

Chapter 137

1985 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. The court may extend the period of suspension beyond five years in accordance with subsection (3) of this section.

(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 more than five years. However, upon a later finding that a defendant on probation for a felony has violated a condition of the probation and in lieu of revocation, the court may order the period of both the suspended sentence and the probation extended until a date not more than six years from the date of original imposition of probation. Time during which the probationer has absconded from supervision and a bench warrant has been issued for the probationer's arrest shall not be counted in determining the time elapsed since imposition of probation.

(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; 1981 c.181 §1]

137.015 Assessment in addition to fine or bail forfeiture; increased bail deposit to cover assessment. (1) Whenever a court imposes a fine, including a fine imposed and thereafter suspended, 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. Within 30 days of receipt of such assessments by the clerk of a municipal court, or by the county treasurer in the case of a justice court, the assessment shall be forwarded to the Department of Revenue to be credited to the Police Standards and Training Account established by ORS 181.690. Within 30 days of the receipt of such assessments by the court, in the case of a circuit or district court, the State Court Administrator shall deposit those moneys in the Police Standards and Training Account. The assessment is not part of the fine or forfeiture or in lieu of any part thereof. The amount of the assessment shall be as follows:

- (a) When fine or forfeiture is \$5 to \$14.99, \$3.
- (b) When fine or forfeiture is \$15 to \$49.99, \$6.
- (c) When fine or forfeiture is \$50 to \$99.99, \$7.
- (d) When fine or forfeiture is \$100 to \$249.99, \$10.
- (e) When fine or forfeiture is \$250 to \$499.99, \$12.
- (f) When fine or forfeiture is \$500 or over, \$30.

(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 or deposited as provided in subsection (1) of this section. If bail is returned, the assessment made thereon shall also be returned. [1971 c.328 §1, 1973 c.346 §1; 1979 c.341 §1; 1983 c.125 §1; 1985 c.277 §1]

137.017 Disposition of fines, costs and forfeited bail received by court. Except as otherwise specifically provided by law, all fines, costs and forfeited bail collected by the clerk of a circuit court in criminal actions and proceedings, as defined in ORS 131.005, in the circuit court shall be deposited in the General Fund available for general governmental expenses. [1981 s.s. c.3 §102; 1983 c.763 §42]

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 the right to appeal and of the procedure for protecting such right. If the defendant is not present, the court shall advise the defendant in writing of the 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 the absence of the defendant.

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 the defendant is to bring the defendant 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 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 the defendant before such court for judgment or, if the court has adjourned for the term, deliver the defendant 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 the counsel of the defendant, 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 defendant's 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.

(4) The defendant may file a written motion to correct the criminal history contained in the presentence report prior to the date of sentencing. At sentencing, the court shall consider defendant's motion to correct the presentence report and shall correct any factual errors in the criminal history contained in that report. An order allowing or denying a motion made pursuant to this subsection shall not be reviewable on appeal. If corrections are made by the court, only corrected copies of the report shall be provided to individuals or agencies pursuant to ORS 137.077. [1973 c.836 §261; 1977 c.372 §11, 1983 c.649 §1]

(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.

137.085 Age and physical disability of victim as factors in sentencing. When a court sentences a defendant convicted of any crime involving a physical or sexual assault, the court shall give consideration to a victim's particular vulnerability to injury in such case, due to the victim's youth, advanced age or physical disability. Such particular vulnerability of the victim is a fact enhancing the seriousness of any assault, and the court shall consider it as such in imposing the sentence within the limits otherwise provided by law. [1985 c.767 §1]

Note: 137.085 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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, the deposition of the witness 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, the defendant may be examined as a witness in relation to the circumstances which are alleged to justify aggravation or mitigation of the punishment; but if the defendant gives testimony at the request of the defendant, then the defendant must submit to be examined generally by the adverse party.

(Compensatory Fine)

137.101 Compensatory fine. (1) Whenever the court imposes a fine as penalty for the commission of an intentional crime resulting in serious physical injury for which the person injured by the act constituting the crime has a remedy by a civil action, unless the issue of punitive damages has been previously decided in a civil case arising out of the same act and transaction, the court may order that the defendant pay any portion of the fine separately to the

clerk of the court as compensatory fines in the case. The clerk shall pay over to the injured victim or victims, as directed in the court's order, moneys paid to the court as compensatory fines under this subsection.

