

# Chapter 137

1993 EDITION

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**PROCEDURE IN CRIMINAL MATTERS GENERALLY**

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## JUDGMENT

## (Generally)

**137.010 Duty of court to ascertain and impose punishment.** (1) The statutes that define offenses impose a duty upon the court having jurisdiction to pass sentence in accordance with this section or, for felonies committed on or after November 1, 1989, in accordance with rules of the State Sentencing Guidelines Board unless otherwise specifically provided by law.

(2) If it cannot be determined whether the felony was committed on or after November 1, 1989, the defendant shall be sentenced as if the felony had been committed prior to November 1, 1989.

(3) Except when a person is convicted of a felony committed on or after November 1, 1989, if the court is of the opinion that it is in the best interests of the public as well as of the defendant, the court may suspend the imposition or execution of any part of a sentence for any period of not more than five years. The court may extend the period of suspension beyond five years in accordance with subsection (4) of this section.

(4) If the court suspends the imposition or execution of a part of a sentence for an offense other than a felony committed on or after November 1, 1989, the court may also impose and execute a sentence of probation on the defendant for a definite or indefinite period of not more than five years. However, upon a later finding that a defendant sentenced to probation for a felony has violated a condition of the probation and in lieu of revocation, the court may order the period of both the suspended sentence and the sentence of probation extended until a date not more than six years from the date of original imposition of sentence. Time during which the probationer has absconded from supervision and a bench warrant has been issued for the probationer's arrest shall not be counted in determining the time elapsed since imposition of the sentence of probation.

(5) If the court announces that it intends to suspend imposition or execution of any part of a sentence, the defendant may, at that time, object and request imposition of the full sentence. In no case, however, does the defendant have a right to refuse the court's order, and the court may suspend imposition or execution of a part of the sentence despite the defendant's objection or request. If the court further announces that it intends to sentence the defendant to a period of probation, the defendant may, at that time, object and request that a sentence of probation or its conditions not be imposed or that different conditions be imposed. In no case, however, does the defendant have the

right to refuse a sentence of probation or any of the conditions of the probation, and the court may sentence the defendant to probation subject to conditions despite the defendant's objection or request.

(6) The power of the judge of any court to suspend execution of any part of a sentence or to sentence any person convicted of a crime to probation shall continue until the person is delivered to the custody of the Department of Corrections.

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

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

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

(9) When imposing sentence for a felony committed on or after November 1, 1989, the court shall complete a sentencing report form as established under section 7, chapter 790, Oregon Laws 1989. The completed form shall be submitted to the Oregon Criminal Justice Council forthwith.

(10) A judgment of conviction that includes a term of imprisonment for a felony committed on or after November 1, 1989, shall state the length of incarceration and the length of post-prison supervision. The judgment of conviction shall also provide that if the defendant violates the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with rules of the State Sentencing Guidelines Board. [Amended by 1971 c.743 §322; 1981 c.181 §1; 1987 c.320 §27; 1989 c.790 §6; 1989 c.849 §1; 1993 c.14 §1]

**137.012 Suspension of imposition or execution of sentence of person convicted of certain sexual offenses; term of probation.** If the court suspends the imposition or execution of a part of a sentence of, or imposes a sentence of probation on, any person convicted of violating or attempting to violate ORS 163.375, 163.405, 163.408, 163.411, 163.425 or 163.427, the court shall sentence the defendant to probation for a period of at least five years and no more than the maximum statutory indeterminate sentence for

the offense. [1991 c.831 §2; 1993 c.14 §2; 1993 c.301 §2]

**Note:** 137.012 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Section 3, chapter 831, Oregon Laws 1991, provides:

**Sec. 3.** The provisions of ORS 137.012 and 144.103 apply to persons convicted of an offense occurring on or after September 29, 1991. [1991 c.831 §3; 1993 c.18 §177]

**137.013 Appearance by victim at time of sentencing.** At the time of sentencing, the victim or the victim's next of kin has the right to appear personally or by counsel, and has the right to reasonably express any views concerning the crime, the person responsible, the impact of the crime on the victim, and the need for restitution and compensatory fine. [1987 c.2 §10]

**137.015** [1971 c.328 §1; 1973 c.346 §1; 1979 c.341 §1; 1983 c.125 §1; 1985 c.277 §1; 1989 c.844 §1; repealed by 1987 c.905 §37]

**137.017 Disposition of fines, costs and forfeited bail received by court.** Except as otherwise specifically provided by law, all fines, costs and forfeited bail ordered paid in criminal actions and proceedings, as defined in ORS 131.005, in the circuit court shall be accounted for and distributed as provided in ORS 137.293 and 137.295, as monetary obligations payable to the state. [1981 s.s. c.3 §102; 1983 c.763 §42; 1987 c.905 §5]

**137.020 Time for pronouncing judgment; delay; notice of right to appeal.** (1) After a plea or verdict of guilty, or after a verdict against the defendant on a plea of former conviction or acquittal, if the judgment is not arrested or a new trial granted, the court shall appoint a time for pronouncing judgment.

(2)(a) The time appointed shall be at least two calendar days after the plea or verdict, if the court intends to remain in session so long. If the court does not intend to remain in session at least two calendar days, the time appointed may be sooner than two calendar days, but shall be as remote a time as can reasonably be allowed. However, in the latter case, the judgment shall not be given less than six hours after the plea or verdict, except with the consent of the defendant.

(b) Except for good cause shown or as otherwise provided in this paragraph, a court shall not delay for more than 31 calendar days after the plea or verdict the sentencing of a defendant held in custody on account of the pending proceedings. Except for good cause shown or as otherwise provided in this paragraph, a court shall not delay for more than 56 calendar days after the plea or verdict the sentencing of a defendant not held in custody on account of the pending proceedings. If the defendant is not in custody

and the court does not pronounce judgment within 56 calendar days after the plea or verdict, any period of probation imposed as a part of a subsequent judgment shall begin to run from the date of the plea or verdict.

(3) If the defendant is in custody following the verdict, the court shall pronounce judgment as soon as practicable, but in any case within seven calendar days following the verdict if no presentence investigation is ordered, and within seven calendar days after delivery of the presentence report to the court if a presentence investigation has been ordered; however, the court may delay pronouncement of judgment beyond the limits of this subsection for good cause shown.

(4) If the final calendar day a defendant must be sentenced is not a judicial day then sentencing may be delayed until the next judicial day.

(5) At the time court pronounces judgment the defendant, if present, shall be advised of the right to appeal and of the procedure for protecting such right. If the defendant is not present, the court shall advise the defendant in writing of the right to appeal and of the procedure for protecting such right. [Amended by 1971 c.565 §18a; 1987 c.242 §1; 1991 c.111 §12]

**137.030 Presence of defendant at pronouncement of judgment.** (1) For the purpose of giving judgment, if the conviction is for a felony, the defendant shall be personally present; but if it is for a misdemeanor, judgment may be given in the absence of the defendant.

(2) As used in this section, "personally present" means that a defendant:

(a) Is physically present before the court; or

(b) Is imprisoned and elects to appear 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.

(3) Notwithstanding subsection (2) of this section, 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. [Amended by 1993 c.581 §1]

**137.040 Bringing defendant in custody to pronouncement of judgment.** If the defendant is in custody, the court shall direct the officer in whose custody the defendant is to bring the defendant before it for judgment; and the officer shall do so accordingly.

**137.050 Nonattendance or nonappearance of released defendant when attend-**

**ance required by court.** (1) If the defendant has been released on a release agreement or security deposit and does not appear for judgment when personal attendance is required by the court, the court may order a forfeiture of the security deposit as provided in ORS 135.280. In addition, if the defendant fails to appear as required by the release agreement or security deposit, the court may direct the clerk to issue a bench warrant for the defendant's arrest.

(2) At any time after the making of the order for the bench warrant, the clerk, on the application of the district attorney, shall issue such warrant, as by the order directed, whether the court is sitting or not. [Amended by 1973 c.836 §257]

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

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

To any peace officer in the State of Oregon, greeting:

A B having been on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, convicted in this court of the crime of (designating it generally), you are commanded to arrest the above-named defendant forthwith and bring the defendant before such court for judgment or, if the court has adjourned for the term, deliver the defendant into the custody of the jailor of this county. By order of the court.

Witness my hand and seal of said circuit (or district) court, affixed at \_\_\_\_\_, in said county, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

[L. S.]

C D, Clerk of the Court

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[Amended by 1957 c.659 §1; 1971 c.423 §1]

**137.070 Counties to which bench warrant may issue; service.** The bench warrant mentioned in ORS 137.050 may issue to one or more counties of the state and may be served in the same manner as any other warrant of arrest issued by a magistrate. [Amended by 1973 c.836 §258]

**137.071 Requirements for judgments.** This section establishes requirements for judgments in actions and proceedings resulting from a person being accused and tried for the commission of an offense. The judge shall assure the creation and filing of a judgment that complies with this section in such

action or proceedings. On appeal, the appellate court may give leave as provided in ORS 19.033 for entry of a judgment that complies with this section but may not reverse or set aside a judgment, determination or disposition on the sole ground that the document fails to comply with this section. No particular form of words is required, but every judgment in a criminal action or proceeding must comply with all the following:

(1) It must be in writing, plainly titled as a judgment and set forth in a separate document.

(2) It must clearly identify the court and file number or other identifier used by the court for that case.

(3) It must clearly identify the defendant.

(4) It must clearly identify the attorney for the state and the attorney, if any, for the defendant. If there is no attorney for the defendant, it must specify whether the defendant knowingly waived any right to an attorney after having been informed of that right.

(5) It must include the identity of the recorder or reporter for the proceeding or action who is to be served under ORS 138.081.

(6) It must include any information specifically required by statute or by court rule.

(7) It must specify clearly the court's determination for each charge in the information, indictment or complaint.

(8) It must specify clearly the court's disposition, including all legal consequences the court establishes or imposes. If the determination is one of conviction, it must include any suspension of sentence, forfeiture, imprisonment, cancellation of license, removal from office, monetary obligation, probation, conditions of probation, discharge, restitution, community service and all other sentences and legal consequences imposed by the court. Nothing in this subsection requires the judgment to specify any consequences that may result from the determination but are not established or imposed by the court.

(9) Any money judgment must comply with this subsection and subsection (10) of this section. A judgment that does not comply with this subsection and subsection (10) of this section is subject to not being docketed in the judgment docket as provided under ORS 137.180 until it is amended to become a money judgment and to so comply. A money judgment must include all the following:

(a) The identity of the judgment creditor.

(b) The identity of the judgment debtor.

(c) If restitution or compensatory fine is ordered, the name and address of the person to whom the court should disburse payments. This paragraph does not require the name and address of the victim, but may include other persons designated by the victim who will pass the restitution or fine on to the victim without requiring the victim's name and address to be a public record.

(d) The amount of the money judgment. The following apply to the amount of the money judgment:

(A) This paragraph requires both the total amount of the money judgment, excluding any amount that is suspended, and a listing of amounts and identification for the fines, assessments, costs, restitution and any other monetary obligations imposed in the sentence as part of the money judgment.

(B) Money required to be paid as a condition of probation:

(i) Is a money judgment that survives and remains payable after revocation of probation if the amount is included in the money judgment section.

(ii) Is not a money judgment or docketable in the judgment docket and does not survive revocation of probation if not included in the money judgment section, even if the amount is included in another part of the judgment.

(e) If other than immediate payment is permitted, the specific terms of payment imposed or allowed by the court.

(f) A statement specifying whether all or any part of any monetary obligation is suspended. This paragraph does not require a response that no monetary obligation was suspended if that is the case. In those instances where there is no statement that any monetary obligation is suspended, it shall be deemed that no monetary obligation or any part is suspended.

(10) The requirements of subsection (9) of this section must be presented in the following manner:

(a) The information must be presented in a separate, discrete section immediately above the judge's signature.

(b) The separate section must be clearly labeled at its beginning as a money judgment.

(c) The information required under subsection (9) of this section must be presented in the same order as set forth in that subsection.

(d) The separate section must contain no other provisions except what is specifically required by this subsection and subsection (9) of this section and shall not include re-

quirements to pay money that are not part of the money judgment.

(11) It must be signed by the judge rendering the judgment and dated as of the date of signature. [1989 c.472 §2]

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

### 137.073 Applicability of ORS 137.071.

(1) The requirements of ORS 137.071 do not apply where the action or proceeding is initiated solely on the basis of a citation adopted under ORS 1.525 that contains a space on the citation for entry of judgment.

(2) The exemption in subsection (1) of this section does not apply:

(a) If any indictment, information or complaint other than a citation under ORS 1.525 is filed in the action or proceeding.

(b) To citations issued in lieu of arrest under ORS 133.055. [1989 c.472 §3]

**137.074 Fingerprints of convicted felons and certain misdemeanants required.** When a person is convicted of a felony or a Class A misdemeanor, the court shall insure that the person's fingerprints have been taken. The law enforcement agency attending upon the court is the agency responsible for obtaining the fingerprints. The agency attending upon the court may, by agreement, arrange for another law enforcement agency to obtain the fingerprints on its behalf. [1989 c.790 §19]

**Note:** 137.074 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

### 137.076 Blood sample of certain convicted defendants required; application.

(1) This section applies to any person convicted of one of the following offenses:

(a) Rape, sodomy, unlawful sexual penetration, sexual abuse, public indecency, incest or using a child in a display of sexually explicit conduct, as those offenses are defined in ORS 163.355 to 163.427, 163.465 (1)(c), 163.525 and 163.670;

(b) Burglary, as defined in ORS 164.215 and 164.225, when committed with intent to commit any offense listed in paragraph (a) of this subsection;

(c) Promoting or compelling prostitution, as defined in ORS 167.012 and 167.017;

(d) Conspiracy or attempt to commit any felony listed in paragraphs (a) to (c) of this subsection; or

(e) Murder or aggravated murder.

(2) When a person is convicted of an offense listed in subsection (1) of this section:

(a) The person shall, whether or not ordered to do so by the court under paragraph (b) of this subsection, provide a blood sample at the request of the appropriate agency designated in paragraph (c) of this subsection.

