

# Show or tell

*Why aren't local law enforcement agencies following a state law when it comes to presenting warrants for arrest?*

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Local police and sheriff's departments charged with enforcing the laws of the land aren't in compliance with one of the laws governing their authority to do so.

According to Oregon state laws dictating arrest procedures by peace officers, anyone arrested under a warrant must be shown the arrest warrant at the time of their arrest. The law states that if it's not possible for the officer to show the warrant to the arrestee at that time, it must be shown to them "as soon as practicable."

Of law enforcement agencies in the Portland metro area that responded to Street Roots' inquiries about their arrest warrant procedures, none had a policy of either showing the arrest warrant at the time of arrest or of showing it shortly thereafter. Most were unaware the law existed.

Portland Police Bureau spokesperson Sgt. Pete Simpson says that in the 23 years he's worked in law enforcement, he has "never heard of this ever being done."

The requirement to produce an arrest warrant is one of seven straightforward items listed under ORS 133.235, "Arrest by a peace officer, procedure."

The state agency responsible for training and certifying police officers is the Department of Public Safety Standards and Training, or DPSST. According to its director, Eriks Gabliks, the contents of this statute are taught in each of its 16-week Basic Police Courses in a procedural law class.

In Oregon, arraignments must take place within four days of the arrest, and it's at the arraignment, Simpson says, that people arrested under a warrant by PPB receive their warrant information.

This conflicts with PPB's own directive on arresting

individuals under a warrant, which states, "There is no need for the arresting member to physically serve the verified warrant on the arrested subject. The warrant will be served by (Multnomah County Sheriff's Office) staff during the booking process."

But the warrant isn't served at the time of booking either.

The warrant, says Multnomah County Sheriff's Office spokesperson Lt. Steven Alexander, is in electronic format in the Criminal Justice Information System, "so, no it is not shown."

Washington County Sheriff's Office spokesperson Sgt. Bob Ray says if people ask for a copy of their warrant at the time of booking, they are provided with it,

otherwise a physical copy is not given to them.

The Clackamas County Sheriff's Office didn't respond to multiple requests for comment about its arrest warrant procedures.

Frustrated from years of representing clients arrested without ever seeing their arrest warrant, Metropolitan Public Defender Chris O'Connor filed an official complaint with Portland's Independent Police Review Board in September, citing the law and Portland Police Bureau's department-wide failure to comply with state statute.

According to O'Connor, "This all shows a dangerous disregard for the rule of law. If they can't follow a basic, clear procedure the legislature has ordered, why should we trust them on efforts to comply with the (Department of Justice) settlement or reduce racial profiling or comply with hundreds of more complex procedures?"

It is, however, policy among area departments for arresting officers to verbally tell arrestees about the existence of a warrant. Some departments, such as Milwaukie and Hillsboro, will show persons under arrest the warrant information displayed on the data system computer screen in the squad car, if they ask.

Other departments do not. Simpson says showing the screen data to arrestees is not Portland Police Bureau policy, but officers may allow arrestees to read the screen from time to time, "but not likely often."

"We show them the back of the car," says Gresham police spokesperson Capt. Claudio Grandjean, when asked what Gresham officers show to people arrested under a warrant.

The general consensus among Portland-area department spokespeople is that to show a warrant at the time of arrest would be impossible in most cases. Not every

police officer carries around a hard copy of every arrest warrant, and people arrested under a warrant are commonly apprehended when involved in a traffic stop or when an officer responds to a call. It isn't until the officer runs their name through the Law Enforcement Data System that the warrant is discovered.

Lake Oswego Police Department spokesperson Sgt. Tom Hamann says his department doesn't show warrants at the time of arrest 99.9 percent of the time either, but points out in State of Oregon v. Thomas Meier, the court found that an arrest made on verified warrant information listed in the computerized database is valid.

O'Connor says this case deals with an individual claiming an arrest was without a



Illustration by Apala Barclay

warrant and therefore unconstitutional, but the court found the state met the constitutional burden of arresting on a warrant.

"Just because an individual can't make a constitutional challenge to the arrest when the police do not meet the statutory requirement doesn't mean that the police don't have an independent obligation to follow the legislature's orders," he says.

O'Connor says police policies seem to indicate that "Because there is no remedy for a defendant at trial, the officer can violate the law."

"It is impracticable for the officer to take the arrested subject to the issuing jurisdiction to see the physical warrant," says Beaverton police spokesperson, Officer Mike Rowe.

O'Connor argues, in the context of Multnomah County, the earliest "practicable" time to show the person under arrest their warrant would be at the Justice Center upon booking, where the sheriff's office, district attorney, police bureau and court are all under one roof. "Yet no efforts are made by any of the officers to show the warrant either at the scene of the arrest or at the jail or any time after the arrest," his complaint alleges.

Physical warrants are signed by the presiding judge, and according to Multnomah County Circuit Court spokesperson Rachel McCarthy, they are delivered to the sheriff's office at 5 p.m. each day for processing.

Given the difficulties of producing a warrant on the spot at the time of arrest, we asked the Multnomah County Sheriff's Office why it isn't complying with state law

by showing arrested persons their warrant at the time of booking, which appears to be the earliest "practicable" time to serve it.

Alexander says the booking office isn't made aware of who is being arrested, so it is not able to have a warrant ready when the arrestee arrives.

He says "if an arrestee asks what the warrant was for when they were arrested and are told and asks again at booking, we accommodate with that information as best we can."

Constantin Severe, director of the Independent Police Review, says O'Connor's complaint is in line for review, and his agency will release its recommendations to Portland Police Bureau in "a couple months."

"The thing is," says Severe, "there is a fundamental constitutional underpinning to why that statute exists."

The Fourth Amendment to the Constitution requires an arrest warrant when arrests are made without probable cause.

The state statute in question, he says, has been in existence for 42 years, and there was an earlier version of it as well. "I don't see the statute changing," he says. "I think it's more of a technological fix than having to rewrite anything or (a) legislative solution."

He adds, "There has to be a really good reason for us not being in compliance with the statute."

If the government's reason for noncompliance is "it's just too hard," he says that's not a good enough reason.

See WARRANTS, page 5