(2) Compensatory fines may be awarded in addition to restitution awarded under ORS 137.103 to 137.109.

(3) Nothing in this section limits or impairs the right of a person injured by a defendant's criminal acts to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay compensatory fines under this section may not be introduced in any civil action arising out of the facts or events which were the basis for the compensatory fine. However, the court in such civil action shall credit any compensatory fine paid by the defendant to a victim against any judgment for punitive damages in favor of the victim in the civil action. [1981 c.637 §2]

(Restitution)

137.103 Definitions for ORS 137.101 to 137.109. As used in ORS 137.101 to 137.109, 137.540, 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 and costs of psychological treatment or counseling.

(3) "Restitution" means full, partial or nominal payment of pecuniary damages to a victim. Restitution is independent of and may be awarded in addition to punitive compensation awarded under ORS 137.101.

(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; 1981 c.637 §1; 1983 c.488 §1; 1983 c.740 §16]

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, unless the presentence investigation report contains such a presentation, the district attorney shall investigate and present to the court, prior to or at the time of sentencing, evidence of the nature and amount of such 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 the defendant to be heard on such issue. [1977 c.371 §2; 1983 c.724 §1]

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]

137.122 Concurrent and consecutive sentences; court discretion; findings required. (1) A term of imprisonment imposed by the court may be made concurrent or consecutive to any other term of imprisonment which has been previously imposed or is simultaneously imposed upon the same defendant. The court may provide for consecutive terms of imprisonment only in accordance with the provisions of this section. A term of imprisonment shall be deemed to be a concurrent term unless the court's order expressly provides for consecutive terms of imprisonment.

(2) If a defendant is simultaneously sentenced for criminal offenses that do not arise from the same continuous and uninterrupted

course of conduct, or if the defendant previously was sentenced by any other court within the United States to a term of imprisonment which the defendant has not yet completed, the court may impose a term of imprisonment concurrent with or consecutive to the other sentence or sentences.

(3) When a defendant has been found guilty of more than one criminal offense arising out of a continuous and uninterrupted course of conduct, the sentences imposed for each resulting conviction shall be concurrent unless the court complies with the procedures set forth in subsection (4) of this section.

(4) The court has discretion to impose consecutive terms of imprisonment for separate convictions arising out of a continuous and uninterrupted course of conduct only if the court finds:

(a) The criminal offense for which a consecutive sentence is contemplated was not merely an incidental violation of a separate statutory provision in the course of the commission of a more serious crime; or

(b) The criminal offense for which a consecutive sentence is contemplated caused or created a substantial risk of causing greater or qualitatively different loss, injury or harm to the victim or caused or created a substantial risk of causing loss, injury or harm to a different victim than was caused or threatened by the other offense or offenses committed during a continuous and uninterrupted course of conduct.

(5) When the court makes the findings provided in paragraph (a) or (b) of subsection (4) of this section, it may, in its discretion, impose a consecutive sentence for each criminal conviction arising out of a continuous and uninterrupted course of conduct for which such a finding has been made. The court may impose a consecutive sentence if the court finds that the actual term of incarceration would not otherwise be commensurate with the seriousness of the total course of defendant's criminal conduct or the public would not be adequately protected if a concurrent term of imprisonment were imposed.

(6) Whenever the court imposes a consecutive sentence under this section, it shall state its reasons for doing so and make all required special findings on the record at the time of sentencing. [1985 c.722 §2]

137.124 Commitment of defendant to Corrections Division; place of confinement; transfer of inmates; juveniles. (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.

(4)(a) When a person under 18 years of age is remanded under ORS 419.533 and subsequently is sentenced to a term of imprisonment in the custody of the Corrections Division, the division shall transfer the person to a juvenile training school for physical custody as provided in ORS 420.011 (3).

