

Chapter 133

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COMPLAINT

133.010 Information defined. An information is a written statement of the essential facts charging a person with the commission of a crime, made upon oath and filed with a magistrate in a preliminary proceeding.

[Amended by 1965 c.508 §1]

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 circuit court;
- (3) Judges of the district court;
- (4) County judges and justices of the peace; and

(5) Municipal officers authorized to exercise the powers and perform the duties of a justice of the peace.

[Amended by 1961 c.724 §27]

133.040 [Repealed by 1965 c.508 §8]

133.050 [Repealed by 1959 c.426 §1]

WARRANT OF ARREST

133.110 Issuance. If the magistrate is satisfied that the crime complained of has been committed and that there is probable cause to believe that the person charged has committed it, he shall issue a warrant of arrest.

133.120 Authority to issue. A judge of the Supreme Court 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 such a warrant for any crime committed or triable within his county.

133.130 Contents. The warrant shall specify the name of the defendant or, if it is unknown to the magistrate, the defendant may be designated by a fictitious name, with a statement therein that his true name is unknown. It shall also state a crime in respect to which the magistrate has authority to issue the warrant.

133.140 Form. A warrant of arrest is an order in writing in the name of the State of Oregon, signed by a magistrate with his name of office, commanding the arrest of the defendant. It may be substantially in the following form:

County of _____

IN THE NAME OF THE STATE OF OREGON

To any peace officer in the State of Oregon, greeting:

Information upon oath having been given before me that the crime of (designating it) has been committed and accusing C.D. thereof, you are, therefore, hereby commanded forthwith to arrest the above-named C.D. and bring him before me at (naming the place), or in case of my absence or inability to act, before the nearest or most accessible magistrate in this county.

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

E. F., Justice of the Peace
(or as the case may be)

[Amended by 1961 c.443 §1]

133.150 [Repealed by 1961 c.443 §3]

133.160 [Amended by 1959 c.664 §28; repealed by 1961 c.443 §3]

133.170 Directed to and executed by peace officer. A peace officer is a sheriff, a constable, a marshal, a policeman of a town or a member of the Oregon State Police, and a warrant of arrest shall be directed to and executed by such peace officer.

[Amended by 1961 c.443 §2]

ARREST

133.210 Definition. Arrest is the taking of a person into custody so that he may be held to answer for a crime.

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

- (1) A peace officer under a warrant;
- (2) A peace officer without a warrant;

or

- (3) A private person.

133.230 Aiding officer in execution of warrant. Every person shall aid an officer in the execution of a warrant if the officer requires his aid and is present and acting in its execution.

133.240 When arrest may be made. If the crime charged is a felony, the arrest may be made on any day and at any time of the day or night; but if it is a misdemeanor, the arrest cannot be made on Sunday, unless upon the direction of the magistrate, indorsed upon the warrant.

133.250 What constitutes an arrest. An arrest is made by an actual restraint of the person of the defendant or by his submission to the custody of the officer.

133.260 Degree of restraint. The defendant shall not be subjected to more restraint than is necessary and proper for his arrest and detention.

133.270 Disclosure of authority when arrest is under warrant. The officer shall inform the defendant that he acts under the authority of the warrant and shall show the warrant if required by the defendant.

133.280 Means of effecting arrest. If, after notice of intention to arrest the defendant, he either flees or forcibly resists, the officer may use all necessary and proper means to effect the arrest.

133.290 Force officer may use to execute warrant in a house. The officer may break open any outer or inner door or window of a dwelling house, or otherwise, to execute the warrant if, after notice of his authority and purpose, he is refused admittance.

133.300 Force officer may use to liberate himself or another. The officer may break open any outer or inner door or window of a dwelling house, or otherwise, for the purpose of liberating a person who, having entered for the purpose of making an arrest, is detained therein, or when necessary for his own liberation.

