Chapter 44

1983 REPLACEMENT PART

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GENERAL

44.010 [Repealed by 1981 c.892 §98]

44.020 [Repealed by 1981 c.892 §98]

44.030 [Repealed by 1981 c.892 §98]

44.040 [Amended by 1957 c.44 §1; 1963 c.396 §16; 1971 c.512 §4; 1973 c.136 §6; 1973 c.777 §19a; 1973 c.794 §13; 1975 c.694 §1; 1975 c.726 §1; 1977 c.656 §1; 1977 c.677 §12a; 1979 c.284 §79; 1979 c.731 §2; 1979 c.744 §1a; 1979 c.769 §12b; repealed by 1981 c.892 §98]

44.050 [Repealed by 1981 c.892 §98]

44.060 [Repealed by 1981 c.892 §98]

44.070 [Repealed by 1981 c.892 §98]

44.080 Protection of witness from improper questions and excessive detention. It is the right of a witness to be protected from irrelevant, insulting or improper questions, and from harsh or insulting demeanor. He is to be detained only so long as the interests of justice require.

44.090 Protection of witness from arrest. (1) Every person who has been, in good faith, served with a subpena to attend as a witness before a court, judge, commissioner, referee or other officer, is exonerated from arrest, in a civil case, while going to the place of attendance, necessarily remaining there and returning. The arrest of a witness contrary to this section is void, and when wilfully made is a contempt of the court; and the officer making the arrest is responsible to the witness for double the amount of the damages which may be assessed against him, and is also liable in an action by the party serving the witness with the subpena, for the damages sustained by that party in consequence of the arrest.

(2) But the officer is not liable in any way, unless the person claiming the exemption makes, if required, an affidavit stating:

(a) That he has been served with a subpena to attend as a witness before a court, judge or other officer, specifying the same, the place of attendance and the action, suit or proceeding in which the subpena was issued; and

(b) That he has not been served by his own procurement with the intention of avoiding an arrest.

(3) The affidavit may be taken by the officer and exonerates him from liability for not making the arrest, or for discharging the witness when arrested.

(4) The court, judge or officer before whom the attendance of the witness is required may discharge him from an arrest made in violation of this section.

44.095 [1973 c.386 §1; repealed by 1981 c.892 §98]

44.110 [Repealed by 1979 c.284 §199]

44.120 [Amended by 1969 c.383 §1; repealed by 1979 c.284 §199]

44.130 [Amended by 1969 c 383 §2; repealed by 1979 c. 284 §199]

44.140 [Amended by 1977 c.789 §2; repealed by 1979 c.284 §199]

44.150 Service of subpena if witness concealed. A sheriff, his deputy or some person specially appointed by him, but none other, is authorized and required to break into any building or vessel in which a witness may be concealed to prevent the service of a subpena, and serve it on the witness.

44.160 [Repealed by 1979 c.284 §199]

44.170 [Repealed by 1961 c.413 §1 (44.171 enacted in lieu of 44.170)]

44.171 [1961 c.413 §2 (enacted in lieu of 44.170); repealed by 1979 c.284 §199]

44.180 [Repealed by 1979 c.284 §199]

44.190 [Repealed by 1979 c.284 §199]

44.200 [Repealed by 1979 c.284 §199]

44.210 [Repealed by 1979 c.284 §199]

44.220 [Repealed by 1979 c.284 §199]

44.230 [Amended by 1973 c.836 §326; repealed by 1979 c.284 §199]

44.240 Production of witness confined in state penal or correctional institution. (1) Whenever a court or judge makes an order for the temporary removal and production of a witness who is confined in a state correctional institution within this state before a court or officer for the purpose of being orally examined, the superintendent of the institution shall deliver, at the institution, the witness to the sheriff of the county in which the court or judge making the order is located.

(2) The sheriff shall give his signed receipt upon delivery to him of the witness under subsection (1) of this section, and shall be responsible for the custody of the witness until he returns the witness to the institution. Upon the return of the witness to the institution by the sheriff, the superintendent shall give his signed receipt therefor to the sheriff.

(3) At the time of the delivery of the witness to the sheriff under subsection (1) of this section, or at any time while the witness is in the custody of the sheriff as provided in subsection (2) of this section, the superintendent may deliver to the sheriff a list of persons who may communicate with the witness or with whom the

witness may communicate. Except as otherwise required by law, upon receipt of the list and while the witness is in his custody, the sheriff shall permit communication only between the witness and those persons designated by the list.

