

Chapter 135

1993 EDITION

Arrestment and Pretrial Provisions

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PROCEDURE IN CRIMINAL MATTERS GENERALLY

ARRAIGNMENT**(Generally)**

135.010 Time and place. When the accusatory instrument has been filed, and if the defendant has been arrested, or as soon thereafter as the defendant may be arrested, the defendant shall be arraigned thereon as provided in ORS 135.030 before the court in which it is found. Except for good cause shown or at the request of the defendant, if the defendant is in custody, the arraignment shall be held during the first 36 hours of custody, excluding holidays, Saturdays and Sundays. In all other cases, except as provided for in ORS 133.060, the arraignment shall be held within 96 hours after the arrest. [Amended by 1973 c.836 §130; 1983 c.344 §1; 1983 c.661 §12]

135.020 Scope of proceedings. The arraignment shall be made by the court, or by the clerk or the district attorney under its direction, as provided in ORS 135.030. The arraignment consists of reading the accusatory instrument to the defendant, causing delivery to the defendant of a copy thereof and indorsements thereon, including the list of witnesses indorsed on it or appended thereto if the accusatory instrument is an indictment, asking the defendant how the defendant pleads to the charge. [Amended by 1973 c.836 §131; 1983 c.344 §2]

135.030 When presence of defendant is required; appearance by counsel. (1) When the accusatory instrument charges a crime punishable as a felony, the defendant shall appear in person at the arraignment.

(2) When the accusatory instrument charges a crime punishable as a misdemeanor, the defendant may appear in person or by counsel.

(3) As used in this section, a defendant appears "in person" if:

(a) The defendant is physically present before the court; or

(b) The defendant appears before the court by means of simultaneous television transmission allowing the court to observe and communicate with the defendant and the defendant to observe and communicate with the court. However, appearance by simultaneous television transmission shall not be permitted unless the facilities used enable the defendant to consult privately with defense counsel during the proceedings. [Formerly 135.110; 1983 c.344 §3]

135.035 Bringing in defendant not yet arrested or held to answer. When an accusatory instrument is filed in court, if the defendant has not been arrested and held to answer the charge, unless the defendant voluntarily appears for arraignment, the court

shall issue a warrant of arrest as provided in ORS 133.110. [Formerly 135.140]

135.037 Omnibus hearing; when held; subject; ruling of court; counsel required.

(1) At any time after the filing of the accusatory instrument in circuit court and before the commencement of trial thereon, the court upon motion of any party shall, and upon its own motion may, order an omnibus hearing.

(2) The purpose of an omnibus hearing shall be to rule on all pretrial motions and requests, including but not limited to the following issues:

(a) Suppression of evidence;

(b) Challenges to identification procedures used by the prosecution;

(c) Challenges to voluntariness of admissions or confession;

(d) Challenges to the accusatory instrument.

(3) The court, at the time of the omnibus hearing, may also consider any matters which will facilitate trial by avoiding unnecessary proof or by simplifying the issues to be tried, or which are otherwise appropriate under the circumstances to facilitate disposition of the proceeding.

(4) At the conclusion of the hearing and prior to trial the court shall prepare and file an order setting forth all rulings of the court on issues raised under subsection (2) of this section. The court shall further prepare and file a memorandum of other matters agreed upon at the hearing. Except in a prosecution of the defendant for perjury or false swearing, or impeachment of the defendant, no admissions made by the defendant or the attorney of the defendant at the hearing shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the attorney.

(5) This section shall not be applied in any proceeding or at any stage of any proceeding where the defendant is not represented by counsel. [1973 c.550 §2]

(Counsel; Name Used)

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

135.045 Court appointment of counsel; waiver. If upon arraignment of a person accused of a crime against the laws of this state, the person being arraigned appears without counsel, the court having jurisdic-

tion of the case, in accordance with ORS 135.050, shall appoint suitable counsel to represent the person unless the person waives counsel and the court approves the waiver. Appointment of counsel under this section is subject to ORS 135.050, 135.055 and 151.430 to 151.495. Appointment of counsel under this section shall be made in compliance with the terms of applicable contracts executed by the State Court Administrator under ORS 151.460. [Formerly 135.320; 1987 c.803 §13; 1989 c.171 §16; 1989 c.1053 §1a; 1991 c.790 §11]

135.050 Eligibility for court-appointed counsel; financial statement; termination; civil liability. (1) Suitable counsel for a defendant shall be appointed by a court if:

(a) The defendant is before a court on a matter described in subsection (4) of this section;

(b) The defendant requests aid of counsel;

(c) The defendant provides to the court a written and verified financial statement; and

(d) It appears to the court that the defendant is financially unable to retain adequate representation without substantial hardship in providing basic economic necessities to the defendant or the defendant's dependent family.

(2) Appointed counsel shall not be denied to any defendant merely because the defendant's friends or relatives have resources adequate to retain counsel or because the defendant has deposited or is capable of depositing security for release. However, appointed counsel may be denied to a defendant if the defendant's spouse has adequate resources which the court determines should be made available to retain counsel.

(3) The defendant's financial statement under subsection (1) of this section shall include, but not be limited to:

(a) A list of bank accounts in the name of defendant or defendant's spouse, and the balance in each;

(b) A list of defendant's interests in real property and those of defendant's spouse;

(c) A list of automobiles and other personal property of significant value belonging to defendant or defendant's spouse;

(d) A list of debts in the name of defendant or defendant's spouse, and the total of each; and

(e) A record of earnings and other sources of income in the name of defendant or defendant's spouse, and the total of each.

(4) Counsel must be appointed for a defendant who meets the requirements of subsection (1) of this section and who is before a court on any of the following matters:

(a) Charged with a crime.

(b) For a hearing to determine whether an enhanced sentence should be imposed when such proceedings may result in the imposition of a felony sentence.

(c) For extradition proceedings under the provisions of the Uniform Criminal Extradition Act.

(d) For any proceeding concerning an order of probation, including but not limited to the revoking or amending thereof.

(5) Unless otherwise ordered by the court, the appointment of counsel under this section shall continue during all criminal proceedings resulting from the defendant's arrest through acquittal or the imposition of punishment. The court having jurisdiction of the case may substitute one appointed counsel for another at any stage of the proceedings when the interests of justice require such substitution.

(6) If, at any time after the appointment of counsel, the court having jurisdiction of the case finds that the defendant is financially able to obtain counsel, the court may terminate the appointment of counsel. If, at any time during criminal proceedings, the court having jurisdiction of the case finds that the defendant is financially unable to pay counsel whom the defendant has retained, the court may appoint counsel as provided in this section.

(7) In addition to any criminal prosecution, a civil proceeding may be initiated by any public body which has expended moneys for the defendant's legal assistance within two years of judgment if the defendant was not qualified in accordance with subsection (1) of this section for legal assistance.

(8) The civil proceeding shall be subject to the exemptions from execution as provided for by law. [Formerly 133.625; 1981 s.s. c.3 §118; 1985 c.710 §1; 1989 c.1053 §1b]

135.053 [1979 c.806 §1; 1981 s.s. c.3 §124; repealed by 1985 c.502 §28]

135.055 Compensation and expenses of appointed counsel. (1) Counsel appointed pursuant to ORS 135.045 or 135.050, if other than counsel provided pursuant to ORS 151.010 or 151.460, shall, upon certification by the court, be paid fair compensation for representation in the case:

(a) By the county, subject to the approval of the governing body of the county, in a proceeding in a county or justice's court.

(b) By the state from funds available for the purpose, in a proceeding in a circuit or district court.

(2) Compensation payable to appointed counsel under subsection (1) of this section:

(a) In a proceeding in a county or justice's court shall not be less than \$30 per hour.

(b) In a proceeding in a circuit or district court shall be subject to the applicable compensation established under ORS 151.430 (5).

(3) The person for whom counsel has been appointed is entitled to reasonable expenses for investigation, preparation and presentation of the case. The person or the counsel for the person may upon motion, which need not be disclosed to the district attorney prior to conclusion of the case, secure approval and authorization of payment of such expenses as the court finds are necessary and proper in the investigation, preparation and presentation of the case, including but not limited to travel, telephone calls, photocopying or other reproduction of documents, necessary costs associated with obtaining the attendance of witnesses for the defense, expert witness fees and fees for interpreters and assistive communication devices necessary for the purpose of communication between appointed counsel and a client or witness in the case. The motion must be accompanied by a supporting affidavit which sets out in detail the purpose of the requested expenditure, the name of the service provider or other recipient of the funds, the dollar amount of the requested expenditure which may not be exceeded without additional authorization and the date or dates during which the service will be rendered or events will occur for which the expenditure is requested. Entitlement under this subsection to payment for expenses is subject to cost guidelines and standards established under ORS 151.430. Entitlement to payment of extraordinary expenses is dependent upon obtaining authorization from the court, except as otherwise provided in the cost guidelines and standards established under ORS 151.430. Approved and authorized expenses shall be paid:

(a) By the county, in respect to a proceeding in a county or justice's court.

(b) By the state from funds available for the purpose, in respect to a proceeding in a circuit or district court.

(c) By the city, in respect to a proceeding in municipal court.

(4) Upon completion of all services by the counsel appointed pursuant to ORS 135.045 or 135.050, the counsel shall submit to the court a statement of all reasonable fees and expenses of investigation, preparation, presentation and representation paid or incurred, supported by appropriate receipts or vouchers and certified by the counsel to be true and accurate. The counsel, at that time, may request payment or reimbursement for any

such expenses for which payment has not yet been approved and authorized.

(5) The total fees and expenses payable under this section shall be subject to the review of the presiding judge of the court, or if there is no presiding judge, the judge of the court. The presiding judge, or judge of the court, shall certify that such amount is fair reimbursement for fees and expenses for representation in the case as provided in subsection (6) of this section. Upon certification and any verification as provided under subsection (6) of this section, the amount of the fees and expenses approved by the court and not already paid shall be paid:

(a) By the county, in respect to a proceeding in a county or justice's court.

(b) By the state from funds available for the purpose, in respect to a proceeding in a circuit or district court.

(6)(a) The presiding judge, or judge of the court, shall certify to the administrative authority responsible for paying fees and expenses under this section that the amount for payment is reasonable and that the amount is properly payable out of public funds.

(b) With any certification by the court of fees or expenses that the State Court Administrator is to pay for counsel or other costs of indigent representation under ORS 33.015 to 33.155, 135.045, 135.055, 135.705, 144.317, 144.343, 151.430, 151.450, 151.460, 161.346, 161.365, 161.665, 163.105, 419B.195, 419B.201, 419B.205, 419B.518, 419C.200, 419C.206, 426.255 and 426.307, the court shall include any information identified and requested by the State Court Administrator as needed for audit, statistical or any other purpose pertinent to insure the proper disbursement of state funds or pertinent to the provision of appointed counsel compensated at state expense.

(c) The presiding judge may authorize the clerk of the court to make the certification required under this section in some or all cases where the amount for payment meets the cost guidelines and standards established pursuant to ORS 151.430 (5) and (6). The authorization must be in writing and must specify the types of cases to which the authorization applies. [Formerly 135.330; 1979 c.867 §1; 1981 s.s. c.3 §§122,123; 1985 c.502 §19; 1985 c.710 §2; 1987 c.606 §4; 1987 c.803 §§14,14a; 1989 c.1053 §2; 1991 c.724 §25; 1991 c.750 §8; 1993 c.33 §297]

135.060 Communication to defendant as to use of name in accusatory instrument. When the defendant is arraigned, the defendant shall be informed that if the name by which the defendant is charged in the accusatory instrument is not the true name of the defendant the defendant must then

declare the true name or be proceeded against by the name in the accusatory instrument. [Formerly 135.340]

135.065 Name used in further proceedings. (1) If the defendant gives no other name, the court may proceed accordingly. If the defendant is charged by indictment or information and alleges that another name is the true name of the defendant, the court shall direct an entry thereof to be made in its register, and the subsequent proceedings on the accusatory instrument may be had against the defendant by that name, referring also to the name by which the defendant is charged.

