

# Chapter 137

2017 EDITION

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## JUDGMENT; EXECUTION; PAROLE; PROBATION

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**JUDGMENT**  
(Generally)

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

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

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

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

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

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

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

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

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

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

(9) When imposing sentence for a felony committed on or after November 1, 1989, the court shall submit sentencing information to the commission in accordance with rules of the commission.

(10) A judgment of conviction that includes a term of imprisonment for a felony committed on or after November 1, 1989, shall state the length of incarceration and the length of post-prison supervision. The judgment of conviction shall also provide that if the defendant violates the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with rules of the commission. [Amended by 1971 c.743 §322; 1981 c.181 §1; 1987 c.320 §27; 1989 c.790 §6; 1989 c.849 §1; 1993 c.14 §1; 2003 c.576 §388; 2005 c.10 §2]

**137.012 Suspension of imposition or execution of sentence of person convicted of certain sexual offenses; term of probation.** If the court suspends the imposition or execution of a part of a sentence of, or imposes a sentence of probation on, any person convicted of violating or attempting to violate ORS 163.365, 163.375, 163.395, 163.405, 163.408, 163.411, 163.425 or 163.427, the court shall sentence the defendant to probation for a period of at least five years and no more than the maximum statutory indeterminate sentence for the offense. [1991 c.831 §2; 1993 c.14 §2; 1993 c.301 §2; 1999 c.161 §3]

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

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

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

**137.017 Disposition of fines, costs and security deposits received by court.** Except as otherwise specifically provided by law, all fines, costs, security deposits and other amounts ordered or required to be paid in criminal actions in circuit courts are monetary obligations payable to the state and shall be deposited in the Criminal Fine Account. [1981 s.s. c.3 §102; 1983 c.763 §42; 1987 c.905 §5; 1999 c.1051 §253; 2011 c.597 §122; 2012 c.89 §2]

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

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

(b) Except for good cause shown or as otherwise provided in this paragraph, a court shall not delay for more than 31 calendar days after the plea or verdict the sentencing of a defendant held in custody on account of the pending proceedings. Except for good cause shown or as otherwise provided in this paragraph, a court shall not delay for more than 56 calendar days after the plea or verdict the sentencing of a defendant not held in custody on account of the pending proceedings. If the defendant is not in custody and the court does not pronounce judgment within 56 calendar days after the plea or verdict, any period of probation imposed as a part of a subsequent judgment shall begin to run from the date of the plea or verdict.

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

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

(5)(a) At the time a court pronounces judgment the defendant, if present, shall be advised of the right to appeal and of the procedure for protecting that right. If the defendant is not present, the court shall advise the defendant in writing of the right to appeal and of the procedure for protecting that right.

(b) If the trial court sentences the defendant subsequent to a plea of guilty or no contest or upon probation revocation or sentence suspension, or if the trial court sentences the defendant after judgment of an appellate court or a post-conviction relief court, the court shall advise the defendant of the limitations on reviewability imposed by ORS 138.105 in person or, if the defendant is not present, in writing.

(6) If the defendant is financially eligible for appointment of counsel at state expense on appeal under ORS 138.500, trial counsel shall determine whether the defendant wishes to pursue an appeal. If the defendant wishes to pursue an appeal, trial counsel shall transmit to the office of public defense services established under ORS 151.216, on a form prepared by the office, information necessary to perfect the appeal. [Amended by 1971 c.565 §18a; 1987 c.242 §1; 1991 c.111 §12; 2001 c.644 §4; 2003 c.14 §57; 2017 c.529 §23]

**137.030 Presence of defendant at pronouncement of judgment.** For the purpose of giving judgment, if the conviction is for:

(1) A felony, the defendant shall be personally present.

(2) A misdemeanor, judgment may be given in the absence of the defendant. [Amended by 1993 c.581 §1; 1997 c.827 §1; 2005 c.566 §9]

**137.040 Bringing defendant in custody to pronouncement of judgment.** If the defendant is in custody, the court shall:

(1) Direct the officer in whose custody the defendant is to bring the defendant before the court for judgment and the officer shall do so accordingly; or

(2) Ensure that arrangements for the defendant to appear for judgment by simultaneous electronic transmission as described in ORS 131.045 have been made. [Amended by 2005 c.566 §10]

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

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

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

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CIRCUIT COURT  
FOR THE COUNTY OF  
\_\_\_\_\_, STATE OF OREGON  
IN THE NAME OF  
THE STATE OF OREGON

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

A B having been on the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, convicted in this court of the crime of (designating it generally), you are commanded to arrest the above-named defendant forthwith and bring the defendant before such court for judgment or, if the court has adjourned, deliver the defendant into the custody of the jailor of this county. By order of the court.

Witness my hand and seal of said circuit court, affixed at \_\_\_\_\_, in said county, this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

[L. S.]

C D, Clerk of the Court

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[Amended by 1957 c.659 §1; 1971 c.423 §1; 2015 c.212 §16]

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

**137.071 Requirements for judgment documents.** (1) The judge in a criminal action shall ensure that the creation and filing of a judgment document complies with this section. On appeal, the appellate court may give leave as provided in ORS 19.270 for entry of a judgment document that complies with this section but may not reverse or set aside a judgment, determination or disposition on the sole ground that the judgment document fails to comply with this section.

(2) A judgment document in a criminal action must comply with ORS 18.038. In addition, a judgment document in a criminal action must:

(a) Indicate whether the defendant was determined to be financially eligible for purposes of appointed counsel in the action.

(b) Indicate whether the court appointed counsel for the defendant in the action.

(c) If there is no attorney for the defendant, indicate whether the defendant knowingly waived any right to an attorney after having been informed of that right.

(d) Include the identity of the recorder or reporter for the proceeding or action who is to be served under ORS 138.081.

(e) Include any information specifically required by statute or by court rule.

(f) Specify clearly the court's determination for each charge in the information, indictment or complaint.

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

(h) Include the identities of the attorney for the state and the attorney, if any, for the defendant.

(3) A judgment document in a criminal action that includes a money award, as defined in ORS 18.005, must comply with ORS 18.048.

(4) The requirements of this section do not apply to a judgment document if the action was commenced by the issuance of a uniform citation adopted under ORS 1.525 and the court has used the space on the citation for the entry of a judgment. The exemption provided by this subsection does not

apply if any indictment, information or complaint other than a uniform citation is filed in the action. [1989 c.472 §2; 1995 c.117 §1; 1997 c.526 §3; 2001 c.962 §88; 2003 c.300 §§1,2; 2003 c.576 §162]

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

**137.073** [1989 c.472 §3; repealed by 2003 c.576 §580]

**137.074 Fingerprints of convicted felons and certain misdemeanants required.** When a person is convicted of a felony, a Class A misdemeanor or a sex crime, as defined in ORS 163A.005, the court shall ensure that the person's fingerprints have been taken. The law enforcement agency attending upon the court is the agency responsible for obtaining the fingerprints. The agency attending upon the court may, by agreement, arrange for another law enforcement agency to obtain the fingerprints on its behalf. [1989 c.790 §19; 1997 c.538 §14]

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

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

**137.076 Blood or buccal sample and thumbprint of certain convicted defendants required; application.** (1) This section applies to any person convicted of:

(a) A felony;

(b) Sexual abuse in the third degree or public indecency;

(c) Conspiracy or attempt to commit rape in the third degree, sodomy in the third degree, sexual abuse in the second degree, burglary in the second degree or promoting prostitution; or

(d) Murder or aggravated murder.

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

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

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

(c) The appropriate agency shall cause a blood or buccal sample to be obtained and

transmitted to the Department of State Police. The agency shall cause the sample to be obtained as soon as practicable after conviction. The agency shall obtain the convicted person's thumbprint at the same time the agency obtains the blood or buccal sample. The agency shall include the thumbprint with the identifying information that accompanies the sample. Whenever an agency is notified by the Department of State Police that a sample is not adequate for analysis, the agency shall obtain and transmit a blood sample. The appropriate agency shall be:

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

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

(3)(a) A blood sample may only be drawn in a medically acceptable manner by a licensed physician, a person acting under the direction or control of a licensed physician, a physician assistant licensed under ORS 677.505 to 677.525, a nurse licensed under ORS chapter 678 or a qualified medical technician.

(b) A buccal sample may be obtained by anyone authorized to do so by the appropriate agency. The person obtaining the buccal sample shall follow the collection procedures established by the Department of State Police.

(c) A person authorized by this subsection to obtain a blood or buccal sample shall not be held civilly liable for obtaining a sample in accordance with this subsection and subsection (2) of this section, ORS 161.325 and 419C.473. The sample shall also be obtained and transmitted in accordance with any procedures that may be established by the Department of State Police. However, no test result or opinion based upon a test result shall be rendered inadmissible as evidence solely because of deviations from procedures adopted by the Department of State Police that do not affect the reliability of the opinion or test result.

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

(a) The Department of State Police notifies the court or the appropriate agency that it has previously received an adequate blood or buccal sample obtained from the convicted person in accordance with this section or ORS 161.325 or 419C.473; or

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

(5) The provisions of subsections (1) to (4) of this section apply to any person who, on



or after September 29, 1991, is serving a term of incarceration as a sentence or as a condition of probation imposed for conviction of an offense listed in subsection (1) of this section, and any such person shall submit to the obtaining of a blood or buccal sample. Before releasing any such person from incarceration, the supervisory authority shall cause a blood or buccal sample and the person's thumbprint to be obtained and transmitted in accordance with subsections (1) to (4) of this section. [1991 c.669 §§2,5; 1993 c.14 §3; 1993 c.33 §298; 1993 c.301 §3; 1999 c.97 §1; 2001 c.852 §1; 2014 c.45 §23]

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

### (Presentence Report)

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

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

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

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

(4) The district attorney, the defendant or the counsel of the defendant, as provided in ORS 137.079. The district attorney and counsel of the defendant may retain a copy of the presentence report as a part of the permanent records of the case. The district attorney and counsel of the defendant may disclose the contents of the presentence report to individuals or agencies when preparing for the sentencing of the defendant. "Individuals and agencies" include victims, psychologists, psychiatrists, physicians li-

censed under ORS 677.100 to 677.228 and any other person or agency who may assist the state or the defendant at the time of sentencing. [1973 c.836 §260; 1987 c.320 §28; 1989 c.408 §1; 2017 c.409 §6]

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

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

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

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

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

(b) Except as otherwise provided in paragraph (c) of this subsection, the defendant's criminal history as set forth in the presentence report shall be reviewable on appeal.

ence report shall satisfy the state's burden of proof as to the defendant's criminal history.

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

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

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

(f) Except as provided in ORS 138.105 and 138.115, the court's decision on issues relating to a defendant's criminal history shall not be reviewable on appeal. [1973 c.836 §261; 1977 c.372 §11; 1983 c.649 §1; 1989 c.408 §2; 1989 c.790 §8; 2017 c.529 §24]

#### (Aggravation or Mitigation)

**137.080 Consideration of circumstances in aggravation or mitigation of punishment.** (1) After a plea or verdict of guilty, or after a verdict against the defendant on a plea of former conviction or acquittal, in a case where discretion is conferred upon the court as to the extent of the punishment to be inflicted, the court, upon the suggestion of either party that there are circumstances which may be properly considered in aggravation or mitigation of the punishment, may, in its discretion, hear the same summarily at a specified time and upon such notice to the adverse party as it may direct.

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

**137.085 Age and physical disability of victim as factors in sentencing.** When a court sentences a defendant convicted of any crime involving a physical or sexual assault, the court shall give consideration to a victim's particular vulnerability to injury in

such case, due to the victim's youth, advanced age or physical disability. Such particular vulnerability of the victim is a fact enhancing the seriousness of any assault, and the court shall consider it as such in imposing the sentence within the limits otherwise provided by law. [1985 c.767 §1]

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

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

(a) Any evidence received during the proceeding;

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

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

(2) In determining mitigation, the court may consider:

(a) Evidence regarding the defendant's status as a servicemember as defined in ORS 135.881.

(b) Whether the defendant committed the crime while under duress, compulsion, direction or pressure from another person who has:

(A) Committed acts of domestic violence, as defined in ORS 135.230, against the defendant;

(B) Committed acts of abuse as a family or household member of the defendant, as those terms are defined in ORS 107.705, against the defendant; or

(C) Used force, intimidation, fraud or coercion to cause the defendant to engage, or attempt to engage, in a commercial sex act.

(3) When a witness is so sick or infirm as to be unable to attend, the deposition of the witness may be taken out of court at such time and place, and upon such notice to the adverse party, and before such person authorized to take depositions, as the court directs. [Amended by 1965 c.400 §1; 1973 c.836 §259; 1989 c.790 §10; 2013 c.331 §1; 2017 c.123 §1]

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

**(Compensatory Fine)**

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

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

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

**(Restitution)**

**137.103 Definitions for ORS 137.101 to 137.109.** As used in ORS 137.101 to 137.109:

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

(2) "Economic damages":

(a) Has the meaning given that term in ORS 31.710, except that "economic damages" does not include future impairment of earning capacity; and

(b) In cases involving criminal activities described in ORS 163.263, 163.264 or 163.266, includes the greater of:

(A) The value to the defendant of the victim's services as defined in ORS 163.261; or

(B) The value of the victim's services, as defined in ORS 163.261, computed using the minimum wage established under ORS 653.025 and the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

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

(4) "Victim" means:

(a) The person or decedent against whom the defendant committed the criminal offense, if the court determines that the person or decedent has suffered or did suffer economic damages as a result of the offense.

