

# House Bill 3348

Sponsored by COMMITTEE ON JUDICIARY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes special agents employed by Governor to apply for search warrants and sign judge's name on duplicate original warrant.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to search warrants; amending ORS 133.545 and 133.555; and declaring an emergency.

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

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

5 133.545. (1) A search warrant may be issued only by a judge. A search warrant issued by a  
6 judge of the Supreme Court or the Court of Appeals may be executed anywhere in the state. Except  
7 as otherwise provided in subsection (2) of this section, a search warrant issued by a judge of a cir-  
8 cuit court may [*only*] be executed **only** within the judicial district in which the court is located. A  
9 search warrant issued by a justice of the peace may [*only*] be executed **only** within the county in  
10 which the justice court is located. A search warrant issued by a municipal judge authorized to ex-  
11 ercise the powers and perform the duties of a justice of the peace may [*only*] be executed **only** in  
12 the municipality in which the court is located.

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

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

21 (4) The application shall consist of a proposed warrant in conformance with ORS 133.565, and  
22 shall be supported by one or more affidavits particularly setting forth the facts and circumstances  
23 tending to show that the objects of the search are in the places, or in the possession of the indi-  
24 viduals, to be searched. If an affidavit is based in whole or in part on hearsay, the affiant shall set  
25 forth facts bearing on any unnamed informant's reliability and shall disclose, as far as possible, the  
26 means by which the information was obtained.

27 (5) Instead of the written affidavit described in subsection (4) of this section, the judge may take  
28 an oral statement under oath. The oral statement shall be recorded and transcribed. The transcribed  
29 statement [*shall be considered to be*] **is** an affidavit for the purposes of this section. In such cases,  
30 the recording of the sworn oral statement and the transcribed statement shall be certified by the  
31 judge receiving it and shall be retained as a part of the record of proceedings for the issuance of

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1 the warrant.

2 (6)(a) In addition to the procedure set out in subsection (5) of this section, the proposed warrant  
 3 and the affidavit may be sent to the court by facsimile transmission or any similar electronic  
 4 transmission that delivers a complete printable image of the signed affidavit and proposed warrant.  
 5 The affidavit may have a notarized acknowledgment, or the affiant may swear to the affidavit by  
 6 telephone. A judge administering an oath telephonically under this subsection must execute a dec-  
 7 laration that recites the manner and time of the oath’s administration. The declaration must be filed  
 8 with the return.

9 (b) When a court issues a warrant upon an application made under paragraph (a) of this sub-  
 10 section:

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

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

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

20 133.555. (1) Before acting on the application, the judge may examine on oath the affiants, and  
 21 the applicant and any witnesses the applicant may produce, and may call such witnesses as the  
 22 judge considers necessary to a decision. The judge shall make and keep a record of any testimony  
 23 taken before the judge. The record shall be admissible as evidence on any motion to suppress.

24 (2) If the judge finds that the application meets the requirements of ORS [*133.535*] **133.545** and  
 25 that, on the basis of the record made before the judge, there is probable cause to believe that the  
 26 search will discover things specified in the application and subject to seizure under ORS 133.535, the  
 27 judge shall issue a search warrant based on the finding of the judge and in accordance with the  
 28 requirements of ORS 133.545 to 133.615. If the judge does not so find, the judge shall deny the ap-  
 29 plication.

30 (3) The judge may orally authorize a police officer, [*or*] a district attorney **or a special agent**  
 31 **employed under ORS 131.805** to sign the judge’s name on a duplicate original warrant. A duplicate  
 32 original warrant shall be a search warrant for the purposes of ORS 133.535 to 133.615, and it shall  
 33 be returned to the judge as provided in ORS 133.615. In such cases a judge shall enter on the face  
 34 of the original warrant the exact time of the issuance of the warrant and shall sign and file the  
 35 original warrant in the manner provided by law.

36 (4) Until the warrant is executed, the proceedings upon application for a search warrant shall  
 37 be conducted with secrecy appropriate to the circumstances.

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