CRIMINAL LAW, EVIDENCE AND ARREST

OREGON STATE POLICE MANUAL

INDEX

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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.

Section 7. A search warrant must be executed and returned to the magistrate who issued it within ten days from its date, unless such magistrate before the expiration of such time shall, by endorsement thereon, extend the time for five days. After the time prescribed, the warrant unless executed is void.

Section 8. When members take property under a search warrant, they must give a receipt for the property taken, specifying it in detail, to the person from whom they take it or in whose possession it is found, or in the absence of any person they must leave the receipt in the place where they found the property.

Section 9. Members who execute a search warrant must forthwith return the warrant to the magistrate and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken and of the applicant for the warrant, if they be present, and verified by oath.

Section 10. Members of the department shall bear in mind that search warrants constitute authority to search certain premises for certain articles of personal property and to seize such property if found therein, and that they do not constitute authority to arrest any person. If the possession of the property found in executing a search warrant is a crime as defined by the laws of the state, the person or persons in whose possession it is found may then and there be arrested without a warrant on the ground that a crime has been committed in the members' presence.

Section 11. Search of the person arrested and of the place where he is found for incriminating evidence are lawful incidents of his arrest and may be made without a search warrant after, but not before, the arrest.

Section 12. A magistrate may order the search in his presence of a person brought before him charged with a crime and believed by the magistrate to have on his person a dangerous weapon or incriminating evidence.

Section 13. Searches without warrant of persons and places, except dwelling houses, are authorized by the laws enacted for the protection of fish and game, but should not be undertaken unless members have knowledge of some fact or facts constituting probable cause for a belief that the thing or things they seek will be found where they intend to search.

Section 14. Searches and seizures may be lawfully made only under the authority of a warrant, except when made after an arrest as an incident thereof, or in the presence of a magistrate on his order, or under the authority of a special statute. Search warrants are drastic police weapons issued as an aid in the detection and suppression of crime, and statutes authorizing them are strictly construed. Unless acting under circumstances falling within the exceptions noted, members who search the person or premises of another without a warrant or with a warrant void on its face become civilly liable for resultant damages.

Section 1. Criminal actions must be commenced within the following periods of time:

(a) For murder or manslaughter, at any time after the death of the person killed;

(b) For any other felony, within three years after its commission;

(c) For any misdemeanor, within two years after its commission.

Section 2. If, when the crime is committed, the defendant be out of the state, the action may be commenced within the time above stated after his coming within the state; no time during which he is not an inhabitant of or usually resident within the state or during which he secretes himself therein to prevent service of process upon him is a part of the limitation prescribed.

Section 3. An action is commenced when an indictment is found by a grand jury and filed with the clerk of the court, or, in cases triable without indictment, when an information or complaint is filed or lodged in the court or with the officer having jurisdiction of the action.

Section 4. All criminal actions must be commenced and tried in the county where the crime was committed, except:

(a) When a state traffic offense as defined by law, has been committed in one county it may be tried in any other county whose county seat is a shorter distance by road from the place where the offense was committed than the county seat of the county in which the crime was committed, if the action is commenced in the circuit or district court;

(b) When a crime is committed on or within one mile of the boundary line of two or more counties or when such boundary line is unknown or uncertain and it is doubtful in which county such crime was committed, an action therefor may be commenced and tried in either county;

(c) When a crime is committed upon any bay, lake, river or other water situated in two or more counties or forming the boundary between two or more counties, an action therefor may be commenced and tried in any county bordering on such bay, lake, river or other water and opposite to the place where the crime was committed;

(d) When property feloniously taken in one county by burglary, robbery, larceny or embezzlement is brought into another county, an action for such crime may be commenced and tried in either county; when property so taken without the state is brought within it, the action may be commenced and tried in any county therein into which such property may be brought;

(e) When a crime is committed partly in one county and partly in another, or the acts or effects thereof constituting or requisite to the consummation of the crime occur in two or more counties, an action therefor may be commenced and tried in either county; criminal actions for nonsupport of wife and child, either or both, may be commenced and tried in any county in which the dependents have been actual residents for not less than sixty days during the period of nonsupport, irrespective of the domicile of the husband or father.

Section 5. When a crime commenced outside the state is consummated within it, an action therefor may be commenced and tried in the county in which

the crime was consummated, though the defendant were out of the state at the time of the commission of the crime if he consummated it within the state through agents or by any means proceeding directly from himself.

Section 6. When murder or manslaughter has been committed by means of a mortal wound given, or injury inflicted, or poison administered without the state and the person so wounded, injured or poisoned shall die thereof within the state, an action therefor may be commenced and tried in the county where the death occurred.

OUTLINE OF THE LAW OF EVIDENCE

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Section 1. The law requires those who charge with a crime one who denies his guilt to establish, beyond a reasonable doubt, the facts constituting such crime and revealing the connection therewith of the accused. This requirement is known as the burden of proof; it never shifts, but rests upon the prosecution throughout the trial. Members are charged with the enforcement of the criminal laws of the state and pursuit of their official duties will lead them from time to time into trial courts. It is essential, therefore, that they acquire knowledge of the laws relative to the admissibility of evidence and the competency of witnesses; otherwise, they may rely on a fact as proof that is not material or on the testimony as to a material fact of a witness who is not competent.

Section 2. Evidence is the means, sanctioned by law, of ascertaining in a judicial proceeding the truth respecting a question of fact. Proof is the establishment of a fact by evidence. The law of evidence comprises rules determining

(a) Facts of which the court will take judicial notice;
(b) Facts presumed from facts proven;
(c) What may be admitted as evidence and what excluded;
(d) Weight and sufficiency of evidence;
(e) Competency of witnesses.

Section 3. Facts of such general notoriety that they are assumed to be known to the court are judicially noticed, and, as to them, evidence need not be produced. Among others, the following facts are presumed to be thus known:

(a) The true meaning of all words and phrases of the English language and of all legal expressions;

(b) Public and private official acts of the legislative, executive and judicial branches of the state and of the United States, and the accession to office, official signatures and seals of office of the principal officers thereof;

(c) The seals of all courts of the state and of the United States, and of notaries public;

(d) The existence, title, flag and seal of every state and sovereign recognized by the United States;

(e) The laws of nature, measure of time, geographical divisions and political history of the world.

Section 4. A presumption is a deduction which the law expressly directs to be made from particular facts proven, and may be either conclusive or disputable.

(a) Conclusive presumptions are few and those directly affecting evidence offered in the trial of those charged with crime are

(1) That the intent to murder is presumed from the deliberate use of a deadly weapon causing death within a year;

(2) That a malicious and guilty intent is presumed from the deliberate commission of an unlawful act for the purpose of injuring another.

