Chapter 133

2009 EDITION

Arrest and Related Procedures; Search and Seizure; Extradition

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GENERAL PROVISIONS

133.005 Definitions for ORS 133.005 to 133.381 and 133.410 to 133.450. As used in ORS 133.005 to 133.381 and 133.410 to 133.450, unless the context requires otherwise:

(1) "Arrest" means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense. A "stop" as authorized under ORS 131.605 to 131.625 is not an arrest.

(2) "Federal officer" means a special agent or law enforcement officer employed by a federal agency who is empowered to effect an arrest with or without a warrant for violations of the United States Code and who is authorized to carry firearms in the performance of duty.

(3) "Peace officer" means a member of the Oregon State Police or a sheriff, constable, marshal, municipal police officer, investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or any other state, or an investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon. [1973 c.836 §62; 1979 c.656 §1; 1981 c.808 §1; 1991 c.67 §25; 1993 c.254 §1; 1995 c.651 §6; 2009 c.11 §8]

133.007 Sufficiency of information or complaint. (1) An information or complaint is sufficient if it can be understood therefrom that:

(a) The defendant is named, or if the name of the defendant cannot be discovered, the defendant is described by a fictitious name, with the statement that the real name of the defendant is unknown to the complainant.

(b) The offense was committed within the jurisdiction of the court, except when, as provided by law, the act, though done without the county in which the court is held, is triable within.

(c) The offense was committed at some time prior to the filing of the information or complaint and within the time limited by law for the commencement of an action therefor.

(2) The information or complaint shall not contain allegations that the defendant has previously been convicted of any offense that might subject the defendant to enhanced penalties.

(3) Words used in a statute to define an offense need not be strictly followed in the information or complaint, but other words conveying the same meaning may be used. [1973 c.836 §63; 2005 c.22 §101]

133.010 [Amended by 1965 c.508 §1; repealed by 1973 c.836 §358]

133.015 Contents of information or complaint. An information or complaint shall contain substantially the following:

(1) The name of the court in which it is filed;

(2) The title of the action;

(3) A statement that accuses the defendant or defendants of the designated offense or offenses;

(4) A separate accusation or count addressed to each offense charged, if there be more than one;

(5) A statement in each count that the offense charged therein was committed in a designated county;

(6) A statement in each count that the offense charged therein was committed on, or on or about, a designated date, or during a designated period of time;

(7) A statement of the acts constituting the offense in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended; and

(8) The verification by the complainant and the date of the signing of the information or complaint. [1973 c.836 §64]

133.020 Magistrate defined. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with the commission of a crime.

133.030 Who are magistrates. The following persons are magistrates:

(1) Judges of the Supreme Court;

(2) Judges of the Court of Appeals;

(3) Judges of the circuit court;

(4) County judges and justices of the peace; and

(5) Municipal judges. [Amended by 1961 c.724 §27; 1969 c.198 §59; 1977 c.746 §1; 1995 c.658 §72]

133.033 Peace officer; community caretaking functions. (1) Except as otherwise expressly prohibited by law, any peace officer of this state, as defined in ORS 133.005, is authorized to perform community caretaking functions.

(2) As used in this section, "community caretaking functions" means any lawful acts that are inherent in the duty of the peace officer to serve and protect the public. "Community caretaking functions" includes, but is not limited to:

(a) The right to enter or remain upon the premises of another if it reasonably appears to be necessary to:

(A) Prevent serious harm to any person or property;

(B) Render aid to injured or ill persons; or

(C) Locate missing persons.

(b) The right to stop or redirect traffic or aid motorists or other persons when such action reasonably appears to be necessary to:

(A) Prevent serious harm to any person or property;

(B) Render aid to injured or ill persons; or

(C) Locate missing persons.

(3) Nothing contained in this section shall be construed to limit the authority of a peace officer that is inherent in the office or that is granted by any other provision of law. [1991 c.959 §1]

Note: 133.033 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 133 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

133.037 [1971 c.743 §289; 1973 c.836 §33; renumbered 131.655]

133.040 [Repealed by 1965 c.508 §8]

133.045 [1969 c.244 §1; 1973 c.836 §65; 1974 c.42 §1; repealed by 1999 c.1051 §72]

133.050 [Repealed by 1959 c.426 §1]

CRIMINAL CITATIONS

133.055 Criminal citation; exception for domestic disturbance; notice of rights. (1) A peace officer may issue a criminal citation to a person if the peace officer has probable cause to believe that the person has committed a misdemeanor or has committed any felony that is subject to misdemeanor treatment under ORS 161.705. The peace officer shall deliver a copy of the criminal citation to the person. The criminal citation shall require the person to appear at the court of the magistrate before whom the person would be taken pursuant to ORS 133.450 if the person were arrested for the offense.

(2)(a) Notwithstanding the provisions of subsection (1) of this section, when a peace officer responds to an incident of domestic disturbance and has probable cause to believe that an assault has occurred between family or household members, as defined in ORS 107.705, or to believe that one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest and take into custody the alleged assailant or potential assailant.

(b) When the peace officer makes an arrest under paragraph (a) of this subsection, the peace officer is not required to arrest both persons.

(c) When a peace officer makes an arrest under paragraph (a) of this subsection, the peace officer shall make every effort to determine who is the assailant or potential assailant by considering, among other factors:

(A) The comparative extent of the injuries inflicted or the seriousness of threats creating a fear of physical injury;

(B) If reasonably ascertainable, the history of domestic violence between the persons involved;

(C) Whether any alleged crime was committed in self-defense; and

(D) The potential for future assaults.

(3) Whenever any peace officer has reason to believe that a family or household member, as defined in ORS 107.705, has been abused as defined in ORS 107.705 or that an elderly person or a person with a disability has been abused as defined in ORS 124.005, that officer shall use all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community and giving each person immediate notice of the legal rights and remedies available. The notice shall consist of handing each person a copy of the following statement:

IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE OR ABUSE, you can ask the district attorney to file a criminal complaint. You also have the right to go to the circuit court and file a petition requesting any of the following orders for relief: (a) An order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing your attacker from entering your residence, school, business or place of employment; (d) an order awarding you or the other parent custody of or parenting time with a minor child or children; (e) an order restraining your attacker from molesting or interfering with minor children in your custody; (f) an order awarding you other relief the court considers necessary to provide for your or your children's safety, including emergency monetary assistance. Such orders are enforceable in every state.

You may also request an order awarding support for minor children in your care or for your support if the other party has a legal obligation to support you or your children.

You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in the small claims department of a

court if the total amount claimed is under $7,500.

Similar relief may also be available in tribal courts.

For further information you may contact: _____.

[1969 c.244 §2; 1977 c.845 §1; 1981 c.779 §1; 1991 c.303 §1; 1995 c.666 §23; 1997 c.707 §28; 1999 c.617 §1; 1999 c.738 §8; 1999 c.1051 §54; 2003 c.264 §8; 2007 c.70 §33; 2007 c.125 §7]

133.060 Cited person to appear before magistrate; effect of failure to appear; arrest warrant. (1) A person who has been served with a criminal citation shall appear before a magistrate of the county in which the person was cited at the time, date and court specified in the citation, which shall not be later than 30 days after the date the citation was issued.

(2) If the cited person fails to appear at the time, date and court specified in the criminal citation, and a complaint or information is filed, the magistrate shall issue a warrant of arrest, upon application for its issuance, upon the person's failure to appear. [1969 c.244 §5; 1983 c.661 §1; 1997 c.548 §1; 1999 c.1051 §55]

133.065 Service of criminal citation. If a criminal citation is issued as described in ORS 133.055, the peace officer shall serve one copy on the person arrested and shall, as soon as practicable, file a duplicate copy with the magistrate specified in ORS 133.055 along with proof of service. [1969 c.244 §6; 1999 c.1051 §58]

133.066 Criminal citations generally. (1) A criminal citation may include a complaint or may be issued without a form of complaint. If a criminal citation is issued without a complaint, the citation must be in the form provided by ORS 133.068. If a criminal citation is issued with a complaint, the citation must be in the form provided by ORS 133.069.

(2) A criminal citation may be issued with a complaint only if a procedure for the issuance of a citation with a complaint has been authorized by the district attorney for the county in which the crime is alleged to have been committed.

(3) A complaint or information may be filed with the court before or after the issuance of a criminal citation without a complaint. Nothing in this section affects the requirement that a complaint or information be filed for the crime charged.

(4) More than one crime may be charged in a single criminal citation. However, if a defendant is to be charged with driving while under the influence of intoxicants in violation of ORS 813.010, a separate criminal citation must be used for the charge of driving while under the influence of intoxicants and that citation may not be used to charge the defendant with the commission of any other crime.

(5) Uniform citation forms for crimes shall be adopted by the Supreme Court under ORS 1.525. In adopting those forms, the Supreme Court may combine the requirements for criminal citations under this section and the requirements for violation citations under ORS 153.045. A crime and a violation may not be charged on the same citation form. [1999 c.1051 §57]

133.067 [1991 c.824 §2; 1995 c.292 §2; repealed by 1999 c.1051 §72]

133.068 Contents of criminal citation issued without complaint. A criminal citation issued without a form of complaint must contain:

(1) The name of the court at which the cited person is to appear.

(2) The name of the person cited.

(3) A brief description of the offense for which the person is charged, the date, time and place at which the offense occurred, the date on which the citation was issued, and the name of the peace officer who issued the citation.

(4) The date, time and place at which the person cited is to appear in court, and a summons to so appear.

(5) Whether a complaint or information had been filed with the court at the time the citation was issued.

(6) If the arrest was made by a private party, the name of the arresting person.

(7) The following:

READ CAREFULLY

This citation is not a complaint or an information. A complaint or an information may be filed and you will be provided a copy thereof at the time of your first appearance. You MUST appear in court at the time set in the citation. IF YOU FAIL TO APPEAR AND A COMPLAINT OR INFORMATION HAS BEEN FILED, THE COURT WILL IMMEDIATELY ISSUE A WARRANT FOR YOUR ARREST.

[1999 c.1051 §60]

133.069 Contents of criminal citation issued with complaint; nonconformance. (1) A criminal citation issued with a form of complaint must contain:

(a) The name of the court at which the cited person is to appear.

(b) The name of the person cited.

(c) A complaint containing at least the following:

(A) The name of the court, the name of the state or of the city or other public body in whose name the action is brought and the name of the defendant.

(B) A statement or designation of the crime that can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the crime is alleged to have been committed.

(C) A form of certificate in which the peace officer must certify that the peace officer has sufficient grounds to believe, and does believe, that the person named in the complaint committed the offense specified in the complaint. A certificate conforming to this subparagraph shall be deemed equivalent to a sworn complaint.

(d) The date on which the citation was issued, and the name of the peace officer who issued the citation.

(e) The date, time and place at which the person cited is to appear in court, and a summons to so appear.

(f) If the arrest was made by a private party, the name of the arresting person.

(2) The district attorney for the county shall review any criminal citation issued with a form of complaint that is to be filed in a circuit or justice court. The review must be done before the complaint is filed.

(3) If the complaint does not conform to the requirements of this section, the court shall set the complaint aside upon motion of the defendant made before entry of a plea. A pretrial ruling on a motion to set aside may be appealed by the state.

(4) A court may amend a complaint at its discretion. [1999 c.1051 §61; 2001 c.870 §10; 2005 c.566 §1]

133.070 Criminal citation where arrest without warrant is authorized for ordinance violation. (1) In any instance in which a person is subject to arrest without a warrant for violation of an ordinance of a county, city or municipal corporation, any peace officer who is authorized to make the arrest may make the arrest or in lieu of taking the person into custody the officer may issue and serve a criminal citation to the person to appear at any court within the jurisdictional unit by which the officer is authorized to act.

(2) Any criminal citation issued under this section must meet the requirements of ORS 133.055 to 133.076.

(3) The person cited shall appear before the court in which the person's appearance is required at the time, date and court specified in the criminal citation. If the person fails to appear at that time and a complaint is filed, the court shall issue a warrant for the person's arrest upon application for its issuance. [1969 c.244 §8; 1983 c.661 §2; 1999 c.1051 §62]

133.072 [1983 c.661 §10; repealed by 1999 c.1051 §72]

133.073 Electronic filing of criminal citation; court rules. (1) Notwithstanding ORS 133.065, a peace officer, following procedures established by court rule, may file a criminal citation with or without a form of complaint with the court by electronic means, without an actual signature of the officer, in lieu of filing a duplicate paper copy of the citation. A peace officer who files a criminal citation under this section is deemed to certify the citation and any complaint included with the citation by that filing and has the same rights, responsibilities and liabilities in relation to the citation and any complaint included with the citation as an officer has in relation to citations and complaints that are filed with the court in paper form and are certified by actual signature.

