Chapter 140

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Bail

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ADMISSION TO BAIL

140.010 Definitions. (1) "Admission to bail" is the order of a competent court or magistrate that the defendant be discharged from actual custody upon bail.

(2) "Taking bail" is the acceptance by a competent court or magistrate of the undertaking of sufficient bail for the appearance of defendant, according to the terms of the undertaking, or that the bail will pay to the state a specified sum of money.

140.020 Crimes not bailable. If the proof or presumption of the guilt of the defendant is evident or strong, he shall not be admitted to bail when he is charged with murder in any degree, with treason or with the infliction upon another of a personal injury likely to produce death under such circumstances that, if death should ensue, the offense would be murder in any degree.

140.030 Admission to bail as matter of right. If the charge is for any other crime than those mentioned in ORS 140.020, the defendant, before conviction, or after judgment of conviction, if he has appealed, is entitled to be admitted to bail as a matter of right.

140.040 Admission to bail in discretion of magistrate. (1) The magistrate before whom is held the examination mentioned in ORS 133.640, if he does not commit the defendant for examination, may, in his discretion, discharge the defendant from custody until the close of the examination upon his giving bail or depositing money in lieu thereof, as provided by statute, as security for his appearance at the time to which the examination is adjourned.

(2) Upon holding defendant to answer, if the crime is bailable, the magistrate shall admit the defendant to bail by adding to the order mentioned in ORS 133.820, words to the following effect: "And I have admitted him to bail, to answer in the sum of $——." The defendant may either put in bail according to the order of admission, then or afterwards; but if it is not put in before he is delivered to the officer for commitment, the magistrate shall indorse the amount of the bail on the writ.

140.050 Who may admit to bail and take bail. (1) A magistrate authorized to issue a warrant of arrest, as provided in ORS 133.020 and 133.030, is a magistrate authorized within his jurisdiction to admit to bail and to take bail, except as in ORS 140.010 to 140.200 otherwise provided.

(2) After an indictment is found or upon an appeal, a defendant cannot be admitted to bail except by the court or judge thereof where the action is pending or in which the judgment appealed from was given.

140.060 Application to court or magistrate to be admitted to bail; court order or certificate of magistrate. If an application to be admitted to bail is made to a court, an order shall be made granting or denying it; and if it is granted, the order shall state the sum in which bail may be taken. If the application is made to a magistrate, he shall certify in writing his decision granting or denying the same; and if he grants it, the certificate shall state the sum in which bail may be taken.

140.070 Appeal to court from adverse decision of magistrate. (1) If the application for admission to bail, when made to a magistrate other than a judge of the Supreme Court, is denied, the defendant may appeal from the decision to the court or judge thereof in which the defendant is triable for the crime charged.

(2) An appeal from the decision denying admission of defendant to bail is taken by giving notice to the district attorney that the defendant appeals from the decision of the magistrate and that he will apply to the court or judge thereof (naming it or him) to be admitted to bail at a time and place therein specified, the former not less than three days from the service of such notice.

140.080 Finality of decision of court. The decision of the court or judge thereof, granting or denying bail, either upon an original application or upon an appeal, is final.

140.090 Application to another magistrate as contempt; revocation of improper admission to bail. (1) If an application for admission to bail is denied, no subsequent application therefor can be made to another magistrate.

(2) The admission to bail contrary to subsection (1) of this section may be revoked by the magistrate who made it or vacated by the court or judge thereof in which the defendant is triable for the crime charged.

140.100 Forms of undertaking of bail. Bail is put in by a written undertaking exe-

cuted by two sufficient sureties and, except as otherwise provided by subsection (2) of ORS 140.110, acknowledged before the court or magistrate taking the same. It may be substantially in one of the following forms:

(1) Before indictment:

An order having been made on the —— day of ——, 19—, by A. B., (adding his official title and place of jurisdiction), that C. D. be held to answer upon a charge of (stating briefly the nature of the crime), upon which he has been duly admitted to bail in the sum of $——, we, E. F., of (stating his place of residence and occupation), and G. H., of (stating his place of residence and occupation), do hereby undertake that the above named C. D. will appear and answer the charge above mentioned in whatever court it may be prosecuted; that he will at all times render himself amenable to the orders and process of the court; and if convicted, that he will appear for judgment and render himself in execution thereof; or if he fails to perform either of those conditions, that we will pay to the State of Oregon the sum of $—— (inserting the sum in which the defendant is admitted to bail).

