# Chapter 137

## 1965 REPLACEMENT PART

# Judgment and Execution; Parole and Probation by the Court

### JUDGMENT


137.010 Duty of court to ascertain and impose punishment
137.020 Time for pronouncing judgment
137.030 Presence of defendant at pronouncement of judgment
137.040 Bringing defendant in custody to pronouncement of judgment
137.050 Nonattendance at pronouncement of judgment of defendant who has given bail or deposited money; bench warrant
137.060 Form of bench warrant
137.070 Counties to which bench warrant may issue; service
137.080 Consideration of circumstances in aggravation or mitigation of punishment
137.090 Proof of circumstances; presentence investigation
137.100 Defendant as witness in relation to circumstances
137.110 Other evidence of circumstances not admissible
137.111 Sentence for indeterminate term upon conviction for certain sexual offenses
137.112 Psychiatric examination after conviction of person for certain sexual offenses
137.113 Report of findings after psychiatric examination
137.114 Presentence hearing concerning psychiatric examination and report
137.115 Immunities surrounding statements made in connection with psychiatric examination and report
137.117 Application of psychiatric examination and indeterminate term statutes to persons transferred to mental institutions
137.119 Court to notify parole board and warden of penitentiary when person sentenced for certain sexual offenses
137.120 Indeterminate sentence
137.125 Sentence to Oregon State Correctional Institution
137.127 Persons not eligible for original court commitment to correctional institution
137.130 Imprisonment when there is no county jail
137.140 Imprisonment when county jail is not suitable for safe confinement
137.150 Fines; imprisonment until fine is satisfied
137.170 Entry of judgment on conviction
137.180 Docketing of judgment to pay fine or costs
137.200 Costs paid by county; taxation against defendant on conviction
137.205 Taxation against defendant of cost of legal assistance furnished to him
137.210 Taxation of costs against complainant
137.220 Clerk to prepare trial court file
137.230 Definitions for ORS 137.230 to 137.260
137.240 Effect of felony conviction on civil and political rights; restoration of civil rights; exceptions
137.250 Restoration of political rights; effect of parole or probation revocation and commitment on civil and political rights
137.260 Political rights restored to persons convicted of felony before August 9, 1961, and subsequently discharged
137.270 Effect of felony conviction on property of defendant


### EXECUTION OF JUDGMENT


137.310 Authorizing execution of judgment; detention of defendant
137.320 By whom judgment of imprisonment is executed
137.330 Where judgment of imprisonment in county jail is executed
137.340 Conveyance of defendant to prison; authority of sheriff to require assistance
137.350 Woman officer to accompany woman or girl to place of confinement
137.360 Duty of judge and sheriff to appoint woman officer to accompany woman ordered to institution
137.370 Commencement of term of imprisonment in state penal or correctional institution; voluntary absence
137.375 Release of prisoners whose terms expire on legal holidays
137.380 Treatment and employment of prisoners
137.390 Commencement and termination of term of imprisonment in county jail; treatment of prisoners therein
137.400 Judgment of death; warrant; delivery of defendant
137.410 Delivery of warrant in case of change of place of trial
137.420 Inflicting punishment of death
137.430 Application of ORS 137.420 to crimes committed prior to its enactment
137.440 Return of officer executing judgment; annexation to judgment roll
137.450 Enforcement of money judgment in criminal action


### SUSPENDED SENTENCE AND PROBATION; PAROLE BY COMMITTING MAGISTRATE


137.510 Power of court to suspend imposition or execution of sentence or to place defendant on probation
137.520 Power of committing magistrate to parole and arrange for employment of persons confined in county jail
137.530 Investigation and report of probation officers
137.540 Determination and modification of conditions of probation
137.550 Period of probation; discharge from probation; proceedings in case of violation of conditions

**137.560 Copies of certain orders to be sent to Director of Parole and Probation**
**137.570 Authority to transfer probationer from one officer to another; procedure**
**137.580 Effect of transfer of probationer from one officer to another**
**137.590 Appointment of probation officers and assistants; chief probation officer; compensation**
**137.610 Performance by staff of State Board of Parole and Probation of duties of probation officers appointed by judge**
**137.620 Powers of probation officers; oath of office; bond; audit of accounts**
**137.630 Duties of probation officers**

**PENALTIES**

**137.990 Penalties**

## CROSS REFERENCES

Automatic appeal to Supreme Court from judgment of death, 138.410
Court and court officer's duty to require performance of acts relating to administration of justice, enforcement of duty by mandamus, 1.025
Enhanced penalties, 168.085
Excessive fines, cruel and unusual punishments, Const. Art. I, § 16
Habitual criminals, Ch. 168
Inspection by defendant of evidence obtained from him, 133.755
Judgment against defendant on failure to plead, 135.700
Post-conviction relief, 138.510 to 138.680
Traffic offense procedure, penalty that may be imposed if defendant not present at hearing, 484.220
Verdict and judgment, 136.605 to 136.730
Work release program, recommendation of sentencing court, 144.440

**137.010**

Added penalty for committing, or attempt to commit crime, while armed, 166.230
Juvenile court, power to fix probation, supervision or institutionalization, 419.511
Misdemeanor, punishment where penalty is not prescribed, 161.080
Punishment for attempt to commit crime, 161.090, 161.100
Punishment for conspiracy to commit felony, 161.320
Punishment of accessory, when no other is prescribed, 161.240
Reporting of disposition of certain cases to central bureau of criminal identification, 181.520