(2) A court may allow electronic filing of criminal citations as described under subsection (1) of this section. Procedures established to allow electronic filing of criminal citations under this section shall be established by court rule and shall include procedures necessary to ensure that:

(a) An electronically filed criminal citation with or without a form of complaint includes all information required on a uniform citation adopted by the Supreme Court under ORS 1.525.

(b) An electronically filed criminal citation with or without a form of complaint is verifiable as being filed by a specific peace officer.

(c) Members of the public can obtain copies of and review a criminal citation with or without a form of complaint that is electronically filed and maintained under this section in the same manner as the manner used for those filed on paper.

(3) For a criminal citation with a form of complaint issued under ORS 133.069, the district attorney's review required by ORS 133.069 and, if necessary, amendments for legal sufficiency, must be completed before the electronic filing of the citation with the form of complaint is made with a court under this section. [2005 c.566 §15]

133.075 [1969 c.244 §9; 1973 c.836 §66; 1983 c.661 §3; repealed by 1999 c.1051 §63 (133.076 enacted in lieu of 133.075)]

133.076 Failure to appear on criminal citation. (1) A person commits the offense of failure to appear on a criminal citation if the person has been served with a criminal citation issued under ORS 133.055 to 133.076 and the person knowingly fails to do any of the following:

(a) Make an appearance in the manner required by ORS 133.060.

(b) Make appearance at the time set for trial in the criminal proceeding.

(c) Appear at any other time required by the court or by law.

(2) Failure to appear on a criminal citation is a Class A misdemeanor. [1999 c.1051 §64 (enacted in lieu of 133.075)]

133.077 [1991 c.592 §2; repealed by 1999 c.1051 §72]

133.080 [1969 c.244 §7; 1971 c.404 §5; 1975 c.451 §172; 1979 c.477 §2; 1983 c.338 §886; repealed by 1999 c.1051 §72]

133.100 [1971 c.404 §1; 1973 c.836 §67; repealed by 1999 c.1051 §72]

WARRANT OF ARREST

133.110 Issuance; citation. If an information or a complaint has been filed with the magistrate, and the magistrate is satisfied that there is probable cause to believe that the person has committed the crime specified in the information or complaint, the magistrate shall issue a warrant of arrest. If the offense is subject to issuance of a criminal citation under ORS 133.055, the court may authorize a peace officer to issue and serve a criminal citation in lieu of arrest. [Amended by 1969 c.244 §3; 1973 c.836 §68; 1983 c.661 §4; 1999 c.1051 §66]

133.120 Authority to issue warrant. A judge of the Supreme Court or the Court of Appeals may issue a warrant of arrest for any crime committed or triable within the state, and any other magistrate mentioned in ORS 133.030 may issue a warrant for any crime committed or triable within the territorial jurisdiction of the magistrate's court. [Amended by 1969 c.198 §60; 1973 c.836 §69; 1977 c.746 §2; 1983 c.661 §5]

133.130 [Repealed by 1973 c.836 §358]

133.140 Content and form of warrant. A warrant of arrest shall:

(1) Be in writing;

(2) Specify the name of the person to be arrested, or if the name is unknown, shall designate the person by any name or description by which the person can be identified with reasonable certainty;

(3) State the nature of the crime;

(4) State the date when issued and the county or city where issued;

(5) Be in the name of the State of Oregon or the city where issued, be signed by and bear the title of the office of the magistrate having authority to issue a warrant for the crime charged;

(6) Command any peace officer, or any parole and probation officer for a person who is being supervised by the Department of Corrections or a county community corrections agency, to arrest the person for whom the warrant was issued and to bring the person before the magistrate issuing the warrant, or if the magistrate is absent or unable to act, before the nearest or most accessible magistrate in the same county;

(7) Specify that the arresting officer may enter premises, in which the officer has probable cause to believe the person to be arrested to be present, without giving notice of the officer's authority and purpose, if the issuing judge has approved a request for such special authorization; and

(8) Specify the amount of security for release. [Amended by 1961 c.443 §1; 1973 c.836 §70; 1977 c.746 §3; 1983 c.661 §6; 2005 c.668 §3]

133.150 [Repealed by 1961 c.443 §3]

133.160 [Amended by 1959 c.664 §28; repealed by 1961 c.443 §3]

133.170 [Amended by 1961 c.443 §2; repealed by 1973 c.836 §358]

133.210 [Repealed by 1973 c.836 §358]

ARREST

133.220 Who may make arrest. An arrest may be effected by:

(1) A peace officer under a warrant;

(2) A peace officer without a warrant;

(3) A parole and probation officer under a warrant as provided in ORS 133.239;

(4) A parole and probation officer without a warrant for violations of conditions of probation, parole or post-prison supervision;

(5) A private person; or

(6) A federal officer. [Amended by 1981 c.808 §2; 2005 c.668 §4]

133.225 Arrest by private person. (1) A private person may arrest another person for any crime committed in the presence of the private person if the private person has probable cause to believe the arrested person committed the crime. A private person making such an arrest shall, without unnecessary delay, take the arrested person before a magistrate or deliver the arrested person to a peace officer.

(2) In order to make the arrest a private person may use physical force as is justifiable under ORS 161.255. [1973 c.836 §74]

133.230 [Repealed by 1971 c.743 §432]

133.235 Arrest by peace officer; procedure. (1) A peace officer may arrest a person for a crime at any hour of any day or night.

(2) A peace officer may arrest a person for a crime, pursuant to ORS 133.310 (1), whether or not such crime was committed within the geographical area of such peace officer's employment, and the peace officer may make such arrest within the state, regardless of the situs of the offense.

(3) The officer shall inform the person to be arrested of the officer's authority and reason for the arrest, and, if the arrest is under a warrant, shall show the warrant, unless the officer encounters physical resistance, flight or other factors rendering this procedure impracticable, in which case the arresting officer shall inform the arrested person and show the warrant, if any, as soon as practicable.

(4) In order to make an arrest, a peace officer may use physical force as justifiable under ORS 161.235, 161.239 and 161.245.

(5) In order to make an arrest, a peace officer may enter premises in which the officer has probable cause to believe the person to be arrested to be present.

(6) If after giving notice of the officer's identity, authority and purpose, the officer is not admitted, the officer may enter the premises, and by a breaking, if necessary.

(7) A person may not be arrested for a violation except to the extent provided by ORS 153.039 and 810.410. [1973 c.836 §71; 1981 c.818 §1; 1999 c.1051 §67]

133.239 Arrest by parole and probation officer; procedure. (1) As used in this section, "parole and probation officer" has the meaning given that term in ORS 181.610.

(2) A parole and probation officer may arrest a person if the person is being supervised by the Department of Corrections or a county community corrections agency.

(3)(a) A parole and probation officer making an arrest under this section shall, without unnecessary delay, take the arrested person before a magistrate or deliver the arrested person to a peace officer.

(b) The parole and probation officer retains authority over the arrested person only until the person appears before a magistrate or until the law enforcement agency having general jurisdiction over the area in which the arrest took place assumes responsibility for the person. [2005 c.668 §6]

133.240 [Repealed by 1973 c.836 §358]

133.245 Arrest by federal officer; procedure. (1) A federal officer may arrest a person:

(a) For any crime committed in the federal officer's presence if the federal officer has probable cause to believe the person committed the crime.

(b) For any felony or Class A misdemeanor if the federal officer has probable cause to believe the person committed the crime.

(c) When rendering assistance to or at the request of a law enforcement officer, as defined in ORS 414.805.

(d) When the federal officer has received positive information in writing or by telephone, telegraph, teletype, radio, facsimile machine or other authoritative source that a peace officer holds a warrant for the person's arrest.

(2) The federal officer shall inform the person to be arrested of the federal officer's authority and reason for the arrest.

(3) In order to make an arrest, a federal officer may use physical force as is justifiable and authorized of a peace officer under ORS 161.235, 161.239 and 161.245.

(4)(a) A federal officer making an arrest under this section without unnecessary delay shall take the arrested person before a magistrate or deliver the arrested person to a peace officer.

(b) The federal officer retains authority over the arrested person only until the person appears before a magistrate or until the law enforcement agency having general jurisdiction over the area in which the arrest took place assumes responsibility for the person.

(5) A federal officer when making an arrest for a nonfederal offense under the circumstances provided in this section shall have the same immunity from suit as a state or local law enforcement officer.

(6) A federal officer is authorized to make arrests under this section upon certification by the Department of Public Safety Standards and Training that the federal officer has received proper training to enable that officer to make arrests under this section. [1981 c.808 §3; 1993 c.254 §2; 1995 c.79 §48; 1997 c.853 §34]

133.250 [Repealed by 1973 c.836 §358]

133.260 [Repealed by 1973 c.836 §358]

133.270 [Repealed by 1973 c.836 §358]

133.280 [Repealed by 1971 c.743 §432]

133.290 [Repealed by 1973 c.836 §358]

133.300 [Repealed by 1973 c.836 §358]

133.310 Authority of peace officer to arrest without warrant. (1) A peace officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed any of the following:

(a) A felony.

(b) A misdemeanor.

(c) An unclassified offense for which the maximum penalty allowed by law is equal to

or greater than the maximum penalty allowed for a Class C misdemeanor.

(d) Any other crime committed in the officer's presence.

(2) A peace officer may arrest a person without a warrant when the peace officer is notified by telegraph, telephone, radio or other mode of communication by another peace officer of any state that there exists a duly issued warrant for the arrest of a person within the other peace officer's jurisdiction.

(3) A peace officer shall arrest and take into custody a person without a warrant when the peace officer has probable cause to believe that:

(a) There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c) or (d), 107.716, 107.718, 124.015, 124.020, 163.738 or 419B.845 restraining the person;

(b) A true copy of the order and proof of service on the person has been filed as required in ORS 107.720, 124.030, 163.741 or 419B.845; and

(c) The person to be arrested has violated the terms of that order.

(4) A peace officer shall arrest and take into custody a person without a warrant if:

(a) The person protected by a foreign restraining order as defined by ORS 24.190 presents a copy of the foreign restraining order to the officer and represents to the officer that the order supplied is the most recent order in effect between the parties and that the person restrained by the order has been personally served with a copy of the order or has actual notice of the order; and

(b) The peace officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining order.

(5) A peace officer shall arrest and take into custody a person without a warrant if:

(a) The person protected by a foreign restraining order as defined by ORS 24.190 has filed a copy of the foreign restraining order with a court or has been identified by the officer as a party protected by a foreign restraining order entered in the Law Enforcement Data System or in the databases of the National Crime Information Center of the United States Department of Justice; and

(b) The peace officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining order.

(6) A peace officer shall arrest and take into custody a person without a warrant if the peace officer has probable cause to believe:

(a) The person has been charged with an offense and is presently released as to that charge under ORS 135.230 to 135.290; and

(b) The person has failed to comply with a no contact condition of the release agreement. [Amended by 1963 c.448 §1; 1973 c.836 §72; 1974 c.42 §2; 1977 c.845 §2; 1979 c.522 §2; 1981 c.780 §8; 1981 c.818 §2; 1983 c.338 §887; 1983 c.661 §7; 1987 c.730 §4a; 1989 c.171 §15; 1991 c.208 §2; 1991 c.222 §2; 1993 c.626 §10; 1993 c.731 §3; 1995 c.353 §11; 1995 c.666 §24; 1997 c.249 §45; 1997 c.863 §2; 1999 c.250 §2; 1999 c.1040 §8; 1999 c.1051 §68; 2005 c.753 §1]

133.315 Liability of peace officer making arrest. (1) No peace officer shall be held criminally or civilly liable for making an arrest pursuant to ORS 133.055 (2) or 133.310 (3) or (5) provided the peace officer acts in good faith and without malice.

(2) No peace officer shall be criminally or civilly liable for any arrest made under ORS 133.310 (4) if the officer reasonably believes that:

(a) A document or other writing supplied to the officer under ORS 133.310 (4) is an accurate copy of a foreign restraining order as defined by ORS 24.190 and is the most recent order in effect between the parties; and

(b) The person restrained by the order has been personally served with a copy of the order or has actual notice of the order. [1977 c.845 §9; subsection (2) enacted as 1991 c.222 §3; 1999 c.250 §3]

Note: 133.315 (2) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 133 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

133.318 Providing false foreign restraining order; false representation to police officer. (1) Any person who provides to a peace officer a copy of a writing purporting to be a foreign restraining order as defined by ORS 24.190 knowing that no valid foreign restraining order is in effect shall be guilty of a Class A misdemeanor.

