

# Chapter 153

1993 EDITION

## Procedures for Infractions and Certain Violations

- STATE PARK INFRACTIONS**
- 153.110 Persons who may enforce infractions; issuance of citation; arrest prohibited
- 153.120 Citation requirements; delivery of summons to person cited; delivery of other parts of citation
- 153.130 Uniform citation
- 153.140 Minimum requirements for summons
- 153.150 Minimum requirements for complaint
- 153.160 Defendant's appearance; bail; request for hearing; statement; guilty plea
- 153.170 Statement as waiver of hearing and consent to judgment; bail forfeiture
- 153.180 Fixing hearing date; notice to defendant; waiver
- 153.190 Hearing discretionary; powers of court on hearing and without hearing; judgment
- 153.200 Warrant for arrest; time limit on issuance; effect of failure to issue warrant
- 153.210 Proceedings to conform to ORS 153.110 to 153.310
- 153.220 Jurisdiction of courts
- 153.230 Venue where action may be commenced
- 153.240 Trial without jury; commencement; burden of proof; pretrial discovery; defendant as witness; proof of culpable mental state not element
- 153.250 Defense counsel not provided at public expense; when prosecuting attorney may appear; notice if defense counsel to appear
- 153.260 Prosecution of crime not bar to prosecution for infraction; admissibility of conviction or infraction in subsequent proceedings
- 153.270 When infraction occurs; effect of conviction; criminal procedures apply to prosecution of infraction; conviction cannot be used to impeach in any other action
- 153.280 Appeal
- 153.290 Infractions Violations Bureau; duties and powers
- 153.300 Violation procedure; effect of previous infractions
- 153.310 Schedule of penalties
- BOATING INFRACTIONS**
- 153.325 Boating infraction described; effect of conviction; enforcement
- 153.330 Peace officer authorized to arrest or issue citation for boating offense; private person may commence action
- 153.335 Boating citation requirements
- 153.340 Minimum requirements for summons
- 153.345 Minimum requirements for complaint
- 153.350 Delivery of summons to person cited; delivery of other parts of citation
- 153.355 Defendant's appearance; bail; request for hearing; statement; guilty plea
- 153.360 Statement as waiver of hearing and consent to judgment; bail forfeiture
- 153.365 Fixing hearing date; notice to defendant; waiver
- 153.370 Hearing discretionary; powers of court on hearing and without hearing; judgment
- 153.375 Warrant for arrest; time limit on issuance; effect of failure to issue warrant
- 153.380 Proceedings to conform to ORS 153.325 to 153.440
- 153.385 Jurisdiction of courts
- 153.390 Venue for boating offense
- 153.395 Trial without jury; commencement; burden of proof; pretrial discovery; defendant as witness
- 153.400 Defense counsel not provided at public expense; when prosecuting attorney may appear; notice if defense counsel to appear
- 153.405 Prosecution of crime not bar to prosecution for infraction; admissibility of conviction or infraction in subsequent proceedings
- 153.410 Effect of conviction on impeachment of witness
- 153.415 Appeal
- 153.420 Construction
- 153.425 Boating Violations Bureau; duties and powers
- 153.430 Violation procedure; effect of previous offenses
- 153.440 Schedule of penalties
- TRAFFIC INFRACTIONS**
- 153.500 Definitions for ORS 153.500 to 153.635 and 153.995
- 153.505 Traffic infraction described; effect of conviction
- 153.510 Private person may commence action; complaint; service of summons
- 153.515 Traffic citation requirements; exception
- 153.520 Minimum requirements for summons
- 153.525 Minimum requirements for complaint
- 153.527 Review of accusatory instrument by district attorney
- 153.530 Designation of speed in complaint and summons charging violation of speed limit
- 153.535 Delivery of summons to person cited; delivery of other parts of citation
- 153.540 Defendant's appearance; bail; request for hearing; statement; guilty plea; when appearance mandatory
- 153.545 Statement as waiver of hearing and consent to judgment; bail forfeiture
- 153.550 Fixing hearing date; notice; suspension of license for failure to appear; exception; termination of suspension
- 153.555 Hearing discretionary; powers of court on hearing and without hearing; judgment
- 153.560 Warrant for arrest; time limit on issuance; effect of failure to issue warrant
- 153.565 Jurisdiction of courts

## PROCEDURE IN CRIMINAL MATTERS GENERALLY

- 153.570 Venue for traffic offense
- 153.575 Trial without jury; burden of proof; pre-trial discovery; defendant as witness; testimony by affidavit
- 153.580 Defense counsel not provided at state expense; when prosecuting attorney may appear; notice if defense counsel to appear
- 153.585 Former jeopardy, res judicata and collateral estoppel not applicable in traffic infraction cases
- 153.590 Effect of conviction on impeachment of witness
- 153.595 Appeal
- 153.600 Traffic Court Violations Bureau; duties and powers
- 153.605 Violation procedure; effect of previous offenses
- 153.610 Classification of traffic infractions
- 153.615 Schedule of penalties
- 153.620 Penalty for offense not otherwise classified
- 153.623 Bail and fines for certain traffic offenses
- 153.624 Costs for obtaining driving records
- 153.625 Records; notice to Department of Transportation
- 153.630 Disposition of moneys collected by courts
- 153.635 Delinquency in paying moneys under ORS 153.630

### WILDLIFE AND COMMERCIAL FISHING INFRACTIONS AND VIOLATIONS

- 153.705 Private person may commence action
- 153.710 Citation for violation of wildlife or commercial fishing laws or rules; form of complaint
- 153.715 Minimum requirements for summons
- 153.720 Minimum requirements for complaint
- 153.725 Delivery of summons and complaint
- 153.730 Forwarding of citation and court disposition information to Department of State Police
- 153.745 Defendant's appearance; bail; request for hearing; statement; guilty plea
- 153.750 Statement as waiver of hearing and consent to judgment; bail forfeiture
- 153.755 Fixing hearing date; notice to defendant; waiver
- 153.760 Hearing discretionary; powers of court on hearing and without hearing; judgment
- 153.765 Warrant for arrest; time limit on issuance; effect of failure to issue warrant

### PENALTIES

- 153.990 Penalty for false certification on infractions
- 153.995 Penalty for false certification on traffic offense
- 153.997 Penalty for false information for boating or wildlife citation

### CROSS REFERENCES

#### 153.550

Procedures for suspension of driving privileges upon failure to appear, 809.220, 809.280

#### 153.565

Juvenile court, transfer of certain proceedings involving children, 419C.050

#### 153.630

Action by Department of Revenue against judicial officer for delinquent payment of certain moneys, 30.830

Disposition of moneys collected by the district court in criminal cases generally, 46.800

**STATE PARK INFRACTIONS**

**153.110 Persons who may enforce infractions; issuance of citation; arrest prohibited.** (1) Persons specifically authorized under law and all peace officers of this state or of any political subdivision thereof have jurisdiction of and may enforce infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990.

(2) Any person authorized to enforce infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990 may issue a citation to any person who violates those infractions. If the person to be issued a citation is a firm, corporation or other organization, issuance of a citation to any employee, agent or representative thereof shall be sufficient to confer jurisdiction.

(3) Any person authorized to issue citations pursuant to this section may not arrest for violation of the infraction but may detain any individual reasonably believed to have committed a violation, or any employee, agent or representative of a firm, corporation or organization reasonably believed to have committed a violation, only so long as is necessary to determine, for the purposes of issuing a citation, the identity of the violator and such additional information as is appropriate for law enforcement agencies in the state. [1981 c.692 §11]

**153.120 Citation requirements; delivery of summons to person cited; delivery of other parts of citation.** (1) A citation issued pursuant to ORS 153.110 shall comply with the requirements of ORS 8.665, 153.110 to 153.310 and 153.990.

(2) The authorized person issuing a citation under ORS 153.110 shall cause:

(a) The summons to be delivered to the person cited; and

(b) The complaint and abstract of court record to be delivered to the court. [1981 c.692 §12]

**153.130 Uniform citation.** (1) Except as otherwise specifically provided for an infraction, a uniform citation conforming to the requirements of this section shall be used for all infraction offenses subject to ORS 8.665, 153.110 to 153.310 and 153.990. This section does not prohibit the use of a uniform citation:

(a) For offenses other than infraction of offenses subject to ORS 8.665, 153.110 to 153.310 and 153.990.

(b) Containing other language in addition to that specified in this section.

(2) The citation shall consist of at least four parts. Additional parts may be inserted by law enforcement agencies for administrative use. The required parts are:

(a) The complaint.

(b) The abstract of record.

(c) The police record.

(d) The summons.

(3) Each of the parts shall contain the information or blanks required by rules of the Supreme Court under ORS 1.525.

(4) The complaint shall contain a form of certificate in which the complaint shall certify, under the penalties provided in ORS 153.990, that the complainant has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. A certificate conforming to this section shall be deemed equivalent of a sworn complaint. [1981 c.692 §13]

**153.140 Minimum requirements for summons.** A summons in an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 is sufficient if it contains the following:

(1) The name of the court, the name of the person cited, the date on which the citation was issued, the name of the complainant and the time and place at which the person cited is to appear in court.

(2) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so, and the date, time and place at which the offense is alleged to have occurred.

(3) A notice to the person cited that a complaint will be filed with the court based on the offense.

(4) The amount of bail, if any, fixed for the offense. [1981 c.692 §15]

**153.150 Minimum requirements for complaint.** (1) Except as provided in this section, a complaint in an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 is sufficient if it contains the following:

(a) The name of the court, the name of the state or of the city or other public body in whose name the action is brought and the name of the defendant.

(b) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the offense is alleged to have occurred.

(c) A certificate under ORS 153.130, signed by the complainant.

