Chapter 135

1969 REPLACEMENT PART

Arraignment; Pleadings of Defendant; Proceedings Thereon

TIME, PLACE AND SCOPE OF ARRAIGNMENT

135.010 Time and place
135.020 Scope of proceedings

PRESENCE OF DEFENDANT AT ARRAIGNMENT; ARREST FOR NONAPPEARANCE

135.110 When presence of defendant is required; appearance by counsel
135.120 Bringing in defendant who is in custody
135.130 Bringing in defendant admitted to bail; forfeiture of bail
135.140 Bringing in defendant not yet arrested or held to answer
135.150 Indorsing amount of bail on bench warrant
135.160 Issuance of bench warrant by clerk when court is not sitting
135.170 Form of bench warrant
135.180 Issuance to one or more counties; service in another county
135.190 Admission of defendant to bail
135.200 Order on taking of bail; discharge of defendant; return of warrant and order
135.210 Denial of bail; disposal of defendant by officer

COUNSEL; NAME USED IN INDICTMENT AND IN SUBSEQUENT PROCEEDINGS

135.310 Right of counsel
135.320 Court appointment of counsel; waiver
135.330 Appointed counsel's fee; expenses; payment of expenses and fee
135.340 Communication to defendant as to use of name in indictment
135.350 Name used in further proceedings

DEFENDANT'S ANSWER GENERALLY

135.410 Time allowed for answering
135.420 Types of answer
135.430 Types of pleading
135.440 Refusal to demur or plead
135.450 Pleading a judgment
135.460 Pleading a private statute or statutory right

MOTION TO SET ASIDE THE INDICTMENT

135.510 Grounds for motion to set aside the indictment
135.520 Time of making motion; hearing
135.530 Effect of allowance of motion
135.540 Effect of resubmission of case to grand jury
135.550 Failure to find new indictment before next grand jury is discharged
135.560 Order to set aside is no bar to future prosecution

DEMURRER

135.610 Time and place of entering
135.620 Form; signature; filing; specification of grounds
135.630 Grounds of demurrer
135.640 When objections which are grounds for demurrer may be taken
135.650 Hearing of objections specified by demurrer
135.660 Judgment on demurrer; entry in journal
135.670 Allowance of demurrer
135.680 Failure to resubmit case to grand jury after allowance of demurrer
135.690 Resubmission of case to grand jury
135.700 Disallowance of demurrer

PLEA

135.810 Time of entering
135.820 Types of plea
135.830 Presentation of plea; entry in journal; form
135.840 Special provisions relating to presentation of plea of guilty
135.850 Withdrawal of plea of guilty
135.860 Not guilty plea as denial of allegations of indictment
135.870 Evidence admissible under plea of not guilty; notice as essential to proof of insanity
135.875 Notice prior to trial of intention to rely on alibi evidence; content of notice; effect of failure to supply notice
135.880 Defect in indictment as affecting acquittal on merits
135.890 Proceedings not constituting former acquittal
135.900 Effect of conviction or acquittal of crime of different degrees

CROSS REFERENCES

Civil commitment of sexually dangerous persons, 426.510 to 426.670
Constitutional rights of accused, Const. Art. I, § 11
Diagnostic examination, 137.072
Duties relating to administration of justice, enforcement of performance of, 1.025
Hearing for traffic offense, 484.200, 484.210, 484.220
Hearing on allegation of former conviction, 168.065
Indictment defective in form may be amended, Const. Art. VII (A), § 5
Inspection by defendant of evidence obtained from him, 133.755
Traffic offense, violations bureau for, clerk of court to accept written appearance, plea of guilty and payment of fine, 484.310
Undertaking requiring witnesses to appear, requiring on arraignment, 139.150 to 139.180

135.120

Presence of prisoner at proceedings, 134.510, 134.540

135.320

Compensation of counsel who assists Public Defender, 138.490
Counsel, appointment by circuit court in certain criminal cases, 133.625
Taxation of costs against defendant, 137.205

135.330

Expenses and fees of appointed counsel, 133.635, 138.500, 138.590

135.430

Forms of pleading in criminal actions abolished, 132.510

135.630

Combining in same indictment of unmarried woman charges of murder of her bastard infant and concealing its death, 163.660
Issue of law raised by demurrer, 136.020

