

Chapter 137

1974 REPLACEMENT PART

Judgment and Execution; Parole and Probation by the Court

JUDGMENT (Generally)

- 187.010 Duty of court to ascertain and impose punishment
- 187.015 Assessment in addition to fine or bail forfeiture; increased bail deposit to cover assessment
- 187.020 Time for pronouncing judgment; notice of right to appeal
- 187.030 Presence of defendant at pronouncement of judgment
- 187.040 Bringing defendant in custody to pronouncement of judgment
- 187.050 Nonattendance or nonappearance of released defendant when attendance required by court
- 187.060 Form of bench warrant
- 187.070 Counties to which bench warrant may issue; service
- (Presentence Report)
- 187.077 Presentence report; general principles of disclosure
- 187.079 Presentence report; disclosure to parties; court's authority to except parts from disclosure
- (Aggravation or Mitigation)
- 187.080 Consideration of circumstances in aggravation or mitigation of punishment
- 187.090 Proof of circumstances; presentence investigation
- 187.100 Defendant as witness in relation to circumstances
- (Term and Place of Confinement)
- 187.120 Indeterminate sentence
- 187.124 Commitment of defendant to Corrections Division; place of confinement; transfer of inmates
- (Post-Judgment Procedures)
- 187.130 Imprisonment when there is no county jail
- 187.140 Imprisonment when county jail is not suitable for safe confinement
- 187.170 Entry of judgment on conviction
- 187.180 Docketing of judgment to pay fine or costs
- 187.210 Taxation of costs against complainant
- 187.220 Clerk to prepare trial court file
- 187.225 Order setting aside conviction; prerequisites; limitations
- (Effects of Felony Conviction)
- 187.230 Definitions for ORS 137.230 to 137.260
- 187.240 Effect of felony conviction on civil and political rights; restoration of civil rights; exceptions
- 187.250 Restoration of political rights; effect of parole or probation revocation and commitment on civil and political rights

- 187.260 Political rights restored to persons convicted of felony before August 9, 1961, and subsequently discharged
- 187.270 Effect of felony conviction on property of defendant

EXECUTION OF JUDGMENT

- 187.310 Authorizing execution of judgment; detention of defendant
- 187.320 Delivery of defendant when committed to Corrections Division; credit on sentence
- 187.330 Where judgment of imprisonment in county jail is executed
- 187.350 Woman officer to accompany woman or girl to place of confinement
- 187.360 Duty of judge and sheriff to appoint woman officer to accompany woman ordered to institution
- 187.370 Commencement of term of imprisonment in state penal or correctional institution; voluntary absence
- 187.375 Release of prisoners whose terms expire on legal holidays
- 187.380 Discipline, treatment and employment of prisoners
- 187.390 Commencement, term and termination of term of imprisonment in county jail; treatment of prisoners therein
- 187.440 Return by officer executing judgment; annexation to trial court file
- 187.450 Enforcement of money judgment in criminal action

PROBATION AND PAROLE BY COMMITTING MAGISTRATE

- 187.520 Power of committing magistrate to parole and arrange for employment of persons confined in county jail
- 187.530 Investigation and report of probation officers
- 187.540 Determination and modification of conditions of probation
- 187.550 Period of probation; discharge from probation; proceedings in case of violation of conditions
- 187.560 Copies of certain orders to be sent to Corrections Division
- 187.570 Authority to transfer probationer from one agency to another; procedure
- 187.580 Effect of transfer of probationer from one agency to another
- 187.590 Appointment of probation officers and assistants; chief probation officer
- 187.610 Performance by Corrections Division staff of duties of probation officers appointed by judge
- 187.620 Powers of probation officers; oath of office; bond; audit of accounts
- 187.630 Duties of probation officers