**137.112**

Bail on civil commitment as sexually dangerous person, 426.510 to 426.670

**137.113**

Certified mail, use of in lieu of registered mail, 174.150

**137.140**

Imprisonment of person already imprisoned in state penal institution upon conviction of another crime, 134.540

**137.150**

Application of money deposited in lieu of bail to satisfaction of judgment, 140.340
Discharge of indigents imprisoned for nonpayment of fine, 169.160
Disposition of fines imposed on auctioneers, 698.755
Imprisonment of person already imprisoned in state penal institution upon conviction of another crime, 134.540

**137.170**

Judgment on demurrer, entry in journal, 135.660

**137.200**

Counsel appointed by court, payment of fees and expenses, 133.635

**137.210**

Similar provisions applying to justice court, 156.280, 156.290

**137.220**

Annexation of copy of judgment of appellate court to transcript, 138.280
Preparation of record on appeal to Supreme Court, 138.185

**137.240, 137.250**

Conviction, effect on right to vote, Const. Art. II, § 3

**137.270**

Conviction of crime shall not work forfeiture of estate or corruption of blood, Const. Art. I, § 25

**137.310**

Enforcement of judgment of appellate court, 138.270, 138.290

**137.320**

Conveyance of females convicted of felony and sentenced to Oregon State Penitentiary to institution outside Oregon for confinement therein, 421.210
Stay of execution of judgment on appeal by defendant, 138.135

**137.370**

Reduction of term of sentence for good behavior, 421.120

**137.380**

Prisoners in Oregon State Correctional Institution, provisions governing conduct and treatment of, 421.012

**137.390**

Deduction from term of sentence for observance of rules of county jail, 169.110
Use of prisoners of county jail for public work, time off for good behavior of prisoners so employed, 169.120

**137.450**

Application of money deposited in lieu of bail to satisfaction of judgment, 140.340

**137.510**

Drug user, periodic test as condition to probation, 475.675
Parole and probation, Ch. 144
Post-conviction relief, modification of sentence, 138.520
Probation and suspension of sentence by trial court prohibited in certain cases, 166.230
Reprieves, commutations and pardons, Ch. 143
Suspension of sentence on conviction for:
Contributing to delinquency of a minor, 167.220
Nonsupport, 167.610
Undertaking by convicted person to keep peace, power of court to require, 145.050

**137.520**

Power of State Board of Parole and Probation to parole persons confined in county jail, 144.050

**137.590**

Appointment of juvenile director or counselor by juvenile court, 419.604

## JUDGMENT

**137.010 Duty of court to ascertain and impose punishment.** The statutes that declare certain crimes punishable as therein mentioned impose a duty upon the court authorized to pass sentence, to determine and impose the punishment prescribed and, whenever such punishment is left undetermined between certain limits or kinds, to determine the punishment to be inflicted.

**137.020 Time for pronouncing judgment.** (1) After a plea or verdict of guilty, or after a verdict against the defendant on a plea of former conviction or acquittal, if the judgment is not arrested or a new trial granted, the court shall appoint a time for pronouncing judgment.

(2) The time appointed shall be at least two days after the verdict, if the court intends to remain in session so long, or if not, as remote a time as can reasonably be allowed; but in no case can the judgment be given, except by the consent of the defendant, in less than six hours after the verdict.

**137.030 Presence of defendant at pronouncement of judgment.** For the purpose of giving judgment, if the conviction is for a felony, the defendant shall be personally present; but if it is for a misdemeanor, judgment may be given in his absence.

**137.040 Bringing defendant in custody to pronouncement of judgment.** If the defendant is in custody, the court shall direct the officer in whose custody he is to bring him before it for judgment; and the officer shall do so accordingly.

**137.050 Nonattendance at pronouncement of judgment of defendant who has given bail or deposited money; bench warrant.** (1) If the defendant has given bail or deposited money in lieu thereof and does not appear for judgment when his personal attendance is necessary, the court may forfeit the undertaking of bail or the money deposited. In addition, the court may direct the clerk to issue a bench warrant for the defendant's arrest.

(2) At any time after the making of the order for the bench warrant, the clerk, on the application of the district attorney, shall issue such warrant, as by the order directed, whether the court is sitting or not.

**137.060 Form of bench warrant.** The bench warrant shall be substantially in the following form:

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CIRCUIT (OR DISTRICT) COURT FOR THE COUNTY OF ———, STATE OF OREGON
IN THE NAME OF THE STATE OF OREGON

To any sheriff or his deputy of this state, greeting:

A B having been on the ——— day of ———, 19—, convicted in this court of the crime of (designating it generally), you are commanded to arrest the above-named defendant forthwith and bring him before such court for judgment or, if the court has adjourned for the term, deliver him into the custody of the jailor of this county. By order of the court.

Witness my hand and seal of said circuit (or district) court, affixed at ———, in said county, this ——— day of ———, 19—.

[L. S.] C D, Clerk of the Court

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[Amended by 1957 c.659 §1]

**137.070 Counties to which bench warrant may issue; service.** The bench warrant mentioned in ORS 137.050 may issue to one or more counties of the state and may be served in the same manner as provided in ORS 135.180, in case of a bench warrant upon an indictment.

