Chapter 141

1963 REPLACEMENT PART

(1969 reprint)

Search Warrants; Search of Person; Interception of Communications

SEARCH WARRANTS; SEARCH OF PERSON

141.010 Grounds for issuance of search warrant
141.020 Purpose of search warrant
141.030 Affidavit of probable cause
141.040 Authority of magistrate to issue search warrant
141.050 Examination of complainant and witnesses
141.060 Issuance of search warrant
141.070 Issuance of search warrant on complaint of cruelty to animals
141.080 Form of search warrant
141.090 Places from which and persons from whom property may be taken under search warrant
141.100 Time for execution and return of search warrant
141.110 Power and authority of officer in execution or service of search warrant; force
141.120 Receipt for property taken under search warrant
141.130 Return of search warrant; inventory of property
141.140 Delivery of copies of inventory to parties
141.150 Hearing when grounds for issuance of search warrant are controverted
141.160 Restoration of property to person from whom it was taken
141.170 Disposal by magistrate of property taken
141.180 Destruction of property taken
141.190 Magistrate's return
141.200 Search of person brought before a magistrate

INTERCEPTION OF COMMUNICATIONS

141.720 Order for interception of telecommunications, radio communications or conversations
141.730 Proceeding under expired order prohibited
141.740 Records confidential

PENALTIES

141.990 Penalties

CROSS REFERENCES

Badge of authority of peace officer in the unlawful possession of another, seizure and destruction of, 162.590
Cigarettes, search for and seizure of if in violation of tax law, 323.240
Duties relating to administration of justice, enforcement of performance of, 1.025
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
Illegal games, seizure and destruction of, 167.555
Inspection by defendant of evidence obtained from him, 133.755
Narcotics, search for and seizure of, 475.120
Shoplifting, detention and interrogation of suspect, 164.392
State teletype communication system, 481.975
Stolen animals, seizure and sale of, 142.090, 142.100

141.020

Peace officer defined, 133.170

141.030

Searches, seizures and warrants, Const. Art. I, § 9

141.040

Magistrate defined, 46.050, 133.020, 133.030

141.120

Receipt for property taken from person in custody, 142.210

141.720

Criminal penalty, 165.540
Evidence obtained without order not admissible, 41.910
Recording of communications concerning operations by police or firemen at operation centers, inadmissibility of evidence so obtained, 165.545

141.730

Proceeding without order prohibited, 165.540

SEARCH WARRANTS; SEARCH OF PERSON

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 in the commission of, or which would constitute evidence of, the crime.

(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. [Amended by 1963 c.375 §1]

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 forthwith to the next court of the county having jurisdiction of the crime in respect to which the search warrant was issued. [Amended by 1959 c.638 §23]

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.

INTERCEPTION OF COMMUNICATIONS

141.710 [1955 c.675 §1; repealed by 1959 c.681 §7]

141.720 Order for interception of telecommunications, radio communications or conversations. (1) An ex parte order for the interception of telecommunications, radio communications or conversations, as defined in ORS 165.535, may be issued by any judge

of a circuit or district court upon verified application of a district attorney setting forth fully the facts and circumstances upon which the application is based and stating that:

(a) There are reasonable grounds to believe that a crime directly and immediately affecting the safety of human life or the national security has been committed or is about to be committed.

(b) There are reasonable grounds to believe that evidence will be obtained essential to the solution of such crime, or which may enable the prevention of such crime.

(c) There are no other means readily available for obtaining such information.

(2) Where statements are solely upon the information and belief of the applicant, the precise source of the information and the grounds for the belief must be given.

(3) The applicant must state whether any prior application has been made to obtain telecommunications, radio communications or conversations on the same instrument or from the person and, if such prior application exists, the applicant shall disclose the current status thereof.

(4) The application and any order issued under this section shall identify fully the particular telephone or telegraph line, or other telecommunication or radio communication carrier or channel from which the information is to be obtained and the purpose thereof.

(5) The court shall examine upon oath or affirmation the applicant and any witness the applicant desires to produce or the court requires to be produced.

(6) Orders issued under this section shall not be effective for a period longer than 60 days, after which period the court which issued the warrant or order may, upon application of the officer who secured the original warrant by application, in its discretion, renew or continue the order for an additional period not to exceed 60 days. All further renewals thereafter shall be for a period not to exceed 30 days.

[1955 c.675 §3; 1959 c.681 §4]

141.730 Proceeding under expired order prohibited. Any officer who knowingly proceeds under an order which has expired and has not been renewed as provided in ORS 141.720 is deemed to act without authority under ORS 141.720 and shall be subject to the penalties provided in subsection (2) of ORS 141.990, as though he had never obtained any such order or warrant.

[1955 c.675 §4]

141.740 Records confidential. The application for any order under ORS 141.720 and any supporting documents and testimony in connection therewith shall remain confidential in the custody of the court, and these materials shall not be released or information concerning them in any manner disclosed except upon written order of the court. No person having custody of any records maintained under ORS 141.720 to 141.740 shall disclose or release any materials or information contained therein except upon written order of the court.

[1955 c.675 §5]

PENALTIES

141.990 Penalties. (1) Any person who maliciously and without probable cause procures a search warrant to be issued and executed is guilty of a misdemeanor.

(2) Violation of ORS 141.730 or 141.740 is punishable, upon conviction, by a fine of not more than $3,000 or by imprisonment in the penitentiary for not more than three years, or by both.

[Subsection (2) enacted as 1955 c.675 §7]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, 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, 1963.

Sam R. Haley
Legislative Counsel