135.650

Issues of law, how tried, 136.030

135.820

Acquittal for variance, effect of, 136.710
Acquittal or conviction as precluding second prosecution, Const. Art. I, § 12, 131.240
Acquittal or conviction under federal narcotics law as precluding prosecution, 474.210
Discharge of defendant after satisfaction of injured person, bar to another prosecution, 134.030
Discharge of indictment as bar to another action for same crime, 136.130
Dismissal of action as bar to another prosecution, 134.140(2)
Judgment of acquittal before presentation of defense as bar to another prosecution for same crime, 136.605

135.840

Powers of judge out of court, 1.230

TIME, PLACE AND SCOPE OF ARRAIGNMENT

135.010 Time and place. When the indictment has been filed, the defendant, if he has been arrested, or as soon thereafter as he may be, shall be arraigned thereon before the court in which it is found.

135.020 Scope of proceedings. The arraignment shall be made by the court, or by the clerk or the district attorney under its direction, and consists of reading the indictment to the defendant, delivering to him a copy thereof and the indorsements thereon, including the list of witnesses indorsed on it or appended thereto, and asking him whether he pleads guilty or not guilty to the indictment.

PRESENCE OF DEFENDANT AT ARRAIGNMENT; ARREST FOR NONAPPEARANCE

135.110 When presence of defendant is required; appearance by counsel. When the indictment is for a felony, the defendant shall be personally present at the arraignment; but when it is for a misdemeanor and the defendant has been held to answer to the charge, his personal appearance is unnecessary and he may appear by counsel.

135.120 Bringing in defendant who is in custody. When the personal appearance of the defendant is necessary, if he is in custody, the court may direct the proper officer to bring him before it to be arraigned and the officer shall do so accordingly.

135.130 Bringing in defendant admitted to bail; forfeiture of bail. If the defendant has given bail, or has deposited money in lieu thereof, and does not appear to be arraigned when his personal appearance is necessary therefor, the court, in addition to the forfeiture of the undertaking of bail or of the money deposited in lieu thereof, may order the clerk to issue a bench warrant for his arrest.

135.140 Bringing in defendant not yet arrested or held to answer. When an indictment is filed in court, if the defendant has not been arrested and held to answer the charge, unless he voluntarily appears for arraignment, the court shall order the clerk to issue a bench warrant for his arrest.

135.150 Indorsing amount of bail on bench warrant. If the crime charged in the indictment is bailable, the court, upon directing the bench warrant to issue, shall fix the amount of bail, and the clerk shall indorse the same upon the warrant and sign it, substantially as follows: "The defendant is to be admitted to bail in the sum of ——— dollars."

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

135.170 Form of bench warrant. The bench warrant upon the indictment shall be substantially in the following form:

CIRCUIT 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:

An indictment having been found on the —— day of ——, 19—, in the circuit court for the county aforesaid, charging A. B. with the crime of (designating it generally), this is to command you forthwith to arrest the defendant and bring him before such court to answer the indictment or, if the court has adjourned for the term, that you deliver him into the custody of the jailor of the county aforesaid. By order of the court.

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

[L. S.] C. D., County Clerk.

135.180 Issuance to one or more counties; service in another county. If the district attorney so directs, a warrant shall issue to one or more counties and such warrants may be served in any county in the state in the same manner as a warrant of arrest, except that when served in another county, it need not be indorsed by a magistrate of that county.

135.190 Admission of defendant to bail. When the crime is bailable and the defendant requires it, the officer making the arrest shall take him before a magistrate of the county wherein the arrest is made or the action is pending for the purpose of putting in bail, and thereupon the magistrate shall

proceed in respect thereto according to the provisions of ORS chapter 140.

135.200 Order on taking of bail; discharge of defendant; return of warrant and order. If bail is taken, the magistrate shall make the order prescribed by subsection (1) of ORS 140.160 and deliver it to the officer, who shall thereupon discharge the defendant and without delay return the warrant and order to the clerk of the court at which the defendant is required to appear.

135.210 Denial of bail; disposal of defendant by officer. If the bail is not allowed, the officer shall take the defendant before the court or commit him to the custody of the jailor, according to the command of the warrant.