(b) Disputable presumptions are many and may be overcome by other evidence, direct or circumstantial. The presumptions that a person is innocent of crime, that he intends the ordinary consequence of his voluntary act, that property in his possession or over which he exercises rights of ownership is owned by him, of identity of person from identity of name, of marriage from cohabitation as man and wife, that a letter duly directed and mailed was received in the regular course of mail and that a person not heard from in seven years is dead, are instances of disputable presumptions which may be controverted by other evidence.

Section 5. Judicial notice and presumptions are mentioned only because they are necessary to an understanding of the law of evidence and not because of any effect they may have on the activities of members. It is with the rules governing the admission and exclusion of evidence and the competency of witnesses that members are most concerned. While the rules are not numerous, the exceptions are many and the scope of this article will permit inclusion only of certain fundamental rules and their principal exceptions.

Section 6. Aside from facts judicially noticed and facts presumed, evidence is produced to the court and jury by the oral testimony of witnesses, by writings and by physical objects presented to the senses. Writings must be authenticated and physical objects identified by oral testimony.

Section 7. Evidence may be direct or circumstantial.

(a) Direct evidence is that which proves a material fact directly, without inference, and which, if true, conclusively establishes that fact. For an example, if the charge be burglary, the testimony of witnesses who observed the accused in the act of entry is direct evidence of his guilt.

(b) Indirect or circumstantial evidence is that which tends to establish a material fact by proving another from which an inference of the material fact may be deduced, an inference being a deduction which the reason of the jury may make from facts proven. For an example, if the charge be burglary and entrance was gained by use of a certain tool, testimony of witnesses who observed the accused in the vicinity at or near the time in possession of such a tool would establish facts from which an inference of guilt could be drawn.

Section 8. Evidence which establishes directly, or tends to establish indirectly by inference, a material fact is admissible whether it be the oral testimony of a competent witness as to facts perceived through his own senses, a writing or a physical object. Members will experience little difficulty in determining what constitutes direct evidence, but eagerness or zeal may lead them to regard as indirect or circumstantial evidence facts too remote to afford bases for inferences. In the absence of direct evidence guilt must be proven by a complete chain of circumstances inconsistent with any other reasonable hypothesis. Inferences may be deduced only from facts proven and the latter must be of such character as to justify the former. No rule can be stated; the facts that may afford a basis for a reasonable inference in one case may not in another. In general, however, evidence of facts relative to the accused showing purpose such as threats, or preparation such as procuring a weapon or tool, or opportunity such as presence at the scene, or participation such as possession of property taken from the scene, or consciousness of guilt such as falsehoods relative to acts or whereabouts at the time, flight or attempted escape, resistance to arrest, suppression or fabrication of evidence, is admissible as affording bases for inferences of guilt.

Section 9. Evidence of the bad character of accused is not admissible unless he has brought his character into issue by introducing evidence, as is his right, to show it is good. When the accused is a witness in his own behalf, his character for truth and veracity may be attacked in the same manner as that of any other witness. Evidence of specific acts of misconduct is not admissible to show bad character. Character as regards truth and veracity with respect to a witness or as regards the trait involved in the crime with respect to the accused may be shown by witnesses who can testify that they know the general reputation in the particular regard of the witness or accused in the community in which he resides and that such general reputation is good or bad.

Section 10. Evidence of participation by accused in crimes other than that with which he is charged is inadmissible, except

(a) Where intent or knowledge is a material fact, evidence of other similar crimes may be admitted as affording a basis for an inference of intent or guilty knowledge;

(b) Where a crime has been committed by novel means or in an extraordinary manner, evidence of other similar crimes committed by the same means or in the same manner may be admitted as affording a basis for an inference of identity;

(c) Where illicit sexual intercourse such as incest or adultery is charged, evidence of prior similar crimes by the same person is admissible to show inclination;

(d) Where another crime was committed in preparation for, or in concealment of, the crime charged, evidence thereof is admissible to show such preparation or concealment;

(e) Where such other crimes, though distinct, are part of one criminal transaction, evidence therefore is admissible as part of the res gestae.

Section 11. One need not delve deeply into the law of evidence to come upon the expression res gestae, the translation of which is, things done. The term as applied to a crime means the complete criminal transaction from its beginning to its end. Evidence of declarations, acts or omissions forming part of the transaction are admissible as part of the res gestae, although they would otherwise be excluded as hearsay or as evidence of other crimes. No general rule can be stated as to what declarations, acts or omissions constitute part of the res gestae. It is for the court to determine in the particular case whether a particular declaration, act or omission constitutes a part of the criminal transaction with which the accused is charged and is therefore admissible as a part of the res gestae. Declarations, to be admissible as a part of the res gestae, must be spontaneous, unpremeditated, approximately contemporaneous with the criminal transaction or with an act which is a part of it, and explanatory of such transaction or act. In crimes involving assaults evidence of exclamations by the accused, by the victim and by bystanders has been admitted, as has that of conversations between the accused and the victim immediately before and immediately after the criminal act. Declarations by the accused, if part of the res gestae, may be admitted even if they are self-serving. Evidence of acts or omissions, if part of the res gestae, may be admitted even if they prove, or tend to prove, another crime.

Section 12. Evidence obtained from the accused by unlawful search is wrongfully procured and will not be admitted over his objection. The attention of members is directed to the fact that while a search of the person

arrested and of the place where he is found for incriminating evidence are lawful incidents of his arrest, they must follow, and not precede it. Evidence obtained by search of the person or of the premises prior to arrest, unless made under the authority of a search warrant, is wrongfully procured.

Section 13. A witness may testify only to facts within his own knowledge derived from his own perceptions. Members must bear this rule in mind both in giving testimony themselves and in taking the statements of persons who may thereafter be called upon to testify as witnesses.

(a) The rule stated requires that the testimony be confined to facts and thus excludes testimony of the conclusions and opinions of the witness, but is subject to the exceptions that a witness may testify to his opinion

(1) Respecting the identity or handwriting of a person when he has knowledge of such person or handwriting;

(2) Respecting the sanity of a person with whom he is intimately acquainted or of the signer of a writing, the validity of which is in dispute, when he is a subscribing witness thereto;

(3) Respecting a matter of science, art, or trade when he is skilled therein; this exception permits expert testimony by a witness who can qualify as an expert with respect to the matter or thing concerning which he is called upon to testify.

(b) The rule further requires that the testimony be confined to facts brought within his knowledge by his own sense of sight, hearing, taste, smell or feeling, and excludes testimony as to the hearsay declarations of others. It is subject to the exceptions that, in criminal trials, a witness may testify respecting

(1) Declarations which are a part of the res gestae, as explained in section 11 hereof;

(2) Declarations of a dying person made under the belief of impending death respecting the cause thereof;

(3) Declarations of the accused as evidence against him;

(4) Declarations of others, in the presence and within the observation of accused, in connection with evidence as to his conduct in relation thereto.