(b) The court shall include in the judgment of conviction an order stating that a blood sample is required to be drawn at the request of the appropriate agency and, unless the convicted person lacks the ability to pay, that the person shall reimburse the appropriate agency for the cost of drawing and transmitting the blood sample. If the judgment sentences the convicted person to probation, the court shall order the convicted person to submit to the drawing of a blood sample as a condition of the probation.

(c) The appropriate agency shall cause a blood sample to be drawn and transmitted to the Department of State Police. The agency shall cause the sample to be drawn as soon as practicable after conviction, but in the case of any person ordered to serve a term of incarceration as a part of the sentence, prior to the person's release from incarceration. Whenever it is notified by the Department of State Police that a sample is not adequate for analysis, the agency shall draw and transmit an additional sample. The appropriate agency shall be:

(A) The Department of Corrections, whenever the convicted person is committed to the legal and physical custody of the department.

(B) In all other cases, the law enforcement agency attending upon the court.

(3) A blood sample may only be drawn in a medically acceptable manner by a licensed professional nurse, a licensed practical nurse, a qualified medical technician, a licensed physician or a person acting under the direction or control of a licensed physician. A person authorized by this subsection to draw a blood sample shall not be held civilly liable for drawing a sample in a medically acceptable manner in accordance with subsection (2) of this section, ORS 161.325 and 419C.473. The sample shall also be drawn and transmitted in accordance with any procedures that may be established by the Department of State Police. However, no test result or opinion based upon a test result shall be rendered inadmissible as evidence solely because of deviations from procedures adopted by the Department of State Police that do not affect the reliability of the opinion or test result.

(4) No sample is required to be drawn if:

(a) The Department of State Police notifies the court or the appropriate agency that it has previously received an adequate blood

sample drawn from the convicted person in accordance with this section or ORS 161.325 or 419C.473; or

(b) The court determines that drawing a sample would create a substantial and unreasonable risk to the health of the convicted person.

(5) The provisions of subsections (1) to (4) of this section apply to any person who, on September 29, 1991, is serving a term of incarceration as a sentence or as a condition of probation imposed for conviction of an offense listed in subsection (1) of this section, and any such person shall submit to the drawing of a blood sample. Before releasing any such person from incarceration, the supervisory authority shall cause a blood sample to be drawn and transmitted in accordance with subsections (1) to (4) of this section. [1991 c.669 §§2,5; 1993 c.14 §3; 1993 c.33 §298; 1993 c.301 §3]

**Note:** 137.076 (5) was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Section 8, chapter 301, Oregon Laws 1993, provides:

**Sec. 8.** The amendments to ORS 137.076 by section 3 of this Act, including sexual abuse in the first degree in the list of crimes conviction of which requires providing a blood sample, apply retroactively to any person who, on or after September 29, 1991:

(1) Is serving a term of incarceration as a sentence or as a condition of probation imposed for conviction of sexual abuse in the first degree;

(2) Has been found guilty of sexual abuse in the first degree except for insanity;

(3) Has been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for having committed an act which, if done by an adult, would constitute sexual abuse in the first degree; or

(4) Was convicted of sexual abuse in the first degree. [1993 c.301 §8]

### (Presentence Report)

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

(1) The sentencing court for the purpose of assisting the court in determining the proper sentence to impose and to other judges who participate in a sentencing council discussion of the defendant. The sentencing judge may disclose information from the presentence report that is necessary to address the content of the report, examine the reasoning for a sentencing recommendation or to explain the reasons for the sentence imposed. Appellate judges may disclose information from the presentence report that is necessary for legal analysis of the case or to report the reasoning of the appellate court.

(2) The Department of Corrections, State Board of Parole and Post-Prison Supervision and other persons or agencies having a legitimate professional interest in the information likely to be contained therein. These agencies or persons may make the presentence report, or any reports based on the contents of that report, available to the victim.

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

(4) The district attorney, the defendant or the counsel of the defendant, as provided in ORS 137.079. The district attorney and counsel of the defendant may retain a copy of the presentence report as a part of the permanent records of the case. The district attorney and counsel of the defendant may disclose the contents of the presentence report to individuals or agencies when preparing for the sentencing of the defendant. "Individuals and agencies" include victims, psychologists, psychiatrists, medical doctors and any other person or agency who may assist the state or the defendant at the time of sentencing. [1973 c.836 §260; 1987 c.320 §28; 1989 c.408 §1]

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

(2) The court may except from disclosure parts of the presentence report or other written information described in subsection (1) of this section which are not relevant to a proper sentence, diagnostic opinions which might seriously disrupt a program of rehabilitation if known by the defendant, or sources of information which were obtainable with an expectation of confidentiality.

(3) If parts of the presentence report or other written information described in subsection (1) of this section are not disclosed under subsection (2) of this section, the court shall inform the parties that information has not been disclosed and shall state for the record the reasons for the court's action. The action of the court in excepting information shall be reviewable on appeal.

(4) A defendant who is being sentenced for felonies committed prior to November 1, 1989, may file a written motion to correct the criminal history contained in the presentence report prior to the date of sentencing. At sentencing, the court shall consider defendant's motion to correct the presentence report and shall correct any factual errors in the criminal history contained in that report. An order allowing or denying a motion made pursuant to this subsection shall not be reviewable on appeal. If corrections are made by the court, only corrected copies of the report shall be provided to individuals or agencies pursuant to ORS 137.077.

(5)(a) The provisions of this subsection apply only to a defendant being sentenced for a felony committed on or after November 1, 1989.

(b) Except as otherwise provided in paragraph (c) of this subsection, the defendant's criminal history as set forth in the presentence report shall satisfy the state's burden of proof as to the defendant's criminal history.

(c) Prior to the date of sentencing, the defendant shall notify the district attorney and the court in writing of any error in the criminal history as set forth in the presentence report. Except to the extent that any disputed portion is later changed by agreement of the district attorney and defendant with the approval of the court, the state shall have the burden of proving by a preponderance of evidence any disputed part of the defendant's criminal history. The court shall allow the state reasonable time to produce evidence to meet its burden.

(d) The court shall correct any error in the criminal history as reflected in the presentence report.

(e) If corrections to the presentence report are made by the court, only corrected copies of the report shall be provided to individuals or agencies pursuant to ORS 137.077.

(f) Except as provided in ORS 138.222, the court's decision on issues relating to a defendant's criminal history shall not be reviewable on appeal. [1973 c.836 §261; 1977 c.372 §11; 1983 c.649 §1; 1989 c.408 §2; 1989 c.790 §8]

#### (Aggravation or Mitigation)

**137.080 Consideration of circumstances in aggravation or mitigation of punishment.** (1) After a plea or verdict of guilty, or after a verdict against the defendant on a plea of former conviction or acquittal, in a case where discretion is conferred upon the court as to the extent of the punishment to be inflicted, the court, upon the suggestion of either party that there are cir-

cumstances which may be properly considered in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time and upon such notice to the adverse party as it may direct.

(2) Notwithstanding any other provision of law, the consideration of aggravating and mitigating circumstances as to felonies committed on or after November 1, 1989, including the maximum sentence that may be imposed because of aggravating circumstances, shall be in accordance with rules of the State Sentencing Guidelines Board. [Amended by 1989 c.790 §9]

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

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

**137.090 Considerations in determining aggravation or mitigation.** (1) In determining aggravation or mitigation, the court shall consider:

(a) Any evidence received during the proceeding;

(b) The presentence report, where one is available; and

(c) Any other evidence relevant to aggravation or mitigation that the court finds trustworthy and reliable.

(2) When a witness is so sick or infirm as to be unable to attend, the deposition of the witness may be taken out of court at such time and place, and upon such notice to the adverse party, and before such person authorized to take depositions, as the court directs. [Amended by 1965 c.400 §1; 1973 c.836 §259; 1989 c.790 §10]

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

### (Compensatory Fine)

**137.101 Compensatory fine.** (1) Whenever the court imposes a fine as penalty for the commission of a crime resulting in injury for which the person injured by the act constituting the crime has a remedy by civil action, unless the issue of punitive damages has been previously decided on a civil case arising out of the same act and transaction, the court may order that the defendant pay any portion of the fine separately to the clerk of the court as compensatory fines in the case. The clerk shall pay over to the injured victim or victims, as directed in the court's order, moneys paid to the court as compensatory fines under this subsection. This section shall be liberally construed in favor of victims.

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

(3) Nothing in this section limits or impairs the right of a person injured by a defendant's criminal acts to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay compensatory fines under this section may not be introduced in any civil action arising out of the facts or events which were the basis for the compensatory fine. However, the court in such civil action shall credit any compensatory fine paid by the defendant to a victim against any judgment for punitive damages in favor of the victim in the civil action. [1981 c.637 §2; 1987 c.2 §11]

### (Restitution)

**137.103 Definitions for ORS 137.101 to 137.109.** As used in ORS 137.101 to 137.109, 137.540, 161.675 and 161.685:

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

(2) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses and costs of psychological treatment or counseling.

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

(4) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities; "victim" shall not include any coparticipant in the defendant's criminal activities. [1977 c.371 §1; 1981 c.637 §1; 1983 c.488 §1; 1983 c.740 §16; 1987 c.905 §16]

**137.106 Restitution to victims; criteria; objections by defendant.** (1) When a person is convicted of criminal activities, or a violation under ORS 161.565, which have resulted in pecuniary damages, unless the presentence investigation report contains such a presentation, the district attorney shall investigate and present to the court, prior to or at the time of sentencing, evidence of the nature and amount of such damages. In addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim.

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

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

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

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

(3) If the defendant objects to the imposition, amount or distribution of the restitution, the court shall at the time of sentencing allow the defendant to be heard on such issue. [1977 c.371 §2; 1983 c.724 §1; 1993 c.533 §1]

**137.109 Effect of restitution order on other remedies of victim; credit of restitution against subsequent civil judgment; effect of criminal judgment on subsequent civil action.** (1) Nothing in ORS 137.103 to 137.109, 137.540, 144.275, 161.675 and 161.685 limits or impairs the right of a person injured by a defendant's criminal activities, or by a defendant's commission of a violation under ORS 161.565, to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution pursuant to ORS 137.103 to 137.109, 137.540, 144.275, 161.675 and 161.685 may not be introduced in any civil action arising out of the facts or events which were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in such civil action.

(2) If conviction in a criminal trial necessarily decides the issue of a defendant's li-

ability for pecuniary damages of a victim, that issue is conclusively determined as to the defendant if it is involved in a subsequent civil action. [1977 c.371 §7; 1993 c.533 §2]

137.110 [Repealed by 1973 c.836 §358]

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

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

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

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

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

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

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

### (Collection of Monetary Obligations)

**137.118 Assignment of judgments for collection of monetary obligation.** Criminal judgments that impose monetary obligations, including judgments requiring the payment of fines, costs, assessments, compensatory fines, attorney fees, forfeitures or restitution, may be assigned by the state for collection. The assignment may be to a private collection agency. [1993 c.531 §1]

Note: 137.118 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

### (Term and Place of Confinement)

**137.120 Term of sentence; reasons to be stated on record.** (1) Whenever any person is convicted of a felony committed prior to November 1, 1989, the court shall, unless it imposes other than a sentence to serve a term of imprisonment in the custody of the Department of Corrections, sentence such person to imprisonment for an indeterminate period of time, but stating and fixing in the judgment and sentence a maximum term for the crime, which shall not exceed the maximum term of imprisonment provided by law therefor; and judgment shall be given accordingly. Such a sentence shall be known as an indeterminate sentence. The court shall state on the record the reasons for the sentence imposed.

(2) Whenever any person is convicted of a felony committed on or after November 1, 1989, the court shall impose sentence in accordance with rules of the State Sentencing Guidelines Board.

(3) This section does not affect the indictment, prosecution, trial, verdict, judgment or punishment of any felony committed before June 14, 1939, and all laws now and

before that date in effect relating to such a felony are continued in full force and effect as to such a felony. [Amended by 1967 c.372 §2; 1971 c.743 §324; 1977 c.372 §12; 1987 c.320 §29; 1989 c.790 §11]

**137.121 Maximum consecutive sentences.** Notwithstanding any other provision of law, but subject to ORS 161.605, the maximum consecutive sentences which may be imposed for felonies committed on or after November 1, 1989, whether as terms of imprisonment, probation or both, shall be as provided by rules of the State Sentencing Guidelines Board. [1989 c.790 §14]

**Note:** 137.121 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.122** [1985 c.722 §2; repealed by 1991 c.67 §28]

**137.123 Additional provisions relating to concurrent and consecutive sentences.**

(1) A sentence imposed by the court may be made concurrent or consecutive to any other sentence which has been previously imposed or is simultaneously imposed upon the same defendant. The court may provide for consecutive sentences only in accordance with the provisions of this section. A sentence shall be deemed to be a concurrent term unless the judgment expressly provides for consecutive sentences.

(2) If a defendant is simultaneously sentenced for criminal offenses that do not arise from the same continuous and uninterrupted course of conduct, or if the defendant previously was sentenced by any other court within the United States to a sentence which the defendant has not yet completed, the court may impose a sentence concurrent with or consecutive to the other sentence or sentences.

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

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

(a) That the criminal offense for which a consecutive sentence is contemplated was not merely an incidental violation of a sepa-

rate statutory provision in the course of the commission of a more serious crime but rather was an indication of defendant's willingness to commit more than one criminal offense; or

(b) The criminal offense for which a consecutive sentence is contemplated caused or created a risk of causing greater or qualitatively different loss, injury or harm to the victim or caused or created a risk of causing loss, injury, or harm to a different victim than was caused or threatened by the other offense or offenses committed during a continuous and uninterrupted course or conduct. [1987 c.2 §12; 1991 c.67 §29; 1991 c.111 §14]

**137.124 Commitment of defendant to Department of Corrections; place of confinement; transfer of inmates; juveniles.**

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

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

(3) If the court imposes a sentence of imprisonment upon conviction of a misdemeanor, it shall commit the defendant to the custody of the executive head of the correctional facility for the imprisonment of misdemeanants designated in the judgment.