133.310 Authority of officer to arrest without warrant. A peace officer may arrest a person without a warrant:

(1) For a crime committed or attempted in his presence;

(2) When the person arrested has committed a felony, although not in his presence;

(3) When a felony has in fact been committed or a major traffic offense, as defined in subsection (5) of ORS 484.010, has been committed, and he has reasonable cause for believing the person arrested to have committed it; or

(4) When he is notified by telegraph, telephone, radio or other mode of communication by another peace officer of any state that such peace officer holds in his hands a duly issued warrant for the arrest of such person charged with a crime committed within his jurisdiction.

[Amended by 1963 c.448 §1]

133.320 Force officer may use to arrest without warrant in a house. To make an arrest, as provided in ORS 133.310, the officer may break open any door or window, as provided in ORS 133.290 and 133.300, if, after notice of his office and purpose, he is refused admittance.

133.330 Disclosure of authority and cause of arrest when made without warrant. When arresting a person without a warrant, the officer shall inform him of the officer's authority and the cause of the arrest, except when he is in the actual commission of a crime, or is pursued immediately after its commission, or an escape.

133.340 Magistrate's authority to order arrest for crime in his presence. When a crime is committed in the presence of a magistrate, he 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 him upon a warrant of arrest.

133.350 Private person's authority to arrest without warrant. A private person may arrest another for the causes specified in ORS 133.310 in like manner and with like effect as a peace officer without a warrant.

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 a circuit or county court, may indorse thereon an order signed by him authorizing the service thereof by telegraph. Thereupon the warrant and order may be sent by telegraph to any marshal, sheriff, constable or policeman and, on receipt of the telegraphic copy thereof, as defined in ORS 758.090, by any such officer, he 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 his hands. 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 his judgment 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.

133.370 Authority to retake escaped or rescued arrested person. If a person arrested escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him at any time and in any place in this state.

133.380 Means of retaking escaped or rescued person. To retake the person escaping or rescued, the person pursuing may use all the means and do any act necessary and proper in making an original arrest.

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 him on the ground that he 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 he 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, he 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, he 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, he shall discharge the person arrested.

PROCEDURES FOLLOWING ARREST AND BEFORE EXAMINATION

133.510 [Repealed by 1965 c.508 §8]

133.520 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, he 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 he 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 him before a magistrate of that county, who shall admit the defendant to bail and take bail from him accordingly. The officer shall at the same time deliver to the magistrate the warrant with his return indorsed and subscribed by him.

(2) On taking bail, the magistrate shall certify that fact on the warrant and return the warrant and undertaking of bail to the officer having charge of the defendant. The officer shall then discharge the defendant from arrest and without delay deliver the warrant and undertaking to the clerk of the court in the other county at which the defendant is required to appear.

(3) If, on the admission of the defendant to bail, bail 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.

[Amended by 1965 c.508 §2]

133.530 [Repealed by 1965 c.508 §8]

133.540 [Repealed by 1965 c.508 §8]

133.550 Delay prohibited. The defendant shall in all cases be taken before the magistrate without delay.

133.560 When arrest is by private person. (1) An officer may without warrant take before a magistrate a person who, being engaged in a breach of the peace, is arrested by a bystander and delivered to him.

(2) A private person who has arrested another for the commission of a crime shall without unnecessary delay take him before a magistrate or deliver him to a peace officer.

CONDUCT OF EXAMINATION

133.610 Information as to charge, right to counsel, use of statement and preliminary examination. When the defendant against whom an information has been filed appears before a magistrate on a charge of having committed a crime, before any further proceedings are had the magistrate shall read to him the information and shall inform him:

(1) Of his right to the aid of counsel, that he is not required to make a statement and that any statement made by him may be used against him.

(2) That he is entitled to a preliminary examination and of the nature of a preliminary examination. If a preliminary examination is requested, it shall be held as soon as practicable but in any event within five days, unless such time is extended for good cause shown.

[Amended by 1963 c.511 §1; 1965 c.508 §3]

133.620 Obtaining counsel. The magistrate shall allow the defendant a reasonable time to obtain counsel and shall adjourn the proceeding for that purpose. A defendant who is committed pending examination shall be given a reasonable opportunity to obtain counsel, including but not limited to a reasonable use of the telephone.