**137.080 Consideration of circumstances in aggravation or mitigation of punishment.** After a plea or verdict of guilty, or after a verdict against the defendant on a plea of former conviction or acquittal, in a case where a discretion is conferred upon the court as to the extent of the punishment to be inflicted, the court, upon the suggestion of either party that there are circumstances which may be properly considered in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time and upon such notice to the adverse party as it may direct.

**137.090 Proof of circumstances; presentence investigation.** The circumstances which are alleged to justify aggravation or mitigation of the punishment shall be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition may be taken out of court at such time and place, and upon such notice

to the adverse party, and before such person authorized to take depositions, as the court directs. The court may consider the report of presentence investigation conducted by probation officers pursuant to ORS 137.530. A copy of such report may be made available to counsel for the defendant and the state a reasonable time before pronouncement of sentence.
[Amended by 1965 c.400 §1]

**137.100 Defendant as witness in relation to circumstances.** If the defendant consents thereto, he may be examined as a witness in relation to the circumstances which are alleged to justify aggravation or mitigation of the punishment; but if he gives his testimony at his own request, then he must submit to be examined generally by the adverse party.

**137.110 Other evidence of circumstances not admissible.** No affidavit or testimony or representation of any kind, verbal or written, can be offered to or received by the court in aggravation or mitigation of the punishment, except as provided in ORS 137.080 to 137.100.

**137.111 Sentence for indeterminate term upon conviction for certain sexual offenses.** After the presentence hearing and upon the consideration of the psychiatric report required by ORS 137.112 to 137.115, the court may, in its discretion, in lieu of any other sentence authorized by law for such crime, sentence any person convicted under ORS 163.210, 163.220, 163.270, 167.035, 167.040 or 167.045 to an indeterminate term not exceeding the natural life of such person if:

(1) The offense involved a child under the age of 16 years; and

(2) The court finds that such person has a mental or emotional disturbance, deficiency or condition predisposing him to the commission of any crime punishable under ORS 163.210, 163.220, 163.270, 167.035, 167.040 or 167.045 to a degree rendering the person a menace to the health or safety of others.
[1955 c.636 §3; 1961 c.424 §1]

**137.112 Psychiatric examination after conviction of person for certain sexual offenses.** (1) Every person convicted of any crime punishable under ORS 163.210 or 167.040, or any crime involving any child under the age of 16 years punishable under ORS 163.220, 163.270, 167.035 or 167.045, may, upon conviction and before sentence, forthwith be given a complete psychiatric examination. The court may order that such person be taken by the sheriff to a state hospital designated by the Oregon State Board of Control for the examination. When the examination is completed, the superintendent of the institution to which the person was taken shall notify the sheriff, who shall go to the institution and the superintendent shall deliver the person to the sheriff. Thereafter the sheriff shall retain custody of such person, subject to further order of the court.

(2) If the court finds, or has reason to believe, that sexual stimulation was the motivating factor in the commission of any crime other than those specified in subsection (1) of this section, the court may order a psychiatric examination in accordance with the procedures outlined in subsection (1) of this section.

(3) The superintendent of the institution to which a person is taken under subsection (1), (2) or (4) of this section shall designate a qualified psychiatrist, who may be either a member of the hospital staff or a psychiatrist engaged in private practice, to conduct the examination of such person.

(4) If a qualified psychiatrist is available, the court may designate him to conduct the examination of the convicted person in the county of conviction. The court may, in accordance with the procedures outlined in subsection (1) of this section, order a further examination at a state hospital designated by the Oregon State Board of Control.

(5) All costs connected with the examination, including the examination by the psychiatrist at the presentence hearing under ORS 137.114, shall be paid by the county in which such person was convicted.
[1953 c.641 §2; 1955 c.252 §1; 1955 c.636 §1; 1961 c.424 §2]

**137.113 Report of findings after psychiatric examination.** (1) Within 60 days after the conviction, the examining psychiatrist appointed pursuant to ORS 137.112 shall file with the superintendent or court appointing him a written report of his findings and conclusions relative to the examination. The examining psychiatrist shall include in his report a statement as to whether or not, in his opinion, the convicted person

has any mental or emotional disturbance, deficiency or condition predisposing him to the commission of any crime to a degree rendering the convicted person a menace to the health or safety of others. The report shall also contain any other information which the examining psychiatrist believes may aid the court in sentencing.

(2) If the convicted person is examined at the state hospital the superintendent shall immediately forward the report to the court in which such person was convicted.

(3) A certified copy of the report shall be sent by registered mail by the clerk of the court to the convicted person, his attorney, the district attorney and, if the convicted person is examined in the county of conviction, to the Oregon State Hospital.
[1953 c.641 §3; 1955 c.252 §2; 1961 c.424 §3]

**137.114 Presentence hearing concerning psychiatric examination and report.** Upon the filing of the report by the examining psychiatrist, the court shall set a time for a presentence hearing, unless the district attorney and the convicted person waive a presentence hearing. At the presentence hearing, the district attorney and the convicted person may examine the psychiatrist who filed the report with reference to the psychiatric examination and report.
[1953 c.641 §4]

**137.115 Immunities surrounding statements made in connection with psychiatric examination and report.** (1) No statement made by a convicted person in the course of an examination made under ORS 137.112 to 137.114 shall be used against him in any civil proceeding or in any other criminal proceeding.

(2) No person shall, without the consent of the convicted person, be examined in any civil or any other criminal proceeding as to any statement made by the convicted person in the course of the examination.