COUNSEL; NAME USED IN INDICTMENT AND IN SUBSEQUENT PROCEEDINGS

135.310 Right of counsel. If the defendant appears for arraignment without counsel, he shall be informed by the court that it is his right to have counsel before being arraigned and shall be asked if he desires the aid of counsel.

135.320 Court appointment of counsel; waiver. If upon arraignment of a person accused in the circuit court of a crime against the laws of this state, the person being arraigned appears without counsel, the court having jurisdiction of the case, in accordance with ORS 133.625, shall appoint suitable counsel to represent him unless the person waives counsel and the court approves the waiver.

[Amended by 1961 c.696 §2; 1967 c.475 §2]

135.330 Appointed counsel's fee; expenses; payment of expenses and fee. (1) Counsel appointed pursuant to ORS 135.320 shall, if the court so orders, be paid by the county in which the proceeding is had, for the services rendered in conducting the defense, fees as set forth in the following schedule, and the necessary disbursements:

(a) When the accused is charged with a misdemeanor, and a plea of "guilty" is entered, $25.

(b) When the accused is charged with a misdemeanor, and a plea of "not guilty" is entered, $50 per day of trial, but not exceeding two days in any one case.

(c) When the accused is charged with a felony, and a plea of "guilty" is entered, $50.

(d) When the accused is charged with a felony, and a plea of "not guilty" is entered, $100 per day of trial, but not exceeding five days in any one case.

(e) When the accused is before the court for any proceedings other than those referred to in paragraphs (a), (b), (c) and (d) of this subsection, $50 per day, but not exceeding two days in any one case.

(f) In extraordinary circumstances, payment in excess of the limits stated herein may be made if the presiding judge of the circuit court certifies that such payment is necessary to provide fair compensation for protracted representation in the case.

(2) The person for whom counsel has been appointed is entitled to a reasonable sum for investigation, preparation and presentation of his case and he or his counsel may upon cause shown, which need not be disclosed to the district attorney prior to any hearing, secure approval and authorization of payment of such sums as the court finds are necessary and proper in the investigation, preparation and presentation of his case, including but not limited to travel, telephone calls, photocopying or other reproduction of documents and expert witness fees.

(3) Upon completion of all services by the attorney or attorneys so appointed under ORS 135.320, the attorney or attorneys shall submit to the court an affidavit containing an accurate statement of all reasonable expenses of investigation and preparation paid or incurred, supported by appropriate receipts or vouchers. The court shall thereupon enter an order directing the county to pay to such attorney or attorneys the amount of the expenses, or such portion thereof as may be approved by the court.

[Amended by 1961 c.698 §1; 1967 c.628 §1]

135.340 Communication to defendant as to use of name in indictment. When the defendant is arraigned, he shall be informed that if the name by which he is indicted is not his true name he must then declare his true name or be proceeded against by the name in the indictment.

135.350 Name used in further proceedings. If the defendant gives no other name, the court may proceed accordingly. If the defendant alleges that another name is his true name, the court shall direct an entry

thereof to be made in its journal, and the subsequent proceedings on the indictment may be had against him by that name, referring also to the name by which he is indicted.

DEFENDANT'S ANSWER GENERALLY

135.410 Time allowed for answering. If on the arraignment the defendant requires it, he shall be allowed until the next day, or until such further time as the court deems reasonable, to answer the indictment.

135.420 Types of answer. If the defendant does not require time, as provided in ORS 135.410, or if he does, then on the next day or at such further day as the court may have allowed him, he may, in answer to the arraignment, move the court to set aside the indictment or demur or plead thereto.

135.430 Types of pleading. The only pleadings on the part of the defendant are the demurrer and plea.

135.440 Refusal to demur or plead. If the defendant, within the time required, refuses to demur or plead to the indictment, the court shall direct that a plea of not guilty be entered for him.

135.450 Pleading a judgment. In pleading a judgment or other determination of or proceeding before a court or officer of special jurisdiction, it is not necessary for the defendant to state the facts conferring jurisdiction; but the judgment, determination, or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial.

135.460 Pleading a private statute or statutory right. In pleading a private statute, or right derived therefrom, it is sufficient to refer to the statute by its title and the day of its passage.