CROSS REFERENCES

- Corporations, fine in lieu of statutory fine, how computed, 161.655
- Costs, payment as condition of probation or suspension, 161.665
- Court and court officer's duty to require performance of acts relating to administration of justice, enforcement of duty by mandamus, 1.025
- Criminal offenses, classification, 161.505 to 161.585
- Excessive fines, cruel and unusual punishments, Const. Art. I, § 16
- Fines, payment as condition of probation or suspension, 161.665
- Fines, standards for imposing, 161.645
- Inspection by defendant of evidence obtained from him, 133.723
- Judgment against defendant on failure to plead, 135.700
- Maximum jail and prison terms, 161.605, 161.615
- Post-conviction relief, 138.510 to 138.680
- Programs for persons convicted of driving under influence of alcohol; crimes committed while intoxicated, 430.850 to 430.880
- Traffic offense procedure, penalty that may be imposed if defendant not present at hearing, 484.220
- Verdict and judgment, 136.445 to 136.495
- Work release program, recommendation of sentencing court, 144.440
- 137.010**
- Added penalty for committing, or attempt to commit crime, while armed, 166.230
- Dangerous offenders, 161.725
- Drug user, periodic test as condition to probation, 475.675
- Juvenile court, power to fix probation, supervision or institutionalization, 419.511
- Misdemeanor, punishment where penalty is not prescribed, 161.585
- Murder, life imprisonment, required, 163.115
- 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
- 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
- Suspension of sentence on conviction for:
- Contributing to delinquency of a minor, 167.220
- Nonsupport, 167.610
- 137.015**
- Assessments, use for reimbursement of local police academy costs, 181.655
- 137.020**
- Felony conviction, required reports, 179.045
- 137.124**
- Statement, admissibility in civil or other criminal proceedings, 161.735
- 137.140**
- Imprisonment of person already imprisoned in state penal institution upon conviction of another crime, 135.767
- 137.170**
- Judgment on demurrer, entry in journal, 135.660
- 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 Court of Appeals, 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 inmates convicted of felony to institution outside Oregon for confinement therein, 421.210
- Statement, admissibility in civil or other criminal proceedings, 161.735
- 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**
- Inmates of penal and correctional institutions generally, Ch. 421
- 137.390**
- Deduction from term of sentence for observance of rules of county jail, 169.110
- Use of prisoners of county jail, time off for prisoners so employed, 169.120
- 137.520**
- Discharge of defendant, standards, 161.715
- 137.540**
- Appointment of counsel for indigent on modification of probation, 135.050
- 137.590**
- Appointment of juvenile director or counselor by juvenile court, 419.604

**JUDGMENT
(Generally)**

137.010 Duty of court to ascertain and impose punishment. (1) The statutes that define offenses impose a duty upon the court having jurisdiction to pass sentence in accordance with this section unless otherwise specifically provided by law.

(2) When a person is convicted of an offense, if the court is of the opinion that it is in the best interests of the public as well as of the defendant, the court may suspend the imposition or execution of sentence for any period of not more than five years.

(3) If the court suspends the imposition or execution of sentence, the court may also place the defendant on probation for a definite or indefinite period of not less than one nor more than five years.

(4) 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 the person is delivered to the custody of the Corrections Division.

(5) When a person is convicted of an offense and the court does not suspend the imposition or execution of sentence or when a suspended sentence or probation is revoked, the court shall impose the following sentence:

- (a) A term of imprisonment; or
- (b) A fine; or
- (c) Both imprisonment and a fine; or
- (d) Discharge of the defendant.

(6) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty. An order exercising that authority may be included as part of the judgment of conviction.

[Amended by 1971 c.743 §322]

137.015 Assessment in addition to fine or bail forfeiture; increased bail deposit to cover assessment. (1) Whenever a court imposes a fine, or orders a bail forfeiture, as a penalty for violation of a law of this state or an ordinance of a city or county except an ordinance relating to cars unlawfully left or parked, an assessment in addition to such fine, or bail forfeiture shall be collected and forwarded within 30 days of receipt of such assessments by the clerk of the court or the county treasurer to the Department of Revenue to be credited to the Police Standards and Training Account established by ORS

181.690. The amount of the assessment shall be as follows:

(a) When fine or forfeiture is \$5 to \$14.99, \$1.