(3) No statement contained in any report made by an examining psychiatrist under ORS 137.112 to 137.114 shall be the subject of any civil suit or action.
[1953 c.641 §5]

**137.116** [1953 c.641 §6; 1955 c.252 §3; 1955 c.636 §2; repealed by 1961 c.424 §9]

**137.117 Application of psychiatric examination and indeterminate term statutes to persons transferred to mental institutions.** ORS 137.111, 137.112 and 167.050 do not apply to any person transferred to any institution for the mentally ill or mentally deficient under ORS 179.473 to 179.486.
[1955 c.636 §10; 1961 c.266 §1; 1961 c.424 §4]

**137.119 Court to notify parole board and warden of penitentiary when person sentenced for certain sexual offenses.** Whenever any sentence is imposed under the provisions of ORS 137.111 or 167.050, the court in which the sentence is imposed shall notify the warden of the Oregon State Penitentiary and the director of the Oregon State Board of Parole and Probation of the name of the person receiving such a sentence and the statute under which sentence was imposed.
[1963 c.320 §1]

**137.120 Indeterminate sentence.** (1) Each minimum period of imprisonment in the penitentiary which prior to June 14, 1939, was provided by law for the punishment of felonies, and each such minimum period of imprisonment for felonies, hereby is abolished.

(2) Whenever any person is convicted of a felony, the court shall, unless it imposes other than a sentence to serve a term in the penitentiary or of death, sentence such person to imprisonment in the penitentiary for an indeterminate period of time, but stating and fixing in the judgment and sentence a maximum penitentiary term for the crime, which shall not exceed the maximum term of imprisonment provided by law therefor; and judgment shall be given accordingly. Such a sentence shall be known as an indeterminate sentence.

(3) This section does not affect the indictment, prosecution, trial, verdict, judgment or punishment of any felony committed before June 14, 1939, and all laws now and before that date in effect relating to such a felony are continued in full force and effect as to such a felony.

**137.125 Sentence to Oregon State Correctional Institution.** (1) Upon conviction of a crime which is punishable by imprisonment in the Oregon State Penitentiary, the court may sentence and commit a male person so convicted to the Oregon State Correctional Institution if, in the opinion of the court, rehabilitation of the defendant can best be attained by such commitment and it appears that the best interest of the defendant and of the public and the ends of justice would thereby be served.

(2) In making its determination under this section the court shall take into consideration age, giving preference to persons under the age of 26, prior criminal record, reformability, education and family background of the defendant, together with any other circumstances which may be disclosed if a presentence investigation is made by the court.
[1955 c.660 §3]

**137.127 Persons not eligible for original court commitment to correctional institution.** The following persons are not eligible for original court commitment to the Oregon State Correctional Institution:

(1) Any person who has been convicted of the crime of murder, rape where actual force is involved or treason.

(2) Any person who has been convicted of a crime and is sentenced by the court for a term of imprisonment of more than 10 years.

(3) Any person who has served a term of imprisonment in the Oregon State Correctional Institution or the Oregon State Penitentiary, or who has been convicted of a crime amounting to a felony and has served a term of imprisonment in a penitentiary or prison of the United States, any state or territory.
[1955 c.660 §5]

**137.130 Imprisonment when there is no county jail.** Whenever there is no jail in a county, every judicial or other officer of the county who has power to order, sentence or deliver any person to the county jail may order, sentence or deliver such person to the jail of an adjoining county or, if there is no jail in any adjoining county, to the nearest county jail.

**137.140 Imprisonment when county jail is not suitable for safe confinement.** Whenever it appears to the court, at the time of giving judgment of imprisonment in the county jail, that there is no sufficient jail in the proper county, as provided in ORS 137.330, suitable for the safe confinement of the defendant, the court may order the judgment to be executed in the jail of any county in the state.

**137.150 Fines; imprisonment until fine is satisfied.** A judgment that the defendant pay a fine shall also direct that he be imprisoned in the county jail until the fine is satisfied, specifying the extent of the imprisonment, which notwithstanding any other provision of the law to the contrary, shall not exceed one day for every $5 of the fine. In case the entry of judgment should omit to direct the imprisonment and the extent thereof, the judgment to pay the fine shall operate to require the imprisonment of the defendant until the fine is satisfied at the rate above mentioned.
[Amended by 1959 c.530 §1]

**137.160** [Repealed by 1961 c.520 §1]

**137.170 Entry of judgment on conviction.** When judgment upon a conviction is given, the clerk shall enter the same in the journal, stating briefly the crime for which the conviction has been had. Such entry may be made at any time.
[Amended by 1959 c.638 §19]

**137.180 Docketing of judgment to pay fine or costs.** A judgment that the defendant pay money, either as a fine or as costs and disbursements of the action, or both, shall be docketed as a judgment in a civil action and with like effect, as provided in ORS 18.320, 18.350 and 18.400.

**137.190** [Repealed by 1959 c.558 §32 (ORS 137.220 enacted in lieu of ORS 137.190)]

**137.200 Costs paid by county; taxation against defendant on conviction.** The costs and disbursements in a criminal action or proceeding are paid to the person rendering the service by the proper county; but in case of a judgment of conviction, such costs and disbursements shall be taxed against the defendant.