Section 14. The dying declaration of a deceased person is admissible only in the trial of one charged with the criminal act of causing his death to establish, or as tending to establish, the facts directly connected with the transaction resulting in death. Before it will be admitted at such time and for such purposes, it must be shown to the satisfaction of the court that the declarant, at the time he made it, believed his death was impending and had no hope of recovery. It may be either oral or written. If oral, it may be proven by the testimony of those who heard it; if a writing, it must be authenticated and proven by the person who wrote it or by the person or persons who saw it written.

Section 15. An admission is a statement by the accused wherein he admits a fact or facts pertinent to the crime with which he is charged from which an inference of his guilt may be deduced, but wherein he does not acknowledge his guilt. An admission, unlike a confession, is prima facie voluntary and the burden of proving it voluntary does not, therefore, rest upon the prosecution. Evidence of admissions is admissible to establish, or as tending to establish, the facts admitted. If oral, an admission is proven by the testimony of a witness, or witnesses, who heard it; if a writing, it must be authenticated and proven as are other writings offered in evidence.

Section 16. A confession is a voluntary statement by a person charged with a crime, communicated to another, wherein he acknowledges his guilt and discloses the circumstances of the act and his share and participation in it. A confession of the accused, whether in the course of judicial proceedings or to a private person, can not be given in evidence against him when made under the influence of fear induced by threats or of hope inspired by promises; nor is it sufficient to warrant his conviction without some other proof that the crime has been committed. Confessions are either judicial or extrajudicial.

(a) A judicial confession is one made at a preliminary examination or in court in the due course of judicial proceedings. A confession made at a preliminary examination must be reduced to writing, signed and certified by the magistrate and must affirmatively set forth that the accused was informed that it was his right to make a statement in relation to the charge against him but that he might waive that right and that his waiver could not be used against him at the trial.

(b) An extrajudicial confession is one made elsewhere than before a magistrate or in open court. It may be made to any person. Such a confession is scrutinized by the courts. It is prima facie involuntary, and upon the prosecution rests the burden of proving, to the satisfaction of the court, that it was neither induced by fear excited by threats nor by hope inspired by promises. If the accused be told merely that it would be better for him if he confessed, or worse for him if he did not, a threat or a promise would be implied and a confession ensuing would be involuntary, and, therefore, inadmissible. A voluntary confession may be made while the accused is in custody and may be elicited by questioning or even by severe cross-questioning, but any violence or show of violence, threat or hint of threat, promise or suggestion of promise, will render it inadmissible because involuntary. Members are admonished strictly to observe these demands of the law whenever, in the course of their official activities, they participate in the taking of statements intended to serve as confessions. An extrajudicial confession may be either oral or in writing. If oral, it is proven by the testimony of those who heard it; if a writing, it must be authenticated in the same manner as other writings offered in evidence.

Section 17. Admissions and confessions are declarations excepted from the hearsay rule under the principle stated in paragraph (3), subsection (b), section 13 of this article. Declarations excepted under the principle stated in paragraph (4) of that subsection, together with testimony as to the reaction of accused thereto, are in effect implied admissions. Denial is the normal reaction of an innocent person to accusation; therefore, failure of the accused to deny an assertion adverse to his interests, made in his presence and hearing under circumstances that naturally call for an answer, is tantamount to an implied admission of the truth of the assertion.

Section 18. When a writing is offered in evidence the original must be produced and proven, except

(a) Oral testimony may be given as to its contents or a copy admitted if the original is in the possession of the adverse party who has failed to produce it after reasonable notice so to do, or if the original can not, with proper diligence and without neglect or default on his part be produced by the party offering oral testimony as to its contents or a copy thereof;

(b) A copy may be produced if the original is a record or other document in the custody of a public officer, or if it is a record or other document of which a certified copy is expressly made admissible by statute;

(c) When the originals consist of numerous accounts or other documents which can not be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.

Section 19. If there be subscribing witnesses to a writing offered in evidence, such writing must be proven by such witnesses, if they be living and within the state and can testify; the testimony of one is sufficient. If the subscribing witnesses be dead or out of the state or incapable of testifying, the handwriting of one and that of the person who executed the writing must be proven.

Section 20. An object, cognizable by the senses, which has such a relation to the fact in dispute as to afford reasonable grounds of belief respecting it or to make an item in the sum of evidence, may be exhibited to the jury or its existence, situation and character proven by witnesses.

Section 21. Fingerprints are admissible for the purpose of establishing the identity of the person or persons present at the scene of the crime. Fingerprints embrace any impression, print or stain made by the tips of the fingers or thumbs or by the palmar surfaces of the hands. In the commission of a crime, any portion of the inner or palmar surface of the hands may leave its imprint, and, whenever any of these may be found, identity may be established by comparison with the prints of an individual. Latent prints brought out and photographed or transferred by lifting may be authenticated by the person who photographed or lifted them, but comparison to establish identity should be demonstrated by an expert.

Section 22. A map, model, diagram or photograph, is admissible as supplementing and illustrating the testimony of a witness who authenticates it by testifying that he made it or that it correctly portrays the scene or thing concerning which he is testifying.

Section 23. The direct evidence of one witness entitled to full credit is sufficient proof of any crime except treason which requires two to the same overt act, and perjury which requires two or one and corroborating circumstances. One can not be convicted of abduction or seduction of an unmarried female on the uncorroborated testimony of such female, or of any crime on the testimony of an accomplice unless such testimony be corroborated by such other evidence as tends to connect the accused with the commission of the crime.

Section 24. Upon a trial for having, by any false pretense, obtained the signature of any person to any written instrument or obtained from any person any valuable thing, no evidence can be admitted of a false pretense expressed orally and unaccompanied by a false token or writing; such pretense, or some note or memorandum thereof, must be in writing and either subscribed by or in the handwriting of accused.

Section 25. It must be proven, beyond a reasonable doubt, in a criminal case, that a crime has been committed. The facts constituting the crime are termed the corpus delicti, the translation of which is, the body of the crime. The agency or participation of the accused must also be proven beyond a reasonable doubt. A confession of the accused must be corroborated by proof of the corpus delicti; the testimony of an accomplice must be corroborated by proof of the agency or participation of the accused.

Section 26. Corroborative evidence is additional evidence of a different character to the same point; cumulative evidence is additional evidence of the same character to the same point.

Section 27. All persons who, having organs of sense, can perceive, and perceiving, can make known their perceptions to others, may be witnesses, except

(a) Those of unsound mind at the time of their production for examination;

(b) Children under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are examined or of relating them truly; but children possessing sufficient intelligence to observe facts and narrate them and who understand or can be made to understand the nature of an oath may testify irrespective of precise age.

Section 28. In all criminal actions where a husband is the accused, the wife is a competent witness, and where the wife is the accused, the husband is a competent witness, but neither can be compelled or allowed to testify in such cases unless by the consent of both. Where one is charged with personal violence upon the other, or of personal violence or other unlawful act committed against any minor child of either or both, the injured spouse will be allowed to testify against the accused, and in all criminal actions in which polygamy or adultery is charged, the husband or wife of the accused will be allowed to testify against the accused, as to the fact of marriage.