(2) Any person who represents to a police officer that a foreign restraining order is the most recent order in effect between the parties or that the person restrained by the order has been personally served with a copy of the order or has actual notice of the order knowing that the representation is false commits a Class A misdemeanor. [1991 c.222 §4; 1999 c.250 §4]

Note: 133.318 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 133 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

133.320 [Repealed by 1973 c.836 §358]

133.330 [Repealed by 1973 c.836 §358]

133.340 Authority to order arrest for crime committed in presence of magistrate. When a crime is committed in the

presence of a magistrate, the magistrate may, by a verbal or written order, command any person to arrest the offender and may thereupon proceed as if the offender had been brought before the magistrate upon a warrant of arrest. [Amended by 1973 c.836 §73; 1983 c.661 §8]

133.350 [Repealed by 1973 c.836 §358]

133.360 Arrests on warrant or order transmitted by telegraph. Whenever any person has been indicted or accused on oath of any public offense, or thereof convicted, and a warrant of arrest has been issued, the magistrate issuing the warrant, or any judge of the Supreme Court, or of the Court of Appeals, or of a circuit or county court, may indorse thereon an order signed by the magistrate or judge authorizing the service thereof by telegraph. Thereupon the warrant and order may be sent by telegraph to any marshal, sheriff, constable or police officer and on receipt of the telegraphic copy thereof, as defined in ORS 165.840, by any such officer, the officer shall have the same authority and be under the same obligations to arrest, take into custody and detain the person as if the original warrant of arrest with the proper direction for its service duly indorsed thereon had been placed in the hands of the officer. The telegraphic copy shall be entitled to full faith and credit and shall have the same force and effect in all courts and places as the original. Prior to indictment or conviction, no such order shall be made by any officer unless in the judgment of the officer there is probable cause to believe the accused person guilty of the offense charged, but the making of such order by any officer is prima facie evidence of the regularity thereof and of all proceedings prior thereto. The original warrant and order, or a copy thereof certified by the officer making the order, shall be preserved in the telegraph office from which the same is sent and in telegraphing the same, the original or the certified copy may be used. [Amended by 1969 c.198 §61; 1991 c.67 §26]

133.370 [Repealed by 1971 c.743 §432]

133.375 Definitions for ORS 133.375 to 133.381. As used in ORS 133.375 to 133.381 and 156.705:

(1) "Animal" has the meaning provided in ORS 167.310.

(2) "Owner" or "person" includes corporations as well as individuals. [Formerly 770.210; 1985 c.662 §11]

133.377 Arrest of persons for cruelty to animals; immunity of peace officer providing care for animal. (1) Any person violating ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428 may be arrested and held without warrant, in the same manner as in the case of persons found breaking the peace.

(2) The person making the arrest, with or without warrant, shall use reasonable diligence to give notice thereof to the owners of the animals found in the charge of the person arrested, and shall properly care and provide for such animals until the owners or their duly authorized agents take charge of them; provided, such owners or agents shall claim and take charge of the animals within 60 days from the date of said notice.

(3) The person making such arrest shall have a lien upon the animals for the expense of such care and provisions.

(4) Any peace officer who cares or provides for an animal pursuant to this section and any person into whose care an animal is delivered by a peace officer acting under this section shall be immune from civil or criminal liability based upon an allegation that such care was negligently provided. [Formerly 770.230; 1983 c.648 §2; 1985 c.662 §12; 2001 c.926 §16; 2009 c.550 §4]

133.379 Duty of peace officer to arrest and prosecute violators of cruelty to animals laws; disposition of fines. (1) It shall be the duty of any peace officer to arrest and prosecute any violator of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428 for any violation which comes to the knowledge or notice of the officer.

(2) All fines and forfeitures collected for violations of ORS 167.315 to 167.333, 167.340, 167.355, 167.365 or 167.428, except for forfeitures of the animal as provided under ORS 167.350 or 167.435, shall be paid into the county treasury of the county in which it is collected, and placed to the credit of the county school fund. [Formerly 770.240; 1983 c.648 §3; 1985 c.662 §13; 2001 c.926 §17; 2009 c.550 §5]

133.380 [Repealed by 1971 c.743 §432]

133.381 Procedure in arrests for violation of certain restraining orders; arrest of person not in county where order or warrant issued. (1) When a peace officer arrests a person pursuant to ORS 133.310 (3) or pursuant to a warrant issued under ORS 33.075 by a court or judicial officer for the arrest of a person charged with contempt for violating an order issued under ORS 107.095 (1)(c) or (d), 107.716, 107.718, 124.015 or 124.020, if the person is arrested in a county other than that in which the warrant or order was originally issued, the peace officer shall take the person before a magistrate as provided in ORS 133.450. If it becomes necessary to take the arrested person to the county in which the warrant or order was originally issued, the costs of such transportation shall be paid by that county.

(2) If a person arrested for the reasons described in subsection (1) of this section is subsequently found subject to the imposition of sanctions for contempt, the court, in addition to any other sanction it may impose, may order the person to repay a county all costs of transportation incurred by the county pursuant to subsection (1) of this section. [1979 c.162 §2; 1981 c.780 §9; 1991 c.724 §24; 1995 c.666 §25]

133.400 Recording of custodial interviews. (1) A custodial interview conducted by a peace officer in a law enforcement facility shall be electronically recorded if the interview is conducted in connection with an investigation into aggravated murder as defined in ORS 163.095 or a crime listed in ORS 137.700 or 137.707.

(2) Subsection (1) of this section does not apply to:

(a) A statement made before a grand jury;

(b) A statement made on the record in open court;

(c) A custodial interview conducted in another state in compliance with the laws of that state;

(d) A custodial interview conducted by a federal law enforcement officer in compliance with the laws of the United States;

(e) A statement that was spontaneously volunteered and did not result from a custodial interview;

(f) A statement made during arrest processing in response to a routine question;

(g) A law enforcement agency that employs five or fewer peace officers;

(h) A custodial interview conducted in connection with an investigation carried out by a corrections officer, a youth corrections officer or a staff member of the Oregon State Hospital in the performance of the officer's or staff member's official duties of treatment, custody, control or supervision of individuals committed to or confined in a place of incarceration or detention; or

(i) A custodial interview for which the state demonstrates good cause for the failure to electronically record the interview.

(3)(a) If the state offers an unrecorded statement made under the circumstances described in subsection (1) of this section in a criminal proceeding alleging the commission of aggravated murder or a crime listed in ORS 137.700 or 137.707 and the state is unable to demonstrate, by a preponderance of the evidence, that an exception described in subsection (2) of this section applies, upon the request of the defendant, the court shall instruct the jury regarding the legal requirement described in subsection (1) of this section and the superior reliability of electronic recordings when compared with testimony about what was said and done.

(b) The court may not exclude the defendant's statement or dismiss criminal charges as a result of a violation of this section.

(c) If each of the statements made by the defendant that the state offers into evidence is recorded, the court may not give a cautionary jury instruction regarding the content of the defendant's statements.

(4) A law enforcement agency that creates an electronic recording of a custodial interview shall preserve the recording until the defendant's conviction for the offense is final and all direct, post-conviction relief and habeas corpus appeals are exhausted, or until the prosecution of the offense is barred by law.

(5) The state shall provide an electronic copy of a defendant's custodial interview to a defendant in accordance with ORS 135.805 to 135.873. Providing an electronic copy of the custodial interview to the defendant constitutes compliance with ORS 135.815 (1)(b), and the state is not required to provide the defendant with a transcript of the contents of the interview. Unless the court orders otherwise, the defendant's attorney may not copy, disseminate or republish the electronic copy of the custodial interview, except to provide a copy to an agent of the defendant's attorney for the limited purpose of case preparation.

(6) An electronic recording of a custodial interview, and any transcription of the recording, that is certified as containing a complete recording, or a complete transcription, of the entirety of the custodial interview, from the advisement of constitutional rights to the conclusion of the custodial interview, is admissible in any pretrial or post-trial hearing for the purpose of establishing the contents of a statement made in the recording and the identity of the person who made the statement, if the statement is otherwise admissible. A certification that complies with this subsection satisfies the requirements of ORS 40.505 and 132.320 for the recording or transcription. This subsection does not prohibit a party from calling a witness to testify regarding the custodial interview.

(7) As used in this section:

(a) "Custodial interview" means an interview in which the person questioned is in custody and is required to be advised of the person's constitutional rights.

(b) "Good cause" includes, but is not limited to, situations in which:

(A) The defendant refused, or expressed an unwillingness, to have the custodial interview electronically recorded;

(B) The failure to electronically record the custodial interview was the result of equipment failure and a replacement device was not immediately available;

(C) The person operating the recording equipment believed, in good faith, that the equipment was recording the custodial interview;

(D) Electronically recording the custodial interview would jeopardize the safety of any person or the identity of a confidential informant;

(E) Exigent circumstances prevented the recording of the custodial interview; or

(F) The peace officer conducting the custodial interview reasonably believed, at the time the custodial interview began, that the custodial interview was conducted in connection with a crime other than aggravated murder as defined in ORS 163.095 or a crime listed in ORS 137.700 or 137.707.

(c) "Law enforcement facility" means a courthouse, building or premises that is a place of operation for a municipal police department, county sheriff's office or other law enforcement agency at which persons may be detained in connection with a juvenile delinquency petition or criminal charge. [2009 c.488 §1]

Note: 133.400 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 133 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 3 (1) and (2), chapter 488, Oregon Laws 2009, provides:

Sec. 3. (1) Section 1 of this 2009 Act [133.400] applies to custodial interviews conducted on or after July 1, 2010, if the person interviewed is:

(a) A minor who is subsequently charged with aggravated murder or a crime listed in ORS 137.700 or 137.707.

(b) A nonnative English speaker who requires the services of a translator or interpreter and is subsequently charged with aggravated murder or a crime listed in ORS 137.700 or 137.707.

(c) Subsequently charged with aggravated murder, murder, aggravated vehicular homicide or manslaughter in the first or second degree and the state is unable to demonstrate, by a preponderance of the evidence, that at the time the interview began, the peace officer conducting the interview reasonably believed that the interview was conducted in connection with an investigation into a crime other than aggravated murder, murder, aggravated vehicular homicide or manslaughter in the first or second degree.

(2) Except as provided in subsection (1) of this section, section 1 of this 2009 Act applies to custodial interviews of persons subsequently charged with aggravated murder or a crime listed in ORS 137.700 or 137.707 conducted on or after July 1, 2011. [2009 c.488 §3(1),(2)]

UNIFORM ACT ON FRESH PURSUIT

133.410 Short title. ORS 133.410 to 133.440 may be cited as the Uniform Act on Fresh Pursuit.

133.420 Definitions for ORS 133.410 to 133.440. As used in ORS 133.410 to 133.440:

(1) "Fresh pursuit" includes fresh pursuit as defined by the common law; the pursuit of a person who has committed a felony or who reasonably is suspected of having committed a felony; and the pursuit of a person suspected of having committed a felony, though no felony actually has been committed, if there is reasonable ground for believing that a felony has been committed. It does not necessarily imply instant pursuit, but pursuit without unreasonable delay.

(2) "State" includes the District of Columbia.

133.430 Authority of officers of other states to make arrest. (1) Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this state in fresh pursuit, and continues within this state in such fresh pursuit, of a person in order to arrest the person on the ground that the person is believed to have committed a felony in the other state has the same authority to arrest and hold such person in custody as has any member of any duly organized state, county or municipal peace unit of this state to arrest and hold in custody a person on the ground that the person is believed to have committed a felony in this state.

(2) This section shall not be construed to make unlawful any arrest in this state which otherwise would be lawful.

133.440 Proceedings following arrest by officer of other state. If an arrest is made in this state by an officer of another state in accordance with ORS 133.430, the officer shall without unnecessary delay take the person arrested before a magistrate of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the magistrate determines that the arrest was lawful, the magistrate shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Governor of this state. If the magistrate determines that the arrest was unlawful, the magistrate shall discharge the person arrested.

PROCEDURES AFTER ARREST

133.450 After arrest; within or without county in which warrant was issued. (1) If the defendant is arrested in the county in which the warrant issued, the defendant shall be taken before the magistrate who issued the warrant, or, if the magistrate is absent or unable to act, before the nearest or most accessible magistrate in the same county; but if the defendant is arrested in another county and the crime charged in the warrant is a misdemeanor, the officer shall, upon being required by the defendant, take the defendant before a magistrate of that county, who shall make a release decision as provided in ORS 135.230 to 135.290. The officer shall at the same time deliver to the magistrate the warrant with the return of the officer indorsed and subscribed by the officer.

(2) After making the release decision, the magistrate shall certify that fact on the warrant and return the warrant and release agreement or security release to the officer having charge of the defendant. The officer shall then discharge the defendant from arrest and without delay deliver the warrant and release agreement or security release to the clerk of the court in the other county at which the defendant is required to appear.