(4)(a) When a person under 18 years of age is waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment in the custody of the Department of Corrections, the department shall transfer the person to a juvenile training school for physical custody as provided in ORS 420.011 (3).

(b) When a person under 16 years of age is waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment in the county jail, the sheriff shall transfer the person to a juvenile training school for physical custody as provided in ORS 420.011 (3). [1967 c.585 §4; 1971 c.743 §325; 1973 c.836 §262; 1985 c.631 §5; 1987 c.320 §30; 1993 c.33 §299; 1993 c.546 §118]

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

**(Community Service)**

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

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

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

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

**137.128 Community service as part of sentence; effect of failure to perform community service.** (1) A judge may sentence an offender to community service either as an alternative to incarceration or fine or probation, or as a condition of probation. Prior to such order of community service the offender must consent to donate labor for the welfare of the public. The court or its delegate may select community service tasks that are within the offender's capabilities and are to be performed within a reasonable length of time during hours the offender is not working or attending school.

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

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

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

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

(3)(a) For a felony committed prior to November 1, 1993, not more than 500 hours.

(b) For a felony committed on or after November 1, 1993, as provided in the rules of the State Sentencing Guidelines Board.

(4) For a violation of driving under the influence of intoxicants under ORS 813.010, not less than 80 hours or more than 250 hours. [1981 c.551 §4; 1983 c.721 §1; 1985 c.16 §447; 1993 c.692 §3]

**(Post-judgment Procedures)**

**137.130** [Repealed by 1987 c.550 §5]

**137.140 Imprisonment when county jail is not suitable for safe confinement.** Whenever it appears to the court that there is no sufficient jail of the proper county, as

provided in ORS 137.330, suitable for the confinement of the defendant, the court may order the confinement of the defendant in the jail of an adjoining county or, if there is no sufficient and suitable jail in the adjoining county, then in the jail of any county in the state. [Amended by 1973 c.836 §263; 1987 c.550 §3]

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

**137.160** [Repealed by 1961 c.520 §1]

**137.170 Entry of judgment on conviction.** When judgment upon a conviction is given, the clerk shall enter the same in the register forthwith, stating briefly the crime for which the conviction has been had. [Amended by 1959 c.638 §19; 1973 c.836 §264; 1985 c.540 §36]

**137.175 Judgment of conviction which effects release of defendant; delivery to sheriff.** Whenever a judgment of conviction will effect the immediate release of a defendant by discharge, probation, sentence to time served, or otherwise, the court shall cause the prompt delivery of a copy of the judgment to the sheriff no later than three calendar days after the judgment is entered. [1987 c.251 §3; 1991 c.111 §15]

**137.180 Docketing of judgment to pay fine or costs.** (1) If a court imposes a sentence that a convicted defendant pay money, whether as a fine, fee, assessment or as costs and disbursements of the action, as restitution or as any other monetary obligation, the clerk shall comply with the following:

(a) If the judgment is given by the circuit court, the clerk shall enter the judgment in the register of actions and shall docket the money judgment portion of the judgment in the judgment docket.

(b) If the judgment is given by the district court, the clerk shall enter the judgment in the register of actions and may docket the money judgment portion of the judgment in the judgment docket.

(2) Notwithstanding subsection (1) of this section, the clerk shall rely on the existence of a separate section within the judgments subject to ORS 137.071 in determining whether the judgment is a judgment for the payment of money and shall docket in the judgment docket only from the separate section unless otherwise instructed by the court. A clerk is not liable for failure to docket a judgment or to enter specific information on the judgment docket where any of the following occur:

(a) The judgment for the payment of money is required to but does not comply with ORS 137.071.

(b) The clerk is unable to ascertain the specific information from the separate section under ORS 137.071.

(3) The clerk is not liable for entering any information in the judgment docket that reflects information actually contained in a judgment or decree whether or not the information in the judgment or decree is correct or properly presented.

(4) Entry and docketing of judgment under this section has the same effect as a judgment in a civil action, as provided in ORS 18.320, 18.350, 18.360 and 18.400. The judgment is a judgment in favor of the state and may be enforced only by the state. [Amended by 1987 c.709 §2; 1989 c.472 §5]

**137.190** [Repealed by 1959 c.558 §32 (137.220 enacted in lieu of 137.190)]

**137.200** [Repealed by 1971 c.743 §432]

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

**137.210 Taxation of costs against complainant.** (1) If it is found by any justice or court trying the action or hearing the proceeding that the prosecution is malicious or without probable cause, that fact shall be entered upon record in the action or proceeding by the justice or court.

(2) Upon making the entry prescribed in subsection (1) of this section, the justice or court shall immediately render judgment against the complainant for the costs and disbursements of the action or proceeding.

(3) As used in this section "complainant" means every person who voluntarily appears before any magistrate or grand jury to prosecute any person in a criminal action, either for a misdemeanor or felony. [Amended by 1959 c.426 §3]

**137.220 Clerk to prepare trial court file.** In every criminal proceeding, the clerk shall attach together and file in the office of the clerk, in the order of their filing, all the original papers filed in the court, whether before or after judgment, including but not limited to the indictment and other pleadings, demurrers, motions, affidavits, stipulations, orders, the judgment and the notice of appeal and undertaking on appeal, if any. [1959 c.558 §33 (enacted in lieu of 137.190)]

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

(b) At any time after the lapse of one year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested person may apply to the court which would have jurisdiction over the crime for which the person was arrested, for entry of an order setting aside the record of such arrest. For the purpose of computing the one-year period, time during which the arrested person has secreted himself or herself within or without the state shall not be included.

(2) A copy of the motion and a full set of the defendant's fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority to prosecute the charge if there was no accusatory instrument filed, and opportunity be given to contest the motion. The fingerprint card with the notation "motion for setting aside conviction" or "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department of State Police Bureau of Criminal Identification. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as it deems proper. Except as otherwise provided in subsection (11) of this section, if the court determines that the circumstances and behavior of the applicant from the date of conviction, or from the date of arrest as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest record as the case may be, it shall enter an appropriate order which shall state the original arrest charge and the conviction charge, if any and if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the bureau and further identified as to state bureau number or submitting agency number. Upon the entry of such an order, the applicant for purposes of the law shall be deemed not to have been previously convicted, or arrested as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest whether or not the arrest resulted in a further criminal proceeding.

(4) The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Department of Corrections when the person has been in the custody of the Department of Corrections.

Upon entry of such an order, such conviction, arrest or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to their occurrence.

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

(a) A Class C felony, except for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(A) Criminal mistreatment in the first degree under ORS 163.205;

(B) Rape in the third degree under ORS 163.355;

(C) Sodomy in the third degree under ORS 163.385;

(D) Sexual abuse in the second degree under ORS 163.425; and

(E) Promoting prostitution under ORS 167.012.

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

(c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(A) Criminal mistreatment in the first degree under ORS 163.205;

(B) Rape in the third degree under ORS 163.355;

(C) Sodomy in the third degree under ORS 163.385;

(D) Sexual abuse in the second degree under ORS 163.425;

(E) Promoting prostitution under ORS 167.012; and

(F) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed, except for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(A) Sexual abuse in the third degree under ORS 163.415; and

(B) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(e) A violation, whether under state law or local ordinance.

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

(A) A Class C felony, except for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205;

(ii) Rape in the third degree under ORS 163.355;

(iii) Sodomy in the third degree under ORS 163.385;

(iv) Sexual abuse in the second degree under ORS 163.425;

(v) Promoting prostitution under ORS 167.012; and

(vi) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Criminal mistreatment in the first degree under ORS 163.205;

(ii) Rape in the third degree under ORS 163.355;

(iii) Sodomy in the third degree under ORS 163.385;

(iv) Sexual abuse in the second degree under ORS 163.425;

(v) Promoting prostitution under ORS 167.012; and

(vi) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(C) A misdemeanor, except for the following crimes when they would constitute child abuse as defined in ORS 419B.005:

(i) Sexual abuse in the third degree under ORS 163.415; and

(ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

(D) A violation.

(6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section do not apply to:

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

(b) A person convicted, within the 10-year period immediately preceding the filing of the motion pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations, whether or not the other conviction is for conduct associated with the same criminal episode that caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this section, a conviction which has been set aside under this section shall be considered for the purpose of determining whether this paragraph is applicable;

(c) A person who at the time the motion authorized by subsection (1) of this section

is pending before the court is under charge of commission of any crime; or

(d) A person convicted of sexual exploitation of a child under ORS 163.670, dealing in depictions of a child's sexual conduct under ORS 163.673 or transporting child pornography into Oregon under ORS 163.677.

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

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

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

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

(11) Unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice, the court shall grant the motion and enter an order as provided in subsection (3) of this section if the defendant has been convicted of one of the following crimes and is otherwise eligible for relief under this section:

(a) Abandonment of a child, ORS 163.535.

(b) Attempted assault in the second degree, ORS 163.175.

(c) Assault in the third degree, ORS 163.165.

(d) Coercion, ORS 163.275.

(e) Criminal mistreatment in the first degree, ORS 163.205.

(f) Attempted escape in the first degree, ORS 162.165.

(g) Incest, ORS 163.525.

(h) Intimidation in the first degree, ORS 166.165.

(i) Attempted kidnapping in the second degree, ORS 163.225.

(j) Criminally negligent homicide, ORS 163.145.

(k) Attempted compelling prostitution, ORS 167.017.

(L) Promoting prostitution, ORS 167.012.

(m) Attempted rape in the second degree, ORS 163.365.

(n) Rape in the third degree, ORS 163.355.

(o) Attempted robbery in the second degree, ORS 164.405.

(p) Robbery in the third degree, ORS 164.395.

(q) Sexual abuse in the second degree, ORS 163.425.

(r) Attempted sodomy in the second degree, ORS 163.395.

(s) Sodomy in the third degree, ORS 163.385.

(t) Supplying contraband, ORS 162.185.

(u) Unlawful use of a weapon, ORS 166.220. [1971 c.434 §2; 1973 c.680 §3; 1973 c.689 §1a; 1973 c.836 §265; 1975 c.548 §10; 1975 c.714 §2; 1977 c.286 §1; 1983 c.556 §1; 1983 c.740 §17; 1987 c.320 §31; 1987 c.408 §1; 1987 c.864 §6; 1989 c.774 §1; 1991 c.830 §6; 1993 c.546 §98; 1993 c.664 §2]

#### (Alcoholic or Drug-Dependent Person)

**137.227 Evaluation after conviction to determine if defendant is alcoholic or drug-dependent person; agencies to perform evaluation.** (1) After a defendant has been convicted of a crime, the court may cause the defendant to be evaluated to determine if the defendant is an alcoholic or a drug-dependent person, as those terms are defined in ORS 430.306. The evaluation shall be conducted by an agency or organization designated under subsection (2) of this section.

(2) The court shall designate agencies or organizations to perform the evaluations required under subsection (1) of this section. The designated agencies or organizations must meet the standards set by the office of Alcohol and Drug Abuse Programs to perform the evaluations for drug dependency and must be approved by the office of Alcohol and Drug Abuse Programs. Wherever possible, a court shall designate agencies or organizations to perform the evaluations that are separate from those that may be desig-

nated to carry out a program of treatment for alcohol or drug dependency. [1991 c.630 §1]

Note: 137.227 to 137.229 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 137 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.228 Finding that defendant is alcoholic or drug-dependent person; effect.**

(1) When a defendant is sentenced for a crime, the court may enter a finding that the defendant is an alcoholic or a drug-dependent person, as those terms are defined in ORS 430.306. The finding may be based upon any evidence before the court, including, but not limited to, the facts of the case, stipulations of the parties and the results of any evaluation conducted under ORS 137.227.

(2) When the court finds that the defendant is an alcoholic or a drug-dependent person, the court, when it sentences the defendant to a term of imprisonment, shall direct the Department of Corrections to place the defendant in an appropriate alcohol or drug treatment program, to the extent that resources are available. [1991 c.630 §§2,3]

Note: See note under 137.227.

**137.229 Duty of Department of Corrections.** The Department of Corrections, to the extent that funds are available, shall expand existing and establish new treatment programs for alcohol and drug dependency. [1991 c.630 §4]

Note: See note under 137.227.

**(Effects of Felony Conviction)**

**137.230 Definitions for ORS 137.260.** As used in ORS 137.260, "conviction" or "convicted" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction. [1961 c.412 §1; 1987 c.158 §20]

**137.240** [Formerly 421.110; 1973 c.56 §1; 1973 c.836 §266; 1974 s.s. c.36 §2; repealed by 1975 c.781 §10]

**137.250** [Formerly 421.112; 1973 c.836 §267; repealed by 1975 c.781 §10]

**137.260 Political rights restored to persons convicted of felony before August 9, 1961, and subsequently discharged.** Any person convicted of a felony prior to August 9, 1961, and subsequently discharged from probation, parole or imprisonment prior to or after August 9, 1961, is hereby restored to the political rights of the person. [1961 c.412 §4]

**137.270 Effect of felony conviction on property of defendant.** No conviction of any person for crime works any forfeiture of any property, except in cases where the same is expressly provided by law; but in all cases of the commission or attempt to commit a

felony, the state has a lien, from the time of such commission or attempt, upon all the property of the defendant for the purpose of satisfying any judgment which may be given against the defendant for any fine on account thereof and for the costs and disbursements in the proceedings against the defendant for such crime; provided, however, such lien shall not attach to such property as against a purchaser or incumbrancer in good faith, for value, whose interest in the property was acquired before the docketing of the judgment against the defendant. [Formerly 137.460]

**137.275 Effect of felony conviction on civil and political rights of felon.** Except as otherwise provided by law, a person convicted of a felony does not suffer civil death or disability, or sustain loss of civil rights or forfeiture of estate or property, but retains all of the rights of the person, political, civil and otherwise, including, but not limited to, the right to vote, to hold, receive and transfer property, to enter into contracts, including contracts of marriage, and to maintain and defend civil actions, suits or proceedings. [1975 c.781 §1]

**137.280** [1975 c.781 §2; repealed by 1983 c.515 §1 (137.281 enacted in lieu of 137.280)]

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

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

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

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

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

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

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

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

(b) Holding a position of private trust;

(c) Acting as a juror; or

(d) Exercising the right to vote.