(2) The complaint shall be set aside by the court upon motion of the defendant before plea when the complaint does not conform to the requirements of this section. A

pretrial ruling on a motion to set aside may be appealed by the state.

(3) Nothing prohibits the court from amending the citation in its discretion. [1981 c.692 §16]

**153.160 Defendant's appearance; bail; request for hearing; statement; guilty plea.** (1) For infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990, the defendant shall either appear in court at the time indicated in the summons, or prior to such time shall deliver to the court the summons, together with check or money order in the amount of the bail set forth in the summons, and enclosing therewith:

(a) A request for a hearing;

(b) A statement of matters in explanation or mitigation of the offense charged; or

(c) The executed appearance, waiver of hearing and plea of guilty appearing on the summons. A statement in explanation or mitigation also may be enclosed with the guilty plea.

(2) In any case in which the defendant personally appears in court at the time indicated in the summons, if the defendant desires to plead guilty and the judge accepts the plea, the judge shall hear any statement in explanation or mitigation that the defendant desires to make. [1981 c.692 §17]

**153.170 Statement as waiver of hearing and consent to judgment; bail forfeiture.** If a defendant has submitted to the court any written statement in explanation or mitigation under ORS 153.160, the statement constitutes a waiver of hearing and consent to judgment. The court may declare a forfeiture of bail on the basis of the statement and any testimony or written statement of the person issuing the citation or other person which may be presented to the court. [1981 c.692 §18]

**153.180 Fixing hearing date; notice to defendant; waiver.** If the defendant requests a hearing under ORS 153.160, or if pursuant to ORS 153.190 the court directs that a hearing be had, the court shall fix a date and time for the hearing and, unless notice is waived, shall at least five days in advance of the hearing mail to the defendant notice of the date and time so fixed. [1981 c.692 §19]

**153.190 Hearing discretionary; powers of court on hearing and without hearing; judgment.** (1) For infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990, the court may direct that a hearing be held.

(2) The court may proceed to make a determination on the infraction under any of the following circumstances:

(a) If a hearing is held, either at the request of the cited person or at the court's

own direction, when the court makes a finding on the evidence presented at the hearing.

(b) If a hearing is not required by statute, directed by the court or requested by the cited person and the cited person has complied with ORS 153.160, when the court makes a finding on the citation, any plea and any evidence or other material submitted.

(c) If the court does not direct that a hearing be held, a hearing is not required by statute and the person has not complied with ORS 153.160 or made appearance, when the time indicated in the citation passes and the court makes a finding on the citation and any other evidence the judge determines appropriate.

(3) Upon completion of its determination under subsection (2) of this section, the court may enter the appropriate judgment and, if the determination is one of conviction, may do any of the following as part of the judgment:

(a) Impose a sentence of a fine.

(b) Direct that the fine be paid out of the bail deposit.

(c) Unless the court orders otherwise, remit the balance to the defendant or to any other person designated by the defendant.

(4) If the person complies with ORS 153.160 and deposits the amount of bail thereunder but neither the person nor the court requests a hearing and a hearing is not required by statute, no fine may be imposed in excess of the bail deposited. If the person has not deposited bail under ORS 153.160 or has requested a hearing under ORS 153.160 without depositing bail and does not appear at the hearing, the court may impose any fine within the statutory limits for the infraction.

(5) If a court sentences a person to pay a fine under this section when the person has not complied with ORS 153.160, the court is not precluded from:

(a) Taking any other action against the person as permitted by law for the person's failure to comply, including, but not limited to, sentencing the person further as permitted by law after the person is brought to hearing.

(b) Following any procedures established by law when the person fails to appear.

(6) If a judgment is entered under this section after a person has failed to comply with ORS 153.160 or make appearance, on motion and upon such terms as are just, the court may relieve a person from the judgment upon a showing that the failure of the cited person to comply with ORS 153.160 or to appear was due to mistake, inadvertence, surprise or excusable neglect. The motion

must be made within a reasonable time, and in no event more than one year after the person receives notice of the judgment.

(7) No judgment may be entered under this section by reason of a person failing to comply with ORS 153.160 or make appearance unless the citation issued to the person contains a statement notifying the cited person that a monetary judgment may be entered against the person up to the maximum statutory limit for the offense if the cited person fails to comply with ORS 153.160 or appear at the time, date and court specified in the citation. [1981 c.692 §20; 1985 c.272 §1; 1991 c.824 §3]

**153.200 Warrant for arrest; time limit on issuance; effect of failure to issue warrant.** (1) If a person cited under ORS 153.120 fails to comply with the provisions of ORS 153.160, or if the person fails to appear at any time fixed by the court, a warrant for the arrest of the person may be issued. A warrant issued by a circuit, district, justice or municipal court may be served, without further indorsement, in any county in this state.

(2) No warrant of arrest may be issued pursuant to this section after a period of 60 days from the date of the entry of an order declaring a forfeiture of bail or other security given by the arrested person. Unless a warrant has been issued before the expiration of that period, the order of forfeiture shall be deemed the final disposition of the case. [1981 c.692 §21]

**153.210 Proceedings to conform to ORS 153.110 to 153.310.** All proceedings concerning infractions under ORS 8.665, 153.110 to 153.310 and 153.990 shall conform to the provisions of ORS 1.520, 8.665, 153.110 to 153.310 and 153.990. [1981 c.692 §22; 1985 c.725 §10]

**153.220 Jurisdiction of courts.** (1) A circuit or district court has concurrent jurisdiction of all infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990.

(2) A justice court, for offenses committed within the county, and a city court, for offenses committed within the jurisdictional authority of the city, have concurrent jurisdiction of all infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990.

(3) The city attorney shall have authority to prosecute in the name of the state for an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 that is committed within the jurisdictional authority of the city as provided in this section, and in any appeal therefrom, except as provided in ORS 180.060. [1981 c.692 §23]

**153.230 Venue where action may be commenced.** (1) An action for an infraction

subject to ORS 8.665, 153.110 to 153.310 and 153.990 may be commenced in any of the following counties:

(a) The county in which the offense was committed.

(b) Any other county whose county seat is a shorter distance by road from the place where the offense was committed than the county seat of the county in which the crime was committed, if the action is commenced in the circuit or district court.

(2) If the action is commenced in a county other than that in which the offense was committed, at the request of the defendant the place of trial may be changed to the county in which the offense was committed. A request for a change of the place of trial shall be made prior to the date set for the trial and shall, if the action is commenced in a circuit or district court, be governed by the provisions of ORS 131.305 to 131.415. If the action is commenced in a justice court a request for change of the place of trial shall be governed by the provisions of ORS 156.100.

(3) If the offense is committed on any body of water located in, or adjacent to, two or more counties or forming the boundary between two or more counties, trial for the offense may be held in any nearby county bordering on the body of water. [1981 c.692 §24]

**153.240 Trial without jury; commencement; burden of proof; pretrial discovery; defendant as witness; proof of culpable mental state not element.** (1) The trial of any infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 shall be by the court without a jury.

(2) The trial of any infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 shall not commence until the expiration of seven days from the date of citation for the infraction unless the defendant waives the seven-day period.

(3) The state, municipality or political subdivision shall have the burden of proving the alleged infraction under ORS 8.665, 153.110 to 153.310 and 153.990 by a preponderance of the evidence.

(4) The pretrial discovery rules in ORS 135.805 to 135.873 apply to infraction cases under ORS 8.665, 153.110 to 153.310 and 153.990.

(5) The defendant may not be required to be a witness in the trial of any infraction under ORS 8.665, 153.110 to 153.310 and 153.990.

(6) Proof of a culpable mental state is not an element of an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990. [1981 c.692 §25]

**153.250 Defense counsel not provided at public expense; when prosecuting attorney may appear; notice if defense counsel to appear.** (1) At any trial involving an infraction under ORS 8.665, 153.110 to 153.310 and 153.990 only, defense counsel shall not be provided at public expense.

(2) At any trial involving an infraction under ORS 8.665, 153.110 to 153.310 and 153.990 only, the prosecuting attorney may aid in preparing evidence and obtaining witnesses but shall not appear unless counsel for the defendant appears. The court shall insure that the prosecuting attorney is given timely notice if defense counsel is to appear at trial. As referred to in this subsection, the prosecuting attorney includes the district attorney, a city attorney or a county counsel, as appropriate. [1981 c.692 §26]

**153.260 Prosecution of crime not bar to prosecution for infraction; admissibility of conviction or infraction in subsequent proceedings.** (1) Notwithstanding ORS 131.505 to 131.535, if a person commits both a crime and an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 as part of the same criminal episode, the prosecution for one offense shall not bar the subsequent prosecution for the other. However, evidence of the first conviction shall not be admissible in any subsequent prosecution for the other offense.

(2) Notwithstanding ORS 43.130 and 43.160, no plea, finding or proceeding upon any infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 shall be used for the purpose of res judicata or collateral estoppel, nor shall any plea, finding or proceeding upon any infraction be admissible as evidence, in any civil proceeding. [1981 c.692 §27]

**153.270 When infraction occurs; effect of conviction; criminal procedures apply to prosecution of infraction; conviction cannot be used to impeach in any other action.** (1) An offense is an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 if it is so designated in the statute defining the offense and if the offense is punishable only by a fine, forfeiture, suspension or revocation of a license or other privilege, or other civil penalty.

(2) A person who commits an infraction under ORS 8.665, 153.110 to 153.310 and 153.990 shall not suffer any disability or legal disadvantage based upon conviction of crime.

(3) Except as otherwise specifically provided in statutes relating to an infraction under ORS 8.665, 153.110 to 153.310 and 153.990, the criminal and criminal procedure laws of this state relating to a violation as described in ORS 161.505 and 161.565 apply with equal force and effect to an infraction

under ORS 8.665, 153.110 to 153.310 and 153.990.