(2) After indictment and before judgment:

An indictment having been found on the —— day of ——, 19—, in the Circuit Court for the County of ——, charging A. B. with the crime of (designating it generally), and he having been duly admitted to bail in the sum of $—— (the remainder of the undertaking may be in the words of form number one, beginning with the words "we, E. F." and substituting the word "indictment" for the word "charge").

(3) Upon an appeal:

A judgment having been given on the —— day of ——, 19—, whereby A. B. was condemned to (setting forth the terms of the judgment generally), and he having appealed from said judgment and been duly admitted to bail in the sum of $——, we, C. D., of (stating his place of residence and occupation), and E. F., of (stating his place of residence and occupation), hereby undertake that the above named A. B. will in all respects abide and perform the orders and judgments of the appellate court upon the appeal, or if he fails so to do in any particular, that we will pay to the State of Oregon the sum of $—— (inserting the sum in which the defendant is admitted to bail).

140.110 Execution of undertaking by sureties; acknowledgment; certificate of magistrate. (1) Except as provided in subsection (2) of this section, the undertaking shall be dated and signed by the sureties in the presence of the magistrate taking the bail, and he shall append thereto a certificate signed by him, with his name of office, substantially in the following form: "Taken and acknowledged before me the day and year above written."

(2) The undertaking may be signed and sworn to before any officer qualified to administer oaths, who shall append thereto a similar acknowledgment and forward the same to the magistrate taking the bail, who shall certify thereon his acceptance or rejection thereof.

140.120 Qualifications of bail; statement of indemnity previously assumed. The qualifications of bail are as follows:

(1) Each of them shall be a resident and a householder or freeholder within the state; but no counselor or attorney, sheriff, clerk of any court or other officer of any court is qualified to be bail.

(2) They shall each be worth the sum specified in the undertaking, exclusive of property exempt from execution and over and above all just debts and liabilities; provided, however, the court or magistrate, on taking the bail, may allow more than two bail to justify severally in amounts less than that expressed in the undertaking, if the whole justification is equivalent to that of two sufficient bail.

(3) The total amount of all indemnity which the bail seeking to qualify may have previously assumed on any bond or undertaking, of any kind which is outstanding and in force and effect, together with the sum specified in the undertaking, shall not exceed the worth of his property exempt from execution and over and above all other just debts and liabilities and said bail shall also under oath set forth the total amount of all indemnity previously assumed and in force; provided, however, that this paragraph does not apply to any bond or undertaking required in any civil action or proceeding.

140.130 Justification of bail. The bail shall in all cases justify by affidavit; and the affidavit shall state that they each possess

the qualifications prescribed by ORS 140.120.

140.140 Examination as to sufficiency of bail. (1) The district attorney or the court or magistrate may, before the bail is taken, further examine them upon oath concerning their sufficiency in such manner as the court or magistrate deems proper. The statements of the bail in response to the examination shall be reduced to writing and subscribed by them.

(2) The court or magistrate may also receive other testimony, either for or against the sufficiency of the bail, and may from time to time adjourn the taking of bail to afford an opportunity of proving or disproving their sufficiency.

140.150 Decision as to allowance of bail; indorsement on undertaking; filing of papers. When the examination is closed, the court or magistrate shall indorse upon the undertaking an order either allowing or disallowing the bail and shall forthwith cause the same, with the affidavits and examination of the sureties and the order of admission to bail, to be filed with the clerk of the court at which the defendant is bound to appear, at which the action is pending or in which the judgment appealed from was given, as the case may be.

140.160 Form of order for discharge of defendant on allowance of bail. Upon the execution of the undertaking and the allowance of the bail, the court or magistrate shall make an order, signed with his name of office, for the discharge of the defendant to the following effect:

(1) When bail is allowed other than on an appeal:

To the sheriff of the County of ———, State of Oregon:

A. B., who is detained by you to answer a (charge or indictment, as the case may be) for the crime of (designating it generally), having given sufficient bail to answer the same, you are commanded forthwith to discharge him from your custody.

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(2) When bail is allowed upon an appeal from a judgment:

To the sheriff of the County of ———, State of Oregon:

A. B., who is detained by you in execution of a judgment whereby he is condemned to (stating the terms of the the judgment generally), having appealed from said judgment and given sufficient bail to abide and perform the judgment of the appellate court, you are commanded forthwith to discharge him from your custody.

140.170 Disallowance of bail; other bail. If the bail is disallowed, the defendant shall be detained in custody until other bail is put in and allowed.

140.180 Right of district attorney to be heard on application for admission to or to take bail. Upon an application for admission to bail or to take bail, the district attorney, either in person or by anyone authorized by him, is entitled to appear and be heard in relation thereto.

