Chapter 133

1975 REPLACEMENT PART

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GENERAL PROVISIONS

133.005 Definitions for ORS 133.005 to 133.450. As used in ORS 131.655 and 133.005 to 133.450, unless the context requires otherwise:

(1) "Arrest" means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging him with an offense. A "stop" as authorized under ORS 131.605 to 131.625 is not an arrest.

(2) "Peace officer" means a member of the Oregon State Police or a sheriff, constable, marshal or municipal policeman, of the State of Oregon.
[1973 c.836 s.62]

133.007 Sufficiency of information or complaint. (1) An information or complaint is sufficient if it can be understood therefrom that:

(a) The defendant is named, or if his name cannot be discovered, that he is described by a fictitious name, with the statement that his real name is unknown to the complainant.

(b) The offense was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable within.

(c) The offense was committed at some time prior to the filing of the information or complaint and within the time limited by law for the commencement of an action therefor.

(2) The information or complaint shall not contain allegations that the defendant has previously been convicted of any offense which might subject him to enhanced penalties.

(3) Words used in a statute to define an offense need not be strictly followed in the information or complaint, but other words conveying the same meaning may be used.
[1973 c.836 s.63]

133.010[Amended by 1965 c.508 s.1; repealed by 1973 c.836 s.358]

133.015 Contents of information or complaint. An information or complaint shall contain substantially the following:

(1) The name of the court in which it is filed;

(2) The title of the action;

(3) A statement that accuses the defendant or defendants of the designated offense or offenses;

(4) A separate accusation or count addressed to each offense charged, if there be more than one;

(5) A statement in each count that the offense charged therein was committed in a designated county;

(6) A statement in each count that the offense charged therein was committed on, or on or about, a designated date, or during a designated period of time;

(7) A statement of the acts constituting the offense in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended; and

(8) The verification by the complainant and the date of the signing of the information or complaint.
[1973 c.836 s.64]

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 Court of Appeals;

(3) Judges of the circuit court;

(4) Judges of the district court;

(5) County judges and justices of the peace; and

(6) Municipal officers authorized to exercise the powers and perform the duties of a justice of the peace.
[Amended by 1961 c.724 s.27; 1969 c.198 s.59]

133.037[1971 c.743 s.289; 1973 c.836 s.33; renumbered 131.655]

133.040[Repealed by 1965 c.508 s.8]

CITATION IN LIEU OF CUSTODY

133.045 Application of ORS 133.055. ORS 133.055 shall apply in any instance when a person is subject to arrest on a misdemeanor or violation charge or on a felony charge which may be deemed a misdemeanor charge after sentence is imposed and:

(1) The arrest is made without a warrant pursuant to ORS 133.310; or

(2) The magistrate before whom an information or complaint is filed authorizes it; or

(3) The person is arrested by a private party and delivered to a peace officer pursuant to ORS 133.225.
[1969 c.244 s.1; 1973 c.836 s.65; 1974 s.s. c.42 s.1]

133.050[Repealed by 1959 c.426 s.1]

133.055 Citation in lieu of custody. A peace officer in lieu of taking the person into custody may issue and serve a citation to the person to appear at the court of the magistrate before whom the person would be taken pursuant to ORS 133.450.
[1969 c.244 s.2]

133.060 Cited person to appear before magistrate; effect of failure to appear. (1) The person cited shall appear before a magistrate of the county in which he was cited at the time, date and court specified in the citation, which shall not be later than two weeks from the date the citation was issued.

(2) If the cited person fails to appear at the time, date and court specified in the citation, and a criminal complaint or information is filed, the magistrate shall issue a warrant of arrest immediately upon the person's failure to appear.
[1969 c.244 s.5]

133.065 Service of citation; contents. (1) If a citation is issued as described in ORS 133.055, the peace officer shall serve one copy to the person arrested and shall, as soon as practicable, file a duplicate copy with the magistrate specified therein along with his proof of service.

(2) Each copy of the citation issued under authority of ORS 133.045 to 133.080, 133.110 and 156.050 shall contain:

(a) The name of the court at which the cited person is to appear.

(b) The name of the person cited.

(c) A brief description of the offense of which the person is charged, the date, the time and place at which the offense occurred, the date on which the citation was issued, and the name of the peace officer who issued the citation.

(d) The time, date and place at which the person cited is to appear in court.

(e) Whether a complaint or information had been filed at the time the citation was issued.

(f) If the arrest was made by a private party, the name of the arresting person.

(g) The following:

READ CAREFULLY

This citation is not a complaint or an information. One may be filed and you will be provided a copy thereof at the time of your first appearance. You MUST appear in court at the time set in the citation. IF YOU FAIL TO APPEAR AND A COMPLAINT OR INFORMATION HAS BEEN FILED, THE COURT WILL IMMEDIATELY ISSUE A WARRANT FOR YOUR ARREST.

[1969 c.244 s.6]

133.070 Citation where arrest without warrant is authorized for ordinance violation. (1) In any instance in which a person is subject to arrest without a warrant for violation of an ordinance of a county, city or municipal corporation, any peace officer who is authorized to make the arrest may make the arrest but in lieu of taking the person into custody he may issue and serve a citation to the person to appear at any court within the jurisdictional unit by which he is authorized to act.

(2) Any citation issued under this section shall conform to the requirements of ORS 133.065.

