

Enrolled
Senate Bill 954

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to crime; amending ORS 133.525, 133.545, 133.575 and 166.725; and declaring an emergency.

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

SECTION 1. ORS 133.525 is amended to read:

133.525. As used in ORS 133.525 to 133.703, unless the context requires otherwise:

(1) **“Interrelated conduct” means engaging in at least two incidents of activity that:**

(a) **Have the same or similar intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics, including a connection to the same enterprise;**

(b) **Are not isolated incidents; and**

(c) **Violate one or more provisions of ORS 475.005 to 475.285, 475.752 to 475.980, 475A.210 to 475A.722, 475C.005 to 475C.525 or 475C.770 to 475C.919.**

(2) **“Judge” means any judge of the circuit court, the Court of Appeals, the Supreme Court, any justice of the peace or municipal judge authorized to exercise the powers and perform the duties of a justice of the peace.**

[(2)] (3) **“Police officer” means:**

(a) A member of the Oregon State Police;

(b) A sheriff or municipal police officer, a police officer commissioned by a university under ORS 352.121 or 353.125 or an authorized tribal police officer as defined in ORS 181A.940;

(c) An investigator of a district attorney’s office if the investigator is or has been certified as a peace officer in this or any other state;

(d) An investigator of the Criminal Justice Division of the Department of Justice;

(e) A humane special agent as defined in ORS 181A.345; or

(f) A regulatory specialist exercising authority described in ORS 471.775 (2).

SECTION 2. 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 subsections (2), (3) and (4) of this section, a search warrant issued by a judge of a circuit court may be executed only within the judicial district in which the court is located. A search warrant issued by a justice of the peace may 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 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 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 **or that the search involves both conduct that occurred in the judicial district in which the court is located and interrelated conduct that occurred in one or more other judicial districts in this state. If a judge denies a search warrant for interrelated conduct that occurred in more than one judicial district, an application for the same search warrant may not be presented to a judge in another judicial district unless the other judicial district is one in which one or more of the objects of the search relate to an offense committed or triable within the other judicial district.** 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) Notwithstanding subsection (1) of this section, a circuit court judge duly assigned pursuant to ORS 1.615 to serve as a judge pro tempore in a circuit court, **or a senior judge duly assigned to serve in a circuit court under ORS 1.300 and who has authorization from the presiding judge of that judicial district,** may authorize execution of a search warrant in any judicial district in which the judge [*serves as judge pro tempore if the application requesting the warrant includes an affidavit showing that a regularly elected or appointed circuit court judge for the judicial district is not available, whether by reason of conflict of interest or other reason, to issue the warrant within a reasonable time*] **is assigned to serve as judge pro tempore or as senior judge.**

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

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

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

(B) Identity theft;

(C) Aggravated identity theft;

(D) Computer crime;

(E) Fraudulent use of a credit card;

(F) Forgery in any degree;

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

(H) Theft in any degree; or

(I) Aggravated theft in the first degree;

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

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

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

(6) 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.

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

(8)(a) In addition to the procedure set out in subsection (7) 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. If the affiant swears to the affidavit by telephone, the affidavit may be signed electronically. 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 person making application under subsection (5) 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 application with the return.

(B) The 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 3. ORS 133.575 is amended to read:

133.575. (1) Except as provided in ORS 136.583, a search warrant may be executed only within the period and at the times authorized by the warrant and only by a police officer. A police officer charged with its execution may be accompanied by such other persons as may be reasonably necessary for the successful execution of the warrant with all practicable safety. **Other persons may include, but are not limited to:**

(a) **Civil enforcement officers;**

(b) **Victim services providers;**

(c) **Law enforcement agency personnel other than police officers;**

(d) **Employees of a utility company;**

(e) **The State Fire Marshal and assistants to the State Fire Marshal, as described in ORS 476.060;**

(f) **Employees of a county animal shelter or other animal care agency;**

(g) **Towers;**

(h) **Personnel from federal, state or local regulatory agencies;**

(i) **Emergency medical services providers, as defined in ORS 682.025; and**

(j) **Contractors and other persons assisting with the destruction of waste.**

(2) The executing officer shall, before entering the premises, give appropriate notice of the identity, authority and purpose of the officer to the person to be searched, or to the person in apparent control of the premises to be searched, as the case may be.

(3) Except as provided in ORS 133.619, before undertaking any search or seizure pursuant to the warrant, the executing officer shall read and give a copy of the warrant to the person to be searched, or to the person in apparent control of the premises to be searched. If the premises are unoccupied or there is no one in apparent control, the officer shall leave a copy of the warrant suitably affixed to the premises.

SECTION 4. ORS 166.725 is amended to read:

166.725. (1) Any circuit court may, after making due provision for the rights of innocent persons, enjoin violations of the provisions of ORS 166.720 (1) to (4) by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering a divestiture by the defendant of any interest in any enterprise, including real property.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of the provisions of ORS 166.720 (1) to (4).

(c) Ordering the dissolution or reorganization of any enterprise.

(d) Ordering the suspension or revocation of a license, permit or prior approval granted to any enterprise by any agency of the state.

(e) Ordering the forfeiture of the charter of a corporation organized under the laws of this state, or the revocation of a certificate of authority authorizing a foreign corporation to conduct business within this state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of ORS 166.720 (1) to (4) and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate of authority revoked.

(2) All property, real or personal, including money, used in the course of, derived from or realized through conduct in violation of a provision of ORS 166.715 to 166.735 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. Forfeited property shall be distributed as follows:

(a)(A) All moneys and the clear proceeds of all other property forfeited shall be deposited with the State Treasurer to the credit of the Common School Fund.