(4) The institution shall not be liable for any expense incurred in connection with the witness while the witness is in the custody of the sheriff as provided in subsection (2) of this section. If the witness is a party plaintiff, the sheriff shall recover costs of his care from the plaintiff, and shall have a lien upon any judgment for the plaintiff. [1955 c.523 §1; 1969 c.502 §2; 1973 c.836 §327]

44.310 [Repealed by 1981 c.892 §98]

44.320 Authority to take testimony and administer oath or affirmation. Every court, judge, clerk of a court, justice of the peace or notary public is authorized to take testimony in any action or proceeding, as are other persons in particular cases authorized by statute or the Oregon Rules of Civil Procedure. Every such court or officer is authorized to administer oaths and affirmations generally, and every such other person in the particular case authorized. [Amended by 1979 c.284 §81]

44.330 [Repealed by 1981 c.892 §98]

44.340 [Repealed by 1981 c.892 §98]

44.350 [Repealed by 1981 c.892 §98]

44.360 [Repealed by 1981 c.892 §98]

44.370 Witness presumed to speak truth; jury judges of credibility. A witness is presumed to speak the truth. This presumption, however, may be overcome by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character or motives, or by contradictory evidence. Where the trial is by the jury, they are the exclusive judges of his credibility.

FEES

44.410 Fees of witnesses. (1) As used in this section, "judge" means judge of a court of record, judge of a district court, justice of the peace, referee, sheriff or other officer.

(2) The fees of witnesses shall be $5 for each day's attendance before a judge. [Amended by 1959 c.158 §1]

44.420 [Repealed by 1959 c.158 §2]

44.430 Mileage of witnesses. Every witness whose fees are prescribed in ORS 44.410 who is required to travel in order to execute or perform his duties as a witness, in addition to the fees prescribed, is entitled to mileage at the rate of eight cents a mile, and no more, in going to and returning from the place where the service is performed.

44.440 [Amended by 1963 c.519 §24; 1977 c.408 §1; repealed by 1981 s.s. c.3 §141]

44.450 [Amended by 1977 c.593 §1; repealed by 1981 s.s. c.3 §141]

MEDIA PERSONS AS WITNESSES

44.510 Definitions for ORS 44.510 to 44.540. As used in ORS 44.510 to 44.540, unless the context requires otherwise:

(1) "Information" has its ordinary meaning and includes, but is not limited to, any written, oral, pictorial or electronically recorded news or other data.

(2) "Medium of communication" has its ordinary meaning and includes, but is not limited to, any newspaper, magazine or other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, or cable television system. Any information which is a portion of a governmental utterance made by an official or employe of government within the scope of his or her governmental function, or any political publication subject to ORS 260.512, 260.522 and 260.532, is not included within the meaning of "medium of communication."

(3) "Processing" has its ordinary meaning and includes, but is not limited to, the compiling, storing and editing of information.

(4) "Published information" means any information disseminated to the public.

(5) "Unpublished information" means any information not disseminated to the public, whether or not related information has been disseminated. "Unpublished information" includes, but is not limited to, all notes, outtakes, photographs, tapes or other data of whatever sort not themselves disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated. [1973 c.22 §2; 1979 c.190 §398]

44.520 Limitation on compellable testimony from media persons; search of media persons' papers, effects or work premises prohibited; exception. (1) No person connected with, employed by or engaged in any medium of communication to the public shall be required by a legislative, executive or judicial officer or body, or any other authority

having power to compel testimony or the production of evidence, to disclose, by subpena or otherwise:

(a) The source of any published or unpublished information obtained by the person in the course of gathering, receiving or processing information for any medium of communication to the public; or

(b) Any unpublished information obtained or prepared by the person in the course of gathering, receiving or processing information for any medium of communication to the public.

(2) No papers, effects or work premises of a person connected with, employed by or engaged in any medium of communication to the public shall be subject to a search by a legislative, executive or judicial officer or body, or any other authority having power to compel the production of evidence, by search warrant or otherwise. The provisions of this subsection, however, shall not apply where probable cause exists to believe that the person has committed, is committing or is about to commit a crime. [1973 c.22 §3; 1979 c.820 §1]

44.530 Application of ORS 44.520. (1) ORS 44.520 applies regardless of whether a person has disclosed elsewhere any of the information or source thereof, or any of the related information.

(2) ORS 44.520 continues to apply in relation to any of the information, or source thereof, or any related information, even in the event of subsequent termination of a person's connection with, employment by or engagement in any medium of communication to the public.

(3) The provisions of ORS 44.520 (1) do not apply with respect to the content or source of allegedly defamatory information, in civil action for defamation wherein the defendant asserts a defense based on the content or source of such information. [1973 c.22 §§4, 5; 1979 c.820 §2]

44.540 Effect of informant as witness. If the informant offers himself as a witness, it is deemed a consent to the examination also of a person described in ORS 44.520 on the same subject. [1973 c.22 §6]

44.610 [1973 c.136 §1; repealed by 1979 c.284 §199]

44.620 [1973 c.136 §§2,3; repealed by 1979 c 284 §199]

44.630 [1973 c.136 §4; repealed by 1979 c.284 §199]

44.640 [1973 c.136 §5; repealed by 1979 c.284 §199]