(2) Upon motion of the defendant, all names, other than the true name of the defendant, shall be stricken from any accusatory instrument read or submitted to the jury. [Formerly 135.350; 1985 c.540 §31]

PRELIMINARY HEARING

(Generally)

135.070 Information as to charge, right to counsel, use of statement, preliminary hearing and use by State Board of Parole and Post-Prison Supervision. When the defendant against whom an information has been filed in a preliminary proceeding appears before a magistrate on a charge of having committed a crime punishable as a felony, before any further proceedings are had the magistrate shall read to the defendant the information and shall inform the defendant:

(1) Of the defendant's right to the aid of counsel, that the defendant is not required to make a statement and that any statement made by the defendant may be used against the defendant.

(2) That the defendant is entitled to a preliminary hearing and of the nature of a preliminary hearing. If a preliminary hearing is requested, it shall be held as soon as practicable but in any event within five days, unless such time is extended for good cause shown.

(3) That if the defendant is on parole, evidence received and the order of the court at the preliminary hearing may be used by the State Board of Parole and Post-Prison Supervision to establish that probable cause exists to believe that a violation of a condition of parole has occurred; and further, that should the defendant waive the defendant's right to a preliminary hearing, such waiver shall also constitute a waiver of a hearing by the board to determine whether there is probable cause to believe that a violation of one or more of the conditions of parole has occurred. [Formerly 133.610; 1981 c.644 §2]

135.073 Statement by defendant when not advised of rights. Evidence obtained directly or indirectly as a result of failure of a magistrate to comply with ORS 135.070 shall not be admissible before the grand jury. [1973 c.836 §61]

135.075 Obtaining counsel. The magistrate shall allow the defendant a reasonable time to obtain counsel and shall adjourn the proceeding for that purpose. A defendant who is committed pending examination shall be given a reasonable opportunity to obtain counsel, including but not limited to a reasonable use of the telephone. [Formerly 133.620]

135.080 [Formerly 133.635; repealed by 1979 c.867 §18]

135.085 Subpoenaing witnesses. (1) The magistrate shall issue subpoenas for any witness within the state when requested by the district attorney or the defendant for the preliminary hearing.

(2) If either party desires to subpoena more than five witnesses, application therefor shall be made in the manner provided in ORS 136.570. [Formerly 133.660; 1987 c.606 §1]

135.090 Examination of adverse witnesses. The witnesses shall be examined in the presence of the defendant and may be cross-examined in behalf of the defendant or against the defendant. [Formerly 133.670]

135.095 Right of defendant to make or waive making a statement. When the examination of the witnesses on the part of the state is closed, the magistrate shall inform the defendant that it is the right of the defendant to make a statement in relation to the charge against the defendant; that the statement is designed to enable the defendant, if the defendant sees fit, to answer the charge and explain the facts alleged against the defendant; that the defendant is at liberty to waive making a statement; and that the waiver of the defendant cannot be used against the defendant on the trial. [Formerly 133.680]

135.100 Statement of defendant. If the defendant chooses to make a statement, the magistrate shall take it in a recorded proceeding without oath, and shall put to the defendant the following questions only:

- (1) What is your name and age?
- (2) Where were you born?
- (3) Where do you reside and how long have you resided there?
- (4) What is your business or occupation?
- (5) Give any explanation you think proper of the circumstances appearing in the testimony against you and state any facts which you think will tend to your exculpation. [Formerly 133.690; 1991 c.790 §12]

135.105 Use of statement before grand jury or on trial. The statement of the defendant is competent testimony to be laid before the grand jury and may be given in evidence at the trial. [Formerly 133.700]

135.110 [Amended by 1973 c.836 §132; renumbered 135.030]

135.115 Waiver of right to make statement. If the defendant waives the right of the defendant to make a statement, the fact of the waiver of the defendant cannot be used against the defendant on the trial. [Formerly 133.710; 1991 c.790 §13]

135.120 [Repealed by 1973 c.836 §358]

135.125 Examination of defendant's witnesses. After the waiver of the defendant to make a statement or after the defendant has made it, the witnesses of the defendant, if the defendant produces any, shall be sworn and examined. [Formerly 133.720]

135.130 [Repealed by 1973 c.836 §358]

135.135 Exclusion of witnesses during examination of others. The magistrate may exclude the witnesses who have not been examined during the examination of the defendant or of a witness for the state or the defendant. [Formerly 133.730]

135.139 Notice of availability of AIDS testing to person charged with crime; when court may order test; victim's rights. (1) At the time of an appearance before a district or circuit court judge on a criminal charge, the judge shall inform every person arrested and charged with a crime, in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved or a sexual act may have occurred, of the availability of HIV testing and counseling through the local health department and shall cause the alleged victim of such a crime, if any, or a parent or guardian of the victim, if any, to be notified that HIV testing and counseling is available.

(2) Notwithstanding the provisions of ORS 433.045, upon conviction of a person for any crime which the court determines from the facts that the transmission of body fluids from one person to another was involved or a sexual act occurred, the court shall seek the consent of the convicted person to submit to an HIV test. In the absence of such consent or failure to submit to the test, the court shall order the convicted person to submit to an HIV test if the victim of the crime, or a parent or guardian of the victim, requests the court to make such order.

(3) If an HIV test is ordered under subsection (2) of this section, the victim of the crime or a parent or guardian of the victim, shall designate an attending physician to re-

ceive such information on behalf of the victim.

(4) If the test results in a negative reaction, the court may order the convicted person to submit to another HIV test six months after the first test was administered.

(5) The result of any HIV test ordered under this section is not a public record and shall be available only to:

(a) The victim.

(b) The parent or guardian of a minor or incapacitated victim.

(c) The attending physician who is licensed to practice medicine.

(d) The Health Division.

(e) The person tested.

(6) If an HIV test ordered under this section results in a positive reaction, the individual subject to the test shall receive post-test counseling as required by the Health Division, by rule. The results of HIV tests ordered under this section shall be reported to the Health Division. Counseling and referral for appropriate health care, testing and support services as directed by the Assistant Director for Health shall be provided to the victim or victims at the request of the victim or victims, or the parent or guardian of a minor or incapacitated victim.

(7) The costs of testing and counseling provided under subsections (2), (5) and (6) of this section shall be paid through the compensation for crime victims program authorized by ORS 147.005 to 147.375 from amounts appropriated for such purposes. Restitution to the state for payment of the costs of any counseling provided under this section and for payment of the costs of any test ordered under this section shall be included by the court in any order requiring the convicted person to pay restitution.

(8) When a court orders a convicted person to submit to an HIV test under this section, the withdrawal of blood may be performed only by a physician licensed to practice medicine or by a licensed health care provider acting within the provider's licensed scope of practice or acting under the supervision of a physician licensed to practice medicine.

(9) No person authorized by subsection (8) of this section to withdraw blood, no person assisting in the performance of the HIV test nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices.

(10) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive the information. Any violation of this subsection is a Class C misdemeanor.

(11) As used in this section:

(a) "HIV test" means a test as defined in ORS 433.045.

(b) "Parent or guardian of the victim" means a custodial parent or legal guardian of a victim who is a minor or incapacitated person.

(c) "Positive reaction" means a positive HIV test with a positive confirmatory test result as specified by the Health Division.

(d) "Sexual act" means contact between the penis and the vulva, anus or mouth or contact between the mouth and the vulva or anus.

(e) "Transmission of body fluids" means the transfer of blood, semen, vaginal secretions or other body fluids identified by rule of the Health Division, from the perpetrator of a crime to the mucous membranes or potentially broken skin of the victim.

(f) "Victim" means the person or persons to whom transmission of body fluids from the perpetrator of the crime occurred or was likely to have occurred in the course of the crime. [1989 c.568 §1; 1993 c.331 §1]

Note: 135.139 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 135 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

135.140 [Amended by 1973 c.836 §133; renumbered 135.035]

135.145 Testimony of witnesses. The testimony of the witnesses in a preliminary hearing shall be recorded. [Formerly 133.740; 1991 c.790 §14]

135.150 [Repealed by 1973 c.836 §358]

135.155 Retention of record and statements by magistrate; inspection. The magistrate shall keep the record of the preliminary hearing and the statement of the defendant, if any, until the record is returned to the proper court and shall not permit the record to be inspected by any person, except the district attorney of the county or the attorney who acts for the district attorney and the defendant and the counsel of the defendant. [Formerly 133.750; 1991 c.790 §15]

135.160 [Repealed by 1973 c.836 §358]

135.165 Counsel for complainant; district attorney. The complainant may employ counsel to appear against the defendant in

every stage of the preliminary hearing; but the district attorney for the county, either in person or by some attorney authorized to act for the district attorney, is entitled to appear on behalf of the state and control and direct the prosecution. [Formerly 133.760]

135.170 [Repealed by 1973 c.836 §358]

135.173 Oregon Evidence Code to apply in preliminary hearings; exception. The Oregon Evidence Code shall apply in any preliminary hearing under this chapter, except that hearsay may be admitted if the court determines that it would impose an unreasonable hardship on one of the parties or on a witness to require that the primary source of the evidence be produced at the hearing, and if the witness furnishes information bearing on the informant's reliability and, as far as possible, the means by which the information was obtained. [1981 c.892 §88b]

(Discharge or Commitment)

135.175 Discharge. After hearing the evidence and the statement of the defendant, if the defendant has made one, unless there is a showing of probable cause that a crime has been committed and that the defendant committed it, the magistrate shall dismiss the information and order the defendant to be discharged. [Formerly 133.810]

135.180 [Repealed by 1973 c.836 §358]

135.185 Holding defendant to answer; use of hearsay evidence. If it appears from the preliminary hearing that there is probable cause to believe that a crime has been committed and that the defendant committed it, the magistrate shall make a written order holding the defendant for further proceedings on the charge. When hearsay evidence was admitted at the preliminary hearing, the magistrate, in determining the existence of probable cause, shall consider (a) the extent to which the hearsay quality of the evidence affects the weight it should be given, and (b) the likelihood of evidence other than hearsay being available at trial to provide the information furnished by hearsay at the preliminary hearing. [Formerly 133.820; 1981 c.892 §88c]

135.190 [Repealed by 1973 c.836 §358]

135.195 Commitment. If the magistrate orders the defendant to be held to answer, the magistrate shall make out a commitment, signed by the magistrate with the name of office of the magistrate, and deliver it with the defendant to the officer to whom the defendant is committed or, if that officer is not present, to any peace officer, who shall immediately deliver the defendant into the proper custody, together with the commitment. [Formerly 133.830]

135.200 [Repealed by 1973 c.836 §358]

135.205 Indorsement in certain cases. When the magistrate delivers the defendant to a peace officer other than the one to whom the defendant is committed, the magistrate shall first make an indorsement on the commitment directing the officer to deliver the defendant and the commitment to the custody of the appropriate sheriff. [Formerly 133.840]

135.210 [Repealed by 1973 c.836 §358]

135.215 Direction to sheriff; detention of defendant. The commitment shall be directed to the sheriff of the county in which the magistrate is sitting. Such sheriff shall receive and detain the defendant, as thereby commanded, in a jail located in the county of the sheriff or, if there is no sufficient jail in the county, by such means as may be necessary and proper therefor or by confining the defendant in the jail of an adjoining county within or without the state. [Formerly 133.850; 1987 c.550 §2]

135.225 Forwarding of papers by magistrate. When the magistrate has held the defendant to answer, the magistrate shall at once forward to the court in which the defendant would be triable the warrant, if any; the information; the statement of the defendant, if the defendant made one; the memoranda mentioned in ORS 135.115 and 135.145; the release agreement or security release of the defendant; and, if applicable, any security taken for the appearance of witnesses. [Formerly 133.860]

RELEASE OF DEFENDANT

135.230 Definitions for ORS 135.230 to 135.290. As used in ORS 135.230 to 135.290, unless the context requires otherwise:

(1) "Abuse" means:

(a) Attempting to cause or intentionally, knowingly or recklessly causing physical injury;

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury; or

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(2) "Conditional release" means a non-security release which imposes regulations on the activities and associations of the defendant.

(3) "Domestic violence" means abuse between family or household members.

(4) "Family or household members" means any of the following:

(a) Spouses.

(b) Former spouses.

(c) Adult persons related by blood or marriage.

(d) Persons cohabiting with each other.

(e) Persons who have cohabited with each other or who have been involved in a sexually intimate relationship.

(f) Unmarried parents of a minor child.

(5) "Magistrate" has the meaning provided for this term in ORS 133.030.

(6) "Personal recognizance" means the release of a defendant upon the promise of the defendant to appear in court at all appropriate times.