(b) Any person not described in paragraph (a) of this subsection whom the court determines has suffered economic damages as a result of the defendant's criminal activities.

(c) The Criminal Injuries Compensation Account, if it has expended moneys on behalf of a victim described in paragraph (a) of this subsection.

(d) An insurance carrier, if it has expended moneys on behalf of a victim described in paragraph (a) of this subsection.

(e) Upon the death of a victim described in paragraph (a) or (b) of this subsection, the estate of the victim.

(f) The estate, successor in interest, trust, trustee, successor trustee or beneficiary of a trust against which the defendant committed the criminal offense, if the court determines that the estate, successor in interest, trust, trustee, successor trustee or beneficiary of a trust suffered economic damages as a result of the offense.

(5) "Victim" does not include any coparticipant in the defendant's criminal activities. [1977 c.371 §1; 1981 c.637 §1; 1983 c.488 §1; 1983 c.740 §16; 1987 c.905 §16; 2005 c.564 §1; 2005 c.642 §4; 2007 c.811 §5; 2015 c.9 §1]

**137.105 Authority of trial court during pendency of appeal.** (1) The trial court retains authority during the pendency of an appeal to determine restitution and to enter a supplemental judgment specifying the amount and terms of restitution or an order denying restitution.

(2) If the trial court enters a supplemental judgment or an order under subsection (1) of this section during the pendency of an appeal, the trial court administrator shall immediately provide a copy of the supplemental judgment or the order to the appellate court. [2017 c.529 §19]

**Note:** 137.105 was added to and made a part of 137.101 to 137.109 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**137.106 Restitution to victims; objections by defendant; disclosure to defendant.** (1)(a) When a person is convicted of a crime, or a violation as described in ORS 153.008, that has resulted in economic

damages, the district attorney shall investigate and present to the court, at the time of sentencing or within 90 days after entry of the judgment, evidence of the nature and amount of the damages. The court may extend the time by which the presentation must be made for good cause. If the court finds from the evidence presented that a victim suffered economic damages, in addition to any other sanction it may impose, the court shall enter a judgment or supplemental judgment requiring that the defendant pay the victim restitution in a specific amount that equals the full amount of the victim's economic damages as determined by the court. The lien, priority of the lien and ability to enforce the specific amount of restitution established under this paragraph by a supplemental judgment relates back to the date of the original judgment that is supplemented.

(b) Notwithstanding paragraph (a) of this subsection, a court may order that the defendant pay the victim restitution in a specific amount that is less than the full amount of the victim's economic damages only if:

(A) The victim or, if the victim is an estate, successor in interest, trust or other entity, an authorized representative of the victim consents to the lesser amount, if the conviction is not for a person felony; or

(B) The victim or, if the victim is an estate, successor in interest, trust or other entity, an authorized representative of the victim consents in writing to the lesser amount, if the conviction is for a person felony.

(c) As used in this subsection, "person felony" has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

(2) After the district attorney makes a presentation described in subsection (1) of this section, if the court is unable to find from the evidence presented that a victim suffered economic damages, the court shall make a finding on the record to that effect.

(3) No finding made by the court or failure of the court to make a finding under this section limits or impairs the rights of a person injured to sue and recover damages in a civil action as provided in ORS 137.109.

(4)(a) If a judgment or supplemental judgment described in subsection (1) of this section includes restitution, a court may delay the enforcement of the monetary sanctions, including restitution, only if the defendant alleges and establishes to the satisfaction of the court the defendant's inability to pay the judgment in full at the time the judgment is entered. If the court finds that the defendant is unable to pay, the court

may establish or allow an appropriate supervising authority to establish a payment schedule, taking into consideration the financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant. The supervising authority shall be authorized to modify any payment schedule established under this section.

(b) As used in this subsection, "supervising authority" means any state or local agency that is authorized to supervise the defendant.

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

(6)(a) At least 10 days prior to the presentation described in subsection (1) of this section, the district attorney shall:

(A) Disclose to the defendant the names of any witnesses that may be called during the presentation; and

(B) Provide the defendant with copies of, or allow the defendant to inspect, any exhibits that will be used or introduced during the presentation.

(b) If the court finds that the district attorney has violated the requirements of this subsection, the court shall grant a continuance to allow additional time for preparation upon request of the defendant. Any additional time granted under this paragraph may not count toward the 90-day time limitation described in subsection (1) of this section. [1977 c.371 §2; 1983 c.724 §1; 1993 c.533 §1; 1997 c.313 §23; 1999 c.1051 §124; 2003 c.670 §1; 2005 c.564 §2; 2007 c.425 §1; 2007 c.482 §1; 2013 c.388 §1; 2015 c.9 §2]

### **137.107 Authority of court to amend part of judgment relating to restitution.**

At any time after entry of a judgment upon conviction of a crime, the court may amend that part of the judgment relating to restitution if, in the original judgment, the court included language imposing, recommending or requiring restitution but failed to conform the judgment to the requirements of ORS 18.048 or any other law governing the form of judgments in effect before January 1, 2004. [1997 c.526 §2; 2003 c.576 §163]

**Note:** 137.107 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

### **137.108 Restitution when defendant has entered into diversion agreement.** (1)

When a person has entered into a driving while under the influence of intoxicants diversion agreement and the person's actions

resulted in economic damages, the district attorney shall investigate and present to the court within 90 days of when the diversion agreement is entered, evidence of the nature and amount of the damages. If the court finds from the evidence presented that a victim suffered economic damages, the court shall order the defendant to pay restitution and include in the diversion agreement one of the following:

(a) A requirement that the defendant pay the victim restitution in a specific amount that equals the full amount of the victim's economic damages as determined by the court.

(b) A requirement that the defendant pay the victim restitution in a specific amount that is less than the full amount of the victim's economic damages, with the consent of the victim.

(2) After the district attorney makes a presentation described in subsection (1) of this section, if the court is unable to find from the evidence presented that a victim suffered economic damages, the court shall make a finding on the record to that effect.

(3) A finding made by the court under this section, or a failure of the court to make a finding, does not limit or impair the right of a person injured to sue and recover damages in a civil action as provided in ORS 137.109.

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

(5) As used in this section, "victim" includes any person the court determines has suffered economic damages as a result of the act that has brought the defendant before the court for the purpose of entering into a driving while under the influence of intoxicants diversion agreement. [2013 c.78 §7]

**137.109 Effect of restitution order on other remedies of victim; credit of restitution against subsequent civil judgment; effect of criminal judgment on subsequent civil action.** (1) Nothing in ORS 137.103 to 137.109, 137.540, 144.102, 144.275, 161.675 and 161.685 limits or impairs the right of a person injured by a defendant's commission of a crime, by a defendant's commission of a violation described in ORS 153.008, or by a defendant's commission of an act that has brought the defendant before the court for the purpose of entering into a driving while under the influence of intoxicants diversion agreement, to sue and recover damages from the defendant in a civil action. Evidence that the defendant has paid or been ordered to pay restitution pursuant

to ORS 137.103 to 137.109, 137.540, 144.102, 144.275, 161.675 and 161.685 may not be introduced in any civil action arising out of the facts or events that were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in such civil action.

(2) If conviction in a criminal trial necessarily decides the issue of a defendant's liability for economic damages of a victim, that issue is conclusively determined as to the defendant if it is involved in a subsequent civil action. [1977 c.371 §7; 1993 c.533 §2; 1997 c.526 §4; 1999 c.1051 §125; 2005 c.564 §3; 2013 c.78 §8]

**137.110** [Repealed by 1973 c.836 §358]

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

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

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

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

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

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

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

**(Collection of Monetary Obligations)**

**137.118 Assignment of judgments for collection of monetary obligation; costs of collection.** (1) Judgments in criminal actions that impose monetary obligations, including judgments requiring the payment of fines, costs, assessments, compensatory fines, attorney fees, forfeitures or restitution, may be assigned by the state, by a municipal court or by a justice court for collection.

(2)(a) The state may assign a judgment to the Department of Revenue or a private collection agency.

(b) A justice court may assign a judgment to a private collection agency or, in a criminal action, to the Department of Revenue for the purposes described in ORS 156.315.

(c) A municipal court may assign a judgment to:

(A) A private collection agency; or

(B) The Department of Revenue for the purposes described in subsections (6) to (8) of this section, if the judgment was entered in a criminal action and part of the judgment is payable to the State of Oregon.

(d) Nothing in this subsection limits the right of a municipal court or a justice court to assign for collection judgments in matters other than criminal actions.

(3) A municipal or justice court may add to any judgment in a criminal action that includes a monetary obligation a fee for the

cost of collection if the court gives the defendant a period of time to pay the obligation after the date of imposition of the sentence or after the date of the hearing or proceeding that results in the imposition of the financial obligation. The fee may not exceed 25 percent of the monetary obligation imposed by the court without the addition of the cost of collection and may not be more than \$250. The fee shall be waived or suspended by the court if the defendant pays the monetary obligation in the manner required by the court.

(4) A state court shall add to any judgment in a criminal action that includes a monetary obligation the fees required by ORS 1.202.

(5) As used in subsections (1) to (5) of this section, "criminal action" has the meaning given that term in ORS 131.005.

(6) If part of a judgment in a criminal action, as described in subsections (1) to (5) of this section, is payable to the State of Oregon, a municipal court may assign the judgment to the Collections Unit in the Department of Revenue for the following purposes:

(a) To determine whether refunds or other sums are owed to the debtor by the department; and

(b) To deduct the amount of debt from any refunds or other sums owed to the debtor by the department.

(7) If the Collections Unit determines that refunds or other sums are owed to the debtor, the department shall deduct the amount of the debt from any refunds or other sums owed to the debtor by the department. After also deducting costs of its actions under subsections (6) to (8) of this section, the department shall remit the amount deducted from refunds or other sums owed to the debtor to the municipal court that assigned the judgment.

(8) A debtor whose account is assigned to the Department of Revenue for setoff under subsections (6) to (8) of this section is entitled to the notice required by ORS 293.250 (3)(d). [1993 c.531 §1; 1995 c.512 §2; 1997 c.801 §99; 1999 c.64 §1; 2001 c.823 §19; 2003 c.375 §1; subsections (6) to (8) of 2005 Edition enacted as 2005 c.501 §1; 2005 c.501 §2; 2015 c.766 §10; 2017 c.746 §22]

**Note:** The amendments to 137.118 by section 22, chapter 746, Oregon Laws 2017, become operative July 1, 2018. See section 24, chapter 746, Oregon Laws 2017. The text that is operative until July 1, 2018, is set forth for the user's convenience.

**137.118.** (1) Judgments in criminal actions that impose monetary obligations, including judgments requiring the payment of fines, costs, assessments, compensatory fines, attorney fees, forfeitures or restitution, may be assigned by the state, by a municipal court or by a justice court for collection.

(2)(a) The state may assign a judgment to the Department of Revenue or a private collection agency.

(b) A justice court may assign a judgment to a private collection agency or, in a criminal action, to the Department of Revenue for the purposes described in ORS 156.315.

(c) A municipal court may assign a judgment to:

(A) A private collection agency; or

(B) The Department of Revenue for the purposes described in subsections (6) to (8) of this section, if the judgment was entered in a criminal action and part of the judgment is payable to the State of Oregon.

(d) Nothing in this subsection limits the right of a municipal court or a justice court to assign for collection judgments in matters other than criminal actions.

(3) A municipal or justice court may add to any judgment in a criminal action that includes a monetary obligation a fee for the cost of collection if the court gives the defendant a period of time to pay the obligation after the date of imposition of the sentence or after the date of the hearing or proceeding that results in the imposition of the financial obligation. The fee may not exceed 25 percent of the monetary obligation imposed by the court without the addition of the cost of collection and may not be more than \$250. The fee shall be waived or suspended by the court if the defendant pays the monetary obligation in the manner required by the court.

(4) A state court shall add to any judgment in a criminal action that includes a monetary obligation the fees required by ORS 1.202.

(5) As used in subsections (1) to (5) of this section, "criminal action" has the meaning given that term in ORS 131.005.

(6) If part of a judgment in a criminal action, as described in subsections (1) to (5) of this section, is payable to the State of Oregon, a municipal court may assign the judgment to the Collections Unit in the Department of Revenue for the following purposes:

(a) To determine whether refunds or other sums are owed to the debtor by the department; and

(b) To deduct the amount of debt from any refunds or other sums owed to the debtor by the department.

(7) If the Collections Unit determines that refunds or other sums are owed to the debtor, the department shall deduct the amount of the debt from any refunds or other sums owed to the debtor by the department. After also deducting costs of its actions under subsections (6) to (8) of this section, the department shall remit the amount deducted from refunds or other sums owed to the debtor to the municipal court that assigned the judgment.

(8) A debtor whose account is assigned to the Department of Revenue for setoff under subsections (6) to (8) of this section is entitled to the notice required by ORS 293.250 (3)(e) and to the opportunity for payment in ORS 293.250 (3)(d).

