

## Chapter 137

### 1977 REPLACEMENT PART

## Judgment and Execution; Parole and Probation by the Court

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### 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; other writings considered in imposing sentence; disclosure to parties; court's authority to except parts from disclosure.** (1) A copy of the presentence report and all other written information concerning the defendant that the court considers in the imposition of sentence shall be made available to the district attorney, the defendant or his counsel a reasonable time before the sentencing of the defendant. All other written information, when received by the court outside the presence of counsel, shall either be summarized by the court in a memorandum available for inspection or summarized by the court on the record before sentence is imposed.

(2) The court may except from disclosure parts of the presentence report or other written information described in subsection (1) of this section 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 with an expectation of confidentiality.

(3) If parts of the presentence report or other written information described in subsection (1) of this section 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, 1977 c 372 §11]

**(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.

**(Restitution)**

**137.103 Definitions for ORS 137.103 to 137.109 and 137.540** As used in ORS 137.103 to 137.109, 137.540, 144.275, 161.675 and 161.685:

(1) "Criminal activities" means any offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant.

(2) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and shall include, but not be limited to,

the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses.

(3) "Restitution" means full, partial or nominal payment of pecuniary damages to a victim.

(4) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities; "victim" shall not include any coparticipant in the defendant's criminal activities.

[1977 c.371 §1]

**137.106 Restitution to victims of crimes; criteria; objections by defendant.**

(1) When a person is convicted of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim.

(2) In determining whether to order restitution which is complete, partial or nominal, the court shall take into account:

(a) The financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant;

(b) The ability of the defendant to pay restitution on an instalment basis or on other conditions to be fixed by the court; and

(c) The rehabilitative effect on the defendant of the payment of restitution and the method of payment.

(3) If the defendant objects to the imposition, amount or distribution of the restitution, the court shall at the time of sentencing allow him to be heard on such issue.

[1977 c.371 §2]

**137.109 Effect of restitution order on other remedies of victim; credit of restitution against subsequent civil judgment; effect of criminal judgment on subsequent civil action.**

(1) Nothing in ORS 137.103 to 137.109, 137.540, 144.275, 161.675 and 161.685 limits or impairs the right of a person injured by a defendant's criminal activities to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution pursuant to ORS 137.103 to 137.109, 137.540, 144.275, 161.675 and 161.685 may not be introduced in any civil action arising out of the facts or events which were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in such civil action.

(2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability for pecuniary damages of a victim, that issue is conclusively determined as to the defendant if it is involved in a subsequent civil action.

[1977 c 371 §7]

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; reasons imposed to be stated on record.** (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. The court shall state on the record the reasons for the sentence imposed.

(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; 1977 c 372 §12]

**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 moneys, 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 (137 220 enacted in lieu of 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 137 190)]

**137.225 Order setting aside conviction; prerequisites; limitations.** (1) At any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court wherein that conviction was entered for entry of an order setting aside the conviction.

(2) A copy of the motion and a full set of the defendant's fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation and opportunity be given to contest the motion.

The fingerprint card with the notation "motion for setting aside conviction" shall be forwarded to the bureau. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(3) 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 which shall state the original arrest charge and the conviction charge if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the bureau and further identified as to state bureau number or submitting agency number. 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.

(4) 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.

(5) The provisions of subsection (1) of this section apply to a conviction of:

(a) A Class C felony.

(b) The crime of possession of the narcotic drug marijuana when that crime was punishable as a felony only.

(c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court.

(d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed.

(e) A violation described in ORS 167.207, 167.217 or 167.222.

(f) An offense committed before January 1, 1972, which if committed after that date would be:

(A) A Class C felony.

(B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court.

(C) A misdemeanor.

(D) A violation.

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

(a) A person convicted of a state or municipal traffic offense;

(b) A person convicted, within the 10-year period immediately preceding the filing of his motion pursuant to subsection (1) of this section, 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. Notwithstanding subsection (1) of this section, a conviction which has been set aside under this section shall be considered for the purpose of determining whether this paragraph is applicable; or

(c) A person who at the time the motion authorized by subsection (1) of this section is pending before the court is under charge of commission of any crime.