Section 29. There are particular relations other than that of husband and wife in which it is the policy of the law to encourage confidence, and to preserve it inviolate; therefore, in criminal prosecutions a person can not be examined as a witness in the following cases:

(a) An attorney shall not, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon, in the course of professional employment.

(b) A priest or clergyman shall not, without the consent of the person making the confession, be examined as to any confession made to him in his professional character, in the course of discipline enjoined by the church to which he belongs.

(c) A public officer shall not be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure.

(d) A stenographer shall not, without the consent of his or her employer, be examined as to any communication or dictation made by the employer to him or her in the course of professional employment.

Section 30. A witness, while testifying, may refuse to give an answer which will have a direct tendency to subject him to punishment for a felony, but he must answer as to the fact of his previous conviction for a felony.

Section 31. The process by which the attendance of a witness before a court or magistrate is required is a subpoena. It is a writ directed to a person requiring his attendance at a particular time and place to testify as a witness in a particular action, suit or proceeding therein specified, on behalf of a particular party therein mentioned.

Section 32. A magistrate before whom an information is laid or complaint made may issue subpoenas, subscribed by him, for witnesses within the state, either on behalf of the prosecution or of the defendant.

Section 33. The district attorney may issue subpoenas, subscribed by him, for witnesses within the state to appear before the grand jury in support of the prosecution in an investigation pending before them, or for such other witnesses as the grand jury may direct; he may in like manner issue subpoenas for not to exceed five witnesses within the state, in support of an indictment, to appear before the court at which it is tried, but the court or judge thereof may, upon good cause shown, make an order allowing subpoenas to issue for a greater number.

Section 34. Subpoenas for the attendance of witnesses in behalf of defendant are issued by the clerk of the court in which the criminal action against him is pending.

Section 35. A subpoena may be served by any person over eighteen years of age, and must be served by any sheriff or constable within his county or precinct when delivered to him for service. It is served by reading and showing the original and delivering a copy or ticket containing the substance thereof to the witness personally.

Section 36. The sheriff, his deputy, or some person specially appointed by him, but none other, is authorized and required to break into any building or vessel in which a witness may be concealed to prevent service of a subpoena and serve such subpoena upon such witness.

Section 37. A magistrate at the time a complaint is made or information laid before him or at the time of holding the defendant to answer, or a judge of the circuit court at the time of the arraignment of defendant upon indictment, may require material witnesses on behalf of the prosecution to give bond conditioned that they appear at the trial; any who refuse to provide such bond may be committed to jail until it is provided or until otherwise discharged.

Section 1. Government is obligated to protect the persons and property of its citizens, preserve its processes and perpetuate its existence. In fulfilling that obligation it became necessary for government to denounce as wrongful and forbid under pain of punishment acts and omissions prejudicial to safety, harmful to property, or threatening to the functions or existence of government itself. These laws regulating the conduct of individuals and providing punishment for their failure to conform are known as criminal laws; the acts or omissions they forbid under penalty are known as crimes.

Section 2. The criminal laws of the several states are for the most part rooted in the common law of England which became and remains, except as changed by statute, the law of those states which were originally English colonies and has been adopted in others. In some, among them Oregon, only those acts and omissions are criminal which have been by statute denounced as crimes, but even in such states these denunciatory statutes are construed in the light of the common law. This article therefore has to do with the criminal statutes of Oregon and pertinent principles of the common law as expounded by the courts.

Section 3. A crime or public offense is an act or omission forbidden by law and punishable upon conviction by either of the following punishments:

(a) Death;
(b) Imprisonment;
(c) Fine;
(d) Removal from office;
(e) Disqualification to hold and enjoy any office of honor, trust or profit under the constitution or laws of the state.

Section 4. Crimes are divided into felonies and misdemeanors. A felony is a crime punishable with death or by imprisonment in the penitentiary; when a crime punishable by imprisonment in the penitentiary is also punishable by a fine or imprisonment in a county jail it is deemed a misdemeanor after judgment imposing punishment other than imprisonment in the penitentiary. Every other crime is a misdemeanor. Felonies are more serious crimes but misdemeanors are more frequent. Altho the march of civilization has wrought changes inducing some additional acts to be denounced as felonies, most of the grave crimes now punished as felonies have been so punished under the common law since time out of mind. But progress has caused many additional acts and omissions to be forbidden and punished as misdemeanors; the advent of the motor vehicle, as an example, has greatly stimulated this increase. The following are important distinctions between felonies and misdemeanors:

(a) Felonies are triable only in the circuit court on indictment unless indictment be waived, while district courts and justices of the peace have concurrent jurisdiction of most misdemeanors;

(b) A trial may be held in the absence of the defendant if it be for a misdemeanor; if for a felony the defendant must be present;

(c) Killing of a human being may be justifiable when necessarily committed to prevent commission of a felony or in arresting a felon, but not to prevent commission of a misdemeanor or in arresting a misdemeanant;

(d) To compound a felony is a crime, but certain misdemeanors may be compromised by satisfying the demands of persons injured in their commission;

(e) In misdemeanors, there are no accessories.

Section 5. While crimes are divided into felonies and misdemeanors according to their gravity as reflected in their punishment, many may be classified according to their purpose and effect as committed against

(a) The person, such as assault, kidnapping, murder, rape, robbery;

(b) Property, such as arson, burglary, embezzlement, larceny, forgery;

(c) Morality, such as adultery, lewd cohabitation, seduction, sodomy;

(d) Justice and authority, such as bribery, malfeasance in office, perjury, subornation of perjury;

(e) The public peace, such as riot and unlawful assembly;

(f) The existence of government, such as treason.

Section 6. At common law two elements were necessary to constitute a crime, a criminal act and criminal intent. The act is a vital element, for merely having in mind an evil purpose without acting to further it is not punishable; but courts construing penal statutes do not always hold with the concept that intent is a necessary element, for in some misdemeanors presenting no serious aspect the crime is considered consummated by commission of the forbidden act without intent and without knowledge it was forbidden. In felonies, however, and in most misdemeanors concurrence of act and intent is necessary.

Section 7. The act is the more important of the two elements. It cannot be concisely defined. It is generally a positive, physical action, but it may be passive, as participation in the physical action of an accomplice, or negative, as failure to do a thing required by law to be done. It may comprise two or more separate and distinct acts, as the breaking and entry in burglary. Then, too, it need not be completed for a step taken with criminal intent and adapted to accomplish the end intended is punishable as an attempt. In its physical or muscular aspect it varies from wielding a lethal weapon, as in murder, to the mere uttering of words, as in threatening or advocating commission of a felony. Altho it allows this wide range in the variety of aspects of the criminal act, the law is specific in requiring that it be done by the defendant or someone acting for him and that it be the proximate cause of the wrong or injury for which punishment is provided.