(b) When fine or forfeiture is \$15 to \$49.99, \$2.

(c) When fine or forfeiture is \$50 to \$99.99, \$3.

(d) When fine or forfeiture is \$100 or over, \$5.

(2) When any deposit of bail is made for an offense to which this section applies, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed in subsection (1) of this section.

(3) If bail is forfeited the assessment prescribed in this section shall be forwarded to the Department of Revenue pursuant to this section. If bail is returned, the assessment made thereon shall also be returned. [1971 c.328 §1; 1973 c.346 §1]

137.020 Time for pronouncing judgment; notice of right to appeal. (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.

(3) At the time court pronounces judgment the defendant, if present, shall be advised of his right to appeal and of the procedure for protecting such right. If the defendant is not present, the court shall advise him in writing of his right to appeal and of the procedure for protecting such right. [Amended by 1971 c.565 §18a]

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 or nonappearance of released defendant when attendance required by court. (1) If the defendant has been released on a release agreement or security deposit and does not appear for judgment when his personal attendance is required by the court, the court may order a forfeiture of the security deposit as provided in ORS 135.280. In addition, if the defendant fails to appear as required by the release agreement or security deposit, 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.

[Amended by 1973 c.836 §257]

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

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

To any peace officer in the State of Oregon, 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

[Amended by 1957 c.659 §1; 1971 c.423 §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 any other warrant of arrest issued by a magistrate.

[Amended by 1973 c.836 §258]

137.072 [1967 c.585 §2; repealed by 1973 c.836 §358]

137.075 [1967 c.585 §3; 1971 c.743 §323; repealed by 1973 c.836 §358]

(Presentence Report)

137.077 Presentence report; general principles of disclosure. The presentence report is not a public record and shall be available only to:

(1) The sentencing court for the purpose of assisting the court in determining the proper sentence to impose and to other judges who participate in a sentencing council discussion of the defendant.

(2) The Corrections Division, State Board of Parole and other persons or agencies having a legitimate professional interest in the information likely to be contained therein.

(3) Appellate or review courts where relevant to an issue on which an appeal is taken or post-conviction relief sought.

(4) The district attorney, the defendant or his counsel, as provided in ORS 137.079. [1973 c.836 §260]

137.079 Presentence report; disclosure to parties; court's authority to except parts from disclosure. (1) A copy of the presentence report shall be made available to the district attorney, the defendant or his counsel a reasonable time before the sentencing of the defendant.

(2) The court may except from disclosure parts of the presentence report which are not relevant to a proper sentence, diagnostic opinions which might seriously disrupt a program of rehabilitation if known by the defendant, or sources of information which were obtainable only on a promise of confidentiality.

(3) If parts of the presentence report are not disclosed under subsection (2) of this section, the court shall inform the parties that information has not been disclosed and shall state for the record the reasons for the court's action. The action of the court in excepting information shall be reviewable on appeal.

[1973 c.836 §261]

(Aggravation or Mitigation)

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 or any other person designated by the court. [Amended by 1965 c.400 §1; 1973 c.836 §259]

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 [Repealed by 1973 c.836 §358]

137.111 [1955 c.636 §3; 1961 c.424 §1; repealed by 1971 c.743 §432]

137.112 [1953 c.641 §2; 1955 c.252 §1; 1955 c.636 §1; 1961 c.424 §2; repealed by 1971 c.743 §432]

137.113 [1953 c.641 §3; 1955 c.252 §2; 1961 c.424 §3; repealed by 1971 c.743 §432]

137.114 [1953 c.641 §4; repealed by 1971 c.743 §432]

137.115 [1953 c.641 §5; repealed by 1971 c.743 §432]

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

137.117 [1955 c.636 §10; 1961 c.266 §1; 1961 c.424 §4; repealed by 1971 c.743 §432]

137.119 [1963 c.320 §1; 1969 c.502 §3; 1969 c.597 §124; repealed by 1971 c.743 §432]

(Term and Place of Confinement)

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 of imprisonment in the custody of the Corrections Division, sentence such person to imprisonment for an indeterminate period of time, but stating and fixing in the judgment and sentence a maximum 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.