(3) The person cited shall appear before the court in which his appearance is required at the time, date and court specified in the citation. If he fails to appear at that time and a criminal complaint is filed, the court immediately shall issue a warrant for his arrest.
[1969 c.244 s.8]

133.075 Penalty for failure to appear on citation. If any person wilfully fails to appear before a court pursuant to a citation issued and served under authority of ORS 133.045 to 133.080, 133.110 and 156.050 and a complaint or information is filed, he is guilty of a Class A misdemeanor.
[1969 c.244 s.9; 1973 c.836 s.66]

133.080 Application to traffic, boating, littering, hunting and fishing violations. Except for Class A traffic infractions as provided by subsection (9) of ORS 484.150, nothing in ORS 133.045 to 133.080, 133.110 and 156.050 applies to violations of law enforceable under ORS 484.010 to 484.435, to violations enforceable under ORS 488.210 to 488.300, to violations enforceable under ORS 496.905 to 496.950 or to violations enforceable under ORS 133.100 and subsection (5) of 164.775.
[1969 c.244 s.7; 1971 c.404 s.5; 1975 c.451 s.172]

133.100 Citations for certain littering violations. A citation conforming to the requirements of ORS 484.150 to 484.220 and 484.230 shall be used for all violations of ORS 164.805 and 390.665 in this state.
[1971 c.404 s.1; 1973 c.836 s.67]

WARRANT OF ARREST

133.110 Issuance; citation. If the magistrate is satisfied that there is probable cause to believe that the person charged has committed the offense complained of, he shall issue a warrant of arrest. However, on a misdemeanor or violation charge or on a felony charge which in the discretion of the court may be considered a misdemeanor charge at the time sentence is imposed he may authorize a peace officer to issue and serve a citation as provided in ORS 133.055.
[Amended by 1969 c.244 s.3; 1973 c.836 s.68]

133.120 Authority to issue warrant. A judge of the Supreme Court or the Court of Appeals may issue a warrant of arrest for any offense committed or triable within the state, and any other magistrate mentioned in ORS 133.030 may issue a warrant for any offense committed or triable within his county.
[Amended by 1969 c.198 s.60; 1973 c.836 s.69]

133.130[Repealed by 1973 c.836 s.358]

133.140 Content and form of warrant. A warrant of arrest shall:

(1) Be in writing;

(2) Specify the name of the person to be arrested, or if his name is unknown, shall designate the person by any name or description by which he can be identified with reasonable certainty;

(3) State the nature of the offense;

(4) State the date when issued and the county where issued;

(5) Be in the name of the State of Oregon, be signed by and bear the title of the office of the magistrate having authority to issue a warrant for the offense charged;

(6) Command any peace officer to arrest the person against whom the charge was made and to bring him before the magistrate issuing the warrant, or if the magistrate is absent or unable to act, before the nearest or most accessible magistrate in the same county;

(7) Specify that the arresting officer may enter premises, in which he has probable cause to believe the person to be arrested to be present, without giving notice of his authority and purpose, if the issuing judge has approved a request for such special authorization; and

(8) Specify the amount of security for release.
[Amended by 1961 c.443 s.1; 1973 c.836 s.70]

133.150[Repealed by 1961 c.443 s.3]

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

133.170[Amended by 1961 c.443 s.2; repealed by 1973 c.836 s.358]

ARREST

133.210[Repealed by 1973 c.836 s.358]

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.

133.225 Arrest by a private person. (1) A private person may arrest another person for any crime committed in his presence if he has probable cause to believe the arrested person committed the crime. A private person making such an arrest shall, without unnecessary delay, take the arrested person before a magistrate or deliver him to a peace officer.

(2) In order to make the arrest a private person may use physical force as is justifiable under ORS 161.255.
[1973 c.836 s.74]

133.230[Repealed by 1971 c.743 s.432]

133.235 Arrest by a peace officer; when and how made. (1) A peace officer may arrest a person for an offense under ORS 133.005 to 133.045, 133.075, 133.100 to 133.340 and 133.450 to 133.475, at any hour of any day or night.

(2) If the arrest is otherwise authorized under ORS 133.005 to 133.045, 133.075, 133.100 to 133.340 and 133.450 to 133.475, a peace officer who is outside the jurisdiction of his employment may make an arrest without a warrant for an offense committed within the jurisdiction where he is present. In so doing, the peace officer shall act with the same rights, privileges and immunities as are otherwise provided by law.

(3) The officer shall inform the person to be arrested of his authority and reason for the arrest, and, if the arrest is under a warrant, shall show the warrant, unless he encounters physical resistance, flight or other factors rendering this procedure impracticable, in which case the arresting

officer shall inform the arrested person and show the warrant, if any, as soon as practicable.

(4) In order to make an arrest, a peace officer may use physical force as justifiable under ORS 161.235, 161.239 and 161.245.

(5) In order to make an arrest, a peace officer may enter premises in which he has probable cause to believe the person to be arrested to be present.

(6) If after giving notice of his identity, authority and purpose, the officer is not admitted, he may enter the premises, and by a breaking, if necessary.
[1973 c.836 s.71]

133.240[Repealed by 1973 c.836 s.358]

133.250[Repealed by 1973 c.836 s.358]

133.260[Repealed by 1973 c.836 s.358]

133.270[Repealed by 1973 c.836 s.358]

133.280[Repealed by 1971 c.743 s.432]

133.290[Repealed by 1973 c.836 s.358]

133.300[Repealed by 1973 c.836 s.358]

133.310 Authority of officer to arrest without warrant. (1) A peace officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed:

(a) A felony, a Class A misdemeanor, an unclassified offense for which the maximum penalty allowed by law is equal to or greater than the maximum penalty allowed for a Class A misdemeanor, or a major traffic offense as defined in subsection (5) of ORS 484.010; or

(b) Any other offense in the officer's presence.

(2) A peace officer may arrest a person without a warrant when he is notified by telegraph, telephone, radio or other mode of communication by another peace officer of any state that there exists a duly issued warrant for the arrest of a person charged with a crime committed within his jurisdiction.
[Amended by 1963 c.448 s.1; 1973 c.836 s.72; 1974 s.s. c.42 s.2]

133.320[Repealed by 1973 c.836 s.358]

133.330[Repealed by 1973 c.836 s.358]

133.340 Magistrate's authority to order arrest for offense in his presence. When an offense 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.
[Amended by 1973 c.836 s.73]

133.350[Repealed by 1973 c.836 s.358]

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 the Court of Appeals, 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 757.631, 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.
[Amended by 1969 c.198 s.61]

133.370[Repealed by 1971 c.743 s.432]

133.375 Definitions for ORS 133.375 to 133.379. As used in ORS 133.375 to 133.379 and 156.705:

(1) "Animal" includes all brute creatures.