(7) "Release" means temporary or partial freedom of a defendant from lawful custody before judgment of conviction or after judgment of conviction if defendant has appealed.

(8) "Release agreement" means a sworn writing by the defendant stating the terms of the release and, if applicable, the amount of security.

(9) "Release criteria" includes the following:

(a) The defendant's employment status and history and financial condition;

(b) The nature and extent of the family relationships of the defendant;

(c) The past and present residences of the defendant;

(d) Names of persons who agree to assist the defendant in attending court at the proper time;

(e) The nature of the current charge;

(f) The defendant's prior criminal record, if any, and, if the defendant previously has been released pending trial, whether the defendant appeared as required;

(g) Any facts indicating the possibility of violations of law if the defendant is released without regulations;

(h) Any facts tending to indicate that the defendant has strong ties to the community; and

(i) Any other facts tending to indicate the defendant is likely to appear.

(10) "Release decision" means a determination by a magistrate, using release criteria, which establishes the form of the release most likely to insure the defendant's court appearance and insure that the defendant does not engage in domestic violence while on release.

(11) "Security release" means a release conditioned on a promise to appear in court at all appropriate times which is secured by cash, stocks, bonds or real property.

(12) "Surety" is one who executes a security release and binds oneself to pay the

security amount if the defendant fails to comply with the release agreement. [1973 c.836 §146; 1993 c.731 §4]

135.235 Release assistance officer; appointment; duties. (1) If directed by the presiding judge of the circuit court in a judicial district, a release assistance officer, and release assistance deputies who shall be responsible to the release assistance officer, shall be appointed under a personnel plan established by the Chief Justice of the Supreme Court.

(2) The release assistance officer shall, except when impracticable, interview every person detained pursuant to law and charged with an offense.

(3) The release assistance officer shall verify release criteria information and may either:

(a) Timely submit a written report to the magistrate containing, but not limited to, an evaluation of the release criteria and a recommendation for the form of release; or

(b) If delegated release authority by the presiding judge of the circuit court in the judicial district, make the release decision. [1973 c.836 §147; 1981 s.s. c.3 §37]

135.240 Releasable offenses. (1) Except as provided in subsection (2) of this section, a defendant shall be released in accordance with ORS 135.230 to 135.290.

(2) When the defendant is charged with murder or treason, release shall be denied when the proof is evident or the presumption strong that the person is guilty.

(3) The magistrate may conduct such hearing as the magistrate considers necessary to determine whether, under subsection (2) of this section, the proof is evident or the presumption strong that the person is guilty. [1973 c.836 §148]

135.245 Release decision. (1) Except as provided in ORS 135.240 (2), a person in custody shall have the immediate right to security release or shall be taken before a magistrate without undue delay. If the person is not released under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person of the right of the person to a security release as provided in ORS 135.265.

(2) If a person in custody does not request a security release at the time of arraignment, the magistrate shall make a release decision regarding the person within 48 hours after the arraignment.

(3) The magistrate shall impose the least onerous condition reasonably likely to insure the person's later appearance and, if the person is charged with an offense involving domestic violence, insure that the person

does not engage in domestic violence while on release. A person in custody, otherwise having a right to release, shall be released upon the personal recognizance unless release criteria show to the satisfaction of the magistrate that such a release is unwarranted.

(4) Upon a finding that release of the person on personal recognizance is unwarranted, the magistrate shall impose either conditional release or security release.

(5) Before the release decision is made, the district attorney shall have a right to be heard in relation thereto.

(6) This section shall be liberally construed to carry out the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the defendant. [1973 c.836 §149; 1993 c.731 §5]

135.250 General conditions of release agreement. (1) If a defendant is released before judgment, the conditions of the release agreement shall be that the defendant will:

(a) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until the defendant is discharged or the judgment is entered;

(b) Submit to the orders and process of the court;

(c) Not depart this state without leave of the court; and

(d) Comply with such other conditions as the court may impose.

(2)(a) In addition to the conditions listed in subsection (1) of this section, if the defendant is charged with an offense that also constitutes domestic violence, the court shall include as a condition of the release agreement that the defendant not contact the victim of the violence.

(b) Notwithstanding paragraph (a) of this subsection, the court may enter an order waiving the condition that the defendant have no contact with the victim if:

(A) The victim petitions the court for a waiver; and

(B) The court finds, after a hearing on the petition, that waiving the condition is in the best interests of the parties and the community.

(3) If the defendant is released after judgment of conviction, the conditions of the release agreement shall be that the defendant will:

(a) Duly prosecute the appeal of the defendant as required by ORS 138.005 to 138.500;

(b) Appear at such time and place as the court may direct;

(c) Not depart this state without leave of the court;

(d) Comply with such other conditions as the court may impose; and

(e) If the judgment is affirmed or the judgment is reversed and the cause remanded for a new trial, immediately appear as required by the trial court. [1973 c.836 §150; 1991 c.111 §10; 1993 c.731 §6]

135.255 Release agreement. (1) The defendant shall not be released from custody unless the defendant files with the clerk of the court in which the magistrate is presiding a release agreement duly executed by the defendant containing the conditions ordered by the releasing magistrate or deposits security in the amount specified by the magistrate in accordance with ORS 135.230 to 135.290.

(2) A failure to appear as required by the release agreement shall be punishable as provided in ORS 162.195 or 162.205.

(3) "Custody" for purposes of a release agreement does not include temporary custody under the citation procedures of ORS 133.045 to 133.080. [1973 c.836 §151]

135.260 Conditional release. (1) Conditional release may include one or more of the following conditions:

(a) Release of the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall not be required to be financially responsible for the defendant, nor to forfeit money in the event the defendant fails to appear in court. The supervisor, however, shall notify the court immediately in the event that the defendant breaches the conditional release.

(b) Reasonable regulations on the activities, movements, associations and residences of the defendant, including, if the court finds it appropriate, restriction of the defendant to the defendant's own residence or to the premises thereof.

(c) Release of the defendant from custody during working hours.

(d) Any other reasonable restriction designed to assure the defendant's appearance.

(2) Except as otherwise provided in ORS 135.250 (2)(b), conditional release shall include a prohibition against contacting the victim if the defendant is charged with an offense that also constitutes domestic violence. [1973 c.836 §152; 1985 c.818 §1; 1993 c.731 §7]

135.265 Security release. (1) If the defendant is not released on personal recogni-

zance under ORS 135.255, or granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional release, the magistrate shall set a security amount that will reasonably assure the defendant's appearance. The defendant shall execute the security release in the amount set by the magistrate.

(2) The defendant shall execute a release agreement and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10 percent of the security amount, but in no event shall such deposit be less than \$25. The clerk shall issue a receipt for the sum deposited. Upon depositing this sum the defendant shall be released from custody subject to the condition that the defendant appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court. Once security has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original security in that court subject to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the defendant has been discharged from all obligations in the cause, the clerk of the court shall return to the person shown by the receipt to have made the deposit, unless the court orders otherwise, 85 percent of the sum which has been deposited and shall retain as security release costs 15 percent, but not less than \$5 nor more than \$200, of the amount deposited. The interest that has accrued on the full amount deposited shall also be retained by the clerk. The amount retained by the clerk of a circuit or district court shall be paid over as directed by the State Court Administrator for deposit in the Criminal Fine and Assessment Account created under ORS 137.300. The amount retained by a justice of the peace shall be deposited in the county treasury. The amount retained by the clerk of a municipal court shall be deposited in the municipal corporation treasury. At the request of the defendant the court may order whatever amount is repayable to defendant from such security amount to be paid to defendant's attorney of record.

(3) Instead of the security deposit provided for in subsection (2) of this section the defendant may deposit with the clerk of the court an amount equal to the security amount in cash, stocks, bonds, or real or personal property situated in this state with equity not exempt owned by the defendant or sureties worth double the amount of security set by the magistrate. The stocks, bonds, real or personal property shall in all

cases be justified by affidavit. The magistrate may further examine the sufficiency of the security as the magistrate considers necessary. [1973 c.836 §153; 1979 c.878 §1; 1981 c.837 §1; 1981 s.s. c.3 §112; 1983 c.763 §44; 1987 c.905 §14]

135.270 Taking of security. When a security amount has been set by a magistrate for a particular offense or for a defendant's release, any person designated by the magistrate may take the security and release the defendant to appear in accordance with the conditions of the release agreement. The person designated by the magistrate shall give a receipt to the defendant for the security so taken and within a reasonable time deposit the security with the clerk of the court having jurisdiction of the offense. [1973 c.836 §154]

135.280 Forfeiture and apprehension.

(1) Upon failure of a person to comply with any condition of a release agreement or personal recognizance, the court having jurisdiction may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, conditional or security release.

(2) A warrant issued under subsection (1) of this section by a municipal officer as defined in ORS 133.030 (6) may be executed by any peace officer authorized to execute arrest warrants.

(3) If the defendant does not comply with the conditions of the release agreement, the court having jurisdiction shall enter an order declaring the entire security amount to be forfeited. Notice of the order of forfeiture shall be given forthwith by personal service, by mail or by such other means as are reasonably calculated to bring to the attention of the defendant and, if applicable, of the sureties, the order of forfeiture. If, within 30 days after the court declares the forfeiture, the defendant does not appear or satisfy the court having jurisdiction that appearance and surrender by the defendant was, or still is, impossible and without fault of the defendant, the court shall enter judgment for the state, or appropriate political subdivision thereof, against the defendant and, if applicable, the sureties, for the amount of security and costs of the proceedings. At any time before or after judgment for the amount of security declared forfeited, the defendant or the sureties may apply to the court for a remission of the forfeiture. The court, upon good cause shown, may remit the forfeiture or any part thereof, as the court considers reasonable under the circumstances of the case.

(4) When judgment is entered in favor of the state, or any political subdivision of the state, on any security given for a release, the judgment may be enforced as a judgment in

a civil action. If entered in circuit court, the judgment shall be docketed, and if entered in district court may be docketed, as a civil judgment under ORS chapter 18. The district attorney, county counsel or city attorney may have execution issued on the judgment and deliver same to the sheriff to be executed by levy on the deposit or security amount made in accordance with ORS 135.265. The proceeds of any execution shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the security was taken if the offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state and the judgment was entered by a justice's court, or paid over as directed by the State Court Administrator for deposit in the Criminal Fine and Assessment Account created under ORS 137.300, if the offense was defined by a statute of this state and the judgment was entered by a circuit or district court. The provisions of this section shall not apply to:

(a) Money deposited pursuant to ORS 153.540 for a traffic offense.

(b) Money deposited pursuant to ORS 153.355 for a boating offense.

(c) Money deposited pursuant to ORS 153.745 for a wildlife or commercial fishing offense.

(5) When the judgment of forfeiture is entered, the security deposit or deposit with the clerk is, by virtue of the judgment alone and without requiring further execution, forfeited to and may be kept by the state or its appropriate political subdivision. The clerk shall reduce, by the value of the deposit so forfeited, the debt remaining on the judgment and shall cause the amount on deposit to be transferred to the revenue account of the state or political subdivision thereof entitled to receive the proceeds of execution under this section.

(6) The stocks, bonds, personal property and real property shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the security was taken if the offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state and the judgment was entered by a justice's court, or deposited in the General Fund available for general governmental expenses if the offense was de-

fined by a statute of this state and the judgment was entered by a circuit or district court. The balance shall be returned to the owner. The real property sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions. [1973 c.836 §155; 1981 s.s. c.3 §113; 1983 c.763 §45; 1987 c.710 §1; 1987 c.905 §15]

135.285 Release decision review and release upon appeal. (1) If circumstances concerning the defendant's release change, the court, on its own motion or upon request by the district attorney or defendant, may modify the release agreement or the security release.

(2) After judgment of conviction in municipal, justice or district court, the court shall order the original release agreement, and if applicable, the security, to stand pending appeal, or deny, increase or reduce the release agreement and the security. If a defendant appeals after judgment of conviction in circuit court for any crime other than murder or treason, release shall be discretionary. [1973 c.836 §156]

135.290 Punishment by contempt of court. (1) A supervisor of a defendant on conditional release who knowingly aids the defendant in breach of the conditional release or who knowingly fails to report the defendant's breach is punishable by contempt.