(3) If the defendant is to be released and does not agree to the release agreement, or a security deposit is not forthwith given, the officer shall take the defendant before the magistrate who issued the warrant or some other magistrate in that county, as provided in this section, together with the warrant. [Formerly 133.520]

133.455 Receipts for property taken from person in custody; penalty. (1) Whenever any jailer, peace officer or health officer takes or receives any money or other valuables from any person in custody for safekeeping or for other purposes, the officer or jailer receiving such valuables or money forthwith shall tender one of duplicate receipts for the property being surrendered to the person in custody. If possible, the person in custody shall countersign both the original and duplicate receipts. If the person is unable to sign the receipts or receive the duplicate thereof, the same shall be signed by and delivered to the person when reasonably possible. A file of the original receipts shall be kept for at least six months after the money or valuables have been returned to the person in custody, the agent or representative of the person or other person entitled to the same.

(2) A person violating any of the provisions of subsection (1) of this section commits a Class B misdemeanor. [Formerly 142.210]

133.460 Forfeiture of conveyances used unlawfully to conceal or transport stolen property. (1) Any boat, vehicle, aircraft or other conveyance used by or with the knowledge of the owner or the person operating or in charge thereof, other than stolen conveyances, in the unlawful transportation of livestock, livestock carcasses, poultry or other personal property, as provided in ORS 142.070, or in which any such personal property unlawfully possessed is kept or concealed by or with the knowledge of such owner or person operating or in charge thereof, shall be forfeited to the state as provided in this section.

(2) If the person arrested under ORS 133.465 is not the owner of the vehicle or conveyance seized, the sheriff shall make reasonable effort to determine the name and address of the owner. If the sheriff is able to determine the name and address of the owner, the sheriff shall immediately notify the owner by registered or certified mail of the seizure and of the owner's rights and duties under this section and ORS 133.465.

(3) A person notified under subsection (2) of this section, or any other person asserting a claim to rightful possession of the vehicle or conveyance seized, except the defendant, may move the court having ultimate trial jurisdiction over any crime charged in connection with the seizure, to return the vehicle or conveyance to the movant.

(4) The movant shall serve a copy of the motion upon the district attorney of the county in which the vehicle or conveyance is in custody. The court shall order the vehicle or conveyance returned to the movant, unless the court is satisfied by clear and convincing evidence that the movant knowingly consented to the unlawful use that resulted in the seizure. If the court does not order the return of the vehicle or conveyance, the movant shall obtain the return only as provided in ORS 133.465.

(5) If the court orders the return of the vehicle or conveyance to the movant, the movant shall not be liable for any towing or storage costs incurred as a result of the seizure.

(6) If the court does not order the return of the vehicle or conveyance under subsection (4) of this section, and the arrested person is convicted for any offense in connection with the seizure, the vehicle or conveyance shall be subject to forfeiture as provided in this section and ORS 133.470 and 133.475. [Formerly 142.080]

133.465 Seizure of stolen animals or other property being transported; proceedings against person arrested. (1) When any peace officer discovers any person

in the act of transporting any stolen live meat food animal or fowl, any meat food animal or fowl carcass, or any part thereof, or any wool, hides, grain or any other article which has been stolen in or upon any vehicle, boat, aircraft or conveyance of any kind, the officer shall seize all such articles or things found therein, take possession of the vehicle or other conveyance and arrest any person in charge thereof.

(2) The officer shall at once proceed against the person arrested, under the provisions of the law which has been violated, in any court having competent jurisdiction and shall deliver the vehicle or other conveyance to the sheriff of the county in which such seizure has been made.

(3) The vehicle or other conveyance shall be returned to the owner if the owner is the person arrested, upon execution of a good and valid bond, with sufficient sureties in a sum double the value of the property, which bond shall be approved by the court and shall be conditioned upon the return of said property to the custody of the sheriff at a time to be specified by the court. [Formerly 142.090]

133.470 Sale of seized property; rights of owner and lienholder. (1) The court, upon conviction of the person arrested pursuant to ORS 133.465, shall, unless the bona fide owner or a bona fide lienholder registers an objection as provided in this section, subject to the ownership rights of innocent third parties, order a sale of the property at public auction by the sheriff of the county where it was seized.

(2) The sheriff, after deducting the expense of keeping the property and the cost of sale, shall pay, according to their priorities, all liens which are established by intervention or otherwise at such hearing or in other proceedings brought for said purpose and shall pay the balance of the proceeds into the general fund of the county.

(3) No claim of ownership or of any right, title or interest in the vehicle or other conveyance shall be held invalid unless the state shows to the satisfaction of the court, by clear and convincing evidence that the claimant had knowledge that the vehicle or other conveyance was used or to be used in violation of law.

(4) No such conveyance shall be sold under this section and unless the state proves to the court, by clear convincing evidence that the person asserting a claim of ownership or other right, title or interest in the conveyance had knowledge that such conveyance was to be used to convey stolen property, in which case the court shall order the vehicle or other conveyance to be released. All liens against property sold under this section or ORS 133.475 or 133.485 shall be transferred from the property to the proceeds of the sale of the property. [Formerly 142.100]

133.475 Notice to owner. If no one claims the vehicle or other conveyance, as provided in ORS 133.470, the taking of the same with description thereof shall be advertised in some daily newspaper published in the city or county where taken or, if there is no daily newspaper published in such county or city, in a newspaper having weekly circulation in the city or county once a week for two weeks and by notice posted in three public places near the place of seizure. The legal owner, in the case of a motor vehicle, if licensed by the State of Oregon, as shown by the name and address of the legal owner in the records of the Department of Transportation, shall be notified by mail. If no claimant appears within 10 days after the last publication of the advertisement, the property shall be sold and the proceeds, after deducting the expenses and costs, shall be paid into the general fund of the county. [Formerly 142.110]

133.485 Perishable property; livestock or fowls. If any of the property seized, as provided in ORS 133.465, is perishable, or livestock or fowls where the cost of keeping is great, the sheriff shall, upon order of the court, sell the same in the manner in which property is sold on execution. [Formerly 142.120]

133.495 Retention of property to answer order of court. The proceeds of the sale mentioned in ORS 133.485 and other property seized shall be retained by liens, if not released on bond, to answer any order that may be entered by the court upon the trial of the person arrested. [Formerly 142.130]

133.510 [Repealed by 1965 c.508 §8]

133.515 Interpreter to be made available to person with a disability. (1) As used in this section:

(a) "Person with a disability" means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against the person, or is incapable of presenting or assisting in the presentation of a defense, because of deafness, or because of a physical hearing impairment or physical speaking impairment.

(b) "Qualified interpreter" means a person who is readily able to communicate with the person with a disability, translate the proceedings, and accurately repeat and translate the statements of the person with a disability to the officer or other person.

(2) Upon the arrest of a person with a disability and before interrogating or taking the statement of the person with a disability,

the arresting peace officer, or when the arrest is by a private person, the officer to whom the person with a disability is delivered, shall make available to the person with a disability, at the earliest possible time, a qualified interpreter to assist the person with a disability throughout the interrogation or taking of a statement.

(3) The public employer of the arresting peace officer or officer to whom the person with a disability is delivered shall pay the fees and expenses of the qualified interpreter if:

(a) The person with a disability, subsequent to the arrest, makes a verified statement and provides other information in writing under oath showing inability to obtain a qualified interpreter, and provides any other information required by the court having jurisdiction over the offense for which the person with a disability was arrested concerning the inability to obtain such an interpreter; and

(b) It appears to the court that the person with a disability was without means and was unable to obtain a qualified interpreter. [1973 c.386 §3; 1981 s.s. c.3 §139; 1989 c.224 §9; 2007 c.70 §34]

133.520 [Amended by 1965 c.508 §2; 1973 c.836 §75; renumbered 133.450]

SEARCH AND SEIZURE

(Generally)

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

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

(2) "Police officer" means a sheriff, municipal police officer, member of the Oregon State Police, investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or any other state, or an investigator of the Criminal Justice Division of the Department of Justice. [1973 c.836 §81; 1979 c.656 §2; 1991 c.67 §27; 1995 c.651 §7]

133.530 [Repealed by 1965 c.508 §8]

133.535 Permissible objects of search and seizure. The following are subject to search and seizure under ORS 133.525 to 133.703:

(1) Evidence of or information concerning the commission of a criminal offense;

(2) Contraband, the fruits of crime, or things otherwise criminally possessed;

(3) Property that has been used, or is possessed for the purpose of being used, to commit or conceal the commission of an offense; and

(4) A person for whose arrest there is probable cause or who is unlawfully held in concealment. [1973 c.836 §82]

133.537 Protection of things seized; liability of agency. (1) In all cases of seizure, an agency that seizes property shall take reasonable steps to safeguard and protect the things seized against loss, damage and deterioration.

(2) Notwithstanding subsection (1) of this section, an agency that seizes property is not liable for loss, damage or deterioration resulting from any reasonable actions taken to secure or develop evidence. [1991 c.540 §2]

Note: 133.537 was added to and made a part of 133.525 to 133.703 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

133.540 [Repealed by 1965 c.508 §8]

(Search and Seizure Pursuant to Warrant)

133.545 Issuance and execution of search warrant. (1) A search warrant may be issued only by a judge. A search warrant issued by a judge of the Supreme Court or the Court of Appeals may be executed anywhere in the state. Except as otherwise provided in subsection (2) of this section, a search warrant issued by a judge of a circuit court may be executed only within the judicial district in which the court is located. A search warrant issued by a justice of the peace may be executed only within the county in which the justice court is located. A search warrant issued by a municipal judge authorized to exercise the powers and perform the duties of a justice of the peace may be executed only in the municipality in which the court is located.

(2) Notwithstanding subsection (1) of this section, a circuit court judge may authorize execution of a search warrant outside the judicial district in which the court is located, if the judge finds from the application that one or more of the objects of the search relate to an offense committed or triable within the judicial district in which the court is located. If the warrant authorizes the installation or tracking of a mobile tracking device, the officer may track the device in any county to which it is transported.

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

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

(5) Instead of the written affidavit described in subsection (4) of this section, the judge may take an oral statement under oath. The oral statement shall be recorded and transcribed. The transcribed statement is an affidavit for the purposes of this section. In such cases, the recording of the sworn oral statement and the transcribed statement shall be certified by the judge receiving it and shall be retained as a part of the record of proceedings for the issuance of the warrant.

(6)(a) In addition to the procedure set out in subsection (5) of this section, the proposed warrant and the affidavit may be sent to the court by facsimile transmission or any similar electronic transmission that delivers a complete printable image of the signed affidavit and proposed warrant. The affidavit may have a notarized acknowledgment, or the affiant may swear to the affidavit by telephone. A judge administering an oath telephonically under this subsection must execute a declaration that recites the manner and time of the oath's administration. The declaration must be filed with the return.

(b) When a court issues a warrant upon an application made under paragraph (a) of this subsection:

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

(B) The person making application shall deliver the original signed affidavit to the court with the return. If the affiant swore to the affidavit by telephone, the affiant must so note next to the affiant's signature on the affidavit. [1973 c.836 §83; 1985 c.344 §1; 1989 c.983 §3; 1995 c.658 §73; 1999 c.56 §1; 2007 c.547 §1; 2009 c.334 §1]

133.550 [Repealed by 1973 c.836 §358]

133.555 Hearing. (1) Before acting on the application, the judge may examine on oath the affiants, and the applicant and any witnesses the applicant may produce, and may call such witnesses as the judge considers necessary to a decision. The judge shall make and keep a record of any testimony taken before the judge. The record shall be admissible as evidence on any motion to suppress.

(2) If the judge finds that the application meets the requirements of ORS 133.545 and that, on the basis of the record made before the judge, there is probable cause to believe that the search will discover things specified in the application and subject to seizure under ORS 133.535, the judge shall issue a search warrant based on the finding of the judge and in accordance with the requirements of ORS 133.545 to 133.615. If the judge does not so find, the judge shall deny the application.

(3) The judge may orally authorize a police officer, a district attorney or a special agent employed under ORS 131.805 to sign the judge's name on a duplicate original warrant. A duplicate original warrant shall be a search warrant for the purposes of ORS 133.535 to 133.615, and it shall be returned to the judge as provided in ORS 133.615. In such cases a judge shall enter on the face of the original warrant the exact time of the issuance of the warrant and shall sign and file the original warrant in the manner provided by law.

(4) Until the warrant is executed, the proceedings upon application for a search warrant shall be conducted with secrecy appropriate to the circumstances. [1973 c.836 §84; 2009 c.334 §2]

133.560 [Repealed by 1973 c.836 §358]

133.565 Contents of search warrant. (1) A search warrant shall be dated and shall be addressed to and authorize its execution by an officer authorized by law to execute search warrants.

(2) The warrant shall state, or describe with particularity:

(a) The identity of the judge issuing the warrant and the date the warrant was issued;

(b) The name of the person to be searched, or the location and designation of the premises or places to be searched;

(c) The things constituting the object of the search and authorized to be seized; and

(d) The period of time, not to exceed five days, after execution of the warrant except as provided in subsection (3) of this section, within which the warrant is to be returned to the issuing authority.