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

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

### (Term and Place of Confinement)

**137.120 Term of sentence; reasons to be stated on record.** (1) Whenever any person is convicted of a felony committed prior to November 1, 1989, the court shall, unless it imposes other than a sentence to serve a term of imprisonment in the custody of the

Department of Corrections, sentence such person to imprisonment for an indeterminate period of time, but stating and fixing in the judgment and sentence a maximum term for the crime, which shall not exceed the maximum term of imprisonment provided by law therefor; and judgment shall be given accordingly. Such a sentence shall be known as an indeterminate sentence. The court shall state on the record the reasons for the sentence imposed.

(2) Whenever any person is convicted of a felony committed on or after November 1, 1989, the court shall impose sentence in accordance with rules of the Oregon Criminal Justice Commission.

(3) This section does not affect the indictment, prosecution, trial, verdict, judgment or punishment of any felony committed before June 14, 1939, and all laws now and before that date in effect relating to such a felony are continued in full force and effect as to such a felony. [Amended by 1967 c.372 §2; 1971 c.743 §324; 1977 c.372 §12; 1987 c.320 §29; 1989 c.790 §11]

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

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

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

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

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

(3) When a defendant is sentenced for a crime committed while the defendant was incarcerated after sentencing for the commission of a previous crime, the court shall provide that the sentence for the new crime be consecutive to the sentence for the previous crime.

(4) When a defendant has been found guilty of more than one criminal offense arising out of a continuous and uninterrupted course of conduct, the sentences imposed for each resulting conviction shall be concurrent unless the court complies with the procedures set forth in subsection (5) of this section.

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

(a) That the criminal offense for which a consecutive sentence is contemplated was not merely an incidental violation of a separate statutory provision in the course of the commission of a more serious crime but rather was an indication of defendant's willingness to commit more than one criminal offense; or

(b) The criminal offense for which a consecutive sentence is contemplated caused or created a risk of causing greater or qualitatively different loss, injury or harm to the victim or caused or created a risk of causing loss, injury or harm to a different victim than was caused or threatened by the other offense or offenses committed during a continuous and uninterrupted course of conduct. [1987 c.2 §12; 1991 c.67 §29; 1991 c.111 §14; 1995 c.657 §2; 2003 c.14 §58]

**137.124 Commitment of defendant to Department of Corrections or county; place of confinement; transfer of inmates; juveniles.** (1) If the court imposes a sentence upon conviction of a felony that includes a term of incarceration that exceeds 12 months:

(a) The court shall not designate the correctional facility in which the defendant is to be confined but shall commit the defendant to the legal and physical custody of the Department of Corrections; and

(b) If the judgment provides that the term of incarceration be served consecutively to a term of incarceration of 12 months or less that was imposed in a previous proceeding by a court of this state upon conviction of a felony, the defendant shall serve any remaining part of the previously imposed term of incarceration in the legal and physical custody of the Department of Corrections.

(2)(a) If the court imposes a sentence upon conviction of a felony that includes a

term of incarceration that is 12 months or less, the court shall commit the defendant to the legal and physical custody of the supervisory authority of the county in which the crime of conviction occurred.

(b) Notwithstanding paragraph (a) of this subsection, when the court imposes a sentence upon conviction of a felony that includes a term of incarceration that is 12 months or less, the court shall commit the defendant to the legal and physical custody of the Department of Corrections if the court orders that the term of incarceration be served consecutively to a term of incarceration that exceeds 12 months that was imposed in a previous proceeding or in the same proceeding by a court of this state upon conviction of a felony.

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

(4) If the court imposes a sentence of imprisonment upon conviction of a misdemeanor, it shall commit the defendant to the custody of the supervisory authority of the county in which the crime of conviction occurred.

(5)(a) When a person under 18 years of age at the time of committing the offense and under 20 years of age at the time of sentencing is committed to the Department of Corrections under ORS 137.707, the Department of Corrections shall transfer the physical custody of the person to the Oregon Youth Authority as provided in ORS 420.011 if:

(A) The person will complete the sentence imposed before the person attains 25 years of age;

(B) The Department of Corrections and the Oregon Youth Authority determine that, because of the person's age, immaturity, mental or emotional condition or risk of physical harm to the person, the person should not be incarcerated initially in a Department of Corrections institution; or

(C) The person is under 18 years of age at the time of sentencing and commitment.

(b) A person placed in the custody of the Oregon Youth Authority under this subsection who is at least 18 years of age shall be returned to the physical custody of the Department of Corrections whenever the Director of the Oregon Youth Authority, after consultation with the Department of Corrections, determines that the conditions or circumstances that warranted the transfer of

custody under this subsection are no longer present.

(c) Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Corrections transfer the person described in this subsection directly to a youth correction facility for physical custody without first delivering the person to the Department of Corrections. As part of the agreement with the Department of Corrections, the sheriff may designate the county juvenile department or the Oregon Youth Authority to conduct the direct transfer described in this paragraph if the sheriff has entered into a written agreement with the county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

(6)(a) When a person under 18 years of age at the time of committing the offense and under 20 years of age at the time of sentencing is committed to the legal and physical custody of the Department of Corrections or the supervisory authority of a county following waiver under ORS 419C.349, 419C.352, 419C.364 or 419C.370 or sentencing under ORS 137.707 (5)(b)(A) or (7)(b) or 137.712, the Department of Corrections or the supervisory authority of a county shall transfer the person to the physical custody of the Oregon Youth Authority for placement as provided in ORS 420.011 (3). The terms and conditions of the person's incarceration and custody are governed by ORS 420A.200 to 420A.206. Notwithstanding ORS 137.320, the sheriff may by agreement with the Department of Corrections or the supervisory authority of a county transfer the person described in this subsection directly to a youth correction facility for physical custody without first delivering the person to the Department of Corrections or supervisory authority of the county. As part of the agreement with the Department of Corrections or supervisory authority of the county, the sheriff may designate the county juvenile department or the Oregon Youth Authority to conduct the direct transfer described in this paragraph if the sheriff has entered into a written agreement with the county juvenile department, the Oregon Youth Authority, or both, to provide the direct transfer.

(b) Notwithstanding ORS 137.320, when a person under 16 years of age is waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment in the county jail, the sheriff shall transfer the person to a youth correction facility for physical custody as provided in ORS 420.011 (3).

(7) If the Director of the Oregon Youth Authority concurs in the decision, the De-



partment of Corrections or the supervisory authority of a county shall transfer the physical custody of a person committed to the Department of Corrections or the supervisory authority of the county under subsection (1) or (2) of this section to the Oregon Youth Authority as provided in ORS 420.011 (2) if:

(a) The person was at least 18 years of age but under 20 years of age at the time of committing the felony for which the person is being sentenced to a term of incarceration;

(b) The person is under 20 years of age at the time of commitment to the Department of Corrections or the supervisory authority of the county;

(c) The person has not been committed previously to the legal and physical custody of the Department of Corrections or the supervisory authority of a county;

(d) The person has not been convicted and sentenced to a term of incarceration for the commission of a felony in any other state;

(e) The person will complete the term of incarceration imposed before the person attains 25 years of age;

(f) The person is likely in the foreseeable future to benefit from the rehabilitative and treatment programs administered by the Oregon Youth Authority;

(g) The person does not pose a substantial danger to Oregon Youth Authority staff or persons in the custody of the Oregon Youth Authority; and

(h) At the time of the proposed transfer, no more than 50 persons are in the physical custody of the Oregon Youth Authority under this subsection.

(8) Notwithstanding the provisions of subsections (5)(a)(A) or (7) of this section, the department or the supervisory authority of a county may not transfer the physical custody of the person under subsection (5)(a)(A) or (7) of this section if the Director of the Oregon Youth Authority, after consultation with the Department of Corrections or the supervisory authority of a county, determines that, because of the person's age, mental or emotional condition or risk of physical harm to other persons, the person should not be incarcerated in a youth correction facility.

(9) Notwithstanding any other provision of this section, under no circumstances may a person under 18 years of age be incarcerated in a Department of Corrections institution. [1967 c.585 §4; 1971 c.743 §325; 1973 c.836 §262; 1985 c.631 §5; 1987 c.320 §30; 1993 c.33 §299; 1993 c.546 §118; 1995 c.422 §§57,57a; 1995 c.423 §12a; 1999 c.109 §5; 2013 c.355 §1; 2014 c.31 §1; 2017 c.134 §1]

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

### (Community Service)

**137.126 Definitions for ORS 137.126 to 137.131.** As used in ORS 137.126 to 137.131:

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

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

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

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

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

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

(1) For a violation, not more than 48 hours.

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

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

(b) For a felony committed on or after November 1, 1993, as provided in the rules of the Oregon Criminal Justice Commission.

(4) For a violation of driving under the influence of intoxicants under ORS 813.010, not less than 80 hours or more than 250 hours. [1981 c.551 §4; 1983 c.721 §1; 1985 c.16 §447; 1993 c.692 §3; 1999 c.1051 §68a]

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

**137.131 Community service as condition of probation for offense involving graffiti.** (1) The court shall impose community service as a condition of a probation sentence when a person is convicted of criminal mischief and the conduct engaged in consists of defacing property by creating graffiti unless the sentence includes incar-

ceration in a county jail or a state correctional institution.

(2) The community service must include removing graffiti, either those that the defendant created or those created by another, or both. [1995 c.615 §5; 2009 c.15 §1]

#### (Forfeiture of Weapons)

**137.138 Forfeiture of weapons and revocation of hunting license for certain convictions.** (1) In addition to and not in lieu of any other sentence it may impose, a court shall require a defendant convicted under ORS 164.365, 166.663, 167.315, 498.056 or 498.146 or other state, county or municipal laws, for an act involving or connected with injuring, damaging, mistreating or killing a livestock animal, to forfeit any rights in weapons used in connection with the act underlying the conviction.

(2) In addition to and not in lieu of any other sentence it may impose, a court shall revoke any hunting license possessed by a defendant convicted as described in subsection (1) of this section.

(3) The State Fish and Wildlife Director shall refuse to issue a hunting license to a defendant convicted as described under subsection (1) of this section for a period of two years following the conviction.

(4) As used in this section, “livestock animal” has the meaning given in ORS 164.055. [1999 c.766 §1; 2001 c.666 §§27,39; 2005 c.830 §21]

**Note:** 137.138 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.140** [Amended by 1973 c.836 §263; 1987 c.550 §3; renumbered 137.167 in 2013]

#### (Payment of Monetary Obligations)

**137.143 All monetary obligations constitute single obligation on part of convicted person.** All fines, costs, restitution, compensatory fines and other monetary obligations imposed upon a convicted person in a circuit, justice or municipal court constitute a single obligation on the part of the convicted person. The clerk shall divide the total obligation as provided in ORS 137.145 to 137.159, based on the different parts of the obligation, and shall credit and distribute all moneys received in payment of the obligation in the manner provided by ORS 137.145 to 137.159. [Formerly 137.288]

**Note:** 137.143 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.145 Definitions for ORS 137.145 to 137.159.** As used in ORS 137.145 to 137.159:

(1) “Criminal judgment” means a judgment of conviction in a criminal action.

(2) “Local court” means a justice or municipal court. [2013 c.685 §15]

**137.146 Priorities for application of payments on criminal judgments entered in circuit courts.** (1) There are five levels of priority for application of payments on criminal judgments entered in circuit courts, with Level I obligations having the highest priority and Level V obligations having the lowest priority. All payments on a criminal judgment entered in a circuit court shall be applied first against the unpaid obligations in the level with highest priority until those obligations have been paid in full, and shall then be applied against the obligations in the level with the next highest level of priority, until all obligations under the judgment have been paid in full.

(2) Except as provided in ORS 137.153, if there is more than one person or public body to whom an obligation is payable under a level, a circuit court shall divide each payment based on each person’s or public body’s proportionate share of the total amount of obligations in that level. [Formerly 137.289]

**137.147 Priorities for application of payments on criminal judgments entered in local courts.** (1) There are four levels of priority for application of payments on criminal judgments entered in local courts, with Level I obligations having the highest priority and Level IV obligations having the lowest priority. All payments on a criminal judgment entered in a local court shall be applied first against the unpaid obligations in the level with highest priority until those obligations have been paid in full, and shall then be applied against the obligations in the level with the next highest level of priority, until all obligations under the judgment have been paid in full.

(2) Except as provided in ORS 137.154, if there is more than one person or public body to whom an obligation is payable under a level, a local court shall divide each payment based on each person’s or public body’s proportionate share of the total amount of obligations in that level. [2013 c.685 §16]

**137.149 Level I obligations in circuit court judgments.** Level I obligations in criminal judgments entered in circuit courts are compensatory fines imposed pursuant to ORS 137.101. [Formerly 137.291]

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

**137.151 Level I obligations in local court judgments.** Level I obligations in criminal judgments entered in local courts are compensatory fines imposed pursuant to ORS 137.101. [2013 c.685 §17]

**137.153 Level II obligations in circuit court judgments.** (1) There are two types of Level II obligations in criminal judgments entered in circuit courts:

(a) Type 1 obligations include awards of restitution as defined in ORS 137.103, awards of restitution under ORS 419C.450 and money awards made under ORS 811.706.