(2) A defendant who knowingly breaches any of the regulations in the release agreement imposed pursuant to ORS 135.260 is punishable by contempt. [1973 c.836 §157]

135.295 Application of ORS 135.230 to 135.290 to certain traffic offenses. Provision for release contained in ORS 135.230 to 135.290 shall not apply to any traffic offenses as defined for the Oregon Vehicle Code except the following:

- (1) Reckless driving under ORS 811.140.
- (2) Driving while under the influence of intoxicants under ORS 813.010.
- (3) Failure to perform the duties of a driver under ORS 811.700 or 811.705.
- (4) Criminal driving while suspended or revoked under ORS 811.182.
- (5) Fleeing or attempting to elude a police officer under ORS 811.540. [1974 s.s. c.35 §1; 1981 c.818 §3; 1983 c.338 §888; 1987 c.730 §5; 1991 c.208 §3]

PLEADINGS

(Defendant's Answer Generally)

135.305 Types of answer. If the defendant does not require time, as provided in ORS 135.380, or if the defendant does, then on the next day or at such further day as the

court may have allowed the defendant, the defendant may, in answer to the arraignment, move against the accusatory instrument or demur or plead thereto. [Formerly 135.420]

135.310 [Renumbered 135.040]

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

135.320 [Amended by 1961 c.696 §2; 1967 c.475 §2; 1973 c.836 §134; renumbered 135.045]

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

135.330 [Amended by 1961 c.698 §1; 1967 c.628 §1; 1971 c.677 §1; renumbered 135.055]

(Plea)

135.335 Pleading by defendant; alternatives. (1) The kinds of plea to an indictment, information or complaint, or each count thereof, are:

- (a) Guilty.
- (b) Not guilty.
- (c) No contest.

(2) A defendant may plead no contest only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice. [1973 c.836 §159]

135.340 [Amended by 1973 c.836 §136; renumbered 135.060]

135.345 Legal effect of plea of no contest. A judgment following entry of a no contest plea is a conviction of the offense to which the plea is entered. [1973 c.836 §160]

135.350 [Amended by 1973 c.836 §137; renumbered 135.065]

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

(1) "The defendant pleads that defendant is guilty of the offense charged in this accusatory instrument."

(2) "The defendant pleads that defendant is not guilty of the offense charged in this accusatory instrument."

(3) "The defendant pleads no contest to the offense charged in this accusatory instrument." [Formerly 135.830; 1985 c.540 §32]

135.360 Special provisions relating to presentation of plea of guilty or no contest. (1) Except as provided in subsection (2) of this section, a plea of guilty or no contest to a crime punishable as a felony shall in all cases be put in by the defendant in person in open court unless upon an accusatory instrument against a corporation, in which case it may be put in by counsel.

(2) Any circuit judge may, within any county in the own district of the judge other than the county where the accusation is pending, accept pleas of guilty or no contest from persons charged with a crime punishable as a felony and pass sentence thereon upon written request of the accused and the attorney of the accused and upon not less than one day's notice to the district attorney. All orders entering such pleas and such sentences shall be as effective as though heard and determined in open court in the county where the accusation is pending and shall be transmitted by the judge to the clerk of the court in the county where the accusation is pending, whereupon the same shall be filed and entered and become effective from the date of filing thereof. [Formerly 135.840]

135.365 Withdrawal of plea of guilty or no contest. The court may at any time before judgment, upon a plea of guilty or no contest, permit it to be withdrawn and a plea of not guilty substituted therefor. [Formerly 135.850]

135.370 Not guilty plea as denial of allegations of accusatory instrument. The plea of not guilty controverts and is a denial of every material allegation in the accusatory instrument. [Formerly 135.860]

135.375 Pleading to other offenses. (1) As used in this section:

(a) "Initiating county" means the county in which the defendant appears for the purpose of entering a plea to a criminal charge.

(b) "Responding county" means a county in which another criminal charge is pending against the defendant entering a plea in the initiating county.

(2) Upon entry of a plea of guilty or no contest, or after conviction on a plea of not guilty, if a charge is pending against the defendant for a crime which is within the jurisdiction of a coordinate court of a responding county in the state, the defendant may state in writing that the defendant desires:

(a) To waive venue and trial in the responding county;

(b) To waive indictment by the grand jury of the responding county;

(c) To plead guilty or no contest; and

(d) To consent to disposition of the case by the court in the initiating county.

(3) Upon receipt of the request and the written approval of the district attorney of the initiating county, the clerk of the court shall forthwith transmit copies of the request and approval to the court and the district attorney of the responding county.

(4) Upon receipt of the papers described in subsection (3) of this section and the written approval of the district attorney of the responding county, the clerk of the court shall forthwith transmit certified copies of the papers in the proceeding to the court of the initiating county.

(5) Upon receipt of the papers described in subsection (4) of this section, the court may allow the defendant to enter the plea.

(6) The original judgment entered by the court of the initiating county shall be transmitted to the court of the responding county for filing. The judgment shall thereafter be considered, for all purposes, the same as a judgment of the court of the responding county. [1973 c.836 §165; 1991 c.111 §11]

135.380 Time of entering plea; aid of counsel. (1) A defendant shall not be required to plead to an offense punishable by imprisonment until the defendant is represented by counsel, unless the defendant knowingly waives the right of the defendant to counsel.

(2) A defendant with counsel may plead guilty or no contest on the day of arraignment or any time thereafter. A defendant without counsel shall not be allowed to plead guilty or no contest to a felony on the day of arraignment.

(3) Upon completion of the arraignment, unless the defendant enters a plea in the manner provided in ORS 135.305 to 135.325, 135.335, 135.355, 135.360 and 135.375, the defendant shall be considered to have entered a plea of not guilty. [1973 c.836 §166]

135.385 Defendant to be advised by court. (1) The court shall not accept a plea of guilty or no contest to a felony or other charge on which the defendant appears in person without first addressing the defendant personally and determining that the defendant understands the nature of the charge.

(2) The court shall inform the defendant:

(a) That by a plea of guilty or no contest the defendant waives the right:

(A) To trial by jury;

(B) Of confrontation; and

(C) Against self-incrimination.

(b) Of the maximum possible sentence on the charge, including the maximum possible sentence from consecutive sentences.

(c) When the offense charged is one for which a different or additional penalty is authorized by reason of the fact that the defendant may be adjudged a dangerous offender, that this fact may be established after a plea in the present action, thereby subjecting the defendant to different or additional penalty.

(d) That if the defendant is not a citizen of the United States conviction of a crime may result, under the laws of the United States, in deportation, exclusion from admission to the United States or denial of naturalization. [1973 c.836 §167; 1979 c.118 §1]

135.390 Determining voluntariness of plea. (1) The court shall not accept a plea of guilty or no contest without first determining that the plea is voluntary and intelligently made.

(2) The court shall determine whether the plea is the result of prior plea discussions and a plea agreement. If the plea is the result of a plea agreement, the court shall determine the nature of the agreement.

(3) If the district attorney has agreed to seek charge or sentence concessions which must be approved by the court, the court shall advise the defendant personally that the recommendations of the district attorney are not binding on the court. [1973 c.836 §168]

135.395 Determining accuracy of plea. After accepting a plea of guilty or no contest, the court shall not enter a judgment without making such inquiry as may satisfy the court that there is a factual basis for the plea. [1973 c.836 §169]

(Plea Discussions and Agreements)

135.405 Plea discussions and plea agreements. (1) In cases in which it appears that the interest of the public in the effective administration of criminal justice would thereby be served, and in accordance with the criteria set forth in ORS 135.415, the district attorney may engage in plea discussions for the purpose of reaching a plea agreement.

(2) The district attorney shall engage in plea discussions or reach a plea agreement with the defendant only through defense counsel, except when, as a matter of record, the defendant has effectively waived the right of the defendant to counsel or, if the defendant is not eligible for court-appointed counsel, has not retained counsel.

(3) The district attorney in reaching a plea agreement may agree to, but is not limited to, one or more of the following, as required by the circumstances of the individual case:

(a) To make or not to oppose favorable recommendations as to the sentence which should be imposed if the defendant enters a plea of guilty or no contest to the offense charged;

(b) To seek or not to oppose dismissal of the offense charged if the defendant enters a plea of guilty or no contest to another offense reasonably related to the defendant's conduct; or

(c) To seek or not to oppose dismissal of other charges or to refrain from bringing potential charges if the defendant enters a plea of guilty or no contest to the offense charged.

(4) Similarly situated defendants should be afforded equal plea agreement opportunities. [1973 c.836 §170]

135.407 Plea agreement must contain defendant's criminal history classification; stipulations. In cases arising from felonies committed on or after November 1, 1989:

(1) Whenever a plea agreement is presented to the sentencing judge, the defendant's criminal history classification, as set forth in the rules of the State Sentencing Guidelines Board, shall be accurately represented to the trial judge in the plea agreement. If a controversy exists as to whether a prior conviction or juvenile adjudication should be included in the defendant's criminal history, or as to its classification under rules of the State Sentencing Guidelines Board, the district attorney and the defendant may stipulate to the inclusion, exclusion or classification of the conviction or adjudication as part of the plea agreement subject to approval of the court.

(2) The district attorney and the defendant may stipulate to the grid block classification within the sentencing guidelines grid established by the rules of the State Sentencing Guidelines Board that will provide the presumptive sentence range for the offender. The sentencing judge may accept the stipulated classification and impose the presumptive sentence provided in the rules of the State Sentencing Guidelines Board for that grid block.

(3) If the district attorney and the defendant stipulate to a grid block classification within the sentencing guidelines grid, and the sentencing judge accepts the stipulated classification but imposes a sentence other than the presumptive sentence provided by rules of the State Sentencing Guidelines Board, the sentence is a departure sentence and is subject to rules of the State Sentencing Guidelines Board related to departures.

(4) The district attorney and defendant may stipulate to a specific sentence within the presumptive range provided by rules of the State Sentencing Guidelines Board for the stipulated offender classification. If the sentencing judge accepts the plea agreement, the judge shall impose the stipulated sentence.

(5) The district attorney and the defendant may stipulate to a sentence outside the presumptive sentence range for a stipulated grid block classification. The sentencing judge may accept an agreement for an optional probationary sentence or a departure sentence as provided in rules of the State Sentencing Guidelines Board. [1989 c.790 §2]

135.410 [Repealed by 1973 c.836 §358]

135.415 Criteria to be considered in plea discussions and plea agreements. In determining whether to engage in plea discussions for the purpose of reaching a plea agreement, the district attorney may take into account, but is not limited to, any of the following considerations:

(1) The defendant by the plea of the defendant has aided in insuring the prompt and certain applications of correctional measures to the defendant.

(2) The defendant has acknowledged guilt and shown a willingness to assume responsibility for the conduct of the defendant.

(3) The concessions made by the state will make possible alternative correctional measures which are better adapted to achieving rehabilitative, protective, deterrent or other purposes of correctional treatment, or will prevent undue harm to the defendant from the form of conviction.

(4) The defendant has made public trial unnecessary when there are good reasons for not having the case dealt with in a public trial.

(5) The defendant has given or offered cooperation when the cooperation has resulted or may result in the successful prosecution of other offenders engaged in equally serious or more serious criminal conduct.

(6) The defendant by the plea of the defendant has aided in avoiding delay in the disposition of other cases and thereby has increased the probability of prompt and certain application of correctional measures to other offenders. [1973 c.836 §171]

135.420 [Amended by 1973 c.836 §158; renumbered 135.305]

135.425 Responsibilities of defense counsel. (1) Defense counsel shall conclude a plea agreement only with the consent of the defendant, and shall insure that the decision whether to enter a plea of guilty or

no contest is ultimately made by the defendant.

(2) To aid the defendant in reaching a decision, defense counsel, after appropriate investigation, shall advise the defendant of the alternatives available and of factors considered important by the defense counsel or the defendant in reaching a decision. [1973 c.836 §172]

135.430 [Renumbered 135.315]

135.432 Responsibilities of trial judge.

(1) The trial judge shall not participate in plea discussions, except to inquire of the parties about the status of any discussions or to participate in a tentative plea agreement as provided in subsections (2) to (4) of this section. Any other judge, at the request of both the prosecution and the defense, or at the direction of the presiding judge, may participate in plea discussions. Participation by a judge in the plea discussion process shall be advisory, and shall in no way bind the parties. If no plea is entered pursuant to these discussions, the advice of the participating judge shall not be reported to the trial judge. If the discussion results in a plea of guilty or no contest, the parties, if they both agree to do so, may proceed with the plea before a judge involved in the discussion. This plea may be entered pursuant to a tentative plea agreement as provided in subsections (2) to (4) of this section.

