

House Bill 2225

Sponsored by Representatives HOYLE, GILLIAM (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes circuit court judge to authorize execution of search warrant outside judicial district of court in certain elder abuse cases.

A BILL FOR AN ACT

1
2 Relating to search warrants; amending ORS 133.545.

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

4 **SECTION 1.** ORS 133.545 is amended to read:

5 133.545. (1) A search warrant may be issued only by a judge. A search warrant issued by a
6 judge of the Supreme Court or the Court of Appeals may be executed anywhere in the state. Except
7 as otherwise provided in subsections (2), [*and*] (3) **and (4)** of this section, a search warrant issued
8 by a judge of a circuit court may be executed only within the judicial district in which the court
9 is located. A search warrant issued by a justice of the peace may be executed only within the county
10 in which the justice court is located. A search warrant issued by a municipal judge authorized to
11 exercise the powers and perform the duties of a justice of the peace may be executed only in the
12 municipality in which the court is located.

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

19 (3) Notwithstanding subsection (1) of this section, a circuit court judge duly assigned pursuant
20 to ORS 1.615 to serve as a judge pro tempore in a circuit court may authorize execution of a search
21 warrant in any judicial district in which the judge serves as judge pro tempore if the application
22 requesting the warrant includes an affidavit showing that a regularly elected or appointed circuit
23 court judge for the judicial district is not available, whether by reason of conflict of interest or
24 other reason, to issue the warrant within a reasonable time.

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

28 **(a) The search relates to an offense constituting abuse of an elderly person, as those**
29 **terms are defined in ORS 124.005;**

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

31 **(c) The person making application for the search warrant is not able to ascertain at the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **time of the application the proper place of trial for the offense described in paragraph (a)**
 2 **of this subsection.**

3 [(4)] (5) Application for a search warrant may be made only by a district attorney, a police of-
 4 ficer or a special agent employed under ORS 131.805.

5 [(5)] (6) The application shall consist of a proposed warrant in conformance with ORS 133.565,
 6 and shall be supported by one or more affidavits particularly setting forth the facts and circum-
 7 stances tending to show that the objects of the search are in the places, or in the possession of the
 8 individuals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant shall
 9 set forth facts bearing on any unnamed informant's reliability and shall disclose, as far as possible,
 10 the means by which the information was obtained.

11 [(6)] (7) Instead of the written affidavit described in subsection [(5)] (6) of this section, the judge
 12 may take an oral statement under oath. The oral statement shall be recorded and a copy of the re-
 13 cording submitted to the judge who took the oral statement. In such cases, the judge shall certify
 14 that the recording of the sworn oral statement is a true recording of the oral statement under oath
 15 and shall retain the recording as part of the record of proceedings for the issuance of the warrant.
 16 The recording shall constitute an affidavit for the purposes of this section. The applicant shall retain
 17 a copy of the recording and shall provide a copy of the recording to the district attorney if the
 18 district attorney is not the applicant.

19 [(7)(a)] (8)(a) In addition to the procedure set out in subsection [(6)] (7) of this section, the
 20 proposed warrant and the affidavit may be sent to the court by facsimile transmission or any similar
 21 electronic transmission that delivers a complete printable image of the signed affidavit and proposed
 22 warrant. The affidavit may have a notarized acknowledgment, or the affiant may swear to the affi-
 23 davit by telephone. A judge administering an oath telephonically under this subsection must execute
 24 a declaration that recites the manner and time of the oath's administration. The declaration must
 25 be filed with the return.

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

28 (A) The court may transmit the signed warrant to the person making application under sub-
 29 section [(4)] (5) of this section by means of facsimile transmission or similar electronic transmission,
 30 as described in paragraph (a) of this subsection. The court shall file the original signed warrant
 31 and a printed image of the application with the return.

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

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