(4) A judgment that a person has committed an infraction under ORS 8.665, 153.110 to 153.310 and 153.990 shall not be used to impeach the character of a witness in any criminal or civil action or proceeding. [1981 c.692 §8]

**153.280 Appeal.** An appeal from a judgment involving an infraction under ORS 8.665, 153.110 to 153.310 and 153.990 may be taken by either party:

(1) From a proceeding in justice's court, or city court as provided in ORS chapter 53;

(2) From a proceeding in district court, as provided in ORS chapter 46; or

(3) From a proceeding in circuit court, as provided in ORS 19.005 to 19.026 and 19.029 to 19.200. [1981 c.692 §28; 1985 c.342 §21]

**153.290 Infractions Violations Bureau; duties and powers.** (1) Any court, when it determines that the efficient disposition of its business and the convenience of persons charged so requires, may establish an Infractions Violations Bureau and constitute the clerk or deputy clerk of the court or any other appropriate official within the jurisdiction in which the court is held as a violations clerk for the Infractions Violations Bureau.

(2) The violations clerk shall accept written appearance, waiver of trial, plea of guilty and payment of fine and costs in infraction cases under ORS 8.665, 153.110 to 153.310 and 153.990, subject to any limitations set forth in this section and ORS 153.300. The violations clerk shall serve under the direction and control of the court appointing the clerk.

(3) The court shall by order designate the infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990 that are within the authority of the violations clerk. Such offenses shall not include any misdemeanors or felonies.

(4) The court shall establish schedules, within the limits prescribed by law, of the amounts of fines to be imposed for first, second and subsequent offenses, designating each offense specifically. The order of the court establishing the schedules shall be prominently posted in the place where the fines are paid. Fines and costs shall be paid to, receipted by and accounted for by the violations clerk in the same manner as other fines and costs are received by the court. [1981 c.692 §29]

**153.300 Violation procedure; effect of previous infractions.** (1) Any person charged with any infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 that is

within the authority of the violations clerk under ORS 153.290, upon signing an appearance, may:

(a) Enter a plea of guilty and waiver of trial; and

(b) Pay the clerk the fine established for the offense charged, and costs.

(2) A person who has been found guilty of, or who has signed a plea of guilty to, one or more previous infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990 in the preceding 12 months within the jurisdiction of the court shall not be permitted to appear before the violations clerk unless the court, by general order applying to certain specified offenses, permits such appearance. [1981 c.692 §30]

**153.310 Schedule of penalties.** (1) Except as otherwise provided in the statute defining the offense, the penalty for committing an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 shall be a fine only.

(2) Infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990 are classified for the purpose of sentence into the following categories:

(a) Class A infractions; and

(b) Class B infractions.

(3) A sentence to pay a fine for an infraction subject to ORS 8.665, 153.110 to 153.310 and 153.990 shall be a sentence to pay an amount not exceeding:

(a) \$700 for a Class A infraction.

(b) \$140 for a Class B infraction. [1981 c.692 §9; 1993 c.531 §4]

## BOATING INFRACTIONS

**153.325 Boating infraction described; effect of conviction; enforcement.** (1) A boating offense defined in ORS 830.010 is a boating infraction if it is so designated in the statute defining the offense or if the offense is punishable only by a fine, forfeiture, suspension or revocation of a license or other privilege, or other civil penalty.

(2) A person who commits a boating infraction shall not suffer any disability or legal disadvantage based upon conviction of crime.

(3) Except as ORS 153.345 and 153.415 and other statutes relating to a boating infraction otherwise expressly provide, the criminal and criminal procedure laws of this state relating to a violation as described in ORS 161.505 and 161.565 apply with equal force and effect to a boating infraction.

(4) A police officer may exercise the authority granted by ORS 133.310 and 153.330 to arrest an individual for a boating infraction. [1981 c.626 §5]

**153.330 Peace officer authorized to arrest or issue citation for boating offense; private person may commence action.** (1) A peace officer may arrest or may issue a citation to a person for a boating offense.

(2) A private person may commence an action for a boating offense as provided by ORS 153.335 (4). [Formerly 488.210]

### 153.335 Boating citation requirements.

(1) A citation conforming to the requirements of this section shall be used for all boating offenses in this state.

(2) The citation shall consist of at least four parts. Additional parts may be inserted by law enforcement agencies for administrative use. The required parts are:

(a) The complaint.

(b) The abstract of record.

(c) The police record.

(d) The summons.

(3) Each of the parts shall contain the information or blanks required by rules of the Supreme Court under ORS 1.525.

(4) The complaint shall contain a form of certificate in which the complainant shall certify, under the penalties provided by ORS 830.995, that the complainant has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. The certification if made by a peace officer need not be made before a magistrate or any other person. A private person shall certify before a magistrate, clerk or deputy clerk of the court and this action will be entered in the court record. A certificate conforming to this section shall be deemed equivalent of a sworn complaint.

(5) The complaint shall be set aside by the court upon the motion of the defendant before plea when it does not conform to the requirements of this section. However, this section does not prohibit the use of a uniform citation for other offenses in addition to boating offenses. [Formerly 488.220]

**153.340 Minimum requirements for summons.** A summons in a boating offense is sufficient if it contains the following:

(1) The name of the court, the name of the person cited, the date on which the citation was issued, the name of the complainant and the time and place at which the person cited is to appear in court.

(2) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so, and the date, time and place at which the offense is alleged to have occurred.

(3) A notice to the person cited that a complaint will be filed with the court based on the offense.

(4) The amount of bail, if any, fixed for the offense. [Formerly 488.230]

**153.345 Minimum requirements for complaint.** A complaint in a boating offense is sufficient if it contains the following:

(1) The name of the court, the name of the state or other public body in whose name the action is brought and the name of the defendant.

(2) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the offense is alleged to have occurred.

(3) A certificate as provided in ORS 153.335 (4), signed by the complainant. [Formerly 488.240]

**153.350 Delivery of summons to person cited; delivery of other parts of citation.** An officer issuing the citation shall cause the summons to be delivered to the person cited and shall cause the complaint and abstract of court record to be delivered to the court. When the complaint is certified by a private person the court shall cause the summons to be delivered to the defendant. [Formerly 488.250]

**153.355 Defendant's appearance; bail; request for hearing; statement; guilty plea.** (1) The defendant shall appear in court at the time mentioned in the summons if the citation is for:

- (a) A major boating offense.
- (b) Any felony.
- (c) A violation of ORS 830.260.

(2) In other cases, the defendant shall either appear in court at the time indicated in the summons or, prior to such time, shall deliver to the court the summons, together with check or money order in the amount of the bail set forth in the summons, and enclosing therewith:

- (a) A request for a hearing; or
- (b) A statement of matters in explanation or mitigation of the offense charged; or
- (c) The executed appearance, waiver of hearing and plea of guilty appearing on the summons. [Formerly 488.260]

**153.360 Statement as waiver of hearing and consent to judgment; bail forfeiture.** If a defendant has submitted to the court a written statement as provided in ORS 153.355 (2)(b), it constitutes a waiver of hearing and consent to judgment by the court declaring a forfeiture of bail on the

basis of such statement and any testimony or written statement of the arresting officer or other witnesses which may be presented to the court. [Formerly 488.270]

**153.365 Fixing hearing date; notice to defendant; waiver.** If the defendant requests a hearing, or if pursuant to ORS 153.370 the court directs that a hearing be had, the court shall fix a date and time for the hearing and, unless notice is waived, shall at least five days in advance of the hearing mail to the defendant notice of the date and time so fixed. [Formerly 488.280]

**153.370 Hearing discretionary; powers of court on hearing and without hearing; judgment.** (1) In any case the court may direct that a hearing be held. No sentence to jail may be imposed unless a hearing is held.

(2) The court may proceed to make a determination under any of the following circumstances:

(a) If a hearing is held, either at the request of the cited person or on the court's own direction, when the court makes a finding on the evidence presented at the hearing.

(b) If a hearing is not required by statute, directed by the court, or requested by the cited person and the cited person has complied with ORS 153.355, when the court makes a finding on the citation, on any plea and on any evidence or other material submitted.

(c) If the court does not direct that a hearing be held, a hearing is not required by statute and the person has not complied with ORS 153.355 or made appearance, when the time indicated on the citation passes and the court makes a finding on the citation and any other evidence the judge determines appropriate.

(3) Upon completion of its determination under subsection (2) of this section, the court may enter the appropriate judgment and, if the determination is one of conviction, may do any of the following as part of the judgment:

- (a) Impose a sentence of a fine.
- (b) Direct that the fine be paid out of the bail deposit, if any.
- (c) Unless the court orders otherwise, remit the balance of the bail deposit to the defendant or to any other person designated by the defendant.

(d) Conditionally suspend all or part of any penalty to be imposed on the defendant if the defendant appears personally and agrees to complete at the defendant's own expense a Safe Boating Education Course approved by the State Marine Board under ORS 830.110 (18), within time limits imposed by the court.

(4) If the person complies with ORS 153.355 and deposits the amount of bail thereunder but neither the person nor the court requests a hearing and a hearing is not required by statute, no fine may be imposed in excess of the bail deposited. If a citation has been issued for a boating infraction and the person has not deposited bail under ORS 153.355 or has requested a hearing under ORS 153.355 without depositing bail and does not appear at the hearing, the court may impose any fine within the statutory limits for the infraction.

(5) If a court sentences a person to pay a fine under this section when the person has not complied with ORS 153.355, or if the person fails to appear at any hearing set by the court, the court is not precluded from:

(a) Taking any other action against the person as permitted by law for the person's failure to comply, including, but not limited to, sentencing the person further as permitted by law after the person is brought to a hearing.

(b) Notifying the State Marine Board of the person's failure to appear or failure to comply with the order of the court.