(b) Type 2 obligations include all fines and other monetary obligations payable to the state for which the law does not expressly provide other disposition, including fines payable to the state under ORS 153.633, 153.645 and 153.650.

(2) If a judgment contains both types of Level II obligations, the circuit court shall apply 50 percent of amounts creditable to Level II obligations to Type 1 obligations and 50 percent of the amounts to Type 2 obligations, until all obligations in one of the two types have been paid in full. All subsequent amounts creditable to Level II obligations shall be applied against the other type of obligations until those obligations have been paid in full.

(3) If there is more than one person for whose benefit a Type 1 money award has been made, the circuit court shall pay the moneys credited to Type 1 obligations in the following order of priority:

(a) If the judgment contains a money award payable to the person or persons against whom the defendant committed the offense, the court shall first pay all moneys credited to Type 1 obligations to those persons, and shall continue to do so until all those obligations are paid in full. If there is more than one person to whom an obligation is payable under this paragraph, the court shall divide each payment under this paragraph based on each person's proportionate share of the total amount of obligations subject to payment under this paragraph.

(b) If the judgment contains a money award payable to the Criminal Injuries Compensation Account, the court shall thereafter transfer moneys credited to Type 1 obligations to the account until the award is paid in full.

(c) If the judgment contains a money award payable to any other victims, as defined in ORS 137.103, the court shall thereafter pay the moneys credited to Type 1 obligations to those victims until those victims are paid in full. [Formerly 137.292]

**137.154 Level II obligations in local court judgments.** (1) There are two types of Level II obligations in criminal judgments entered in local courts:

(a) Type 1 obligations include awards of restitution as defined in ORS 137.103, awards of restitution under ORS 419C.450 and money awards made under ORS 811.706.

(b) Type 2 obligations include all fines and other monetary obligations payable to the state, a city or a county, after payment of the amount provided for in ORS 153.633 (2).

(2) If a criminal judgment entered in a local court contains both types of Level II obligations, the court shall apply 50 percent of amounts creditable to Level II obligations to Type 1 obligations and 50 percent of the amounts to Type 2 obligations, until all obligations in one of the two types have been paid in full. All subsequent amounts creditable to Level II obligations shall be applied against the other type of obligations until those obligations have been paid in full.

(3) If there is more than one person for whose benefit a Type 1 money award has been made, a local court shall pay the moneys credited to Type 1 obligations in the following order of priority:

(a) If the judgment contains a money award payable to the person or persons against whom the defendant committed the offense, the court shall first pay all moneys credited to Type 1 obligations to those persons, and shall continue to do so until all those obligations are paid in full. If there is more than one person to whom an obligation is payable under this paragraph, the court shall divide each payment under this paragraph based on each person's proportionate share of the total amount of obligations subject to payment under this paragraph.

(b) If the judgment contains a money award payable to the Criminal Injuries Compensation Account, the court shall thereafter transfer moneys credited to Type 1 obligations to the account until the award is paid in full.

(c) If the judgment contains a money award payable to any other victims, as defined in ORS 137.103, the court shall thereafter pay the moneys credited to Type 1 obligations to those victims until those victims are paid in full. [2013 c.685 §18]

**137.155 Level III obligations in circuit court judgments.** Level III obligations in criminal judgments entered in circuit courts are fines payable to a county or city. [Formerly 137.294]

**137.156 Level III obligations in local court judgments.** Level III obligations in criminal judgments entered in local courts are amounts that the law expressly directs be paid to a specific account or public body as defined in ORS 174.109. [2013 c.685 §19]

**137.157 Level IV obligations in circuit court judgments.** Level IV obligations in criminal judgments entered in circuit courts are amounts that the law expressly directs be paid to a specific account or public body as defined in ORS 174.109. [Formerly 137.296]

**137.158 Level IV obligations in local court judgments.** Level IV obligations in criminal judgments entered in local courts are amounts payable for reward reimbursement under ORS 131.897. [2013 c.685 §20]

**137.159 Level V obligations in circuit court judgments.** Level V obligations in criminal judgments entered in circuit courts are amounts payable for reward reimbursement under ORS 131.897. [Formerly 137.297]

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

#### (Post-Judgment Procedures)

**137.167 Imprisonment when county jail is not suitable for safe confinement.** Whenever it appears to the court that there is no sufficient jail of the proper county, as provided in ORS 137.330, suitable for the confinement of the defendant, the court may order the confinement of the defendant in the jail of an adjoining county or, if there is no sufficient and suitable jail in the adjoining county, then in the jail of any county in the state. [Formerly 137.140]

**137.170 Entry of judgment in criminal action.** When judgment in a criminal action is given, the clerk shall enter the same in the register. If the judgment is upon a determination of conviction of an offense, the clerk shall state briefly in the register the offense for which the defendant was convicted. [Amended by 1959 c.638 §19; 1973 c.836 §264; 1985 c.540 §36; 1997 c.801 §65b]

**137.172 Entry of corrected judgment.** (1) The trial court retains authority after entry of judgment of conviction or a supplemental judgment, including during the pendency of an appeal, to modify the judgment, including the sentence, to correct any arithmetic or clerical errors or to delete or modify any erroneous term in the judgment. The court may correct the judgment either on the motion of one of the parties or on the court's own motion after written notice to all of the parties.

(2) If the trial court enters a corrected judgment under this section during the pendency of an appeal, the trial court administrator shall immediately provide a copy

of the corrected judgment to the appellate court. [2017 c.529 §20]

**137.175 Judgment in criminal action that effects release of defendant; delivery to sheriff.** Whenever a judgment in a criminal action will effect the immediate release of a defendant by discharge, probation, sentence to time served, or otherwise, the court shall cause the prompt delivery of a copy of the judgment to the sheriff no later than three calendar days after the judgment is entered. [1987 c.251 §3; 1991 c.111 §15; 1997 c.801 §65c]

**137.180** [Amended by 1987 c.709 §2; 1989 c.472 §5; 1995 c.658 §77; 1997 c.801 §62; 1999 c.1051 §126; repealed by 2003 c.576 §580]

**137.183 Interest on judgments; waiver; payments.** (1)(a) Criminal judgments bear interest at the rate provided by ORS 82.010. Except as provided in paragraph (b) of this subsection, criminal judgments bear interest for a period of 20 years after the judgment is entered. Except as provided in paragraph (b) of this subsection, criminal judgments begin to accrue interest on the date the judgment is entered and do not bear interest after the expiration of the 20-year period.

(b) When a person is sentenced to a term of imprisonment, interest on a judgment in a criminal action does not begin to accrue until the first day of the second full calendar month after the person's initial release from custody following the sentencing in which the monetary obligation was imposed. If the judgment includes a money award for restitution, the judgment accrues interest for a period of 20 years after the first day of the second full calendar month after the person's initial release from custody following the sentencing in which the monetary obligation was imposed.

(2) The State Court Administrator may waive interest, or cause waiver of interest, on any criminal judgment or category of criminal judgments for the purpose of administering the collection of judgments of the Supreme Court, the Court of Appeals, the Oregon Tax Court and circuit courts. A judge of the Supreme Court, the Court of Appeals, the Oregon Tax Court or a circuit court may waive interest in any criminal action or proceeding for good cause shown.

(3) A municipal judge may waive interest on any criminal judgment, or category of criminal judgments, entered in the municipal court in which the judge presides. A justice of the peace may waive interest on any criminal judgment, or category of criminal judgments, entered in the justice court in which the justice of the peace presides.

(4) A waiver under subsection (2) or (3) of this section may be for all or part of the interest payable on a criminal judgment and may be for a specified period of time.

(5) All payments collected under a criminal judgment must first be applied against the principal amount of a money award. Payments may be applied against interest on the money award only after the principal amount of the money award is paid. This subsection applies only to judgments of the Supreme Court, the Court of Appeals, the Oregon Tax Court and circuit courts.

(6) Moneys collected as interest under a criminal judgment may be applied against costs of collection. Except as provided in subsection (7) of this section:

(a) Any amounts of moneys collected as interest on judgments of the Supreme Court, Court of Appeals, Oregon Tax Court or circuit courts that remain after payment of collection costs shall be deposited in the Criminal Injuries Compensation Account to be used for the purposes specified in ORS 147.225.

(b) Any amounts of moneys collected as interest on judgments of the municipal or justice courts that remain after payment of collection costs shall be deposited in the general fund of the city or county in which the court operates and be available for general governmental purposes.

(7) After any payment of costs of collection, any interest collected on an award for restitution on and after January 1, 2012, must be paid to the person in whose favor the award of restitution was made.

(8) As used in this section, "criminal judgment" means a judgment entered in a criminal action as defined in ORS 131.005. [1999 c.1064 §2; 2005 c.618 §7; 2007 c.626 §1]

**Note:** 137.183 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

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

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

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

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

(3) As used in this section "complainant" means every person who voluntarily appears before any magistrate or grand jury to prosecute any person in a

criminal action, either for a misdemeanor or felony. [Amended by 1959 c.426 §3]

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

**137.221 Vacation of judgment of conviction for prostitution.** (1) A court may vacate a judgment of conviction for the crime of prostitution under ORS 167.007 as described in this section.

(2)(a) A person may request vacation of a judgment of conviction for prostitution by filing a motion in the county of conviction. The motion may be filed at least 21 days after the judgment of conviction is entered.

(b) A copy of the motion shall be served on the district attorney.

(c) The motion must contain an explanation of facts supporting a claim that the person was the victim of sex trafficking at or around the time of the conduct giving rise to the prostitution conviction. The motion must further contain an explanation of why those facts were not presented to the trial court.

(3) Upon receiving the motion described in subsection (2) of this section, the court shall hold a hearing. At the hearing, the person has the burden of proof and may present evidence that, at or around the time of the conduct giving rise to the prostitution conviction, the person was the victim of sex trafficking. The court shall consider any evidence the court deems of sufficient credibility and probative value in determining whether the person was a victim of sex trafficking. The evidence may include, but is not limited to:

(a) Certified records of a state or federal court proceeding demonstrating that the person was a victim of sex trafficking;

(b) Certified records from federal immigration proceedings recognizing the person as a victim of sex trafficking; and

(c) A sworn statement from a trained professional staff member of a victim services organization, an attorney, a member of the clergy or a medical or other professional, certifying that the person has sought assistance addressing trauma associated with being a sex trafficking victim.

(4) If the court finds, by clear and convincing evidence, that the person was the victim of sex trafficking at or around the

time of the conduct giving rise to the prostitution conviction, the court shall grant the motion.

(5) If the court grants a motion under this section, the court shall vacate the judgment of conviction for prostitution and may make other orders as the court considers appropriate.

(6) If the court grants a motion under this section while an appeal of the judgment of conviction is pending, the court shall immediately forward a copy of the vacation order to the appellate court.

(7) As used in this section, “sex trafficking” means the use of force, intimidation, fraud or coercion to cause a person to engage, or attempt to engage, in a commercial sex act. [2017 c.245 §1]

**Note:** 137.221 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.223 Order setting aside judgment of guilty except for insanity; fees; procedure; effect of order.** (1) A person who has been found guilty except for insanity of an offense for which, if convicted, the person could apply for entry of an order setting aside the conviction pursuant to ORS 137.225, may by motion apply to the court for entry of an order setting aside the judgment finding the person guilty except for insanity of the offense.

(2) A person described in subsection (1) of this section may file the motion to set aside a judgment of guilty except for insanity any time after three years from the date of entry of the judgment of guilty except for insanity, provided that:

(a) The person is no longer under the jurisdiction of the Psychiatric Security Review Board; and

(b) The person has no other findings of guilty except for insanity within the 10 years prior to filing the motion and no convictions for offenses other than motor vehicle violations within the 10 years prior to filing the motion.

(3)(a) A copy of the motion and a full set of the defendant’s fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the offense and opportunity shall be given to contest the motion. The fingerprint card with the notation “motion for setting aside judgment of guilty except for insanity” shall be forwarded to the Department of State Police. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(b) When a prosecuting attorney is served with a copy of a motion to set aside a judgment of guilty except for insanity under this section, the prosecuting attorney shall provide a copy of the motion and notice of the hearing date to the victim, if any, of the offense by mailing a copy of the motion and notice to the victim’s last-known address.

(c) When a person files a motion under this section, the person must pay a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police.

(d) In addition to the fee established under paragraph (c) of this subsection, the person must pay the filing fee established under ORS 21.135.

(4)(a) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim, if any, to make a statement at the hearing.

(b) Except as otherwise provided in paragraph (c) of this subsection, if the court determines that the circumstances and behavior of the person from the date of the judgment of guilty except for insanity to the date of the hearing on the motion warrant the court granting the motion, the court shall enter an order setting aside the judgment of guilty except for insanity.

(c) Unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice, the court shall grant the motion and enter an order as provided in paragraph (b) of this subsection if the defendant was found guilty except for insanity of an offense described in ORS 137.225 (12) and is otherwise eligible for relief under this section.

(d) An order entered under this subsection shall state the original arrest charge and the charge for which the person was found guilty except for insanity. The order shall further state that positive identification has been established by the Department of State Police and further identified as to Department of State Police number or submitting agency number.