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

(5) The rights and privileges withdrawn by this section are restored automatically upon discharge or parole from imprisonment, but in the case of parole shall be automatically withdrawn upon a subsequent imprisonment for violation of the terms of the parole. [1983 c.515 §2 (enacted in lieu of 137.280); 1987 c.320 §32; 1993 c.14 §4]

**137.285 Retained rights of felon; regulation of exercise.** ORS 137.275 to 137.285 do not deprive the Director of the Department of Corrections, or the director's authorized agents, of the authority to regulate the manner in which these retained rights of convicted persons may be exercised as is reasonably necessary for the control of the conduct and conditions of confinement of convicted persons in the custody of the Department of Corrections. [1975 c.781 §3; 1979 c.284 §116; 1987 c.320 §33]

#### (Unitary Assessment)

**137.290 Unitary assessment; amount; waiver.** (1) In all cases of conviction for the commission of a crime, violation or infraction, excluding parking violations, the trial court, whether a circuit, district, justice or municipal court, shall impose upon the defendant, in addition to any other monetary obligation imposed, a unitary assessment under this section. The unitary assessment shall also be imposed by the circuit court and county court in juvenile cases under ORS 419C.005 (1). The unitary assessment is a penal obligation in the nature of a fine and shall be in an amount as follows:

(a) \$94 in the case of a felony.

(b) \$54 in the case of a misdemeanor.

(c) \$84 in the case of a conviction for driving under the influence of intoxicants.

(d) \$25 in the case of any offense punishable only by a fine.

(2) The unitary assessment shall include, in addition to the amount in subsection (1) of this section, \$40 if the defendant was

driving a vehicle that requires a commercial driver license to operate and the conviction was for violating:

(a) ORS 811.100 by driving at a speed at least 10 miles per hour greater than is reasonable and prudent under the circumstances; or

(b) ORS 811.115 by driving at least 65 miles per hour.

(3) The court in any case may waive payment of the unitary assessment, in whole or in part, if, upon consideration, the court finds that payment of the assessment or portion thereof would impose upon the defendant a total monetary obligation inconsistent with justice in the case. In making its determination under this subsection, the court shall consider:

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

(b) The extent to which such burden can be alleviated by allowing the defendant to pay the monetary obligations imposed by the court on an installment basis or on other conditions to be fixed by the court. [1987 c.905 §1; 1991 c.460 §14; 1993 c.33 §300; 1993 c.637 §1; 1993 c.770 §§1,3]

**Note:** 137.290 to 137.305 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Section 39, chapter 905, Oregon Laws 1987, provides:

**Sec. 39.** Chapter 905, Oregon Laws 1987, takes effect on July 1, 1992. It shall apply only to persons convicted of or granted diversion from offenses for which the accusatory instrument was filed on or after that date and to moneys ordered to be paid as a result of such conviction or diversion. The provisions of chapter 905, Oregon Laws 1987, do not apply to persons convicted of or granted diversion from offenses for which the accusatory instrument was filed before July 1, 1992. Such persons may be prosecuted on and after July 1, 1992, as if chapter 905, Oregon Laws 1987, had not been enacted, and the disposition of moneys ordered paid by such persons shall be as if chapter 905, Oregon Laws 1987, had not been enacted, except that all fine and assessment moneys received by the courts on or after July 1, 1995, for these cases shall be deposited in the Criminal Fine and Assessment Account created in ORS 137.300. [1987 c.905 §39; 1989 c.844 §6; 1991 c.460 §1; 1993 c.13 §1]

**137.293 All monetary obligations constitute single obligation on part of convicted person.** All fines, costs, assessments, restitution, compensatory fines and other monetary obligations imposed upon a convicted person in a circuit, district, justice or municipal court, shall constitute a single obligation on the part of the convicted person. The clerk shall subdivide the total obligation as provided in ORS 137.295 according to the

various component parts of the obligation and shall credit and distribute accordingly, among those subdivisions, all moneys received. [1987 c.905 §2]

Note: See notes under 137.290.

**137.295 Categories of monetary obligations; order of crediting moneys received.** (1) When a defendant convicted of a crime, violation or infraction in the circuit, district, justice or municipal court, or allowed diversion in such a case, makes a payment of money to be credited against monetary obligations imposed as a result of that conviction or diversion, the clerk shall distribute the payment as provided in this section.

(2) There are four categories of monetary obligations. The categories are as follows:

(a) Category 1 consists of compensatory fines under ORS 137.101.

(b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS 419C.450.

(c) Category 3 consists of the unitary assessment imposed under ORS 137.290, costs imposed under ORS 161.665 and those fines, costs, forfeited bail and other monetary obligations payable to the state or to the General Fund of the state in criminal and quasi-criminal cases for which moneys the law does not expressly provide other disposition.

(d) Category 4 consists of monetary obligations imposed upon the defendant as a result of the conviction, but which do not fall under category 1, category 2 or category 3 of the obligation categories. These include, but are not limited to, fines and other monetary obligations that the law expressly directs be paid to any agency, person or political subdivision of the state, and any other obligation to reimburse for payment of a reward under ORS 131.897.

(3) So long as there remains unpaid any obligation under category 1, the clerk shall credit toward category 1 all of each payment received.

(4) After the total obligation has been credited under category 1, then so long as there remains unpaid any obligation under both categories 2 and 3, the clerk shall credit toward each such category 50 percent of each payment received.

(5) The clerk shall monthly transfer the moneys credited under category 1 and under category 2 to the victims for whose benefit moneys under that category were ordered paid. The clerk of a circuit or district court shall monthly transfer the moneys credited under category 3 as directed by the State Court Administrator for deposit in the State

Treasury to the credit of the Criminal Fine and Assessment Account established under ORS 137.300. The clerk of a justice or municipal court shall monthly transfer the moneys credited under category 3 to the Department of Revenue as provided in ORS 305.830.

(6) When the entire amount owing for purposes of either category 2 or category 3 has been credited, further payments by the defendant shall be credited by the clerk entirely to the unpaid balance of whichever of those categories remains unpaid, until such time as both category 2 and category 3 have been entirely paid.

(7) When category 1, category 2 and category 3 have been entirely paid and any obligation remains owing under category 4, the clerk shall credit further payments by the defendant to the obligations under category 4 and shall monthly transfer the moneys so received to the appropriate recipient, giving first priority to counties and cities entitled to revenues generated by prosecutions in justice and municipal courts and giving last priority to persons entitled to moneys as reimbursement for reward under ORS 131.897. [1987 c.905 §3; 1991 c.460 §13; 1993 c.33 §301]

Note: See notes under 137.290.

**137.300 Criminal Fine and Assessment Account.** The Criminal Fine and Assessment Account is established in the General Fund of the State Treasury. All moneys in the account are appropriated continuously to be distributed by the Department of Revenue as provided in ORS 137.303. The department shall keep a record of moneys transferred into and out of the account. The department shall report monthly to the Attorney General the amount of moneys received from the state courts in each county and from each city court. [1987 c.905 §6]

Note: See notes under 137.290.

**137.303 Distribution of moneys from account.** (1) The Department of Revenue is responsible for assuring that moneys in the Criminal Fine and Assessment Account are properly distributed and shall distribute the moneys monthly according to the following formula:

(a) 16.1000 percent of moneys in the account shall be transferred to the Police Standards and Training Account established under ORS 181.690.

(b) 7.9881 percent of moneys in the account shall be transferred to the Criminal Injuries Compensation Account established under ORS 147.225.

(c) 0.1547 percent of moneys in the account shall be transferred to the Boating Safety, Law Enforcement and Facility Account established under ORS 830.140.

(d) 4.3548 percent of moneys in the account shall be transferred to the Intoxicated Driver Program Fund established under ORS 813.270.

(e) 0.0500 percent of moneys in the account shall be transferred to the State Highway Fund established under ORS 366.505, to be used and expended for purposes designated by the Oregon Transportation Commission pursuant to ORS 802.110.

(f) 2.0726 percent of moneys in the account shall be transferred to the State Highway Fund established under ORS 366.505, to be used and expended as are other state highway funds.

(g) 0.0369 percent of moneys in the account shall be transferred to the State Parks and Recreation Department Fund.

(h) 0.5521 percent of moneys in the account shall be transferred to the Motor Vehicle Records Account established under ORS 802.150.

(i) 2.0138 percent of moneys in the account shall be transferred to the Department of Transportation and is continuously appropriated to the department for administrative expenses connected with driver and motor vehicle services.

(j) 0.5538 percent of moneys in the account shall be transferred to the State Wildlife Fund established under ORS 496.300.

(k) 50.5796 percent of moneys in the account shall be transferred to the General Fund to be used for general governmental expenses.

(L) 2.4152 percent of the moneys in the account shall be reserved to be distributed as provided in ORS 137.305.

(m) 0.1343 percent of the moneys in the account shall be transferred to the Department of Human Resources for use by alcohol and drug abuse programs under ORS 430.400.

(n) 4.1954 percent of the moneys in the account shall be transferred to the Department of State Police and is continuously appropriated to the department.

(o) 0.8106 percent of moneys in the account shall be transferred to the Department of State Police and is continuously appropriated to the department for the purpose of enhanced enforcement of traffic laws against drivers of commercial motor vehicles.

(p) 7.9881 percent of the moneys in the account shall be transferred to the Child Abuse Multidisciplinary Intervention Account established in ORS 418.746.

(2) The Department of Revenue shall report to Children's Services Division monthly on the amount of moneys transferred to the Child Abuse Multidisciplinary Intervention

Account under subsection (1)(p) of this section. In making the report, the Department of Revenue shall specify the amount of moneys received from the state courts in each county and from each city court. [1987 c.905 §7; 1989 c.904 §49; 1991 c.460 §2; 1993 c.741 §1; 1993 c.770 §§2,4]

Note: See notes under 137.290.

**137.305 Reserved moneys; distribution.** Moneys reserved under ORS 137.303 (1)(L) shall be distributed monthly as follows:

(1) If the monthly distribution to the Police Standards and Training Account pursuant to ORS 137.303 (1)(a), ORS 137.015 (1985 Replacement Part) and ORS 813.240 (1)(b) (1985 Replacement Part), is not at least \$390,630, then the Department of Revenue shall distribute from the reserved moneys such amount as will make up the shortage for the month.

(2) If the monthly distribution to the Criminal Injuries Compensation Account pursuant to ORS 137.303 (1)(b) and ORS 147.259 (1985 Replacement Part) is not at least \$179,000, then the Department of Revenue shall distribute from the reserved moneys such amount as will make up the shortage for the month.

(3) If the amount reserved under ORS 137.303 (1)(L) is not adequate to make up the shortages described in subsections (1) and (2) of this section, the Department of Revenue shall distribute the reserved moneys to make up for as much of the shortages as possible. The department shall distribute those moneys between the recipients named in subsections (1) and (2) of this section so that, as nearly as possible, each such recipient suffers, for that month, the same shortage on a percentage basis.

(4) If any moneys reserved under ORS 137.303 (1)(L) remain undistributed after the procedure described in subsections (1) to (3) of this section, those moneys shall cease to be reserved and shall remain in the Criminal Fine and Assessment Account for distribution in the following month. [1987 c.905 §8; 1991 c.460 §15; 1993 c.637 §4; 1993 c.770 §6]

Note: See notes under 137.290.

#### (County Assessment)

**137.306** [1989 c.860 §§1,6; 1993 c.14 §5; repealed by 1993 c.196 §12]

**137.307** [1989 c.860 §§2,3,5; 1991 c.203 §1; repealed by 1993 c.196 §12]

**137.308 Authorized uses of assessments.** (1) The county treasurer shall deposit 60 percent of the moneys received under ORS 137.309 (6) to (10) into the general fund of the county to be used for the purpose of planning, operating and maintaining county juvenile and adult corrections

programs and facilities and drug and alcohol programs approved by the Governor's Council on Alcohol and Drug Abuse Programs. Expenditure by the county of the funds described in this subsection shall be made in a manner that is consistent with the approved community corrections plan for that county; however, a county may not expend more than 50 percent of the funds on the construction or operation of a county jail. Prior to budgeting the funds described in this subsection, a county shall consider any comments received from, and upon request shall consult with, the governing body of a city that forwards assessments under ORS 137.307 (1991 Edition) concerning the proposed uses of the funds.

(2) The county treasurer shall deposit 40 percent of the moneys received under ORS 137.309 (6) to (10) into the county's court facilities security account established under ORS 1.182. [1989 c.860 §4; 1993 c.196 §4; 1993 c.637 §14]

**Note:** 137.308 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.309 County assessment; amount; collection; distribution.** (1) Except as provided in subsection (4) of this section, whenever a circuit, district or municipal court or a justice of a justice's court imposes a sentence of a fine, term of imprisonment, probation or any combination thereof, including a sentence imposed and thereafter suspended, or orders a bail forfeiture, as a penalty for an offense as defined in ORS 161.505, excluding parking violations, an assessment in addition to such sentence or bail forfeiture shall be collected.

(2) The assessment is not part of the penalty or in lieu of any part thereof. The amount of the assessment shall be as follows:

(a) \$5, when the fine or forfeiture is \$5 to \$14.99.

(b) \$12, when the fine or forfeiture is \$15 to \$49.99.

(c) \$14, when the fine or forfeiture is \$50 to \$99.99.

(d) \$20, when the fine or forfeiture is \$100 to \$249.99.

(e) \$24, when the fine or forfeiture is \$250 to \$499.99.

(f) \$59, when the fine or forfeiture is \$500 or more.

(3) Assessments imposed under subsections (1) to (5) of this section shall be collected as provided in subsections (6) to (10) of this section.