**137.205 Taxation against defendant of cost of legal assistance furnished to him.** An individual for whom aid of an attorney has been furnished under ORS 133.625, 135.320, 138.440, 138.480, 138.500, 138.590, 138.770, 419.498 or 426.100 is liable for the cost incurred in furnishing such aid; which shall include the total amount of the fees and expenses allowed the attorney or the attorneys. Where the Public Defender has acted as attorney, the cost incurred shall include the reasonable share of the salaries and expenses of the Public Defender applicable to the defense of such individual, determined by the formula prescribed by the Public Defender Committee under ORS 138.730. The cost incurred shall be taxed as a disbursement against the individual for whom the aid was

furnished, by the highest court that last acted in the case, whether or not a trial is had and whether or not the individual prevails.
[1963 c.600 §12]

**137.210 Taxation of costs against complainant.** (1) If it is found by any justice or court trying the action or hearing the proceeding that the prosecution is malicious or without probable cause, that fact shall be entered upon record in the action or proceeding by the justice or court.

(2) Upon making the entry prescribed in subsection (1) of this section, the justice or court shall immediately render judgment against the complainant for the costs and disbursements of the action or proceeding.

(3) As used in this section "complainant" means every person who voluntarily appears before any magistrate or grand jury to prosecute any person in a criminal action, either for a misdemeanor or felony.
[Amended by 1959 c.426 §3]

**137.220 Clerk to prepare trial court file.** In every criminal proceeding, the clerk shall attach together and file in his office, in the order of their filing, all the original papers filed in the court, whether before or after judgment, including but not limited to the indictment and other pleadings, demurrers, motions, affidavits, stipulations, orders, the judgment and the notice of appeal and undertaking on appeal, if any.
[1959 c.558 §33 (enacted in lieu of ORS 137.190)]

**137.230 Definitions for ORS 137.230 to 137.260.** As used in ORS 137.230 to 137.260, "conviction" or "convicted" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.
[1961 c.412 §1]

**137.240 Effect of felony conviction on civil and political rights; restoration of civil rights; exceptions.** (1) Conviction of a felony:

(a) Suspends all the civil and political rights of the person so convicted.

(b) Forfeits all public offices and all private trusts, authority or power during the term or duration of any imprisonment.

(2) However, a person convicted of a felony may lawfully exercise all civil rights during any period of parole or probation or upon final discharge from imprisonment.

(3) The provisions of subsections (1) and (2) of this section are not intended to render a person convicted of a felony incapable of making a will or power of attorney or incapable of making and acknowledging a sale or conveyance of property.
[Formerly 421.110]

**137.250 Restoration of political rights; effect of parole or probation revocation and commitment on civil and political rights.** (1) The political rights of a person convicted of a felony shall be restored to him automatically upon final discharge from probation, parole or imprisonment.

(2) Revocation of parole or probation and commitment to the penitentiary or correctional institution suspends civil and political rights.
[Formerly 421.112]

**137.260 Political rights restored to persons convicted of felony before August 9, 1961, and subsequently discharged.** Any person convicted of a felony prior to August 9, 1961, and subsequently discharged from probation, parole or imprisonment prior to or after August 9, 1961, is hereby restored to his political rights.
[1961 c.412 §4]

**137.270 Effect of felony conviction on property of defendant.** No conviction of any person for crime works any forfeiture of any property, except in cases where the same is expressly provided by law; but in all cases of the commission or attempt to commit a felony, the state has a lien, from the time of such commission or attempt, upon all the property of the defendant for the purpose of satisfying any judgment which may be given against him for any fine on account thereof and for the costs and disbursements in the proceedings against him for such crime; provided, however, such lien shall not attach to such property as against a purchaser or incumbrancer in good faith, for value, whose interest in the property was acquired before the docketing of the judgment against the defendant.
[Formerly 137.460]

**137.280 to 137.300** [Reserved for expansion]

## EXECUTION OF JUDGMENT

**137.310 Authorizing execution of judgment; detention of defendant.** (1) When a judgment, except of death, has been pronounced, a certified copy of the entry thereof upon the journal shall be forthwith furnished

by the clerk to the officer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require its execution.

(2) The defendant may be arrested and detained in any county in the state by any peace officer and held for the authorities from the county to which the execution is directed. Time spent by the defendant in such detention shall be credited towards the term specified in the judgment.

[Amended by 1961 c.358 §1]

**137.320 By whom judgment of imprisonment is executed.** When the judgment is imprisonment in the penitentiary or the Oregon State Correctional Institution, the sheriff shall deliver the defendant, together with a copy of the entry of judgment, to the executive head of the designated institution. When the judgment is imprisonment in the county jail or a fine and that the defendant be imprisoned until it is paid, the judgment shall be executed by the sheriff of the county.

[Amended by 1955 c.660 §14]

**137.330 Where judgment of imprisonment in county jail is executed.** (1) Except as provided in ORS 137.130 and 137.140, a judgment of imprisonment in the county jail shall be executed by confinement in the jail of the county where the judgment is given, except that when the place of trial has been changed, the confinement shall take place in the jail of the county where the action was commenced.

(2) The jailor of any county jail to which a prisoner is ordered, sentenced or delivered pursuant to ORS 137.130 or 137.140 shall receive and keep such prisoner in the same manner as if he had been ordered, sentenced or delivered to him by an officer or court of his own county; but the county in which the prisoner would be imprisoned except for the provisions of ORS 137.130 or 137.140 shall pay all the expenses of keeping and maintaining him in said jail.