(c) Following any procedures established by law when the person fails to appear.

(6) If a judgment is entered under this section after a person has failed to comply with ORS 153.355 or make appearance, on motion and upon such terms as are just, the court may relieve a person from the judgment upon a showing that the failure of the cited person to comply with ORS 153.355 or to appear was due to mistake, inadvertence, surprise or excusable neglect. The motion must be made within a reasonable time, and in no event more than one year after the person receives notice of the judgment.

(7) No judgment may be entered under this section by reason of a person failing to comply with ORS 153.355 or make appearance unless the citation issued to the person contains a statement notifying the cited person that a monetary judgment may be entered against the person up to the maximum statutory limit for the offense if the cited person fails to comply with ORS 153.355 or appear at the time, date and court specified in the citation. [Formerly 488.290; 1985 c.272 §2; 1991 c.931 §§2,2a]

**153.375 Warrant for arrest; time limit on issuance; effect of failure to issue warrant.** (1) If a person cited fails to comply with the provisions of ORS 153.355, or if the person fails to appear at any time fixed by the court, a warrant for the arrest of the person may be issued. A warrant issued by a circuit, district or justice court may be

served, without further indorsement, in any county in this state.

(2) No warrant of arrest may be issued pursuant to this section after a period of 60 days from the date of the entry of an order declaring a forfeiture of bail or other security given by the arrested person. Unless a warrant has been issued before the expiration of that period the order of forfeiture shall be deemed the final disposition of the case. [Formerly 488.300]

**153.380 Proceedings to conform to ORS 153.325 to 153.440.** All proceedings concerning boating offenses shall conform to the provisions of ORS 1.520, 153.325 to 153.440 and ORS chapter 830. [1981 c.626 §6; 1985 c.725 §11]

**153.385 Jurisdiction of courts.** (1) A circuit or district court has concurrent jurisdiction of all state boating offenses, except that the circuit court has exclusive jurisdiction of the trial of criminally negligent homicide and of felonies.

(2) A justice court, for offenses committed within the county, and a city court, for offenses committed within the jurisdictional authority of the city, have concurrent jurisdiction of all state boating offenses, except that they do not have jurisdiction of the trial of any felony.

(3) The city attorney shall have authority to prosecute in the name of the state for a state boating offense committed within the jurisdictional authority of the city as provided in this section, and in any appeal therefrom, except as provided in ORS 180.060. [1981 c.626 §7]

**153.390 Venue for boating offense.** (1) An action for a state boating offense may be commenced in any of the following counties:

(a) The county in which the offense was committed.

(b) Any other county whose county seat is a shorter distance by road from the place where the offense was committed than the county seat of the county in which the crime was committed, if the action is commenced in the circuit or district court.

(2) If the action is commenced in a county other than that in which the offense was committed, at the request of the defendant the place of trial may be changed to the county in which the offense was committed. A request for a change of the place of trial shall be made prior to the date set for the trial and shall, if the action is commenced in a circuit or district court, be governed by the provisions of ORS 131.305 to 131.415. If the action is commenced in a justice court a request for change of the place of trial shall

be governed by the provisions of ORS 156.100.

(3) If a boating offense is committed on any body of water located in, or adjacent to, two or more counties or forming the boundary between two or more counties, trial for the offense may be held in any nearby county bordering on the body of water. [1981 c.626 §8]

**153.395 Trial without jury; commencement; burden of proof; pretrial discovery; defendant as witness.** (1) The trial of any boating infraction shall be by the court without a jury.

(2) The trial of any boating infraction shall not commence until the expiration of seven days from the date of arrest or citation for the boating infraction unless the defendant waives the seven-day period.

(3) The state, municipality or political subdivision shall have the burden of proving the alleged boating infraction by a preponderance of the evidence.

(4) The pretrial discovery rules in ORS 135.805 to 135.873 apply to boating infraction cases.

(5) The defendant may not be required to be a witness in the trial of any boating infraction. [1981 c.626 §10]

**153.400 Defense counsel not provided at public expense; when prosecuting attorney may appear; notice if defense counsel to appear.** (1) At any trial involving a boating infraction only, defense counsel shall not be provided at public expense.

(2) At any trial involving a boating infraction only, the prosecuting attorney may aid in preparing evidence and obtaining witnesses but shall not appear unless counsel for the defendant appears. The court shall insure that the prosecuting attorney is given timely notice if defense counsel is to appear at trial. As referred to in this subsection, the prosecuting attorney includes the district attorney, a city attorney or a county counsel, as appropriate. [1981 c.626 §11]

**153.405 Prosecution of crime not bar to prosecution for infraction; admissibility of conviction or infraction in subsequent proceedings.** (1) Notwithstanding ORS 131.505 to 131.535, if a person commits both a crime and a boating infraction as part of the same criminal episode, the prosecution for one offense shall not bar the subsequent prosecution for the other. However, evidence of the first conviction shall not be admissible in any subsequent prosecution for the other offense.

(2) Notwithstanding ORS 43.130 and 43.160, no plea, finding or proceeding upon any boating infraction shall be used for the purpose of res judicata or collateral estoppel,

nor shall any plea, finding or proceeding upon any boating infraction be admissible as evidence, in any civil proceeding. [1981 c.626 §12]

**153.410 Effect of conviction on impeachment of witness.** A conviction before or after November 1, 1981, of any of the statutory counterparts of offenses designated as boating infractions in ORS 153.325 to 153.440 and ORS chapter 830, shall not be used to impeach the character of a witness in any criminal or civil action or proceeding. [1981 c.626 §13]

**153.415 Appeal.** An appeal from a judgment involving a boating infraction may be taken by either party:

(1) From a proceeding in justice's court or city court, as provided in ORS chapter 53;

(2) From a proceeding in district court, as provided in ORS chapter 46; or

(3) From a proceeding in circuit court, as provided in ORS 19.005 to 19.026 and 19.029 to 19.200. [1981 c.626 §14; 1985 c.342 §22]

**153.420 Construction.** (1) ORS 153.325 to 153.440 and ORS chapter 830 govern the construction of and punishment for any boating offense defined in ORS 153.325 to 153.440 and ORS chapter 830 and committed after November 1, 1981, the construction and application of any defense to a prosecution for such an offense and any administrative proceedings authorized or affected by ORS 153.325 to 153.440 and ORS chapter 830.

(2) ORS 153.325 and 153.380 to 153.440 do not apply to or govern the construction of or punishment for any boating offense committed before November 1, 1981, or the construction and application of any defense to a prosecution for such an offense.

(3) When all or part of a statute in ORS 153.325 to 153.440 and ORS chapter 830 is amended or repealed, the statute or part thereof so amended or repealed remains in force for the purpose of authorizing the accusation, prosecution, conviction and punishment of a person who violated the statute or part thereof before the effective date of the amending or repealing Act.

(4) The provisions of ORS 153.325 and 153.380 to 153.440 do not impair or render ineffectual any court or administrative proceedings or procedural matters which occurred before November 1, 1981. [1981 c.626 §15]

**153.425 Boating Violations Bureau; duties and powers.** (1) Any court, when it determines that the efficient disposition of its business and the convenience of persons charged so requires, may establish a Boating Violations Bureau and constitute the clerk or deputy clerk of the court or any other appropriate official within the jurisdiction in

which the court is held as a violations clerk for the Boating Violations Bureau.

(2) The violations clerk shall accept written appearance, waiver of trial, plea of guilty and payment of fine and costs in boating offense cases, subject to the limitations set forth in this section and ORS 153.430. The violations clerk shall serve under the direction and control of the court appointing the clerk.

(3) The court shall by order designate the boating offenses within the authority of the violations clerk. Such offenses shall not include any major boating offense.

(4) The court shall establish schedules, within the limits prescribed by law, of the amounts of fines to be imposed for first, second and subsequent offenses, designating each offense specifically. The order of the court establishing the schedules shall be prominently posted in the place where the fines are paid. Fines and costs shall be paid to, received by and accounted for by the violations clerk in the same manner as other fines and costs are received by the court. [1981 c.626 §16]

**153.430 Violation procedure; effect of previous offenses.** (1) Any person charged with any boating offense within the authority of the violations clerk may, upon signing an appearance, plea of guilty and waiver of trial, pay the clerk the fine established for the offense charged, and costs.

(2) A person who has been found guilty of, or who has signed a plea of guilty to, one or more previous boating offenses in the preceding 12 months within the jurisdiction of the court shall not be permitted to appear before the violations clerk unless the court, by general order applying to certain specified offenses, permits such appearance. [1981 c.626 §17]

**153.440 Schedule of penalties.** (1) Except as otherwise provided in the statute defining the offense, the penalty for committing a boating infraction shall be a fine only.

(2) Boating infractions are classified for the purpose of sentence into the following categories:

- (a) Class A boating infractions; and
- (b) Class B boating infractions.

(3) A sentence to pay a fine for a boating infraction shall be a sentence to pay an amount not exceeding:

- (a) \$1,395 for a Class A boating infraction.
- (b) \$350 for a Class B boating infraction. [1981 c.626 §9; 1993 c.531 §5]

## TRAFFIC INFRACTIONS

**153.500 Definitions for ORS 153.500 to 153.635 and 153.995.** As used in ORS 153.500 to 153.635 and 153.995 unless the context otherwise requires:

(1) "Bail" means money or its equivalent deposited by a defendant to secure the defendant's appearance for a traffic offense.

(2) "City court" means a municipal court, whether or not it is exercising authority under the charter or ordinances of a city or as a justice court under the laws of this state.

(3) "City police officer" includes a city marshal or a member of the police of a city, municipal or quasi-municipal corporation.

(4) "City traffic offense" means any violation of a traffic ordinance of a city, municipal or quasi-municipal corporation, except ordinances governing parking of vehicles.