(b) When a person under 16 years of age is remanded under ORS 419.533 and subsequently is sentenced to a term of imprisonment in the county jail, the sheriff shall transfer the person to a juvenile training school for physical custody as provided in ORS 420.011 (3). [1967 c.585 §4; 1971 c.743 §325; 1973 c.836 §262, 1985 c.631 §5]

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

(Community Service)

137.126 Definitions for ORS 137.126 to 137.129. As used in ORS 137.126 to 137.129:

(1) "Community service" means uncompensated labor for an agency whose purpose is to enhance physical or mental stability, environmental quality or the social welfare.

(2) "Agency" means a nonprofit organization or public body agreeing to accept community service from offenders and to report on the progress of ordered community service to the court or its delegate. [1981 c.551 §2]

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

137.128 Community service as part of sentence; effect of failure to perform community service. (1) A judge may sentence an offender to community service either as an alternative to incarceration or fine or probation, or as

a condition of probation. Prior to such order of community service the offender must consent to donate labor for the welfare of the public. The court or its delegate may select community service tasks that are within the offender's capabilities and are to be performed within a reasonable length of time during hours the offender is not working or attending school.

(2) Failure to perform a community service sentence may be grounds for revocation of probation or contempt of court. [1981 c.551 §§3,5]

137.129 Length of community service sentence. The length of a community service sentence shall be within these limits:

(1) For a violation or traffic offense except a major traffic offense, not more than 48 hours.

(2) For a misdemeanor or major traffic offense other than driving under the influence of intoxicants in violation of ORS 813.010, not more than 160 hours.

(3) For a felony, not more than 500 hours.

(4) For a violation of driving under the influence of intoxicants under ORS 813.010, not less than 80 hours or more than 250 hours. [1981 c.551 §4; 1983 c.721 §1; 1985 c.16 §447]

(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 register forthwith, stating briefly the crime for which the conviction has been had. [Amended by 1959 c.638 §19; 1973 c.836 §264; 1985 c.540 §36]

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 (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 the office of the clerk, 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 or record of arrest; prerequisites; limitations. (1)(a) 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; or

(b) At any time after the lapse of one year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested person may apply to the court which would have jurisdiction over the crime for which the person was arrested, for entry of an order setting aside the record of such arrest. For the purpose of computing the one-year period, time during

which the arrested person has secreted himself or herself within or without the state shall not be included.

(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, or who had authority to prosecute the charge if there was no accusatory instrument filed, and opportunity be given to contest the motion. The fingerprint card with the notation "motion for setting aside conviction" or "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department of State Police Bureau of Criminal Identification. 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, or from the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest record as the case may be, it shall enter an appropriate order which shall state the original arrest charge and the conviction charge, if any and 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, or arrested as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest whether or not the arrest resulted in a further 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 paragraph (a) 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 167.222.

(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, or arrested for, a state or municipal traffic offense;

(b) A person convicted, within the 10-year period immediately preceding the filing of the motion pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations, whether or not the other conviction is for conduct associated with the same criminal episode that caused the arrest or conviction that is sought to be set aside. 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 paragraph (b) of subsection (1) of this section do not apply to a person arrested within the three-year period immediately preceding the filing of the motion for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated with the same criminal episode that caused the arrest that is sought to be set aside.

(8) The provisions of subsection (1) of this section apply to convictions and arrests which occurred before, as well as those which occurred after, September 9, 1971. There shall be no time limit for making such application.

(9) For purposes of any civil action in which truth is an element of a claim for relief 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.

(10) Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order shall have no other effect on the orders setting aside the conviction or the arrest record. [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; 1983 c.556 §1; 1983 c.740 §17]

(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 the political rights of the person. [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 the defendant for any fine on account thereof and for the costs and disbursements in the proceedings against the defendant 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 the rights of the person, 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 [1975 c.781 §2; repealed by 1983 c.515 §1 (137.281 enacted in lieu of 137.280)]

137.281 Withdrawal of rights during term of imprisonment; restoration of rights. (1) In any felony case, when the court sentences the defendant to a term of imprisonment in the custody of the Corrections Division and execution of the sentence is not suspended, or execution is suspended upon condition that the defendant serve a term of imprisonment in the county jail, the defendant is deprived of all rights and privileges described in subsection (3) of this section from the date of sentencing until:

(a) The defendant is discharged or paroled from imprisonment; or

(b) The defendant's conviction is set aside.

