit by telephone. If the affiant swears to the affidavit by telephone, the
28 affidavit may be signed electronically. A judge administering an oath tele-
29 phonically under this subsection must execute a declaration that recites the
30 manner and time of the oath's administration. The declaration must be filed
31 with the return.

1 (b) When a court issues a warrant upon an application made under para-
2 graph (a) of this subsection:

3 (A) The court may transmit the signed warrant to the person making ap-
4 plication under subsection (5) of this section by means of facsimile trans-
5 mission or similar electronic transmission, as described in paragraph (a) of
6 this subsection. The court shall file the original signed warrant and a
7 printed image of the application with the return.

8 (B) The person making application shall deliver the original signed affi-
9 davit to the court with the return. If the affiant swore to the affidavit by
10 telephone, the affiant must so note next to the affiant's signature on the af-
11 fidavit.

12 **SECTION 3.** ORS 133.575 is amended to read:

13 133.575. (1) Except as provided in ORS 136.583, a search warrant may be
14 executed only within the period and at the times authorized by the warrant
15 and only by a police officer. A police officer charged with its execution may
16 be accompanied by such other persons as may be reasonably necessary for
17 the successful execution of the warrant with all practicable safety. **Other**
18 **persons may include, but are not limited to:**

19 (a) **Civil enforcement officers;**

20 (b) **Victim services providers;**

21 (c) **Law enforcement agency personnel other than police officers;**

22 (d) **Employees of a utility company;**

23 (e) **The State Fire Marshal and firefighters;**

24 (f) **Employees of a county animal shelter or other animal care**
25 **agency;**

26 (g) **Towers;**

27 (h) **Personnel from federal, state or local regulatory agencies;**

28 (i) **Emergency medical services providers, as defined in ORS 682.025;**

29 **and**

30 (j) **Contractors and other persons assisting with the destruction of**
31 **waste.**

1 (2) The executing officer shall, before entering the premises, give appro-
2 priate notice of the identity, authority and purpose of the officer to the
3 person to be searched, or to the person in apparent control of the premises
4 to be searched, as the case may be.

5 (3) Except as provided in ORS 133.619, before undertaking any search or
6 seizure pursuant to the warrant, the executing officer shall read and give a
7 copy of the warrant to the person to be searched, or to the person in ap-
8 parent control of the premises to be searched. If the premises are unoccupied
9 or there is no one in apparent control, the officer shall leave a copy of the
10 warrant suitably affixed to the premises.

11 **SECTION 4.** ORS 166.725 is amended to read:

12 166.725. (1) Any circuit court may, after making due provision for the
13 rights of innocent persons, enjoin violations of the provisions of ORS 166.720
14 (1) to (4) by issuing appropriate orders and judgments, including, but not
15 limited to:

16 (a) Ordering a divestiture by the defendant of any interest in any enter-
17 prise, including real property.

18 (b) Imposing reasonable restrictions upon the future activities or invest-
19 ments of any defendant, including, but not limited to, prohibiting any de-
20 fendant from engaging in the same type of endeavor as the enterprise in
21 which the defendant was engaged in violation of the provisions of ORS
22 166.720 (1) to (4).

23 (c) Ordering the dissolution or reorganization of any enterprise.

24 (d) Ordering the suspension or revocation of a license, permit or prior
25 approval granted to any enterprise by any agency of the state.

26 (e) Ordering the forfeiture of the charter of a corporation organized under
27 the laws of this state, or the revocation of a certificate of authority author-
28 izing a foreign corporation to conduct business within this state, upon find-
29 ing that the board of directors or a managerial agent acting on behalf of the
30 corporation, in conducting the affairs of the corporation, has authorized or
31 engaged in conduct in violation of ORS 166.720 (1) to (4) and that, for the

1 prevention of future criminal activity, the public interest requires the char-
2 ter of the corporation forfeited and the corporation dissolved or the certif-
3 icate of authority revoked.