(5) "Major traffic offense" means a violation of any of the following provisions of law or a city ordinance conforming thereto:

(a) Reckless driving as defined in ORS 811.140.

(b) Driving while under the influence of intoxicants, as defined in ORS 813.010.

(c) Failure to perform the duties of a driver involved in an accident or collision, under ORS 811.700 or 811.705.

(d) Criminal driving while suspended or revoked, as defined under ORS 811.182.

(e) Fleeing or attempting to elude a police officer, as defined under ORS 811.540.

(6) "Owner" means the person having all the incidents of ownership in a vehicle or where the incidents of ownership are in different persons, the person, other than a security interest holder or lessor, entitled to the possession of a vehicle under a security agreement, or a lease for a term of 10 or more successive days.

(7) "Police officer" includes a member of the Oregon State Police, a sheriff or deputy sheriff and a city police officer.

(8) "State court" means a circuit, district or justice court or magistrate.

(9) "State traffic offense" means a violation of any provision of law for which a criminal or traffic infraction penalty is provided in the Oregon Vehicle Code or ORS chapter 767 and includes violation of ORS 390.790.

(10) "Traffic crime" means any traffic offense which is punishable by a jail sentence.

(11) "Traffic offense" includes an offense mentioned in subsections (4), (5) and (9) of this section. [1983 c.338 §941; formerly 484.010; 1987 c.730 §6; 1991 c.67 §30; 1991 c.208 §4]

**153.505 Traffic infraction described; effect of conviction.** (1) An offense defined in the Oregon Vehicle Code is a traffic infraction if it is so designated in the statute defining the offense or if the offense is punishable only by a fine, forfeiture, suspension or revocation of a license or other privilege or other civil penalty.

(2) A person who commits a traffic infraction shall not suffer any disability or legal disadvantage based upon conviction of crime.

(3) Except as ORS 153.525 and 153.595 and other statutes relating to a traffic infraction otherwise expressly provide, the criminal and criminal procedure laws of this state relating to a violation as described in ORS 161.505 and 161.565 apply with equal force and effect to a traffic infraction. [Formerly 484.350]

**153.510 Private person may commence action; complaint; service of summons.**

(1) A private person may commence an action for a traffic offense by certifying to the complaint before a magistrate, clerk or deputy clerk of the court. This action will be entered in the court record.

(2) A complaint under subsection (1) of this section shall contain a form of certificate in which the complainant shall certify, under the penalties provided in ORS 153.995, that the complainant has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. A certificate conforming to this section shall be deemed equivalent of a sworn complaint.

(3) When the complaint is certified by a private person, the court shall cause the summons to be delivered to the defendant. The court may require the Oregon State Police, the county sheriff's office or any municipal police force within its jurisdiction to serve the summons as provided in ORS 153.535 (1). [Formerly 484.155]

**153.515 Traffic citation requirements; exception.** (1) Except for violation of laws governing parking of vehicles, a traffic citation conforming to the requirements of this section shall be used for all traffic infraction offenses, and may be used for any traffic misdemeanor offense in this state. This section does not prohibit the use of a uniform citation:

(a) For offenses other than traffic offenses.

(b) Containing other language in addition to that specified in this section.

(2) The citation shall consist of at least four parts. Additional parts may be inserted by law enforcement agencies for administrative use. The required parts are:

(a) The complaint.

(b) The abstract of record.

(c) The police record.

(d) The summons.

(3) Each of the parts shall contain the information or blanks required by rules of the Supreme Court under ORS 1.525.

(4) The complaint shall contain a form of certificate in which the complainant shall certify, under the penalties provided in ORS 153.995, that the complainant has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law. A certificate conforming to this section shall be deemed equivalent of a sworn complaint. [Formerly 484.150]

**153.520 Minimum requirements for summons.** A summons in a traffic offense is sufficient if it contains the following:

(1) The name of the court, the name of the person cited, the date on which the citation was issued, the name of the complainant and the time and place at which the person cited is to appear in court.

(2) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so, and the date, time and place at which the offense is alleged to have occurred.

(3) A notice to the person cited that a complaint will be filed with the court based on the offense.

(4) The amount of bail, if any, fixed for the offense. [Formerly 484.160]

**153.525 Minimum requirements for complaint.** (1) Except as provided in this section, a complaint in a traffic offense is sufficient if it contains the following:

(a) The name of the court, the name of the state or of the city or other public body in whose name the action is brought and the name of the defendant.

(b) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the offense is alleged to have occurred.

(c) A certificate under ORS 153.515 (4) or under ORS 153.510, signed by the complainant.

(2) The complaint shall be set aside by the court upon motion of the defendant before plea when the complaint does not conform to the requirements of this section. A pretrial ruling on a motion to set aside may be appealed by the state.

(3) Nothing prohibits the court from amending the citation in its discretion. [Formerly 484.170]

**153.527 Review of accusatory instrument by district attorney.** The district attorney having jurisdiction thereof shall review an accusatory instrument relating to any major traffic offense before it is filed in a district or circuit court. [1989 c.355 §1]

**Note:** 153.527 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 153 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**153.530 Designation of speed in complaint and summons charging violation of speed limit.** A complaint and summons or notice to appear on the charges specified in this section, shall specify the speed at which the defendant is alleged to have driven and the speed designated for the district or location. This section applies to the following charges:

- (1) Violation of the basic speed rule.
- (2) Violation of the federal maximum speed limit.
- (3) Violation of the maximum speed for motor trucks and passenger transport vehicles.
- (4) Violation of the maximum speed limit for rural interstate highways. [Formerly 484.175; 1987 c.5 §7; 1987 c.887 §14]

**153.535 Delivery of summons to person cited; delivery of other parts of citation.** (1) An officer issuing the citation shall cause:

- (a) The summons to be delivered to the person cited; and
- (b) The complaint and abstract of court record to be delivered to the court.

(2) When a warning has been given a person by an officer at the time of an alleged violation of ORS 803.315, 811.520, 811.530, 815.025, 815.080 to 815.090, 815.115, 815.130, 815.185, 815.210 to 815.255, 815.265, 815.275, 815.285, 816.030 to 816.300, 816.330, 816.350, 816.360 or 820.360 to 820.380 and it is subsequently determined that the person had no valid operator's license at the time of the warning or had previously received two or more such warnings within the preceding year, if a complaint is filed for the alleged violation or for violation of ORS 807.010, 811.175 or 811.182, delivery of summons may be made on the defendant personally or by mail addressed to the defendant's last-known address. Proof of mailing summons under this subsection is sufficient proof of delivery of summons for purposes of ORS 153.560. [Formerly 484.180; 1983 c.338 §890; 1985 c.597 §24; 1987 c.730 §7; 1989 c.782 §36]

**153.540 Defendant's appearance; bail; request for hearing; statement; guilty plea; when appearance mandatory.** (1) The defendant shall appear in court at the time mentioned in the summons if the citation is for a major traffic offense.

(2) In other cases, the defendant shall either appear in court at the time indicated in the summons, or prior to such time shall either:

- (a) Request a hearing; or
- (b) Deliver to the court the summons, together with check or money order in the amount of the bail set forth in the summons, and enclosing therewith:
  - (A) A statement of matters in explanation or mitigation of the offense charged; or
  - (B) The executed appearance, waiver of hearing and plea of guilty appearing on the summons. A statement in explanation or mitigation also may be enclosed with the guilty plea.

(3) In any case in which the defendant personally appears in court at the time indicated in the summons, if the defendant desires to plead guilty and the judge accepts the plea, the judge shall hear any statement in explanation or mitigation that the defendant desires to make.

(4) The court may require a defendant to appear in any case; however, the court shall require a defendant to appear personally for sentencing if the conviction is grounds for or will result in mandatory revocation or suspension of the defendant's driving privileges or right to apply under ORS 809.410 or 813.400.

(5) The requirements under subsections (1) and (2) of this section are enforceable as provided under ORS 809.220. [Formerly 484.190; 1983 c.338 §891; 1985 c.669 §16]

**153.545 Statement as waiver of hearing and consent to judgment; bail forfeiture.** If a defendant has submitted to the court a written statement as provided in ORS 153.540 (2)(b), it constitutes a waiver of hearing and consent to judgment by the court declaring a forfeiture of bail on the basis of such statement and any testimony or written statement of the citing officer or other witnesses which may be presented to the court. [Formerly 484.200]

**153.550 Fixing hearing date; notice; suspension of license for failure to appear; exception; termination of suspension.** If the defendant requests a hearing, or if pursuant to ORS 153.540 (4) and 153.555 the court directs that a hearing be had, the court shall fix a date and time for the hearing. Unless notice is waived, the court shall mail or otherwise provide to the defendant,

at least five days in advance of the hearing, notice of the date and time so fixed. The notice shall set forth a warning that if the defendant fails to appear at the hearing, the person is subject to ORS 809.220 unless bail is deposited in the amount set by the court. [Formerly 484.210; 1983 c.399 §1; 1983 c.507 §2; 1985 c.16 §449; 1985 c.669 §17]

**153.555 Hearing discretionary; powers of court on hearing and without hearing; judgment.** (1) In any case the court may direct that a hearing be held.

(2) The court may proceed to make a determination under any of the following circumstances:

(a) If a hearing is held, either at the request of the cited person or on the court's own direction, when the court makes a finding on the evidence presented at the hearing.

(b) If a hearing is not required by statute, directed by the court or requested by the cited person and the cited person has complied with ORS 153.540, when the court makes a finding on the citation, any plea and any evidence or other material submitted.

(c) If the court does not direct that a hearing be held, a hearing is not required by statute and the person has not complied with ORS 153.540 or made appearance, when the time indicated in the citation passes and the court makes a finding on the citation and any other evidence the judge determines appropriate.

