CRIMINAL LAW, EVIDENCE AND ARREST

OREGON STATE POLICE MANUAL

INDEX

BOARD ON POLICE STANDARDS AND TRAINING
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Section 1. Members of the department are charged with the duty of arresting from time to time persons who have committed or attempted to commit crimes. In so doing they may exercise, but not exceed, the authority conferred by law upon peace officers.

Section 2. Arrest is the taking of a person into custody that he may be held to answer for a crime, and is made by an actual restraint of such person or by his submission to custody. The person arrested shall not be subjected to more restraint than is necessary and proper for his arrest and detention (ORS 133.260). An arrest may be made either

(a) By a peace officer under a warrant,
(b) By a peace officer without a warrant, or
(c) By a private person.

Section 3. A peace officer is defined by statute as a sheriff of a county, constable of a precinct, or marshal or policeman of a town or a member of the Oregon State Police and, too, by the provisions of ORS 181.030 quoted in section 1, Article III hereof, members of the department are specifically authorized and empowered as peace officers.

Section 4. A warrant of arrest is an order in writing, in the name of the state, signed by a magistrate with his name of office, commanding the arrest of the defendant. A magistrate is required by law to issue a warrant of arrest when satisfied from the allegations of a verified complaint or information that the crime complained of has been committed and that there is probable cause to believe the person charged committed it. A warrant of arrest must specify the name of the defendant, or, if it be unknown to the magistrate, the defendant may be designated by a fictitious name with a statement therein that his true name is unknown, and it must also state a crime in respect to which the magistrate has authority to issue the warrant.

Section 5. A magistrate is an officer having power to issue a warrant for the arrest of a person charged with the commission of a crime. The following are magistrates:

(a) Justices of the Supreme Court;
(b) Judges of the Circuit Court;
(c) District Judges;
(d) County Judges and justices of the peace;
(e) Municipal officers authorized to exercise the powers and perform the duties of a justice of the peace.

Section 6. (a) A magistrate, other than a justice of the Supreme Court, has authority to issue a warrant only for a crime committed or triable within his county. The warrant must be directed to a peace officer in the State of Oregon and may be executed by any such officer to whom it may be delivered in the county in which it is issued or in any other county of the state.

(b) A warrant issued by a circuit court or district court for the arrest of a person for failure to appear in answer to a traffic citation may be served without further endorsement, in any county in the state.

Section 7. If the crime for which a warrant has been issued be a felony, the arrest may be made on any day and at any time of the day or night; but if it be a misdemeanor, the arrest can not be made on Sunday, unless upon the direction of the magistrate endorsed upon the warrant.

Section 8. A peace officer may, without a warrant, arrest a person

(a) For a crime committed or attempted in his presence;

(b) When the person arrested has committed a felony, although not in his presence;

(c) When a felony has in fact been committed or a major traffic offense and he has reasonable cause for believing the person arrested to have committed it;

(d) When notified by telegraph, telephone, radio, or other mode of communication, by another peace officer of any state that such peace officer holds in his hands a duly issued warrant for the arrest of such person charged with a crime committed within his jurisdiction;

(e) For any violation of law regulating the speed of motor vehicles when the speed has been checked by radar and if the arresting officer, in uniform, has either observed the radar recording of the speed of the offending vehicle or has received from an officer who did observe the reading a message dispatched by radio immediately after the recording, giving the license number of the vehicle and its radar recorded speed (ORS 483.112).

Section 9. In all other instances a warrant must be procured before an arrest is made. Unlawful arrests attempted by members may be lawfully resisted; unlawful arrests made by them render them civilly and sometimes criminally liable. The protection of the law is given members who, in good faith and within the scope of their authority and without unnecessary force, execute a warrant regularly issued and valid on its face. It is when acting without a warrant that danger and difficulty may be encountered; therefore, the following deductions should be carefully noted:

(a) They may arrest without a warrant for a crime, either a felony or a misdemeanor, committed, or attempted, in their presence. To be committed, or attempted, in their presence it must be committed, or attempted, within the range of their senses. Knowledge of what was done and who did it must be brought to them by their own senses; they cannot gain that knowledge from others. If the crime be a misdemeanor, the arrest must be made then and there and not thereafter or elsewhere, unless in fresh pursuit. They cannot make an arrest without a warrant, for a misdemeanor not committed in their presence except for a major traffic offense or when notified by another peace officer of any state that the latter holds a duly issued warrant commanding it.

