

PROCEDURE FOR OBTAINING ARREST WARRANTS

In those cases where a warrant is needed before arresting a person for a misdemeanor charge, the law enforcement officer must use the following papers and procedures. An arrest warrant is not needed in most misdemeanor situations. (see Part III below)

I. Papers. File a long-form criminal complaint and a probable cause affidavit. The affidavit must contain a sufficient statement of facts (who, what, when and where) to support the elements of the offense alleged in the complaint.

II. Procedures

- A. Court open. If the court is open, the law enforcement officer must cause the papers to be filed at the court. A deputy clerk will read the affidavit. If probable cause is stated, an arrest warrant will be authorized. If probable cause is not stated, the warrant will not be issued. The Court will notify the Judge and the officer or his agency will be contacted.
- B. Court closed. If the court is closed, the law enforcement officer must telephone one of the following court officials: Clerk of Court, Deputy Clerk, Judge or Acting Judge (if one has been assigned in the absence of the Judge).

The entire procedure will be handled by telephone. The officer will read the probable cause affidavit to the party called. Information may be added to the affidavit in response to any questions or concerns expressed during the conversation. If probable cause is stated, the officer will be authorized to take the following steps:

- 1. The probable cause affidavit must be signed in the presence of a notary public (or any law enforcement officer acting as a deputy clerk of court); and
- 2. The officer shall, on the arrest warrant, write "approved by telephone on (date) " and shall print the name of the person contacted in the signature line followed by the officer's initials. The arrest warrant can then be issued.
- 3. No law enforcement officer shall issue a warrant.

III. Exceptions. There are exceptions when an officer can arrest a person without obtaining a warrant. These include the following situations:

- A. Any felony offense, if the officer has reasonable cause to believe that the person has committed it (see ORC 2935.04).
- B. Any misdemeanor offense committed in the presence of the officer [ORC 2935.03(A)].
- C. Any of the following misdemeanor offenses, if the officer has reasonable cause to believe that the person has committed the offense within the territorial limits of the officer's place

of appointment:

1. Offense of violence as defined in ORC 2901.01(A)(9).
2. Offense of criminal child enticement as defined in ORC 2905.05.
3. Offense of public indecency as defined in ORC 2907.09.
4. Offense of domestic violence as defined in ORC 2919.25.
5. Offense of violating a protection order as defined in ORC 2919.27.
6. Offense of menacing by stalking as defined in ORC 2903.211.
7. Offense of aggravated trespass as defined in ORC 2911.211.
8. Offense of theft as defined in ORC 2913.01.
9. Offense of DUI/DWI when based on the circumstances as delineated in Oregon v. Szakwits, 32 OS 2d 271.
10. Offense of speeding when measured by radar or aerial observation (ORC 4511.021).

IV. Arrest and detention until warrant can be obtained.
(ORC 2935.03)

If a warrantless arrest is made, the appropriate law enforcement officer may sign the complaint or a private person may sign the complaint. Such arrest may be accomplished in the following manner:

- A. Upon execution of a sworn affidavit, the law enforcement officer may sign the complaint and seek a warrant from the appropriate court personnel if the officer has reasonable cause to believe a crime has been committed.
- B. If the law enforcement officer does not wish to sign the complaint, an affidavit and complaint may be prepared for the private individual to sign. Both documents shall then be forwarded to the appropriate prosecutor's office for review and further proceedings. In the alternative, the officer may seek an arrest warrant from the court based on the affidavit and complaint if the officer has reasonable cause to believe that a crime has been committed. Upon making the arrest, the affidavit, complaint and warrant shall be filed by the officer with the Court.
- C. A written statement by a person alleging that an alleged offender has committed the offense of menacing by stalking or aggravated trespass constitutes reasonable grounds to believe that the offense alleged in the statement was committed and reasonable cause to

believe that the person alleged in the statement committed the offense.

- D. A written statement by a person alleging that an offender has committed the offense of domestic violence, or the offense of violating a protection order, against the person who executes the statement or against a child of the person who executes the statement, constitutes reasonable grounds to believe that the offense of domestic violence or the offense of violating a protection order has been committed and the person alleged in the statement committed the offense. If no written statement is obtained, the officer may find reasonable cause to arrest based on ORC 2935.03(B)(3)(a)(ii and iii).

V. Detention of shoplifters; rights of museums and libraries (ORC 2935.041)

Any peace officer may arrest without a warrant any person that he has probable cause to believe has committed any of the following acts:

- A. Shoplifting offense where a person is detained in a merchantile establishment or its immediate vicinity by a merchant, or his employee or agent, for the unlawful taking of items for sale. [see ORC 2935.041(A)]
- B. Offense of theft or criminal mischief where the property is owned by or in the custody of a library, museum, or archival institution. [see ORC 2935.041(B)]

VI. When citation must be used rather than arrest; exceptions; procedures (ORC 2935.26)

For most minor misdemeanors, the officer cannot arrest a person and must instead issue the person a citation. However, there are four instances when the officer can arrest the person for a minor misdemeanor offense:

- A. The offender requires medical care or is unable to provide for his own safety.
- B. The offender cannot or will not offer satisfactory evidence of his identity.
- C. The offender refuses to sign the citation.
- D. The offender has previously been issued a citation for the commission of that misdemeanor and has failed to do one of the following:
 - 1. Appear at the time and place stated in the citation.
 - 2. Appear in person at the officer of the Clerk of Court, sign a plea of guilty and a waiver of trial and pay the total amount of fine and costs or accomplish the same by mail.

When applicable, the law enforcement officer may proceed after issuing a citation for a minor traffic misdemeanor in accordance with ORC 2937.221.

VII. Liability attaches not for signing the complaint, but for making an illegal arrest. Private persons cannot make arrests for misdemeanors. Arrests for minor misdemeanors and other fineable arrests may be made only when authorized by statute. No law enforcement officer shall order a warrant.

Applications to court personnel for arrest warrants based upon private complaints will be closely scrutinized and warrants will be the exception rather than the rule.