(4) The court is not required to impose the assessment, or a part of the assessment, if it finds that the defendant is indigent or that imposition of the assessment would constitute an undue hardship.

(5) Payment to a court shall not be credited to the assessment described in subsections (1) to (5) of this section until all other fines, fees and assessments ordered by the court have been paid.

(6) Except as provided in subsection (9) of this section, within 60 days after receipt of such assessment by the clerk of a circuit, district or municipal court or by a justice of a justice's court, the assessment shall be paid to the county treasurer of the county in which the court is located.

(7) When any bail is deposited with a court for an offense, the person making such deposit shall include with the bail the amount of the assessment.

(8) If bail for an offense is forfeited, the assessment included therewith shall be paid to the county treasurer as provided in subsection (6) of this section. If the bail is returned, the assessment included therewith shall also be returned.

(9) Prior to making payment to the county treasurer as provided in subsections (6) to (10) of this section, the clerk of a circuit, district, municipal or justice's court:

(a) Shall withhold and deposit in the State Treasury to the credit of the Law Enforcement Medical Liability Account the following amounts:

(A) \$1, when the assessment is \$12 or \$14.

(B) \$2, when the assessment is \$20 or \$24.

(C) \$5, when the assessment is \$59.

(b) May withhold an amount equal to the reasonable costs incurred by the clerk in collection and distribution of the assessment.

(10) A city that lies in more than one county shall pay the assessments it collects to each county in proportion to the percent of the population of the city that resides in each county. [1991 c.778 §§4,5; 1993 c.14 §6; 1993 c.196 §1; 1993 c.637 §§13,13a]

## EXECUTION OF JUDGMENT

### (Imprisonment)

**137.310 Authorizing execution of judgment; detention of defendant.** (1) When a judgment has been pronounced, a certified copy of the entry thereof in the register shall be forthwith furnished by the clerk to the officer whose duty it is to execute the judgment; and no other warrant or authority is necessary to justify or require its execution.

(2) The defendant may be arrested and detained in any county in the state by any peace officer and held for the authorities from the county to which the execution is directed. Time spent by the defendant in such detention shall be credited towards the term specified in the judgment. [Amended by 1961 c.358 §1; 1967 c.372 §4; 1985 c.540 §37]

**137.315 Electronic telecommunication of notice of judgment authorized.** Whenever it is necessary that a copy of the entry of judgment against a defendant be delivered to the Department of Corrections or any other correctional authority of this state, or to the correctional authority of any political subdivision of this state, the court or the sheriff may transmit notice of the judgment by electronic telecommunication. The notice of judgment shall serve as authority for imprisonment under this chapter. The notice need not be a duplicate or photographic copy of judgment, but if it is not a duplicated or photographic copy, then it must be followed in due course by a duplicate or photographic copy with a notation that notice had been sent previously. [1987 c.251 §2]

**137.320 Delivery of defendant when committed to Department of Corrections; credit on sentence.** (1) When a judgment includes commitment to the legal and physical custody of the Department of Corrections, the sheriff shall deliver the defendant, together with a copy of the entry of judgment and a statement signed by the sheriff of the number of days the defendant was imprisoned prior to delivery, to the superintendent of the Department of Corrections institution to which the defendant is initially assigned pursuant to ORS 137.124.

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

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

(4) When the judgment is imprisonment in the county jail or a fine and that the defendant be imprisoned until it is paid, the judgment shall be executed by the sheriff of the county. The sheriff shall compute the time the defendant was imprisoned after arrest and prior to the commencement of the term specified in the judgment. Such time shall be credited towards the term of the

sentence. [Amended by 1955 c.660 §14; 1967 c.232 §1; 1967 c.585 §5; 1971 c.619 §1; 1973 c.631 §1; 1981 c.424 §1; 1987 c.320 §34]

**Note:** Sections 3 and 4, chapter 802, Oregon Laws 1993, provide:

**Sec. 3.** Notwithstanding ORS 137.330, until June 30, 1997, ORS 137.330 shall not be operative, but section 4 of this Act shall operate in lieu thereof. [1993 c.802 §3]

**Sec. 4.** (1) Except as provided in ORS 137.140 or section 2 of this Act, a judgment of imprisonment in the county jail shall be executed by confinement in the jail of the county where the judgment is given, except that when the place of trial has been changed, the confinement shall take place in the jail of the county where the action was commenced.

(2) The jailor of any county jail to which a prisoner is ordered, sentenced or delivered pursuant to ORS 137.140 shall receive and keep such prisoner in the same manner as if the prisoner had been ordered, sentenced or delivered to the jailor by an officer or court of the jailor's own county; but the county in which the prisoner would be imprisoned except for the provisions of ORS 137.140 shall pay all the expenses of keeping and maintaining the prisoner in said jail. [1993 c.802 §4]

**137.330 Where judgment of imprisonment in county jail is executed.** (1) Except as provided in ORS 137.140, a judgment of imprisonment in the county jail shall be executed by confinement in the jail of the county where the judgment is given, except that when the place of trial has been changed, the confinement shall take place in the jail of the county where the action was commenced.

(2) The jailor of any county jail to which a prisoner is ordered, sentenced or delivered pursuant to ORS 137.140 shall receive and keep such prisoner in the same manner as if the prisoner had been ordered, sentenced or delivered to the jailor by an officer or court of the jailor's own county; but the county in which the prisoner would be imprisoned except for the provisions of ORS 137.140 shall pay all the expenses of keeping and maintaining the prisoner in said jail. [Amended by 1987 c.550 §4]

**137.340** [Repealed by 1971 c.743 §432]

**137.350** [Repealed by 1987 c.247 §1]

**137.360** [Repealed by 1987 c.247 §1]

**137.370 Commencement and computation of term of imprisonment in state penal or correctional institution; sentences concurrent unless court orders otherwise.** (1) When a person is sentenced to imprisonment in the custody of the Department of Corrections, the term of confinement therein commences from the day the person is delivered to the custody of an officer of the Department of Corrections for the purpose of serving the sentence executed, regardless of whether the sentence is to be served in a state or federal institution.

(2) Except as provided in subsection (3) of this section, when a person is sentenced to imprisonment in the custody of the De-

partment of Corrections, for the purpose of computing the amount of sentence served the term of confinement includes only:

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

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

(3) When a judgment of conviction is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, the period of detention and imprisonment theretofore served shall be deducted from the maximum term, and from the minimum, if any, of the new sentence.

(4) Unless the court expressly orders otherwise, a term of imprisonment shall be concurrent with that portion of any sentence previously imposed that remains unexpired at the time the court imposes sentence. This subsection applies regardless of whether the earlier sentence was imposed by the same or any other court, and regardless of whether the earlier sentence is being or is to be served in the same penal institution or under the same correctional authority as will be the later sentence. [Amended by 1955 c.660 §15; 1965 c.463 §19; 1967 c.232 §2; 1973 c.562 §2; 1973 c.631 §4; 1981 c.424 §2; 1987 c.251 §4; 1987 c.320 §35]

**137.372 Credit for time served as part of probationary sentence.** Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who has been revoked from a probationary sentence for a felony committed on or after November 1, 1989, shall receive credit for the time served in jail as part of the probationary sentence only upon the direction of the sentencing judge. [1989 c.790 §81; 1993 c.692 §4]

**Note:** 137.372 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.375 Release of prisoners whose terms expire on legal holidays.** When the date of release from imprisonment of any prisoner in an adult correctional facility under the jurisdiction of the Department of Corrections, or any prisoner in the county or city jail, falls on Saturday, Sunday or a legal holiday, the prisoner shall be released on the first day preceding the date of release which is not a Saturday, Sunday or legal holiday, except for prisoners of a county or city jail serving a mandatory minimum term specifically limited to weekends who shall only be released at the time fixed in the sentence. [1953 c.532 §1; 1955 c.660 §16; 1971 c.290 §1; 1979 c.487 §10; 1987 c.320 §36]

**137.380 Discipline, treatment and employment of prisoners.** A judgment of commitment to the custody of the Department of Corrections need only specify the duration of confinement as provided in ORS 137.120. Thereafter the manner of the confinement and the treatment and employment of a person shall be regulated and governed by whatever law is then in force prescribing the discipline, treatment and employment of persons committed. [Amended by 1955 c.32 §1; 1955 c.660 §17; 1959 c.687 §1; 1973 c.836 §268; 1987 c.320 §37]

**137.390 Commencement, term and termination of term of imprisonment in county jail; treatment of prisoners therein.** The commencement, term and termination of a sentence of imprisonment in the county jail is to be ascertained by the rule prescribed in ORS 137.370, and the manner of such confinement and the treatment of persons so sentenced shall be governed by whatever law may be in force prescribing the discipline of county jails. [Amended by 1973 c.631 §3]

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

**137.410** [Repealed by 1967 c.372 §13]

**137.420** [Repealed by 1967 c.372 §13]

**137.430** [Repealed by 1967 c.372 §13]

**137.440 Return by officer executing judgment; annexation to trial court file.** When a judgment in a criminal action has been executed, the sheriff or officer executing it shall return to the clerk the warrant or copy of the entry or judgment upon which the sheriff or officer acted, with a statement of the doings of the sheriff or officer indorsed thereon, and the clerk shall file the same and annex it to the trial court file, as defined in ORS 19.005. [Amended by 1967 c.471 §4]

**137.450 Enforcement of money judgment in criminal action.** A judgment against the defendant or complainant in a criminal action, so far as it requires the payment of a fine, fee, assessment, costs and disbursements of the action or restitution, may be enforced as a judgment in a civil action. [Amended by 1973 c.836 §269; 1987 c.709 §1]

**137.452 Satisfaction of monetary obligation imposed as part of sentence; release of money judgment lien from real property; authority of Attorney General.** When a person is convicted of an offense and sentenced to pay any monetary obligation, the following provisions apply to obtaining a satisfaction of the money judgment imposing the monetary obligation or a release of a money judgment lien from a specific parcel of real property when the money judgment is not satisfied:

(1) The Attorney General, by rule, may do any of the following:

(a) Authorize the Attorney General's office, a district attorney's office, any state agency within the executive branch of government or any specific individual or group within any of these to:

(A) Issue satisfactions of money judgments; or

(B) Release a money judgment lien from a specific parcel of real property when either the money judgment lien does not attach to any equity in the real property or the amount of equity in the real property to which the judgment lien attaches, less costs of sale or other reasonable expenses, is paid upon the money judgment.

(b) Establish procedures and requirements that any person described under paragraph (a) of this subsection must follow to issue satisfactions or releases.

(2) Authorization of a person under subsection (1) of this section is permissive and such person is not required to issue satisfactions or releases if authorized. However, if a person is authorized under subsection (1) of this section and does issue satisfactions or releases, the person must comply with the procedures and requirements established by the Attorney General by rule.

(3) If the Attorney General establishes a program under subsection (1) of this section, the Attorney General's office shall issue satisfactions and releases under the program unless the Attorney General determines that there are sufficient other agencies authorized under subsection (1) of this section who are actually participating in the program to provide reasonable access to satisfactions and releases on a statewide basis.

(4) Any satisfaction issued by a person authorized under this section may be entered in the same manner and has the same effect on the money judgment as a satisfaction issued for a judgment from a civil action or proceeding.

(5) The release of judgment liens on specific parcels of real property is discretionary. The money judgment shall remain a lien against all real property not specifically released. [1989 c.472 §4; 1993 c.145 §1]

**Note:** 137.452 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

137.460 [Renumbered 137.270]

#### (Death Sentence)

**137.463 Death warrant; delivery to sheriff; automatic review by Supreme Court.** (1) When a judgment of death is pronounced, a warrant signed by the trial judge and attested by the clerk of the court, with

the seal of the court affixed, shall be drawn and delivered to the sheriff of the county. The warrant shall state the conviction and judgment and shall direct the sheriff to deliver the defendant within 20 days from the time of the judgment to the Superintendent of the Oregon State Penitentiary pending the determination of the automatic and direct review by the Supreme Court.

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

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

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

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

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

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

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

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

(c) The lethal substance or substances described in subsection (1) of this section are not controlled substances when purchased, possessed or used for purposes of this section. [1984 c.3 §7; 1987 c.320 §38; 1993 c.137 §1]

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

### PROBATION AND PAROLE BY COMMITTING MAGISTRATE

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

**137.520 Power of committing magistrate to parole and grant temporary release to persons confined in county jail; authority of sheriff to release county jail inmates; disposition of work release earnings.** (1) The committing magistrate, having sentenced a defendant to confinement in a county jail for a period of up to one year, or as provided by rules adopted by the State Sentencing Guidelines Board for felonies committed on or after November 1, 1989, may parole the defendant outside the county jail subject to condition and subject to being taken back into confinement upon the breach of such condition. The committing magistrate may also authorize, limit or prohibit the release of a sentenced defendant upon pass, furlough, leave, work or educational release.

(2) The committing magistrate, having sentenced a defendant to probation and having confined the defendant as a condition of that probation in a county jail for a period up to one year, or having imposed a sentence of probation with confinement in the county jail in accordance with rules adopted by the State Sentencing Guidelines Board for felonies committed on or after November 1, 1989, may authorize, limit or prohibit the release of such person upon pass, furlough, leave, work or educational release.

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

(4) A defendant confined in a county jail and placed upon educational release or upon work release shall, during the hours in which not so engaged or employed, be confined in the county jail unless the court by order otherwise directs or unless the sheriff otherwise directs in the absence of a contrary order by the court. The defendant's net earnings shall be paid to the sheriff, who shall deduct therefrom and pay such sums as may be ordered by the court for the defendant's board, restitution, fine, support of dependents and necessary personal expense. Any balance remaining shall be retained by the sheriff until the defendant's discharge from custody, whereupon the balance shall be paid to the defendant. [Amended by 1959 c.345 §1; 1973 c.836 §270; 1981 c.568 §1; 1989 c.790 §15; 1993 c.14 §8]

**137.523 Custody of person sentenced to confinement as condition of probation.** For felonies committed on or after November 1, 1989:

(1) When the judge sentences the defendant to confinement in a county jail as a condition of probation, the judge shall sentence the defendant directly to the custody of the sheriff or the supervisory authority, as defined in rules of the State Sentencing Guidelines Board, with jurisdiction over the county jail.