(2) In any felony case, when the court sentences the defendant to a term of imprisonment in the custody of the Corrections Division and execution of the sentence is suspended upon any condition other than imprisonment in the county jail, if the probation is revoked and the suspended sentence is ordered executed, the defendant is deprived of the rights and privileges described in subsection (3) of this section from the date the sentence is ordered executed until:

(a) The defendant is discharged or paroled from imprisonment; or

(b) The defendant's conviction is set aside.

(3) The rights and privileges of which a person may be deprived under this section are:

(a) Holding a public office or an office of a political party or becoming or remaining a candidate for either office;

(b) Holding a position of private trust;

(c) Acting as a juror; or

(d) Exercising the right to vote.

(4) If the court under subsection (1) of this section temporarily stays execution of sentence for any purpose other than probation, the defendant nonetheless is sentenced for purposes of subsection (1) of this section.

(5) The rights and privileges withdrawn by this section are restored automatically upon dis-

charge or parole from imprisonment, but in the case of parole shall be automatically withdrawn upon a subsequent imprisonment for violation of the terms of the parole. [1983 c.515 §2 (enacted in lieu of 137.280)]

137.285 Retained rights of felon; regulation of exercise. ORS 137.275 to 137.285 do not deprive the Assistant Director for Corrections or the authorized agents of the assistant director 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 the custody of the assistant director. [1975 c.781 §3, 1979 c.284 §116]

EXECUTION OF JUDGMENT

(Imprisonment)

137.310 Authorizing execution of judgment; detention of defendant. (1) When a judgment has been pronounced, a certified copy of the entry thereof in the register 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; 1985 c.540 §37]

137.320 Delivery of defendant when committed to Corrections Division; credit on sentence. (1) When a 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 delivery, to the superintendent of the penal or correctional institution to which the defendant is initially assigned pursuant to ORS 137.124.

(2) If the defendant is surrendered to another legal authority prior to delivery to an institution of the Corrections Division, the sheriff shall forward to the Corrections Division a copy of the entry of judgment, a statement of the number of days the defendant was imprisoned prior to surrender, and an identification of the authority to whom the prisoner was surrendered.

(3) Upon receipt of the information described in subsection (1) or (2) of this section, the Corrections Division shall establish a case file and compute the defendant's sentence in accordance with the provisions of ORS 137.370.

(4) 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 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; 1981 c.424 §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 the prisoner had been ordered, sentenced or delivered to the jailor by an officer or court of the own county of the jailor; 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 the prisoner 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 and computation of term of imprisonment in state penal or correctional institution; sentences concurrent unless court orders otherwise. (1) When a person is sentenced to imprisonment in the custody of the Corrections Division, the term of confinement therein commences from the day the person is delivered to the custody of an officer of the Corrections Division for the purpose of serving the sentence executed, regardless of whether the sentence is to be served in a state or federal institution.

(2) Except as provided in subsection (3) of this section, when a person is sentenced to imprisonment in the custody of the Corrections Division, for the purpose of computing the amount of sentence served the term of confinement includes only:

(a) The time that the person is confined by any authority after the arrest for the crime for which sentence is imposed; and

(b) The time that the person is authorized by the Corrections Division to spend outside a confinement facility, in a program conducted by or for the Corrections Division.

(3) 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.

(4) Unless the court expressly orders otherwise, a term of imprisonment shall be concurrent with the remainder of any sentence previously imposed at the time the court imposes sentence. This subsection applies whether the earlier sentence was imposed by the same or any other court, and is being served in the same or any other penal institution. [Amended by 1955 c.660 §15; 1965 c.463 §19; 1967 c.232 §2; 1973 c.562 §2; 1973 c.631 §4; 1981 c.424 §2]

