

Chapter 44

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Witnesses

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EVIDENCE AND WITNESSES

44.010 [Repealed by 1981 c.892 §98]

44.020 [Repealed by 1981 c.892 §98]

44.030 [Repealed by 1981 c.892 §98]

44.040 [Amended by 1957 c.44 §1; 1963 c.396 §16; 1971 c.512 §4; 1973 c.136 §6; 1973 c.777 §19a; 1973 c.794 §13; 1975 c.694 §1; 1975 c.726 §1; 1977 c.656 §1; 1977 c.677 §12a; 1979 c.284 §79; 1979 c.731 §2; 1979 c.744 §1a; 1979 c.769 §12b; repealed by 1981 c.892 §98]

44.050 [Repealed by 1981 c.892 §98]

44.060 [Repealed by 1981 c.892 §98]

44.070 [Repealed by 1981 c.892 §98]

GENERAL PROVISIONS

44.080 Protection of witness from improper questions and excessive detention. It is the right of a witness to be protected from irrelevant, insulting or improper questions, and from harsh or insulting demeanor. The witness is to be detained only so long as the interests of justice require.

44.090 Protection of witness from arrest. (1) Every person who has been, in good faith, served with a subpoena to attend as a witness before a court, judge, commissioner, referee or other officer, is exonerated from arrest, in a civil case, while going to the place of attendance, necessarily remaining there and returning. The arrest of a witness contrary to this section is void, and when willfully made is a contempt of the court; and the officer making the arrest is responsible to the witness for double the amount of the damages which may be assessed against the officer, and is also liable in an action by the party serving the witness with the subpoena, for the damages sustained by that party in consequence of the arrest.

(2) But the officer is not liable in any way, unless the person claiming the exemption makes, if required, an affidavit stating:

(a) That the person has been served with a subpoena to attend as a witness before a court, judge or other officer, specifying the same, the place of attendance and the action, suit or proceeding in which the subpoena was issued; and

(b) That the person has not been served by the procurement of the person with the intention of avoiding an arrest.

(3) The affidavit may be taken by the officer and exonerates the officer from liability for not making the arrest, or for discharging the witness when arrested.

(4) The court, judge or officer before whom the attendance of the witness is required may discharge the witness from an arrest made in violation of this section.

44.095 [1973 c.386 §1; repealed by 1981 c.892 §98]

44.110 [Repealed by 1979 c.284 §199]

44.120 [Amended by 1969 c.383 §1; repealed by 1979 c.284 §199]

44.130 [Amended by 1969 c.383 §2; repealed by 1979 c.284 §199]

44.140 [Amended by 1977 c.789 §2; repealed by 1979 c.284 §199]

44.150 Service of subpoena if witness concealed. A sheriff, deputy or some person specially appointed by the sheriff, but none other, is authorized and required to break into any building or vessel in which a witness may be concealed to prevent the service of a subpoena, and serve it on the witness.

44.160 [Repealed by 1979 c.284 §199]

44.170 [Repealed by 1961 c.413 §1 (44.171 enacted in lieu of 44.170)]

44.171 [1961 c.413 §2 (enacted in lieu of 44.170); repealed by 1979 c.284 §199]

44.180 [Repealed by 1979 c.284 §199]

44.190 [Repealed by 1979 c.284 §199]

44.200 [Repealed by 1979 c.284 §199]

44.210 [Repealed by 1979 c.284 §199]

44.220 [Repealed by 1979 c.284 §199]

44.230 [Amended by 1973 c.836 §326; repealed by 1979 c.284 §199]

44.240 Production of witness confined in Department of Corrections institution.

(1) Whenever a court or judge makes an order for the temporary removal and production of a witness who is confined in a Department of Corrections institution within this state before a court or officer for the purpose of being orally examined this section applies. The superintendent of the institution shall, at the institution, deliver the witness to the sheriff of the county in which the court or judge making the order is located.

(2) The sheriff shall give the superintendent a signed receipt when taking custody of the witness under subsection (1) of this section. The sheriff shall be responsible for the custody of the witness until the sheriff returns the witness to the institution. Upon the return of the witness to the institution by the sheriff, the superintendent shall give a signed receipt therefor to the sheriff.

(3) When a witness is delivered to a sheriff under subsection (1) of this section, or at any time while the witness is in the custody of the sheriff as provided in subsection (2) of this section, the superintendent may give the sheriff a list of persons who may communicate with the witness or with whom the witness may communicate. Except as otherwise required by law, upon receipt of the list and while the witness is in the custody of the sheriff, the sheriff shall permit communication only between the witness and those persons designated by the list.