**137.340 Conveyance of defendant to prison; authority of sheriff to require assistance.** (1) The sheriff or his deputy, while conveying the defendant to the proper prison in execution of a judgment of imprisonment, may require the assistance of any inhabitant of this state in securing the defendant and in retaking him if he escapes as if the sheriff were in his own county.

(2) No person shall refuse or neglect to assist the sheriff when so required.

**137.350 Woman officer to accompany woman or girl to place of confinement.** If any woman or girl charged with a crime is sentenced to any place of confinement, she shall be accompanied to such place by a woman officer who shall be appointed and compensated in the same manner as provided in ORS 133.780.

**137.360 Duty of judge and sheriff to appoint woman officer to accompany woman ordered to institution.** (1) Whenever an order has been made by any court of this state for the confinement of any female within any of the penal, reformatory or eleemosynary institutions of this state and by reason thereof it becomes the duty of any judge to appoint any person to accompany the female to such institution, the judge shall appoint a woman for that purpose.

(2) Whenever under the laws of this state it becomes the duty of the sheriff of any county to convey any female to any of the penal, reformatory or eleemosynary institutions of this state, the sheriff shall cause such person to be accompanied by a female attendant to the place of confinement.

**137.370 Commencement of term of imprisonment in state penal or correctional institution; voluntary absence.** When a person is sentenced to imprisonment in the penitentiary or the correctional institution, his term of confinement therein commences from the day of his delivery at the penitentiary or correctional institution to the proper officer thereof. Except in the case of a person enrolled in a work release program established under ORS 144.420, no time during which such person is voluntarily absent from the penitentiary or correctional institution can be counted as a part of the term for which such person was sentenced.

[Amended by 1955 c.660 §15; 1965 c.463 §19]

**Note:** The 1965 amendment to ORS 137.370 does not become operative until the Oregon State Board of Control approves rules under ORS 144.450 and files a copy of such rules with the Secretary of State. See 1965 c.463 §24.

**137.375 Release of prisoners whose terms expire on legal holidays.** When the date of release from imprisonment of any inmate in the county or city jail or penal, correctional or reformatory institution falls

on Sunday or a legal holiday, such person shall be released on the preceding day. [1953 c.532 §1; 1955 c.660 §16]

**137.380 Treatment and employment of prisoners.** A judgment of imprisonment in the penitentiary or the Oregon State Correctional Institution need only specify the duration of confinement. Thereafter the manner of the confinement and the treatment and employment of a person sentenced to imprisonment in any penal, correctional or reformatory institution shall be regulated and governed by whatever law is then in force prescribing the discipline of such institution and the treatment and employment of persons sentenced to confinement therein. [Amended by 1955 c.32 §1; 1955 c.660 §17; 1959 c.687 §1]

**137.390 Commencement and termination of term of imprisonment in county jail; treatment of prisoners therein.** The commencement and termination of a sentence of imprisonment in the county jail is to be ascertained by the rule prescribed in ORS 137.370, and the manner of such confinement and the treatment of persons so sentenced shall be governed by whatever law may be in force prescribing the discipline of county jails.

**137.400 Judgment of death; warrant; delivery of defendant.** (1) When judgment of death is pronounced, a warrant signed by the judge of the court and attested by the clerk, with the seal of the court affixed, shall be drawn and delivered to the sheriff of the county. It shall state the conviction and judgment and shall direct the sheriff to deliver the defendant within 20 days from the time of judgment to the Warden of the Oregon State Penitentiary pending the determination of an appeal or the automatic appeal provided in ORS 138.410.

(2) If an appeal or the automatic appeal provided by ORS 138.410, affirms the judgment of death, a warrant signed by the judge of the court in which the judgment was rendered and attested by the clerk of such court, shall be drawn and delivered to the Warden of the Oregon State Penitentiary. The warrant shall appoint a day on which the judgment is to be executed and shall authorize and command the warden to execute the judgment of the court. [Amended by 1953 c.104 §2; 1955 c.662 §6]

**137.410 Delivery of warrant in case of change of place of trial.** In case the place of trial has been changed, the death warrant shall be delivered to the sheriff of the county wherein the trial was had. He shall deliver the same, with the defendant, to the warden, as provided in ORS 137.400.

**137.420 Inflicting punishment of death.** The punishment of death shall be inflicted by the administration of lethal gas until the defendant is dead. The judgment shall be executed by the warden of the penitentiary. All executions shall take place within the inclosure of the penitentiary. The warden of the penitentiary shall be present at the execution and shall invite the presence of one or more physicians, the Attorney General, the sheriff of the county in which the judgment was rendered and at least 12 reputable citizens to be selected by him. He shall, at the request of the defendant, permit such ministers of the gospel, not exceeding two, as the defendant may name and, in the discretion of the warden, such relatives and friends of the defendant as he may designate, not to exceed five, to be present at the execution, together with such peace officers as the warden thinks expedient. No other persons than those mentioned in this section can be present at the execution, nor can any person under the age of 21 years be allowed to witness the same.

**137.430 Application of ORS 137.420 to crimes committed prior to its enactment.** ORS 137.420 does not affect the indictment, prosecution, trial, verdict, judgment or punishment of any crimes committed before June 7, 1937, but all laws before that date in effect relating thereto are continued in full force and effect as to such crimes.