(3) Upon completion of its determination, the court may enter the appropriate judgment and, if the determination is one of conviction, may do any of the following as part of the judgment:

(a) Impose a sentence of a fine.

(b) Direct that the fine be paid out of the bail deposit.

(c) Unless the court orders otherwise, remit the balance to the defendant or to any other person designated by the defendant.

(4) If the person complies with ORS 153.540 and deposits the amount of bail thereunder but neither the person nor the court requests a hearing and a hearing is not required by statute, no fine may be imposed in excess of the bail deposited. If the person has not deposited bail under ORS 153.540 or has requested a hearing under ORS 153.540 without depositing bail and does not appear at the hearing, the court may impose any fine within the statutory limits for the offense.

(5) The court shall not make or recommend a suspension of the defendant's driving privileges unless a hearing has been ordered, but the failure of the defendant to appear at

the hearing shall not preclude such suspension or recommendation.

(6) If a court sentences a person to pay a fine under this section when the person has not complied with ORS 153.540, the court is not precluded from:

(a) Taking any other action against the person as permitted by law for the person's failure to comply, including, but not limited to, sentencing the person further as permitted by law after the person is brought to hearing.

(b) Following any procedures established by law when the person fails to appear.

(7) If a judgment is entered under this section after a person has failed to comply with ORS 153.540 or make appearance, on motion and upon such terms as are just, the court may relieve a person from the judgment upon a showing that the failure of the cited person to comply with ORS 153.540 or to appear was due to mistake, inadvertence, surprise or excusable neglect. The motion must be made within a reasonable time, and in no event more than one year after the person receives notice of the judgment.

(8) No judgment may be entered under this section by reason of a person failing to comply with ORS 153.540 or make appearance unless the citation issued to the person contains a statement notifying the cited person that a monetary judgment may be entered against the person up to the maximum statutory limit for the offense if the cited person fails to comply with ORS 153.540 or appear at the time, date and court specified in the citation. [Formerly 484.220; 1985 c.272 §3; 1989 c.472 §6; 1991 c.824 §6]

**153.560 Warrant for arrest; time limit on issuance; effect of failure to issue warrant.** (1) If a person cited for a traffic crime fails to comply with the provisions of ORS 153.540, or if the person fails to appear at any time fixed by the court, a warrant for the person's arrest may be issued. A warrant issued by a circuit, district, justice or municipal court may be served, without further indorsement, in any county in this state. If an owner or lessee has been made codefendant as provided in ORS 810.350, a warrant may be issued for the arrest of the owner or lessee.

(2) No warrant of arrest may be issued pursuant to this section after a period of 60 days from the date of the entry of an order declaring a forfeiture of bail or other security given by the arrested person. Unless a warrant has been issued before the expiration of that period the order of forfeiture shall be deemed the final disposition of the case. [Formerly 484.230; 1983 c.338 §893]

**153.565 Jurisdiction of courts.** (1) A circuit or district court has concurrent jurisdiction of all state traffic offenses, except that the circuit court has exclusive jurisdiction of the trial of criminally negligent homicide and of felonies.

(2) A justice court, for offenses committed within the county, and a city court, for offenses committed within the jurisdictional authority of the city, have concurrent jurisdiction of all state traffic offenses, except that they do not have jurisdiction of the trial of any felony.

(3) The city attorney shall have authority to prosecute in the name of the state for a state traffic offense committed within the jurisdictional authority of the city as provided in subsection (2) of this section, and in any appeal therefrom, except as provided in ORS 180.060. [Formerly 484.030]

**153.570 Venue for traffic offense.** (1) An action for a state traffic offense which is not punishable as a crime may be commenced in any of the following counties:

(a) The county in which the offense was committed.

(b) Any other county whose county seat is a shorter distance by road from the place where the offense was committed than the county seat of the county in which the offense was committed, if the action is commenced in the circuit or district court.

(2) If the action is commenced in a county other than that in which the offense was committed, at the request of the defendant the place of trial may be changed to the county in which the offense was committed. A request for a change of the place of trial shall be made prior to the date set for the trial and shall, if the action is commenced in a circuit or district court, be governed by the provisions of ORS 131.305 to 131.415. If the action is commenced in a justice court a request for change of the place of trial shall be governed by the provisions of ORS 156.100.

(3) When the state traffic offense is punishable as a crime, the action shall be commenced in the county in which the offense was committed. [Formerly 484.040; 1983 c.565 §2]

**153.575 Trial without jury; burden of proof; pretrial discovery; defendant as witness; testimony by affidavit.** (1) The trial of any traffic infraction shall be by the court without a jury. The trial of any traffic infraction shall not commence until the expiration of seven days from the date of the citation for the traffic infraction unless the defendant waives the seven-day period.

(2) The state, municipality or political subdivision shall have the burden of proving

the alleged traffic infraction by a preponderance of the evidence.

(3) The pretrial discovery rules in ORS 135.805 to 135.873 apply to traffic infraction cases.

(4) The defendant may not be required to be a witness in the trial of any traffic infraction.

(5) Notwithstanding any other provision of law, a court, in any trial of a traffic infraction, may admit as testimony the affidavit of any witness into evidence in lieu of taking the testimony orally and in court. The authority granted under this subsection is subject to all of the following:

(a) In order to allow testimony to be presented by affidavit in the manner provided by this subsection, a court must adopt rules allowing for such testimony and providing procedures for use of such testimony.

(b) Testimony by affidavit under this subsection shall only be allowed by a court upon the written signed waiver of the defendant of the right to have the testimony be presented orally in court.

(c) A court may allow testimony by affidavit under this subsection with respect to any matter including, but not limited to, matters described in ORS 40.460.

(d) Any affidavit by the defendant under this subsection does not constitute a waiver of hearing under ORS 153.540 and 153.545 unless specifically so provided by the defendant.

(e) Nothing in this subsection shall require the defendant or any other witness to waive the right to appear if other testimony is taken by affidavit as provided in this subsection. [Formerly 484.375; 1983 c.565 §1]

**153.580 Defense counsel not provided at state expense; when prosecuting attorney may appear; notice if defense counsel to appear.** (1) At any trial involving a traffic infraction only, defense counsel shall not be provided at public expense.

(2) At any trial involving a traffic infraction only, the district attorney may aid in preparing evidence and obtaining witnesses but shall not appear unless counsel for the defendant appears. The court shall insure that the district attorney is given timely notice if defense counsel is to appear at trial.

(3) As used in subsection (2) of this section, "district attorney" includes, where appropriate, a city attorney and county counsel. [Formerly 484.390]

**153.585 Former jeopardy, res judicata and collateral estoppel not applicable in traffic infraction cases.** (1) Notwithstanding ORS 131.505 to 131.535, if a person

commits both a crime and a traffic infraction as part of the same criminal episode, the prosecution for one offense shall not bar the subsequent prosecution for the other. However, evidence of the first conviction shall not be admissible in any subsequent prosecution for the other offense.

(2) Notwithstanding ORS 43.130 and 43.160, no plea, finding or proceeding upon any traffic infraction shall be used for the purpose of *res judicata* or collateral estoppel, nor shall any plea, finding or proceeding upon any traffic infraction be admissible as evidence, in any civil proceeding. [Formerly 484.395]

**153.590 Effect of conviction on impeachment of witness.** A conviction before, on or after July 1, 1976, of any of the statutory counterparts of offenses designated as traffic infractions as defined in ORS 153.505, shall not be used to impeach the character of a witness in any criminal or civil action or proceeding. [Formerly 484.400]

**153.595 Appeal.** An appeal from a judgment involving a traffic infraction may be taken by either party:

(1) From a proceeding in justice's court or city court, as provided in ORS chapter 53;

(2) From a proceeding in district court, as provided in ORS chapter 46; or

(3) From a proceeding in circuit court, as provided in ORS 19.005 to 19.026 and 19.029 to 19.200. [Formerly 484.405; 1985 c.342 §23]

**153.600 Traffic Court Violations Bureau; duties and powers.** (1) Any court, when it determines that the efficient disposition of its business and the convenience of persons charged so requires, may establish a Traffic Court Violations Bureau and constitute the clerk or deputy clerk of the court or any other appropriate official within the jurisdiction in which the court is held as a violations clerk for the Traffic Court Violations Bureau. The violations clerk shall serve under the direction and control of the court appointing the clerk.

(2) In traffic offense cases the violations clerk shall accept, subject to the limitations set forth in this section and ORS 153.605:

(a) Written appearance, waiver of trial, plea of guilty and payment of fine and costs; or

(b) Payment of bail.

(3) The court shall by order designate the traffic offenses for which the violations clerk has authority over fines, costs, bail and bail forfeitures under this section and ORS 153.605. Such offenses shall not include any major traffic offense.

(4) The court shall establish schedules, within the limits prescribed by law, of the amounts of fines or bail to be imposed for first, second and subsequent offenses, designating each offense specifically. The order of the court establishing the schedules shall be prominently posted in the place where the bail and fines are paid. Bail, fines and costs shall be paid to, receipted by and accounted for by the violations clerk in the same manner as other bail, fines and costs are received by the court. [Formerly 484.310]

**153.605 Violation procedure; effect of previous offenses.** (1) Any person charged with any traffic offense within the authority of the violations clerk may:

(a) Upon signing an appearance, plea of guilty and waiver of trial, pay the clerk the fine established for the offense charged, and costs.

(b) Pay the clerk the bail established for the offense. Payment of bail under this paragraph constitutes consent to forfeiture of bail and disposition of the offense by the clerk as provided by the rules of the court. Payment of bail under this paragraph is not consent to forfeiture of bail if the bail is accompanied by:

(A) A plea of not guilty;

(B) A request for hearing; or

(C) A written statement of matters in explanation or mitigation under ORS 153.540.