(4) The sheriff and neither the institution nor the Department of Corrections shall be liable for any expense incurred in connection with the witness while the witness is in the custody of the sheriff as provided in subsection (2) of this section. If the witness is a

party plaintiff, the sheriff shall recover costs of the care of the witness from the plaintiff, and shall have a lien upon any judgment for the plaintiff. In all other cases, the sheriff and not the witness shall be entitled to the witness fees and mileage to which the witness would otherwise be entitled under ORS 44.415 (2), or other applicable law. [1955 c.523 §1; 1969 c.502 §2; 1973 c.836 §327; 1987 c.320 §13; 1987 c.606 §6; 1989 c.980 §3a]

44.310 [Repealed by 1981 c.892 §98]

44.320 Authority to take testimony and administer oath or affirmation. Every court, judge, clerk of a court, justice of the peace, certified shorthand reporter as defined in ORS 8.415 or notary public is authorized to take testimony in any action or proceeding, as are other persons in particular cases authorized by statute or the Oregon Rules of Civil Procedure and is authorized to administer oaths and affirmations generally, and every such other person in the particular case authorized. [Amended by 1979 c.284 §81; 1989 c.1055 §13; 1997 c.249 §21]

44.330 [Repealed by 1981 c.892 §98]

44.340 [Repealed by 1981 c.892 §98]

44.350 [Repealed by 1981 c.892 §98]

44.360 [Repealed by 1981 c.892 §98]

44.370 Witness presumed to speak truth; jury judges of credibility. A witness is presumed to speak the truth. This presumption, however, may be overcome by the manner in which the witness testifies, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence. Where the trial is by the jury, they are the exclusive judges of the credibility of the witness.

44.410 [Amended by 1959 c.158 §1; repealed by 1989 c.980 §24]

FEEES

44.415 Fees and mileage of witnesses.

(1) Except as provided in subsection (2) of this section, a person is entitled to receive \$30 for each day's attendance as a witness and mileage reimbursement at the rate of 25 cents a mile if the person is required to travel from a place within or outside this state in order to perform duties as a witness. Total mileage reimbursement shall not exceed the necessary cost of transportation on reasonably available common carriers.

(2) In any criminal proceeding, any proceeding prosecuted by a public body or any proceeding where a public body is a party, a person is entitled to receive \$5 for each day's attendance as a witness and mileage reimbursement at the rate of eight cents a mile if the person is required to travel from a place within or outside this state in order to perform duties as a witness. Total mileage

reimbursement shall not exceed the necessary cost of transportation on reasonably available common carriers.

(3) As used in this section, "public body" means any state, city, county, school district, other political subdivision, municipal corporation, public corporation and any instrumentality thereof. [1989 c.980 §2]

44.420 [Repealed by 1959 c.158 §2]

44.430 [Repealed by 1989 c.980 §24]

44.440 [Amended by 1963 c.519 §24; 1977 c.408 §1; repealed by 1981 s.s. c.3 §141]

44.450 [Amended by 1977 c.593 §1; repealed by 1981 s.s. c.3 §141]

MEDIA PERSONS AS WITNESSES

44.510 Definitions for ORS 44.510 to 44.540. As used in ORS 44.510 to 44.540, unless the context requires otherwise:

(1) "Information" has its ordinary meaning and includes, but is not limited to, any written, oral, pictorial or electronically recorded news or other data.

(2) "Medium of communication" has its ordinary meaning and includes, but is not limited to, any newspaper, magazine or other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, or cable television system. Any information which is a portion of a governmental utterance made by an official or employee of government within the scope of the official's or employee's governmental function, or any political publication subject to ORS 260.532, is not included within the meaning of "medium of communication."

(3) "Processing" has its ordinary meaning and includes, but is not limited to, the compiling, storing and editing of information.

(4) "Published information" means any information disseminated to the public.

(5) "Unpublished information" means any information not disseminated to the public, whether or not related information has been disseminated. "Unpublished information" includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not themselves disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated. [1973 c.22 §2; 1979 c.190 §398; 2001 c.965 §18; 2005 c.797 §50]

44.520 Limitation on compellable testimony from media persons; search of media persons' papers, effects or work premises prohibited; exception. (1) No person connected with, employed by or engaged in any medium of communication to the public shall be required by a legislative, executive or judicial officer or body, or any

other authority having power to compel testimony or the production of evidence, to disclose, by subpoena or otherwise:

(a) The source of any published or unpublished information obtained by the person in the course of gathering, receiving or processing information for any medium of communication to the public; or

(b) Any unpublished information obtained or prepared by the person in the course of gathering, receiving or processing information for any medium of communication to the public.