[Amended by 1967 c.372 §2; 1971 c.743 §324]

137.124 Commitment of defendant to Corrections Division; place of confinement; transfer of inmates. (1) If the court imposes a sentence of imprisonment upon conviction of a felony, it shall not designate the correctional facility in which the defendant is to be confined but shall commit the defendant to the legal and physical custody of the Corrections Division.

(2) After assuming custody of the convicted person the Corrections Division may transfer inmates from one correctional facility to another such facility for the purposes of diagnosis and study, rehabilitation and treatment, as best seems to fit the needs of the inmate and for the protection and welfare of the community and the inmate.

(3) If the court imposes a sentence of imprisonment upon conviction of a misdemeanor, it shall commit the defendant to the custody of the executive head of the correctional facility for the imprisonment of misdemeanants designated in the judgment. [1967 c.585 §4; 1971 c.743 §325; 1973 c.836 §262]

137.125 [1955 c.660 §3; repealed by 1967 c.585 §8]

137.127 [1955 c.660 §5; repealed by 1967 c.585 §8]

(Post-Judgment Procedures)

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 that there is no sufficient jail in the proper county, as provided in ORS 137.330, suitable for the confinement of the defendant, the court may order the confinement of the defendant in the jail of any county in the state.

[Amended by 1973 c.836 §263]

137.150 [Amended by 1959 c.530 §1; 1969 c.511 §2; repealed by 1971 c.743 §432]

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 forthwith, stating briefly the crime for which the conviction has been had.

[Amended by 1959 c.638 §19; 1973 c.836 §264]

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 [Repealed by 1971 c.743 §432]

137.205 [1963 c.600 §12; 1967 c.372 §3; repealed by 1971 c.743 §432]

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)]

137.225 Order setting aside conviction; prerequisites; limitations. (1) Every defendant convicted of a Class C felony, or the crime of possession of the narcotic drug marijuana when that crime was punishable as a felony only, or a crime punishable as either a felony or a misdemeanor in the discretion of the court, or a misdemeanor, including a violation of a municipal ordinance for which a jail sentence may be imposed, or a violation as described by ORS 167.207 or 167.217, at any time after the lapse of three years from the date of pronouncement of judgment, if he has fully complied with and performed the sentence of the court, and is not under charge of commission of any crime, may move the court wherein such conviction was entered for an entry of an order setting aside such conviction. A copy of the motion shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation and opportunity be given to contest the motion. Upon hearing the motion the court may require the filing of such affidavits and may require the taking of such proofs as it deems proper. If the court determines that the circumstances and behavior of the applicant from the date of conviction to the date of the hearing on the motion warrant setting aside the conviction, it shall enter an appropriate order. Upon the entry of such an order, the applicant for purposes of the law shall be deemed not to have been previously convicted and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest resulting in the criminal proceeding. The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Corrections Division when the person has been in the custody of the Corrections Division. Upon entry of such an order, such conviction, arrest or other proceeding shall be deemed

not to have occurred, and the applicant may answer accordingly any questions relating to their occurrence.

(2) The provisions of subsection (1) of this section do not apply to:

(a) A state or municipal traffic offense; or

(b) A person convicted of more than one offense, excluding motor vehicle violations, whether the second or additional convictions occurred in the same action in which the conviction as to which relief is sought occurred or in another action; or

(c) A person who previously had a conviction set aside pursuant to this section.