(2) A city court may by rule provide for the disposition of violations of ordinances relating to parking by the violations clerk in the manner provided in subsection (1) of this section and ORS 153.600.

(3) A person who has been found guilty of, or who has signed a plea of guilty to, one or more previous traffic offenses in the preceding 12 months within the jurisdiction of the court shall not be permitted to appear before the violations clerk unless the court, by general order applying to certain specified offenses, permits such appearance. [Formerly 484.320]

**153.610 Classification of traffic infractions.** Traffic infractions are classified for the purpose of sentence into the following categories:

(1) Class A traffic infractions;

(2) Class B traffic infractions;

(3) Class C traffic infractions; and

(4) Class D traffic infractions. [Formerly 484.355]

**153.615 Schedule of penalties.** (1) Except as otherwise provided in the statute defining the offense, the penalty for committing a traffic infraction shall be a fine.

(2) A sentence to pay a fine for a traffic infraction shall be a sentence to pay an amount not exceeding:

- (a) \$940 for a Class A traffic infraction.
- (b) \$470 for a Class B traffic infraction.
- (c) \$190 for a Class C traffic infraction.
- (d) \$95 for a Class D traffic infraction.

[Formerly 484.360; 1993 c.531 §6]

**153.620 Penalty for offense not otherwise classified.** An offense defined in the Oregon Vehicle Code which is not classified as a crime or traffic infraction, or for which a penalty is not otherwise specifically provided, shall be considered a Class A traffic infraction. [Formerly 484.370]

**153.623 Bail and fines for certain traffic offenses.** Notwithstanding any other provision of law, a court that establishes bail for a person charged with violation of a traffic offense that is in a category described in this section, or a court that imposes a fine for violation of one of those offenses, shall not establish the bail or impose the fine at an amount less than that established for the category described under this section. This section does not require a court to impose bail upon the person if the court determines that the person may be released without bail. If the maximum fine allowable for an offense is less than the amount established under this section for the category of that offense, the court shall establish the bail or impose the fine at the maximum amount allowable for that offense. This section establishes the following minimum amounts for the described categories of traffic offenses:

- (1) Vehicle registration violations, \$40.
- (2) Equipment defects, \$40.
- (3) Violation of a specific speed limit imposed under law or of a posted speed limit, based on number of miles per hour in excess of speed limit as follows:
  - (a) One to 10 miles per hour in excess of speed limit, \$40.
  - (b) 11 to 20 miles per hour in excess of speed limit, \$95.
  - (c) 21 to 30 miles per hour in excess of speed limit, \$280.
  - (d) Over 30 miles per hour in excess of speed limit, \$470.
  - (e) Notwithstanding paragraphs (b) and (c) of this subsection, if the speed limit is 65 miles per hour and:

(A) The person is exceeding 65 miles per hour but not exceeding 75 miles per hour, \$95.

(B) The person is exceeding 75 miles per hour but not exceeding 85 miles per hour, \$280.

(C) The person is exceeding 85 miles per hour, \$470.

- (4) Speed racing, \$565.
- (5) Passing violations, \$40.
- (6) Pedestrian violations, \$10.
- (7) Bicycle violations, \$30.
- (8) Dealer or wrecker license violations, \$565.
- (9) License plate violations, \$280.
- (10) Truck license violations and prorate violations, \$95.
- (11) Failure to obtain Public Utility Commission permit, \$95.
- (12) Violations of laws on open liquor containers in vehicles, \$195.
- (13) Violations of laws relating to yielding or stopping for school buses or worker transport buses, \$290.
- (14) Careless driving, \$190.
- (15) Violation of winter parking permit requirements, \$20.
- (16) Failure to have driver license in possession, \$10.
- (17) Operating without driver license, \$190.
- (18) Misuse, failure to surrender or false application for driver license, \$280.
- (19) False name or identification to police officer, \$280.
- (20) Reckless driving, \$565.
- (21)(a) Infraction driving with suspended or revoked driver license, \$565.
- (b) Misdemeanor driving with suspended or revoked driver license, \$940.
- (c) Felony driving with suspended or revoked driver license, \$1,880.
- (22) Failure to perform duties of driver or witness, \$565.
- (23) Driving under the influence of intoxicants, \$565.
- (24) Attempting to elude police officer, \$565.
- (25) Overload violations other than ORS 818.040 and 818.340 (5)(b) based on weight in excess of allowable weight, the amounts established as fines under Schedule I in ORS 818.430.
- (26) Overload violation under ORS 818.340 (5)(b) based on weight in excess of allowable weight, the amounts established as fines under Schedule II in ORS 818.430.
- (27) Overload violations under ORS 818.040, based on weight in excess of allowable weight, the amounts established as fines under Schedule III in ORS 818.430.

(28) Failure or refusal to stop for and submit to measurement or weighing, \$1,880.

(29) Parking in a disabled parking space in violation of ORS 811.615 or unlawful use of a disabled person parking permit in violation of ORS 811.625, \$190.

(30) Violations not otherwise provided for in this section, as follows:

(a) \$50 if the violation is not a contributing factor to an accident.

(b) \$95 if the violation is a contributing factor to an accident. [1981 s.s. c.3 §105; 1983 c.571 §1; 1985 c.16 §450; 1987 c.730 §22; 1987 c.887 §15; 1987 c.897 §1; 1991 c.741 §9; 1993 c.531 §7]

**153.624 Costs for obtaining driving records.** In addition to any other costs charged a person convicted of a traffic offense, a court shall charge as costs and collect from any person convicted of a traffic offense any actual costs incurred in obtaining any driving records relating to the person. All costs collected under this section shall be paid as provided in ORS 153.630 (1). [Formerly 484.145]

**153.625 Records; notice to Department of Transportation.** (1) The judge or clerk of every court of this state having jurisdiction of any traffic offense, as defined for the Oregon Vehicle Code, including all local and municipal judicial officers in this state:

(a) Shall keep a full record of every case in which a person is charged with any such offense.

(b) Shall send the Department of Transportation an abstract of conviction or bail forfeiture for any person who is convicted or whose bail is forfeited.

(c) Shall send the department a copy of any final judgment of conviction of any person which results in mandatory suspension or revocation of driving privileges or commercial driver license under ORS 809.410, 813.400 or 813.403.

(d) Shall send the department a copy of any final judgment finding a person charged with a traffic offense guilty except for insanity and committed to the jurisdiction of the Psychiatric Security Review Board.

(2) The department shall keep such records in its office, and they shall be open to the inspection of any person during reasonable business hours.

(3) To comply with this section, a judge or clerk must comply with the following:

(a) Any information required by this section to be sent to the department must be sent within the time provided under ORS 810.370 and must include information required by ORS 810.370.

(b) Information shall not be sent to the department under this section concerning

convictions excluded from ORS 810.370. [Formerly 484.240; 1983 c.507 §1; 1985 c.16 §451; 1987 c.137 §1; 1989 c.636 §32]

**153.630 Disposition of moneys collected by courts.** (1) Costs and one-half of all fines and forfeited bail collected in traffic offense cases by any court having jurisdiction of the traffic offense shall be paid as follows:

(a) If collected in a circuit or district court, to be credited and distributed under ORS 137.293 and 137.295, as a monetary obligation payable to the state.

(b) If collected in a justice court, to be credited and distributed under ORS 137.293 and 137.295 to the treasurer of the county in which the offense occurred, as a monetary obligation payable to the county.

(c) If collected in a city court, to be credited and distributed under ORS 137.293 and 137.295 to the city treasurer, as a monetary obligation payable to the city.

(2) The other half of such fines and bail shall be paid as follows:

(a) If resulting from prosecutions initiated by or from arrests or complaints made by a member of the Oregon State Police, to be credited and distributed under ORS 137.293 and 137.295, as a monetary obligation payable to the state.

(b) If resulting from prosecutions initiated by or from arrests or complaints made by a motor carrier enforcement officer, to be credited and distributed under ORS 137.293 and 137.295, as a monetary obligation payable to the state.

(c) If resulting from prosecutions initiated by or from arrests or complaints made by a city police officer, to be credited and distributed under ORS 137.293 and 137.295 to the treasurer of the city, municipal or quasi-municipal corporation by which such police officer is employed, as a monetary obligation to that political subdivision of the state.

(d) If resulting from prosecutions initiated by or from arrests or complaints made by a sheriff, deputy sheriff or county weighmaster, to be credited and distributed under ORS 137.293 and 137.295 to the treasurer of the county in which the offense occurred, as a monetary obligation payable to that county and to be credited to the general fund of that county.

(e) If resulting from prosecutions for parking in a winter recreation parking location, to be credited and distributed under ORS 137.293 and 137.295, as a monetary obligation payable to the state.

(f) In other cases, to be credited and distributed under ORS 137.293 and 137.295, as a monetary obligation to the same entity to

which payment is made of the half provided for in subsection (1) of this section.

(3) If provisions of subsection (2)(b) or (e) of this section are applicable, and if the fine or penalty imposed is remitted, suspended or stayed, or the offender against whom the fine or penalty was levied or imposed serves time in jail in lieu of paying the fine or penalty or a part thereof, the committing judge or magistrate shall certify the facts thereof in writing to the State Court Administrator in the case of a district or circuit court or the Department of Revenue in the case of a justice or municipal court not later than the 10th day of the month next following the month in which the fine was remitted or penalty suspended. If any part of the fine is thereafter paid, it shall be remitted to the judge or magistrate who imposed the fine or penalty, who shall distribute it as provided in subsections (1) and (2) of this section.