[Amended by 1965 c.508 §4]

133.625 Court appointment of counsel.

(1) Suitable counsel for a defendant shall be appointed by a circuit court if:

(a) The defendant is before a court or magistrate on a matter described in subsection (3) of this section; and

(b) The defendant requests aid of counsel; and

(c) The defendant makes a verified financial statement and provides other information in writing under oath showing his lack of ability to obtain counsel and provide any other information required by the court as to his inability to obtain counsel; and

(d) It appears to the court that the defendant is without means and is unable to obtain counsel.

(2) If the defendant is before a justice or district court in any proceeding described in subsection (3) of this section, and complies with the provisions of subsection (1) of this section, the magistrate shall forward to the circuit court in his judicial district all information obtained under subsection (1) of this section, along with his recommendations as to whether or not the defendant is without means and is unable to obtain counsel. The circuit court may thereupon appoint suitable counsel for the defendant.

(3) Counsel must be appointed for a defendant who meets the requirements of subsection (1) of this section and who is before the court or magistrate on any of the following matters:

(a) Charged with a crime for which a felony sentence could be imposed.

(b) For a hearing to determine whether an enhanced sentence should be imposed when such proceedings may result in the imposition of a felony sentence.

(c) For extradition proceedings under the provisions of the Uniform Criminal Extradition Act.

(d) For any proceeding concerning an order of probation, including but not limited to the revoking or amending thereof.

(4) Unless otherwise ordered by the court, the appointment of counsel under this section shall continue during all criminal proceedings resulting from the defendant's arrest through acquittal or the imposition of punishment. The court having jurisdiction of the case may substitute one appointed counsel for another at any stage of the proceedings when the interests of justice require such substitution.

(5) If, at any time after the appointment of counsel, the court having jurisdiction of the case finds that the defendant is financially able to obtain counsel or to make partial payment for the services of counsel, the court may terminate the appointment of counsel or require such partial payment or enter an order against the defendant in favor of the county for such fees as the county has paid and for which the defendant is liable under ORS 137.205. If, at any time during criminal proceedings, the court having jurisdiction of the case finds that the defendant is financially unable to pay counsel whom he has retained, the court may appoint counsel as provided in this section.

[1961 c.696 §1; 1967 c.475 §1]

133.630 [Repealed by 1961 c.696 §4]

133.635 Appointed counsel's affidavit of expenses; payment of expenses and fees. Upon completion of all services by the counsel so appointed under ORS 133.625, the counsel shall submit to the court an affidavit containing an accurate statement of all reasonable expenses paid or incurred in connection with such services, supported by appropriate receipts or vouchers. The court shall thereupon enter an order directing the county in which the proceeding is had to pay the counsel the amount of the expenses, or such portion thereof as may be approved by the court, together with fees as set forth in subsection (1) of ORS 135.330.

[1961 c.696 §3; 1967 c.628 §2]

Note: The amendment of ORS 133.635 by 1967 c.628 §2 takes effect January 1, 1969. See 1967 c.628 §3.

133.640 [Repealed by 1965 c.508 §8]

133.650 Commitment of defendant on adjournment. (1) If an adjournment is had for any cause, the magistrate shall commit the defendant for examination, or may admit him to bail as provided in ORS 140.040.

(2) The commitment for examination is by an indorsement, signed by the magistrate, on the warrant of arrest to the following effect: "The within-named A B, having been brought before me under this warrant, is committed for examination to the custody of the officer having him in charge" or, if the magistrate sits in the vicinity of the county jail, "to the jailor of the County of _____."

133.660 Subpenaing witnesses. (1) The magistrate shall issue subpoenas for any witnesses within the state when requested by

the district attorney or the defendant for the examination.

(2) If either party desires to subpoena more than five witnesses at public expense, application therefor shall be made in the manner provided in ORS 139.060.

