

Chapter 44

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EVIDENCE AND WITNESSES

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44.010 [Repealed by 1981 c.892 §98]

44.020 [Repealed by 1981 c.892 §98]

44.030 [Repealed by 1981 c.892 §98]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§1; 1975 c.726 §1; 1977 c.656 §1; 1977 c.677 §12a; 1979 c.284 §79; 1979 c.731 §2; 1979 c.744 §1a; 1979 c.769 §12b; repealed by 1981 c.892 §98]

44.050 [Repealed by 1981 c.892 §98]

44.060 [Repealed by 1981 c.892 §98]

44.070 [Repealed by 1981 c.892 §98]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. The witness 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 subpoena 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 the officer, and is also liable in an action by the party serving the witness with the subpoena, 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 the person has been served with a subpoena 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 subpoena was issued; and

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

(3) The affidavit may be taken by the officer and exonerates the officer 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 the witness 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44.095 [1973 c.386 §1; repealed by 1981 c.892 §98]

44.110 [Repealed by 1979 c.284 §199]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 subpoena if witness concealed. A sheriff, deputy or some person specially appointed by the sheriff, 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 subpoena, 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 Department of Corrections institution.

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

(2) The sheriff shall give the superintendent a signed receipt when taking custody of the witness under subsection (1) of this section. The sheriff shall be responsible for the custody of the witness until the sheriff returns the witness to the institution. Upon the return of the witness to the institution by the sheriff, the superintendent shall give a signed receipt therefor to the sheriff.

(3) When a witness is delivered to a 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 give 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 the custody of the sheriff, the sheriff shall permit communication only between the witness and those persons designated by the list.

(4) The sheriff and neither the institution nor the Department of Corrections shall be liable for any expense incurred in connection with the witness while the witness is in the custody of the sheriff as provided in sub-

section (2) of this section. If the witness is a party plaintiff, the sheriff shall recover costs of the care of the witness from the plaintiff, and shall have a lien upon any judgment for the plaintiff. In all other cases, the sheriff and not the witness shall be entitled to the witness fees and mileage to which the witness would otherwise be entitled under ORS 44.415 (2), or other applicable law. [1955 c.523 §1; 1969 c.502 §2; 1973 c.836 §327; 1987 c.320 §13; 1987 c.606 §6, 1989 c.980 §3a]

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, certified shorthand reporter 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 and is authorized to administer oaths and affirmations generally, and every such other person in the particular case authorized. [Amended by 1979 c.284 §81; 1989 c.1055 §13]

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 the witness testifies, by the character of the testimony of the witness, or by evidence affecting the character or motives of the witness, or by contradictory evidence. Where the trial is by the jury, they are the exclusive judges of the credibility of the witness.

44.410 [Amended by 1959 c.158 §1; repealed by 1989 c.980 §24]

FEEES

44.415 Fees and mileage of witnesses.

(1) Except as provided in subsection (2) of this section, a person is entitled to receive \$30 for each day's attendance as a witness and mileage reimbursement at the rate of 25 cents a mile if the person is required to travel from a place within or outside this state in order to perform duties as a witness. Total mileage reimbursement shall not exceed the necessary cost of transportation on reasonably available common carriers.

(2) In any criminal proceeding, any proceeding prosecuted by a public body or any proceeding where a public body is a party, a person is entitled to receive \$5 for each day's attendance as a witness and mileage reimbursement at the rate of eight cents a mile if the person is required to travel from a place within or outside this state in order to

perform duties as a witness. Total mileage reimbursement shall not exceed the necessary cost of transportation on reasonably available common carriers.

(3) As used in this section, "public body" means any state, city, county, school district, other political subdivision, municipal corporation, public corporation and any instrumentality thereof. [1989 c.980 §2]

44.420 [Repealed by 1959 c.158 §2]

44.430 [Repealed by 1989 c.980 §24]

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 employee 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 subpoena 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 the informant 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]

EVIDENCE AND WITNESSES