140.190 Notice of application for admission to bail. When the admission to bail is a matter of discretion or the right thereto is doubtful, the court or magistrate by whom it may be ordered may require such notice of the application therefor as he deems reasonable to be given to the district attorney or to any person by him authorized to appear for him.

140.200 Notice of application to take bail. Bail may be taken, in the discretion of the court or magistrate, without notice to the district attorney, but he may require reasonable notice of the application therefor, as in case of an application for admission to bail.

140.210 to 140.300 [Reserved for expansion]

DEPOSIT OF MONEY IN LIEU OF GIVING BAIL

140.310 Deposit of money instead of giving bail; discharge from custody. The defendant, at any time after an order admitting him to bail, instead of giving bail, may deposit the sum of money mentioned in the order with the clerk of the court at which he is held to answer, in which the action is pending or in which judgment appealed from was given; and upon delivering the clerk's certificate of such deposit to the officer in whose custody he is, he shall be discharged from custody.

140.320 Deposit of money after giving bail. If the defendant has given bail, he may, at any time before the forfeiture of their undertaking, in like manner deposit the sum of money mentioned in the undertaking; and

upon the deposit being made and the certificate thereof given, the bail is exonerated.

140.330 Substitution of bail for money. If money is deposited, as provided in ORS 140.310 or 140.320, bail may, at any time before forfeiture of the deposit, be given in the same manner as if it had been originally given upon the order for admission to bail, and the court or magistrate before whom the bail is taken shall thereupon direct, in the order of allowance, that the money deposited be refunded by the clerk to the defendant, and it shall be refunded accordingly.

140.340 Application of money deposited in lieu of bail to satisfaction of judgment. When money has been deposited in lieu of bail, if it remains on deposit at the time of a judgment for the payment of money, the clerk shall, under the direction of the court, apply the money in satisfaction thereof. After satisfying the same, he shall refund the surplus, if any, to the defendant.

140.350 to 140.400 [Reserved for expansion]

SURRENDER AND ARREST BY BAIL

140.410 Surrender. At any time before the forfeiture of their undertaking, the bail may surrender the defendant in their exoneration, or he may surrender himself to the officer to whose custody he was committed at the time of giving bail, in the following manner:

(1) A certified copy of the undertaking of the bail shall be delivered to the officer, who shall detain the defendant in his custody thereon, as upon a commitment, and, by a certificate signed with his name of office, acknowledge the surrender.

(2) At any time after the surrender of the defendant, either by his bail or himself, the court or judge thereof, at which the defendant is bound to appear, in which the action is pending or in which judgment appealed from was given, as the case may be, may, upon reasonable notice to the district attorney, order that the bail be exonerated; and, upon the entry or filing of such order, they are exonerated accordingly.

140.420 Arrest of defendant by bail. For the purpose of surrendering the defendant, the bail, at any time before the forfeiture of their undertaking and at any place within the state, may themselves arrest him or, by a written authority indorsed on a certified copy of the undertaking, may empower any other person so to do.

140.430 Return of deposited money. If money has been deposited in lieu of bail and the defendant, at any time before the forfeiture thereof, surrenders himself to the officer to whose custody he was committed at the time of making the deposit, in the manner provided in ORS 140.410, the court or judge thereof shall order a return of the deposit to the defendant upon his producing the certificate of the officer showing the surrender, and upon reasonable notice of the application to the district attorney.

140.440 How notice to district attorney is given. The notice to be given to the district attorney, required by ORS 140.410 to 140.430, may be given to him personally or to any person authorized to appear for him, as provided in ORS 140.180 and 140.190.

140.450 to 140.500 [Reserved for expansion]

COMMITMENT OF BAILED DEFENDANT; READMISSION TO BAIL

140.510 When court may order arrest and commitment of bailed defendant. The court at which the defendant is bound to appear, in which the action is pending or in which the judgment appealed from was given may, by an order entered upon its journal, direct the arrest, commitment and detention of a defendant who has given bail in the following cases:

(1) When, by reason of his neglect or failure to appear, he has incurred a forfeiture of his bail or of money deposited in lieu thereof, as provided in ORS 140.610.

(2) When it appears to the court that his bail, or either of them, are dead or insufficient or have removed from the state.

(3) At any time after an indictment against him is found.

140.520 Contents of order. The order for the recommitment of the defendant shall recite generally the facts upon which it is founded and direct that the defendant be arrested by any sheriff or his deputy in this state and committed to the officer to whose custody he was committed at the time of giving bail, to be detained until legally discharged.

