

Chapter 141

Search Warrants; Search of Person

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CROSS REFERENCES

Badge of authority of peace officer in the unlawful possession of another, seizure and destruction of, 162.590	141.030	Searches, seizures and warrants, Const. Art. I, § 9
For authority to enter premises for purposes of inspection or to seize equipment or products for nonconformity to statutory requirements, see statutes relating to particular subject matter involved	141.040	Magistrate defined, 46.050, 133.020, 133.030
Illegal games, seizure and destruction of, 167.555	141.110	Power of sheriff to forcibly enter premises to take mortgaged chattel, 86.500
Narcotics, search for and seizure of, 475.120	141.120	Receipt for property taken from person in custody, 142.210
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141.010 Grounds for issuance of search warrant. A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property was used as the means of committing a felony.

(3) When the property is either in the possession of a person who intends to use it as the means of committing a crime or in the possession of another to whom such person delivered it for the purpose of concealing it or preventing its being discovered.

141.020 Purpose of search warrant. A search warrant is directed to a peace officer and commands him to search for personal property at any place within his county and to bring it before the magistrate.

141.030 Affidavit of probable cause. A search warrant cannot be issued but upon probable cause, shown by affidavit, naming or describing the person, and describing the property and the place to be searched.

141.040 Authority of magistrate to issue search warrant. A magistrate authorized to issue a warrant of arrest may issue a search warrant.

141.050 Examination of complainant and witnesses. Before issuing the warrant, the magistrate shall examine on oath the complainant and any witnesses he may produce, take their depositions in writing and cause the depositions to be subscribed by the parties making them.

141.060 Issuance of search warrant. If the magistrate is satisfied that there is probable cause to believe that the grounds of the application exist, he shall issue the search warrant.

141.070 Issuance of search warrant on complaint of cruelty to animals. When complaint is made on oath or affirmation before any magistrate who is authorized to issue warrants in criminal cases that the complainant believes, and has reasonable cause to believe, the law in relation to cruelty to animals has been or is being violated in or near any building, place or location, such magistrate shall, if satisfied that there is reasonable cause for such belief, issue a search warrant authorizing any sheriff, deputy sheriff, constable or police officer to search such building, place or locality.

141.080 Form of search warrant. A search warrant shall be in substantially the following form:

County of _____.

IN THE NAME OF THE STATE OF
OREGON

To any sheriff or constable of the County of _____, greeting:

Information on oath having been this day laid before me (stating the particular grounds of the application, according to ORS 141.010), you are therefore hereby commanded to make immediate search, at any time in the day or night, of (naming the person or describing the place to be searched with reasonable particularity, as the case may be), for (describing the property with reasonable particularity), and if you find the same, or any part thereof, to bring it forthwith to me at (stating the place).

Dated at _____, this _____ day of _____, 19____.

A. B.

Justice of the peace (or as the case may be)

141.090 Places from which and persons from whom property may be taken under search warrant. (1) Stolen property, embezzled property or property used as the means of committing a felony may be taken pursuant to a search warrant from any house or other place in which it is concealed or found or from the possession of any person.

(2) Property in the possession of a person who intends to use it as the means of committing a crime or in the possession of another to whom he delivered it for the purpose of concealing it or preventing its being discovered may be taken pursuant to a search warrant from the possession of either of such persons or from any house or other place occupied by them or under their control, or either of them.

141.100 Time for execution and return of search warrant. A search warrant must be executed and returned to the magistrate by whom it was issued within 10 days from its date, unless such magistrate, before the expiration of such time, by indorsement thereon, extends the time for 5 days. After the expiration of the time prescribed by this section, the warrant, unless executed, is void.

141.110 Power and authority of officer in execution or service of search warrant; force. In the execution or service of a search warrant, the officer has the same power and authority, in all respects, to break open any door or window, to use all necessary and proper means to overcome any forcible resistance made to him or to call any other person to his aid that he has in the execution or service of a warrant of arrest.

141.120 Receipt for property taken under search warrant. When an officer takes property under a search warrant, he shall give a receipt for the property taken, specifying it in detail, to the person from whom he takes it or in whose possession it is found. In the absence of any such person, he shall leave the receipt in the place where he found the property.

141.130 Return of search warrant; inventory of property. The officer who executes the warrant shall forthwith return the warrant to the magistrate and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they are present, verified by the oath of the officer, to the following effect: "I, A. B., the officer by whom this warrant was executed, swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

141.140 Delivery of copies of inventory to parties. The magistrate to whom the return mentioned in ORS 141.130 is made shall thereupon, if required, deliver a certified copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

141.150 Hearing when grounds for issuance of search warrant are controverted. If the person from whose possession the property was taken controverts the grounds of issuing the warrant, the magistrate shall proceed to examine the matter by taking testimony in relation thereto.

141.160 Restoration of property to person from whom it was taken. If it appears that the property taken is not the same as that described in the warrant or that there

is no probable cause for believing that the grounds on which the warrant was issued exist, the magistrate shall cause the property to be restored to the person from whom it was taken.

141.170 Disposal by magistrate of property taken. When the property is delivered to the magistrate, if it was stolen or embezzled, the magistrate shall dispose of it as provided in ORS 142.020 and 142.040; but if it was taken on a warrant issued on the grounds stated in subsection (2) or (3) of ORS 141.010, he shall retain it in his possession, subject to the order of the court to which he is required to return the proceedings before him or of any other court in which the crime in respect to which the property was taken is triable.

141.180 Destruction of property taken. When any goods or things, the manufacture, sale or use of which is prohibited by the laws of this state, are taken on a search warrant, the magistrate before whom they are brought shall direct the officer to destroy them, which direction the officer shall obey and make return thereof on the warrant.

141.190 Magistrate's return. The magistrate shall annex together the depositions, the search warrant, the return of the warrant and the inventory and return them at or before the first day of the term thereof, to the next court of the county having jurisdiction of the crime in respect to which the search warrant was issued.

141.200 Search of person brought before a magistrate. When a person charged with a crime is supposed by the magistrate before whom he is brought to have upon his person a dangerous weapon or anything which may be used as evidence of the commission of the crime, the magistrate may direct that he be searched in the presence of the magistrate and that the weapon or other thing be retained, subject to the order of the magistrate or of the court in which the defendant may be tried.

141.990 Penalties. Any person who maliciously and without probable cause procures a search warrant to be issued and executed is guilty of a misdemeanor.