(2) "Owner" or "person" includes corporations as well as individuals.
[Formerly 770.210]

133.377 Arrest of persons for cruelty to animals. (1) Any person violating ORS 167.850 may be arrested and held without warrant, in the same manner as in case of persons found breaking the peace.

(2) The person making the arrest, with or without warrant, shall use reasonable

diligence to give notice thereof to the owners of the animals found in the charge of the person arrested, and shall properly care and provide for such animals until the owners or their duly authorized agents take charge of them; provided, such owners or agents shall claim and take charge of the animals within 60 days from the date of said notice.

(3) The person making such arrest shall have a lien upon the animals for the expense of such care and provisions.
[Formerly 770.230]

133.379 Duty of peace officer to arrest and prosecute violators of cruelty to animals laws; disposition of fines. (1) It shall be the duty of any sheriff, deputy sheriff, constable or police officer to arrest and prosecute any violator of ORS 167.850 for any violation which comes to his knowledge or notice.

(2) All fines and forfeitures collected for violations of ORS 167.850 shall be paid into the county treasury of the county in which it is collected, and placed to the credit of the county school fund.
[Formerly 770.240]

133.380[Repealed by 1971 c.743 s.432]

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 AFTER ARREST

133.450 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 make a release decision as provided in ORS 135.230 to 135.290. The officer shall at the same time deliver to the magistrate the warrant with his return indorsed and subscribed by him.

(2) After making the release decision, the magistrate shall certify that fact on the warrant and return the warrant and release agreement or security release to the officer having charge of the defendant. The officer shall then discharge the defendant from arrest and without delay deliver the warrant

and release agreement or security release to the clerk of the court in the other county at which the defendant is required to appear.

(3) If the defendant is to be released and he does not agree to the release agreement, or a security deposit 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.

[Formerly 133.520]

133.455 Receipts for property taken from person in custody; penalty. (1) Whenever any jailer, peace officer or health officer takes or receives any money or other valuables from any person in custody for safekeeping or for other purposes, the officer or jailer receiving such valuables or money forthwith shall tender one of duplicate receipts for the property being surrendered to the person in custody. If possible, the person in custody shall countersign both the original and duplicate receipts. If the person is unable to sign the receipts or receive the duplicate thereof, the same shall be signed by and delivered to the person when reasonably possible. A file of the original receipts shall be kept for at least six months after the money or valuables have been returned to the person in custody, his agent or representative or other person entitled to the same.

(2) A person violating any of the provisions of subsection (1) of this section commits a Class B misdemeanor.

[Formerly 142.210]

133.460 Forfeiture of conveyances used unlawfully to conceal or transport stolen property. (1) Any boat, vehicle, aircraft or other conveyance used by or with the knowledge of the owner or the person operating or in charge thereof, other than stolen conveyances, in the unlawful transportation of livestock, livestock carcasses, poultry or other personal property, as provided in ORS 142.070, or in which any such personal property unlawfully possessed is kept or concealed by or with the knowledge of such owner or person operating or in charge thereof, shall be forfeited to the state as provided in this section.

(2) If the person arrested under ORS 133.465 is not the owner of the vehicle or conveyance seized, the sheriff shall make reasonable effort to determine the name and address of the owner. If the sheriff is able to determine the name and address of the owner, he shall immediately notify the owner by registered or certified mail of the seizure and of the owner's rights and duties under this section and ORS 133.465.

(3) A person notified under subsection (2) of this section, or any other person asserting a claim to rightful possession of the vehicle or conveyance seized, except the defendant, may move the court having ultimate trial jurisdiction over any crime charged in connection with the seizure, to return the vehicle or conveyance to the movant.

(4) The movant shall serve a copy of the motion upon the district attorney of the county in which the vehicle or conveyance is in custody. The court shall order the vehicle or conveyance returned to the movant, unless the court is satisfied by clear and convincing evidence that the movant knowingly consented to the unlawful use that resulted in the seizure. If the court does not order the return of the vehicle or conveyance, the movant shall obtain the return only as provided in ORS 133.465.

(5) If the court orders the return of the vehicle or conveyance to the movant, the movant shall not be liable for any towing or storage costs incurred as a result of the seizure.

(6) If the court does not order the return of the vehicle or conveyance under subsection (4) of this section, and the arrested person is convicted for any offense in connection with the seizure, the vehicle or conveyance shall be subject to forfeiture as provided in this section and ORS 133.470 and 133.475.

[Formerly 142.080]

133.465 Seizure of stolen animals or other property being transported; proceedings against person arrested. (1) When any peace officer discovers any person in the act of transporting any stolen live meat food animal or fowl, any meat food animal or fowl carcass, or any part thereof, or any wool, hides, grain or any other article which has been stolen in or upon any vehicle, boat, aircraft or conveyance of any kind, the officer shall seize all such articles or things found therein, take possession of the vehicle or other conveyance and arrest any person in charge thereof.

(2) The officer shall at once proceed against the person arrested, under the provisions of the law which has been violated, in any court having competent jurisdiction and shall deliver the vehicle or other conveyance to the sheriff of the county in which such seizure has been made.