**137.440 Return of officer executing judgment; annexation to judgment roll.** When a judgment in a criminal action has been executed, the sheriff or officer executing it shall return to the clerk the warrant or copy of the entry or judgment upon which he acted, with a statement of his doings indorsed thereon, and the clerk shall file the same and annex it to the judgment roll in the case.

**137.450 Enforcement of money judgment in criminal action.** A judgment against the defendant in a criminal action or the private prosecutor, so far as it requires the

payment of a fine or costs and disbursements of the action, or both, may be enforced as a judgment in a civil action.

**137.460** [Renumbered 137.270]

**137.470 to 137.500** [Reserved for expansion]

## SUSPENDED SENTENCE AND PROBATION; PAROLE BY COMMITTING MAGISTRATE

**137.510 Power of court to suspend imposition or execution of sentence or to place defendant on probation.** (1) The courts having jurisdiction of criminal or quasicriminal actions, including actions for violation of municipal ordinances, when it appears that the best interests of the public as well as of the defendant will be subserved thereby, may:

(a) Suspend the imposition or execution of sentence for any crime or offense for any period not to exceed five years; and may also

(b) Place the defendant on probation for a definite or indefinite period not less than one nor more than five years.

(2) The power of the judge of any court to suspend execution of sentence or to grant probation to any person convicted of a crime shall continue until such person is delivered to the executive head of the penal, reformatory or correctional institution designated in the judgment.

[Amended by 1955 c.660 §18; 1955 c.688 §1]

**137.520 Power of committing magistrate to parole and arrange for employment of persons confined in county jail.** (1) The committing magistrate may establish rules and regulations under which any prisoner who is confined in any county jail for any period under six months may be allowed to go upon parole outside the county jail, but to remain while on parole in the legal custody and under the control of the court, and subject to being taken back into confinement at the discretion of the court.

(2) If such a prisoner prior to sentence for any crime or offense has been regularly employed, the court may, by order, direct the sheriff of the county to arrange for such prisoner to continue his employment in the county or contiguous to the county where imprisoned, so far as possible. If such prisoner had no regular employment the court may, by order, authorize the sheriff to obtain gainful employment for him at prevailing rate of wage for such work and at fair and reasonable hours per day or week.

(3) Between the hours or periods when the prisoner is not employed he shall be confined in jail unless the court, by order, otherwise directs.

(4) The net earnings of such prisoner shall be payable to the sheriff. From such net earnings the sheriff, to the extent ordered by the court, may pay for such prisoner's board, both inside and outside of jail, and personal expenses and the support of such prisoner's lawful dependents, if any, and, if sufficient funds are available after making the foregoing payments, pay in whole or in part the pre-existing debts of such prisoner. Any balance shall be retained until such prisoner has been discharged, whereupon it shall be paid to him.

(5) The committing magistrate may parole to the State Board of Parole and Probation any person sentenced to be confined in the county jail for a period of six months or more.

[Amended by 1959 c.345 §1]

**137.530 Investigation and report of probation officers.** Probation officers, when directed by the court, shall fully investigate and report to the court in writing on the circumstances of the offense, criminal record, social history and present condition and environment of any defendant; and unless the court directs otherwise in individual cases, no defendant shall be placed on probation until the report of such investigation has been presented to and considered by the court. Whenever desirable, and facilities exist therefor, such investigation shall include physical and mental examinations of such defendants.

**137.540 Determination and modification of conditions of probation.** The court shall determine, and may at any time modify, the conditions of probation, which may include, as well as any others, that the probationer shall:

(1) Avoid injurious or vicious habits.

(2) Avoid places or persons of disreputable or harmful character.

(3) Report to the probation officer as directed by the court or probation officer.

(4) Permit the probation officer to visit him at his place of abode or elsewhere.

(5) Answer all reasonable inquiries of the probation officer.

(6) Work faithfully at suitable employment.

(7) Remain within a specified area.

(8) Pay his fine, if any, in one or several sums.

(9) Be confined to the county jail for a period not to exceed one year or one-half of the maximum period of confinement that could be imposed for the offense for which the defendant is convicted, whichever is the lesser.

(10) Make reparation or restitution to the aggrieved party for the damage or loss caused by offense, in an amount to be determined by the court.

(11) Support his dependents.

(12) Remain in the legal custody and control of the State Board of Parole and Probation under the rules and regulations of the board.

[Amended by 1965 c.346 §1]

**137.550 Period of probation; discharge from probation; proceedings in case of violation of conditions.** (1) Subject to the limitations in subsection (1) of ORS 137.510:

(a) The period of probation shall be such as the court determines and may, in the discretion of the court, be continued or extended.

(b) The court may at any time discharge a person from probation.

(2) At any time during the probation period, the court may issue a warrant and cause a defendant to be arrested for violating any of the conditions of probation. Any probation officer, police officer or other officer with power of arrest may arrest a probationer without a warrant, and a statement by the probation officer setting forth that the probationer has, in his judgment, violated the conditions of probation is sufficient warrant for the detention of the probationer in the county jail, house of detention or local prison, when designated in such statement, until the probationer can be brought before the court. The probation officer shall forthwith report such arrest or detention to the court and submit to the court a report showing in what manner the probationer has violated his probation. Thereupon the court, after summary hearing, may revoke the probation and suspension of sentence and cause the sentence imposed to be executed or, if no sentence has been imposed, impose any sentence which originally could have been imposed. A defendant who has been previously confined in the county jail as a condition of probation pursuant to ORS 137.540 shall be given credit for all time thus served in any order or judgment of confinement resulting from revocation of his probation. In the case of any defendant whose sentence has been suspended but who is not on probation, the court may issue a warrant and cause the defendant to be arrested and brought before the court at any time within the maximum period for which the defendant might originally have been sentenced. Thereupon the court, after summary hearing, may revoke the suspension of sentence and cause the sentence imposed to be executed.