(3) Any defendant may have subpoenas issued for any number of witnesses at his own expense without an order of the magistrate. [Amended by 1961 c.289 §1; 1965 c.508 §5]

133.665 [Repealed by 1961 c.289 §3]

133.670 Examination of adverse witnesses. The witnesses shall be examined in the presence of the defendant and may be cross-examined in his behalf or against him.

133.680 Right of defendant to make or waive making a statement. When the examination of the witnesses on the part of the state is closed, the magistrate shall inform the defendant that it is his right to make a statement in relation to the charge against him; that the statement is designed to enable him, if he sees fit, to answer the charge and explain the facts alleged against him; that he is at liberty to waive making a statement; and that his waiver cannot be used against him on the trial.

133.690 Statement of defendant. (1) If the defendant chooses to make a statement, the magistrate shall take it in writing, without oath, and shall put to the defendant the following questions only:

(a) What is your name and age?

(b) Where were you born?

(c) Where do you reside and how long have you resided there?

(d) What is your business or occupation?

(e) Give any explanation you think proper of the circumstances appearing in the testimony against you and state any facts which you think will tend to your exculpation.

(2) The answer of the defendant to each of the questions shall be read to him as it is taken down. He may thereupon correct or add to his answer until it is made conformable to what he declares to be the truth.

(3) The statement of the defendant shall be reduced to writing by the magistrate or under his direction and authenticated in the following form:

(a) It shall set forth that the defendant was informed of his rights, as provided in ORS 133.680, and that after being so informed he made the statement.

(b) It need not contain the questions put to the defendant, but shall contain his answers thereto, with the corrections and additions, if any are made.

(c) It may be signed by the defendant, but if he refuses to sign it, his reason therefor shall be stated as he gives it.

(d) It shall be signed and certified to by the magistrate.

133.700 Use of statement before grand jury or on trial. The statement of the defendant is competent testimony to be laid before the grand jury and may be given in evidence against the defendant on the trial.

133.710 Memorandum of waiver of right to make statement. If the defendant waives his right to make a statement, the magistrate shall make a memorandum thereof in the proceedings; but the fact of his waiver cannot be used against the defendant on the trial.

133.720 Examination of defendant's witnesses. After the waiver of the defendant to make a statement or after he has made it, his witnesses, if he produces any, shall be sworn and examined.

133.730 Exclusion of witnesses during examination of others. The magistrate may exclude the witnesses who have not been examined during the examination of the defendant or of a witness for the state or the defendant.

133.740 Memorandum relative to witnesses. The testimony of the witnesses need not be reduced to writing, but the magistrate shall make a memorandum of the name of each witness, his place of residence and his business or occupation.

133.750 Retention of statements and depositions by magistrate; inspection. The magistrate shall keep the statement and depositions taken on the information, the statement of the defendant, if any, together with the memoranda mentioned in ORS 133.710 and 133.740, until they are returned to the proper court and shall not permit them to be inspected by any person, except the district attorney of the county or the attorney who acts for him and the defendant and his counsel.

133.755 Inspection by defendant of evidence obtained from or belonging to him. (1)

Upon motion of a defendant, at any time after the filing of the indictment or information, and upon a showing that the items sought are material to the preparation of his defense and that the request is reasonable, the court may order the district attorney to permit the defendant to inspect and copy or photograph designated books, papers, documents or tangible objects, obtained from or belonging to the defendant, including written statements or confessions made by the defendant. The order shall specify the time, place and manner of making the inspection and of taking copies or photographs and may prescribe such terms and conditions as are just.

(2) Inspection of the items described in subsection (1) of this section may be made in criminal actions in accordance with the provisions of subsection (1) of this section and no other.

[1961 c.521 §1]

133.760 Counsel for informant; district attorney. The informant may employ counsel to appear against the defendant on the examination in every stage of the proceedings; but the district attorney for the county, either in person or by some attorney authorized to act for him, is entitled to appear on behalf of the state and control and direct the prosecution.