(b) They may arrest without a warrant a person they have reasonable cause to believe guilty of a felony that has actually been committed. Manifestly, if there is no crime there can be no lawful arrest, and their sincere belief and good faith will not supply the lack; if they make an arrest without a warrant in such circumstances, they must know, at their peril, that a felony has been committed. Not only must they know a felony has been committed, but they must have reasonable cause for believing the person they are about to arrest committed it. Mere suspicion is not enough; suspicion is distrust aroused by little evidence or none at all. To have a reasonable cause for their belief, they must have knowledge of some fact or facts that would lead a discreet and prudent person to the same belief.

Section 10. Without making an arrest a police officer may issue a citation to the driver of a vehicle at the scene of a traffic accident when, based upon his personal investigation, he has reasonable grounds to believe that the person to be cited committed a traffic offense in connection with the accident.

Section 11. (a) A private person may arrest another for the causes specified in paragraphs (a), (b) and (c) of section 8 of this article, and, in such event, must without unreasonable delay take the person arrested before a

magistrate or deliver him to a peace officer. If a member accepts custody of a person so arrested he may, without a warrant, take such person before a magistrate and must do so without delay; but unless he has such knowledge of the facts as will enable him to verify by his oath the information or complaint he should require, as a condition of acceptance of custody, that the private person who made the arrest accompany him for that purpose.

(b) A private person may commence an action for a traffic offense by certification of the complaint before a magistrate, clerk or deputy clerk of the court, in which event, the court shall cause the summons to be delivered to the defendant.

Section 12. To make an arrest with or without a warrant, members may break open any outer or inner door or window of a dwelling house, or otherwise, if after notice of their purpose and authority they be refused admittance, or when necessary for their liberation or the liberation of any person who, having entered for the purpose of making an arrest, is detained therein.

Section 13. In making an arrest members must inform the person being arrested of their authority and purpose. When acting under the authority of a warrant, they must so inform such person and show the warrant if required by him; if acting without a warrant, they must inform him of their authority and the cause of the arrest except when he is in the actual commission of a crime or is being pursued immediately after its commission or is an escapee. If, after notice of their intention to arrest him, such person flees or forcibly resists, members may use all necessary and proper means to effect the arrest.

Section 14. If a person arrested escapes from their custody or is rescued, members must immediately pursue and may retake him at any time and in any place in the state. In making such recapture they may use all the means and do any act necessary or proper in making an original arrest.

Section 15. In making an arrest or a recapture members are warranted in using only such force as is necessary and proper in taking the person into custody and detaining him. They shall use dangerous weapons only when they, or some other person or persons, are assailed and in danger of great bodily harm or when actually necessary in arresting or retaking a felon; insulting, vile or abusive language never justifies their use. Handcuffs should be applied if the member is convinced, from the character and behavior of the person in custody and from the circumstances of the case, that such action is necessary.

Section 16. Upon making an arrest, whether for a felony or misdemeanor, members shall immediately search the person arrested for concealed weapons to avoid the possibility of assault or escape and for any incriminating evidence.

Section 17. When money or other property is taken from a person arrested, members taking it must give duplicate receipts therefor specifying particularly the amount of money or kind of property taken, one to the person arrested and the other to the magistrate who examines the charge or, if the arrest be after indictment found, to the clerk of the court wherein the action is pending.

Section 18. Members shall take care that a person in custody, either at the time of arrest or while being taken to a magistrate or to jail, does not destroy, conceal, lose, or otherwise dispose of, anything he may have on his person or in his possession at the time of arrest. Members shall be alert in listening to and noting any voluntary statement or admission made by a prisoner at the time of his arrest or thereafter while in their custody so that such statement or admission may be repeated by such members under oath if necessary.

Section 19. Members are authorized by ORS 181.190, to direct and command the assistance of any able-bodied citizen when necessary in accomplishing the purpose of their office. ORS 133.230 declares that every person must aid a peace officer in the execution of a warrant if the officer requires his aid and is present and acting in its execution.