(2) If a tentative plea agreement has been reached which contemplates entry of a plea of guilty or no contest in the expectation that charge or sentence concessions will be granted, the trial judge, upon request of the parties, may permit the disclosure to the trial judge of the tentative agreement and the reasons therefor in advance of the time for tender of the plea. The trial judge may then advise the district attorney and defense counsel whether the trial judge will concur in the proposed disposition if the information in the presentence report or other information available at the time for sentencing is consistent with the representations made to the trial judge.

(3) If the trial judge concurs, but later decides that the final disposition of the case should not include the sentence concessions contemplated by the plea agreement, the trial judge shall so advise the defendant and allow the defendant a reasonable period of time in which to either affirm or withdraw a plea of guilty or no contest.

(4) When a plea of guilty or no contest is tendered or received as a result of a prior plea agreement, the trial judge shall give the agreement due consideration, but notwithstanding its existence, the trial judge is not bound by it, and may reach an independent

decision on whether to grant sentence concessions under the criteria set forth in ORS 135.415. [1973 c.836 §173; 1987 c.202 §1]

135.435 Discussion and agreement not admissible. (1) Except as provided in subsection (2) of this section, none of the following shall be received in evidence for or against a defendant in any criminal or civil action or administrative proceeding:

(a) The fact that the defendant or the counsel of the defendant and the district attorney engaged in plea discussions.

(b) The fact that the defendant or the attorney of the defendant made a plea agreement with the district attorney.

(c) Any statement or admission made by the defendant or the attorney of the defendant to the district attorney and as a part of the plea discussion or agreement.

(2) The provisions of subsection (1) of this section shall not apply if, subsequent to the plea discussions or plea agreement, the defendant enters a plea of guilty or no contest which is not withdrawn. [1973 c.836 §174]

135.440 [Repealed by 1973 c.836 §358]

135.445 Withdrawn plea or statement not admissible. (1) A plea of guilty or no contest which is not accepted or has been withdrawn shall not be received against the defendant in any criminal proceeding.

(2) No statement or admission made by a defendant or the attorney of the defendant during any proceeding relating to a plea of guilty or no contest which is not accepted or has been withdrawn shall be received against the defendant in any criminal proceeding. [1973 c.836 §175]

135.450 [Renumbered 135.325]

(Related Procedure)

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

(2) As used in this section "alibi evidence" means evidence that the defendant in a criminal action was, at the time of commission of the alleged offense, at a place other than the place where such offense was committed. [Formerly 135.875]

135.460 [Repealed by 1973 c.836 §358]

135.465 Defect in accusatory instrument as affecting acquittal on merits. When the defendant is acquitted on the merits, the defendant is considered acquitted of the offense charged in the accusatory instrument, notwithstanding a defect in form or substance in the accusatory instrument on which the defendant is acquitted. [Formerly 135.880]

PRETRIAL MOTIONS

135.470 Motion to dismiss accusatory instrument on grounds of former jeopardy. (1) The court shall dismiss the accusatory instrument if, upon motion of the defendant, it appears, as a matter of law, that a former prosecution bars the prosecution for the offense charged.

(2) The time of making the motion and its effect shall be as provided for a motion to set aside the indictment in ORS 135.520 and 135.530.

(3) An order to dismiss the accusatory instrument on grounds of former jeopardy is a bar to a future prosecution of the defendant for the offense charged in the accusatory instrument. [1973 c.836 §177]

135.510 Grounds for motion to set aside the indictment. (1) The indictment shall be set aside by the court upon the motion of the defendant in either of the following cases:

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

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

(2) Nothing in paragraph (b) of subsection (1) of this section shall affect the application of ORS 132.580. [Amended by 1959 c.426 §2; 1973 c.836 §178]

135.520 Time of making motion; hearing. A motion to set aside the indictment or dismiss the accusatory instrument shall be made and heard at the time of the arraignment or within 10 days thereafter, unless for good cause the court allows additional time. If not so made, the defendant is precluded from afterwards taking the objections to the indictment or accusatory instrument. [Amended by 1973 c.836 §179]

135.530 Effect of allowance of motion.

(1) If the motion to set aside or dismiss is allowed, the court shall order that the defendant, if in custody, be discharged therefrom or, if the defendant has been released, that the release agreement be discharged and the security deposit be refunded as provided by law, unless the court allows the case to be refiled or resubmitted to the same or another grand jury.

(2) If the court allows the case to be resubmitted or refiled, it must be resubmitted or refiled by the state within 30 days from the date on which the court enters the order. If the case is not resubmitted or refiled within that time, the defendant shall be released from custody or the release agreement discharged or the security deposit returned. [Amended by 1973 c.836 §180]

135.540 Effect of resubmission of case.

Subject to the limitations of ORS 135.530 (2), if the court allows the case to be resubmitted or refiled, the defendant, if then in custody, shall so remain, unless the defendant is released as provided by law. If the defendant has already been released, the release agreement or any security deposited as provided by law, shall continue to insure the appearance of the defendant to answer a new indictment or information, if one is filed. [Amended by 1973 c.836 §181]

135.550 [Repealed by 1973 c.836 §358]

135.560 Order to set aside is no bar to future prosecution. Except for an order dismissing an accusatory instrument on grounds of former jeopardy, an order to set aside an indictment or to dismiss an accusatory instrument is no bar to a future prosecution for the same crime. [Amended by 1973 c.836 §182]

DEMURRERS

135.610 Demurrer; generally. (1) The demurrer shall be entered either at the time of the arraignment or at such other time as may be allowed to the defendant for that purpose.

(2) The demurrer shall be in writing, signed by the defendant or the attorney of the defendant and filed. It shall distinctly specify the ground of objection to the accusatory instrument. [Amended by 1973 c.836 §183]

135.620 [Repealed by 1973 c.836 §358]

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

(1) If the accusatory instrument is an indictment, that the grand jury by which it was found had no legal authority to inquire into the crime charged because the same is not triable within the county;

(2) If the accusatory instrument is an indictment, that it does not substantially conform to the requirements of ORS 132.510 to 132.560, 135.713, 135.715, 135.717 to 135.737, 135.740 and 135.743;

(3) That the accusatory instrument charges more than one offense not separately stated;

(4) That the facts stated do not constitute an offense;

(5) That the accusatory instrument contains matter which, if true, would constitute a legal justification or excuse of the offense charged or other legal bar to the action; or

(6) That the accusatory instrument is not definite and certain. [Amended by 1973 c.836 §184]

135.640 When objections that are grounds for demurrer may be taken.

When the objections mentioned in ORS 135.630 appear upon the face of the accusatory instrument, they can only be taken by demurrer, except that the objection to the jurisdiction of the court over the subject of the accusatory instrument, or that the facts stated do not constitute an offense, may be taken at the trial, under the plea of not guilty and in arrest of judgment. [Amended by 1973 c.836 §185]

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

135.660 Judgment on demurrer; entry in register. Upon considering the demurrer, the court shall give judgment, either allowing or disallowing it, and an entry to that effect shall be made in the register. [Amended by 1985 c.540 §33]

135.670 Allowance of demurrer. (1) If the demurrer is allowed, the judgment is final upon the accusatory instrument demurred to and is a bar to another action for the same crime unless the court, being of the opinion that the objection on which the demurrer is allowed may be avoided in a new accusatory instrument, allows the case to be resubmitted or refiled.

(2) If the court allows the case to be resubmitted or refiled, it must be resubmitted or refiled by the state within 30 days from the date on which the court enters the order. If the case is not resubmitted or refiled within that time, the defendant shall be discharged from custody or the release agreement discharged or the security deposit returned as provided in ORS 135.680. [Amended by 1973 c.836 §186]

135.680 Failure to resubmit case after allowance of demurrer. If the court does not allow the case to be resubmitted or an

amended complaint or information filed, the defendant, if in custody, shall be discharged. If the defendant has been released, the release agreement shall be discharged. If the defendant has deposited any security, the security shall be returned to the defendant as provided by law. [Amended by 1973 c.836 §187]

135.690 Resubmission of case. If the court allows the case to be resubmitted, the same proceedings shall be had thereon as are prescribed in ORS 135.540. [Amended by 1973 c.836 §188]

135.700 Disallowance of demurrer. If the demurrer is disallowed, the court shall permit the defendant, at the election of the defendant, to plead, which the defendant must do forthwith or at such time as the court may allow; but if the defendant does not plead, a plea of not guilty shall be entered. [Amended by 1973 c.836 §189]

COMPROMISE

135.703 Crimes subject to being compromised; exceptions. When a defendant is charged with a crime punishable as a misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised, as provided in ORS 135.705, except when it was committed:

- (1) By or upon a peace officer while in the execution of the duties of office;
- (2) Riotously;
- (3) With an intent to commit a crime punishable only as a felony; or
- (4) By one family or household member upon another family or household member, as defined in ORS 107.705, and the crime was:
 - (a) Assault in the fourth degree under ORS 163.160;
 - (b) Assault in the third degree under ORS 163.165;
 - (c) Menacing under ORS 163.190;
 - (d) Recklessly endangering another person under ORS 163.195; or
 - (e) Harassment under ORS 166.065. [Formerly 134.010; 1991 c.938 §1]

135.705 Satisfaction of injured person; dismissal of charges. (1) If the person injured acknowledges in writing, at any time before trial on an accusatory instrument for the crime, that the person has received satisfaction for the injury, the court may, in its discretion, on payment of the costs and expenses incurred, order the accusatory instrument dismissed. The order must be entered in the register.

(2) As used in this section, "costs" includes those expenses specially incurred by

the state in prosecuting the defendant, but "costs" does not include the compensation of counsel appointed pursuant to ORS 135.045 or 135.050 and expenses approved under ORS 135.055. [Formerly 134.020; 1981 s.s. c.3 §121; 1985 c.540 §34; 1985 c.710 §4; 1987 c.803 §25]

135.707 Discharge as bar to prosecution. The order authorized by ORS 135.705, when made and entered, is a bar to another prosecution for the same crime. [Formerly 134.030]

135.709 Exclusiveness of procedure. No crime can be compromised nor can any proceeding for the prosecution or punishment thereof be stayed upon a compromise, except as provided in ORS 135.703 to 135.709 and 135.745 to 135.757. [Formerly 134.040]

SUFFICIENCY OF ACCUSATORY INSTRUMENTS

135.711 Facts constituting crime or subcategory of crime required. For any felony committed on or after November 1, 1989, the accusatory instrument shall allege facts sufficient to constitute a crime or a specific subcategory of a crime in the Crime Seriousness Scale established by the rules of the State Sentencing Guidelines Board. [1989 c.790 §4]

135.713 Necessity of stating presumptions of law and matters judicially noticed. Neither presumptions of law nor matters of which judicial notice is taken need be stated in an accusatory instrument. [Formerly 132.570]

135.715 Effect of nonprejudicial defects in form of accusatory instrument. No accusatory instrument is insufficient, nor can the trial, judgment or other proceedings thereon be affected, by reason of a defect or imperfection in a matter of form which does not tend to the prejudice of the substantial rights of the defendant upon the merits. [Formerly 132.590]

135.717 Time of crime. The precise time at which the offense was committed need not be stated in the accusatory instrument, but it may be alleged to have been committed at any time before the finding thereof and within the time in which an action may be commenced therefor, except where the time is a material element in the offense. [Formerly 132.610]

135.720 Place of crime in certain cases. In an accusatory instrument for an offense committed as described in ORS 131.315 and 131.325, it is sufficient to allege that the offense was committed within the county where the accusatory instrument is found. [Formerly 132.620]

135.725 Person injured or intended to be injured. When a crime involves the com-

mission of or an attempt to commit a private injury and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured is not material. [Formerly 132.630]

135.727 Description of animal. When an offense involves the taking of or injury to an animal, the accusatory instrument is sufficiently certain in that respect if it describes the animal by the common name of its class. [Formerly 132.640]

135.730 Judgments; facts conferring jurisdiction. In pleading in an accusatory instrument a judgment or other determination of or proceeding before a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction; but the judgment, determination or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial. [Formerly 132.660]