137.375 Release of prisoners whose terms expire on legal holidays. When the date of release from imprisonment of any prisoner in an adult correctional facility under the jurisdiction of the Corrections Division, or any prisoner in the county or city jail, falls on Saturday, Sunday or a legal holiday, the prisoner shall be released on the first day preceding the date of release which is not a Saturday, Sunday or legal

holiday, except for prisoners of a county or city jail serving a mandatory minimum term specifically limited to weekends who shall only be released at the time fixed in the sentence. [1953 c.532 §1; 1955 c.660 §16; 1971 c.290 §1; 1979 c.487 §10]

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 the sheriff or officer acted, with a statement of the doings of the sheriff or officer 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]

(Death Sentence)

137.463 Death warrant; delivery to sheriff; automatic review by Supreme

Court. (1) When a judgment of death is pronounced, a warrant signed by the trial judge and attested by the clerk of the court, with the seal of the court affixed, shall be drawn and delivered to the sheriff of the county. The warrant shall state the conviction and judgment and shall direct the sheriff to deliver the defendant within 20 days from the time of the judgment to the Superintendent of the Oregon State Penitentiary pending the determination of the automatic and direct review by the Supreme Court.

(2) If the Supreme Court affirms the sentence of death, a warrant, signed by the trial judge of the court in which the judgment was rendered and attested by the clerk of that court, shall be drawn and delivered to the Superintendent of the Oregon State Penitentiary. The warrant shall appoint a day on which the judgment is to be executed and shall authorize and command the superintendent to execute the judgment of the court. [1984 c.3 §5]

137.465 [1979 c.2 §5; repealed by 1981 c.873 §9]

137.467 Delivery of warrant when place of trial changed. If the place of trial has been changed, the death warrant shall be delivered to the sheriff of the county in which the defendant was tried. [1984 c.3 §6]

137.470 [1979 c.2 §6, repealed by 1981 c.873 §9]

137.473 Means of inflicting death; place and procedures; acquisition of lethal substance. (1) The punishment of death shall be inflicted by the intravenous administration of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent until the defendant is dead. The judgment shall be executed by the superintendent of the penitentiary or designee. All executions shall take place within the enclosure of the penitentiary. The superintendent of the penitentiary shall be present at the execution and shall invite the presence of one or more physicians, the Attorney General and the sheriff of the county in which the judgment was rendered. At the request of the defendant, the superintendent shall allow no more than two clergymen designated by the defendant to be present at the execution. At the discretion of the superintendent, no more than five friends and relatives designated by the defendant may be present at the execution. The superintendent shall allow the presence of any peace officers as the superintendent thinks expedient.

(2) The person who administers the lethal injection under subsection (1) of this section shall not thereby be considered to be engaged in the practice of medicine.

(3)(a) Any wholesale drug outlet, as defined in ORS 689.005, registered with the State Board of Pharmacy under ORS 689.305 may provide the lethal substance described in subsection (1) of this section upon written order of the Assistant Director for Corrections of the Department of Human Resources, accompanied by a certified copy of the judgment of the court imposing the punishment.

(b) For purposes of ORS 689.765 (8) the assistant director shall be considered authorized to purchase the lethal substance described in subsection (1) of this section.

(c) The lethal substance described in subsection (1) of this section is not a controlled substance when purchased, possessed or used for purposes of this section. [1984 c.3 §7]

Note: Section 8, chapter 3, Oregon Laws 1984, provides:

Sec. 8. (1) The provisions of this Act shall govern the construction of and punishment for aggravated murder as defined by ORS 163.095 and committed after the effective date of this Act [December 6, 1984], as well as the construction and application of any defense to a prosecution for such an offense.

(2) The provisions of this Act shall not apply to any offense committed before the effective date of this Act or to any defense to a prosecution for such an offense. Such an offense shall be construed and prosecuted according to the law existing at the time of the commission of the offense in the same manner as if this Act had not been enacted.

(3) When all or part of a criminal statute is amended or repealed by this Act, the criminal statute or part thereof so amended or repealed remains in force for the purpose of authorizing the accusation, prosecution and conviction of a person who violated the statute or part thereof before the effective date of this Act.

137.475 [1979 c.2 §7; repealed by 1981 c.873 §9]

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 grant temporary release to persons confined in county jail; authority of sheriff to release county jail inmates; disposition of work release earnings. (1) The committing magistrate, having sentenced a defendant to confinement in a county jail for a period of up to one year, may parole the defendant outside the county jail subject to condition and subject to being taken back into confinement upon the breach of such condition. The committing magistrate may also authorize, limit or prohibit the release of a sentenced defendant upon pass, furlough, leave, work or educational release.