(3) The provisions of subsection (1) of this section apply to convictions which occurred before, as well as those which occurred after, September 9, 1971.

[1971 c.434 §2; 1973 c.680 §3; 1973 c.689 §1a; 1973 c.836 §265]

(Effects of Felony Conviction)

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:

(a) Making a will; or

(b) Making a power of attorney; or

(c) Making and acknowledging a sale or conveyance of property; or

(d) Appearing and commencing, maintaining or defending a proceeding for child custody or dissolution of marriage; or

(e) Appearing and maintaining or defending any other cause of action while imprisoned or on release, if the action was started before the person's conviction.

(4) Nothing in this section prevents a person convicted of a felony and imprisoned as a penalty therefor from entering into a civil contract of marriage during the period of imprisonment if in the judgment of the Administrator of the Corrections Division the marriage would contribute to the person's rehabilitation and the administrator consents to the marriage.

(5) The provisions of subsections (1) and (2) of this section are not intended to render a person convicted of a felony ineligible to receive benefits under the Workmen's Compensation Law, including the right to file claims, file request for hearing, file request for review and file an appeal under the Workmen's Compensation Law.

[Formerly 421.110; 1973 c.56 §1; 1973 c.836 §266; 1974 s.s. c.36 §2]

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 Corrections Division and placement in a correctional facility suspends civil and political rights.

[Formerly 421.112; 1973 c.836 §267]

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]

EXECUTION OF JUDGMENT

137.310 Authorizing execution of judgment; detention of defendant. (1) When a judgment 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; 1967 c.372 §4]

137.320 Delivery of defendant when committed to Corrections Division; credit on sentence. (1) When the judgment includes commitment to the legal and physical custody of the Corrections Division, the sheriff shall deliver the defendant, together with a copy of the entry of judgment and a statement signed by the sheriff of the number of days the defendant was imprisoned prior to his delivery, to the superintendent of the penal or correctional institution to which the defendant is initially assigned pursuant to ORS 137.124. Time spent in custody by the defendant after his arrest and before his delivery to the Corrections Division shall be credited towards the term of the sentence.

(2) 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. The sheriff shall compute the time the defendant was imprisoned after his arrest and prior to the commencement of the term specified in the judgment. Such time shall be credited towards the term of the sentence.

[Amended by 1955 c.660 §14; 1967 c.232 §1; 1967 c.585 §5; 1971 c.619 §1; 1973 c.631 §1]

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 [Repealed by 1971 c.743 §432]

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 136.347.

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. (1) Except as provided in subsection (2) of this section, 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.

(2) The time that a person sentenced to imprisonment in the penitentiary or the correctional institution is confined after arrest and prior to his delivery thereat shall be computed by the sheriff and considered

part of his sentence actually served in the penitentiary or the correctional institution. When a judgment of conviction is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the maximum term, and from the minimum, if any, of the new sentence.

(3) Except as provided in ORS 421.120 and 421.122, no time during which a person sentenced to imprisonment in the penitentiary or the correctional institution 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; 1967 c.232 §2; 1973 c.562 §2; 1973 c.631 §4]

137.375 Release of prisoners whose terms expire on legal holidays. (1) When the date of release from imprisonment of any inmate in the county or city jail falls on Saturday, Sunday or a legal holiday, such person shall be released on the preceding day unless the inmate is serving a mandatory minimum sentence specifically limited to weekends in which case he shall only be released at the time fixed in the sentence.

(2) When the date of release from imprisonment of any inmate in an adult correctional facility under the jurisdiction of the Corrections Division falls on Saturday, Sunday or a legal holiday, the inmate shall be released on the first day preceding the date of release which is not a Saturday, Sunday or legal holiday.

[1953 c.532 §1; 1955 c.660 §16; 1971 c.290 §1]

137.380 Discipline, treatment and employment of prisoners. A judgment of commitment to the Corrections Division need only specify the duration of confinement. Thereafter the manner of the confinement and the treatment and employment of a person shall be regulated and governed by whatever law is then in force prescribing the discipline, treatment and employment of persons committed.