135.733 Defamation. An accusatory instrument for criminal defamation need not set forth any extrinsic facts for the purpose of showing the application to the party defamed of the defamatory matter on which the accusatory instrument is founded; but it is sufficient to state generally that the same was published concerning the party; and the fact that it was so published must be established on the trial. [Formerly 132.670]

135.735 Forgery; misdescription of forged instrument. When an instrument which is the subject of an accusatory instrument for forgery has been destroyed or withheld by the act or procurement of the defendant and the fact of the destruction or withholding is alleged in the accusatory instrument and established on the trial, the misdescription of the instrument is immaterial. [Formerly 132.680]

135.737 Perjury. In an accusatory instrument for perjury, attempted perjury, solicitation of perjury or conspiracy to commit perjury it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, in what court or before whom the oath alleged to be false was taken and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the accusatory instrument need set forth neither the pleadings, record or proceedings with which the oath is connected nor the commission or authority of the court or person before whom the perjury was committed. [Formerly 132.690]

135.740 Construction of words and phrases used. The words used in an accusatory instrument must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning. [Formerly 132.710]

135.743 Fictitious or erroneous name; insertion of true name. When a defendant is charged in an accusatory instrument by a fictitious or erroneous name and in any stage of the proceedings the true name of the defendant is discovered, it may be inserted in the subsequent proceedings, referring to the fact of the defendant being charged by the name mentioned in the accusatory instrument. [Formerly 132.720]

SPEEDY TRIAL PROVISIONS

135.745 Delay in finding an indictment or filing an information. When a person has been held to answer for a crime, if an indictment is not found against the person within 30 days or the district attorney does not file an information in circuit court within 30 days after the person is held to answer, the court shall order the prosecution to be dismissed, unless good cause to the contrary is shown. [Formerly 134.110]

135.747 Effect of delay in bringing defendant to trial. If a defendant charged with a crime, whose trial has not been postponed upon the application of the defendant or by the consent of the defendant, is not brought to trial within a reasonable period of time, the court shall order the accusatory instrument to be dismissed. [Formerly 134.120]

135.750 Where there is reason for delay. If the defendant is not proceeded against or tried, as provided in ORS 135.745 and 135.747, and sufficient reason therefor is shown, the court may order the action to be continued and in the meantime may release the defendant from custody as provided in ORS 135.230 to 135.290, for the appearance of the defendant to answer the charge or action. [Formerly 134.130]

DISMISSAL OF ACTION

135.753 Effect of dismissal. (1) If the court directs the charge or action to be dismissed, the defendant, if in custody, shall be discharged. If the defendant has been released, the release agreement is exonerated and security deposited shall be refunded to the defendant.

(2) An order for the dismissal of a charge or action, as provided in ORS 135.703 to 135.709 and 135.745 to 135.757, is a bar to another prosecution for the same crime if the crime is a Class B or C misdemeanor; but it

is not a bar if the crime charged is a Class A misdemeanor or a felony.

(3) If any charge or action is dismissed for the purpose of consolidation with one or more other charges or actions, then any such dismissal shall not be a bar to another prosecution for the same offense. [Formerly 134.140; 1975 c.198 §1]

135.755 Dismissal on motion of court or district attorney. The court may, either of its own motion or upon the application of the district attorney, and in furtherance of justice, order the proceedings to be dismissed. The reasons for the dismissal shall be set forth in the order, which shall be entered in the register. [Formerly 134.150; 1985 c.540 §35]

135.757 Nolle prosequi; discontinuance by district attorney. The entry of a nolle prosequi is abolished, and the district attorney cannot discontinue or abandon a prosecution for a crime, except as provided in ORS 135.755. [Formerly 134.160]

PROSECUTION OF PRISONERS

135.760 Notice requesting early trial on pending charge. (1) Any inmate in the custody of the Department of Corrections against whom there is pending at the time of commitment or against whom there is filed at any time during imprisonment, in any court of this state, an indictment, information or criminal complaint charging the inmate with the commission of a crime, may give written notice to the district attorney of the county in which the inmate is so charged requesting the district attorney to prosecute and bring the inmate to trial on the charge forthwith.

(2) The notice provided for in subsection (1) of this section shall be signed by the inmate and set forth the place and term of imprisonment. A copy of the notice shall be sent to the court in which the inmate has been charged by indictment, information or complaint. [Formerly 134.510; 1987 c.320 §19]

135.763 Trial within 90 days of notice unless continuance granted. (1) The district attorney, after receiving a notice requesting trial under ORS 135.760, shall, within 90 days of receipt of the notice, bring the inmate to trial upon the pending charge.

(2) The court shall grant any reasonable continuance with the consent of the defendant. Notwithstanding the defendant's lack of consent, the court may grant a continuance on motion of the district attorney or on its own motion, for good cause shown. The fact of imprisonment is not good cause for the purposes of this subsection. [Formerly 134.520; 1993 c.542 §1]

135.765 Dismissal of criminal proceeding not brought to trial within allowed time; exceptions. (1) On motion of the defendant or the counsel of the defendant, or on its own motion, the court shall dismiss any criminal proceeding not brought to trial in accordance with ORS 135.763.

(2) This section shall not apply:

(a) When failure to bring the inmate to trial within 90 days after the district attorney receives notice under ORS 135.760 was the result of motions filed on behalf of the inmate, or of a grant by the court of a continuance on motion of the district attorney or on its own motion, for good cause shown; or

(b) When the inmate is unavailable for trial, other than by imprisonment, or because of other pending criminal proceedings against the inmate. [Formerly 134.530; 1993 c.542 §2]

135.767 Presence of prisoner at proceedings. (1) Whenever the presence of an inmate in the custody of the Department of Corrections is necessary in any criminal proceeding under ORS 135.760 to 135.773, the court wherein the inmate is charged with the commission of a crime may issue an order directing the Director of the Department of Corrections to surrender the inmate to the sheriff of the county where the inmate is to be tried.

(2) The costs of transportation and maintenance of any inmate removed under this section shall be paid by the county where the inmate is charged with commission of a crime.

(3) At the conclusion of any criminal proceeding under ORS 135.760 to 135.773, notwithstanding the provisions of ORS 137.140, the inmate shall be returned by the sheriff to the custody of the Department of Corrections.

(4) The time during which an inmate is in the custody of the sheriff under this section is part of and shall be counted as time served under the original sentence. [Formerly 134.540; 1983 c.740 §14; 1987 c.320 §20]

135.770 Release of prisoner prohibited. No inmate in the custody of a sheriff under ORS 135.767 shall be released pending a criminal proceeding under ORS 135.760 to 135.773 or any appeal therefrom. [Formerly 134.550]

135.773 District attorney to furnish certain documents. The district attorney shall, in all proceedings against inmates under ORS 135.760 to 135.773, obtain for and furnish to the court a certified copy of the judgment, sentence or commitment order pursuant to which the inmate is imprisoned. [Formerly 134.560]

DETAINER

135.775 Agreement on Detainers. The Agreement on Detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

AGREEMENT ON DETAINERS

The contracting states solemnly agree that:

ARTICLE I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II

As used in this agreement:

(a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that the prisoner initiates a request for final disposition pursuant to Article III of this agreement or at the time that a request for custody or availability is initiated pursuant to Article IV of this agreement.

(c) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV of this agreement.

(d) "Department of Corrections institution" of this state shall mean any institution operated by the Department of Corrections.

ARTICLE III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, informa-

tion or complaint on the basis of which a detainer has been lodged against the prisoner, the prisoner shall be brought to trial within 180 days after the prisoner shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of imprisonment and the request of the prisoner for a final disposition to be made of the indictment, information or complaint: Provided, that for good cause shown in open court, the prisoner or the counsel of the prisoner being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in paragraph (a) of this Article shall be given or sent by the prisoner to the warden or other official having custody of the prisoner, who shall promptly forward it together with the certificate to the prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden or other official having custody of the prisoner shall promptly inform the prisoner of the source and contents of any detainer lodged against the prisoner and shall also inform the prisoner of the right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) of this Article shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint con-

templated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) of this Article shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) of this Article, and a waiver of extradition to the receiving state to serve any sentence there imposed upon the prisoner, after completion of the term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of the body of the prisoner in any court where the presence of the prisoner may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to the execution of the request for final disposition referred to in paragraph (a) of this Article shall void the request.

ARTICLE IV

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom the officer has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with paragraph (a) of Article V of this agreement upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated: Provided, that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; And provided further, that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon the own motion of the governor or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in paragraph (a) of this Article, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is be-

ing held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. Such authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this Article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or the counsel of the prisoner being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this Article shall be construed to deprive any prisoner of any right which the prisoner may have to contest the legality of the delivery of the prisoner as provided in paragraph (a) of this Article, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to paragraph (e) of Article V of this agreement, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V

(a) In response to a request made under Article III or Article IV of this agreement, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary cus-

tody shall present the following upon demand:

(1) Proper identification and evidence of authority to act for the state into whose temporary custody the prisoner is to be given.

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of such prisoner, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV of this agreement, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for attendance of the prisoner at court and while being transported to or from any place at which the presence of the prisoner may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing contained in this paragraph shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of such time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the agreement into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the agreement. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by prisoners or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence

or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party to this agreement, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[Formerly 134.605; 1987 c.320 §20a]

135.777 Definition for ORS 135.775. As used in the Agreement on Detainers, the term "appropriate court" means any court of this state that has criminal jurisdiction. [Formerly 134.615]

135.779 Enforcement of ORS 135.775 by public agencies. All courts, departments, agencies, officers and employees of this state and its political subdivisions are hereby directed to enforce the Agreement on Detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purposes. [Formerly 134.625]

135.783 Effect of escape from custody in another state. Escape from custody while in another state pursuant to the Agreement on Detainers is an offense against the laws of this state to the same extent and degree as an escape from the institution in which the prisoner was confined immediately prior to having been sent to another state pursuant to the provision of the Agreement on Detainers and shall be punishable in the same manner as an escape from such institution. [Formerly 134.635]

135.785 Surrender of custody under ORS 135.775. The official in charge of a Department of Corrections institution in this state shall give over the person of any inmate thereof whenever so required by the operation of the Agreement on Detainers. [Formerly 134.645; 1987 c.320 §21]

135.787 Administrator of agreement; appointment; duties. The Governor may appoint an administrator who shall perform the duties and functions and exercise the powers conferred upon such person by Article VII of the Agreement on Detainers. [Formerly 134.655]

135.789 Notice of request for temporary custody; prisoner's rights. In order to implement paragraph (a) of Article IV of the Agreement on Detainers, and in furtherance of its purposes, the appropriate

authorities having custody of the prisoner shall, promptly upon receipt of the officer's written request, notify the prisoner and the Governor in writing that a request for temporary custody has been made and such notification shall describe the source and contents of such request. The authorities having custody of the prisoner shall also advise the prisoner in writing of the rights of the prisoner to counsel, to make representations to the Governor within 30 days, and to contest the legality of the delivery of the prisoner. [Formerly 134.665]

135.791 Request for final disposition of detainer from prisoner without state. When the district attorney of any county shall have received written notice from a prisoner in another state of the prisoner's request for final disposition to be made of any untried accusatory instrument which is the basis of a detainer against the prisoner, the district attorney promptly shall give written notice to the Governor that such request has been received. The notice to the Governor shall describe the charge pending against the prisoner and shall recite the crime of which the prisoner was convicted in the other state, the sentence imposed and the date the sentence commenced, or so much of such information as may be known to the district attorney. The notice to the Governor shall be accompanied by a summary of the evidence against the prisoner on the untried charge. Within 10 days after receiving the notice and summary of evidence, the Governor shall send written direction to the district attorney either to proceed with prosecution of the prisoner when the prisoner is made available, or to move the court for dismissal of the untried indictment, information or complaint and to remove the detainer against the prisoner. The written direction may be signed by the Governor or by a person authorized by the Governor to perform extradition functions. The decision of the Governor shall be final, and the district attorney shall act as so directed. [1973 c.632 §2]

135.793 Procedure where untried instrument pending against prisoner without state. Any officer of a jurisdiction in this state in which an untried accusatory instrument is pending against a prisoner in another state, and who desires to have the prisoner returned for trial, shall give written notice and a summary of the evidence against the prisoner to the Governor in the manner provided in ORS 135.791. The Governor shall, within 10 days after receiving the notice and summary, send written direction to such officer either approving or disapproving the return of the prisoner. The direction by the Governor shall be final, and

may be signed as provided in ORS 135.791. The officer desiring return of a prisoner shall not seek the court approval provided for in paragraph (a) of Article IV of the Agreement on Detainers prior to receiving approval by the Governor. [1973 c.632 §3]

PRETRIAL DISCOVERY

135.805 Applicability; scope of disclosure. (1) The provisions of ORS 135.805 to 135.873 are applicable to all criminal prosecutions in which the charging instrument has been brought in a court of record.