Section 8. Criminal intent, the other element of a crime, is as difficult to define as is the criminal act. It has been defined as a design, resolve or determination of the mind. It is manifestly a state of mind, but is different from motive which is also a state of mind. Motive is often the desire to gain a benefit or inflict an injury which incites criminal intent, but it is not an element of crime; a crime may be committed with a good motive or without any. Where intent is a necessary element both the act and the intent must concur as to time; if the act was done innocently, a criminal intent subsequently formed would not make it a crime. Criminal intent may be presumed, or must be proven, as follows:

(a) A person mentally capable of forming a criminal intent who, without justification or excuse, voluntarily commits a forbidden act is presumed to intend the ordinary consequences of that act. The gist of this principle of the common law has been adopted by statute as a disputable presumption, and it has been declared by statute as a disputable presumption that unlawful acts are done with an unlawful intent. Criminal intent is conclusively presumed

from the deliberate commission of an unlawful act for the purpose of injuring another and from the deliberate use of a deadly weapon causing death within a year. Intent so presumed from the doing of the act is known as general intent and that element is supplied by presumption in most crimes.

(b) When the law forbids under pain of punishment an act done with a specific intent, criminal intent will not be presumed but must be proven. Instances of such crimes are burglary, wherein the breaking and entering must be accompanied by intent to commit a felony, or assault with intent to kill, rape, rob or commit mayhem; in attempt, too, intent to commit the crime attempted must be proven. Intent specifically required by statute to accompany the forbidden act is known as specific intent, and, as above stated, is not supplied by presumption.

(c) If in the course of doing one unlawful act a person without intent so to do, commits another, the criminal intent presumed from voluntarily doing the first will be imputed to the second and supply the element of intent in the crime resulting therefrom. Intent so presumed or proven in the doing of one criminal act and imputed to another is known as constructive intent. The doctrine applies only where general intent satisfies the requirement of law as stated in paragraph (a) of this section; it does not apply where specific intent must be proven as stated in paragraph (b).

Section 9. Since criminal intent, an element of crime, is a state of mind, it follows that only those should be held criminally responsible for their acts who are mentally capable of entertaining criminal intent. Infancy, which is the term the law applies to those under legal age, and insanity therefore affect criminal responsibility as follows:

(a) Children of tender years cannot weigh the consequences of their deeds and forbidden acts committed by them are manifestly unattended by that state of mind the law demands as an element of crime. At common law a child under seven years of age is regarded as incapable of entertaining criminal intent; between seven and fourteen the presumption of incapacity yields to proof to the contrary; above fourteen capacity is presumed. Statutes defining juvenile delinquency and outlining procedure respecting delinquent children altho intended to deal with treatment rather than accountability, have had the practical effect of diverting from infants under eighteen years of age previously accepted doctrines of criminal responsibility.

(b) A person afflicted with a defect or disease of the mind which, at the time of committing a prohibited act, rendered him incapable of knowing its wrongfulness cannot entertain a criminal intent and cannot, therefore, be held criminally responsible. A morbid propensity to commit such acts is not sufficient to exempt from criminal responsibility; incapacity to realize their wrongfulness is necessary and must be proved by the preponderance of the evidence. Voluntary intoxication does not exempt from criminal responsibility, but when specific intent is an element of the crime such condition may be considered by the jury in determining the intent with which the act was committed.

(c) In general, a person who commits a forbidden act, other than murder, against his will and under such compulsion or coercion by another as to cause fear of death or great bodily harm, is not criminally responsible. In such commission, it is not his will but that of the other which dominates, and he does not contribute the element of intent.

Section 10. A forbidden act intentionally committed by a sane adult may not constitute a crime, for it may be excusable or justifiable. These terms are usually applied to homicide but they are properly applicable to any

forbidden act which can be excused or justified; altho formerly distinguished one from the other, their use is now generally synonymous.

Section 11. An act, otherwise criminal, is justified when committed in furtherance of public justice as by a peace officer in performance of his duties. An officer is not criminally responsible who necessarily breaks and enters a dwelling to make an arrest, altho if without official status his acts might constitute burglary and kidnapping; he does not commit assault in overcoming resistance to arrest, or larceny if he takes property under a search warrant or burglary if forced to break and enter to get such property. This immunity which attends officers in the proper performance of their duties protects others acting at their command in their aid. An act, otherwise criminal, is justified, too, when necessarily committed in defense of person or property.

Section 12. Homicides are declared by statute to be justifiable when committed:

(a) By officers, or those acting at their command in their aid, in obedience to the judgment of a competent court, and when necessarily committed in overcoming resistance to execution of legal process or discharge of a legal duty or in retaking persons charged with or convicted of crime who have escaped or been rescued or in arresting a person fleeing from justice who has committed a felony;

(b) By any person to prevent commission of a felony on such person, his or her husband, wife, parent, child, master, mistress or servant or upon his property or property in his possession or upon or in any dwelling house where he may be, and in the lawful attempt to arrest a person who has committed a felony or suppress a riot or preserve the peace.

Section 13. Homicides are declared by statute to be excusable when committed by accident or misfortune:

(a) In lawfully correcting a child or servant or in doing any other lawful act, by lawful means, with usual and ordinary caution and without any unlawful intent;

(b) In the heat of passion, upon a sudden and sufficient provocation, or upon sudden combat, without premeditation or undue advantage being taken, and without any dangerous weapon or thing being used, and not done in a cruel and unusual manner.

Section 14. The doctrine of self-defense is announced in the statute which declares that resistance to the commission of a crime may be lawfully made by the person about to be injured, or by any other in his aid or defense, to prevent a crime against his person or an illegal attempt, by force, to take or injure property in his possession. Thus is excused and justified any act, otherwise criminal, necessarily committed in defense of person or property. In order that self-defense be available to excuse or justify, the following requirements must be met:

(a) The person invoking self-defense as excuse or justification must himself have been without fault in the circumstances;

(b) The danger of injury to person or property must have been imminent and impending, or must have so appeared to a reasonable mind;

(c) Only such force must have been used as was necessary to prevent injury to person or property.

Section 15. The scope of this article necessarily restricts treatment of its subject to a discourse on the origin and development of criminal law, the qualities common to all crimes and defenses available in most. Only

fundamental principles could be touched, and those but lightly. A more extended and technical treatment inclusive of definitions and elements of specific crimes is manifestly impracticable therein; members are expected to acquire such further knowledge by study of the Penal Code.

Section 16. In addition to the crimes defined by the laws of the state, certain acts or omissions committed within the state are denounced as crimes by federal law and punishment is imposed by federal courts. Some acts or omissionscommitted within incorporated cities or towns are forbidden by the ordinances of the particular municipality and punishment is imposed by the municipal court thereof.