(3) The vehicle or other conveyance shall be returned to the owner if he is the person arrested, upon execution of a good and valid bond, with sufficient sureties in a sum double the value of the property, which bond shall be approved by the court and shall be conditioned upon the return of said property to the custody of the sheriff at a time to be specified by the court.
[Formerly 142.090]

133.470 Sale of seized property; rights of owner and lien holder. (1) The court, upon conviction of the person arrested pursuant to ORS 133.465, shall, unless the bona fide owner or a bona fide lien holder registers his objection as provided in this section, subject to the ownership rights of innocent third parties, order a sale of the property at public auction by the sheriff of the county where it was seized.

(2) The sheriff, after deducting the expense of keeping the property and the cost of sale, shall pay, according to their priorities, all liens which are established by intervention or otherwise at such hearing or in other proceedings brought for said purpose and shall pay the balance of the proceeds into the general fund of the county.

(3) No claim of ownership or of any right, title or interest in the vehicle or other conveyance shall be held invalid unless the state shows to the satisfaction of the court, by clear and convincing evidence that the claimant had knowledge that the vehicle or other conveyance was used or to be used in violation of law.

(4) No such conveyance shall be sold under this section and unless the state proves to the court, by clear convincing evidence that the person asserting a claim of ownership or other right, title or interest in the conveyance had knowledge that such conveyance was to be used to convey stolen property, in which case the court shall order the vehicle or other conveyance to be released. All liens against property sold under this section or ORS 133.475 or 133.485 shall be transferred from the property to the proceeds of the sale of the property.
[Formerly 142.100]

133.475 Notice to owner. If no one claims the vehicle or other conveyance, as provided in ORS 133.470, the taking of the same with description thereof shall be advertised in some daily newspaper published in the city or county where taken or, if there is no daily newspaper published in such county or city, in a newspaper having weekly circulation in the city or county once a week for two weeks and by notice posted in three public places near the place of seizure. The legal owner, in the case of a motor vehicle, if licensed by the State of Oregon, as shown by his name and address in the records of the Motor Vehicles Division of the Department of Transportation, shall be notified by mail. If no claimant appears within 10 days after the last publication of the advertisement, the property shall be sold and the proceeds, after deducting the expenses and costs, shall be paid into the general fund of the county.
[Formerly 142.110]

133.485 Perishable property; livestock. If any of the property seized, as provided in ORS 133.465, is perishable, or livestock or fowls where the cost of keeping is great, the sheriff shall, upon order of the court, sell the same in the manner in which property is sold on execution.
[Formerly 142.120]

133.495 Retention of property to answer order of court. The proceeds of the sale mentioned in ORS 133.485 and other property seized shall be retained by liens, if not released on bond, to answer any order that may be entered by the court upon the trial of the person arrested.
[Formerly 142.130]

133.510[Repealed by 1965 c.508 s.8]

133.515 Interpreter to be made available to handicapped person. (1) Upon the arrest of a handicapped person and before interrogating or taking the statement of the handicapped person, the arresting peace officer, or when the arrest is by a private person, the officer to whom the handicapped person is delivered, shall make available to the handicapped person, at the earliest possible time, a qualified interpreter to assist the handicapped person throughout the interrogation or taking of a statement. The county in which the arrest is made shall pay the fees and expenses of the qualified interpreter if:

(a) The handicapped person, subsequent to the arrest, makes a verified statement and provides other information in writing under oath showing his inability to obtain a qualified interpreter, and provides any other information required by the court having jurisdiction over the offense for which the handicapped person was arrested concerning his ability to obtain such an interpreter; and

(b) It appears to the aforesaid court that the handicapped person was without means

and was unable to obtain a qualified interpreter.

(2) As used in this section:

(a) "Handicapped person" means a person who cannot readily understand or communicate the English language, or cannot understand the proceedings or a charge made against him, or is incapable of presenting or assisting in the presentation of his defense, because he is deaf, or because he has a physical hearing impairment or physical speaking impairment.

(b) "Qualified interpreter" means a person who is readily able to communicate with the handicapped person, translate the proceedings for him, and accurately repeat and translate the statements of the handicapped person to the officer or other person.
[1973 c.386 s.3]

133.520[Amended by 1965 c.508 s.2; 1973 c.836 s.75; renumbered 133.450]

SEARCH AND SEIZURE

(Generally)

133.525 Definitions for ORS 133.525 to 133.703. As used in ORS 133.525 to 133.703, unless the context requires otherwise:

(1) "Judge" means any judge of the district or circuit court, the Court of Appeals, the Supreme Court, any justice of the peace or municipal judge authorized to exercise the powers and perform the duties of a justice of the peace.

(2) "Police officer" means a sheriff, municipal policeman or member of the Oregon State Police.
[1973 c.836 s.81]

133.530[Repealed by 1965 c.508 s.8]

133.535 Permissible objects of search and seizure. The following are subject to search and seizure under ORS 133.525 to 133.703:

(1) Evidence of or information concerning the commission of a criminal offense;

(2) Contraband, the fruits of crime, or things otherwise criminally possessed;

(3) Property that has been used, or is possessed for the purpose of being used, to commit or conceal the commission of an offense; and

(4) A person for whose arrest there is probable cause or who is unlawfully held in concealment.
[1973 c.836 s.82]

133.540[Repealed by 1965 c.508 s.8]

(Search and Seizure Pursuant to Warrant)

133.545 Issuance of search warrant. (1) A search warrant may be issued only by a judge.

(2) Application for a search warrant may be made only by a district attorney or by any police officer.

(3) 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 such things 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.

(4) Instead of the written affidavit described in subsection (3) of this section, the judge may take an oral statement under oath when circumstances exist making it impracticable for a district attorney or police officer to obtain a warrant in person. The oral statement shall be recorded and transcribed. The transcribed statement shall be considered to be 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.
[1973 c.836 s.83]

133.550[Repealed by 1973 c.836 s.358]

133.555 Hearing. (1) Before acting on the application, the judge may examine on oath the affiants, and the applicant and any witnesses he may produce, and may himself call such witnesses as he considers necessary to a decision. He shall make and keep a record of any testimony taken before him. The record shall be admissible as evidence on any motion to suppress.

