

Requested by SENATE COMMITTEE ON JUDICIARY (at the request of the Department of Justice)

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2399**

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

3 On page 6, after line 7, insert:

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

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

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

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

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

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

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

16 “(B) Identity theft;

17 “(C) Aggravated identity theft;

18 “(D) Computer crime;

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

20 “(F) Forgery in any degree;

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

22 “(H) Theft in any degree; or

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

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

25 “(c) The person making application for the search warrant is not able to
26 ascertain at the time of the application the proper place of trial for the of-
27 fense described in paragraph (a) of this subsection.

28 “(5) Application for a search warrant may be made only by a district at-
29 torney, a police officer or a special agent employed under ORS 131.805.

30 “(6) The application shall consist of a proposed warrant in conformance

1 with ORS 133.565, and shall be supported by one or more affidavits partic-
2 ularly setting forth the facts and circumstances tending to show that the
3 objects of the search are in the places, or in the possession of the individ-
4 uals, to be searched. If an affidavit is based in whole or in part on hearsay,
5 the affiant shall set forth facts bearing on any unnamed informant's reli-
6 ability and shall disclose, as far as possible, the means by which the infor-
7 mation was obtained.

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

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

28 “(b) When a court issues a warrant upon an application made under par-
29 agraph (a) of this subsection:

30 “(A) The court may transmit the signed warrant to the person making

1 application under subsection (5) of this section by means of facsimile trans-
2 mission or similar electronic transmission, as described in paragraph (a) of
3 this subsection. The court shall file the original signed warrant and a
4 printed image of the application with the return.

5 “(B) The person making application shall deliver the original signed affi-
6 davit to the court with the return. If the affiant swore to the affidavit by
7 telephone, the affiant must so note next to the affiant’s signature on the af-
8 fidavit.”.

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

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