

Senate Bill 954

Sponsored by COMMITTEE ON JUDICIARY

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**.

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 declaring an emergency.

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

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

5 133.525. As used in ORS 133.525 to 133.703, unless the context requires otherwise:

6 (1) **"Interrelated conduct" means engaging in at least two incidents of activity that:**

7 (a) **Have the same or similar intents, results, accomplices, victims or methods of com-**
8 **mission, or are otherwise interrelated by distinguishing characteristics, including a con-**
9 **nection to the same enterprise; and**

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

11 (2) "Judge" means any judge of the circuit court, the Court of Appeals, the Supreme Court, any
12 justice of the peace or municipal judge authorized to exercise the powers and perform the duties
13 of a justice of the peace.

14 [(2)] (3) "Police officer" means:

15 (a) A member of the Oregon State Police;

16 (b) A sheriff or municipal police officer, a police officer commissioned by a university under ORS
17 352.121 or 353.125 or an authorized tribal police officer as defined in ORS 181A.940;

18 (c) An investigator of a district attorney's office if the investigator is or has been certified as
19 a peace officer in this or any other state;

20 (d) An investigator of the Criminal Justice Division of the Department of Justice;

21 (e) A humane special agent as defined in ORS 181A.345; or

22 (f) A regulatory specialist exercising authority described in ORS 471.775 (2).

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

24 133.545. (1) A search warrant may be issued only by a judge. A search warrant issued by a
25 judge of the Supreme Court or the Court of Appeals may be executed anywhere in the state. Except
26 as otherwise provided in subsections (2), (3) and (4) of this section, a search warrant issued by a
27 judge of a circuit court may be executed only within the judicial district in which the court is lo-
28 cated. A search warrant issued by a justice of the peace may be executed only within the county
29 in which the justice court is located. A search warrant issued by a municipal judge authorized to
30 exercise the powers and perform the duties of a justice of the peace may be executed only in the

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 municipality in which the court is located.

2 (2) Notwithstanding subsection (1) of this section, a circuit court judge may authorize execution
3 of a search warrant outside the judicial district in which the court is located, if the judge finds from
4 the application that one or more of the objects of the search relate to an offense committed or
5 triable within the judicial district in which the court is located, **or that the search involves**
6 **interrelated conduct carried on in more than one county in this state, including the judicial**
7 **district in which the court is located.** If the warrant authorizes the installation or tracking of a
8 mobile tracking device, the officer may track the device in any county to which it is transported.

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

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

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

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

23 (B) Identity theft;

24 (C) Aggravated identity theft;

25 (D) Computer crime;

26 (E) Fraudulent use of a credit card;

27 (F) Forgery in any degree;

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

29 (H) Theft in any degree; or

30 (I) Aggravated theft in the first degree;

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

32 (c) The person making application for the search warrant is not able to ascertain at the time
33 of the application the proper place of trial for the offense described in paragraph (a) of this sub-
34 section.

35 (5) Application for a search warrant may be made only by a district attorney, a police officer
36 or a special agent employed under ORS 131.805.

37 (6) The application shall consist of a proposed warrant in conformance with ORS 133.565, and
38 shall be supported by one or more affidavits particularly setting forth the facts and circumstances
39 tending to show that the objects of the search are in the places, or in the possession of the indi-
40 viduals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant shall set
41 forth facts bearing on any unnamed informant's reliability and shall disclose, as far as possible, the
42 means by which the information was obtained.

43 (7) Instead of the written affidavit described in subsection (6) of this section, the judge may take
44 an oral statement under oath. The oral statement shall be recorded and a copy of the recording
45 submitted to the judge who took the oral statement. In such cases, the judge shall certify that the

1 recording of the sworn oral statement is a true recording of the oral statement under oath and shall
 2 retain the recording as part of the record of proceedings for the issuance of the warrant. The re-
 3 cording shall constitute an affidavit for the purposes of this section. The applicant shall retain a
 4 copy of the recording and shall provide a copy of the recording to the district attorney if the district
 5 attorney is not the applicant.

6 (8)(a) In addition to the procedure set out in subsection (7) of this section, the proposed warrant
 7 and the affidavit may be sent to the court by facsimile transmission or any similar electronic
 8 transmission that delivers a complete printable image of the signed affidavit and proposed warrant.
 9 The affidavit may have a notarized acknowledgment, or the affiant may swear to the affidavit by
 10 telephone. If the affiant swears to the affidavit by telephone, the affidavit may be signed electron-
 11 ically. A judge administering an oath telephonically under this subsection must execute a declara-
 12 tion that recites the manner and time of the oath's administration. The declaration must be filed
 13 with the return.

14 (b) When a court issues a warrant upon an application made under paragraph (a) of this sub-
 15 section:

16 (A) The court may transmit the signed warrant to the person making application under sub-
 17 section (5) of this section by means of facsimile transmission or similar electronic transmission, as
 18 described in paragraph (a) of this subsection. The court shall file the original signed warrant and
 19 a printed image of the application with the return.

20 (B) The person making application shall deliver the original signed affidavit to the court with
 21 the return. If the affiant swore to the affidavit by telephone, the affiant must so note next to the
 22 affiant's signature on the affidavit.