(2) When the judge recommends a custodial facility or program other than jail as a condition of probation, the judge shall sentence the defendant directly to the custody of the supervisory authority, as defined in rules of the State Sentencing Guidelines Board, with jurisdiction over the facility or program. Before imposing such a sentence, the judge must determine from the supervisory authority that space is available in the facility or program and that the defendant meets the eligibility criteria established for the facility or program.

(3) A record of the time served by the defendant in custody under community supervision during probation shall be maintained as provided by rules adopted by the State Sentencing Guidelines Board. [1989 c.790 §18]

**Note:** 137.523 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.525 Probation for person convicted of crime described in ORS 163.305 to 163.495; examination; report; written consent of convicted person.** (1) If a person pleads guilty or no contest to, or is found guilty of, a crime described in ORS 163.305 to 163.465, and if the court contemplates sentencing the person to probation, the

court, before entering judgment, may order that the person undergo an examination by a psychiatrist or other physician found qualified and appointed by the court to determine whether available medical treatment would be likely to reduce such biological, emotional or psychological impulses, including any paraphilia, which may be the cause of the criminal conduct and, if so, whether the person is a suitable candidate medically for such treatment. Such medical treatments may include the taking of prescribed medication.

(2) If the examining psychiatrist or other physician reports that available medical treatment would be likely to reduce the biological, emotional or psychological impulses that were a probable cause of the criminal conduct, and that the person is a suitable candidate medically for such treatment, the court may include as a condition of probation that the person participate in a prescribed program of medicine and accept medical treatment at the person's own expense under the care of the psychiatrist or other physician appointed by the court and that the person faithfully participate in the prescribed program of medical treatment during the course of the probation.

(3) A sentence of probation under this section shall not be imposed except upon the written consent of the convicted person. Probation under this section may be revoked upon any failure of the convicted person to cooperate in the treatment program, including, but not limited to, any failure to meet with the treating physician as directed by the physician or to take medication or otherwise to participate in the prescribed program of medical treatment during the course of the probation. [1987 c.908 §3; 1993 c.14 §9]

**137.530 Investigation and report of probation officers; statement of victim.** (1) Probation officers, when directed by the court, shall fully investigate and report to the court in writing on the circumstances of the offense, criminal record, social history and present condition and environment of any defendant; and unless the court directs otherwise in individual cases, no defendant shall be sentenced to probation until the report of such investigation has been presented to and considered by the court.

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

preparer is unable to contact the victim or if the victim declines to make a statement, the preparer shall report that the preparer was unable to contact the victim after making reasonable efforts to do so, or, if contact was made with the victim, that the victim declined to make a statement for purposes of this section. Before taking a statement from the victim, the preparer of the report shall inform the victim that the statement will be made available to the defendant and the defendant's attorney prior to sentencing as required under ORS 137.079.

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

(4) As used in this section, "victim" means the person or persons who have suffered financial, social, psychological or physical harm as a result of an offense, and includes, in the case of any homicide or abuse of corpse in any degree, an appropriate member of the immediate family of the decedent. [Amended by 1983 c.723 §1; 1993 c.14 §10; 1993 c.294 §4]

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

(a) Pay supervision fees, fines, restitution or other fees ordered by the court.

(b) Not use or possess controlled substances except pursuant to a medical prescription.

(c) Submit to testing of breath or urine for controlled substance or alcohol use if the probationer has a history of substance abuse or if there is a reasonable suspicion that the probationer has illegally used controlled substances.

(d) Participate in a substance abuse evaluation as directed by the supervising officer and follow the recommendations of the evaluator if there are reasonable grounds to believe there is a history of substance abuse.

(e) Remain in the State of Oregon until written permission to leave is granted by the Department of Corrections or a county community corrections agency.

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

(g) Change neither employment nor residence without prior permission from the De-

partment of Corrections or a county community corrections agency.

(h) Permit the probation officer to visit the probationer or the probationer's residence or work site, and report as required and abide by the direction of the supervising officer.

(i) Consent to the search of person, vehicle or premises upon the request of a representative of the supervising officer if the supervising officer has reasonable grounds to believe that evidence of a violation will be found, and submit to fingerprinting or photographing, or both, when requested by the Department of Corrections or a county community corrections agency for supervision purposes.

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

(k) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections or a county community corrections agency.

(L) Not possess weapons, firearms or dangerous animals.

(m) If under supervision for, or previously convicted of, a sex offense under ORS 163.305 to 163.465, and if recommended by the supervising officer, successfully complete a sex offender treatment program approved by the supervising officer and submit to polygraph examinations at the direction of the supervising officer.

(n) Participate in a mental health evaluation as directed by the supervising officer and follow the recommendation of the evaluator.

(2) In addition to the general conditions, the court may impose any special conditions of probation that are reasonably related to the crime of conviction or the needs of the defendant for the protection of the public or reformation of the offender, or both, including, but not limited to, that the probationer shall:

(a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after November 1, 1989, be confined to the county jail or be restricted to the probationer's own residence or to the premises thereof, or be subject to any combination of such confinement and restriction, such confinement or restriction or combination thereof to be for a period not to exceed one year or one-half of the maximum period of confinement that could be imposed for the offense for which the defendant is convicted, whichever is the lesser.

(b) For felonies committed on or after November 1, 1989, be confined in the county jail, or be subject to other custodial sanc-

tions under community supervision, or both, as provided by rules of the State Sentencing Guidelines Board.

(3) Failure to abide by all general and special conditions imposed by the court and supervised by the Department of Corrections or a county community corrections agency may result in arrest, modification of conditions, revocation of probation or imposition of structured, intermediate sanctions in accordance with rules adopted under ORS 137.595.

(4) The court may at any time modify the conditions of probation.

(5) It shall not be a cause for revocation of probation that the probationer failed to apply for or accept employment at any workplace where there is a labor dispute in progress. As used in this subsection, "labor dispute" has the meaning for that term provided in ORS 662.010. [Amended by 1965 c.346 §1; 1969 c.597 §125; 1977 c.371 §3; 1977 c.380 §2; 1981 c.671 §1; 1983 c.588 §2; 1985 c.818 §2; 1987 c.780 §3; 1989 c.790 §16; 1991 c.196 §1; 1991 c.630 §5; 1991 c.731 §1; 1993 c.14 §11; 1993 c.680 §16]

**137.550 Period of probation; discharge from probation; proceedings in case of violation of conditions.** (1) Subject to the limitations in ORS 137.010 and to rules of the State Sentencing Guidelines Board for felonies committed on or after November 1, 1989:

(a) The period of probation shall be such as the court determines and may, in the discretion of the court, be continued or extended.

(b) The court may at any time discharge a person from probation.

(2) At any time during the probation period, the court may issue a warrant and cause a defendant to be arrested for violating any of the conditions of probation. Any probation officer, police officer or other officer with power of arrest may arrest a probationer without a warrant for violating any condition of probation, and a statement by the probation officer setting forth that the probationer has, in the judgment of the probation officer, violated the conditions of probation is sufficient warrant for the detention of the probationer in the county jail until the probationer can be brought before the court or until the probation officer or supervisory personnel impose and the offender agrees to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Such disposition shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holidays, unless later disposition is authorized by supervisory personnel. If authorized by supervisory personnel, the disposition shall take place in no more than five judicial days. If the offender

does not consent to structured, intermediate sanctions imposed by the probation officer or supervisory personnel in accordance with the rules adopted under ORS 137.595, the probation officer, as soon as practicable, but within one judicial day, shall report such arrest or detention to the court that imposed the probation. The probation officer shall promptly submit to the court a report showing in what manner the probationer has violated the conditions of probation.

(3) Except for good cause shown or at the request of the probationer, the probationer shall be brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending revocation hearing or pending transfer to the jurisdiction of another court where the probation was imposed. In lieu of an order that the probationer be held, the magistrate may release the probationer upon the condition that the probationer appear in court at a later date for a probation violation or revocation hearing. If the probationer is being held on an out-of-county warrant, the magistrate may order the probationer released subject to an additional order to the probationer that the probationer report within seven calendar days to the court that imposed the probation.

(4)(a) For defendants sentenced for felonies committed prior to November 1, 1989, and for any misdemeanor, the court that imposed the probation, after summary hearing, may revoke the probation and:

(A) If the execution of some other part of the sentence has been suspended, the court shall cause the rest of the sentence imposed to be executed.

(B) If no other sentence has been imposed, the court may impose any other sentence which originally could have been imposed.

(b) For defendants sentenced for felonies committed on or after November 1, 1989, the court that imposed the probationary sentence may revoke probation supervision and impose a sanction as provided by rules of the State Sentencing Guidelines Board.

(5) Except for good cause shown, if the revocation hearing is not conducted within 14 calendar days following the arrest or detention of the probationer, the probationer shall be released from custody.

(6) A defendant who has been previously confined in the county jail as a condition of probation pursuant to ORS 137.540 or as part of a probationary sentence pursuant to the rules of the State Sentencing Guidelines Board may be given credit for all time thus

served in any order or judgment of confinement resulting from revocation of probation.

(7) In the case of any defendant whose sentence has been suspended but who has not been sentenced to probation, the court may issue a warrant and cause the defendant to be arrested and brought before the court at any time within the maximum period for which the defendant might originally have been sentenced. Thereupon the court, after summary hearing, may revoke the suspension of sentence and cause the sentence imposed to be executed.

(8) If a probationer fails to appear or report to a court for further proceedings as required by an order under subsection (3) of this section, the failure to appear may be prosecuted in the county to which the probationer was ordered to appear or report.

(9)(a) If requested by the probationer and agreed to by the court, the probationer may admit or deny the violation without being physically present at the hearing if the probationer 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.

(b) Notwithstanding paragraph (a) of this subsection, 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. [Amended by 1955 c.688 §2; 1965 c.346 §2; 1971 c.743 §326; 1987 c.908 §1; 1989 c.790 §17; 1991 c.196 §2; 1993 c.14 §12; 1993 c.581 §2; 1993 c.680 §17]

**137.551 Revocation of probationary sentences; release dates; rules.** (1) The State Board of Parole and Post-Prison Supervision shall adopt rules to establish release dates for revocations of probationary sentences imposed for felonies committed before November 1, 1989.

(2) To the extent permissible under law, the release dates for revocation of probationary sentences imposed for felonies committed before November 1, 1989, shall be set consistent with sanctions for probation revocations as provided by rules of the State Sentencing Guidelines Board for felonies committed on or after November 1, 1989. [1989 c.790 §18a]

Note: 137.551 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.553 Use of citations for probation violations authorized.** (1) In addition to any authority granted under ORS 137.550, a court may authorize the use of citations to direct

its probationers who violate conditions of probation to appear before the court. The following apply to the use of citations under this subsection:

(a) A court may authorize issuance of citations under this subsection only by officers who are permitted under ORS 137.550 to make an arrest without a warrant.

(b) Nothing in this subsection limits the authority, under ORS 137.550, of a probation officer, police officer or other officer to arrest for violation of conditions of probation even if the officer is authorized under this section to issue a citation.

(c) A court may impose any conditions upon an authorization under this subsection that the court considers appropriate. The conditions may include, but are not limited to, requirements that citation authority be sought on a case by case basis, provision for citation in all cases that meet certain conditions, allowance of citation for certain types of cases or designation of certain cases where citations shall not be used.

(2) The cited probationer shall appear before the court at the time, date and court specified in the citation. If the probationer fails to appear at the time, date and court specified in the citation, the court may issue a warrant of arrest, upon the request of the supervisor of probation, or upon request of the district attorney, or upon the court's own motion. [1987 c.761 §2]

#### **137.557 Citation; procedure; contents.**

(1) If a citation is issued under ORS 137.553, the officer who issues the citation shall serve one copy of the citation to the probationer who is cited to appear and shall, as soon as practicable, file a duplicate copy with the court in which the probationer is cited to appear, along with proof of service.

(2) Each copy of the citation issued under ORS 137.553 shall contain:

(a) The name of the court at which the cited probationer is to appear.

(b) The name of the probationer cited.

(c) A brief description of the asserted probation violation, the date, the time and the place at which the violation occurred, the date on which the citation was issued and the name of the officer who issued the citation.

(d) The time, date and place at which the cited probationer is to appear in court.

(e) A notice to the effect that:

(A) The citation is not itself a motion to revoke probation, but that such a motion will be filed and a copy provided to the probationer when the probationer appears at court;

(B) The probationer must appear in court at the time set in the citation; and

(C) If the probationer fails to appear as directed, the court may immediately issue a warrant for the probationer's arrest or the probationer may immediately be taken into custody by the officer responsible for supervising the probation. [1987 c.761 §3]

**137.560 Copies of certain judgments to be sent to Department of Corrections.** Within 10 days following the issuing of any judgment of suspension of imposition or execution of sentence or of probation of any person convicted of a crime, or of the continuation, extension, modification or revocation of any such judgment, or of the discharge of such person, or the recommendation by the court to the Governor of the pardon of such person, provided such person is under the jurisdiction of the Department of Corrections, the court issuing such a judgment shall cause prompt delivery of a copy of the same to the Director of the Department of Corrections. [Amended by 1973 c.836 §271; 1979 c.75 §1; 1987 c.320 §39; 1991 c.111 §16; 1993 c.18 §23]

**137.570 Authority to transfer probationer from one agency to another; procedure.** A court may transfer a person on probation under its jurisdiction from the supervision of one probation agency to that of another probation agency. Whenever a person sentenced to probation resides in or is to remove to a locality outside the jurisdiction of the court which sentenced such person to probation, such court may transfer such person to a probation officer appointed to serve for the locality in which such person resides or to which the person is to remove:

(1) If such probation officer sends to the court desiring to make such transfer a written statement that the probation officer will exercise supervision over such person.