(2) As used in ORS 135.805 to 135.873, "disclose" means to afford the adverse party an opportunity to inspect or copy the material. [1973 c.836 §213; 1977 c.617 §1]

135.810 [Repealed by 1973 c.836 §358]

135.815 Disclosure to defendant. Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall disclose to the defendant the following material and information within the possession or control of the district attorney:

(1) The names and addresses of persons whom the district attorney intends to call as witnesses at any stage of the trial, together with their relevant written or recorded statements or memoranda of any oral statements of such persons.

(2) Any written or recorded statements or memoranda of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one.

(3) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons which the district attorney intends to offer in evidence at the trial.

(4) Any books, papers, documents, photographs or tangible objects:

(a) Which the district attorney intends to offer in evidence at the trial; or

(b) Which were obtained from or belong to the defendant. ●

(5) If actually known to the district attorney, any record of prior criminal convictions of persons whom the district attorney intends to call as witnesses at the trial; and the district attorney shall make a good faith effort to determine if such convictions have occurred.

(6) All prior convictions of the defendant known to the state that would affect the determination of the defendant's criminal history for sentencing under rules of the State Sentencing Guidelines Board. [1973 c.836 §214; 1989 c.790 §5; 1993 c.469 §2]

135.820 [Repealed by 1973 c.836 §358]

135.825 Other disclosure to defendant; special conditions. Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall disclose to the defendant:

(1) The occurrence of a search or seizure; and

(2) Upon written request by the defendant, any relevant material or information obtained thereby, the circumstances of the search or seizure, and the circumstances of the acquisition of any specified statements from the defendant. [1973 c.836 §215]

135.830 [Amended by 1973 c.836 §161; renumbered 135.355]

135.835 Disclosure to the state. Except as otherwise provided in ORS 135.855 and 135.873, the defendant shall disclose to the district attorney the following material and information within the possession or control of the defendant:

(1) The names and addresses of persons, including the defendant, whom the defendant intends to call as witnesses at the trial, together with relevant written or recorded statements or memoranda of any oral statements of such persons other than the defendant.

(2) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons, which the defendant intends to offer in evidence at the trial.

(3) Any books, papers, documents, photographs or tangible objects which the defendant intends to offer in evidence at the trial. [1973 c.836 §216]

135.840 [Amended by 1973 c.836 §162; renumbered 135.360]

135.845 Time of disclosure. (1) The obligations to disclose shall be performed as soon as practicable following the filing of an indictment or information in the circuit court or the filing of a complaint charging a misdemeanor or violation of a city ordinance. The court may supervise the exercise of discovery to the extent necessary to insure that it proceeds properly and expeditiously.

(2) If, after complying with the provisions of ORS 135.805 to 135.873, a party finds, either before or during trial, additional material or information which is subject to or covered by these provisions, the party must promptly notify the other party of the additional material or information. [1973 c.836 §217]

135.850 [Amended by 1973 c.836 §163; renumbered 135.365]

135.855 Property not subject to discovery. (1) The following material and in-

formation shall not be subject to discovery under ORS 135.805 to 135.873:

(a) Work product, legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the attorneys, peace officers or their agents in connection with the investigation, prosecution or defense of a criminal action.

(b) The identity of a confidential informant where the identity of the informant is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the defendant. Except as provided in ORS 135.873, disclosure shall not be denied hereunder of the identity of witnesses to be produced at trial.

(c) Transcripts, recordings or memoranda of testimony of witnesses before the grand jury, except transcripts or recordings of statements made by the defendant.

(2) When some parts of certain material are discoverable under ORS 135.805 to 135.873, and other parts not discoverable, as much of the material shall be disclosed as is consistent with the provisions thereof. [1973 c.836 §218]

135.857 Disclosure to victim; conditions. (1) In any criminal prosecution arising from an automobile collision in which the defendant is alleged to have been under the influence of alcohol or drugs, the district attorney prosecuting the action shall make available, upon request, to the victim or victims and to their attorney, or to the survivors of the victim or victims and to their attorney, all reports and information disclosed to the defendant pursuant to ORS 135.805 to 135.873. The reports and information shall be made available at the same time as it is disclosed to the defendant or as soon thereafter as may be practicable after a request is received. The district attorney may impose such conditions as may be reasonable and necessary to prevent the release of the reports and information from interfering with the trial of the defendant. The district attorney may apply to the court for an order requiring any person receiving such reports and information to comply with the conditions of release.

(2) For the purpose of this section:

(a) "District attorney" has that meaning given in ORS 131.005.

(b) "Drug" has that meaning given in ORS 475.005. [1991 c.229 §2]

135.860 [Amended by 1973 c.836 §164; renumbered 135.370]

135.865 Effect of failure to comply with discovery requirements. Upon being apprised of any breach of the duty imposed

by the provisions of ORS 135.805 to 135.873, the court may order the violating party to permit inspection of the material, or grant a continuance, or refuse to permit the witness to testify, or refuse to receive in evidence the material not disclosed, or enter such other order as it considers appropriate. [1973 c.836 §219]

135.870 [Amended by 1971 c.743 §321; repealed by 1973 c.836 §358]

135.873 Protective orders. (1) Upon a showing of good cause, the court may at any time order that specified disclosures be denied, restricted or deferred, or make such other order as is appropriate.

(2) Upon request of any party, the court may permit a showing of good cause for denial or regulation of disclosures, or portion of such showing, to be made in camera. A record shall be made of such proceedings.

(3) If the court enters an order granting relief following a showing in camera, the entire record of the showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal. The trial court, in its discretion, may, after trial and conviction, unseal matters previously sealed. [1973 c.836 §220]

135.875 [1969 c.293 §1; renumbered 135.455]

135.880 [Amended by 1973 c.836 §176; renumbered 135.465]

DIVERSION

(Generally)

135.881 Definitions for ORS 135.881 to 135.901. As used in ORS 135.881 to 135.901:

(1) "District attorney" has the meaning given that term by ORS 131.005 (8).

(2) "Diversion" means referral of a defendant in a criminal case to a supervised performance program prior to adjudication.

(3) "Diversion agreement" means the specification of formal terms and conditions which a defendant must fulfill in order to have the charges against the defendant dismissed. [1977 c.373 §1]

135.886 Requirements for diversion; factors considered. (1) After an accusatory instrument has been filed charging a defendant with commission of a crime other than driving while under the influence of intoxicants as defined in ORS 813.010, and after the district attorney has considered the factors listed in subsection (2) of this section, if it appears to the district attorney that diversion of the defendant would be in the interests of justice and of benefit to the defendant and the community, the district attorney may propose a diversion agreement to the defendant the terms of which are es-

established by the district attorney in conformance with ORS 135.891. A diversion agreement under this section is not available to a defendant charged with the crime of driving while under the influence of intoxicants as defined in ORS 813.010.

(2) In determining whether diversion of a defendant is in the interests of justice and of benefit to the defendant and the community, the district attorney shall consider at least the following factors:

(a) The nature of the offense; however, the offense must not have involved injury to another person;

(b) Any special characteristics or difficulties of the offender;

(c) Whether the defendant is a first-time offender; if the offender has previously participated in diversion, according to the certification of the Department of Justice, diversion shall not be offered;

(d) Whether there is a probability that the defendant will cooperate with and benefit from alternative treatment;

(e) Whether the available program is appropriate to the needs of the offender;

(f) The impact of diversion upon the community;

(g) Recommendations, if any, of the involved law enforcement agency;

(h) Recommendations, if any, of the victim;

(i) Provisions for restitution; and

(j) Any mitigating circumstances. [1977 c.373 §2; 1981 c.64 §1; 1981 c.803 §2; 1983 c.338 §889]

135.890 [Repealed by 1973 c.836 §358]

135.891 Conditions of diversion agreement; dismissal of criminal charges; scope of agreement. A diversion agreement carries the understanding that if the defendant fulfills the obligations of the program described therein, the criminal charges filed against the defendant will be dismissed with prejudice. It shall include specifically the waiver of the right to a speedy trial. It may include, but is not limited to, admissions by the defendant, stipulation of facts, stipulation that depositions of witnesses may be taken pursuant to ORS 136.080 to 136.100, payment of costs as defined in ORS 135.705, restitution, performance of community service, residence in a halfway house or similar facility, maintenance of gainful employment, and participation in programs offering medical, educational, vocational, social and psychological services, corrective and preventive guidance and other rehabilitative services. [1977 c.373 §3; 1985 c.710 §5]

135.896 Stay of criminal proceedings during period of agreement; limitation on

stay; effect of declining diversion. If the district attorney elects to offer diversion in lieu of further criminal proceedings and the defendant, with the advice of counsel, agrees to the terms of the proposed agreement, including a waiver of the right to a speedy trial, the court shall stay further criminal proceedings for a definite period. The stay shall not exceed 270 days in the case of a defendant charged with commission of a felony, and shall not exceed 180 days in the case of a defendant charged with the commission of a misdemeanor. If the defendant declines diversion, the court shall resume criminal proceedings. [1977 c.373 §4]

135.900 [Repealed by 1973 c.836 §358]

135.901 Effect of compliance or non-compliance with agreement; effect of partial compliance in subsequent criminal proceedings; record of participation in program. (1) If the district attorney finds at the termination of the diversion period or any time prior thereto that the divertee has failed to fulfill the terms of the diversion agreement, the district attorney shall terminate diversion and the court shall resume criminal proceedings. However, if the former divertee is adjudicated guilty as a result thereof, the court may take into consideration at the time of the sentencing any partially successful fulfillment by such person of the terms of agreement.

(2) If the district attorney informs the court at the termination of the diversion period that the defendant has fulfilled the terms of the diversion agreement, the court shall dismiss with prejudice the criminal charges filed against the defendant.

(3) A record of the fact that an individual has participated in diversion shall be forwarded to and kept by the Department of Justice, and shall be made available upon request to any district attorney who subsequently considers diversion of such person. [1977 c.373 §5; 1981 c.64 §2]

135.905 Unitary assessment. (1) Whenever a defendant accused of committing a crime participates in a diversion agreement under ORS 135.881 to 135.901 or 813.210 to 813.230, the defendant, as a condition of the diversion, shall pay the unitary assessment for which the defendant would have been liable under ORS 137.290 if the defendant had been convicted. The district attorney, or the city attorney if the case is prosecuted by the city attorney, shall include in the diversion agreement a provision setting forth the defendant's obligation. If the diversion is terminated and criminal proceedings are resumed against defendant, any payment made by the defendant under this subsection shall be refunded upon subsequent acquittal of the defendant or dismissal of the case.

(2) Assessments under this section shall be paid within 90 days of imposition, unless the court allows payment at a later time. The assessments shall be paid to the clerk of the court, who shall account for and distribute the moneys as provided in ORS 137.293 and 137.295. [1987 c.905 §10]

Note: 135.905 was added to and made a part of 147.005 to 147.365 by legislative action but was not added to or made a part of ORS chapter 135 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

(Possession of Marijuana)

135.907 Notification of availability of diversion; petition form; information. (1) The court shall inform at arraignment a defendant charged with the offense of possession of less than one ounce of marijuana, that a diversion agreement may be available if the offense for which the defendant is before the court is the defendant's first offense of possession of less than one ounce of marijuana and files with the court a petition for a possession of marijuana diversion agreement.

(2) The petition form for a possession of marijuana diversion agreement shall be available to a defendant at the court.

(3) The form of the petition for a possession of marijuana diversion agreement and the information and blanks contained therein shall be determined by the Supreme Court under ORS 1.525. The petition form made available to a defendant by any state court shall conform to the requirements adopted by the Supreme Court.