MOTION TO SET ASIDE THE INDICTMENT

135.510 Grounds for motion to set aside the indictment. The indictment shall be set aside by the court upon the motion of the defendant in either of the following cases:

(1) When it is not found, indorsed and presented as prescribed in ORS 132.360, 132.400 to 132.430 and 132.580.

(2) When the names of the witnesses examined before the grand jury are not inserted at the foot of the indictment or indorsed thereon.

[Amended by 1959 c.426 §2]

135.520 Time of making motion; hearing. The motion to set aside the indictment shall be made and heard at the time of the arraignment unless for good cause the court postpones the hearing to a future time. If not so made, the defendant is precluded from afterwards taking the objections mentioned in ORS 135.510.

135.530 Effect of allowance of motion. If the motion is allowed, the court shall order that the defendant, if in custody, be discharged therefrom or, if he has given bail or deposited money in lieu thereof, that his bail be exonerated or his money refunded to him, unless it directs that the case be resubmitted to the same or another grand jury.

135.540 Effect of resubmission of case to grand jury. If the court directs that the case be resubmitted, the defendant, if then in custody, shall so remain, unless he is admitted to bail. If he has already given bail or deposited money in lieu thereof, the bail or money is answerable for the appearance of the defendant to answer a new indictment, if one is found.

135.550 Failure to find new indictment before next grand jury is discharged. Unless a new indictment is found before the next grand jury of the county is discharged, the court shall, on the discharge of such grand jury, make the order prescribed by ORS 135.530.

135.560 Order to set aside is no bar to future prosecution. An order to set aside an indictment, as provided in ORS 135.510 to 135.550, is no bar to a future prosecution for the same crime.

DEMURRER

135.610 Time and place of entering. The demurrer shall be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

135.620 Form; signature; filing; specification of grounds. The demurrer shall be in writing, signed by the defendant or his

attorney and filed. It shall distinctly specify the ground of objection to the indictment or it may be disregarded.

135.630 Grounds of demurrer. The defendant may demur to the indictment when it appears upon the face thereof that:

(1) The grand jury by which it was found had no legal authority to inquire into the crime charged because the same is not triable within the county;

(2) It does not substantially conform to the requirements of ORS 132.510 to 132.570, 132.590, 132.610 to 132.690, 132.710 and 132.720;

(3) More than one crime is charged in the indictment;

(4) The facts stated do not constitute a crime; or

(5) The indictment contains any matter which, if true, would constitute a legal justification or excuse of the crime charged or other legal bar to the action.

135.640 When objections which are grounds for demurrer may be taken. When the objections mentioned in ORS 135.630 appear upon the face of the indictment, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the indictment, or that the facts stated do not constitute a crime, may be taken at the trial, under the plea of not guilty and in arrest of judgment.

135.650 Hearing of objections specified by demurrer. Upon the filing of the demurrer, the objections presented thereby shall be heard either immediately or at such time as the court may direct.

135.660 Judgment on demurrer; entry in journal. Upon considering the demurrer, the court shall give judgment, either allowing or disallowing it, and an entry to that effect shall be made in the journal.

135.670 Allowance of demurrer. If the demurrer is allowed, the judgment is final upon the indictment demurred to and is a bar to another action for the same crime unless the court, being of opinion that the objection on which the demurrer is allowed may be avoided in a new indictment, directs the case to be resubmitted to the same or another grand jury.

135.680 Failure to resubmit case to grand jury after allowance of demurrer. If the court does not direct the case to be resubmitted, the defendant, if in custody, shall be discharged. If he has been admitted to bail, his bail shall be exonerated. If he has deposited money in lieu of bail, the money shall be refunded to him.

135.690 Resubmission of case to grand jury. If the court directs that the case be resubmitted, the same proceedings shall be had thereon as are prescribed in ORS 135.540 and 135.550.

135.700 Disallowance of demurrer. If the demurrer is disallowed, the court shall permit the defendant, at his election, to plead, which he must do forthwith or at such time as the court may allow; but if he does not plead, judgment shall be given against him.

PLEA

135.810 Time of entering. The plea shall be put in, in open court, either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

135.820 Types of plea. There are three kinds of plea to an indictment:

(1) Guilty.

(2) Not guilty.

(3) A former judgment of conviction or acquittal of the crime charged, which may be pleaded either with or without the plea of not guilty.