(3) Except as otherwise provided herein, the search warrant shall be executed between the hours of 7 a.m. and 10 p.m. and within five days from the date of issuance.

The judge issuing the warrant may, however, by indorsement upon the face of the warrant, authorize its execution at any time of the day or night and may further authorize its execution after five days, but not more than 10 days from date of issuance. [1973 c.836 §85]

133.575 Execution of warrant. (1) Except as provided in ORS 136.583, a search warrant may be executed only within the period and at the times authorized by the warrant and only by a police officer. A police officer charged with its execution may be accompanied by such other persons as may be reasonably necessary for the successful execution of the warrant with all practicable safety.

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

(3) Except as provided in ORS 133.619, before undertaking any search or seizure pursuant to the warrant, the executing officer shall read and give a copy of the warrant to the person to be searched, or to the person in apparent control of the premises to be searched. If the premises are unoccupied or there is no one in apparent control, the officer shall leave a copy of the warrant suitably affixed to the premises. [1973 c.836 §86; 1989 c.983 §4; 2009 c.617 §2]

133.585 [1973 c.836 §87; repealed by 1997 c.313 §37]

133.595 List of things seized. Except as provided in ORS 133.619, promptly upon completion of the search, the officer shall make a list of the things seized, and shall deliver a receipt embodying the list to the person from whose possession they are taken, or the person in apparent control of the premises or vehicle from which they are taken. If the vehicle or premises are unoccupied or there is no one present in apparent control, the executing officer shall leave the receipt suitably affixed to the vehicle or premises. [1973 c.836 §88; 1989 c.983 §5]

133.605 Use of force in executing warrants. (1) The executing officer and other officers accompanying and assisting the officer may use the degree of force, short of deadly physical force, against persons, or to effect an entry, or to open containers, as is reasonably necessary for the execution of the search warrant with all practicable safety.

(2) The use of deadly physical force in the execution of a search warrant is justifiable only:

(a) If the officer reasonably believes that there is a substantial risk that things to be seized will be used to cause death or serious physical injury if their seizure is delayed and that the force used creates no substantial risk of injury to persons other than those obstructing the officer; or

(b) If the officer reasonably believes that the use of deadly physical force is necessary to defend the officer or another person from the use or threatened imminent use of deadly physical force. [1973 c.836 §89]

133.610 [Amended by 1963 c.511 §1; 1965 c.508 §3; 1973 c.836 §138; renumbered 135.070]

133.615 Return of the warrant. (1) If a search warrant is not executed within the time specified by the warrant, the officer shall forthwith return the warrant to the issuing judge.

(2) An officer who has executed a search warrant shall, as soon as is reasonably possible and in no event later than the date specified in the warrant, return the warrant to the issuing judge together with a signed list of things seized and setting forth the date and time of the search.

(3) Subject to the provisions of subsection (4) of this section, the issuing judge shall file the warrant and list returned to the judge, with the record of the proceedings on the application for the warrant made pursuant to ORS 133.555.

(4) If the issuing judge does not have jurisdiction to inquire into the offense in respect to which the warrant was issued or the offense apparently disclosed by the things seized, the judge shall transmit the warrant and the record of proceedings for its issuance, together with the documents submitted on the return, to the clerk of the appropriate court having jurisdiction to inquire into such offense. [1973 c.836 §90]

133.617 "Mobile tracking device" defined. As used in ORS 133.545 and 133.619, unless the context requires otherwise, "mobile tracking device" means an electronic or mechanical device which permits the tracking of the movement of a person or object. [1989 c.983 §1]

Note: 133.617 and 133.619 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 133 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

133.619 Execution of warrant authorizing mobile tracking device. (1) A warrant authorizing the installation or tracking of a mobile tracking device shall be executed as provided in this section.

(2) The officer need not inform any person of the existence or content of the warrant prior to its execution.

(3) Except as provided in subsection (4) of this section, the officer need not deliver or leave a receipt for things seized or observations made under authority of the warrant.

(4) Within five days of the execution of the warrant, or, in the case of an ongoing investigation, within such additional time as the issuing judge may allow upon application, the officer shall mail a receipt for things seized or observations made under authority of the warrant to the following:

(a) If the mobile tracking device has been affixed to a vehicle, to the registered owner; and

(b) To such other persons as the court may direct in the warrant.

(5) The receipt provided for in subsection (4) of this section shall include the dates and times during which the officer monitored or attempted to monitor the mobile tracking device.

(6) A warrant authorizing the installation or tracking of a mobile tracking device shall only be issued based upon the submission of an affidavit or oral statement as set forth in ORS 133.545, which affidavit or statement demonstrates that probable cause exists to believe that an individual is committing or is about to commit a particular felony of murder, kidnapping, arson, robbery or other crime dangerous to life and punishable as a felony, any crime punishable as a felony arising under ORS 475.840 or 475.846 to 475.894, unlawfully transporting metal property, any crime described in ORS 165.118, bribery, extortion, burglary or unauthorized use of a motor vehicle punishable as a felony, or any conspiracy to commit any of the crimes listed in this subsection. [1989 c.983 §2; 1991 c.625 §1; 1993 c.171 §1; 1999 c.56 §2; 2005 c.708 §44; 2009 c.811 §8]

Note: See note under 133.617.

133.620 [Amended by 1965 c.508 §4; renumbered 135.075]

133.621 Medical procedures; immunity from liability for performing. A duly licensed physician, or a person acting under the direction or control of a duly licensed physician, may withdraw bodily substances, pierce human tissue, perform medical tests and procedures and otherwise use medical procedures to gather evidence in a criminal investigation. A duly licensed physician, or a person acting under the direction or control of a duly licensed physician, shall not be held civilly liable for gathering potential evidence in a criminal investigation in a medically acceptable manner at the request of a peace officer. The civil immunity granted in this section is not conditioned upon the existence of probable cause, the existence of a search warrant or the existence of a court order. Nothing in this section shall be interpreted as requiring a duly licensed physician to act at the request of a peace officer. [1989 c.585 §2]

Note: 133.621 was added to and made a part of ORS chapter 133 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

(Disposition of Things Seized)

133.623 Handling and disposition of things seized. (1) The provisions of subsections (2), (3) and (4) of this section apply to all cases of seizure, except for a seizure made under a search warrant.

(2) If an officer makes an arrest in connection with the seizure, the officer shall, as soon thereafter as is reasonably possible, make a written list of the things seized and furnish a copy of the list to the defendant.

(3) If no claim to rightful possession has been established under ORS 133.633 to 133.663, the things seized may be disposed of in accordance with ORS 98.245 or the court may order that the things be delivered to the officials having responsibility under the applicable laws for selling, destroying or otherwise disposing of contraband, forfeited or unclaimed goods in official custody. If the responsible officials are state officials and the property is forfeited, the clear proceeds shall be deposited with the State Treasury in the Common School Fund.

(4) If things seized in connection with an arrest are not needed for evidentiary purposes, and if a person having a rightful claim establishes identity and right to possession beyond a reasonable doubt to the satisfaction of the seizing officer, the officer may summarily return the things seized to their rightful possessor. If the things seized are perishable and it is not possible to return them to their rightful possessor, the seizing officer may dispose of the items as justice and the necessities of the case require. [1973 c.836 §109; 1987 c.858 §1; 1997 c.480 §3]

133.625 [1961 c.696 §1; 1967 c.475 §1; 1973 c.836 §135; renumbered 135.050]

133.630 [Repealed by 1961 c.696 §4]

133.633 Motion for return or restoration of things seized. (1) Within 90 days after actual notice of any seizure, or at such later date as the court in its discretion may allow:

(a) An individual from whose person, property or premises things have been seized may move the appropriate court to return things seized to the person or premises from which they were seized.

(b) Any other person asserting a claim to rightful possession of the things seized may move the appropriate court to restore the things seized to the movant.

(2) The appropriate court to consider such motion is:

(a) The court having ultimate trial jurisdiction over any crime charged in connection with the seizure;

(b) If no crime is charged in connection with the seizure, the court to which the warrant was returned; or

(c) If the seizure was not made under a warrant and no crime is charged in connection with the seizure, any court having authority to issue search warrants in the county in which the seizure was made.

(3) The movant shall serve a copy of the motion upon the district attorney or the city attorney, whichever is appropriate, of the jurisdiction in which the property is in custody.

(4) No filing, appearance or hearing fees may be charged for filing or hearing a motion under this section. [1973 c.836 §110; 1999 c.37 §1; 2005 c.22 §102]

133.635 [1961 c.696 §3; 1967 c.628 §2; renumbered 135.080]

133.640 [Repealed by 1965 c.508 §8]

133.643 Ground for motion for return or restoration of things seized. A motion for the return or restoration of things seized shall be based on the ground that the movant has a valid claim to rightful possession thereof, because:

(1) The things had been stolen or otherwise converted, and the movant is the owner or rightful possessor;

(2) The things seized were not in fact subject to seizure under ORS 131.550 to 131.600 or 133.525 to 133.703;

(3) The movant, by license or otherwise, is lawfully entitled to possess things otherwise subject to seizure under ORS 133.525 to 133.703;

(4) Although the things seized were subject to seizure under ORS 133.525 to 133.703, the movant is or will be entitled to their return or restoration upon the court's determination that they are no longer needed for evidentiary purposes; or

(5) The parties in the case have stipulated that the things seized may be returned to the movant. [1973 c.836 §111; 2001 c.104 §44; 2001 c.666 §§22,23; 2005 c.830 §20]

133.650 [Repealed by 1973 c.836 §358]

133.653 Postponement of return or restoration; appellate review. (1) In granting a motion for return or restoration of things seized, the court shall postpone execution of the order until such time as the things in question need no longer remain available for evidentiary use.

(2) An order granting a motion for return or restoration of things seized shall be reviewable on appeal in regular course. An order denying such a motion or entered under ORS 133.663 shall be reviewable on appeal upon certification by the court having custody of the things in question that they are no longer needed for evidentiary purposes. [1973 c.836 §112]

133.660 [Amended by 1961 c.289 §1; 1965 c.508 §5; 1973 c.836 §139; renumbered 135.085]

133.663 Disputed possession rights. (1) If, upon consideration of a motion for return or restoration of things seized, it appears to the court that the things should be returned or restored, but there is a substantial question whether they should be returned to the person from whose possession they were seized or to some other person, or a substantial question among several claimants to rightful possession, the court may:

(a) Return the things to the person from whose possession they were seized; or

(b)(A) Impound the things seized and set a further hearing, ensuring that all persons with a possible possessory interest in the things in question receive due notice and an opportunity to be heard; and

(B) Upon completion of the hearing provided for in subparagraph (A) of this paragraph, enter an order for the return or restoration of the things seized.

(2) If there is no substantial question whether the things should be returned to the person from whose possession they were seized, they must be returned to the person upon the release of the defendant from custody.

(3) Instead of conducting the hearing provided for in subsection (1)(b)(A) of this section and returning or restoring the property, the court, in its discretion, may leave the several claimants to appropriate civil process for the determination of the claims. [1973 c.836 §113; 2005 c.22 §103]

Note: Sections 1 and 3, chapter 489, Oregon Laws 2009, provide:

Sec. 1. Preservation of biological evidence. (1) Except as provided in subsection (3) of this section, a custodian shall preserve biological evidence:

(a) That is collected as part of a criminal investigation into a covered offense; or

(b)(A) That reasonably may be used to incriminate or exculpate any person for a covered offense; and

(B) That is in the possession of the custodian before any person is convicted of a covered offense.

(2) A custodian shall preserve biological evidence described in subsection (1) of this section in an amount and manner that is sufficient to develop a DNA profile.

(3) A custodian is not required to preserve physical evidence solely because the physical evidence contains biological evidence if the physical evidence is of such a size, bulk or physical character as to render retention impracticable. When the retention of physical evidence is impracticable, the custodian shall remove and preserve portions of the physical evidence likely to contain biological evidence in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.

(4) As used in this section:

(a) "Biological evidence" means a sample of an individual's blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identifiable biological material or an item that contains such material, whether the material or item is stored or cataloged separately or the material is present upon other evidence. "Biological evidence" includes the contents of a sexual assault forensic evidence kit.

(b) "Convicted" includes a finding of guilty or responsible except for insanity, or a finding that a person is within the jurisdiction of the juvenile court under ORS 419C.005.

(c) "Covered offense" means:

(A) Aggravated murder;

(B) Murder;

(C) Manslaughter in the first or second degree;

(D) Criminally negligent homicide;

(E) Aggravated vehicular homicide; or

(F) A sex crime listed in ORS 181.594.

(d) "Custodian" means a law enforcement agency as defined in ORS 131.550 or any other person or public body as defined in ORS 174.109 that is charged with the collection, storage or retrieval of biological evidence in connection with a criminal investigation or criminal prosecution. "Custodian" does not include a court.

(e) "DNA" means deoxyribonucleic acid.