(2) The committing magistrate, having suspended imposition or execution of sentence and placed a defendant upon probation and having confined the defendant as a condition of that probation in a county jail for a period up to one year, may authorize, limit or prohibit the release of such person upon pass, furlough, leave, work or educational release.

(3) The sheriff of a county in which a defendant is confined in the county jail by sentence or as a condition of probation may allow the release of the defendant upon pass, furlough, leave, work or educational release unless otherwise ordered by the committing magistrate.

(4) A defendant confined in a county jail and placed upon educational release or upon work release shall, during the hours in which not so engaged or employed, be confined in the county jail unless the court by order otherwise directs or unless the sheriff otherwise directs in the absence of a contrary order by the court. The defendant's net earnings shall be paid to the sheriff, who shall deduct therefrom and pay such sums as may be ordered by the court for the defendant's board, restitution, fine, support of dependents and necessary personal expense. Any balance remaining shall be retained by the sheriff until the defendant's discharge from custody, whereupon the balance shall be paid to the defendant. [Amended by 1959 c 345 §1; 1973 c.836 §270; 1981 c 568 §1]

137.530 Investigation and report of probation officers; statement of victim. (1) 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.

(2) Whenever a presentence report is made, the preparer of the report shall make a reasonable effort to contact the victim and obtain a statement describing the effect of the defendant's offense upon the victim. If the victim is under 18 years of age, the preparer shall obtain the consent of the victim's parent or guardian before contacting the victim. The preparer of the report shall include the statement of the victim in the presentence investigation report. If the preparer is unable to contact the victim or if the victim declines to make a statement, the preparer shall report that the preparer was unable to contact the victim after making reasonable efforts to do so, or, if contact was made with the victim, that the

victim declined to make a statement for purposes of this section. Before taking a statement from the victim, the preparer of the report shall inform the victim that the statement will be made available to the defendant and the defendant's attorney prior to sentencing as required under ORS 137.079.

(3) Whenever desirable, and facilities exist therefor, such investigation shall include physical and mental examinations of such defendants.

(4) As used in this section, "victim" means the person or persons who have suffered financial, social, psychological or physical harm as a result of an offense, and includes, in the case of any homicide, an appropriate member of the immediate family of any such person. [Amended by 1983 c.723 §1]

137.540 Conditions of probation; evaluation and treatment; effect of failure to abide by conditions; modification. (1) The court may place the defendant on probation, which shall be subject to the following general conditions unless specifically deleted by the court. The probationer shall:

(a) Remain under the supervision and control of the probation department.

(b) Abide by the direction of the probation department and its representatives.

(c) Promptly and truthfully answer all reasonable inquiries of the probation officer relating to probation performance.

(d) Truthfully report monthly at times and in a manner specified by the probation department or its representative.

(e) Remain in the State of Oregon until written permission to leave is granted by the probation department or its representatives.

(f) Find and maintain gainful full-time employment, approved schooling, or a full-time combination of both. Any waiver of this requirement must be based on a finding by the court stating the reasons for the waiver.

(g) Change neither employment nor residence without promptly informing the probation department or its representatives.

(h) Permit the probation officer to visit the probationer or the probationer's residence or work site.

(i) Submit to fingerprinting or photographing, or both, when requested by the probation department for supervision purposes.

(j) Obey all laws, municipal, county, state and federal.

(k) Pay fines, costs including probation costs, attorney fees or restitution or any combination thereof ordered by the court on a schedule of payments determined by the court.

(2) In addition to the general conditions, the court may impose special conditions of probation for the protection of the public or reformation of the offender, or both, including, but not limited to, that the probationer shall:

(a) Be confined to the county jail or be restricted to the probationer's own residence or to the premises thereof, or be subject to any combination of such confinement and restriction, such confinement or restriction or combination thereof to be 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. However, the court shall not order restriction to residence or premises thereof in the case of a defendant convicted of a crime in the course of which the defendant used or threatened to use any weapon or in the course of which the defendant caused, attempted to cause or threatened to cause, physical injury to another.