PROCEDURE SUBSEQUENT TO ARREST

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Section 1. The law is emphatic in its demand that a person arrested, with or without a warrant, be taken before a magistrate without delay. This is a mandatory requirement, subject only to an exception in the case of a traffic offender who may be released for later appearance upon issuance of a citation, to assure that he will be promptly and judicially informed of the charge against him and of his rights in connection therewith and afforded an opportunity to give bail if the crime be bailable. A member who has made a lawful arrest but who has failed thereafter to follow this prescribed procedure is liable to an action for damages for false imprisonment; this liability renders highly pertinent the following reflections:

(a) The person arrested must be taken before a magistrate. This demand is not satisfied by taking him before the district attorney, a police agency, or some self-constituted inquisitorial body; the law explicitly directs that he be taken before a magistrate, and he may not meantime be taken before any other person, official or tribunal against his will and without his consent.

(b) The person arrested must be taken before the magistrate without delay. This means it must be done promptly and within a reasonable time under all the facts and circumstances of the particular case. It is unreasonable delay, therefore, upon which an action for damages may be based. Delay for further investigation or while an attempt is made to procure a confession is unreasonable. Where the practice prevails for the district attorney to prepare the information or complaint, the person arrested may be detained while the member promptly repairs to that official's office for that purpose; he may be detained, too, while the member diligently seeks the magistrate who issued the warrant, or an accessible magistrate if the arrest was made without a warrant, and, in this connection, members are reminded that the powers of a magistrate in criminal actions may be exercised on a legal holiday. Delay caused by the person arrested or to which he has consented is not unreasonable.

(c) In the case of a person arrested for a violation of laws providing for the registration and regulating the operation of motor vehicles, the demand for an immediate appearance before a magistrate may be waived. ORS 484.150 directs that a traffic citation conforming to the requirements set forth in the Act shall be used for all traffic offenses and ORS 484.120 provides that security for the appearance of a person arrested for such an offense may be taken by the arresting officer if it appears to him that a person who is arrested for a violation of any of the provisions of the laws restricting vehicle weights and sizes (ORS 483.502-483.536) might fail to respond to a citation or there is no accessible magistrate. Under these circumstances the arrested person's unexpired card of membership in an organized automobile association qualified under the laws of this state may be taken as security provided the amount does not exceed fifty dollars, or the arrested person's unexpired guaranteed arrest bond certificate may be accepted, in an amount not in excess of two hundred dollars (ORS 747.082), for a traffic offense which is neither a felony nor a violation of the code prohibiting the operation of a vehicle while under the influence of intoxicating liquor or narcotics. A member of the department who has made such an arrest in such circumstances shall give his receipt in writing for the security accepted and issue a citation notifying the offender when and where to appear in answer to the charge.

Section 2. If the crime charged in the warrant be a felony, the officer making the arrest must take the defendant before the magistrate who issued it and deliver to such magistrate the warrant with his return endorsed thereon and subscribed by him; if such magistrate be absent or unable to act, the defendant may be taken before, and the warrant with the return duly endorsed thereon delivered to, the nearest or most accessible magistrate in the same county.

Section 3. If the crime charged in the warrant be a misdemeanor and the defendant be arrested in the county in which it is issued, the defendant must be taken before, and the warrant with return duly endorsed thereon delivered to, the magistrate who issued the warrant, or the nearest or most accessible magistrate in the county if the magistrate who issued it be absent or unable to act. If the defendant be arrested in another county, the officer must upon being required by the defendant, take him before a magistrate of that county who must admit the defendant to bail and take bail from him accordingly; but if bail be not given the officer must take him before the magistrate who issued the warrant or the nearest or most accessible magistrate in that county.

Section 4. When the arrest is made without a warrant within the county in which the crime was committed, the person arrested must be taken before the nearest or most accessible magistrate in that county; when the crime was committed in another county the authorities of that county should be immediately advised and their instructions awaited.

Section 5. Except as otherwise provided in Article XIV hereof, a person arrested with or without a warrant and taken before a magistrate is there given a trial if such crime be a misdemeanor within the jurisdiction of the magistrate or a preliminary hearing if the crime charged be a felony or a misdemeanor not triable by the magistrate.