(f) "DNA profile" means the unique identifier of an individual that is derived from DNA. [2009 c.489 §1]

Sec. 3. This 2009 Act is repealed on January 2, 2012. [2009 c.489 §3]

133.665 [Repealed by 1961 c.289 §3]

133.670 [Renumbered 135.090]

(Evidentiary Exclusion)

133.673 Motions to suppress evidence. (1) Objections to use in evidence of things seized in violation of any of the provisions of ORS 133.525 to 133.703 shall be made by a motion to suppress which shall be heard and determined by any department of the trial court in advance of trial.

(2) A motion to suppress which has been denied may be renewed, in the discretion of the court, on the ground of newly discovered evidence, or as the interests of justice require. [1973 c.836 §114; 1975 c.197 §1]

133.680 [Renumbered 135.095]

133.683 [1973 c.836 §117; repealed by 1997 c.313 §37]

133.690 [Renumbered 135.100]

133.693 Challenge to truth of evidence. (1) Subject to the provisions of subsection (2) of this section, in any proceeding on a motion to suppress evidence the moving party shall be entitled to contest, by cross-examination or offering evidence, the good faith, accuracy and truthfulness of the affiant with respect to the evidence presented to establish probable cause for search or seizure.

(2) If the evidence sought to be suppressed was seized by authority of a search warrant, the moving party shall be allowed to contest the good faith, accuracy and truthfulness of the affiant as to the evidence presented before the issuing authority only upon supplementary motion, supported by affidavit, setting forth substantial basis for questioning such good faith, accuracy and truthfulness.

(3) In any proceeding under subsection (2) of this section, the moving party shall have the burden of proving by a preponderance of the evidence that the evidence presented before the issuing authority was not offered in good faith, was not accurate and was not truthful.

(4) Where the motion to suppress challenges evidence seized as the result of a warrantless search, the burden of proving by a preponderance of the evidence the validity of the search is on the prosecution.

(5) The court shall determine whether, under applicable law, any inaccuracy, untruthfulness or lack of good faith requires suppression. [1973 c.836 §118]

133.700 [Renumbered 135.105]

133.703 Identity of informants. (1) In any proceeding on a motion to suppress evidence wherein, pursuant to ORS 133.693, the good faith of the testimony presented to establish probable cause is contested, and wherein such testimony includes a report of information furnished by an informant whose identity is not disclosed in the testimony, the moving party shall be entitled to prevail on the motion to suppress and evidence obtained as a result of the information furnished by the informant shall be suppressed unless:

(a) The evidence sought to be suppressed was seized by authority of a search warrant and the informant testified in person before the issuing authority; or

(b) The judge determines from the affiant by a preponderance of the evidence that such confidential informant exists and is reliable.

(2) If the defendant is entitled to prevail on the motion to suppress under subsection (1) of this section, the evidence obtained as a result of the information furnished by the informant shall be suppressed. [1973 c.836 §119]

133.710 [Renumbered 135.115]

133.720 [Renumbered 135.125]

INTERCEPTION OF COMMUNICATIONS

133.721 Definitions for ORS 41.910 and 133.721 to 133.739. As used in ORS 41.910 and 133.721 to 133.739, unless the context requires otherwise:

(1) "Aggrieved person" means a person who was a party to any wire, electronic or oral communication intercepted under ORS 133.724 or 133.726 or a person against whom

the interception was directed and who alleges that the interception was unlawful.

(2) "Contents," when used with respect to any wire, electronic or oral communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport or meaning of that communication.

(3) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a radio, electromagnetic, photoelectronic or photo-optical system, or transmitted in part by wire, but does not include:

(a) Any oral communication or any communication that is completely by wire; or

(b) Any communication made through a tone-only paging device.

(4) "Electronic, mechanical or other device" means any device or apparatus that can be used to intercept a wire, electronic or oral communication other than:

(a) Any telephone or telegraph instrument, equipment or facility, or any component thereof that is furnished to the subscriber or user by a telecommunications carrier in the ordinary course of its business and that is being used by the subscriber or user in the ordinary course of its business or being used by a telecommunications carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of official duties; or

(b) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(5) "Intercept" means the acquisition, by listening or recording, of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device.

(6) "Investigative or law enforcement officer" means an officer or other person employed by a county sheriff or municipal police department, the Oregon State Police, Attorney General, a district attorney or the Department of Corrections, and officers or other persons employed by law enforcement agencies of other states or the federal government, to investigate or enforce the law.

(7) "Oral communication" means:

(a) Any oral communication, other than a wire or electronic communication, uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation; or

(b) An utterance by a person who is participating in a wire or electronic communication, if the utterance is audible to another person who, at the time the wire or electronic communication occurs, is in the immediate presence of the person participating in the communication.

(8) "Telecommunications carrier" means:

(a) A telecommunications utility as defined in ORS 759.005; or

(b) A cooperative corporation organized under ORS chapter 62 that provides telecommunications services.

(9) "Telecommunications service" has the meaning given that term in ORS 759.005.

(10) "Wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception, whether furnished or operated by a public utility or privately owned or leased. [1979 c.716 §2; 1983 c.824 §6; 1987 c.320 §18; 1987 c.447 §103; 1989 c.983 §6; 1999 c.1093 §1; 2001 c.385 §1; 2003 c.14 §53; 2005 c.22 §104]

133.723 Records confidential. The application for any order under ORS 133.724 and any supporting documents and testimony in connection therewith shall remain confidential in the custody of the court, and these materials shall not be released or information concerning them in any manner disclosed except upon written order of the court and as required under ORS 135.805 to 135.873. No person having custody of any records maintained under ORS 133.721 to 133.739 shall disclose or release any materials or information contained therein except upon written order of the court and as required under ORS 135.805 to 135.873. [Formerly 141.740; 1979 c.716 §13]

133.724 Order for interception of communications; application; grounds for issuance; contents of order; progress reports. (1) An ex parte order for the interception of wire, electronic or oral communications may be issued by any circuit court judge upon written application made upon oath or affirmation of the individual who is the district attorney or a deputy district attorney authorized by the district attorney for the county in which the order is sought. The application shall include:

(a) The name of the district attorney or the deputy district attorney making the application and the authority of the district attorney or the deputy district attorney to make the application;

(b) The identity of the investigative or law enforcement officer making the application and the officer authorizing the application;

(c) A statement demonstrating that there is probable cause to believe that an individual is committing, has committed or is about to commit:

(A) A particular felony of murder, kidnapping, arson, robbery, bribery, extortion or other crime dangerous to life and punishable as a felony;

(B) A crime punishable as a felony under ORS 166.720, 475.840, 475.846 to 475.894 or 475.904 to 475.910 or as a misdemeanor under ORS 167.007; or

(C) Any conspiracy to commit any of the foregoing crimes;

(d) A statement of the details, if known, of the particular crime alleged under paragraph (c) of this subsection;

(e) A particular description of the nature and location of the facilities from which or the place where the wire, electronic or oral communication is to be intercepted, if known;

(f) A particular description of the type of wire, electronic or oral communication sought to be intercepted;

(g) The identity of the person, if known, suspected of committing the crime and whose wire, electronic or oral communications are to be intercepted;

(h) A full and complete statement as to whether or not other investigative procedures have been tried and failed or why other investigative procedures reasonably appear to be unlikely to succeed if tried or are likely to be too dangerous;

(i) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of wire, electronic or oral communication has been first obtained, a description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

(j) A statement as to whether any prior application has been made to intercept wire, electronic or oral communications from the same person and, if such prior application exists, a statement of the current status of that application; and

(k) Where the application is for the extension of an existing order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(2) The judge may require the applicant to furnish further testimony or documentary evidence in support of the application.

(3) Upon examination of such application and evidence the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, electronic or oral communications within the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause for belief that an individual is committing, has committed or is about to commit a particular crime described in subsection (1)(c) of this section;

(b) There is probable cause for belief that particular communications concerning that crime will be obtained through such interception;

(c) Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or are likely to be too dangerous; and

(d) There is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications to be intercepted are being used, or are about to be used, in connection with the planning or the commission of that crime are open to the public or are owned by, leased to, listed in the name of, or commonly used by the individual suspected.

(4) Each order authorizing or approving the interception of any wire, electronic or oral communication shall specify:

(a) The identity of the person, if known, whose communications are to be intercepted;

(b) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted;

(c) A particular description of the type of communication sought to be intercepted, and a statement of the particular crime to which it relates;

(d) The identity of the agency authorized to intercept the communications and of the person authorizing the application;

(e) The period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained; and

(f) The name of the applicant, date of issuance, and the signature and title of the issuing judge.

(5) An order entered pursuant to this section may not authorize or approve the interception of any wire, electronic or oral communication for any period longer than is necessary to achieve the objective of authorization and in no event for longer than 30 days. Extensions of any order may be granted, but only when application for an

extension is made in accordance with subsection (1)(k) of this section and the court makes the findings required by subsection (3) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purpose for which it is granted and in no event for longer than 30 days. Every order and extension of that order shall contain a provision that the authorization to intercept must be executed as soon as practicable, must be conducted in such a way as to minimize the interception of communications not otherwise subject to interception, and must terminate upon attainment of the authorized objective, or in any event in 30 days.

(6) Whenever an order authorizing interception is entered pursuant to this section, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Such reports shall be made at such intervals as the judge may require. [1979 c.716 §4 (enacted in lieu of 133.725); 1989 c.639 §1; 1989 c.983 §7a; 1995 c.224 §1; 2001 c.385 §6; 2005 c.708 §45; 2007 c.442 §1]

133.725 [Formerly 141.720; repealed by 1979 c.716 §3 (133.724 enacted in lieu of 133.725)]

133.726 Interception of oral communication without order; order for interception of oral communication; application; grounds for issuance; contents of order; penalties. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a law enforcement officer is authorized to intercept an oral communication to which the officer or a person under the direct supervision of the officer is a party, without obtaining an order for the interception of a wire, electronic or oral communication under ORS 133.724.

(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication if the oral communication is made in the person's immediate presence and is audible to the person regardless of whether the communication is specifically directed to the person.

(3) An ex parte order for intercepting an oral communication in any county of this state under this section may be issued by any judge as defined in ORS 133.525 upon written application made upon oath or affirmation of the district attorney or a deputy district attorney authorized by the district attorney for the county in which the order is sought or upon the oath or affirmation of any peace officer as defined in ORS 133.005. The application shall include:

(a) The name of the applicant and the applicant's authority to make the application;

(b) A statement demonstrating that:

(A) There is probable cause to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007, and that intercepting the oral communication will yield evidence thereof; or

(B)(i) There is reasonable suspicion to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a crime;

(ii) There is reasonable suspicion to believe that the circumstances in which the oral communication is to be intercepted present a substantial risk of death, serious physical injury or sexual assault to a law enforcement officer or a person under the direct supervision of the officer;

(iii) Interception of the oral communication is necessary to protect the safety of the person who may be endangered; and

(iv) Other investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or are likely to be too dangerous; and

(c) The identity of the person, if known, suspected of committing the crime and whose oral communication is to be intercepted.

(4) The judge may require the applicant to furnish further testimony or documentary evidence in support of the application.

(5) Upon examination of the application and evidence, the judge may enter an ex parte order, as requested or as modified, authorizing or approving the interception of an oral communication within the state if the judge determines on the basis of the facts submitted by the applicant that:

(a)(A) There is probable cause to believe that a person is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and

(B) There is probable cause to believe that the oral communication to be obtained will contain evidence concerning that crime; or

(b)(A) There is reasonable suspicion to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a crime;

(B) There is reasonable suspicion to believe that the circumstances in which the oral communication is to be intercepted present a substantial risk of death, serious physical injury or sexual assault to a law enforcement officer or a person under the direct supervision of the officer;

(C) Interception of the oral communication is necessary to protect the safety of the person who may be endangered; and

(D) Other investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or are likely to be too dangerous.

(6) An order authorizing or approving the interception of an oral communication under this section must specify:

(a) The identity of the person, if known, whose oral communication is to be intercepted;

(b) A statement identifying the particular crime to which the oral communication is expected to relate;

(c) The agency authorized under the order to intercept the oral communication;

(d) The name and office of the applicant and the signature and title of the issuing judge;

(e) A period of time after which the order shall expire; and

(f) A statement that the order authorizes only the interception of an oral communication to which a law enforcement officer or a person under the direct supervision of a law enforcement officer is a party.

(7) An order under ORS 133.724 or this section is not required when a law enforcement officer intercepts an oral communication to which the officer or a person under the direct supervision of the officer is a party if the oral communication is made by a person whom the officer has probable cause to believe has committed, is engaged in committing or is about to commit:

(a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.904 to 475.910 or as a misdemeanor under ORS 167.007; or

(b) Any other crime punishable as a felony if the circumstances at the time the oral communication is intercepted are of such exigency that it would be unreasonable to obtain a court order under ORS 133.724 or this section.