(4) In addition to any other information required by the Supreme Court to be contained in a petition for a possession of marijuana diversion agreement, the petition shall include:

(a) A waiver by the defendant of the right to speedy trial or sentencing in any subsequent action upon the charge;

(b) An agreement by the defendant to complete at an agency or organization designated by the state court a diagnostic assessment to determine the possible existence and degree of a drug abuse problem;

(c) An agreement by the defendant to complete, at defendant's own expense based on defendant's ability to pay, the program of treatment indicated as necessary by the diagnostic assessment;

(d) An agreement by the defendant to comply fully with the laws of this state regarding controlled substances;

(e) A notice to the defendant that the diversion agreement will be considered to be violated if the court receives notice that the

defendant at any time during the diversion period committed a violation of the controlled substances laws of this state;

(f) An agreement by the defendant to keep the court advised of the defendant's current mailing address at all times during the diversion period; and

(g) A waiver by the defendant of any former jeopardy rights under the federal and state constitutions and ORS 131.505 to 131.525 in any subsequent action upon the charge or any other offenses based upon the same criminal episode. [1989 c.1075 §5]

Note: 135.907 to 135.921 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 135 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

135.909 Filing petition; procedure. (1) After an accusatory instrument has been filed charging the defendant with the offense of possession of less than one ounce of marijuana, a defendant may file with the court a petition for a possession of marijuana diversion agreement described in ORS 135.907. The petition:

(a) Must be filed within 30 days after the date of the defendant's first appearance on the summons, unless a later filing date is allowed by the court upon a showing of good cause.

(b) Notwithstanding paragraph (a) of this subsection, may not be filed after entry of a guilty plea or a no contest plea or after commencement of any trial on the charge whether or not a new trial or retrial is ordered for any reason.

(2) The defendant shall pay to the court, at the time of filing a petition for a possession of marijuana diversion agreement, a filing fee as specified in ORS 135.921. The court may make provision for payment of the filing fee by the defendant on an installment basis. The court may waive all or part of the filing fee in cases involving indigent defendants. The filing fee paid to the court under this subsection shall be retained by the court if the petition is allowed. The filing fee shall be distributed as provided in ORS 135.921.

(3) The defendant shall pay to the agency or organization providing the diagnostic assessment, at the time the petition is allowed, the fee required by ORS 135.921 (3).

(4) The defendant shall cause a copy of the petition for a possession of marijuana diversion agreement to be served upon the district attorney or city attorney. The district attorney may file with the court, within 15 days after the date of service, a written objection to the petition and a request for a hearing. [1989 c.1075 §6; 1993 c.13 §2]

Note: See note under 135.907.

135.911 Diversion for first offense only. After the time for requesting a hearing under ORS 135.909 has expired with no request for a hearing, or after a hearing requested under ORS 135.909, the court shall allow the petition for a possession of marijuana diversion agreement if the court finds that the offense for which the defendant is before the court is the defendant's first offense of possession of less than one ounce of marijuana. [1989 c.1075 §7]

Note: See note under 135.907.

135.913 Diversion agreement part of record of case; duration of agreement; effect of denial of petition. (1) When the court allows a petition for a possession of marijuana diversion agreement filed as provided in ORS 135.909, the judge taking that action shall sign the petition and indicate thereon the date of allowance of the diversion period, the length of the diversion period and the date upon which the possession of less than one ounce of marijuana offense occurred. The petition when signed and dated becomes the diversion agreement between the defendant and the court. The court shall make the agreement a part of the record of the case.

(2) A possession of marijuana diversion agreement shall be for a period of one year after the date the court allows the petition. During the diversion period the court shall stay the possession of less than one ounce of marijuana offense proceeding pending completion of the diversion agreement or its termination.

(3) When the court denies a petition for a possession of marijuana diversion agreement, it shall continue the offense proceeding against the defendant. [1989 c.1075 §8]

Note: See note under 135.907.

135.915 Effect of compliance with agreement. (1) At any time after the conclusion of the period of a possession of marijuana diversion agreement described in ORS 135.913, a defendant who has fully complied with and performed the conditions of the diversion agreement may apply by motion to the court wherein the diversion agreement was entered for an order dismissing the charge with prejudice.

(2) The defendant shall cause to be served on the district attorney a copy of the motion for entry of an order dismissing with prejudice the charge of possession of less than one ounce of marijuana. The motion shall be served on the district attorney at the time it is filed with the court. The district attorney may contest the motion.

(3) If the defendant does not appear as provided by subsection (1) of this section within six months after the conclusion of the

diversion period, and if the court finds that the defendant fully complied with and performed the conditions of the diversion agreement, and if it gives notice of that finding to the district attorney, the court may on its own motion enter an order dismissing the charge of possession of less than one ounce of marijuana with prejudice.

(4) No statement made by the defendant about the offense with which the defendant is charged shall be offered or received in evidence in any criminal or civil action or proceeding arising out of the same conduct which is the basis of the charge of possession of less than one ounce of marijuana, if the statement was made during the course of the diagnostic assessment or the rehabilitation program and to a person employed by the program. [1989 c.1075 §9]

Note: See note under 135.907.

135.917 Designation of agencies to perform diagnostic assessments; duties of agency. (1) Courts having jurisdiction over the offense of possession of less than one ounce of marijuana shall designate agencies or organizations to perform the diagnostic assessment and treatment required under possession of marijuana diversion agreements described in ORS 135.907. The designated agencies or organizations must meet the standards set by the Mental Health and Developmental Disability Services Division to perform the diagnostic assessment and treatment of drug dependency and must be certified by the Mental Health and Developmental Disability Services Division. Wherever possible, a court shall designate agencies or organizations to perform the diagnostic assessment that are separate from those that may be designated to carry out a program of treatment for drug dependency.

(2) Monitoring of a defendant's progress under a diversion agreement shall be the responsibility of the diagnostic assessment agency or organization. It shall make a report to the court stating the defendant's successful completion or failure to complete all or any part of the treatment program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the court and the diagnostic assessment agency or organization. The court shall make the report of the diagnostic assessment agency or organization that is required by this subsection a part of the record of the case. [1989 c.1075 §11]

Note: See note under 135.907.

135.919 Termination of agreement by court; procedure; grounds; effect. (1) At any time before the court dismisses with prejudice the charge of possession of less than one ounce of marijuana, the court on

its own motion or on the motion of the district attorney may issue an order requiring the defendant to appear and show cause why the court should not terminate the diversion agreement. The order to show cause shall state the reasons for the proposed termination and shall set an appearance date.

(2) The order to show cause shall be served on the defendant and on the defendant's attorney, if any. Service may be made by first class mail, postage paid, addressed to the defendant at the mailing address shown on the diversion petition and agreement or at any other address that the defendant provides in writing to the court.

(3) The court shall terminate the diversion agreement and continue the offense proceeding if:

(a) At the hearing on the order to show cause, the court finds by a preponderance of the evidence that any of the reasons for termination described in this section exist; or

(b) The defendant fails to appear at the hearing on the order to show cause.

(4) If the court terminates the diversion agreement and continues the offense proceeding, the court:

(a) On the defendant's motion and for good cause shown, may reinstate the diversion agreement at any time before conviction, acquittal or dismissal with prejudice.

(b) If the defendant is convicted, may take into account at time of sentencing any partial fulfillment by the defendant of the terms of the diversion agreement.

(5) The court shall terminate a diversion agreement under this subsection for any of the following reasons:

(a) If the defendant has failed to fulfill the terms of the diversion agreement.

(b) If the defendant did not qualify for the diversion agreement. [1989 c.1075 §10]

Note: See note under 135.907.

135.921 Amount and distribution of filing fee; diagnostic assessment fee. (1) The filing fee paid by a defendant at the time of filing a petition for a possession of marijuana diversion agreement as provided in ORS 135.909 shall be \$212 and shall be ordered paid as follows if the petition is allowed:

(a) \$112 to the Department of Revenue for deposit in the Criminal Fine and Assessment Account; and

(b) \$100 to be distributed as provided for the disposition of costs under ORS 153.630.

(2) If less than the \$212 filing fee is paid to the court by the defendant under subsection (1) of this section, the money actually received shall be allocated in the amounts

provided first to the State Treasurer and the remainder as provided for the disposition of costs under ORS 153.630.

(3) In addition to the filing fee under subsection (1) of this section, the court shall order the defendant to pay \$90 directly to the agency or organization providing the diagnostic assessment.

(4) The Chief Justice of the Oregon Supreme Court may require that any or all fees distributed by circuit and district courts under this section be distributed through the offices of the State Court Administrator. [1989 c.1075 §12; 1991 c.460 §19; 1991 c.818 §4; 1993 c.13 §3]

Note: See note under 135.907.

135.930 [1983 c.487 §1; 1987 c.320 §22; repealed by 1987 c.908 §4]

135.935 [1983 c.487 §2; 1987 c.320 §23; repealed by 1987 c.908 §4]

135.940 [1983 c.487 §3; 1987 c.320 §24; repealed by 1987 c.908 §4]

135.945 [1983 c.487 §4; 1987 c.320 §25; repealed by 1987 c.908 §4]

135.950 [1983 c.487 §5; repealed by 1987 c.908 §4]

MISCELLANEOUS

135.970 When address and phone number of victim not to be given to defendant; when contact with victim prohibited; effect of threats by defendant. (1) If the victim or a witness requests, the court shall order that their address and phone number not be given to the defendant unless good cause is shown to the court.

(2) If contacted by the defense, the victim must be clearly informed by the defendant's attorney, either in person or in writing, of the identity and capacity of the person contacting them, that the victim does not have to talk to the defendant's attorney, or other agents of the defendant, unless the victim wishes, and that the victim may have a district attorney present during any interview.

(3)(a) Any pretrial release order must prohibit any contact with the victim, either directly or indirectly, unless specifically authorized by the court having jurisdiction over the criminal charge. This subsection shall not limit contact by the defense attorney, or an agent of the defense attorney, other than the defendant, in the manner set forth in subsection (2).

(b) If a victim notifies the district attorney that the defendant, either directly or indirectly threatened or intimidated the victim, the district attorney shall notify the court with jurisdiction over the criminal matter and the defense attorney. If the defendant is not in custody and the court finds there is probable cause to believe the victim has been threatened or intimidated by the defendant,

either directly or indirectly, the court shall immediately issue an order to show cause why defendant's release status should not be revoked. After conducting such hearing as it deems appropriate, if the court finds that the victim has been threatened or intimidated by the defendant, either directly or indirectly, the defendant's release status shall be revoked and the defendant shall be held in custody with bail set in an amount sufficient to insure the safety of the victim and the community. [1987 c.2 §3]

135.975 [1987 c.475 §2; repealed by 1989 c.790 §74]

135.980 Rehabilitative programs directory; compilation; availability. (1) By January 1, 1990, the Director of the Department of Corrections shall compile and thereafter maintain a directory of public and private rehabilitative programs known and available to corrections agencies of the state and of each county. For purposes of this subsection, "rehabilitative program" means a planned activity, in a custodial or noncustodial context, designed and implemented to treat drug or alcohol abuse, to prevent criminal sexual behavior, to modify a propensity to commit crimes against persons or property or to achieve restitution for losses caused by an offender and includes programs that employ the device of mediation between the victim and offender. The director shall include:

(a) The name, address and telephone number of the program and the identity of its director or other principal contact;

(b) The geographical jurisdiction of the program;

(c) The types of offenders that the program claims to be able to serve and the criteria that the program applies in selecting or soliciting cases;

(d) The claims of the program regarding its effectiveness in reducing recidivism,

achieving restitution or otherwise serving correctional objectives;

(e) An assessment by the relevant corrections agency of the actual effectiveness of the program; and

(f) The capacity of the program for new cases.

(2) The Director of the Department of Corrections shall make the directory available to the Oregon Criminal Justice Council and to judges in a form that will allow sentencing judges to determine what rehabilitative programs are appropriate and available to the offender during any period of probation, imprisonment or local incarceration and post-prison supervision. The Director of the Department of Corrections shall also make the directory available to its employees who prepare presentence reports and proposed release plans for submission to the State Board of Parole and Post-Prison Supervision.

(3) The directory shall be updated as frequently as is practical, but no less often than every six months.

(4) The Director of the Department of Corrections shall prepare a plan for monitoring the scope and measuring the effectiveness of existing rehabilitative programs and shall deliver that plan to the Oregon Criminal Justice Council no later than January 1, 1990. [1989 c.790 §7a]

Note: 135.980 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 135 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

135.990 Penalties. Violation of ORS 135.155 is punishable as a contempt by the court having jurisdiction of the crime charged against the defendant. [Formerly 133.990]