

Oregon Department of Public Safety Standards and Training



Legal Issues for Telecommunications Lorraine Anglemier – DPSST

Legal Issues for Telecommunications

Topics

- ❑ **Discovery and Public Records**
- ❑ **Police Use of Deadly Force – Oregon and Federal Law Review**
- ❑ **2015 Oregon Legislature – Guns and Mental Illness**



Discovery

ORS discovery provisions

➤ 135.815 Disclosure to defendant

(1) Except as otherwise provided ...the district attorney shall disclose ...the following material and information within the possession or control of the district attorney:

(a) The names and addresses of persons whom the district attorney intends to call as witnesses ...together with their relevant written or **recorded** statements or **memoranda** of any oral statements of such persons...

(g) Any material or information that tends to:

(A) Exculpate the defendant;

(B) Negate or mitigate the defendant's guilt or punishment; or

(C) Impeach a person the district attorney intends to call as a witness at the trial.

(2)(a) The disclosure required by subsection (1)(g)...shall occur without delay after arraignment and prior to the entry of any guilty plea pursuant to an agreement with the state. If the existence of the material or information is not known at that time, the disclosure shall be made upon discovery without regard to whether the represented defendant has entered or agreed to enter a guilty plea.



Discovery (cont'd.)

- ▶ Significance of “within the possession or control of the district attorney”

Under *Brady v. Maryland*, 373 US 83 (1963), a prosecutor is obliged to disclose to the defense favorable evidence that is material to either guilt or punishment. That due process obligation extends to include impeachment information, and imposes a *duty on the prosecutor to ascertain whether materially exculpatory information is known to police*. *United States v. Bagley*, 473 US 667 (1985); *Kyles v. Whitley*, 514 US 419, 436 (1995).

- ▶ Consequences of non-compliance
- ▶ Relevance to dispatch

Discovery (cont'd.)

Recorded statements made to dispatch

- Privacy exemptions
- US Supreme Court case law and the Evidence Code
- HIPPA/Confidentiality issues



Public Records

- **Inspection** – ORS 192.410 to 192.505
- **Retention** – OAR 166-150-0135 and OAR 166-200-0350
- **Connection to dispatch realities**



Police Use of Force

Oregon Law – ORS 161.015 (3)

“Deadly physical force” means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.”

- This definition would control in an Oregon criminal review of deadly force decision-making
- NOTE: This definition does NOT require a person be armed with a dangerous or deadly weapon. Similar definitions nationwide and in the federal circuits.



Police Use of Force

Oregon Law

- An Oregon officer's deadly force decision-making will be analyzed under the "justification" statutes in the Oregon Criminal Code
- Significance of "conduct which would otherwise constitute an offense is justifiable and not criminal"
- "Criminal offense" requires "culpable mental state"



Police Use of Force

Federal Law

- **Review for “Possible Civil Rights Violation”**
 - Title 18 U.S.C. Section 242 defines the federal crime of violating a person’s constitutional rights
 - Investigated by US DOJ
 - Successful prosecution by AUSA requires proof beyond a reasonable doubt of a culpable mental state, namely “willfulness,” attached to the deprivation of rights
 - Relevance of prior state grand jury rejection of criminal charges requiring culpable mental state



Police Use of Force

Federal Law

- **Review for “Possible Civil Rights Violation”**
 - Title 42 U.S.C. Section 1983 defines the federal lawsuit remedy for violating a person’s constitutional rights
 - Filed by person’s privately retained counsel
 - The government is not a party
 - No proof of culpable mental state required and burden of proof is preponderance of evidence
 - Prior state grand jury rejection of criminal charges largely irrelevant



2015 Oregon Legislature – SB 941

- Effective May 11th, 2015, SB 941 amended ORS 166.250, the crime of Unlawful Possession of a Firearm, as follows:

“...a person commits the crime of unlawful possession of a firearm if the person knowingly...(c) Possesses a firearm and...*(F) Is presently subject to an order under ORS 426.133 prohibiting the person from purchasing or possessing a firearm...*



ORS 426.133 – “Orders requiring assisted outpatient treatment”

- ▶ **ORS 426.133, which defines “assisted outpatient treatment,” and gives a court authority to issue an order requiring a person to participate in such treatment, was amended as follows:**

(5) As part of the order ...the court may prohibit the person from purchasing or possessing a firearm during the period of assisted outpatient treatment if, in the opinion of the court, there is a reasonable likelihood the person would constitute a danger to self or others or to the community at large as a result of the person’s mental or psychological state, as demonstrated by past behavior or participation in incidents involving unlawful violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court adds a firearm prohibition to [such]an order...the court shall cause a copy of the order to be delivered to the sheriff of the county, who shall enter the information into [LEDS]....

ORS 426.133 – Sample Order

SB 941 – Firearm Prohibitor Order

EIP File: Firearms Prohibition Per Court Order – Mental Health

(QW Query)

Test Record:

Name: LEDS,PROHIBITED TEST

DOB: 1989/09/09

Sex: F

Q W.OR024015Y.NAM/LEDS,PROHIBITED TEST.DOB/09091989.SEX/F.RAC/W
FIREARM PROHIBITION PER COURT ORDER–MENTAL HEALTH (BASED ON DOB,NAM)

EIP OR0370000 NAM/LEDS,PROHIBITED TEST DOB/1989/09/09

SEX/F RAC/W POB/OR HGT/600 WGT/175 EYE/BLU HAI/BLK SKN/

OCA/2015–TEST0123 SMT/MC BEHAVIO

****RECORD INFORMATION****

COURT ORDER DATE/2015/09/03 RTP/PMH

MIS/****THIS IS A LEDS TEST RECORD ONLY**** TAKE NO ACTION BASED ON THIS RECORD******

CONTACT LEDS TRAINING UNIT 503–934–0300 ****THIS IS A LEDS TEST RECORD
ONLY****

ENT: 2015/09/03 AT 1229 FROM LE24 BY/LEDSTEST COUNTY SHERIFFS OFFI (LTS)

PURGEDATE: NOT PURGEABLE

LNU/W075539634 RECORD IN NCIC/NO

Questions?

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