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

24 133.575. (1) Except as provided in ORS 136.583, a search warrant may be executed only within
 25 the period and at the times authorized by the warrant and only by a police officer. A police officer
 26 charged with its execution may be accompanied by such other persons as may be reasonably nec-
 27 essary for the successful execution of the warrant with all practicable safety. **Other persons may**
 28 **include, but are not limited to:**

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

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

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

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

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

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

35 (g) **Towers;**

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

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

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

39 (2) The executing officer shall, before entering the premises, give appropriate notice of the
 40 identity, authority and purpose of the officer to the person to be searched, or to the person in ap-
 41 parent control of the premises to be searched, as the case may be.

42 (3) Except as provided in ORS 133.619, before undertaking any search or seizure pursuant to the
 43 warrant, the executing officer shall read and give a copy of the warrant to the person to be
 44 searched, or to the person in apparent control of the premises to be searched. If the premises are
 45 unoccupied or there is no one in apparent control, the officer shall leave a copy of the warrant

1 suitably affixed to the premises.

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

3 166.725. (1) Any circuit court may, after making due provision for the rights of innocent persons,
4 enjoin violations of the provisions of ORS 166.720 (1) to (4) by issuing appropriate orders and judg-
5 ments, including, but not limited to:

6 (a) Ordering a divestiture by the defendant of any interest in any enterprise, including real
7 property.

8 (b) Imposing reasonable restrictions upon the future activities or investments of any defendant,
9 including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor
10 as the enterprise in which the defendant was engaged in violation of the provisions of ORS 166.720
11 (1) to (4).

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

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

15 (e) Ordering the forfeiture of the charter of a corporation organized under the laws of this state,
16 or the revocation of a certificate of authority authorizing a foreign corporation to conduct business
17 within this state, upon finding that the board of directors or a managerial agent acting on behalf
18 of the corporation, in conducting the affairs of the corporation, has authorized or engaged in con-
19 duct in violation of ORS 166.720 (1) to (4) and that, for the prevention of future criminal activity,
20 the public interest requires the charter of the corporation forfeited and the corporation dissolved
21 or the certificate of authority revoked.

22 (2) All property, real or personal, including money, used in the course of, derived from or real-
23 ized through conduct in violation of a provision of ORS 166.715 to 166.735 is subject to civil forfei-
24 ture to the state. The state shall dispose of all forfeited property as soon as commercially feasible.
25 If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures
26 or dispositions under this section shall be made with due provision for the rights of innocent per-
27 sons. Forfeited property shall be distributed as follows:

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

30 (B) For purposes of subparagraph (A) of this paragraph, "clear proceeds" means proceeds of
31 forfeited property less costs of maintaining and preserving property pending its sale or other dispo-
32 sition, less costs of sale or disposition and, if the Department of Justice has not otherwise recovered
33 its costs and expenses of the investigation and prosecution leading to the forfeiture, less 30 percent
34 of the remaining proceeds of the property which is awarded to the department as reasonable re-
35 imbursement for costs of such investigation and prosecution.

36 (b) Any amounts awarded to the Department of Justice pursuant to paragraph (a) of this sub-
37 section shall be deposited in the Criminal Justice Revolving Account in the State Treasury.

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

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

42 (b) The property subject to seizure has been the subject of a prior judgment in favor of the state
43 in a forfeiture proceeding based upon this section.

44 (4) In the event of a seizure under subsection (3) of this section, a forfeiture proceeding shall
45 be instituted promptly. Property taken or detained under this section shall not be subject to

1 replevin, but is deemed to be in the custody of the police officer making the seizure, subject only
2 to the order of the court. When property is seized under this section, pending forfeiture and final
3 disposition, the police officer may:

4 (a) Place the property under seal;

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

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

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

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

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

22 (B) If the person is entitled to pursue a cause of action under subsection (7)(a)(B) of this section.

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

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

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

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

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

40 (c) Any injured person shall have a right or claim to forfeited property or to the proceeds de-
41 rived therefrom superior to any right or claim the state has in the same property or proceeds.

42 (8) An investigative agency may bring an action for civil penalties for any violation of ORS
43 166.720 (1) to (4). Upon proof of any such violation, the court shall impose a civil penalty of not more
44 than \$250,000.

45 (9) A judgment rendered in favor of the state in any criminal proceeding under ORS 166.715 to

1 166.735 shall estop the defendant in any subsequent civil action or proceeding brought by the state
2 or any other person as to all matters as to which such judgment would be an estoppel as between
3 the state and the defendant.

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

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

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

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

27 (13) Notwithstanding subsection (6) or (7) of this section, a person may not institute a proceed-
28 ing under subsection (6) of this section and does not have a cause of action under subsection (7) of
29 this section if the conduct that is the basis of the proceeding or action could also be the basis of
30 a claim of discrimination because of sex that constitutes sexual harassment.

31 (14) In an action brought under the provisions of this section by a person other than the At-
32 torney General, a district attorney or a state agency, the court may award reasonable attorney fees
33 to the prevailing party. In a civil action brought under the provisions of this section by the Attorney
34 General, a district attorney or a state agency:

35 (a) The court may award reasonable attorney fees to the Attorney General, district attorney or
36 state agency if the Attorney General, district attorney or state agency prevails in the action; and

37 (b) The court may award reasonable attorney fees to a defendant who prevails in an action un-
38 der this section if the court determines that the Attorney General, district attorney or state agency
39 had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an
40 adverse decision of the trial court.

41 **SECTION 5. This 2023 Act being necessary for the immediate preservation of the public**
42 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
43 **on its passage.**