(5)(a) Upon the entry of an order under subsection (4) of this section:

(A) The person, for purposes of the law, shall be deemed not to have been previously found guilty except for insanity, and the court shall issue an order sealing the records

of the case, including the records of arrest, whether or not the arrest resulted in a further criminal proceeding.

(B) The court shall inform the person that the person's right to possess, purchase or otherwise acquire a firearm remains prohibited under federal law.

(b) For purposes of this subsection, records of the case do not include medical records that are in the possession of the Psychiatric Security Review Board, including medical evaluations and reports submitted from other agencies concerning the status or compliance of the person.

(6) The clerk of the court shall forward a certified copy of the order entered under subsection (5) of this section to such agencies as directed by the court. A certified copy shall be sent to the Psychiatric Security Review Board. Upon entry of the order, the judgment of guilty except for insanity shall be deemed not to have been entered, and the person may answer accordingly any questions relating to its occurrence.

(7) For purposes of any civil action in which truth is an element of a claim for relief or affirmative defense, the provisions of subsection (6) of this section providing that the judgment of guilty except for insanity be deemed not to have been entered do not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interests of justice.

(8) Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order has no other effect on the orders setting aside the judgment of guilty except for insanity. [2015 c.320 §1; 2017 c.442 §16]

**Note:** The amendments to 137.223 by section 16, chapter 442, Oregon Laws 2017, become operative July 1, 2018. See section 36, chapter 442, Oregon Laws 2017. The text that is operative until July 1, 2018, is set forth for the user's convenience.

**137.223.** (1) A person who has been found guilty except for insanity of an offense for which, if convicted, the person could apply for entry of an order setting aside the conviction pursuant to ORS 137.225, may by motion apply to the court for entry of an order setting aside the judgment finding the person guilty except for insanity of the offense.

(2) A person described in subsection (1) of this section may file the motion to set aside a judgment of guilty except for insanity any time after three years from the date of entry of the judgment of guilty except for insanity, provided that:

(a) The person is no longer under the jurisdiction of the Psychiatric Security Review Board or the Oregon Health Authority; and

(b) The person has no other findings of guilty except for insanity within the 10 years prior to filing the motion and no convictions for offenses other than motor vehicle violations within the 10 years prior to filing the motion.

(3)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon the office of the prosecuting attorney who prosecuted the offense and opportunity shall be given to contest the motion. The fingerprint card with the notation "motion for setting aside judgment of guilty except for insanity" shall be forwarded to the Department of State Police. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.

(b) When a prosecuting attorney is served with a copy of a motion to set aside a judgment of guilty except for insanity under this section, the prosecuting attorney shall provide a copy of the motion and notice of the hearing date to the victim, if any, of the offense by mailing a copy of the motion and notice to the victim's last-known address.

(c) When a person files a motion under this section, the person must pay a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police.

(d) In addition to the fee established under paragraph (c) of this subsection, the person must pay the filing fee established under ORS 21.135.

(4)(a) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim, if any, to make a statement at the hearing.

(b) Except as otherwise provided in paragraph (c) of this subsection, if the court determines that the circumstances and behavior of the person from the date of the judgment of guilty except for insanity to the date of the hearing on the motion warrant the court granting the motion, the court shall enter an order setting aside the judgment of guilty except for insanity.

(c) Unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice, the court shall grant the motion and enter an order as provided in paragraph (b) of this subsection if the defendant was found guilty except for insanity of an offense described in ORS 137.225 (12) and is otherwise eligible for relief under this section.

(d) An order entered under this subsection shall state the original arrest charge and the charge for which the person was found guilty except for insanity. The order shall further state that positive identification has been established by the Department of State Police and further identified as to Department of State Police number or submitting agency number.

(5)(a) Upon the entry of an order under subsection (4) of this section:

(A) The person, for purposes of the law, shall be deemed not to have been previously found guilty except for insanity, and the court shall issue an order sealing the records of the case, including the records of arrest, whether or not the arrest resulted in a further criminal proceeding.

(B) The court shall inform the person that the person's right to possess, purchase or otherwise acquire a firearm remains prohibited under federal law.

(b) For purposes of this subsection, records of the case do not include medical records that are in the possession of the Psychiatric Security Review Board or

the Oregon Health Authority, including medical evaluations and reports submitted from other agencies concerning the status or compliance of the person.

(6) The clerk of the court shall forward a certified copy of the order entered under subsection (5) of this section to such agencies as directed by the court. A certified copy shall be sent to the Psychiatric Security Review Board or the Oregon Health Authority, as appropriate. Upon entry of the order, the judgment of guilty except for insanity shall be deemed not to have been entered, and the person may answer accordingly any questions relating to its occurrence.

(7) For purposes of any civil action in which truth is an element of a claim for relief or affirmative defense, the provisions of subsection (6) of this section providing that the judgment of guilty except for insanity be deemed not to have been entered do not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interests of justice.

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

**Note:** 137.223 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.225 Order setting aside conviction or record of criminal charge; fees; prerequisites; limitations.** (1)(a) Except as provided in paragraph (c) of this subsection, at any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion may apply to the court where the conviction was entered for entry of an order setting aside the conviction. A person who is still under supervision, or who is still incarcerated, as part of the sentence for the offense that is the subject of the motion has not fully complied with or performed the sentence of the court.

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

(c) A person whose sentence of probation was revoked may not apply to the court for

entry of an order setting aside the conviction for which the person was sentenced to probation for a period of 10 years from the date of revocation.

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

(b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction under this section, the prosecuting attorney shall provide a copy of the motion and notice of the hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the victim's last-known address.

(c) When a person makes a motion under subsection (1)(a) of this section, the person must pay a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police.

(d) In addition to the fee established under paragraph (c) of this subsection, when a person makes a motion under subsection (1)(a) of this section the person must pay the filing fee established under ORS 21.135.

(e) The prosecuting attorney may not charge the defendant a fee for performing the requirements described in this section.

(3) Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim to make a statement at the hearing. Except as otherwise provided in subsection (12) of this section, if the court determines that the circumstances and behavior of the applicant from the date of conviction, or from the date of arrest, citation or charge as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest, citation or charge record as the case may be, the court shall enter an appropriate order that shall state the original arrest or citation



charge and the conviction charge, if any and if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the Department of State Police and further identified as to Department of State Police number or submitting agency number. Upon the entry of the order, the applicant for purposes of the law shall be deemed not to have been previously convicted, or arrested, cited or charged as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest, citation or charge whether or not the arrest, citation or charge resulted in a further criminal proceeding.

(4) The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Department of Corrections when the person has been in the custody of the Department of Corrections. Upon entry of the order, the conviction, arrest, citation, charge or other proceeding shall be deemed not to have occurred, and the applicant may answer accordingly any questions relating to its occurrence.

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

(a) A Class B felony, except for a violation of ORS 166.429 or any crime classified as a person felony as that term is defined in the rules of the Oregon Criminal Justice Commission, only if:

(A)(i) Twenty years or more have elapsed from the date of the conviction sought to be set aside or of the release of the person from imprisonment for the conviction sought to be set aside, whichever is later; and

(ii) The person has not been convicted of, arrested or criminally cited for or charged with any other offense, excluding motor vehicle violations, after the date the person was convicted of the offense sought to be set aside. Notwithstanding subsection (1) of this section, a conviction, arrest, citation or charge that has been set aside under this section shall be considered for the purpose of determining whether this subparagraph is applicable; or

(B) The Class B felony is described in paragraphs (b) to (e) of this subsection.

(b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS 161.705.

(c) Unlawful possession of a controlled substance classified in Schedule I.

(d) An offense constituting a violation under state law or local ordinance.

(e) An offense committed before January 1, 1972, that, if committed after that date, would qualify for an order under this section.

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

(a) Criminal mistreatment in the second degree under ORS 163.200 if the victim at the time of the crime was 65 years of age or older.

(b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS 419B.005.

(c) Endangering the welfare of a minor under ORS 163.575 (1)(a), when the offense constitutes child abuse as defined in ORS 419B.005.

(d) Criminally negligent homicide under ORS 163.145, when that offense was punishable as a Class C felony.

(e) Assault in the third degree under ORS 163.165 (1)(h).

(f) Any sex crime, unless:

(A) The sex crime is listed in ORS 163A.140 (1)(a) and:

(i) The person has been relieved of the obligation to report as a sex offender pursuant to a court order entered under ORS 163A.145 or 163A.150; and

(ii) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from setting aside the conviction under this section; or

(B) The sex crime constitutes a Class C felony and:

(i) The person was under 16 years of age at the time of the offense;

(ii) The person is:

(I) Less than two years and 180 days older than the victim; or

(II) At least two years and 180 days older, but less than three years and 180 days older, than the victim and the court finds that setting aside the conviction is in the interests of justice and of benefit to the person and the community;

(iii) The victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age;

(iv) The victim was at least 12 years of age at the time of the offense;

(v) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime for which the court

is prohibited from setting aside the conviction under this section; and

(vi) Each conviction or finding described in this subparagraph involved the same victim.

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

(a) A conviction for a state or municipal traffic offense.

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

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

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

(a) A person arrested or criminally cited for or charged with an offense within the three-year period immediately preceding the filing of the motion for any offense, excluding motor vehicle violations, and excluding arrests, citations or charges for conduct associated with the same criminal episode that caused the arrest, citation or charge that is sought to be set aside. An arrest, citation or charge that has been set aside under this section may not be considered for the purpose of determining whether this paragraph is applicable.

(b) An arrest or citation for driving while under the influence of intoxicants if the charge is dismissed as a result of the person's successful completion of a diversion agreement described in ORS 813.200.

(9) The provisions of subsection (1) of this section apply to convictions, arrests, citations and charges that occurred before, as well as those that occurred after, September 9, 1971. There is no time limit for making an application.

(10) For purposes of any civil action in which truth is an element of a claim for relief or affirmative defense, the provisions of subsection (3) of this section providing that

the conviction, arrest, citation, charge or other proceeding be deemed not to have occurred do not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interest of justice.

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

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

(a) Abandonment of a child, ORS 163.535.

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

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

(d) Coercion, ORS 163.275.

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

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

(g) Incest, ORS 163.525, if the victim was at least 18 years of age.

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

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

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

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

(L) Supplying contraband, ORS 162.185.

(m) Unlawful use of a weapon, ORS 166.220.

(13) As used in this section, "sex crime" has the meaning given that term in ORS 163A.005. [1971 c.434 §2; 1973 c.680 §3; 1973 c.689 §1a; 1973 c.836 §265; 1975 c.548 §10; 1975 c.714 §2; 1977 c.286 §1; 1983 c.556 §1; 1983 c.740 §17; 1987 c.320 §31; 1987 c.408 §1; 1987 c.864 §6; 1989 c.774 §1; 1991 c.830 §6; 1993 c.546 §98; 1993 c.664 §2; 1995 c.429 §9; 1995 c.743 §1; 1999 c.79 §1; 2007 c.71 §35; 2009 c.360 §1; 2009 c.560 §1; 2011 c.196 §1; 2011 c.533 §1; 2011 c.547 §29; 2011 c.595 §87; 2012 c.70 §4; 2013 c.390 §1; 2015 c.235 §1; 2015 c.820 §§32,32a; 2017 c.338 §1; 2017 c.339 §1]

**137.226 Eligibility for order setting aside certain marijuana convictions.** (1) Notwithstanding ORS 137.225 (1)(a), a defendant is eligible for an order setting aside a conviction for a criminal offense in which possession, delivery or manufacture of marijuana or a marijuana item as defined in ORS 475B.015 is an element after one year has elapsed from the date of entry of judgment of conviction if:

(a) The defendant was under 21 years of age at the time of the conviction;

(b) The defendant has not been convicted of any other offense, excluding motor vehicle violations; and

(c) The defendant has fully complied with and performed the sentence of the court.

(2) When a person is convicted of an offense involving possession, delivery or manufacture of marijuana or a marijuana item as defined in ORS 475B.015, and when the conduct that is the basis of the conviction occurred before April 21, 2017, the convicted person may file a motion for a court order setting aside the conviction pursuant to ORS 137.225, and the court, when determining whether the person is eligible for the order, shall consider the offense to be classified under ORS 161.535 or 161.555 as if the conduct occurred on or after April 21, 2017, or, if the offense is no longer a crime, shall consider the offense to be classified as a Class C misdemeanor. [2015 c.844 §3; subsection (2) of 2017 Edition enacted as 2017 c.21 §21; 2017 c.21 §99]

**Note:** The amendments to 137.226 by section 99, chapter 21, Oregon Laws 2017, apply to conduct occurring on and after April 21, 2017. See section 127, chapter 21, Oregon Laws 2017.

**Note:** 137.226 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

### **(Temporary provisions relating to Certificates of Good Standing)**

**Note:** Sections 1, 2 and 3, chapter 526, Oregon Laws 2017, provide:

**Sec. 1.** (1) As used in this section, unless the context requires otherwise:

(a) "Petition" means a petition for a Certificate of Good Standing.

(b) "Petitioner" means a person who files a petition.

(c) "Supervisory authority" means the state or local corrections agency supervising persons on probation, post-prison supervision or parole.

