

**Enrolled**  
**House Bill 3348**

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER .....

AN ACT

Relating to search warrants; amending ORS 133.545 and 133.555; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** ORS 133.545 is amended to read:

133.545. (1) A search warrant may be issued only by a judge. A search warrant issued by a judge of the Supreme Court or the Court of Appeals may be executed anywhere in the state. Except as otherwise provided in subsection (2) of this section, a search warrant issued by a judge of a circuit court may [*only*] be executed **only** within the judicial district in which the court is located. A search warrant issued by a justice of the peace may [*only*] be executed **only** within the county in which the justice court is located. A search warrant issued by a municipal judge authorized to exercise the powers and perform the duties of a justice of the peace may [*only*] be executed **only** in the municipality in which the court is located.

(2) Notwithstanding subsection (1) of this section, a circuit court judge may authorize execution of a search warrant outside [*of*] the judicial district in which the court is located, if the judge finds from the application that one or more of the objects of the search relate to an offense committed or triable within the judicial district in which the court is located. If the warrant authorizes the installation or tracking of a mobile tracking device, the officer may track the device in any county to which it is transported.

(3) Application for a search warrant may be made only by a district attorney [*or by any police officer*], **a police officer or a special agent employed under ORS 131.805.**

(4) 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 the objects of the search 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.

(5) Instead of the written affidavit described in subsection (4) of this section, the judge may take an oral statement under oath. The oral statement shall be recorded and transcribed. The transcribed statement [*shall be considered to be*] **is** 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.

(6)(a) In addition to the procedure set out in subsection (5) of this section, the proposed warrant and the affidavit may be sent to the court by facsimile transmission or any similar electronic transmission that delivers a complete printable image of the signed affidavit and proposed warrant.

The affidavit may have a notarized acknowledgment, or the affiant may swear to the affidavit by telephone. A judge administering an oath telephonically under this subsection must execute a declaration that recites the manner and time of the oath's administration. The declaration must be filed with the return.

(b) When a court issues a warrant upon an application made under paragraph (a) of this subsection:

(A) The court may transmit the signed warrant to the [*district attorney or police officer*] **person making application under subsection (3) of this section** by means of facsimile transmission or similar electronic transmission, as described in paragraph (a) of this subsection. The court shall file the original signed warrant and a printed image of the [*district attorney's or police officer's*] application with the return.

(B) The [*district attorney or police officer*] **person making application** shall deliver the original signed affidavit to the court with the return. If the affiant swore to the affidavit by telephone, the affiant must so note next to the affiant's signature on the affidavit.

**SECTION 2.** ORS 133.555 is amended to read:

133.555. (1) Before acting on the application, the judge may examine on oath the affiants, and the applicant and any witnesses the applicant may produce, and may call such witnesses as the judge considers necessary to a decision. The judge shall make and keep a record of any testimony taken before the judge. 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*] **133.545** and that, on the basis of the record made before the judge, there is probable cause to believe that the search will discover things specified in the application and subject to seizure under ORS 133.535, the judge shall issue a search warrant based on the finding of the judge and in accordance with the requirements of ORS 133.545 to 133.615. If the judge does not so find, the judge shall deny the application.

(3) The judge may orally authorize a police officer, [*or*] a district attorney **or a special agent employed under ORS 131.805** 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.

**SECTION 3. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.**

**Passed by House April 29, 2009**

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Chief Clerk of House

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Speaker of House

**Passed by Senate May 29, 2009**

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President of Senate

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

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Secretary of State