(2) If the statement is approved in writing by the judge of the court to which such probation officer is attached. [Amended by 1973 c.836 §272; 1993 c.14 §13]

**137.580 Effect of transfer of probationer from one agency to another.** Whenever the transfer mentioned in ORS 137.570 is made, the court making it shall send to the probation agency to whose supervision the probationer is transferred a copy of all the records of such court as to the offense, criminal record and social history of the probationer. The probation agency shall report concerning the conduct and progress of the probationer to the court that sentenced the probationer to probation. Probation officers or agencies shall have, with respect to persons transferred to their supervision from any other jurisdiction, all

the powers and be subject to all the duties now imposed by law upon them in regard to probationers received on probation from courts in their own jurisdiction. [Amended by 1973 c.836 §273; 1993 c.14 §14]

**137.590 Appointment of probation officers and assistants; chief probation officer.** The judge or judges of any court of criminal jurisdiction, including municipal courts, may appoint, with the prior approval of the governing body of the county or city involved, and at pleasure remove, such probation officers and clerical assistants as may be necessary. Probation officers appointed by the court shall be selected because of definite qualifications as to character, personality, ability and training. In courts where more than one probation officer is appointed, one shall be designated chief probation officer and shall have general supervision of the probation work of probation officers appointed by and under the direction of the court. Appointments shall be in writing and entered on the records of the court. Probation officers and clerical assistants appointed under this section are not state officers or employees, and their compensation and expenses shall not be paid by the state. [Amended by 1971 c.633 §12; 1973 c.836 §274; 1981 s.s. c.3 §38]

**137.592 Policy regarding probation violations.** The Legislative Assembly finds that:

(1) To protect the public, the criminal justice system must compel compliance with the conditions of probation by responding to violations with swift, certain and fair punishments.

(2) Decisions to incarcerate offenders in state prisons for violation of the conditions of probation must be made upon a reasonably systematic basis that will insure that available prison space is used to house those offenders who constitute a serious threat to the public, taking into consideration the availability of both prison space and local resources. [1993 c.680 §8]

**Note:** 137.592 to 137.599 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Section 9, chapter 680, Oregon Laws 1993, provides:

**Sec. 9.** (1) Sections 10 to 15 of this Act [137.593 to 137.599, 137.675 and 137.677] and the amendments to ORS 137.540 by section 16 of this Act apply to:

(a) All persons on probation for felonies committed on or after September 1, 1993.

(b) All persons on probation for felonies committed prior to September 1, 1993, if:

(A) The sentencing judge orders, on or after September 1, 1993, that the person be subject to sections 10

to 15 of this Act and the amendments to ORS 137.540 by section 16 of this Act; and

(B) The probationer consents in writing or on the record to be subject to sections 10 to 15 of this Act and the amendments to ORS 137.540 by section 16 of this Act.

(2) If it cannot be determined whether the felony was committed on or after September 1, 1993, the crime shall be deemed, for purposes of sections 10 to 15 of this Act and the amendments to ORS 137.540 by section 16 of this Act, to have been committed prior to September 1, 1993. [1993 c.680 §9]

**137.593 Duty of corrections agencies to impose structured, intermediate sanctions for probation violations.** (1) Except as otherwise provided in subsection (2) of this section, when a court suspends the imposition or execution of sentence and places a defendant on probation, or sentences a defendant to probation under the rules of the State Sentencing Guidelines Board and orders a defendant placed under the supervision of the Department of Corrections or a county community corrections agency, the Department of Corrections or the county community corrections agency shall impose structured, intermediate sanctions for the violation of conditions of probation in accordance with rules adopted under ORS 137.595. Under no circumstances may the Department of Corrections or a county community corrections agency revoke probation.

(2) The sentencing judge shall retain authority:

(a) To revoke probation and receive recommendations regarding revocation of probation from the supervising officer made in accordance with rules adopted under ORS 137.595;

(b) To determine whether conditions of probation have been violated and to impose sanctions for the violations if the court, at the time of sentencing, states on the record that the court is retaining such authority; and

(c) To cause a probationer to be brought before the court for a hearing upon motion of the district attorney or the court's own motion prior to the imposition of any structured, intermediate sanctions or within four judicial days after receiving notice that a structured, intermediate sanction has been imposed on the probationer pursuant to rules adopted under ORS 137.595 and to revoke probation or impose such other or additional sanctions or modify the conditions of probation as authorized by law.

(3) In no case may the sentencing judge cause a probationer to be brought before the court for a hearing and revoke probation or impose other or additional sanctions after the probationer has completed a structured, intermediate sanction imposed by the Department of Corrections or a county commu-

nity corrections agency pursuant to rules adopted under ORS 137.595. [1993 c.680 §10]

Note: See note under 137.592.

**137.595 Establishing system of sanctions; rules.** (1) The Department of Corrections shall adopt rules to carry out the purposes of chapter 680, Oregon Laws 1993, by establishing a system of structured, intermediate probation violation sanctions that may be imposed by the Department of Corrections or a county community corrections agency, taking into consideration the severity of the violation behavior, the prior violation history, the severity of the underlying criminal conviction, the criminal history of the offender, protection of the community, deterrence, the effective capacity of the state prisons and the availability of appropriate local sanctions including, but not limited to, jail, community service work, house arrest, electronic surveillance, restitution centers, work release centers, day reporting centers or other local sanctions.

(2) Rules adopted by the Department of Corrections under this section shall establish:

(a) A system of structured, intermediate probation violation sanctions that may be imposed by the Department of Corrections or a county community corrections agency on a probationer who waives in writing a probation violation hearing, admits or affirmatively chooses not to contest the violations alleged in a probation violation report and consents to the sanctions;

(b) Procedures to provide a probationer with written notice of the probationer's right to a hearing before the court to determine whether the probationer violated the conditions of probation alleged in a probation violation report, and if so, whether to continue the probationer on probation subject to the same or modified conditions, or order sanctions for any violations and the right to be represented by counsel at the hearing if the probationer is indigent;

(c) Procedures for a probationer to waive in writing a probation violation hearing, admit or not contest the violations alleged in the probation violation report and consent to the imposition of structured, intermediate sanctions by the Department of Corrections or a county community corrections agency;

(d) The level and type of sanctions that may be imposed by probation officers and by supervisory personnel;

(e) The level and type of violation behavior warranting a recommendation to the court that probation be revoked;

(f) Procedures for notifying district attorneys and the courts of probation violations

admitted by probationers and the sanctions imposed by the Department of Corrections or county community corrections agencies; and

(g) Such other policies or procedures as are necessary to carry out the purposes of chapter 680, Oregon Laws 1993.

(3) Jail confinement imposed as a custodial sanction by the Department of Corrections or a county community corrections agency pursuant to rules adopted under this section shall not exceed 30 days per violation report. The total number of days of jail confinement for all violation reports per conviction shall not exceed the maximum number of available jail custody units under rules adopted by the State Sentencing Guidelines Board.

(4) Nonjail confinement imposed as a custodial sanction by the Department of Corrections or a county community corrections agency pursuant to rules adopted under this section shall not exceed the maximum number of available nonjail custody units under rules adopted by the State Sentencing Guidelines Board. [1993 c.680 §11]

Note: See note under 137.592.

Note: Legislative Counsel has substituted "chapter 680, Oregon Laws 1993," for the words "this Act" in section 11, chapter 680, Oregon Laws 1993, compiled as 137.595. Specific ORS references have not been substituted, pursuant to 173.160. The range of sections for which substitutions would be required yields ORS references too numerous to be useful. These sections may be determined by referring to the 1993 Comparative Section Table located in Volume 15 of ORS.

**137.597 Probationer may consent to imposition of sanctions.** Subject to rules adopted under ORS 137.595, after receiving written notification of rights, a probationer may waive in writing a probation violation hearing, admit or not contest the violations alleged in the probation violation report and consent to the imposition of structured, intermediate sanctions by the Department of Corrections or a county community corrections agency pursuant to rules adopted under ORS 137.595. [1993 c.680 §12]

Note: See note under 137.592.

**137.599 Hearing prior to, or after, imposition of sanctions.** Prior to the imposition of any structured, intermediate sanction or within four judicial days after receiving notice that a structured, intermediate sanction has been imposed on a probationer pursuant to rules adopted under ORS 137.595, the court, upon motion of the district attorney or on its own motion, may cause the probationer to be brought before the court for a hearing, and may revoke probation or impose such other or additional sanctions or modify the conditions of probation as authorized by law. In no case may the sentencing judge cause a probationer to be brought

before the court for a hearing and revoke probation or impose other or additional sanctions after the probationer has completed a structured, intermediate sanction imposed by the Department of Corrections or a county community corrections agency pursuant to rules adopted under ORS 137.595. [1993 c.680 §13]

Note: See note under 137.592.

137.600 [Repealed by 1955 c.491 §9]

**137.610 Performance by Department of Corrections staff of duties of probation officers appointed by judge.** The judge or judges of any court of criminal jurisdiction, including municipal courts, may request at any time the staff of the Department of Corrections to perform any of the duties which might be required of a probation officer appointed by the court pursuant to ORS 137.590. All such requests for services of the staff shall be made upon the Director of the Department of Corrections, who shall order the prompt performance of any such requested service whenever members of the staff are available for such duty. [Amended by 1969 c.597 §126; 1987 c.320 §40]

**137.620 Powers of probation officers; oath of office; bond; audit of accounts.** Probation officers of the Department of Corrections and those appointed by the court shall have the powers of peace officers in the execution of their duties, but shall not be active members of the regular police force. Each probation officer appointed by the court, before entering on the duties of office, shall take an oath of office. Each probation officer who collects or has custody of money shall execute a bond in a penal sum to be fixed by the court, with sufficient sureties approved thereby, conditioned for the honest accounting of all money received by the probation officer as probation officer. The accounts of all probation officers shall be subject to audit at any time by the proper fiscal authorities. [Amended by 1973 c.836 §275; 1987 c.320 §41]

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

(a) To make such investigations and reports under ORS 137.530 as are required by the judge of any court having jurisdiction within the county, city or judicial district for which the officer is appointed to serve.

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

(c) To provide release assistance, and supervise any person placed in a diversion, work release or community services alterna-

tive program, by any court in the jurisdiction area for which such officers are appointed to serve.

(d) To give each person under their supervision a statement of the conditions of probation or program participation and to instruct the person regarding the conditions; to keep informed concerning the conduct and condition of such persons by visiting, requiring reports and otherwise; to use all suitable methods, not inconsistent with the condition of probation or program participation, to aid and encourage such persons and to effect improvement in their conduct and condition.

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

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

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

(3) Notwithstanding subsection (2) of this section, probation officers shall not be required to collect from persons under their supervision any fees to offset the costs of supervising the probation, including but not limited to those ordered pursuant to ORS 137.540 or 423.570. [Amended by 1969 c.597 §127; 1981 c.447 §1; 1987 c.320 §42; 1993 c.14 §15]

#### (Determinate Sentences)

**137.635 Determinate sentences required for certain felony convictions.** (1) When, in the case of a felony described in subsection (2) of this section, a court sentences a convicted defendant who has previously been convicted of any felony designated in subsection (2) of this section, the sentence shall not be an indeterminate sentence to which the defendant otherwise would be subject under ORS 137.120, but, unless it imposes a death penalty under ORS 163.105, the court shall impose a determinate sentence, the length of which the court shall determine, to the custody of the Department of Corrections. Any mandatory minimum sentence otherwise provided by law shall apply. The sentence shall not exceed the maximum sentence otherwise provided by law in such cases. The convicted defendant who is subject to this section shall not be eligible for probation. The convicted defendant shall serve the entire sentence imposed by the court and shall not, during the service of such a sentence, be eligible for parole or any

form of temporary leave from custody. The person shall not be eligible for any reduction in sentence pursuant to ORS 421.120.

(2) Felonies to which subsection (1) of this section apply include and are limited to:

(a) Murder, as defined in ORS 163.115, and any aggravated form thereof.

(b) Manslaughter in the first degree, as defined in ORS 163.118.

(c) Assault in the first degree, as defined in ORS 163.185.

(d) Kidnapping in the first degree, as defined in ORS 163.235.

(e) Rape in the first degree, as defined in ORS 163.375.

(f) Sodomy in the first degree, as defined in ORS 163.405.

(g) Unlawful sexual penetration in the first degree, as defined in ORS 163.411.

(h) Burglary in the first degree, as defined in ORS 164.225.

(i) Arson in the first degree, as defined in ORS 164.325.

(j) Robbery in the first degree, as defined in ORS 164.415.

(3) When the court imposes a sentence under this section, the court shall indicate in the judgment that the defendant is subject to this section. [1989 c.1 §§2, 3; 1991 c.386 §6; 1993 c.692 §5]

**137.637 Determining length of determinate sentences.** When a determinate sentence of imprisonment is required or authorized by statute, the sentence imposed shall be the determinate sentence or the presumptive sentence as provided by the rules of the State Sentencing Guidelines Board, whichever is longer. [1989 c.790 §82]

**Note:** 137.637 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

137.640 [Repealed by 1961 c.359 §1]

137.650 [Repealed by 1961 c.359 §1]

### OREGON CRIMINAL JUSTICE COUNCIL (Generally)

**137.651 "Criminal justice system" defined.** As used in this section and ORS 137.653 and 137.655, "criminal justice system" includes all activities and agencies, whether state or local, public or private, pertaining to the prevention, prosecution and defense of offenses, or to the disposition of offenders under the criminal law. The "criminal justice system" includes police, public prosecutors, defense counsel, courts, correction systems, mental health agencies and

all public and private agencies providing services in connection with those elements, whether voluntarily, contractually or by order of a court. [1985 c.558 §1]

**Note:** 137.651 to 137.673 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 137 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.653 Oregon Criminal Justice Council; membership; terms; meetings.** (1) There is established the Oregon Criminal Justice Council consisting of 24 members.

(2) The Oregon Criminal Justice Council shall be composed as follows:

(a) The following shall be members by virtue of their office:

(A) The Attorney General;

(B) The Director of the Department of Corrections;

(C) The chairperson of the State Board of Parole and Post-Prison Supervision;

(D) The Superintendent of State Police;

(E) The chairperson of the Psychiatric Security Review Board; and

(F) The administrator of the Mental Health and Developmental Disability Services Division.