133.770 When attendance of woman officer is required. Whenever any woman or girl is interrogated with reference to the commission of any sexual crime, is accused of or charged with the commission of any sexual crime before any committing magistrate and is taken into custody therefor, or is called as a witness at a hearing before a committing magistrate with reference to any such class of crimes, and whether such crime has been committed by her or by some other person, she shall only be orally examined by or in the presence of a woman officer, appointed as provided in ORS 133.780.

133.780 Appointment, duties and compensation of woman officer. The court or officer before whom any female person mentioned in ORS 133.770 is interrogated, taken into custody or called as a witness, shall appoint some suitable female person who shall conduct or be present at the examination of such accused person or witness or receive or be present at the receiving or making of any confession or statement which

such accused person or witness desires to make. The compensation of any such person, when so appointed, shall be paid out of the general funds of the county wherein such proceeding is had by the county treasurer of the county, upon vouchers signed by the judge of the court or the officer making such appointment, which vouchers shall certify the nature and extent of the services performed and the amount of compensation due the person in whose favor the same is drawn.

DISCHARGE OR COMMITMENT

133.810 Discharge. (1) After hearing the proofs and the statement of the defendant, if he has made one, if it appears either that the crime has not been committed or that there is no sufficient cause to believe the defendant guilty thereof, the magistrate shall order the defendant to be discharged by an indorsement on the warrant, signed by him, to the following effect: "There being no sufficient cause shown to believe the within-named A B guilty of the crime within-mentioned, I order him to be discharged."

(2) If the arrest was without warrant, the discharge may be made by a certificate in writing, signed by the magistrate, to the following effect: "There being no sufficient cause shown to believe A B, brought before me without warrant, guilty of the crime of (designating it generally), I order him to be discharged." This certificate shall be delivered to the defendant.

133.820 Holding defendant to answer. If it appears from the examination that a crime has been committed and that there is sufficient cause to believe the defendant guilty thereof, the magistrate shall make a written order, signed by him, to the following effect: "It appearing to me from the testimony produced before me on the examination that the crime of (designating it generally) has been committed and that there is sufficient cause to believe A B guilty thereof, I order him to be held to answer the same."

133.830 Commitment. (1) If the magistrate orders the defendant to be held to answer, he shall make out a commitment, signed by him with his name of office, and deliver it with the defendant to the officer to whom the defendant is committed or, if that officer is not present, to any peace officer, who shall immediately deliver the de-

fendant into the proper custody, together with the commitment.

(2) The commitment may be in substantially the following form:

IN THE NAME OF THE STATE OF OREGON

To the sheriff of the County of _____, greeting:

An order having been this day made by me that A B be held to answer upon a charge of (designating it generally), you are therefore commanded to receive him in your custody and to detain him until legally discharged.

Dated at _____, this _____ day of _____, 19____.
C D, Justice of the Peace (or as the case may be).

133.840 Indorsement in certain cases. When the magistrate delivers the defendant to a peace officer other than the one to whom he is committed, he shall first make an indorsement on the commitment, signed with his name of office, to the following effect: "I hereby authorize and command E F to deliver this commitment, together with the within-named defendant, to the custody of the sheriff of the County of _____."

133.850 Direction to sheriff; detention of defendant. The commitment shall be directed to the sheriff of the county in which the magistrate is sitting. Such sheriff shall receive and detain the defendant, as thereby commanded, in the jail of his county or, if there is no sufficient jail in the county, by such means as may be necessary and proper therefor or by confining him in the jail of an adjoining county.

133.860 Forwarding of papers by magistrate. When the magistrate has held the defendant to answer, he shall at once forward to the court in which the defendant would be triable the warrant, if any; the information; the statement of the defendant, if he made one; the memoranda mentioned in ORS 133.710 and 133.740; and all undertakings of bail or for the appearance of witnesses taken by him.

[Amended by 1959 c.638 §14; 1965 c.508 §6]

PENALTIES

133.990 Penalties. Violation of ORS 133.750 is punishable as a contempt by the court having jurisdiction of the crime charged against the defendant.

PROCEDURE IN CRIMINAL MATTERS GENERALLY

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1967.

Robert W. Lundy
Legislative Counsel