

Enrolled
House Bill 3286

Sponsored by COMMITTEE ON JUDICIARY (at the request of Attorney General Ellen F. Rosenblum)

CHAPTER

AN ACT

Relating to warrants; creating new provisions; amending ORS 133.545; and declaring an emergency.

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

SECTION 1. ORS 133.545 is amended to read:

133.545. (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.]

(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 a copy of the recording submitted to the judge who took the oral statement. In such cases, the judge

shall certify that the recording of the sworn oral statement is a true recording of the oral statement under oath and shall retain the recording as part of the record of proceedings for the issuance of the warrant. The recording shall constitute an affidavit for the purposes of this section. The applicant shall retain a copy of the recording and shall provide a copy of the recording to the district attorney if the district attorney is not the applicant.

(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.

SECTION 2. The amendments to ORS 133.545 by section 1 of this 2013 Act apply only to warrants issued on or after the effective date of this 2013 Act.

SECTION 3. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House April 29, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 15, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

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Kate Brown, Secretary of State