(2)(a) A person who has been convicted of a non-person felony or a Class A misdemeanor other than a person Class A misdemeanor, as those terms are defined in the rules of the Oregon Criminal Justice Commission, may petition the court for a Certificate of Good Standing as provided in this section.

(b) If the person was under the supervision of a supervisory authority within the three years prior to filing the petition, prior to filing the petition the person

shall request from the supervisory authority a written statement verifying that the person has successfully completed probation, post-prison supervision or parole and is eligible for a Certificate of Good Standing under this section. The request for verification shall be in writing on a form provided by the Department of Corrections.

(3)(a) A person shall file a petition using a form provided by the State Court Administrator, in the circuit court of the county in which the petitioner resides. In the application, the person shall affirm that the person satisfies the requirements described in subsection (6) of this section and is eligible for the Certificate of Good Standing.

(b) If the person was under the supervision of a supervisory authority within the three years prior to filing the petition, the person shall attach to the petition the verification from the supervisory authority described in subsection (2)(b) of this section.

(c) In addition to the petition, the person may file with the court any other documents or written material supporting the issuance of a Certificate of Good Standing.

(d) No filing fees or court fees may be required when filing a petition under this section.

(4)(a) At the time of filing, the petitioner shall serve a copy of the petition on the district attorney of the county in which the person resides.

(b) Within 30 days of receiving a copy of the petition, the district attorney may:

(A) File a written statement in the circuit court in support of the petition; or

(B) File a written objection to the issuance of a Certificate of Good Standing only on the grounds that the petitioner does not satisfy the requirements described in subsection (6) of this section, and may support the objection by submitting documents and other written materials or request a hearing on the petition.

(5)(a) When determining whether to issue a Certificate of Good Standing to the petitioner, the court shall review only the documents or other material submitted by the petitioner in support of the petition and any documents or other material submitted by the district attorney.

(b) Notwithstanding paragraph (a) of this subsection, if the district attorney files a written objection and requests a hearing, the court may consider any testimony or oral argument offered at the hearing when determining whether to issue the certificate.

(6)(a) The court may issue a Certificate of Good Standing to the petitioner if the court determines, by a preponderance of the evidence, that:

(A) The petitioner meets the criminal history eligibility requirements described in subsection (2) of this section;

(B) At least one year has elapsed since the petitioner has completed all requirements of the petitioner's sentence, including the completion of any term of supervision;

(C) The petitioner has complied with all requirements of the petitioner's sentence, including conditions of supervision and any required drug or alcohol treatment, batterers' intervention, sex offender treatment, anger management or educational programs;

(D) The petitioner has satisfied all court-ordered financial obligations or is current on a payment plan ordered by the court or a third party as authorized by the Judicial Department;

(E) The petitioner is not in violation of the conditions of any criminal sentence;

(F) There are no criminal charges pending against the petitioner; and

(G) The petitioner is engaged in, or seeking to engage in, a lawful occupation or activity, including but not limited to employment, training, education or rehabilitative programs, or the person has a lawful source of support.

(b) The court may make the determination described in paragraph (a) of this subsection without holding a hearing if the district attorney does not file an objection to the issuance of the Certificate of Good Standing and request a hearing.

(7)(a) If the court issues the Certificate of Good Standing as described in this section, the clerk of the court shall immediately provide notice of the issuance of the certificate to the Department of State Police and other agencies as directed by the court.

(b) Upon receiving notice of the issuance of the Certificate of Good Standing, the Department of State Police shall:

(A) Enter the existence of the certificate into the Law Enforcement Data System maintained by the Department of State Police and the databases of the National Crime Information Center of the United States Department of Justice; and

(B) Ensure that the results of any criminal records check performed by the Department of State Police concerning the person who is the subject of a Certificate of Good Standing include the existence of a valid certificate.

(8)(a) If the court denies issuance of a Certificate of Good Standing, the court shall state the reasons for the denial on the record and shall include the reasons in a written order denying the petition.

(b) A petitioner may file a new application and petition no less than six months after the denial of a previous petition and shall, in the new petition, demonstrate that the petitioner has remedied or addressed the reasons for the denial of the previous petition and has met any conditions set by the court.

(9)(a) A court that issued a Certificate of Good Standing shall revoke the certificate if the person who is the subject of the certificate is subsequently convicted of a felony or a Class A or Class B misdemeanor or is found to have made any material misrepresentation in the petition.

(b) A district attorney in a proceeding in which a person with a Certificate of Good Standing is convicted of a felony or a Class A or Class B misdemeanor shall notify the court where the certificate was issued of the conviction.

(c) The court may hold a hearing on the revocation, and the district attorney who received a copy of the original petition under subsection (4) of this section may appear and be heard at the revocation hearing.

(d) The clerk of the court shall immediately provide notice of the revocation of the certificate, in the form of a court order, to the Department of State Police and other agencies as directed by the court.

(e) Upon receiving notice of the revocation of the Certificate of Good Standing, the Department of State Police shall:

(A) Enter the revocation of the certificate into the Law Enforcement Data System maintained by the Department of State Police and the databases of the National Crime Information Center of the United States Department of Justice; and

(B) Ensure that the results of any criminal records check performed by the Department of State Police concerning the person who is the subject of the revoked Certificate of Good Standing accurately reflect the status of the certificate.

(f) Any person who knowingly presents, or attempts to present, a revoked or otherwise invalid Certificate

of Good Standing as a valid certificate commits a violation.

(10) The clerk of the circuit court of each county shall make available the petition forms described in subsection (3)(a) of this section without charge.

(11) A district attorney may not condition a plea offer on future eligibility or ineligibility for a Certificate of Good Standing. [2017 c.526 §1]

**Sec. 2.** In a claim for negligent hiring of an employee, there is a rebuttable presumption that the employer was not negligent if the employer had notice at the time of the hiring that the employee was the subject of a valid Certificate of Good Standing as described in section 1 of this 2017 Act. [2017 c.526 §2]

**Sec. 3.** Sections 1 and 2 of this 2017 Act are repealed on January 2, 2022. [2017 c.526 §3]

### (Alcoholic or Drug-Dependent Person)

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

(2) The court shall designate agencies or organizations to perform the evaluations required under subsection (1) of this section. The designated agencies or organizations must meet the standards set by the Oregon Health Authority to perform the evaluations for drug dependency and must be approved by the authority. Wherever possible, a court shall designate agencies or organizations to perform the evaluations that are separate from those that may be designated to carry out a program of treatment for alcohol or drug dependency. [1991 c.630 §1; 2009 c.595 §94]

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

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

(2) When the court finds that the defendant is an alcoholic or a drug-dependent person, the court, when it sentences the defendant to a term of imprisonment, shall direct the Department of Corrections to place the defendant in an appropriate alcohol

or drug treatment program, to the extent that resources are available. The alcohol or drug treatment program shall meet the standards promulgated by the Oregon Health Authority pursuant to ORS 430.357. [1991 c.630 §§2,3; 2005 c.271 §1; 2009 c.595 §95]

**Note:** See note under 137.227.

**137.229 Duty of Department of Corrections.** The Department of Corrections, to the extent that funds are available, shall expand existing and establish new treatment programs for alcohol and drug dependency that meet minimum standards adopted by the Oregon Health Authority pursuant to ORS 430.357. [1991 c.630 §4; 2011 c.673 §5]

**Note:** See note under 137.227.

#### (Effects of Felony Conviction)

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

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

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

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

**137.270 Effect of felony conviction on property of defendant.** No conviction of any person for crime works any forfeiture of any property, except in cases where the same is expressly provided by law; but in all cases of the commission or attempt to commit a felony, the state has a lien, from the time of such commission or attempt, upon all the property of the defendant for the purpose of satisfying any judgment which may be given against the defendant for any fine on account thereof and for the costs and disbursements in the proceedings against the defendant for such crime; provided, however, such lien shall not attach to such property as against a purchaser or incumbrancer in good faith, for value, whose interest in the property was acquired before the entry of the judgment against the defendant. [Formerly 137.460; 2003 c.576 §191]

**137.275 Effect of felony conviction on civil and political rights of felon.** Except as otherwise provided by law, a person convicted of a felony does not suffer civil death or disability, or sustain loss of civil rights or forfeiture of estate or property, but retains

all of the rights of the person, political, civil and otherwise, including, but not limited to, the right to vote, to hold, receive and transfer property, to enter into contracts, including contracts of marriage, and to maintain and defend civil actions, suits or proceedings. [1975 c.781 §1]

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

**137.281 Withdrawal of rights during term of incarceration; restoration of rights.** (1) In any felony case, when the defendant is sentenced to a term of incarceration, the defendant is deprived of all rights and privileges described in subsection (3) of this section from the date of sentencing until:

(a) The defendant is released from incarceration; or

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

(2) Subsection (1) of this section applies to any term of incarceration, whether the term of incarceration was imposed as a result of conviction or as a sanction or revocation resulting from the defendant’s violation of the terms and conditions of probation, parole or post-prison supervision.

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

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

(b) Holding a position of private trust;

(c) Acting as a juror; or

(d) Exercising the right to vote.

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

(5) A person convicted of any crime and serving a term of imprisonment in any federal correctional institution in this state is deprived of the rights to register to vote, update a registration or vote in any election in this state from the date of sentencing until:

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

(b) The person’s conviction is set aside.

(6) The county clerk or county official in charge of elections in any county may cancel the registration of any person serving a term of imprisonment in any federal correctional institution in this state.

(7) Except as otherwise provided in ORS 10.030, the rights and privileges withdrawn by this section are restored automatically

upon release from incarceration, but in the case of parole shall be automatically withdrawn upon a subsequent imprisonment for violation of the terms of the parole. [1983 c.515 §2 (enacted in lieu of 137.280); 1987 c.320 §32; 1993 c.14 §4; 1997 c.313 §10; 1999 c.499 §1; 2008 c.35 §6]

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

#### (Minimum Fine)

**137.286 Minimum fines for misdemeanors and felonies; retention of jurisdiction.** (1) Unless a specific minimum fine is provided by law, the minimum fine for a misdemeanor is \$100.

(2) Unless a specific minimum fine is provided by law, the minimum fine for a felony is \$200.

(3) A court may waive payment of the minimum fine established by this section, in whole or in part, if the court finds that requiring payment of the minimum fine would be inconsistent with justice in the case. In making its determination under this subsection, the court shall consider:

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

(b) The extent to which that burden can be alleviated by allowing the defendant to pay the monetary obligations imposed by the court on an installment basis or on other conditions to be fixed by the court.

(4) This section does not affect the manner in which a court imposes or reduces monetary obligations other than fines.

(5) During any period of supervision that is part of the defendant's sentence, the court retains jurisdiction under this subsection for the limited purpose of waiving any unpaid portion of a fine previously imposed if the defendant is able to establish a financial hardship that prevents the defendant from completing an alcohol or drug treatment program that was required as a condition of supervision. Any moneys received in payment of the fine prior to the waiver may not be returned to the defendant. [2011 c.597 §10; 2015 c.186 §1]

**137.288** [Formerly 137.293; renumbered 137.143 in 2013]

**137.289** [2011 c.597 §33; 2013 c.685 §21; renumbered 137.146 in 2013]

**137.290** [1987 c.905 §1; 1991 c.460 §14; 1993 c.33 §300; 1993 c.637 §1; 1993 c.770 §§1,3; 1995 c.555 §1; 1997 c.872 §27; 1999 c.1051 §127; 1999 c.1056 §1d; 1999 c.1095 §6; 2003 c.737 §112; 2003 c.819 §11; 2005 c.843 §21; 2007 c.899 §§1,2; repealed by 2011 c.597 §118]

**Note:** Section 1 (2), chapter 89, Oregon Laws 2012, provides:

**Sec. 1.** (2) The repeal of ORS 137.290 by section 118, chapter 597, Oregon Laws 2011, applies only to offenses committed on or after January 1, 2012. Except as provided in this section, any offense committed before January 1, 2012, shall continue to be governed by ORS 137.290 as in effect immediately before January 1, 2012, and all amounts collected as a unitary assessment for offenses committed before January 1, 2012, shall be deposited in the Criminal Fine Account. [2012 c.89 §1(2)]

**137.291** [2011 c.597 §34; 2013 c.685 §22; renumbered 137.149 in 2013]

**137.292** [2011 c.597 §35; 2013 c.685 §23; renumbered 137.153 in 2013]

**137.293** [1987 c.905 §2; 2011 c.597 §123; renumbered 137.288 in 2011]

**137.294** [2011 c.597 §36; 2013 c.685 §24; renumbered 137.155 in 2013]

**137.295** [1987 c.905 §3; 1991 c.460 §13; 1993 c.33 §301; 1995 c.782 §3; 1997 c.761 §10; 1999 c.1051 §128; 1999 c.1064 §1; 2001 c.823 §§22,23; 2003 c.687 §§2,3; 2005 c.564 §§4,5; 2007 c.626 §2; 2007 c.899 §§3,4; repealed by 2011 c.597 §118]

**137.296** [2011 c.597 §37; 2013 c.685 §25; renumbered 137.157 in 2013]

**137.297** [2011 c.597 §38; 2013 c.685 §26; renumbered 137.159 in 2013]

#### (Criminal Fine Account)

##### **137.300 Criminal Fine Account; rules.**

(1) The Criminal Fine Account is established in the General Fund. Except as otherwise provided by law, all amounts collected in state courts as monetary obligations in criminal actions shall be deposited by the courts in the account. All moneys in the account are continuously appropriated to the Department of Revenue to be distributed by the Department of Revenue as provided in this section. The Department of Revenue shall keep a record of moneys transferred into and out of the account.