Section 17. Of the crimes defined by federal laws, the acts or omissions designated as espionage and sabotage threaten the national security. Since peace officers are cogs in the machine designed to preserve the national security, it is important that members know what acts or omissions constitute espionage and sabotage. Without recourse to technical language or involved phraseology, they are defined as follows:

(a) Espionage is obtaining, receiving, or communicating to a foreign government, or attempting or inducing another so to do, information pertaining to the national defense, with intent or reason to believe such information is to be used to the injury of this, or the advantage of any foreign government; or the wilful giving of such information by one entrusted with it to another not entitled to receive it.

(b) Sabotage is the wilful injury or destruction, or the attempt so to do, of national-defense material, national-defense premises, or national-defense utilities with intent to injure, interfere with, or obstruct the national defense; or the wilful making or causing to be made in a defective manner, or the attempt so to do, of any national-defense material, with like intent. National-defense material includes any article or thing intended for use in the national defense; national-defense premises include all places where national-defense materials are produced or stored and all military or naval stations; national-defense utilities include all facilities or means whereby or whereon national-defense materials or troops are transported, and all facilities or means whereby national-defense premises or the armed forces are supplied with water, gas, light, heat, power or communication service.

Section 1. A criminal investigation is a methodical inquiry conducted for the purpose of determining what crime has been committed, when, where, how, why and by whom. It involves close scrutiny of the scene of the crime, preservation of physical evidence found there or elsewhere, locating and questioning suspects, and locating and interviewing all persons who have or are thought to have any information respecting the crime under investigation.

Section 2. The technique of investigating can not well be imparted by one to another. It is acquired by actual experience. Much depends upon the intuition and resourcefulness of the individual and upon his faculty of observation. The latter can be developed; if two or more members adopt the practice, whenever convenient, of stepping into a room or upon a scene and later comparing the results of their observations, it will be found that the number of objects and the variety of conditions seen and recalled by each will increase as the practice is continued. No matter what qualifications the individual may possess, calm, careful, patient effort exerted methodically is essential. It is to the method, therefore, that these suggestions must pertain, and since the scope of this manual will not permit exposition of particular crimes, the suggestions must be of general application.

Section 3. The scene of the crime looms large in importance, particularly in crimes of violence and of stealth. It should be the first objective of the member unless his attention is diverted to effect the arrest of the perpetrator fleeing therefrom. On arrival he should not proceed in a hurried or haphazard manner. If assistance is required, it should be summoned at once. If the scene presented to his view is that of a crime, he must bear in mind that a crime is the result of human agency and that some person has gained access, accomplished a criminal purpose and departed. Few have been able to do so without leaving some trace. Orderly procedure at the scene to ascertain facts pertaining to the criminal act and the manner and agency of commission is as follows:

(a) All unauthorized persons should be excluded from the immediate premises, but none should be permitted to leave the vicinity until interviewed.

(b) If the crime be homicide, whether within or without a building, the body of the victim must not be disturbed until photographs and measurements of its position with relation to fixed objects have been taken, or thereafter without the permission of the coroner or medical investigator having been first obtained. From the position of the body it may be determined whether death occurred where it was found or elsewhere; from its condition it may be determined how the mortal wound was inflicted, why, and whether the victim struggled to avert it or had no notice of it. The fingerprints of the victim should be taken as soon as possible after the body has been found. The contents of all pockets should be examined and preserved and all articles of wearing apparel observed and arrangements made for their careful preservation for later examination. If the victim is not dead and is still conscious, his statement should be taken while life and consciousness remain. The statement should set forth the facts and circumstances relative to the infliction of the mortal wound and

the agency by which it was inflicted; it should be reduced to writing by the person taking it and signed by the victim if his condition will permit. If, when making such as statement, the victim is under a sense of impending death and has no hope of recovery, that fact should be averred. A statement so made, whether the sense of impending death is affirmed therein or proven otherwise, is a dying declaration and admissible in evidence at the trial of any person, or persons, charged with the criminal act of causing the death of the declarant.

(c) In all crimes of violence or stealth, whether the scene be indoors or outdoors, careful examination of the exterior premises should be made for foot-prints or tire prints or any object the perpetrator may have dropped on entering, or escaping from, the scene. If foot or tire prints are found, they should be covered until photographs thereof have been taken and casts made. If the scene be indoors and entry gained by force, careful examination of exterior openings should be made to determine the point and manner of entry; fingerprints should be sought on any marred or broken door or window or in any other likely place and any found should be photographed or lifted or both; imprints, dents or marks on frame, casing or sill should be measured and photographed.

(d) If the scene be a room, the member will be confronted with confusing details in the way of physical objects and the examination, to be thorough, must be planned. No object should be touched or moved until its position and condition has been observed. He should stop at the threshold and scan the entire floor; articles, objects, splashes and stains appearing thereon indicate disorder. The tops of tables, chairs, dressers and beds should then be scanned and objects or articles appearing thereon noted; the walls and openings therein may then be scanned and spots, stains or disarray of draperies or pictures noted; the ceiling should next be scrutinized and the arrangement of lighting fixtures thereon or their absence noted; then the position of the various articles of furniture should be observed having in mind array or disarray. If the circumstances of the particular case require a photograph, it should then be taken. The room may then be entered and fingerprints sought on door knobs, door casings, dresser drawers, the backs of chairs, and elsewhere as the judgement of the member dictates. Minute examination of articles of furniture and of other objects may then be made, but no object appearing to have any connection with the crime should be handled in such a manner as to obliterate any fingerprints thereon.

(e) In any inquiry involving death by violence, even though suicide seems readily apparent, the same painstaking investigation must be conducted in order that the truth may be established. This includes the fingerprints of the deceased, photographs, medical examination, preservation of all articles of evidence and whatever other steps may be taken to determine the facts.

(f) If property has been taken by violence or stealth or procured by deception, a complete list should be made wherein should appear the ownership, approximate value and name and description of the articles. Too particular a description of such property can not be given; it should include, whenever available, the name of the maker, kind of material, color, size, serial number, defects, private marks and marks of launderers and dry cleaners.

(g) The names and addresses of all persons present at the scene when the member arrived must be taken and all should be questioned while on the premises as to why they were there, when they arrived, what they saw, heard or otherwise sensed and as to the identity of suspects. Any familiar with the scene may indicate objects found which were not on the premises previously or objects not found which were there previously. Full and complete statements should be taken from all.

(h) After examining the scene of the crime and interviewing all persons found there on his arrival, the member should interview all in the vicinity who were in a position to see or hear, or otherwise sense, anything pertinent to the criminal act. Someone in the vicinity may have observed and recognized a person or may have observed and be able to describe an unrecognized person approaching, upon, or leaving the scene or may be able to give the license number of, or otherwise describe, a motor vehicle observed approaching or leaving it or parked nearby or may have heard a shot, an outcry, hasty footsteps, or a speeding motor vehicle and noted the time such incident was heard.