(8) A law enforcement officer who intercepts an oral communication pursuant to this section may not intentionally fail to record and preserve the oral communication in its entirety. A law enforcement officer, or a person under the direct supervision of the officer, who is authorized under this section to intercept an oral communication is not required to exclude from the interception an oral communication made by a person for whom probable cause does not exist if the officer or the person under the officer's direct supervision is a party to the oral communication.

(9) A law enforcement officer may not divulge the contents of an oral communication intercepted under this section before a preliminary hearing or trial in which an oral communication is going to be introduced as evidence against a person except:

(a) To a superior officer or other official with whom the law enforcement officer is cooperating in the enforcement of the criminal laws of this state or the United States;

(b) To a magistrate;

(c) In a presentation to a federal or state grand jury; or

(d) In compliance with a court order.

(10) A law enforcement officer may intercept an oral communication under this section only when acting within the scope of the officer's employment and as a part of assigned duties.

(11) As used in this section, "law enforcement officer" means an officer employed by the United States, this state or a municipal government within this state, or a political subdivision, agency, department or bureau of those governments, to enforce criminal laws.

(12) Violation of subsection (9) of this section is a Class A misdemeanor. [1983 c.824 §8; 1995 c.224 §2; 2001 c.385 §2; 2003 c.577 §13; 2005 c.708 §46; 2007 c.442 §2]

Note: The amendments to 133.726 by section 3, chapter 442, Oregon Laws 2007, become operative January 2, 2012. See section 4, chapter 442, Oregon Laws 2007. The text that is operative on and after January 2, 2012, is set forth for the user's convenience.

133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a law enforcement officer is authorized to intercept an oral communication to which the officer or a person under the direct supervision of the officer is a party, without obtaining an order for the interception of a wire, electronic or oral communication under ORS 133.724.

(2) For purposes of this section and ORS 133.736, a person is a party to an oral communication if the oral communication is made in the person's immediate presence and is audible to the person regardless of whether the communication is specifically directed to the person.

(3) An ex parte order for intercepting an oral communication in any county of this state under this section may be issued by any judge as defined in ORS 133.525 upon written application made upon oath or affirmation of the district attorney or a deputy district attorney authorized by the district attorney for the county in which the order is sought or upon the oath or affirmation of any peace officer as defined in ORS 133.005. The application shall include:

(a) The name of the applicant and the applicant's authority to make the application;

(b) A statement demonstrating that there is probable cause to believe that a person whose oral communication is to be intercepted is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007, and that intercepting the oral communication will yield evidence thereof; and

(c) The identity of the person, if known, suspected of committing the crime and whose oral communication is to be intercepted.

(4) The judge may require the applicant to furnish further testimony or documentary evidence in support of the application.

(5) Upon examination of the application and evidence, the judge may enter an ex parte order, as requested or as modified, authorizing or approving the interception of an oral communication within the state if the judge determines on the basis of the facts submitted by the applicant that:

(a) There is probable cause to believe that a person is engaged in committing, has committed or is about to commit a particular felony, or a misdemeanor under ORS 167.007; and

(b) There is probable cause to believe that the oral communication to be obtained will contain evidence concerning that crime.

(6) An order authorizing or approving the interception of an oral communication under this section must specify:

(a) The identity of the person, if known, whose oral communication is to be intercepted;

(b) A statement identifying the particular crime to which the oral communication is expected to relate;

(c) The agency authorized under the order to intercept the oral communication;

(d) The name and office of the applicant and the signature and title of the issuing judge;

(e) A period of time after which the order shall expire; and

(f) A statement that the order authorizes only the interception of an oral communication to which a law enforcement officer or a person under the direct supervision of a law enforcement officer is a party.

(7) An order under ORS 133.724 or this section is not required when a law enforcement officer intercepts an oral communication to which the officer or a person under the direct supervision of the officer is a party if the oral communication is made by a person whom the officer has probable cause to believe has committed, is engaged in committing or is about to commit:

(a) A crime punishable as a felony under ORS 475.840, 475.846 to 475.894 or 475.906 or as a misdemeanor under ORS 167.007; or

(b) Any other crime punishable as a felony if the circumstances at the time the oral communication is intercepted are of such exigency that it would be unreasonable to obtain a court order under ORS 133.724 or this section.

(8) A law enforcement officer who intercepts an oral communication pursuant to this section may not intentionally fail to record and preserve the oral communication in its entirety. A law enforcement officer, or a person under the direct supervision of the officer, who is authorized under this section to intercept an oral communication is not required to exclude from the interception an oral communication made by a person for whom probable cause does not exist if the officer or the person under the officer's direct supervision is a party to the oral communication.

(9) A law enforcement officer may not divulge the contents of an oral communication intercepted under this section before a preliminary hearing or trial in which an oral communication is going to be introduced as evidence against a person except:

(a) To a superior officer or other official with whom the law enforcement officer is cooperating in the enforcement of the criminal laws of this state or the United States;

(b) To a magistrate;

(c) In a presentation to a federal or state grand jury; or

(d) In compliance with a court order.

(10) A law enforcement officer may intercept an oral communication under this section only when acting within the scope of the officer's employment and as a part of assigned duties.

(11) As used in this section, "law enforcement officer" means an officer employed by the United States, this state or a municipal government within this state, or a political subdivision, agency, department or bureau of those governments, to enforce criminal laws.

(12) Violation of subsection (9) of this section is a Class A misdemeanor.

133.727 Proceeding under expired order prohibited. Any officer who knowingly proceeds under an order which has expired and has not been renewed as provided in ORS 133.724 is deemed to act without authority under ORS 133.724 and shall be subject to the penalties provided in ORS 165.543, as though the officer had never obtained any such order or warrant. [Formerly 141.730; 1979 c.716 §14; 1983 c.824 §7]

133.729 Recording intercepted communications; method; delivery to court; custody. The contents of any wire, electronic or oral communication intercepted in accordance with the provisions of ORS 133.724 shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, electronic or oral communication under this section shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order issued under ORS 133.724, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under the direction of the judge. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed before the expiration of the minimum retention period established by the State Court Administrator under ORS 8.125. Duplicate recordings may be made for use or disclosure pursuant to the provisions of ORS 133.737 (1) and (2) for investigations. The presence of the seal provided for by this section, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, electronic or oral communication or evidence derived therefrom under ORS 133.737 (3). [1979 c.716 §7; 1989 c.983 §8; 1997 c.872 §12]

133.730 [Renumbered 135.135]

133.731 Inventory; contents; inspection of intercepted communications. (1) Within a reasonable time but not later than 90 days after the termination of the period of an order issued under ORS 133.724, or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and

such other parties to intercepted communications as the judge may determine in the judge's discretion should be served in the interest of justice, an inventory which shall include notice of:

(a) The fact of the entry of the order or the application;

(b) The date of the entry and the period of authorized, approved or disapproved interception, or the denial of the application; and

(c) The fact that during the period wire, electronic or oral communications were or were not intercepted.

(2) The judge, upon the filing of a motion, may in the judge's discretion make available to such person or the person's counsel for inspection such portions of the intercepted communications, applications and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of the circuit court, the serving of the inventory required by this section may be postponed. [1979 c.716 §8; 1989 c.983 §9]

133.733 Procedure for introduction as evidence. The contents of any wire, electronic or oral communication intercepted under ORS 133.724, or evidence derived therefrom, shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in any court of this state unless each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This 10-day period may be waived by the judge if the judge finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving such information. [1979 c.716 §9; 1989 c.983 §10]

133.735 Suppression of intercepted communications; procedure; grounds; appeal. (1) Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of the state, or a political subdivision thereof, may move to suppress the contents of any wire, electronic or oral communication intercepted under ORS 133.724, or evidence derived therefrom, on the grounds that:

(a) The communication was unlawfully intercepted;

(b) The order of authorization or approval under which it was intercepted is insufficient on its face; or

(c) The interception was not made in conformity with the order of authorization or approval.

(2) Such motion shall be made before the trial, hearing or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic or oral communication, or evidence derived therefrom, shall be treated as having been unlawfully obtained. The judge, upon the filing of such motion by the aggrieved person, may in the judge's discretion make available to the aggrieved person or the person's counsel for inspection such portions of the intercepted communications or evidence derived therefrom as the judge determines to be in the interests of justice.

(3) In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion to suppress under subsection (1) of this section. [1979 c.716 §10; 1989 c.983 §11]

133.736 Motion to suppress intercepted oral communication; right of state to appeal. (1) Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of the state, or a political subdivision thereof, may move to suppress recordings of any oral communication intercepted in violation of ORS 133.726 or testimony or other evidence derived solely from the unlawful interception.

(2) Such motion shall be made before the trial, hearing or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the judge, upon the filing of such motion by the aggrieved person, may in the judge's discretion make available to the aggrieved person or the person's counsel for inspection such portions of the intercepted communications or evidence derived therefrom as the judge determines to be in the interests of justice.

(3) In addition to any other right to appeal, the state shall have the right to appeal from an order granting a motion to suppress under subsection (1) of this section. [1983 c.824 §5; 2001 c.385 §3; 2003 c.14 §55]

133.737 Disclosure and use of intercepted communications. (1) Any investigative or law enforcement officer who, by any means authorized by ORS 133.721 to 133.739, has obtained knowledge of the contents of any wire, electronic or oral communication under ORS 133.724, or evidence derived therefrom, may disclose such contents to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure or to the

extent that such disclosure is otherwise authorized by law.

(2) Any investigative or law enforcement officer who, by any means authorized by ORS 133.721 to 133.739, has obtained knowledge of the contents of any wire, electronic or oral communication under ORS 133.724, or evidence derived therefrom, may use such contents to the extent such use is appropriate to the proper performance of official duties.

(3) Any person who has received by any means authorized by ORS 133.721 to 133.739, any information concerning a wire, electronic or oral communication under ORS 133.724, or evidence derived therefrom, intercepted in accordance with the provisions of ORS 133.721 to 133.739, may disclose the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of the state or political subdivision thereof.

(4) No otherwise privileged communication intercepted in accordance with, or in violation of, the provisions of ORS 133.721 to 133.739, shall lose its privileged character.

(5) When an investigative or law enforcement officer, while engaged in intercepting wire, electronic or oral communications in any manner authorized by ORS 133.724, intercepts wire, electronic or oral communications relating to crimes other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section. Such contents and any evidence derived therefrom may be used under subsection (3) of this section when authorized or approved by a judge of the circuit court if the judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of ORS 133.724. Such application shall be made as soon as practicable. [1979 c.716 §6; 1989 c.983 §12; 2003 c.14 §56]

133.739 Civil damages for willful interception, disclosure or use of communications; attorney fees; defense; effect on other remedies. (1) Any person whose wire, electronic or oral communication was intercepted, disclosed or used in violation of ORS 133.724 or 133.737 shall have a civil cause of action against any person who willfully intercepts, discloses or uses, or procures any other person to intercept, disclose or use such communication and shall be entitled to recover from any such person:

(a) Actual damages but not less than damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is greater; and

(b) Punitive damages.

(2) A good faith reliance on a court order or legislative authorization shall constitute a complete defense to any civil action brought under this section.

(3) Nothing in ORS 41.910, 133.721 to 133.739 and 133.992 is intended to abrogate any other private civil remedy for invasion of privacy.