(2) The Legislative Assembly shall first allocate moneys from the Criminal Fine Account for the following purposes, in the following order of priority:

(a) Allocations for public safety standards, training and facilities.

(b) Allocations for criminal injuries compensation and assistance to victims of crime and children reasonably suspected of being victims of crime.

(c) Allocations for the forensic services provided by the Oregon State Police, including, but not limited to, services of the Chief Medical Examiner.

(d) Allocations for the maintenance and operation of the Law Enforcement Data System.

(3) After making allocations under subsection (2) of this section, the Legislative Assembly shall allocate moneys from the Criminal Fine Account for the following purposes:

(a) Allocations to the Law Enforcement Medical Liability Account established under ORS 414.815.

(b) Allocations to the State Court Facilities and Security Account established under ORS 1.178.

(c) Allocations to the Department of Corrections for the purpose of planning, operating and maintaining county juvenile and adult corrections programs and facilities and drug and alcohol programs.

(d) Allocations to the Oregon Health Authority for the purpose of grants under ORS 430.345 for the establishment, operation and maintenance of alcohol and drug abuse prevention, early intervention and treatment services provided through a county.

(e) Allocations to the Oregon State Police for the purpose of the enforcement of the laws relating to driving under the influence of intoxicants.

(f) Allocations to the Arrest and Return Account established under ORS 133.865.

(g) Allocations to the Intoxicated Driver Program Fund established under ORS 813.270.

(h) Allocations to the State Court Technology Fund established under ORS 1.012.

(4) It is the intent of the Legislative Assembly that allocations from the Criminal Fine Account under subsection (3) of this section be consistent with historical funding of the entities, programs and accounts listed in subsection (3) of this section from monetary obligations imposed in criminal proceedings. Amounts that are allocated under subsection (3)(c) of this section shall be distributed to counties based on the amounts that were transferred to counties by circuit courts during the 2009-2011 biennium under the provisions of ORS 137.308, as in effect January 1, 2011.

(5) Moneys in the Criminal Fine Account may not be allocated for the payment of debt service obligations.

(6) The Department of Revenue shall deposit in the General Fund all moneys remaining in the Criminal Fine Account after the distributions listed in subsections (2) and (3) of this section have been made.

(7) The Department of Revenue shall establish by rule a process for distributing

moneys in the Criminal Fine Account. The department may not distribute more than one-eighth of the total biennial allocation to an entity during a calendar quarter. [1987 c.905 §6; 2001 c.829 §§1,1a; 2005 c.700 §2; 2011 c.597 §52; 2012 c.89 §14; 2013 c.40 §2; 2013 c.628 §10; 2013 c.685 §27; 2017 c.151 §2; 2017 c.712 §5]

**Note:** 137.300 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.301 Legislative findings.** The Legislative Assembly finds that:

(1) Systems critical components of the Oregon criminal justice system exist that require the highest priority considerations for funding from the Criminal Fine Account.

(2) The systems critical components of the Oregon criminal justice system are interrelated and essential to the initiation and successful conclusion of criminal investigations.

(3) The interests of victims of crime and other Oregonians are advanced by the ability of the public safety community to respond professionally to reports of criminal activity and to successfully investigate criminal cases in a manner that protects the constitutional rights of all Oregonians.

(4) The effective training of police officers, corrections officers, parole and probation officers and other first responders increases the likelihood that crimes will be solved quickly and that the needs of victims of crime will be met.

(5) The collection of evidence at crime scenes, the forensic processing of the evidence by qualified, well-trained technicians and the work of medical examiners are critical statewide functions that allow all Oregonians an equal opportunity to justice.

(6) The collection of criminal information such as that retained in the Law Enforcement Data System enhances the ability of investigators to identify criminals and the unnamed victims of violent crimes.

(7) Timely intervention on behalf of victims of crime through effective assistance programs makes recovery from victimization possible and is necessary to the well-being of Oregonians adversely affected by violent crime. [2005 c.700 §1; 2011 c.597 §52b]

**Note:** 137.301 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.302** [2001 c.829 §2; repealed by 2005 c.700 §3]

**137.303** [1987 c.905 §7; 1989 c.904 §49; 1991 c.460 §2; 1993 c.741 §1; 1993 c.770 §§2,4; 1995 c.555 §§2,3; 1997 c.872 §28; 1999 c.1056 §§2,2c; 1999 c.1084 §38; 2001 c.624 §13; repealed by 2001 c.829 §10]

**137.304** [1999 c.1095 §8; 1999 c.1095 §§9,10,11; repealed by 2001 c.829 §10]

**137.305** [1987 c.905 §8; 1991 c.460 §15; 1993 c.637 §4; 1993 c.770 §6; 1995 c.440 §2; 1997 c.872 §29; 1999 c.867 §9; repealed by 2001 c.829 §10]

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

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

**137.308** [1989 c.860 §4; 1993 c.196 §4; 1993 c.637 §14; 1999 c.1051 §255; 2005 c.804 §5; 2009 c.856 §§6,33; repealed by 2011 c.597 §118]

**137.309** [1991 c.778 §§4,5; 1993 c.14 §6; 1993 c.196 §1; 1993 c.637 §§13,13a; 1999 c.1051 §254; 2003 c.687 §4; 2005 c.804 §6; repealed by 2011 c.597 §118]

## EXECUTION OF JUDGMENT

### (Imprisonment)

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

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

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

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

the defendant is initially assigned pursuant to ORS 137.124. If at the time of entry of a judgment, the defendant was serving a term of incarceration at the direction of the supervisory authority of a county upon conviction of a prior felony, the sheriff shall also deliver to the Department of Corrections a copy of the prior entry of judgment committing the defendant to the supervisory authority of the county of conviction and a statement of the number of days the defendant has remaining to be served on the term or incarceration imposed in the prior judgment.

(2) If the defendant is surrendered to another legal authority prior to delivery to an institution of the Department of Corrections, the sheriff shall forward to the Department of Corrections copies of the entry of all pertinent judgments, a statement of the number of days the defendant was imprisoned prior to surrender, a statement of the number of days the defendant has remaining to be served on any term of incarceration the defendant was serving at the direction of the supervisory authority of a county upon conviction of a prior felony and an identification of the authority to whom the prisoner was surrendered.

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

(4) When the judgment is imprisonment in the county jail or a fine and that the defendant be imprisoned until it is paid, the judgment shall be executed by the sheriff of the county. The sheriff shall compute the time the defendant was imprisoned after arrest and prior to the commencement of the term specified in the judgment. Such time shall be credited toward the term of the sentence. [Amended by 1955 c.660 §14; 1967 c.232 §1; 1967 c.585 §5; 1971 c.619 §1; 1973 c.631 §1; 1981 c.424 §1; 1987 c.320 §34; 1995 c.423 §29; 2014 c.31 §2]

**137.330 Where judgment of imprisonment in county jail is executed.** (1) Except as provided in ORS 137.167, 137.333 or 423.478, a judgment of imprisonment in the county jail shall be executed by confinement in the jail of the county where the judgment is given, except that when the place of trial has been changed, the confinement shall take place in the jail of the county where the action was commenced.

(2) The jailor of any county jail to which a prisoner is ordered, sentenced or delivered pursuant to ORS 137.167 shall receive and keep such prisoner in the same manner as if the prisoner had been ordered, sentenced or delivered to the jailor by an officer or court



of the jailor's own county; but the county in which the prisoner would be imprisoned except for the provisions of ORS 137.167 shall pay all the expenses of keeping and maintaining the prisoner in said jail. [Amended by 1987 c.550 §4; 1996 c.4 §3]

**137.333 Exception to ORS 137.330.**

Whenever a judge sentences a person to a term of incarceration in a county jail, the judgment may be executed by confinement in another county or in a state correctional facility if the county in which the person would otherwise be imprisoned:

(1) Has entered into an intergovernmental agreement as provided in ORS 169.053; or

(2) Is located within an intergovernmental correctional entity formed under ORS 190.265. [1996 c.4 §2]

**Note:** 137.333 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

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

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

**137.370 Commencement and computation of term of imprisonment in state correctional institution; sentences concurrent unless court orders otherwise.** (1)

When a person is sentenced to imprisonment in the custody of the Department of Corrections, the term of confinement therein commences from the day the person is delivered to the custody of an officer of the Department of Corrections for the purpose of serving the sentence executed, regardless of whether the sentence is to be served in a state or federal institution.

(2) Except as provided in subsections (3) and (4) of this section, when a person is sentenced to imprisonment in the custody of the Department of Corrections, for the purpose of computing the amount of sentence served the term of confinement includes only:

(a) The time that the person is confined by any authority after the arrest for:

(A) The crime for which sentence is imposed;

(B) A lesser included or greater inclusive offense of the crime for which sentence was imposed; and

(C) Any other crime constituting a violation of Oregon law within the same county designated by the sentencing court in the judgment as having been committed as part of the same criminal episode as the crime for which sentence was imposed; and

(b) The time that the person is authorized by the Department of Corrections to spend

outside a confinement facility, in a program conducted by or for the Department of Corrections.

(3) When a judgment of conviction is vacated and a new sentence is thereafter imposed upon the defendant for the same crime, a lesser included or greater inclusive offense of the crime, or any crime constituting a violation of Oregon law within the same county designated by the sentencing court in the judgment as having been committed as part of the same criminal episode as the crime, the period of detention and imprisonment theretofore served shall be deducted from the maximum term, and from the minimum, if any, of the new sentence.

(4) Unless the court expressly orders otherwise, a person who is confined as the result of a sentence for a crime or conduct that is not directly related to the crime for which the sentence is imposed, or for violation of the conditions of probation, parole or post-prison supervision, shall not receive presentence incarceration credit for the time served in jail toward service of the term of confinement.

(5) Unless the court expressly orders otherwise, a term of imprisonment shall be concurrent with that portion of any sentence previously imposed that remains unexpired at the time the court imposes sentence. This subsection applies regardless of whether the earlier sentence was imposed by the same or any other court, and regardless of whether the earlier sentence is being or is to be served in the same penal institution or under the same correctional authority as will be the later sentence.

(6) As used in this section, "criminal episode" has the meaning given that term in ORS 131.505. [Amended by 1955 c.660 §15; 1965 c.463 §19; 1967 c.232 §2; 1973 c.562 §2; 1973 c.631 §4; 1981 c.424 §2; 1987 c.251 §4; 1987 c.320 §35; 1995 c.657 §20; 2015 c.508 §§1,4]

**137.372 Credit for time served as part of probationary sentence; diversion program or specialty court program.** (1)(a)

Notwithstanding the provisions of ORS 137.370 (2), an offender who has been revoked from a probationary sentence for a felony committed on or after November 1, 1989, and whose sentence was imposed as a downward dispositional departure under the rules of the Oregon Criminal Justice Commission, shall receive credit for the time served in jail after arrest and before commencement of the probationary sentence and for the time served in jail as part of the probationary sentence. However, if the credit for the time served in jail as described in this paragraph is greater than 90 days, the sentencing judge may limit or deny credit for any of that time that exceeds 90 days.

(b) Notwithstanding the provisions of ORS 137.370 (2), an offender who has been revoked from a probationary sentence for a felony committed on or after November 1, 1989, and whose sentence was imposed as a presumptive probationary sentence under the rules of the Oregon Criminal Justice Commission, shall receive credit for the time served in jail after arrest and before commencement of the probationary sentence and for the time served in jail as part of the probationary sentence, unless the sentencing judge orders otherwise.

(2) Notwithstanding the provisions of ORS 137.370 (2), an offender who is sentenced to imprisonment in the custody of the Department of Corrections following the failure to complete a diversion program described in ORS 430.450 to 430.555 or a specialty court program in which the offender was not on probation shall receive credit for the time served in jail after arrest and before commencement of the program and for the time served in jail as a sanction for violating the terms of the program, unless the sentencing judge orders otherwise.

(3) Notwithstanding the provisions of ORS 137.320 (4), an offender who has been ordered confined as part of a probationary sentence for a felony committed on or after July 18, 1995, shall receive credit for the time served in jail after arrest and before commencement of the term unless the sentencing judge orders otherwise.

(4) As used in this section, "specialty court" has the meaning given that term in ORS 137.680. [1989 c.790 §81; 1993 c.692 §4; 1995 c.657 §13; 2015 c.508 §2]

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

**137.375 Release of prisoners whose terms expire on weekends or legal holidays.** When the date of release from imprisonment of any prisoner in an adult correctional facility under the jurisdiction of the Department of Corrections, or any prisoner in a county or city jail, falls on Saturday, Sunday or a legal holiday, the prisoner shall be released, at the discretion of the releasing authority, on the first, second or third day preceding the date of release which is not a Saturday, Sunday or legal holiday. Prisoners of a county or city jail serving a mandatory minimum term specifically limited to weekends shall be released only at the time fixed in the sentence. [1953 c.532 §1; 1955 c.660 §16; 1971 c.290 §1; 1979 c.487 §10; 1987 c.320 §36; 2001 c.851 §7]

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

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

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

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

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

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

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

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

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

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

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

(A) Issue satisfactions of the money award portions of judgments; or

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

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

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

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

(4)(a) Except as provided in paragraph (b) of this subsection, when the entries in the register and the financial accounting records for the court show conclusively that a monetary obligation imposed in a criminal action has been paid in full, the clerk of the court may note in the register that the money award portion of the judgment has been paid in full. Notation in the register under this paragraph constitutes a satisfaction of the money award portion of the judgment. The clerk of the court is not civilly liable for any act or omission in making the notation in the register in the manner authorized by this paragraph.