(a) If the proceeding be a trial, sentence will be imposed by the magistrate if the defendant is convicted or enters a plea of guilty; otherwise, he will be discharged from custody.

(b) If the proceeding be a preliminary hearing and if it appears from the evidence produced that a crime has been committed and that there is sufficient cause to believe the defendant guilty thereof, the magistrate will hold the defendant to answer; otherwise, he will be discharged from custody. In the event a defendant is held to answer for a crime that is bailable, the magistrate must fix the bail; if such bail is not furnished before commitment, he must endorse the amount thereof on the writ.

Section 6. A person held to answer by a magistrate for a felony or a misdemeanor not triable by the magistrate can be charged in the circuit court with the commission of such felony or misdemeanor only upon indictment found by a grand jury, unless he appear before a judge of that court and waive indictment in which event he may be charged on information filed by the district attorney.

Section 7. If the evidence produced to the grand jury is such as in their judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury of the person held to answer, an indictment will be found and presented to the court.

Section 8. When an indictment is filed in court, if the defendant has not been arrested and held to answer the charge and does not voluntarily appear, the court must order the clerk to issue a bench warrant for his arrest; if the

crime charged be bailable, the court must fix and the clerk endorse, upon the warrant the amount of bail. A bench warrant may be executed in any county in the state, and, if executed in a county other than that in which it was issued, it need not be endorsed by a magistrate of that county. When the crime is bailable, and the defendant requires it, the officer making the arrest must take him before a magistrate of the county wherein the arrest is made or the action is pending for the purpose of furnishing bail.

Section 9. When an indictment has been filed, the defendant, if he has been arrested or as soon thereafter as he may be, must be arraigned thereon before the court by reading the indictment to him, delivering him a copy thereof and asking him whether he pleads guilty or not guilty. In due course of procedure sentence will follow a plea of guilty and trial will follow a plea of not guilty.

Section 10. Members shall follow the course of all prosecutions resulting from arrests made by them to the final conclusions thereof and fully report each step and the final disposition of each of such cases to the superintendent.

Section 1. The constitution of the state guarantees the security of the people in their persons, houses, papers and effects against unreasonable searches and seizures, and declares that no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

Section 2. A magistrate authorized to issue a warrant of arrest has authority to issue a search warrant directed to a peace officer, commanding him to search for personal property at any place within his county and bring it before the magistrate.

Section 3. If a peace officer should have probable cause to believe that the fruit of a crime, or property used in committing a felony, or property intended for use in committing a crime, is on a certain person or on certain premises, he may not summarily search either the person or the premises and seize it if found. He must instead make a showing by affidavit before a magistrate of probable cause for his belief, naming or describing the person and describing the property and the place to be searched. Thereupon, the magistrate, if he be satisfied that there is probable cause to believe in the existence of the grounds stated, will issue a warrant authorizing the search and seizure of the property if found.

Section 4. A search warrant may be issued upon either of the following grounds:

(a) When the property was stolen or embezzled, in which case it may be taken on the warrant, from any house or other place in which it is concealed or may be found, or from the possession of the person by whom it was stolen or embezzled or of any other person in whose possession it may be:

(b) When the property was used in the commission of a crime or which would constitute evidence of the crime in which case it may be taken on the warrant, from any house or other place in which it is concealed or may be found or from the possession of the person by whom it was used in the commission of the offense or of any other person in whose possession it may be;

(c) When the property is in the possession of any person with the intent to use it as the means of committing a crime, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its being discovered in which case it may be taken on the warrant from the possession of such person or of the person to whom he may have so delivered it or from any house or other place occupied by them or under their control, or either of them.

Section 5. A search warrant can not be issued but upon probable cause, shown by affidavit, naming or describing the person and describing the property and the place to be searched. Determination of probable cause is a judicial function.

Section 6. In executing a search warrant members have the same power and authority, in all respects, to break open any door or window, to use all necessary and proper means to overcome any forcible resistance made to them, or to call any other person to their aid, that they have in executing or serving a warrant of arrest.