4 (2) All property, real or personal, including money, used in the course of,
5 derived from or realized through conduct in violation of a provision of ORS
6 166.715 to 166.735 is subject to civil forfeiture to the state. The state shall
7 dispose of all forfeited property as soon as commercially feasible. If property
8 is not exercisable or transferable for value by the state, it shall expire. All
9 forfeitures or dispositions under this section shall be made with due pro-
10 vision for the rights of innocent persons. Forfeited property shall be dis-
11 tributed as follows:

12 (a)(A) All moneys and the clear proceeds of all other property forfeited
13 shall be deposited with the State Treasurer to the credit of the Common
14 School Fund.

15 (B) For purposes of subparagraph (A) of this paragraph, “clear proceeds”
16 means proceeds of forfeited property less costs of maintaining and preserving
17 property pending its sale or other disposition, less costs of sale or disposition
18 and, if the Department of Justice has not otherwise recovered its costs and
19 expenses of the investigation and prosecution leading to the forfeiture, less
20 30 percent of the remaining proceeds of the property which is awarded to the
21 department as reasonable reimbursement for costs of such investigation and
22 prosecution.

23 (b) Any amounts awarded to the Department of Justice pursuant to par-
24 agraph (a) of this subsection shall be deposited in the Criminal Justice Re-
25 volving Account in the State Treasury.

26 (3) Property subject to forfeiture under this section may be seized by a
27 police officer, as defined in ORS 133.525 [(2)], upon court process. Seizure
28 without process may be made if:

29 (a) The seizure is incident to a lawful arrest or search or an inspection
30 under an administrative inspection warrant; or

31 (b) The property subject to seizure has been the subject of a prior judg-

1 ment in favor of the state in a forfeiture proceeding based upon this section.

2 (4) In the event of a seizure under subsection (3) of this section, a forfei-
3 ture proceeding shall be instituted promptly. Property taken or detained
4 under this section shall not be subject to replevin, but is deemed to be in the
5 custody of the police officer making the seizure, subject only to the order
6 of the court. When property is seized under this section, pending forfeiture
7 and final disposition, the police officer may:

8 (a) Place the property under seal;

9 (b) Remove the property to a place designated by the court; or

10 (c) Require another agency authorized by law to take custody of the
11 property and remove it to an appropriate location.

12 (5) The Attorney General, any district attorney or any state agency hav-
13 ing jurisdiction over conduct in violation of a provision of ORS 166.715 to
14 166.735 may institute civil proceedings under this section. In any action
15 brought under this section, the circuit court shall give priority to the hear-
16 ing and determination. Pending final determination, the circuit court may
17 at any time enter such injunctions, prohibitions or restraining orders, or
18 take such actions, including the acceptance of satisfactory performance
19 bonds, as the court may deem proper. The Attorney General, district attorney
20 or state agency bringing an action under this section may be awarded, upon
21 entry of a judgment in favor of the state, costs of investigation and liti-
22 gation, reasonably incurred. Amounts recovered may include costs and ex-
23 penses of state and local governmental departments and agencies incurred
24 in connection with the investigation or litigation.

25 (6)(a) Any aggrieved person may institute a proceeding under subsection
26 (1) of this section:

27 (A) If the proceeding is based upon racketeering activity for which a
28 criminal conviction has been obtained, any rights of appeal have expired and
29 the action is against the individual convicted of the racketeering activity;
30 or

31 (B) If the person is entitled to pursue a cause of action under subsection

1 (7)(a)(B) of this section.

2 (b) In such proceeding, relief shall be granted in conformity with the
3 principles that govern the granting of injunctive relief from threatened loss
4 or damage in other civil cases, except that no showing of special or
5 irreparable damage to the person shall have to be made. Upon the execution
6 of proper bond against damages for an injunction improvidently granted and
7 a showing of immediate danger of significant loss or damage, a temporary
8 restraining order and a preliminary injunction may be issued in any such
9 action before a final determination on the merits.

10 (7)(a) Any person who is injured by reason of any violation of the pro-
11 visions of ORS 166.720 (1) to (4) shall have a cause of action for three-fold
12 the actual damages sustained and, when appropriate, punitive damages:

13 (A) If a criminal conviction for the racketeering activity that is the basis
14 of the violation has been obtained, any rights of appeal have expired and the
15 action is against the individual convicted of the racketeering activity; or

16 (B) If the violation is based on racketeering activity as defined in ORS
17 166.715 (6)(a)(B) to (J), (K) as it relates to burglary and criminal trespass, (L)
18 to (P), (S), (T), (U), (V), (X) to (Z), (AA) to (EE), (LL), (MM) or (PP) to (WW).