[Amended by 1955 c.32 §1; 1955 c.660 §17; 1959 c.687 §1; 1973 c.836 §268]

137.390 Commencement, term and termination of term of imprisonment in county jail; treatment of prisoners therein. The commencement, term 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.

[Amended by 1973 c.631 §3]

137.400 [Amended by 1953 c.104 §2; 1955 c.662 §6; repealed by 1967 c.372 §13]

137.410 [Repealed by 1967 c.372 §13]

137.420 [Repealed by 1967 c.372 §13]

137.430 [Repealed by 1967 c.372 §13]

137.440 Return by officer executing judgment; annexation to trial court file. 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 trial court file, as defined in ORS 19.005.

[Amended by 1967 c.471 §4]

137.450 Enforcement of money judgment in criminal action. A judgment against the defendant in a criminal action or the complainant, 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.

[Amended by 1973 c.836 §269]

137.460 [Renumbered 137.270]

PROBATION AND PAROLE BY COMMITTING MAGISTRATE

137.510 [Amended by 1955 c.660 §18; 1955 c.688 §1; repealed by 1971 c.743 §432]

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, at the time of sentencing, 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, at the time of sentencing, 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. After sentence, or after a prisoner has been confined to a county jail as a condition of probation, the sheriff of the county may grant the prisoner the privilege of leaving secure custody during necessary and reasonable hours for the purpose of:

(a) Working in the county or contiguous to the county where imprisoned at gainful employment that has been approved by the sheriff for such a purpose.

(b) Obtaining in the state additional education, including but not limited to vocational, technical and general education.

(3) Between the hours or periods when the prisoner is not employed he shall be confined in jail unless the court, by order, or the sheriff, 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 preexisting 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 Corrections Division any person sentenced to be confined in the county jail for a period of six months or more.

[Amended by 1959 c.345 §1; 1973 c.836 §270]

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 under the supervision and control of the Corrections Division.

[Amended by 1965 c.346 §1; 1969 c.597 §125]

137.550 Period of probation; discharge from probation; proceedings in case of violation of conditions. (1) Subject to the limitations in ORS 137.010:

(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; 1971 c.743 §326]

137.560 Copies of certain orders to be sent to Corrections Division. Within 10 days following the issuing of any order of suspension or 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 Administrator of the Corrections Division.

[Amended by 1973 c.836 §271]

137.570 Authority to transfer probationer from one agency to another; procedure. A court may transfer a person on probation under its jurisdiction from the supervision of one probation agency to that of another probation agency. 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.

[Amended by 1973 c.836 §272]

137.580 Effect of transfer of probationer from one agency to another. Whenever the transfer mentioned in ORS 137.570 is made, the court making it shall send to the probation agency 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 agency shall report concerning the conduct and progress of the probationer to the court that placed him on probation. Probation officers or agencies 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.

[Amended by 1973 c.836 §273]

137.590 Appointment of probation officers and assistants; chief probation officer. 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.

[Amended by 1971 c.633 §12; 1973 c.836 §274]

137.600 [Repealed by 1955 c.491 §9]

137.610 Performance by Corrections Division staff 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 Corrections Division 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 Administrator of the Corrections Division,

who shall order the prompt performance of any such requested service whenever members of the staff are available for such duty. [Amended by 1969 c.597 §126]

137.620 Powers of probation officers; oath of office; bond; audit of accounts. Probation officers of the Corrections Division and those appointed by the court 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 appointed by the court, before entering on the duties of his office, shall take an oath of office. 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. [Amended by 1973 c.836 §275]

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 Corrections Division as such courts require. [Amended by 1969 c.597 §127]

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]

137.990 [Amended by 1971 c.743 §327; repealed by 1973 c.836 §358]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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 June 1, 1974.

Thomas G. Clifford
 Legislative Counsel