135.830 Presentation of plea; entry in journal; form. Every plea shall be oral and shall be entered in the journal of the court in substantially one of the following forms:

(1) "The defendant pleads that he is guilty of the crime charged in this indictment."

(2) "The defendant pleads that he is not guilty of the crime charged in this indictment."

(3) "The defendant pleads that he has already been convicted (or acquitted, as the case may be) of the crime charged in this indictment by the judgment of the court of ——— (naming it), rendered at ——— (naming the place), on the ——— day of ———, 19—."

135.840 Special provisions relating to presentation of plea of guilty. (1) Except as provided in subsection (2) of this section, a plea of guilty shall in all cases be put in by the defendant in person in open court unless

upon an indictment against a corporation, in which case it may be put in by counsel.

(2) Any circuit judge may, within any county in his own district other than the county where the accusation is pending, accept pleas of guilty from persons charged with felonies and pass sentence thereon upon written request of the accused and his attorney and upon not less than one day's notice to the district attorney. All orders entering such pleas and such sentences shall be as effective as though heard and determined in open court in the county where the accusation is pending and shall be transmitted by the judge to the clerk of the court in the county where the accusation is pending, whereupon the same shall be filed and entered and become effective from the date of filing thereof.

135.850 Withdrawal of plea of guilty. The court may at any time before judgment, upon a plea of guilty, permit it to be withdrawn and a plea of not guilty substituted therefor.

135.860 Not guilty plea as denial of allegations of indictment. The plea of not guilty controverts and is a denial of every material allegation in the indictment.

135.870 Evidence admissible under plea of not guilty; notice as essential to proof of insanity. All matters of fact tending to establish a defense to the charge in the indictment or information, other than those specified in subsection (3) of ORS 135.820, and except as in this section provided, may be given in evidence under the plea of not guilty; provided, however, that where the defendant pleads not guilty and purposes to show in evidence that he was insane or mentally defective at the time of the alleged commission of the act charged, he shall, at the time he pleads, file a written notice of his purpose; and provided, further, that the defendant may file such notice at any time thereafter but before trial when just cause for failure to file the same at the time of making his plea is made to appear to the satisfaction of the court. If the defendant fails to file any such notice he shall not be entitled to introduce evidence for the establishment of such insanity or mental defect; provided, however, that the court may, in its discretion, permit such evidence to be introduced where just cause for failure to file the notice has been made to appear.

135.875 Notice prior to trial of intention to rely on alibi evidence; content of notice; effect of failure to supply notice. (1) If the defendant in a criminal action proposes to rely in any way on alibi evidence, he shall, not less than five days before the trial of the cause, file and serve upon the district attorney a written notice of his purpose to offer such evidence, which notice shall state specifically the place or places where the defendant claims to have been at the time or times of the alleged offense together with the name and residence or business address of each witness upon whom the defendant intends to rely for alibi evidence. If the defendant fails to file and serve such notice, he shall not be permitted to introduce alibi evidence at the trial of the cause unless the court for good cause orders otherwise.

(2) As used in this section "alibi evidence" means evidence that the defendant in a criminal action was, at the time of commission of the alleged offense, at a place other than the place where such offense was committed.
[1969 c.293 §1]

135.880 Defect in indictment as affecting acquittal on merits. When the defendant was acquitted on the merits, he is deemed acquitted of the same crime, notwithstanding a defect in form or substance in the indictment on which he was acquitted.

135.890 Proceedings not constituting former acquittal. If the defendant was formerly acquitted on the ground of a variance between the indictment and the proof, or if the indictment was dismissed upon a demurrer to its form or substance or discharged for want of prosecution, without a judgment of acquittal or in bar of another prosecution, it is not an acquittal of the same crime.

135.900 Effect of conviction or acquittal of crime of different degrees. When the defendant has been convicted or acquitted upon an indictment for a crime consisting of different degrees, such conviction or acquittal is a bar to another indictment for the crime charged in the former, for any inferior degree of that crime, for an attempt to commit the same or for an offense necessarily included therein of which he might have been convicted under that indictment, as provided in ORS 136.650 and 136.660.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Robert W. Lundy, 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 December 1, 1969

Robert W. Lundy
Legislative Counsel