(2) If the judge finds that the application meets the requirements of ORS 133.535 and that, on the basis of the record made before him, there is probable cause to believe that the search will discover things specified in the application and subject to seizure under ORS 133.535, he shall issue a search warrant based on his finding and in accordance with the requirements of ORS 133.545 to 133.615. If he does not so find, the judge shall deny the application.

(3) The judge may orally authorize a police officer or a district attorney to sign the judge's name on a duplicate original warrant. A duplicate original warrant shall be a search warrant for the purposes of ORS 133.535 to 133.615, and it shall be returned to the judge as provided in ORS 133.615. In such cases a judge shall enter on the face of the original warrant the exact time of the issuance of the warrant and shall sign and file the original warrant in the manner provided by law.

(4) Until the warrant is executed, the proceedings upon application for a search warrant shall be conducted with secrecy appropriate to the circumstances.
[1973 c.836 s.84]

133.560[Repealed by 1973 c.836 s.358]

133.565 Contents of search warrant. (1) A search warrant shall be dated and shall be addressed to and authorize its execution by an officer authorized by law to execute search warrants.

(2) The warrant shall state, or describe with particularity:

(a) The identity of the judge issuing the warrant and the date the warrant was issued;

(b) The name of the person to be searched, or the location and designation of the premises or places to be searched;

(c) The things constituting the object of the search and authorized to be seized; and

(d) The period of time, not to exceed five days, after execution of the warrant except as provided in subsection (3) of this section, within which the warrant is to be returned to the issuing authority.

(3) Except as otherwise provided herein, the search warrant shall be executed between the hours of 7 a.m. and 10 p.m. and within five days from the date of issuance. The judge issuing the warrant may, however, by indorsement upon the face of the warrant, authorize its execution at any time of the day or night and may further authorize its execution after five days, but not more than 10 days from date of issuance.
[1973 c.836 s.85]

133.575 Execution of warrant. (1) A search warrant may be executed only within the period and at the times authorized by the warrant and only by a police officer. A police officer charged with its execution may be accompanied by such other persons as may be reasonably necessary for the successful execution of the warrant with all practicable safety.

(2) The executing officer shall, before entering the premises, give appropriate notice of his identity, authority and purpose to the person to be searched, or to the person in apparent control of the premises to be searched, as the case may be.

(3) Before undertaking any search or seizure pursuant to the warrant, the executing officer shall read and give a copy of the warrant to the person to be searched, or to the person in apparent control of the premises to be searched. If the premises are unoccupied or there is no one in apparent control, the officer shall leave a copy of the warrant suitably affixed to the premises.
[1973 c.836 s.86]

133.585 Scope of search. The scope of search shall be only such as is authorized by the warrant and is reasonably necessary to discover the persons or things specified therein. Upon discovery of the persons or things so specified, the officer shall take possession or custody of them and search no further under authority of the warrant. If in the course of the search the officer discovers things, not specified in the warrant, which he has probable cause to believe to be subject to seizure under ORS 133.535 which he did not have probable cause to expect to find, he shall also take possession of the things discovered.
[1973 c.836 s.87]

133.595 List of things seized. Promptly upon completion of the search, the officer shall make a list of the things seized, and shall deliver a receipt embodying the list to the person from whose possession they are taken, or the person in apparent control of the premises or vehicle from which they are taken. If the vehicle or premises are unoccupied or there is no one present in apparent control, the executing officer shall leave the receipt suitably affixed to the vehicle or premises.
[1973 c.836 s.88]

133.605 Use of force in executing warrants. (1) The executing officer and other officers accompanying and assisting him may use the degree of force, short of deadly physical force, against persons, or to effect an entry, or to open containers, as is reasonably necessary for the execution of the search warrant with all practicable safety.

(2) The use of deadly physical force in the execution of a search warrant is justifiable only:

(a) If the officer reasonably believes that there is a substantial risk that things to be seized will be used to cause death or serious physical injury if their seizure is delayed and that the force used creates no substantial risk of injury to persons other than those obstructing the officer; or

(b) If the officer reasonably believes that the use of deadly physical force is necessary to defend the officer or another person from the use or threatened imminent use of deadly physical force.
[1973 c.836 s.89]

133.610[Amended by 1963 c.511 s.1; 1965 c.508 s.3; 1973 c.836 s.138; renumbered 135.070]

133.615 Return of the warrant. (1) If a search warrant is not executed within the time specified by the warrant, the officer shall forthwith return the warrant to the issuing judge.

(2) An officer who has executed a search warrant shall, as soon as is reasonably possible and in no event later than the date specified in the warrant, return the warrant to the issuing judge together with a signed list of things seized and setting forth the date and time of the search.

(3) Subject to the provisions of subsection (4) of this section, the issuing judge shall file the warrant and list returned to him, with the record of the proceedings on the application for the warrant made pursuant to ORS 133.555.

(4) If the issuing judge does not have jurisdiction to inquire into the offense in respect to which the warrant was issued or the offense apparently disclosed by the things seized, the judge shall transmit the warrant and the record of proceedings for its issuance, together with the documents submitted on the return, to the clerk of the appropriate court having jurisdiction to inquire into such offense.
[1973 c.836 s.90]

133.620[Amended by 1965 c.508 s.4; renumbered 135.075]

(Disposition of Things Seized)

133.623 Handling and disposition of things seized. (1) The provisions of subsections (2), (3) and (4) of this section apply to all cases of seizure, except for a seizure made under a search warrant.

(2) If an officer makes an arrest in connection with the seizure, he shall, as soon thereafter as is reasonably possible, make a written list of the things seized and furnish a copy of the list to the defendant.

(3) If no claim to rightful possession has been established under ORS 133.633 to 133.663, the court shall order that the things be delivered to the officials having responsibility under the applicable laws for selling, destroying or otherwise disposing of contraband, forfeited or unclaimed goods in official custody.