(4) Except as provided in subsection (5) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(5) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (4) of this section if the action under this section is maintained as a class action pursuant to ORCP 32. [1979 c.716 §11; 1981 c.897 §38; 1989 c.983 §13; 1995 c.696 §16]

133.740 [Renumbered 135.145]

UNIFORM CRIMINAL EXTRADITION ACT

133.743 Definitions for ORS 133.743 to 133.857; appointment of legal counsel to assist Governor. (1) Where appearing in ORS 133.743 to 133.857, the term "Governor" includes any person performing the extradition functions of Governor by authority of an appointment under subsection (2) of this section. The term "executive authority" includes the Governor and any person performing the functions of Governor in a state other than this state, and the term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

(2) The Governor may appoint a member of the legal staff of the Governor to act in behalf of the Governor under ORS 133.743 to 133.857 in performing the extradition functions of the Governor. The appointment shall be in writing and be filed with the Secretary of State. [Formerly 147.010; 1983 c.82 §1]

133.745 Determination of security requirements to carry out extradition. The Governor shall determine the security requirements necessary to safely carry out the extradition of a person from another state including, but not limited to, the number of agents needed to secure the return of a person under ORS 133.743 to 133.857. [1999 c.867 §12; 2009 c.40 §1]

Note: 133.745 was added to and made a part of 133.743 to 133.857 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

133.747 Fugitives from other states; Governor to cause arrest and delivery of criminals. Subject to the qualifications of ORS 133.743 to 133.857 and the provisions of the Constitution of the United States controlling, and Acts of Congress in pursuance thereof, it is the duty of the Governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state. [Formerly 147.020]

133.750 [Renumbered 135.155]

133.753 Form of demand. No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of security release, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand. [Formerly 147.030; 1999 c.1051 §246]

133.755 [1961 c.521 §1; repealed by 1973 c.836 §358]

133.757 Investigation of demand and report. When a demand shall be made upon the Governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to the Governor the situation and circumstances of the person so demanded, and whether the person ought to be surrendered. [Formerly 147.040]

133.760 [Amended by 1973 c.836 §140; renumbered 135.165]

133.763 Facts documents must show. A warrant of extradition must not be issued unless the documents presented by the executive authority making the demand show that:

(1) Except in cases arising under ORS 133.767, the accused, when demanded upon a charge of crime, was present in the demanding state at the time of the commission of the alleged crime and thereafter fled from that state;

(2) The person demanded is in this state; and

(3) They constitute full compliance with the requirements of ORS 133.753. [Formerly 147.050]

133.767 Extradition of person not present in demanding state at time of commission of crime. The Governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in ORS 133.763 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of ORS 133.743 to 133.857 not otherwise inconsistent shall apply to such cases, notwithstanding that the accused was not in that state at the time of the commission of the crime and has not fled therefrom. [Formerly 147.060; 1985 c.565 §12; 2005 c.22 §105]

133.770 [Renumbered 136.345]

133.773 Governor's warrant of arrest. If the Governor shall decide that the demand should be complied with, the Governor shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to a sheriff, marshal, coroner or other person whom the Governor may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issue. [Formerly 147.070]

133.777 Execution of the warrant. Such warrant shall authorize the officer or other person to whom directed to arrest the accused at any place where the accused may be found within the state and to command the aid of all sheriffs and other peace officers in the execution of the warrant, and to deliver the accused, subject to the provisions of ORS 133.743 to 133.833 and 133.839 to 133.855, to the duly authorized agent of the demanding state. [Formerly 147.080]

133.780 [Renumbered 136.347]

133.783 Authority of arresting officer to command assistance. Every such officer or other person empowered to make the arrest shall have the same authority in arresting the accused to command assistance therein as sheriffs and other officers have by law in the execution of any criminal process directed to them, with the like penalties against those who refuse their assistance. [Formerly 147.090]

133.787 Rights of arrested person. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding the person shall have appointed to receive the person unless

the person has been informed of the demand made for surrender and of the crime with which the person is charged, and that the person has the right to demand legal counsel; and if the prisoner, the friends, or counsel of the prisoner shall state the desire to test the legality of the arrest, the prisoner shall be taken forthwith before a judge of a court of record in this state, who shall fix a reasonable time to be allowed the prisoner within which to apply for a writ of habeas corpus. And when such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the public prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state. [Formerly 147.100]

133.793 Penalty for disobedience to ORS 133.787. Any officer who shall deliver to the agent for extradition of the demanding state a person in the custody of the officer under the Governor's warrant in disobedience to ORS 133.787 commits a Class B misdemeanor. [Formerly 147.110]

133.797 Confinement of prisoner. (1) The officer or person executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which the officer, person or agent may pass; and the keeper of such jail must receive and safely keep the prisoner until the person having charge of the prisoner is ready to proceed on the route, such person being chargeable with the expense of keeping.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which the officer or agent may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of the prisoner is ready to proceed on the route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that the officer or agent is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state. [Formerly 147.120]

133.803 Arrest prior to requisition. Whenever any person within this state shall be charged on the oath of any credible person before any judge or other magistrate of this state with the commission of a crime in any other state and, except in cases arising under ORS 133.767, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of security release, probation or parole, or whenever complaint shall have been made before any judge or other magistrate in this state setting forth on the affidavit of any creditable person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under ORS 133.767, has fled therefrom or has been convicted of a crime in that state and escaped from confinement, or has broken the terms of security release, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding the peace officer to apprehend the person named therein, wherever the person may be found in this state, and bring the person before the same or any other judge, court or magistrate who may be convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant. [Formerly 147.130; 1999 c.1051 §247]

133.805 Arrest without warrant. The arrest of a person may be lawfully made also by an officer or a private citizen without a warrant, upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against the accused under oath setting forth the ground for the arrest as in ORS 133.803; and thereafter the answer of the accused shall be heard as if the accused had been arrested on a warrant. [Formerly 147.140]

133.807 Commitment to await arrest on requisition. If from the initial examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, the judge or magistrate must commit the person to jail by a warrant reciting the accusation for a period of at least 45 days to enable the arrest of the accused to be made under a

warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the defense, unless the accused is released as provided in ORS 133.809, or until the accused shall be legally discharged. The period of time may be extended upon good cause shown demonstrating the need for additional time to allow the executive authority of the state having jurisdiction of the defense to comply with procedural requirements of the Uniform Criminal Extradition Act, 18 U.S.C. 3182, or section 2, Article IV of the United States Constitution. [Formerly 147.150; 1999 c.553 §1]

133.809 Release. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, the judge or magistrate must make a release decision concerning the person arrested under ORS 135.230 to 135.290, for the appearance of the person at a time specified in the security release or in the release agreement. [Formerly 147.160]

133.810 [Amended by 1973 c.836 §141; renumbered 135.175]

133.813 Proceedings in absence of arrest under executive warrant within specified time. If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant, security release or release agreement, the judge or magistrate may discharge the accused or may recommit the accused to a further day, or may again set a security release or a release agreement for the appearance and surrender of the accused, as provided in ORS 133.809; and at the expiration of the second period of commitment, or if the accused has been released and appeared according to the terms of the security release or release agreement of the accused, the judge or magistrate either may discharge the accused or may require the accused to enter into a new security release or release agreement to appear and surrender at another day. [Formerly 147.170]

133.815 Forfeiture; recovery thereon. If the prisoner is released and fails to appear according to the condition of the security release or release agreement of the prisoner, the court, by proper order, shall declare the security release or release agreement forfeited, and recovery may be had thereon in the name of the state as in the case of other security releases and release agreements given by the accused in criminal proceedings within this state. [Formerly 147.180]

133.817 Persons under criminal prosecution in this state at time of requisition. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the Governor, at the discretion of the Governor, either may surrender the person on the demand of the executive authority of another state or may hold the person until the person has been tried and discharged, or convicted and punished in this state. [Formerly 147.190]

133.820 [Amended by 1973 c.836 §142; renumbered 135.185]

133.823 When guilt of accused may be inquired into. The guilt or innocence of the accused as to the crime of which the accused is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition, accompanied by a charge of crime in legal form as provided in ORS 133.743 to 133.817, shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime. [Formerly 147.200]

133.825 Governor may recall warrant. The Governor may recall the Governor's warrant of arrest or may issue another warrant whenever the Governor deems proper. [Formerly 147.210]

133.827 Warrant to agent to return fugitive from this state. Whenever the Governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of security release, probation or parole in this state from the chief executive of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, the Governor shall issue a warrant under the seal of this state to some agent or agents, commanding the agent to receive the person so charged if delivered to the agent and convey the person to the proper officer of the county in this state in which the offense was committed. [Formerly 147.220; 1999 c.1051 §248]

133.830 [Amended by 1973 c.836 §143; renumbered 135.195]

133.833 Application for requisition; filing and forwarding of papers. (1) When the return to this state of a person charged with crime in this state is required, the district attorney of the county in which the alleged crime is committed shall present to the Governor written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against the person, the approximate time, place and circumstances of its commission, the state in which the person is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the district attorney the interest of the public in the effective administration of criminal jus-

tice requires the arrest and return of the accused to this state for trial, and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of or found guilty except for insanity of a crime in this state and who has escaped from confinement or broken the terms of the release, probation or parole of such person, the district attorney of the county in which the offense was committed, the parole board, or the superintendent of the institution or sheriff of the county from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which the person was convicted or found guilty except for insanity, the circumstances of the escape from confinement or of the breach of the terms of release, probation or parole, the state in which the person is believed to be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The district attorney, parole board, superintendent or sheriff may also attach such further affidavits and other documents in duplicate as the district attorney, parole board, superintendent or sheriff shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by indorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavit, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition. [Formerly 147.230; 1985 c.192 §2]

133.835 Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion. (1) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against the person in another state, the Governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or the term of sentence of the person in such other state, upon condition that the person be returned to the other state at the expense of this state as soon as the prosecution in this state is terminated.

(2) The Governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in ORS 133.743 to 133.857 with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily. [1973 c.836 §129; 1985 c.565 §13; 2005 c.22 §106]

133.837 Appointment of agent to return fugitive from this state who waives extradition. In the event a fugitive from this state shall waive extradition, an agent or agents to secure the return of the fugitive may be appointed by the district attorney of the county in which the offense was committed, and the account of such agent or agents embracing necessary expenses incurred in performing the service, shall be audited and paid in the same manner as accounts presented under ORS 133.857. [Formerly 147.235]

133.839 Immunity from civil process in certain civil cases. A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which the person is being or has been returned, until the person has been convicted in the criminal proceeding, or, if acquitted, until the person has had reasonable opportunity to return to the state from which the person was extradited. [Formerly 147.250]

133.840 [Amended by 1973 c.836 §144; renumbered 135.205]

133.843 Written waiver of extradition proceedings. (1) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of security release, probation or parole may waive the issuance and service of the warrant provided for in ORS 133.773 and 133.777 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that the person consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of rights to the issuance and service of a warrant of extradition and to apply for a writ of habeas corpus as provided for in ORS 133.787.

(2)(a) If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent.

(b) Nothing in this section shall be deemed to limit the right of the accused person to submit voluntarily to the custody of such agent or agents for return without formality to the demanding state.

(c) The waiver procedure described in this section is not an exclusive procedure, nor does it limit the powers, rights or duties of the officers of the demanding state or of this state.

(3) Notwithstanding subsection (1) of this section, a law enforcement or corrections agency in this state holding a person who is alleged to have broken the terms of the person's security release, probation, parole or any other release in the demanding state may deliver the person to the duly accredited agent of the demanding state without the requirement of a warrant if:

(a) The person has signed a prior waiver of extradition as a term of the person's current security release, probation, parole or other release in the demanding state; and

(b) The law enforcement or corrections agency holding the person has received an authenticated copy of the prior waiver of extradition signed by the person and photographs, fingerprints or other evidence properly identifying the person as the person who signed the waiver. [Formerly 147.253; 1999 c.1051 §249; 2001 c.230 §1]

133.845 Nonwaiver by this state. Nothing contained in ORS 133.743 to 133.857 shall be deemed to constitute a waiver by this state of its right, power or privilege to try a person demanded under ORS 133.843 for any crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings under ORS 133.743 to 133.857 that result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever. [Formerly 147.256; 1985 c.565 §14; 2005 c.22 §107]

133.847 Trial of extradited person for other crimes. After a person has been brought back to this state upon extradition proceedings, the person may be tried in this state for other crimes which the person may be charged with having committed here as well as that specified in the requisition for extradition. [Formerly 147.260]

133.850 [Renumbered 135.215]

133.853 Construction of Act. ORS 133.743 to 133.833 and 133.839 to 133.855 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact the Uniform Criminal Extradition Act. [Formerly 147.270]

133.855 Short title. ORS 133.743 to 133.833 and 133.839 to 133.855 may be cited as the Uniform Criminal Extradition Act. [Formerly 147.280]

133.857 Payment of agent's expenses. The account of the agent or agents embracing necessary expenses incurred in performing the service, after approval by the Governor, shall be paid, after being audited and allowed as other claims against the state, from any moneys appropriated therefor. [Formerly 147.290]

133.860 [Amended by 1959 c.638 §14; 1965 c.508 §6; 1973 c.836 §145; renumbered 135.225]

ARREST AND RETURN ACCOUNT

133.865 Arrest and Return Account. (1) The Arrest and Return Account is established separate and distinct from the General Fund. The account consists of moneys deposited into the account under ORS 161.665 and such other moneys as may be appropriated to the account by law. Except as provided in subsection (2) of this section, moneys in the account are continuously appropriated to the Governor for the purpose of paying costs incurred in carrying out the provisions of ORS 133.743 to 133.857.

(2) Moneys deposited in the Arrest and Return Account under ORS 144.605 are continuously appropriated to the Governor for the purpose of paying costs incurred in retaking offenders who have transferred supervision under the Interstate Compact for Adult Offender Supervision described in ORS 144.600. [2003 c.615 §3; 2009 c.742 §2]

Note: 133.865 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 133 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

133.990 [Renumbered 135.990]

133.992 Penalties. Any person who maliciously and without probable cause causes a search warrant or a court order for interception to be issued and executed is guilty of a Class A misdemeanor. [Formerly 141.990; 1979 c.716 §15; 1983 c.824 §2]