140.530 Arrest on copy of order or bench warrant. (1) A defendant who has given bail may be arrested pursuant to subsection (1), (2) or (3) of ORS 140.510, upon a certified copy of the order mentioned in that section, in any county in the state in the same manner as upon a bench warrant. Upon the request of the district attorney, copies of the order may be sent to the sheriffs of different counties.

(2) If the defendant who has given bail is ordered arrested pursuant to subsection (3) of ORS 140.510, he shall, if present when the order is made, be forthwith committed, or admitted to bail, as provided in the order mentioned in ORS 140.550; but if he is not present, a bench warrant shall be issued and proceeded upon in the manner provided in ORS 135.130 to 135.210.

140.540 Failure of defendant to appear for judgment prevents readmission to bail. If the order recites, as the ground upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant shall be committed according to the requirement of the order.

140.550 Readmission of defendant to bail. If the order is made for any other cause than that specified in ORS 140.540, and the crime is bailable, the court may direct in the order that the defendant be admitted to bail in an amount to be therein specified; but if the arrest and commitment of the defendant are ordered pursuant to subsection (3) of ORS 140.510, the order shall specify that he be admitted to bail, with new sureties or in an increased amount.

140.560 Authority of magistrate to take bail. When the defendant is admitted to bail, the bail may be taken by any magistrate having authority to take bail, as provided in subsection (1) of ORS 140.050, or by any particular magistrate, to be designated by the order.

140.570 Form of undertaking on readmission to bail. When bail is taken upon an order for the recommitment of the defendant, the undertaking of bail shall be in substantially the form prescribed in ORS 140.100 and 140.110 for the original undertaking of bail, except that it need not refer to the original order of admission to bail and shall specify the court in which the order for recommitment and admission to bail is made and the date of such order.

140.580 Qualifications of bail. The bail shall possess the qualifications and shall be put in all respects in the manner prescribed in ORS 140.010 to 140.200.

140.590 to 140.600 [Reserved for expansion]

FORFEITURE OF THE UNDERTAKING OF BAIL AND REMISSION OF FORFEITURE

140.610 When undertaking or deposit is forfeited. If, without sufficient excuse, the defendant fails to appear for arraignment, trial or judgment, or upon any other occasion when his presence in court is lawfully required, or to surrender himself in execution of the judgment, the court shall direct the fact to be entered in its journal; and the undertaking of bail or the money deposited in lieu thereof, as the case may be, is thereupon forfeited.

140.620 Discharge of forfeiture. If the defendant appears within 30 days after the time he is required to so appear or surrender and satisfactorily excuses his failure to appear or surrender, the court may direct the forfeiture of the undertaking or deposit to be discharged upon such terms as are just. [Amended by 1959 c.638 §21]

140.630 Enforcement of forfeiture of bail. If the forfeiture is not discharged as provided in ORS 140.620, the district attorney may, after the expiration of the 30-day period mentioned in ORS 140.620, proceed, by action only, against the bail upon their undertaking. [Amended by 1959 c.638 §22]

140.640 Remission of forfeiture. At any time before judgment against the bail in an action upon the undertaking, they may apply to the court for a remission of the forfeiture; and thereupon, the court, upon good cause shown, may remit the forfeiture or any part thereof upon such terms as are just and reasonable, according to the circumstances of the case.

140.650 Payment of costs; partial remission; judgment for remainder as bar to action. The court can only remit the forfeiture, in whole or in part, upon the payment of the costs and expenses incurred in the proceedings for its enforcement; and if part only is remitted, judgment shall be given against the bail for the remainder and such

judgment is a bar to an action upon the undertaking, or if one is already commenced, it is thereby abated.

140.660 Application for remission; finality of order granting or refusing remission. The application for remission shall be upon at least 10 days' notice to the district attorney, with copies of all affidavits and papers on which it is founded. The application shall admit the forfeiture and the obligation of the bail to pay the sum mentioned in the undertaking. The judgment or order of the court in the matter is final.

140.670 Disposition of money deposited in lieu of bail on forfeiture. If money deposited in lieu of bail is forfeited and the forfeiture is not discharged, as provided in ORS 140.620, the clerk with whom it is deposited shall, after the final adjournment of the court, forthwith deposit the same with the county treasurer.

140.680 to 140.980 [Reserved for expansion]

PENALTIES

140.990 Penalties. Violation of subsection (1) of ORS 140.090 is punishable as a contempt.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 1, 1959.

Sam R. Haley
Legislative Counsel