(4) If things seized in connection with an arrest are not needed for evidentiary purposes, and if a person having a rightful claim establishes his identity and right to possession beyond a reasonable doubt to the satisfaction of the seizing officer, the officer may summarily return the things seized to their rightful possessor. If the things seized are perishable and it is not possible to return them to their rightful possessor, the seizing officer may dispose of the items as justice and the necessities of the case require.
[1973 c.836 s.109]

133.625[1961 c.696 s.1; 1967 c.475 s.1; 1973 c.836 s.135; renumbered 135.050]

133.630[Repealed by 1961 c.696 s.4]

133.633 Motion for return or restoration of things seized. (1) Within 90 days after actual notice of any seizure, or at such later date as the court in its discretion may allow:

(a) An individual from whose person, property or premises things have been seized may move the appropriate court to return things seized to the person or premises from which they were seized.

(b) Any other person asserting a claim to rightful possession of the things seized may move the appropriate court to restore the things seized to the movant.

(2) The appropriate court to consider such motion is:

(a) The court having ultimate trial jurisdiction over any crime charged in connection with the seizure; or

(b) If no crime is charged in connection with the seizure, the court to which the warrant was returned; or

(c) If the seizure was not made under a warrant and no crime is charged in connection with the seizure, any court having authority to issue search warrants in the county in which the seizure was made.
[1973 c.836 s.110]

133.635[1961 c.696 s.3; 1967 c.628 s.2; renumbered 135.080]

133.640[Repealed by 1965 c.508 s.8]

133.643 Grounds for motion for return or restoration of things seized. A

motion for the return or restoration of things seized shall be based on the ground that the movant has a valid claim to rightful possession thereof, because:

(1) The things had been stolen or otherwise converted, and the movant is the owner or rightful possessor; or

(2) The things seized were not in fact subject to seizure under ORS 133.525 to 133.703; or

(3) The movant, by license or otherwise, is lawfully entitled to possess things otherwise subject to seizure under ORS 133.525 to 133.703; or

(4) Although the things seized were subject to seizure under ORS 133.525 to 133.703, the movant is or will be entitled to their return or restoration upon the court's determination that they are no longer needed for evidentiary purposes; or

(5) The parties in the case have stipulated that the things seized may be returned to the movant.

[1973 c.836 s.111]

133.650[Repealed by 1973 c.836 s.358]

133.653 Postponement of return or restoration; appellate review. (1) In granting a motion for return or restoration of things seized, the court shall postpone execution of the order until such time as the things in question need no longer remain available for evidentiary use.

(2) An order granting a motion for return or restoration of things seized shall be reviewable on appeal in regular course. An order denying such a motion or entered under ORS 133.663 shall be reviewable on appeal upon certification by the court having custody of the things in question that they are no longer needed for evidentiary purposes.

[1973 c.836 s.112]

133.660[Amended by 1961 c.289 s.1; 1965 c.508 s.5; 1973 c.836 s.139; renumbered 135.085]

133.663 Disputed possession rights. (1) If, upon consideration of a motion for return or restoration of things seized, it appears to the court that the things should be returned or restored, but there is a substantial question whether they should be returned to the person from whose possession they were seized or to some other person, or a substantial question among several claimants to rightful possession, the court may:

(a) Return the things to the person from whose possession they were seized; or

(b) Impound the things seized and set a further hearing, assuring that all persons with a possible possessory interest in the things in question receive due notice and an opportunity to be heard; and

(c) Upon completion of the hearing provided for in paragraph (b) of this subsection, enter an order for the return or restoration of the things seized.

(2) If there is no substantial question whether the things should be returned to the person from whose possession they were seized, they must be returned to the person upon the release of the defendant from custody.

(3) Instead of conducting the hearing provided for in paragraph (b) of subsection (1) of this section and returning or restoring the property, the court in its discretion, may leave the several claimants to appropriate civil process for the determination of the claims.

[1973 c.836 s.113]

133.665[Repealed by 1961 c.289 s.3]

133.670[Renumbered 135.090]

(Evidentiary Exclusion)

133.673 Motions to suppress evidence. (1) Objections to use in evidence of things seized in violation of any of the provisions of ORS 133.525 to 133.703 shall be made by a motion to suppress which shall be heard and determined by any department of the trial court in advance of trial.

(2) A motion to suppress which has been denied may be renewed, in the discretion of the court, on the ground of newly discovered evidence, or as the interests of justice require.

[1973 c.836 s.114; 1975 c.197 s.1]

133.680[Renumbered 135.095]

133.683 Fruits of prior unlawful search. If a search or seizure is carried out in such a manner that things seized in the course of the search would be subject to suppression, and if as a result of such search or seizure other evidence is discovered subsequently and offered against a defendant, such evidence shall be subject to a motion to suppress unless the prosecution establishes by a preponderance of the evidence that such evidence would have been discovered by law enforcement authorities irrespective of such search or seizure, and the court finds that exclusion of such evidence is not necessary to deter violations of ORS 133.525 to 133.703.

[1973 c.836 s.117]

133.690[Renumbered 135.100]

133.693 Challenge to truth of evidence. (1) Subject to the provisions of subsection (2) of this section, in any proceeding on a motion to suppress evidence the moving party shall be entitled to contest, by cross-examination or offering evidence, the good faith, accuracy and truthfulness of the affiant with respect to the evidence presented to establish probable cause for search or seizure.

(2) If the evidence sought to be suppressed was seized by authority of a search warrant, the moving party shall be allowed to contest the good faith, accuracy and truthfulness of the affiant as to the evidence presented before the issuing authority only upon supplementary motion, supported by affidavit, setting forth substantial basis for questioning such good faith, accuracy and truthfulness.