(b) Submit to polygraph examination by a qualified polygraph examiner designated by the court or probation officer under terms and conditions set by the court.

(c) Enroll, participate and successfully complete designated residential treatment programs for drug, alcohol or mental health problems.

(d) Abstain from or limit the use of intoxicants.

(e) Submit to random urinalysis at the direction of probation officer.

(f) Refrain from knowingly associating with persons who use or possess controlled substances illegally, or from frequenting places where such substances are kept or sold.

(g) Refrain from knowingly associating with:

(A) Codefendants or crime partners.

(B) Persons known by the probationer to be engaged in criminal activities.

(C) Persons under a specified age except under specific circumstances specified in writing by the court or probation officer.

(D) Other designated persons.

(h) Undergo medical, psychological or therapy treatment.

(i) Take Antabuse, if medically approved.

(j) Submit to breath test or blood test to determine blood alcohol content upon request of

a probation officer having reasonable grounds to believe the results would disclose evidence of a probation violation. This condition may be set when it is reasonably related to the nature of the offense or treatment of the offender.

(k) Neither own, possess nor control any firearm or any other specified weapon.

(L) Submit person, residence, vehicle and property to search by a probation officer having reasonable grounds to believe such search will disclose evidence of a probation violation. This condition may be set when it is reasonably related to the nature of the offense or treatment of the offender.

(3)(a) As a condition of probation, the court may require the defendant to report to any state or local mental health facility or other appropriate mental health program 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 or program.

(b) The facility or program 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 or program 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 or program, 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 the counsel of the defendant. 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 or program providing the treatment.

(4) As a condition of probation, the court may order the defendant to pay to the provider the reasonable cost of psychiatric or psychological treatment or other counseling services provided to the victim or victims and the victim's family resulting from or related to the crime or crimes of which the defendant was convicted.

(5) Failure to abide by all general and special conditions imposed by the court and supervised by the probation department and its represen-

tatives may result in arrest and revocation of probation and will result in notification of the violation to the sentencing court.

(6) The court may at any time modify the conditions of probation. [Amended by 1965 c.346 §1; 1969 c.597 §125; 1977 c.371 §3; 1977 c.380 §2; 1981 c.671 §1; 1983 c.588 §2; 1985 c.818 §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 the judgment of the probation officer, 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 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 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, provided such person is under the jurisdiction of the Corrections Division, 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; 1979 c 75 §1]

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 the person is to remove:

(1) If such probation officer sends to the court desiring to make such transfer a written statement that the probation officer 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 the probationer 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, with the prior approval of the governing body of the county or city involved, and at pleasure remove, such 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. Probation officers and clerical assistants appointed under this section are not state officers or employes, and their compensation and expenses shall not be paid by the state. [Amended by 1971 c.633 §12; 1973 c.836 §274; 1981 s.s. c.3 §38]

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 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 the probation officer 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.

(1) The duties of probation officers appointed pursuant to ORS 137.590 or 423.500 to 423.560 shall be:

(a) 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.

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

(c) To provide release assistance, and supervise any person placed in a diversion, work release or community services alternative program, by any court in the jurisdiction area for which such officers are appointed to serve.

(d) To give each person under their supervision a statement of the conditions of probation or program participation and to instruct the person regarding the conditions; 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 or program participation, to aid and encourage such persons and to effect improvement in their conduct and condition.

(e) To keep detailed records of the work done and to make such reports to the courts and to the Corrections Division as such courts require.

(f) To perform such other duties not inconsistent with the normal and customary functions of probation officers as may be required by any court in the jurisdiction area for which such officers are appointed to serve.

(2) Probation officers of the Corrections Division shall have duties as specified by rule adopted by the Assistant Director for Corrections.

(3) Notwithstanding subsection (2) of this section, probation officers shall not be required to collect from persons under their supervision any fees to offset the costs of supervising the probation, including but not limited to those ordered pursuant to ORS 137.540 or 423.570. [Amended by 1969 c.597 §127; 1981 c.447 §1]

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]