(b) The Chief Justice of the Supreme Court shall appoint two judges to the council, one of whom may be a judge of the Supreme Court or the Court of Appeals, and one of whom shall be a trial judge of the circuit or district court. Senior judges, as provided under ORS 1.300, are eligible for appointment.

(c) At the beginning of each regular session of the Legislative Assembly, the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader and the House of Representatives Minority Leader shall appoint four legislators to the council to serve until the commencement of the regular session of the Legislative Assembly next following. Two shall be Senators appointed, one each, by the President and the Senate Minority Leader. Two shall be Representatives appointed, one each, by the Speaker and the House Minority Leader. The members are eligible for reappointment.

(d) The Governor shall appoint 12 members to the council as follows:

(A) One district attorney;

(B) One attorney a substantial proportion of whose employment is spent in criminal defense;

(C) One county sheriff;

(D) One county commissioner;

(E) One representative of a county community corrections office;

(F) One chief of police;

(G) Five public members not employed in prosecution or law enforcement. One public member shall be a member of a recognized citizens' group that represents the interests of crime victims or a victim or witness advocate who serves in a program which receives funding under ORS 147.259 (1989 Edition); and

(H) One director of a private nonprofit entity created for the purpose of increasing understanding of the adult and juvenile justice system and promoting effective policies and programs for the prevention, treatment and control of crime.

(3) The term of office of each member of the council appointed by the Chief Justice or Governor is three years, but such members serve at the pleasure of the Chief Justice or Governor, whichever shall have appointed the member. A member appointed by the Chief Justice or Governor is eligible for re-appointment, but shall serve no more than two consecutive terms. When a person is appointed under subsection (4) of this section to serve an unexpired term, the unexpired term shall not be considered for purposes of the limitation to two consecutive terms of service. Before the expiration of the term of the member, the Chief Justice or Governor, as the case may be, shall appoint a successor whose term shall begin on July 1 next following.

(4) If there is a vacancy for any cause in an appointed position, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

(5) The Governor shall appoint the chairperson of the Oregon Criminal Justice Council from among its members not holding elective office. The chairperson shall serve at the pleasure of the Governor.

(6) The members of the Oregon Criminal Justice Council shall elect from among their members a vice-chairperson who shall preside and exercise the functions of chairperson during absence or disability of the chairperson.

(7)(a) The chairperson shall appoint, subject to approval of the majority of the council, an executive committee composed of the chairperson, the vice-chairperson and three other members of the council to exercise the powers and responsibilities of the council between meetings of the council.

(b) All action taken by the executive committee not previously authorized shall be submitted to the council at its next regular or special meeting for approval.

(8) The chairperson may appoint such committees within the council as the chairperson may think necessary. Persons who are not council members may be appointed as associate members of the committees with the approval of the full council.

(9) Regular meetings of the council shall be held at least once every three months at a place, day and hour determined by the council. Special meetings shall be held at such other times as the chairperson may designate. If 12 or more members of the council request in writing that the chairperson designate a time for a special meeting, the chairperson shall designate a time as requested.

(10) Members of the council and associate members of committees are entitled to expenses as provided under ORS 292.495 (2). Legislative members shall be entitled to payment of compensation and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(11) The council is subject to the provisions of ORS 291.202 to 291.222 and 291.232 to 291.260. [1985 c.558 §2; 1987 c.879 §18; 1989 c.548 §1; 1993 c.188 §2]

Note: See note under 137.651.

**137.655 Duties.** The Oregon Criminal Justice Council shall:

(1) Study and make recommendations concerning the functioning of the various parts of the criminal justice system, including study and recommendations concerning implementation of community corrections programs;

(2) Study and make recommendations concerning the coordination of the various parts of the criminal justice system;

(3) Conduct research and evaluation of programs, methods and techniques employed by the several components of the criminal justice system;

(4) Study and make recommendations concerning the capacity, utilization and type of state and local prison and jail facilities and alternatives to the same including the appropriate use of existing facilities and programs, and the desirability of additional or different facilities and programs;

(5) Study and make recommendations concerning methods of reducing risk of future criminal conduct by offenders;

(6) Collect, evaluate and coordinate information and data related to or produced by all parts of the criminal justice system;

(7) Accept gifts and grants and disburse them in the performance of its responsibilities;

(8) Study the application of the aggravated murder statutes to identify the frequency with which particular aggravating factors are alleged and proved;

(9) Determine whether there is gender or racial bias in the application of the death penalty;

(10) If so designated by the Governor, be the agency responsible for the administration of the Drug Control and System Improvement Grant Program as set forth in 42 U.S.C. §3757;

(11) Issue annual state corrections population forecasts, including expected populations of prisons, jails and community corrections caseloads, to be used by:

(a) The Department of Corrections in preparing budget requests;

(b) The State Sentencing Guidelines Board in considering amendments to sentencing guidelines; and

(c) Any other state agency concerned with the effect of offender populations or policy development on budgeting;

(12) Serve as the state's criminal justice grants authorization clearinghouse as directed;

(13) Conduct joint studies by agreement with other state agencies, boards or commissions on any matters within the jurisdiction of the council;

(14) Assess quarterly the impact of sentencing guidelines, and make recommendations to the Legislative Assembly regarding proposed changes in the criminal code, criminal procedures and any aspects of sentencing that may impede the implementation and effectiveness of the sentencing guidelines;

(15) Assist in maintaining the quality and reliability of data from established criminal justice information systems and promote the development of criminal justice information systems;

(16) Be a depository of federal criminal justice analytical and statistical information, be a center for dissemination of the information to Oregon state and local government agencies and provide Oregon criminal justice analytical and statistical information to federal agencies; and

(17) Report annually to the Chief Justice of the Supreme Court, the President of the Senate, the Speaker of the House of Representatives and the Governor. [1985 c.558 §3; subsections (8) and (9) enacted as 1991 c.885 §6; 1993 c.188 §1]

Note: See note under 137.651.

**137.657 Additional duties.** For any measure introduced in the Legislative As-

sembly the effect of which is to create a new crime or increase the period of incarceration allowed or required for an existing crime, the Oregon Criminal Justice Council shall prepare a statement that contains an estimate of the additional number of prison beds needed for the following biennium to accommodate the increased prison population resulting from the measure. The statement shall be submitted to the committee considering the bill. [1989 c.790 §91]

Note: See note under 137.651.

**137.659 Council as clearinghouse and information center regarding sentencing options.** (1) The Oregon Criminal Justice Council shall serve as a clearinghouse and information center for the collection, preparation and analysis and dissemination of information on state and local sentencing practices. The council shall assess the impact of sentencing guidelines.

(2) The council shall make recommendations to the Legislative Assembly regarding proposed changes in the criminal code, criminal procedures, and any aspects of sentencing that may impede the implementation and effectiveness of the sentencing guidelines. [1987 c.619 §9; 1991 c.455 §1]

Note: See note under 137.651.

**137.660** [Repealed by 1961 c.359 §1]

**137.661 Agency cooperation with council.** All officers, boards, commissions and other agencies of the State of Oregon shall cooperate with the Oregon Criminal Justice Council to accomplish the purposes of this section and ORS 137.651, 137.653, 137.655 and 423.510. [1985 c.558 §6]

Note: See note under 137.651.

#### (State Sentencing Guidelines Board)

**137.663 State Sentencing Guidelines Board; members; staff.** (1) There is created the State Sentencing Guidelines Board.

(2) Those members of the Oregon Criminal Justice Council who serve by virtue of their respective offices in the Executive Branch of the state government, the director of the entity referred to in ORS 137.653 (2)(d)(H) and those members appointed to the Oregon Criminal Justice Council by the Governor shall constitute the State Sentencing Guidelines Board.

(3) The Governor shall appoint one of the members to be the chair of the board and the Executive Director of the Oregon Criminal Justice Council shall provide staff services to the board. [1987 c.619 §3; 1989 c.790 §38; 1993 c.188 §3]

Note: See note under 137.651.

**137.665 Meetings; report by Oregon Criminal Justice Council.** (1) The State

Sentencing Guidelines Board shall meet quarterly at a time and place determined by the board. Special meetings shall be held at such other times as the chairperson may designate. If seven or more members of the board request in writing that the chairperson designate a time for a special meeting, the chairperson shall designate a time as requested.

(2) The Oregon Criminal Justice Council shall report to the quarterly meetings of the State Sentencing Guidelines Board, or other meetings as designated, on the implementation of sentencing guidelines and the effect of the guidelines on state and local correctional resources. The reports shall include a determination by the council, based on the data available to it, of:

(a) Any anticipated change in the effective capacity of the corrections system; and

(b) Any anticipated change in the projected prison population.

(3) If the projected prison population will exceed or underutilize the effective capacity of state correctional resources, the board shall adopt by rule modifications to assure that prison population is consistent with capacity. Any modification shall be consistent with the purposes listed in section 2, chapter 619, Oregon Laws 1987.

(4) Within four months after adjournment sine die of the Legislative Assembly, the State Sentencing Guidelines Board shall review all new legislation that creates new crimes or modifies existing crimes. The board shall adopt by rule any necessary modifications to the crime seriousness scale of the guidelines to reflect the actions of the Legislative Assembly and shall classify offenses as person felonies or person misdemeanors for purposes of the rules. [1989 c.790 §89; 1993 c.692 §6]

Note: See note under 137.651.

**137.667 Amendments to sentencing guidelines; submitting to Legislative Assembly.** (1) The State Sentencing Guidelines Board may adopt by majority vote of all of its members amendments to the sentencing guidelines approved by section 87, chapter 790, Oregon Laws 1989. The board shall submit the amendments to the Legislative Assembly for its approval. The amendments shall not become effective unless approved by the Legislative Assembly by statute. The effective date of the amendments shall be the date specified by the Legislative Assembly in the statute approving the amendments. The Legislative Assembly may by statute amend, repeal or supplement any of the amendments.

(2) In adopting the amendments to the sentencing guidelines, the board shall consider recommendations from the Oregon

Criminal Justice Council. The board is not bound by the recommendations and shall exercise its own independent judgment. The board shall, however, in adopting amendments under this section and section 135, chapter 790, Oregon Laws 1989, be subject to the same considerations that applied to the development of sentencing guidelines under section 2, chapter 619, Oregon Laws 1987.

(3) The provisions of this section do not apply to amendments to the guidelines adopted by the board under ORS 137.665 and 421.512 (2) and section 84, chapter 790, Oregon Laws 1989. [1989 c.790 §94a; 1993 c.681 §6; 1993 c.692 §7]

Note: See note under 137.651.

**137.669 Guidelines control sentences; mandatory sentences.** The guidelines adopted by the State Sentencing Guidelines Board and approved by the Legislative Assembly under ORS 137.667, together with any amendments, supplements or repealing provisions enacted by the Legislative Assembly, shall control the sentences for all crimes committed after the effective date of such guidelines. Except as provided in ORS 137.671, the incarcerative guidelines and any other guidelines so designated by the board shall be mandatory and constitute presumptive sentences. [1987 c.619 §5; 1989 c.790 §95]

Note: See note under 137.651.

**137.670** [Repealed by 1961 c.359 §1]

**137.671 Authority of court to impose sentence outside guidelines.** (1) The court may impose a sentence outside the presumptive sentence or sentence range made presumptive under ORS 137.669 for a specific offense if it finds, considering the purposes of ORS 137.659, 137.663, 137.669, 137.671 and sections 1, 2, 4, 7, 8 and 10 to 12, chapter 619, Oregon Laws 1987, there are substantial and compelling reasons justifying a deviation from the presumptive sentence.

(2) Whenever the court imposes a sentence outside the presumptive sentence it shall set forth the reasons for its decision in the manner required by rules of the State Sentencing Guidelines Board. [1987 c.619 §6; 1989 c.790 §39]

Note: See note under 137.651.

**137.673 Validity of rules.** Rules adopted by the State Sentencing Guidelines Board shall not be declared invalid solely because of irregularities in procedural rulemaking, including but not limited to the provisions of ORS 183.335 (10)(a) or 183.400 (4)(c). [1989 c.790 §73]

Note: See note under 137.651.

**137.675 Sanctions for violation of conditions of probationary sentence; rules; additional nonjail custody units.** (1) The State Sentencing Guidelines Board shall

adopt rules to provide additional nonjail custody units to be used as sanctions for violations of conditions imposed as part of a probationary sentence.

(2) The rules shall provide for up to 30 nonjail custody units for offenses classified in Crime Seriousness Categories 1 and 2 and grid blocks 3G, 3H and 3I; up to 60 nonjail custody units for offenses classified in grid blocks 3A through 3F, 4C through 4I and 5G through 5I; and up to 90 nonjail custody units for offenses classified in grid blocks 5F, 6F through 6I, 7F through 7I and offenses in which a sentence of probation was imposed as a dispositional departure or as an optional probation. [1993 c.680 §14]

Note: 137.675 and 137.677 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.677 Limits on jail custody units imposed at sentencing to probationary sentence.** The State Sentencing Guidelines Board shall adopt rules to limit the number of jail custody units that a sentencing judge may impose immediately upon sentencing as

part of a probationary sentence to no more than one-third of the total jail custody units. The remaining jail custody units may be used to sanction violations of conditions imposed as part of the probationary sentence. A sentencing judge may exceed these limitations without departure upon a finding of adequate jail space. [1993 c.680 §15]

Note: See note under 137.675.

Note: Sections 5 and 6, chapter 680, Oregon Laws 1993, provide:

**Sec. 5.** The State Sentencing Guidelines Board shall amend its rules regarding post-prison supervision sanctions to provide graduated periods of maximum sanctions based on the length of the supervision term as follows:

- (1) Six months if the term of supervision is one year;
- (2) Nine months if the term of supervision is two years; and
- (3) Twelve months if the term of supervision is three years. [1993 c.680 §5]

**Sec. 6.** Section 5 of this Act is repealed on November 1, 1995. [1993 c.680 §6]

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