(3) In any proceeding under subsection (2) of this section, the moving party shall have the burden of proving by a preponderance of the evidence that the evidence presented before the issuing authority was not offered in good faith, was not accurate and was not truthful.

(4) Where the motion to suppress challenges evidence seized as the result of a warrantless search, the burden of proving by a preponderance of the evidence the validity of the search is on the prosecution.

(5) The court shall determine whether, under applicable law, any inaccuracy, untruthfulness or lack of good faith requires suppression.
[1973 c.836 s.118]

133.700[Renumbered 135.105]

133.703 Identity of informants. (1) In any proceeding on a motion to suppress evidence wherein, pursuant to ORS 133.693, the good faith of the testimony presented to establish probable cause is contested, and wherein such testimony includes a report of information furnished by an informant whose identity is not disclosed in the testimony, the moving party shall be entitled to prevail on the motion to suppress and evidence obtained as a result of the information furnished by the informant shall be suppressed unless:

(a) The evidence sought to be suppressed was seized by authority of a search warrant and the informant testified in person before the issuing authority; or

(b) The judge determines from the affiant by a preponderance of the evidence that such confidential informant exists and is reliable.

(2) If the defendant is entitled to prevail on the motion to suppress under subsection (1) of this section, the evidence obtained as a result of the information furnished by the informant shall be suppressed.
[1973 c.836 s.119]

133.710[Renumbered 135.115]

133.720[Renumbered 135.125]

INTERCEPTION OF COMMUNICATIONS

133.723 Records confidential. The application for any order under ORS 133.725 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 and as required under ORS 135.805 to 135.873. No person having custody of any records maintained under ORS 133.723 to 133.727 shall disclose or release any materials or information contained therein except upon written order of the court and as required under ORS 135.805 to 135.873.
[Formerly 141.740]

133.725 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.
[Formerly 141.720]

133.727 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 133.725 is deemed to act without authority under ORS 133.725 and shall be subject to the penalties provided in subsection (2) of ORS 133.992, as though he had never obtained any such order or warrant.
[Formerly 141.730]

133.730[Renumbered 135.135]

133.740[Renumbered 135.145]

UNIFORM CRIMINAL EXTRADITION ACT

133.743 "Governor" defined; appointment of legal counsel to assist Governor. (1) Where appearing in ORS 133.743 to 133.857, the term "Governor" includes any person performing the extradition functions of Governor by authority of an appointment under subsection (2) of this section. The term "executive authority" includes the Governor and any person performing the functions of Governor in a state other than this state, and the term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

(2) The Governor may appoint a member of his legal staff to act in his behalf under ORS 133.743 to 133.857 in performing the extradition functions of the Governor during any absence of the Governor from the state. The appointment shall be in writing and be filed with the Secretary of State.
[Formerly 147.010]

133.747 Fugitives from other states; Governor to cause arrest and delivery of criminals. Subject to the qualifications of ORS 133.743 to 133.857 and the provisions of the Constitution of the United States controlling, and Acts of Congress in pursuance thereof, it is the duty of the Governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.
[Formerly 147.020]

133.750[Renumbered 135.155]

133.753 Form of demand. No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing and accompanied by a copy of an indictment found or by an information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.
[Formerly 147.030]

133.755[1961 c.521 s.1; repealed by 1973 c.836 s.358]

133.757 Investigation of demand and report. When a demand shall be made upon the Governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and cir-

cumstances of the person so demanded, and whether he ought to be surrendered.
[Formerly 147.040]

133.760[Amended by 1973 c.836 s.140; renumbered 135.165]

133.763 Facts documents must show. A warrant of extradition must not be issued unless the documents presented by the executive authority making the demand show that:

(1) Except in cases arising under ORS 133.767, the accused, when demanded upon a charge of crime, was present in the demanding state at the time of the commission of the alleged crime and thereafter fled from that state;

(2) The person demanded is in this state; and

(3) They constitute full compliance with the requirements of ORS 133.753.
[Formerly 147.050]

133.767 Extradition of person not present in demanding state at time of commission of crime. The Governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in ORS 133.763 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand; and the provisions of this chapter not otherwise inconsistent shall apply to such cases, notwithstanding that the accused was not in that state at the time of the commission of the crime and has not fled therefrom.
[Formerly 147.060]

133.770[Renumbered 136.345]

133.773 Governor's warrant of arrest. If the Governor shall decide that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to a sheriff, marshal, coroner or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issue.
[Formerly 147.070]

133.780[Renumbered 136.347]

133.777 Execution of the warrant. Such warrant shall authorize the officer or other person to whom directed to arrest the accused at any place where he may be found within the state and to command the aid of all sheriffs and other peace officers in the execution of the warrant, and to deliver the accused, subject to the provisions of ORS 133.743 to 133.833 and 133.839 to 133.855, to the duly authorized agent of the demanding state.
[Formerly 147.080]

133.783 Authority of arresting officer to command assistance. Every such officer or other person empowered to make the arrest shall have the same authority in arresting the accused to command assistance therein as sheriffs and other officers have by law in the execution of any criminal process directed to them, with the like penalties against those who refuse their assistance.
[Formerly 147.090]

133.787 Rights of arrested person. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he has been informed of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand legal counsel; and if the prisoner, his friends, or counsel shall state that he or they desire to test the legality of the arrest, the prisoner shall be taken forthwith before a judge of a court of record in this state, who shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. And when such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the public prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.
[Formerly 147.100]

133.793 Penalty for disobedience to ORS 133.787. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant in disobedience to ORS 133.787 commits a Class B misdemeanor.
[Formerly 147.110]

133.797 Confinement of prisoner. (1) The officer or person executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered, may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the person

having charge of him is ready to proceed on his route, such person being chargeable with the expense of keeping.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.
[Formerly 147.120]