(B) For purposes of subparagraph (A) of this paragraph, "clear proceeds" means proceeds of forfeited property less costs of maintaining and preserving property pending its sale or other disposition, less costs of sale or disposition and, if the Department of Justice has not otherwise recovered its costs and expenses of the investigation and prosecution leading to the forfeiture, less 30 percent of the remaining proceeds of the property which is awarded to the department as reasonable reimbursement for costs of such investigation and prosecution.

(b) Any amounts awarded to the Department of Justice pursuant to paragraph (a) of this subsection shall be deposited in the Criminal Justice Revolving Account in the State Treasury.

(3) Property subject to forfeiture under this section may be seized by a police officer, as defined in ORS 133.525 [(2)], upon court process. Seizure without process may be made if:

(a) The seizure is incident to a lawful arrest or search or an inspection under an administrative inspection warrant; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) In the event of a seizure under subsection (3) of this section, a forfeiture proceeding shall be instituted promptly. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the police officer making the seizure, subject only to the order of the court. When property is seized under this section, pending forfeiture and final disposition, the police officer may:

(a) Place the property under seal;

(b) Remove the property to a place designated by the court; or

(c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(5) The Attorney General, any district attorney or any state agency having jurisdiction over conduct in violation of a provision of ORS 166.715 to 166.735 may institute civil proceedings under this section. In any action brought under this section, the circuit court shall give priority to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper. The Attorney General, district attorney or state agency bringing an action under this section may be awarded, upon entry of a judgment in favor of the state, costs of investigation and litigation, reasonably incurred. Amounts recovered may include costs and expenses of state and local governmental departments and agencies incurred in connection with the investigation or litigation.

(6)(a) Any aggrieved person may institute a proceeding under subsection (1) of this section:

(A) If the proceeding is based upon racketeering activity for which a criminal conviction has been obtained, any rights of appeal have expired and the action is against the individual convicted of the racketeering activity; or

(B) If the person is entitled to pursue a cause of action under subsection (7)(a)(B) of this section.

(b) In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that no showing of special or irreparable damage to the person shall have to be made. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

(7)(a) Any person who is injured by reason of any violation of the provisions of ORS 166.720 (1) to (4) shall have a cause of action for three-fold the actual damages sustained and, when appropriate, punitive damages:

(A) If a criminal conviction for the racketeering activity that is the basis of the violation has been obtained, any rights of appeal have expired and the action is against the individual convicted of the racketeering activity; or

(B) If the violation is based on racketeering activity as defined in ORS 166.715 (6)(a)(B) to (J), (K) as it relates to burglary and criminal trespass, (L) to (P), (S), (T), (U), (V), (X) to (Z), (AA) to (EE), (LL), (MM) or (PP) to (WW).

(b) The defendant or any injured person may demand a trial by jury in any civil action brought pursuant to this subsection.

(c) Any injured person shall have a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds.

(8) An investigative agency may bring an action for civil penalties for any violation of ORS 166.720 (1) to (4). Upon proof of any such violation, the court shall impose a civil penalty of not more than \$250,000.

(9) A judgment rendered in favor of the state in any criminal proceeding under ORS 166.715 to 166.735 shall estop the defendant in any subsequent civil action or proceeding brought by the state or any other person as to all matters as to which such judgment would be an estoppel as between the state and the defendant.

(10) The Attorney General may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or (7) of this section if the Attorney General certifies that, in the opinion of the Attorney General, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Attorney General instituted the action or proceeding.

(11)(a) Notwithstanding any other provision of law, a criminal or civil action or proceeding under ORS 166.715 to 166.735 may be commenced at any time within five years after the conduct in violation of a provision of ORS 166.715 to 166.735 terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent or restrain any violation of the provisions of ORS 166.715 to 166.735, the running of the period of limitations prescribed by this section with respect to any cause of action arising under subsection (6) or (7) of this section which is based in whole or in part upon any matter complained of in any such prosecution, action or proceeding shall be suspended during the pendency of such prosecution, action or proceeding and for two years following its termination.

(b) A cause of action arising under subsection (6)(a)(A) or (7)(a)(A) of this section accrues when the criminal conviction for the underlying activity is obtained. In addition to any suspension of the running of the period of limitations provided for in paragraph (a) of this subsection, the period of limitations prescribed by paragraph (a) of this subsection is suspended during any appeal from the criminal conviction for the underlying activity.

(12) The application of one civil remedy under any provision of ORS 166.715 to 166.735 shall not preclude the application of any other remedy, civil or criminal, under ORS 166.715 to 166.735 or any

other provision of law. Civil remedies under ORS 166.715 to 166.735 are supplemental and not mutually exclusive.

(13) Notwithstanding subsection (6) or (7) of this section, a person may not institute a proceeding under subsection (6) of this section and does not have a cause of action under subsection (7) of this section if the conduct that is the basis of the proceeding or action could also be the basis of a claim of discrimination because of sex that constitutes sexual harassment.

(14) In an action brought under the provisions of this section by a person other than the Attorney General, a district attorney or a state agency, the court may award reasonable attorney fees to the prevailing party. In a civil action brought under the provisions of this section by the Attorney General, a district attorney or a state agency:

(a) The court may award reasonable attorney fees to the Attorney General, district attorney or state agency if the Attorney General, district attorney or state agency prevails in the action; and

(b) The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the Attorney General, district attorney or state agency had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

SECTION 5. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by Senate April 11, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 31, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State