

## SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2399

By COMMITTEE ON JUDICIARY

May 23

1 On page 1 of the printed A-engrossed bill, line 2, after “ORS” insert “133.545.”.

2 On page 6, after line 7, insert:

3 “**SECTION 7.** ORS 133.545 is amended to read:

4 “133.545. (1) A search warrant may be issued only by a judge. A search warrant issued by a  
5 judge of the Supreme Court or the Court of Appeals may be executed anywhere in the state. Except  
6 as otherwise provided in subsections (2), (3) and (4) of this section, a search warrant issued by a  
7 judge of a circuit court may be executed only within the judicial district in which the court is lo-  
8 cated. A search warrant issued by a justice of the peace may be executed only within the county  
9 in which the justice court is located. A search warrant issued by a municipal judge authorized to  
10 exercise the powers and perform the duties of a justice of the peace may be executed only in the  
11 municipality in which the court is located.

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

18 “(3) Notwithstanding subsection (1) of this section, a circuit court judge duly assigned pursuant  
19 to ORS 1.615 to serve as a judge pro tempore in a circuit court may authorize execution of a search  
20 warrant in any judicial district in which the judge serves as judge pro tempore if the application  
21 requesting the warrant includes an affidavit showing that a regularly elected or appointed circuit  
22 court judge for the judicial district is not available, whether by reason of conflict of interest or  
23 other reason, to issue the warrant within a reasonable time.

24 “(4) Notwithstanding subsection (1) of this section, a circuit court judge may authorize execution  
25 of a search warrant outside the judicial district in which the court is located if the judge finds that:

26 “(a) The search relates to one of the following offenses involving a victim who was 65 years of  
27 age or older at the time of the offense:

28 “(A) Criminal mistreatment in the first degree as described in ORS 163.205 (1)(b)(D) or (E);

29 “(B) Identity theft;

30 “(C) Aggravated identity theft;

31 “(D) Computer crime;

32 “(E) Fraudulent use of a credit card;

33 “(F) Forgery in any degree;

34 “(G) Criminal possession of a forged instrument in any degree;

35 “(H) Theft in any degree; or

1       “(I) Aggravated theft in the first degree;

2       “(b) The objects of the search consist of financial records; and

3       “(c) The person making application for the search warrant is not able to ascertain at the time  
4 of the application the proper place of trial for the offense described in paragraph (a) of this sub-  
5 section.

6       “(5) Application for a search warrant may be made only by a district attorney, a police officer  
7 or a special agent employed under ORS 131.805.

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

14       “(7) Instead of the written affidavit described in subsection (6) of this section, the judge may  
15 take an oral statement under oath. The oral statement shall be recorded and a copy of the recording  
16 submitted to the judge who took the oral statement. In such cases, the judge shall certify that the  
17 recording of the sworn oral statement is a true recording of the oral statement under oath and shall  
18 retain the recording as part of the record of proceedings for the issuance of the warrant. The re-  
19 cording shall constitute an affidavit for the purposes of this section. The applicant shall retain a  
20 copy of the recording and shall provide a copy of the recording to the district attorney if the district  
21 attorney is not the applicant.

22       “(8)(a) In addition to the procedure set out in subsection (7) of this section, the proposed war-  
23 rant and the affidavit may be sent to the court by facsimile transmission or any similar electronic  
24 transmission that delivers a complete printable image of the signed affidavit and proposed warrant.  
25 The affidavit may have a notarized acknowledgment, or the affiant may swear to the affidavit by  
26 telephone. **If the affiant swears to the affidavit by telephone, the affidavit may be signed**  
27 **electronically.** A judge administering an oath telephonically under this subsection must execute a  
28 declaration that recites the manner and time of the oath’s administration. The declaration must be  
29 filed with the return.

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

32       “(A) The court may transmit the signed warrant to the person making application under sub-  
33 section (5) of this section by means of facsimile transmission or similar electronic transmission, as  
34 described in paragraph (a) of this subsection. The court shall file the original signed warrant and  
35 a printed image of the application with the return.

36       “(B) The person making application shall deliver the original signed affidavit to the court with  
37 the return. If the affiant swore to the affidavit by telephone, the affiant must so note next to the  
38 affiant’s signature on the affidavit.”.

39       In line 8, delete “7” and insert “8”.

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