133.803 Arrest prior to requisition. Whenever any person within this state shall be charged on the oath of any credible person before any judge or other magistrate of this state with the commission of a crime in any other state and, except in cases arising under ORS 133.767, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge or other magistrate in this state setting forth on the affidavit of any creditable person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under ORS 133.767, has fled therefrom or has been convicted of a crime in that state and escaped from confinement, or has broken the terms of his bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and bring him before the same or any other judge, court or magistrate who may be convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.
[Formerly 147.130]

133.805 Arrest without warrant. The arrest of a person may be lawfully made also by an officer or a private citizen without a warrant, upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in ORS 133.803; and thereafter his answer shall be heard as if he had been arrested on a warrant.
[Formerly 147.140]

133.807 Commitment to await arrest on requisition. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, the judge or magistrate must commit him to jail by a warrant reciting the accusation for such a time specified in the warrant as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the defense, unless the accused is released as provided in ORS 133.809, or until he shall be legally discharged.
[Formerly 147.150]

133.809 Release. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, the judge or magistrate must make a release decision concerning the person arrested under ORS 135.230 to 135.290, for his appearance at a time specified in the security release or in the release agreement.
[Formerly 147.160]

133.810[Amended by 1973 c.836 s.141; renumbered 135.175]

133.813 Proceedings in absence of arrest under executive warrant within specified time. If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the war-

rant, security release or release agreement, the judge or magistrate may discharge him or may recommit him to a further day, or may again set a security release or a release agreement for his appearance and surrender, as provided in ORS 133.809; and at the expiration of the second period of commitment, or if he has been released and appeared according to the terms of his security release or release agreement, the judge or magistrate either may discharge him or may require him to enter into a new security release or release agreement to appear and surrender himself at another day.
[Formerly 147.170]

133.815 Forfeiture; recovery thereon. If the prisoner is released and fails to appear according to the condition of his security release or release agreement, the court, by proper order, shall declare the security release or release agreement forfeited, and recovery may be had thereon in the name of the state as in the case of other security releases and release agreements given by the accused in criminal proceedings within this state.
[Formerly 147.180]

133.817 Persons under criminal prosecution in this state at time of requisition. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the Governor, at his discretion, either may surrender him on the demand of the executive authority of another state or may hold him until he has been tried and discharged, or convicted and punished in this state.
[Formerly 147.190]

133.820[Amended by 1973 c.836 s.142; renumbered 135.185]

133.823 When guilt of accused may be inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition, accompanied by a charge of crime in legal form as provided in ORS 133.743 to 133.817, shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.
[Formerly 147.200]

133.825 Governor may recall warrant; alias writ. The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.
[Formerly 147.210]

133.827 Warrant to agent to return fugitive from this state. Whenever the Governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in this state from the chief executive of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state to some agent or agents, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.
[Formerly 147.220]

133.830[Amended by 1973 c.836 s.143; renumbered 135.195]

133.833 Application for requisition; filing and forwarding of papers. (1) When the return to this state of a person charged with crime in this state is required, the district attorney of the county in which the alleged crime is committed shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made, and certifying that in the opinion of the district attorney the interest of the public in the effective administration of criminal justice requires the arrest and return of the accused to this state for trial, and that the proceeding is not instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his release, probation or parole, the district attorney of the county in which the offense was committed, the parole board, or the superintendent of the institution or sheriff of the county, from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his release, probation or parole, the state in which he is believed to

be, including the location of the person therein at the time application is made.

(3) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, superintendent or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by indorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavit, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.
[Formerly 147.230]

133.835 Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion. (1) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that the person be returned to the other state at the expense of this state as soon as the prosecution in this state is terminated.

(2) The Governor of this state may also surrender on demand of the executive authority of any other state any person in this state who is charged in the manner provided in this chapter with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.
[1973 c.836 s.129]

133.837 Appointment of agent to return fugitive from this state who waives extradition. In the event a fugitive from this state shall waive extradition, an agent or agents to secure his return may be appointed by the district attorney of the county in which the offense was committed, and the account of such agent or agents embracing necessary expenses incurred in performing the service, shall be audited and paid in the same manner as accounts presented under ORS 133.857.
[Formerly 147.235]

133.839 Immunity from civil process in certain civil cases. A person brought into this state by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.
[Formerly 147.250]

133.840[Amended by 1973 c.836 s.144; renumbered 135.205]

133.843 Written waiver of extradition proceedings. (1) Any person arrested in this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in ORS 133.773 and 133.777 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to apply for a writ of habeas corpus as provided for in ORS 133.787.

(2) If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the right of the accused person to submit voluntarily to the custody of such agent or agents

for return without formality to the demanding state.
[Formerly 147.253]

133.845 Nonwaiver by this state. Nothing in this chapter contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person for crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.
[Formerly 147.256]

133.847 Trial of extradited person for other crimes. After a person has been brought back to this state upon extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.
[Formerly 147.260]

133.850[Renumbered 135.215]

133.853 Construction of Act. ORS 133.743 to 133.833 and 133.839 to 133.855 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact the Uniform Criminal Extradition Act.
[Formerly 147.270]

133.855 Short title. ORS 133.743 to 133.833 and 133.839 to 133.855 may be cited as the Uniform Criminal Extradition Act.
[Formerly 147.280]

133.857 Payment of agent's expenses. The account of the agent or agents embracing necessary expenses incurred in performing the service, after approval by the Governor, shall be paid, after being audited and allowed as other claims against the state, from any moneys appropriated therefor.
[Formerly 147.290]

133.860[Amended by 1959 c.638 s.14; 1965 c.508 s.6; 1973 c.836 s.145; renumbered 135.225]

PENALTIES

133.990[Renumbered 135.990]

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

(2) A person who violates ORS 133.723 or 133.727 commits a Class C felony.
[Formerly 141.990]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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,
October 1, 1975.

Thomas G. Clifford
Legislative Counsel