[Amended by 1955 c.688 §2; 1965 c.346 §2]

**137.560 Copies of certain orders to be sent to Director of Parole and Probation.** Within 10 days following the issuing of any order of suspension of imposition or execution of sentence or of probation of any person convicted of a crime, or of the continuation, extension, modification or revocation of any such order, or of the discharge of such person, or the recommendation by the court to the Governor of the pardon of such person, the judge issuing such an order shall send a copy of the same to the Director of Parole and Probation.

**137.570 Authority to transfer probationer from one officer to another; procedure.** A court may transfer a person on probation under its jurisdiction from the supervision of one probation officer to that of another probation officer. Whenever a person placed on probation resides in or is to remove to a locality outside the jurisdiction of the court which placed such person on probation, such court may transfer such person to a probation officer appointed to serve for the locality in which such person resides or to which he is to remove:

(1) If such probation officer sends to the court desiring to make such transfer a written statement that he will exercise supervision over such person.

(2) If the statement is approved in writing by the judge of the court to which such probation officer is attached.

**137.580 Effect of transfer of probationer from one officer to another.** Whenever the transfer mentioned in ORS 137.570 is made, the court making it shall send to the probation officer to whose supervision the probationer is transferred a copy of all the records of such court as to the offense, criminal record and social history of the

probationer. The probation officer shall report concerning the conduct and progress of the probationer to the court that placed him on probation. Probation officers shall have, with respect to persons transferred to their supervision from any other jurisdiction, all the powers and be subject to all the duties now imposed by law upon them in regard to probationers received on probation from courts in their own jurisdiction.

**137.590 Appointment of probation officers and assistants; chief probation officer; compensation.** The judge or judges of any court of criminal jurisdiction, including municipal courts, may appoint, and at pleasure remove, such men and women probation officers and clerical assistants as may be necessary. Probation officers appointed by the court shall be selected because of definite qualifications as to character, personality, ability and training. In courts where more than one probation officer is appointed, one shall be designated chief probation officer and shall have general supervision of the probation work of probation officers appointed by and under the direction of the court. Appointments shall be in writing and entered on the records of the court. A copy of each order of appointment shall be filed in the office of the State Board of Parole and Probation. No probation officer or clerical assistant appointed by the court under this section shall receive any compensation from the state, any county or any municipality.

**137.600** [Repealed by 1955 c.491 §9]

**137.610 Performance by staff of State Board of Parole and Probation of duties of probation officers appointed by judge.** The judge or judges of any court of criminal jurisdiction, including municipal courts, may request at any time the staff of the State Board of Parole and Probation to perform any of the duties which might be required of a probation officer appointed by the court pursuant to ORS 137.590. All such requests for services of the staff shall be made upon the Director of Parole and Probation, who shall order the prompt performance of any such requested service whenever members of the staff are available for such duty.

**137.620 Powers of probation officers; oath of office; bond; audit of accounts.** Probation officers shall have the powers of peace officers in the execution of their duties, but shall not be active members of the regular police force. Each probation officer, before entering on the duties of his office, shall take an oath of office, to be administered by the court making the appointment. Each probation officer who collects or has custody of money shall execute a bond in a penal sum to be fixed by the court, with sufficient sureties approved thereby, conditioned for the honest accounting of all money received by him as probation officer. The accounts of all probation officers shall be subject to audit at any time by the proper fiscal authorities.

**137.630 Duties of probation officers.** The duties of probation officers shall be:

(1) To make such investigations and reports under ORS 137.530 as are required by the judge of any court having jurisdiction within the county, city or judicial district for which the officer is appointed to serve.

(2) To receive under supervision any person placed on probation by any court in the jurisdiction area for which such officers are appointed to serve.

(3) To collect from persons under their supervision such payments as are ordered by the courts for which they serve, and to disburse the money so received under the direction of such courts.

(4) To give each person under their supervision a statement of the conditions of probation and to instruct him regarding them; to keep informed concerning the conduct and condition of such persons by visiting, requiring reports and otherwise; to use all suitable methods, not inconsistent with the condition of probation, to aid and encourage such persons and to effect improvement in their conduct and condition.

(5) To keep detailed records of the work done and accurate and complete accounts of all money collected and disbursed and to give and obtain receipts therefor; and to make such reports to the courts and to the State Board of Parole and Probation as such courts require.

**137.640** [Repealed by 1961 c.359 §1]

**137.650** [Repealed by 1961 c.359 §1]

**137.660** [Repealed by 1961 c.359 §1]

**137.670** [Repealed by 1961 c.359 §1]

**137.680 to 137.980** [Reserved for expansion]

## PENALTIES

**137.990 Penalties.** (1) Violation of ORS 137.110 may be punished as a contempt.

(2) Violation of subsection (2) of ORS 137.340 is punishable as if the sheriff were in his own county.

(3) Violation of ORS 137.360 is punishable upon conviction by a fine of not less than $25 nor more than $500.

### 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 15, 1965.

Sam R. Haley
Legislative Counsel