Section 4. Crimes of deception, such as forgery or false pretense, present no situation which can be described as their scene. The victims of these, as well as those of all other criminal acts when accessible, should be interviewed with care and thoroughness. Forged documents, forged and fictitious checks, and false tokens used in perpetration should be procured and preserved and full information sought respecting the manner in which they were used. In all criminal acts information respecting the modus operandi, or, translated, the manner of working, is important; in crimes of deception it is particularly important. If the perpetrator is not in custody, his name, if known, his personal description, the description and license number of any motor vehicle used by him and all information that will aid in effecting his arrest should be procured.

Section 5. An interview of a witness should be approached by the member with a view of eliciting all exact and definite information pertaining to the crime within the knowledge of the person to be interviewed. A witness may be friendly or unfriendly, honest or dishonest, or both unfriendly and dishonest. He may be nervous, irritable or prejudiced. His character, attitude and disposition must be recognized by the member as having a direct bearing on the accuracy and extent of any information divulged. Each specific statement of fact should be tested as to accuracy. If the statement be as to direction or speed or distance, it should be ascertained how such was fixed; if it be as to something seen or heard, it should be ascertained whether such thing could have been seen or heard at the time and under the conditions stated; if it be as to the identity of a person or an object, it should be ascertained how such identity was determined. Time and place are factors of prime importance in connection with a criminal act; a witness who undertakes to establish either must be closely questioned as to the manner in which the former was fixed and as to the street and number or other description of the latter. The names and addresses of persons mentioned in the narrative of the witness as present at any time and place should be stated. The statement should be reduced to writing, if possible, and signed by the witness. If, in the course of the interview, the witness has identified any physical object, a description thereof should be written into the statement.

Section 6. If the perpetrator is not in custody or his identity known when examination of the scene has been concluded and the victim and all known witnesses interviewed, all suspects should be located and questioned. The method of questioning a suspect differs from that of interviewing a witness. The questioning should be exhaustive and deal with trivial as well as important incidents. The members should display no eagerness and, at least until the time is opportune, should reveal no information respecting the suspect's participation in the criminal act. His whereabouts and movements at the time of the crime should be ascertained. He should be induced to fix time and place and name persons present during his narrative so it may thereafter be tested for truth. The suspect's attitude, manner and appearance and the condition of his wearing apparel should be closely observed.

If and when, in the course of questioning, the suspect's participation in the criminal act is indicated or admitted, he should be at once informed of his rights. The questioning from that point should proceed in the manner of questioning an accused person.

Section 7. The arrest of accused should be immediately followed by a careful search of his person and of the place of arrest; the search of the person should be made on the spot and at the time of the arrest and that of the place should follow as closely thereafter as circumstances will permit. In order that the search be lawful the act of arrest must precede that of search, but the interval need be but momentary. On the person of accused or in the place of arrest may be found fruits of the crime or weapons or instruments used in its commission or articles of apparel torn or soiled in perpetrating the criminal act or described by witnesses as worn by a suspect observed at the scene. Articles procured in preparation for, or concealment of, the crime and footwear bearing mud or soil from, or conforming to prints observed at, the scene may also be found. If the accused be not arrested at his regular abode and will not consent to a search thereof, the authority of a search warrant should be invoked.

Section 8. At the time the accused is taken into custody or as soon thereafter as possible, he should be questioned. Before the questioning is begun he should be informed it is his privilege to refuse to answer any question propounded, warned that any answer returned or statement made may be used against him and advised of his right to consult counsel. Extreme care should be exercised to avoid any threat or semblance of a threat or any promise or hint of a promise. He may be freely questioned and cross-questioned, but a confession elicited to be admissible in evidence must be voluntarily made. He may not be told even that it would be better for him to tell the truth; a promise would be implied therefrom. Threats may be implied from acts and gestures as well as from predictions of dire consequence. If the accused, in the course of questioning, voluntarily reveals the facts and circumstances of the criminal act and his participation in it, his statement should be reduced to writing by himself or some other person and each page or sheet thereof signed by him. It should contain the averment that it was freely and voluntarily made without threat or promise on the part of any person. If the accused, in the course of questioning, persists in denying his guilt, but admits a fact or facts from which an inference of it may be deduced, such admission should be carefully noted so the member may give exact testimony respecting it. He should be questioned closely as to his whereabouts and movements before, at, and following the time of the crime and encouraged to name persons whom he met, with whom he conversed, or who observed him; his answers should be tested for truth as soon as possible thereafter.

Section 9. In the course of examining the scene of the crime or of interviewing witnesses or of questioning suspects or accused persons or of searching the persons of suspects arrested or the premises where arrested, physical objects of probable evidentiary value will be found. All such must be procured, marked for identification by the member and by any others who may thereafter be called upon to identify them, and carefully preserved as physical evidence. The naked hand must not touch any object which may bear fingerprints or on which stains appear or to which substances of unknown origin or kind adhere. From the time they come into the hands of the member until they are produced in court, the chain of possession must be established; they must not, therefore, be needlessly passed from hand to hand. The member should enter in his notebook a

minute description of each, the day and hour received and from whom. If it becomes necessary to deliver any such object into the possession of another, the day and hour of such delivery should be entered and a receipt therefor procured. The following are approved methods of marking and preserving physical evidence:

(a) The member should mark a writing for identification by inscribing thereon in ink or with indelible pencil his name or initials and the day and hour it came into his possession, and cause the person from whom it was procured in like manner to inscribe on it his name or initials and the day and hour it left his possession. It should then be placed in an envelope and sealed; across the sealed flap of the envelope the member should inscribe his signature, and on the reverse side he should note the contents and where, when and from whom received.

(b) Objects to be subjected to laboratory tests or microscopic examination should be positively identified either on the item itself in such a manner that the evidential value is not damaged, or on the container, sealed and then packed in such a manner that the material can not be damaged or contaminated in shipment. Any such objects that are of such size, shape, or form as to render the use of a container impracticable should be protected from contact and abrasion at the points of interest by small boxes taped over the pertinent areas or padding if the area should be a tool mark or of that nature. Objects to be subjected to fingerprint examination should be suspended or blocked in the package in such a manner that nothing can come in contact with the critical area.

(c) Objects not to be subjected to further tests or examination which bear serial numbers may be marked by attaching a tag thereto on which the member should inscribe in ink or with indelible pencil, over his signature, such serial number, the day and hour procured, from whom and where; if they do not bear serial numbers, the member should cut, scratch or file an identifying mark, or marks, thereon and attach thereto a tag also bearing such identifying mark or marks, and inscribed in manner and form above specified. Cartridges from loaded firearms should be placed in a cloth bag and attached to the weapon from which taken.

Section 10. The importance of latent fingerprints can not be overstated, and this importance attaches not only to prints of fingers but to prints of the palmar surface of the hand. If any such are found at the scene of a crime and identified as those of the accused, no array of witnesses in his behalf will dispel the conviction that he was there at some time. Because of their importance, no search for them should be made on the scene with respect to any object or paper capable of being removed to a laboratory for examination by an expert. On objects that can not be removed the member should make a careful and thorough search by dusting with powders specially prepared for the purpose of bringing out latent prints. Smooth, hard surfaces will yield prints readily when dusted; even the absorbent surface of paper will yield them. Equipment and materials provided by the department, for bringing out, photographing and lifting latent prints are within the ready reach of all members. Double precaution will be assured if photographs are first taken and the prints then lifted. Visible fingerprints in dust, grease, blood or similar substance should never be brushed with powder. Whenever found they should be photographed as soon as possible.