(4) Payment of fines, costs and forfeited bail collected in a justice or city court under this section shall be made within the first 20 days of the month following the month in which collected. [Formerly 484.250; 1981 s.s. c.3 §107; 1983 c.164 §1; 1983 c.763 §47; 1985 c.16 §452; 1987 c.905 §17; 1991 c.67 §31; 1993 c.741 §102]

**153.635 Delinquency in paying moneys under ORS 153.630.** If any of the money collected under ORS 153.630 is not paid over as provided in that section by the 10th day of the second calendar month next following the month in which it is received, the person withholding it is delinquent in its payment and, in addition to the penalties prescribed by law, the person is personally liable therefor to the public bodies to which the money is payable, with interest at the rate established under ORS 305.220 from the delinquency date until paid. An action may be maintained in the name of the state for the recovery of the unpaid amounts with interest. [Formerly 484.260; 1989 c.934 §1]

#### **WILDLIFE AND COMMERCIAL FISHING INFRACTIONS AND VIOLATIONS**

**153.705 Private person may commence action.** A private person may commence an action for a violation of the wildlife and commercial fishing laws and rules adopted under those laws, as provided in ORS 153.710 (4). [Formerly 496.910]

**153.710 Citation for violation of wildlife or commercial fishing laws or rules; form of complaint.** (1) A citation conforming to the requirements of this section shall be used by individuals authorized to enforce any of the provisions of the wildlife and commercial fishing laws and rules adopted

under those laws and for citing any violations thereof.

(2) The citation shall consist of at least four parts. Additional parts may be inserted by law enforcement agencies for administrative use. The required parts are:

- (a) The complaint.
- (b) The abstract of record.
- (c) The police record.
- (d) The summons.

(3) Each of the parts shall contain the information or blanks required by rules of the Supreme Court under ORS 1.525.

(4) The complaint shall contain a form of certificate in which the complainant shall certify, under penalties of false swearing provided in ORS 162.075, that the complainant has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law or rule. The certification if made by a police officer need not be made before a magistrate or any other person. A private person shall certify before a magistrate, clerk or deputy clerk of the court and this action shall be entered in the court record. A certificate conforming to this section shall be deemed equivalent of a sworn complaint.

(5) The complaint shall be set aside by the court upon the motion of the defendant before plea when it does not conform to the requirements of this section. This section does not prohibit the use of a uniform citation for other offenses in addition to wildlife or commercial fishing law offenses. [Formerly 496.905]

**153.715 Minimum requirements for summons.** A summons in an alleged violation of the wildlife and commercial fishing laws and rules promulgated pursuant thereto is sufficient if it contains the following:

(1) The name of the court, the name of the person cited, the date on which the citation was issued, the name of the complainant and the time and place at which the person cited is to appear in court.

(2) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so, and the date, time and place at which the offense is alleged to have occurred.

(3) A notice to the person cited that a complaint will be filed with the court based on the offense.

(4) The amount of bail, if any, fixed for the offense. [Formerly 496.915]

**153.720 Minimum requirements for complaint.** Except as provided in this section, a complaint in an alleged violation of

the wildlife and commercial fishing laws and rules adopted under those laws is sufficient if it contains the following:

(1) The name of the court, the name of the state or of the city or other public body in whose name the action is brought and the name of the defendant.

(2) A statement or designation of the offense in such manner as can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the offense is alleged to have occurred.

(3) A certificate as provided in ORS 153.710 (4) signed by the complainant. [Formerly 496.920]

**153.725 Delivery of summons and complaint.** An officer issuing the citation shall cause the summons to be delivered to the person cited and shall cause the complaint to be delivered to the court. When the complaint is certified by a private person the court shall cause the summons to be delivered to the defendant. [Formerly 496.925]

**153.730 Forwarding of citation and court disposition information to Department of State Police.** (1) Each person who enforces the wildlife laws or commercial fishing laws shall cause the portion of the citation referred to in ORS 153.710 (2)(c), or a copy thereof, to be forwarded to the Department of State Police.

(2) When a person is convicted of violation of any provision of the wildlife laws or commercial fishing laws, or any rule promulgated pursuant thereto, or forfeits bail in connection therewith, the court in which such conviction or forfeiture occurs shall forward to the Department of State Police an abstract of record of the conviction or forfeiture. [Formerly 496.927]

**153.745 Defendant's appearance; bail; request for hearing; statement; guilty plea.** The defendant shall either appear in court at the time indicated in the summons, or prior to such time shall deliver to the court the summons, together with check or money order in the amount of the bail set forth in the summons, and enclosing therewith:

(1) A request for a hearing; or

(2) A statement of matters in explanation or mitigation of the offense charged; or

(3) The executed appearance, waiver of hearing and plea of guilty appearing on the summons. [Formerly 496.930]

**153.750 Statement as waiver of hearing and consent to judgment; bail forfeiture.** If a defendant has submitted to the court a written statement as provided in ORS 153.745 (2), it constitutes a waiver of

hearing and consent to judgment by the court declaring a forfeiture of bail on the basis of such statement and any testimony or written statement of the arresting officer or other witnesses which may be presented to the court. [Formerly 496.935]

**153.755 Fixing hearing date; notice to defendant; waiver.** If the defendant requests a hearing, or if pursuant to ORS 153.760 the court directs that a hearing be had, the court shall fix a date and time for the hearing and, unless notice is waived, shall at least five days in advance of the hearing mail to the defendant notice of the date and time so fixed. [Formerly 496.940]

**153.760 Hearing discretionary; powers of court on hearing and without hearing; judgment.** (1) In any case on an alleged violation of the wildlife and commercial fishing laws and rules promulgated pursuant thereto, the court may direct that a hearing be held. No sentence to jail may be imposed unless a hearing is held.

(2) The court may proceed to make a determination under any of the following circumstances:

(a) If a hearing is held, either at the request of the cited person or at the court's own direction, when the court makes a finding on the evidence presented at the hearing.

(b) If a hearing is not required by statute, directed by the court or requested by the cited person and the cited person has complied with ORS 153.745, when the court makes a finding on the citation, any plea and any evidence or other material submitted.

(c) If the court does not direct that a hearing be held, a hearing is not required by statute and the person has not complied with ORS 153.745 or made appearance, when the time indicated in the citation passes and the court makes a finding on the citation and any other evidence the judge determines appropriate.

(3) Upon completion of its determination under subsection (2) of this section, the court may enter the appropriate judgment and, if the determination is one of conviction, may do any of the following as part of the judgment:

(a) Impose a sentence of a fine.

(b) Direct that the fine be paid out of the bail deposit.

(c) Unless the court orders otherwise, remit the balance to the defendant or to any other person designated by the defendant.

(4) If the person complies with ORS 153.745 and deposits the amount of bail thereunder but neither the person nor the court requests a hearing and a hearing is not required by statute, no fine may be imposed

in excess of the bail deposited. If the person has not deposited bail under ORS 153.745 or has requested a hearing under ORS 153.745 without depositing bail and does not appear at the hearing, the court may impose any fine within the statutory limits for the offense.

(5) If a court sentences a person to pay a fine under this section when the person has not complied with ORS 153.745, the court is not precluded from:

(a) Taking any other action against the person as permitted by law for the person's failure to comply, including, but not limited to, sentencing the person further as permitted by law after the person is brought to hearing.

(b) Following any procedures established by law when the person fails to appear.

(6) If a judgment is entered under this section after a person has failed to comply with ORS 153.745 or make appearance, on motion and upon such terms as are just, the court may relieve a person from the judgment upon a showing that the failure of the cited person to comply with ORS 153.745 or to appear was due to mistake, inadvertence, surprise or excusable neglect. The motion must be made within a reasonable time, and in no event more than one year after the person receives notice of the judgment.

(7) No judgment may be entered under this section by reason of a person failing to comply with ORS 153.745 or make appearance unless the citation issued to the person contains a statement notifying the cited person that a monetary judgment may be entered against the person up to the maximum statutory limit for the offense if the cited person fails to comply with ORS 153.745 or appear at the time, date and court specified in the citation. [Formerly 496.945; 1985 c.272 §4; 1991 c.824 §5].

**153.765 Warrant for arrest; time limit on issuance; effect of failure to issue warrant.** (1) If a person cited fails to comply with the provisions of ORS 153.745, or if the person fails to appear at any time fixed by the court, a warrant for the arrest of the person may be issued. A warrant issued by a circuit, district or justice court may be

served, without further indorsement, in any county in this state.

(2) No warrant of arrest may be issued pursuant to this section after a period of 60 days from the date of the entry of an order declaring a forfeiture of bail or other security given by the arrested person. Unless a warrant has been issued before the expiration of that period, the order of forfeiture shall be deemed a final disposition of the case. [Formerly 496.950]

## PENALTIES

**153.990 Penalty for false certification on infractions.** Any person who in connection with the issuance of a citation, or the filing of a complaint, under ORS 8.665, 153.110 to 153.310 and this section, knowingly certifies falsely to the matters set forth therein commits a Class A misdemeanor. [1981 c.692 §14]

**153.995 Penalty for false certification on traffic offense.** Any person who in connection with the issuance of a citation, or the filing of a complaint, for a traffic offense, as defined in ORS 153.500, knowingly certifies falsely to the matters set forth therein commits a Class A misdemeanor. [1959 c.664 §19; 1975 c.451 §156; 1981 c.818 §39; formerly 484.990]

**153.997 Penalty for false information for boating or wildlife citation.** (1) A person commits the offense of giving false information to a police officer for a citation if the person knowingly uses or gives a false or fictitious name, address or date of birth to any police officer for the purpose of the officer's issuing or serving the person a citation under authority of ORS 153.325 to 153.430 or 153.705 to 153.765.

(2) A person who violates this section commits a Class A misdemeanor. [1991 c.806 §1]

**Note:** 153.997 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 153 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## CHAPTERS 154 AND 155

[Reserved for expansion]

**PROCEDURE IN CRIMINAL MATTERS GENERALLY**

---