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

(8) For purposes of any civil action in which truth is an element of a cause of action or affirmative defense, the provisions of subsection (3) of this section providing that the conviction, arrest or other proceeding be deemed not to have occurred shall not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interest of justice.

[1971 c 434 §2, 1973 c 680 §3, 1973 c 689 §1a, 1973 c 836 §265, 1975 c 548 §10, 1975 c 714 §2, 1977 c 286 §1]

### (Effects of Felony Conviction)

**137.230 Definitions for ORS 137.230 and 137.260.** As used in ORS 137.230 and 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** [Formerly 421 110; 1973 c 56 §1, 1973 c 836 §266, 1974 s. s. c 36 §2, repealed by 1975 c 781 §10]

**137.250** [Formerly 421 112, 1973 c 836 §267, repealed by 1975 c 781 §10]

**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]

**137.275 Effect of felony conviction on civil and political rights of felon.** Except as otherwise provided by law, a person convicted of a felony does not suffer civil death or disability, or sustain loss of civil rights or forfeiture of estate or property, but retains all of his rights, political, civil and otherwise, including, but not limited to, the right to vote, to hold, receive and transfer property, to enter into contracts, including contracts of marriage, and to maintain and defend civil actions, suits or proceedings.

[1975 c 781 §1]

**137.280. Rights withdrawn during term of imprisonment; restoration of rights.** (1) During the term or duration of any imprisonment a person convicted of a felony may not:

(a) Become a candidate for or hold public office or an office of a political party;

(b) Hold a position of private trust;

(c) Act as a juror; or

(d) Exercise the right to vote.

(2) The rights withdrawn by subsection (1) of this section shall be restored automatically upon discharge or parole from imprisonment.

[1975 c.781 §2]

**137.285 Retained rights of felon; regulation of exercise.** ORS 10.030, 17.130, 113.092, 113.095, 113.195 and 137.275 to 137.285 do not deprive the Assistant Director for Corrections or his authorized agents of the authority to regulate the manner in which these retained rights of convicted persons may be exercised as is reasonably necessary for the control of the conduct and conditions of confinement of convicted persons in his custody.

[1975 c 781 §3]

### 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 Modification of conditions of probation; evaluation, treatment and payment therefor.** (1) 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:

(a) Avoid injurious or vicious habits.

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

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

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

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

(f) Work faithfully at suitable employment.

(g) Remain within a specified area.

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

(i) 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.

(j) Make restitution to the victim as provided in ORS 137.106.

(k) Support his dependents.

(L) Remain under the supervision and control of the Corrections Division.

(2)(a) As a condition of probation, the court may require the defendant to report to any state or local mental health facility for evaluation. Whenever medical, psychiatric or psychological treatment is recommended, the court may order the defendant, as a condition of probation, to cooperate with and accept the treatment from the facility.

(b) The facility to which the defendant has been referred for evaluation shall perform such evaluation and submit a written report of its findings to the court. If the facility finds that treatment of the defendant is appropriate, it shall include its recommendations for treatment in the report to the court.

(c) Whenever treatment is provided by the facility, it shall furnish reports to the court on a regular basis concerning the progress of the defendant.

(d) Copies of all reports submitted to the court pursuant to this section shall be furnished to the defendant and his counsel. The confidentiality of these reports shall be determined pursuant to ORS 192.500.

(e) Whenever treatment is provided pursuant to this subsection, the court may order, as an additional condition of probation, that the defendant pay the reasonable cost of the treatment to the mental health facility.

[Amended by 1965 c 346 §1, 1969 c 597 §125; 1977 c 371 §3, 1977 c 380 §2]

**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 sen-

tenced. 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 Assistant Director for Corrections.

[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 Assistant Director for Corrections, 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,  
October 1, 1977

Thomas G Clifford  
Legislative Counsel