Section 11. Often the member, in the course of a criminal investigation, will come upon spots or stains of undetermined origin or kind. If any appear on an object which can be removed to a laboratory for examination, it should be so

removed. If any appear on an object that can not be removed, they should first be photographed and then scraped from a hard surface or cut from an absorbent surface; the substance so procured should be placed in an envelope, or other container, marked for identification as hereinbefore specified and taken to the laboratory.

Section 12. Footprints and tire prints are often of utmost importance. Whenever found at or near the scene of a crime, they should be photographed. Thereafter, unless they appear in snow or loose sand, casts of plaster of paris should be made. The print should be prepared by carefully removing therefrom any loose material preferably with tweezers. The material for the cast should be prepared by slowly pouring plaster of paris into a container partly filled with water; the point at which the plaster strikes the water should be approximately the center of the container; the plaster will sink and form a pile or mound on the bottom of the container; when the plaster, so poured, reaches the surface of the water, no more should be added. The mixture should then be quickly and thoroughly stirred and poured into the print. Rigidity of the cast may be assured by placing a water-soaked strip of wood in it longitudinally during the process of pouring the plaster.

Section 13. The value of measurements made by a member in a criminal investigation will be gauged by their accuracy. Steel tapes are supplied all members; measurements should be made by the use of them whenever practicable. If their use be impracticable in a particular case, the kind of instrument used and its ownership should be entered in the member's notebook so that it may thereafter be produced for testing if its accuracy is challenged. Distance should be measured in both directions to insure greater accuracy.

Section 14. In this article much mention has been made of photographs. Photography requires a degree of skill not generally possessed by members. The services of persons skilled in police photography or of responsible persons engaged in commercial photography should be engaged in a criminal investigation when circumstances will permit. It may be necessary, however, for the member to essay the role of photographer with the instruments provided by the department. In any event, the photograph should truly portray the thing photographed. No writing should appear on the photograph that does not appear on the object; all descriptive matter, including kind of camera and lens, day and hour of exposure, where and by whom taken should be entered in the member's notebook in connection with an identifying number which may appear on the photograph. In order to portray the relative size of objects or space or distance, the member's tape measure extended to a length accurately entered in his notebook may be exposed in the photograph taken.

Section 15. The member shall, in the course of a criminal investigation conducted by him, enter in his notebook all the pertinent facts determined and descriptions of all material objects observed, at or near the time of determination and observation, with such fidelity as to detail and precision as to fact that, by referring thereto, a true narrative of the criminal act and a full description of the scene thereof may be reported and exact testimony concerning them given.

OREGON STATE POLICE MANUAL

Section 1. In the pursuit of their official duties members will frequently be required to locate and apprehend, or assist in locating and apprehending, fugitives from justice. Such an investigation entails the immediate obtainment of all available information pertinent to the fugitive, his habits and associates, and thereafter diligently prosecuting inquiries of sources likely to yield information as to his whereabouts.

Section 2. The following information, if available, should be at once procured and reported for inclusion in circulars and bulletins:

(a) True name of fugitive and any names known to have been assumed;

(b) Complete physical description including
- (1) Age
- (2) Height
- (3) Weight
- (4) Build
- (5) Color of hair
- (6) Color of eyes
- (7) Complexion
- (8) Condition of teeth
- (9) Whether or not smooth shaven
- (10) Whether or not spectacles or eyeglasses are worn
- (11) Facial blemishes, scars, tattoos and physical infirmities apparent to eye or ear, such as lameness or impediment in speech
- (12) Wearing apparel and habits with respect thereto;

(c) Last known residence address;

(d) Occupation and where last employed;

(e) Whether married or single, and, if married, present address of spouse;

(f) Manufacturer, type and color of body, serial, motor and license number of any motor vehicle owned, possessed or known to be used;

(g) Names and addresses of close relatives and associates;

(h) Name and addresses of intimate acquaintances of opposite sex;

(i) Habits, hobbies and favorite amusements;

(j) Membership in fraternal organizations, social clubs or trade unions;

(k) Whether life or accident insurance policies have been issued, and, if so, by what companies;

(l) Narrative of any known previous criminal activity and fingerprint classification, if any;

(m) Photograph and specimen of handwriting.

Section 3. Diligent inquiry of the following sources at the fugitive's last known point of residence may reveal his whereabouts:

(a) Of former employers to ascertain if salary or wages were drawn in full when service terminated, or, if not, to what point remitted, and whether, on leaving service, future movements were indicated in any manner to such employer or to fellow employes;

(b) Of any fraternal organization, social club or trade union of which a member to ascertain if dues are being paid, and, if so, how and from what point;

(c) Of or through the local agent of any company in which insurance policies are carried to ascertain if premiums are being paid, and, if so, how and from what point;

(d) Of mercantile agencies maintaining ratings as to retail credit to ascertain where accounts for merchandise have been carried and the origin of any recent inquiries as to financial responsibility;

(e) Of mercantile establishments with which the fugitive is known to have dealt, and of launderers and dry cleaners known to have been patronized by him;

(f) Of public utility companies supplying electric current, gas, water, and telephone service to ascertain if service is being supplied, and, if so, at what address; if not, when discontinued, and the origin of any recent inquiries as to financial responsibility;

(g) Of school authorities, if the fugitive has children of school age, to ascertain if scholastic credits have been forwarded to any other point;

(h) Of companies operating taxicabs, transfer trucks or vans and storage warehouses to ascertain if any baggage or furniture has been shipped or stored;

(i) Of transportation companies to ascertain destination of any tickets sold or any baggage checked or baggage or furniture shipped;

(j) Of any banking institution in which an account has been carried to ascertain if such account has been closed, and, if so, when; if not, from what point deposits are received or withdrawals made.

Section 4. Diligent inquiry of the following sources at points other than the last known residence may yield pertinent information:

(a) Of motor vehicle registration agencies of this and adjoining states to ascertain if any such vehicle owned has been licensed or the title thereto transferred;

(b) Of school authorities at any probable destination of fugitive, if he has children of school age, to ascertain if such children are enrolled at such point;

(c) Of employers at any probable destination to ascertain if the fugitive has sought or obtained employment in his known trade or vocation;

(d) Of law enforcement agencies of adjoining states, and, if the fingerprints of the fugitive are known to be recorded, of the criminal identification bureau thereof and of the national bureau.

Section 5. Discreet inquiry may be made of the following sources:

(a) Of close relatives, intimate acquaintances and associates;

(b) Of persons residing in the vicinity of last known residence address.