(2) No papers, effects or work premises of a person connected with, employed by or engaged in any medium of communication to the public shall be subject to a search by a legislative, executive or judicial officer or body, or any other authority having power to compel the production of evidence, by search warrant or otherwise. The provisions of this subsection, however, shall not apply where probable cause exists to believe that the person has committed, is committing or is about to commit a crime. [1973 c.22 §3; 1979 c.820 §1]

44.530 Application of ORS 44.520. (1) ORS 44.520 applies regardless of whether a person has disclosed elsewhere any of the information or source thereof, or any of the related information.

(2) ORS 44.520 continues to apply in relation to any of the information, or source thereof, or any related information, even in the event of subsequent termination of a person's connection with, employment by or engagement in any medium of communication to the public.

(3) The provisions of ORS 44.520 (1) do not apply with respect to the content or source of allegedly defamatory information, in civil action for defamation wherein the defendant asserts a defense based on the content or source of such information. [1973 c.22 §§4,5; 1979 c.820 §2]

44.540 Effect of informant as witness. If the informant offers the informant as a witness, it is deemed a consent to the examination also of a person described in ORS 44.520 on the same subject. [1973 c.22 §6]

CHILDREN OR PERSONS WITH DEVELOPMENTAL DISABILITIES AS WITNESSES

44.545 Expediting proceedings. (1) Except as otherwise provided in subsection (2) of this section or except for good cause shown by either party, in any case where a child or a member of the family of the child is a victim of a crime and where a child under 18 years of age is called to give testimony, the court, consistent with the rules of civil or criminal procedure, shall expedite

the action and insure that it takes precedence over any other. When determining whether or not to grant a continuance, the judge shall take into consideration the age of the child and the potential adverse impact the delay may have on the well-being of the child. The court shall make written findings of fact and conclusions of law when granting a continuance.

(2) The provisions of subsection (1) of this section do not apply to any juvenile proceeding other than the termination of parental rights. [1991 c.387 §1]

Note: 44.545 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 44 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

44.547 Notice to court; accommodations. (1) In any case in which a child under 12 years of age or a person with a developmental disability described in subsection (2) of this section is called to give testimony, the attorney or party who plans to call the witness must notify the court at least seven days before the trial or proceeding of any special accommodations needed by the witness. Upon receiving the notice, the court shall order such accommodations as are appropriate under the circumstances considering the age or disability of the witness. Accommodations ordered by the court may include:

(a) Break periods during the proceedings for the benefit of the witness.

(b) Designation of a waiting area appropriate to the special needs of the witness.

(c) Conducting proceedings in clothing other than judicial robes.

(d) Relaxing the formalities of the proceedings.

(e) Adjusting the layout of the courtroom for the comfort of the witness.

(f) Conducting the proceedings outside of the normal courtroom.

(2) For the purposes of this section, "developmental disability" means a disability attributable to mental retardation, autism, cerebral palsy, epilepsy or other disabling neurological condition that requires training or support similar to that required by persons with mental retardation, if either of the following apply:

(a) The disability originates before the person attains 22 years of age, or if the disability is attributable to mental retardation the condition is manifested before the person attains 18 years of age, the disability can be expected to continue indefinitely, and the disability constitutes a substantial handicap to the ability of the person to function in society.

(b) The disability results in a significant subaverage general intellectual functioning with concurrent deficits in adaptive behavior that are manifested during the developmental period. [1995 c.804 §1]

Note: 44.547 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 44 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

POLICE OFFICERS AS WITNESSES

44.550 Definitions for ORS 44.550 to 44.566. As used in ORS 44.550 to 44.566:

(1) "Civil case" means any proceeding other than a criminal prosecution.

(2) "Law enforcement unit" means the police department of a city or the sheriff's department or other police organization of a county.

(3) "Police officer" means an officer or member of a law enforcement unit who is employed full-time as a peace officer by the city or county and who is responsible for enforcing the criminal laws of this state.

(4) "Tribunal" means any person or body before which attendance of witnesses may be required by subpoena, including an arbitrator in arbitration proceedings. [1991 c.550 §1]

Note: 44.550 to 44.566 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 44 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

44.552 Method of subpoenaing police officer; subpoena to reflect whether expert opinion to be asked. (1) Whenever a police officer is called as an expert witness in a civil case by a party by whom the officer is not employed, a subpoena requiring attendance may be served by delivering a copy either to the officer personally or to the officer's immediate superior.

(2) Any person causing a subpoena to be issued to compel the attendance of a police officer before a tribunal shall indicate on the face of that subpoena whether the person or the person's representative intends to ask the expert opinion of the officer as to any aspect of the proceedings. A police officer shall not be required by a tribunal to give the officer's expert opinion on any matter before the tribunal unless the subpoena compelling the officer's presence indicates that the officer's expert opinion will be asked. [1991 c.550 §2]

Note: See note under 44.550.