19 (b) The defendant or any injured person may demand a trial by jury in
20 any civil action brought pursuant to this subsection.

21 (c) Any injured person shall have a right or claim to forfeited property
22 or to the proceeds derived therefrom superior to any right or claim the state
23 has in the same property or proceeds.

24 (8) An investigative agency may bring an action for civil penalties for any
25 violation of ORS 166.720 (1) to (4). Upon proof of any such violation, the
26 court shall impose a civil penalty of not more than \$250,000.

27 (9) A judgment rendered in favor of the state in any criminal proceeding
28 under ORS 166.715 to 166.735 shall estop the defendant in any subsequent
29 civil action or proceeding brought by the state or any other person as to all
30 matters as to which such judgment would be an estoppel as between the state
31 and the defendant.

1 (10) The Attorney General may, upon timely application, intervene in any
2 civil action or proceeding brought under subsection (6) or (7) of this section
3 if the Attorney General certifies that, in the opinion of the Attorney Gen-
4 eral, the action or proceeding is of general public importance. In such action
5 or proceeding, the state shall be entitled to the same relief as if the Attorney
6 General instituted the action or proceeding.

7 (11)(a) Notwithstanding any other provision of law, a criminal or civil
8 action or proceeding under ORS 166.715 to 166.735 may be commenced at any
9 time within five years after the conduct in violation of a provision of ORS
10 166.715 to 166.735 terminates or the cause of action accrues. If a criminal
11 prosecution or civil action or other proceeding is brought, or intervened in,
12 to punish, prevent or restrain any violation of the provisions of ORS 166.715
13 to 166.735, the running of the period of limitations prescribed by this section
14 with respect to any cause of action arising under subsection (6) or (7) of this
15 section which is based in whole or in part upon any matter complained of
16 in any such prosecution, action or proceeding shall be suspended during the
17 pendency of such prosecution, action or proceeding and for two years fol-
18 lowing its termination.

19 (b) A cause of action arising under subsection (6)(a)(A) or (7)(a)(A) of this
20 section accrues when the criminal conviction for the underlying activity is
21 obtained. In addition to any suspension of the running of the period of lim-
22 itations provided for in paragraph (a) of this subsection, the period of limi-
23 tations prescribed by paragraph (a) of this subsection is suspended during
24 any appeal from the criminal conviction for the underlying activity.

25 (12) The application of one civil remedy under any provision of ORS
26 166.715 to 166.735 shall not preclude the application of any other remedy,
27 civil or criminal, under ORS 166.715 to 166.735 or any other provision of law.
28 Civil remedies under ORS 166.715 to 166.735 are supplemental and not mu-
29 tually exclusive.

30 (13) Notwithstanding subsection (6) or (7) of this section, a person may
31 not institute a proceeding under subsection (6) of this section and does not

1 have a cause of action under subsection (7) of this section if the conduct that
2 is the basis of the proceeding or action could also be the basis of a claim
3 of discrimination because of sex that constitutes sexual harassment.

4 (14) In an action brought under the provisions of this section by a person
5 other than the Attorney General, a district attorney or a state agency, the
6 court may award reasonable attorney fees to the prevailing party. In a civil
7 action brought under the provisions of this section by the Attorney General,
8 a district attorney or a state agency:

9 (a) The court may award reasonable attorney fees to the Attorney Gen-
10 eral, district attorney or state agency if the Attorney General, district at-
11 torney or state agency prevails in the action; and

12 (b) The court may award reasonable attorney fees to a defendant who
13 prevails in an action under this section if the court determines that the At-
14 torney General, district attorney or state agency had no objectively reason-
15 able basis for asserting the claim or no reasonable basis for appealing an
16 adverse decision of the trial court.

17 **SECTION 5. This 2023 Act being necessary for the immediate pres-**
18 **ervation of the public peace, health and safety, an emergency is de-**
19 **clared to exist, and this 2023 Act takes effect on its passage.**

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