44.554 Payment of police officer subpoenaed as expert witness; obligation of party to reimburse law enforcement agency; method of payment. (1) Any police officer who is obliged by a subpoena issued pursuant to ORS 44.552 (2) to attend as an

expert witness shall receive the salary or other compensation to which the officer is normally entitled from the law enforcement unit by which the officer is employed during the time that the officer travels to and from the place where the court or other tribunal is located and while the officer is required to remain at that place pursuant to such subpoena. The officer shall also receive from the law enforcement unit by which the officer is employed the actual necessary and reasonable traveling expenses incurred in complying with the subpoena.

(2) The party at whose request a subpoena is issued pursuant to ORS 44.552 (2) compelling the attendance of a police officer as an expert witness shall reimburse the law enforcement unit by which the officer is employed for the full cost to the law enforcement unit incurred in reimbursing the officer as provided in subsection (1) of this section for each day that the officer is required to remain in attendance pursuant to the subpoena. The amount of \$160 shall be tendered with any subpoena issued under ORS 44.552 (2) to compel the attendance of a police officer as an expert witness for each day that the officer is required to remain in attendance pursuant to the subpoena. If the person causing the issuance of a subpoena requiring the expert opinion of a police officer makes arrangements with the officer and with the tribunal prior to the issuance of the subpoena to take the testimony of the officer by telephone, and testimony by telephone is otherwise allowed by the Oregon Rules of Civil Procedure, the amount of \$80 shall be tendered with the subpoena for each day that the officer is required to testify pursuant to the subpoena.

(3) If the actual expenses should later prove to be less than the amount tendered, the excess of the amount tendered shall be refunded.

(4) If the actual expenses should later prove to be more than the amount tendered, the difference shall be paid to the law enforcement unit by which the officer is employed by the party at whose request the subpoena is issued. However, no additional amounts shall be due unless, within seven days after the final day on which the officer appears in the proceedings, the law enforcement unit mails a statement to the party or to the party's attorney reflecting the additional amounts due.

(5) If a court or tribunal continues a proceeding on its own motion, no additional expert witness fee may be required prior to the issuance of a subpoena or the making of an order directing the officer to appear on the date to which the proceeding is continued. [1991 c.550 §3]

Note: See note under 44.550.

44.556 Prepayment of expenses in certain cases required. A police officer who is called as an expert witness in a civil case may demand the payment specified in ORS 44.554 (2) for one day, in advance, and when so demanded shall not be compelled to attend until the payment is tendered. [1991 c.550 §4]

Note: See note under 44.550.

44.558 Payment for additional attendance beyond first day required in advance. A police officer shall not be ordered to return by the court or tribunal for subsequent proceedings beyond the day stated in the subpoena requiring the officer to give the officer's expert opinion referred to in ORS 44.552 (2) or the day upon which the officer appeared under ORS 44.562 (2), unless the party at whose request the subpoena was issued, or the party at whose request the officer is ordered to return, shall first tender to the officer the same sum required to be tendered with a subpoena in the first instance. [1991 c.550 §5]

Note: See note under 44.550.

44.560 Application to subpoenas for depositions. ORS 44.552, 44.554 and 44.558 apply to subpoenas issued for the taking of depositions of police officers. [1991 c.550 §6]

Note: See note under 44.550.

44.562 Party and police officer may agree to modify time of appearance. A

police officer who has been subpoenaed under ORS 44.552 and 44.560 for the purpose of giving the officer's expert opinion, in lieu of attendance at the time specified in the subpoena, may agree with the party at whose request the subpoena was issued to appear at another time or pursuant to such notice as may be agreed upon. [1991 c.550 §7]

Note: See note under 44.550.

44.564 Right of action to recover payment due. Whenever a police officer appears as an expert witness under ORS 44.550 to 44.566 and reimbursement is not made as provided for in ORS 44.550 to 44.566, the law enforcement unit by which the officer is employed shall have standing to bring an action in order to recover such funds. [1991 c.550 §8]

Note: See note under 44.550.

44.566 Provisions not applicable if public body a party. ORS 44.550 to 44.566 shall not apply to any proceeding in which a public body is a party. For the purposes of this section, "public body" has the meaning given in ORS 30.260. [1991 c.550 §9]

Note: See note under 44.550.

44.610 [1973 c.136 §1; repealed by 1979 c.284 §199]

44.620 [1973 c.136 §§2,3; repealed by 1979 c.284 §199]

44.630 [1973 c.136 §4; repealed by 1979 c.284 §199]

44.640 [1973 c.136 §5; repealed by 1979 c.284 §199]