(b) When a monetary obligation imposed in a criminal action is paid by a negotiable instrument, the clerk of the court shall proceed as provided in paragraph (a) of this subsection only after the expiration of 21 days from the date the negotiable instrument is received by the court. The clerk may proceed as provided in paragraph (a) of this subsection before the expiration of the 21-day period if the judgment debtor or any other

interested person makes a request that the clerk proceed and provides information that establishes to the satisfaction of the clerk that the instrument has been honored.

(c) This subsection does not authorize the clerk of a court to compromise, settle or partially satisfy a monetary obligation imposed in a criminal action, or to release part of any property subject to a judgment lien.

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

(6) The release of judgment liens on specific parcels of real property by the Attorney General or by a person authorized by the Attorney General under subsection (1) of this section is discretionary. The money award portion of the judgment shall remain a lien against all real property not specifically released. [1989 c.472 §4; 1993 c.145 §1; 1997 c.801 §68; 2003 c.576 §164]

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

**137.460** [Renumbered 137.270]

### (Death Sentence)

**137.463 Death warrant hearing; death warrant.** (1) When a sentence of death is pronounced, the clerk of the court shall deliver a copy of the judgment of conviction and sentence of death to the sheriff of the county. The sheriff shall deliver the defendant within 20 days from the date the judgment is entered to the correctional institution designated by the Director of the Department of Corrections pending the determination of the automatic and direct review by the Supreme Court under ORS 138.052.

(2) If the Supreme Court affirms the sentence of death, a death warrant hearing shall take place in the court in which the judgment was rendered within 30 days after the effective date of the appellate judgment or, upon motion of the state, on a later date. The following apply to a death warrant hearing under this subsection:

(a) The defendant must be present; and

(b) The defendant may be represented by counsel. If the defendant was represented by appointed counsel on automatic and direct review, that counsel's appointment continues for purposes of the death warrant hearing and any related matters. If that counsel is unavailable, the court shall appoint counsel

pursuant to the procedure in ORS 135.050 and 135.055.

(3)(a) If the defendant indicates the wish to waive the right to counsel for the purpose of the death warrant hearing, the court shall inquire of the defendant on the record to ensure that the waiver is competent, knowing and voluntary.

(b) If the court finds that the waiver is competent, knowing and voluntary, the court shall discharge counsel.

(c) If the court finds on the record that the waiver of the right to counsel granted by this section is not competent, knowing or voluntary, the court shall continue the appointment of counsel.

(d) Notwithstanding the fact that the court finds on the record that the defendant competently, knowingly and voluntarily waives the right to counsel, the court may continue the appointment of counsel as advisor only for the purposes of the death warrant hearing.

(4) At the death warrant hearing, the court:

(a) After appropriate inquiry, shall make findings on the record whether the defendant suffers from a mental condition that prevents the defendant from comprehending the reasons for the death sentence or its implication. The defendant has the burden of proving by a preponderance of the evidence that the defendant suffers from a mental condition that prevents the defendant from comprehending the reasons for the death sentence or its implication.

(b) Shall advise the defendant that the defendant is entitled to counsel in any post-conviction proceeding and that counsel will be appointed if the defendant is financially eligible for appointed counsel at state expense.

(c) Shall determine whether the defendant intends to pursue any challenges to the sentence or conviction. If the defendant states on the record that the defendant does not intend to challenge the sentence or conviction, the court after advising the defendant of the consequences shall make a finding on the record whether the defendant competently, knowingly and voluntarily waives the right to pursue:

(A) A petition for certiorari to the United States Supreme Court;

(B) Post-conviction relief under ORS 138.510 to 138.680; and

(C) Federal habeas corpus review under 28 U.S.C. 2254.

(5) Following the death warrant hearing, a death warrant, signed by the trial judge of the court in which the judgment was ren-

dered and attested by the clerk of that court, shall be drawn and delivered to the superintendent of the correctional institution designated by the Director of the Department of Corrections. The death warrant shall specify a day on which the sentence of death is to be executed and shall authorize and command the superintendent to execute the judgment of the court. The trial court shall specify the date of execution of the sentence, taking into consideration the needs of the Department of Corrections. The trial court shall specify a date not less than 90 days nor more than 120 days following the effective date of the appellate judgment.

(6)(a) Notwithstanding any other provision in this section, if the court finds that the defendant suffers from a mental condition that prevents the defendant from comprehending the reasons for the sentence of death or its implications, the court may not issue a death warrant until such time as the court, after appropriate inquiries, finds that the defendant is able to comprehend the reasons for the sentence of death and its implications.

(b)(A) If the court does not issue a death warrant because it finds that the defendant suffers from a mental condition that prevents the defendant from comprehending the reasons for the sentence of death or its implications, the court shall conduct subsequent hearings on the issue on motion of the district attorney or the defendant's counsel or on the court's own motion, upon a showing that there is substantial reason to believe that the defendant's condition has changed.

(B) The court may hold a hearing under this paragraph no more frequently than once every six months.

(C) The state and the defendant may obtain an independent medical, psychiatric or psychological examination of the defendant in connection with a hearing under this paragraph.

(D) In a hearing under this paragraph, the defendant has the burden of proving by a preponderance of the evidence that the defendant continues to suffer from a mental condition that prevents the defendant from comprehending the reasons for the sentence of death or its implications.

(7) If for any reason a sentence of death is not executed on the date appointed in the death warrant, and the sentence of death remains in force and is not stayed under ORS 138.686 or otherwise by a court of competent jurisdiction, the court that issued the initial death warrant, on motion of the state and without further hearing, shall issue a new death warrant specifying a new date on which the sentence is to be executed. The court shall specify a date for execution of the

sentence, taking into consideration the needs of the Department of Corrections. The court shall specify a date not more than 20 days after the date on which the state's motion was filed.

(8) No appeal may be taken from an order issued pursuant to this section. [1984 c.3 §5; 1999 c.1055 §2; 2001 c.962 §96]

**137.464 Administrative assessment of defendant's mental capacity.** (1)(a) At the death warrant hearing under ORS 137.463, the court shall order that the Oregon Health Authority or its designee perform an assessment of the defendant's mental capacity to engage in reasoned choices of legal strategies and options if:

(A) The defendant indicates the wish to waive the right to counsel; and

(B) The court has substantial reason to believe that, due to mental incapacity, the defendant cannot engage in reasoned choices of legal strategies and options.

(b) The court also shall order an assessment described in paragraph (a) of this subsection upon motion by the state.

(2) If the requirements of subsection (1) of this section are met, the court may order the defendant to be committed to a state mental hospital designated by the authority for a period not exceeding 30 days for the purpose of assessing the defendant's mental capacity. The report of any competency assessment performed under this section must include, but need not be limited to, the following:

(a) A description of the nature of the assessment;

(b) A statement of the mental condition of the defendant; and

(c) A statement regarding the defendant's mental capacity to engage in reasoned choices of legal strategies and options.

(3) If the competency assessment cannot be conducted because the defendant is unwilling to participate, the report must so state and must include, if possible, an opinion as to whether the unwillingness of the defendant is the result of a mental condition affecting the defendant's mental capacity to engage in reasoned choices of legal strategies and options.

(4) The authority shall file three copies of the report of the competency assessment with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant. [1999 c.1055 §3; 2009 c.595 §96]

**Note:** 137.464, 137.466, 137.476, 137.478 and 137.482 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

**137.466 Judicial determination of defendant's mental capacity.** (1) If the court has ordered the Oregon Health Authority to perform a competency assessment of the defendant under ORS 137.464 and the assessment has been completed, the court shall determine the issue of the defendant's mental capacity to engage in reasoned choices of legal strategies and options. If neither the state nor counsel for the defendant contests the finding of the report filed under ORS 137.464, the court may make the determination of the defendant's mental capacity to engage in reasoned choices of legal strategies and options on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence at the hearing, the party contesting the finding has the right to summon and to cross-examine the psychiatrist or psychologist who submitted the report and to offer evidence on the issue. Either party may introduce other evidence regarding the defendant's mental capacity to engage in reasoned choices of legal strategies and options.

(2) If the court determines that, due to mental incapacity, the defendant cannot engage in reasoned choices of legal strategies and options, the court shall continue the appointment of counsel provided under ORS 137.463.

(3) No appeal may be taken from an order issued pursuant to this section. [1999 c.1055 §4; 2009 c.595 §97]

**Note:** See note under 137.464.

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

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

**137.473 Means of inflicting death; place and procedures; acquisition of lethal substance.** (1) The punishment of death shall be inflicted by the intravenous administration of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent and potassium chloride or other equally effective substances sufficient to cause death. The judgment shall be executed by the superintendent of the Department of Corrections institution in which the execution takes place, or by the designee of that superintendent. All executions shall take place within the enclosure of a Department of Corrections institution designated by the Director of the Department of Corrections. The superintendent of the institution shall be present at the execution and shall invite the presence of one or more physicians, physician assistants or nurse

practitioners, the Attorney General, the sheriff of the county in which the judgment was rendered and representatives from the media. At the request of the defendant, the superintendent shall allow no more than two members of the clergy designated by the defendant to be present at the execution. At the discretion of the superintendent, no more than five friends and relatives designated by the defendant may be present at the execution. The superintendent shall allow the presence of any peace officers as the superintendent thinks expedient.

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

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

(b) For purposes of ORS 689.527 (7) the director shall be considered authorized to purchase the lethal substance or substances described in subsection (1) of this section.

(c) The lethal substance or substances described in subsection (1) of this section are not controlled substances when purchased, possessed or used for purposes of this section.

(4) The superintendent may require that persons who are present at the execution under subsection (1) of this section view the initial execution procedures, prior to the point of the administration of the lethal injection, by means of a simultaneous closed-circuit television transmission under the direction and control of the superintendent. [1984 c.3 §7; 1987 c.320 §38; 1993 c.137 §1; 2001 c.104 §46; 2001 c.213 §1; 2003 c.103 §4; 2005 c.471 §9; 2014 c.45 §24]

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

**137.476 Assistance by licensed health care professional or nonlicensed medically trained person.** (1) Notwithstanding any other law, a licensed health care professional or a nonlicensed medically trained person may assist the Department of Corrections in an execution carried out under ORS 137.473.

(2) Any assistance rendered in an execution carried out under ORS 137.473 by a licensed health care professional or a nonlicensed medically trained person is not cause for disciplinary measures or regulatory oversight by any board, commission or agency created by this state or governed by state law that oversees or regulates the practice

of health care professionals including, but not limited to, the Oregon Medical Board, the Oregon State Board of Nursing and the Oregon Health Authority.

(3) The infliction of the punishment of death by the administration of the required lethal substances in the manner required by ORS 137.473 may not be construed to be the practice of medicine.

(4) As used in this section, "licensed health care professional" includes, but is not limited to, a physician, physician assistant, nurse practitioner or nurse licensed by the Oregon Medical Board or the Oregon State Board of Nursing or an emergency medical services provider licensed by the Oregon Health Authority. [1999 c.1055 §9; 2011 c.703 §25]

**Note:** See note under 137.464.

**137.478 Return of death warrant after execution of sentence of death.** Not later than 30 days after the execution of a sentence of death under ORS 137.473, the superintendent of the correctional institution where the sentence was executed shall return the death warrant to the clerk of the trial court from which the warrant was issued with the superintendent's return on the death warrant showing the time, place and manner in which the death warrant was executed. [1999 c.1055 §10]

**Note:** See note under 137.464.

**137.482 Service of documents on defendant.** A copy of any document filed in any of the following proceedings shall be served personally on the defendant, even if the defendant is represented by counsel, by providing the copy to the custodian of the defendant, who shall ensure that the copy is provided promptly to the defendant:

(1) A death warrant hearing under ORS 137.463.

(2) A proceeding in which a person other than the defendant seeks to stay execution of the defendant's sentence of death.

(3) A petition for post-conviction relief filed under ORS 138.510 (2). [1999 c.1055 §16]

**Note:** See note under 137.464.

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

## PROBATION AND PAROLE BY COMMITTING MAGISTRATE

**137.520 Power of committing magistrate to parole and grant temporary release to persons confined in county jail; authority of sheriff to release county jail inmates; disposition of work release earnings.** (1) The committing magistrate, having sentenced a defendant to confinement in a county jail for a period of up to one year, or as provided by rules adopted by the

Oregon Criminal Justice Commission for felonies committed on or after November 1, 1989, may parole the defendant outside the county jail subject to condition and subject to being taken back into confinement upon the breach of such condition. When a court paroles a defendant under this subsection and the defendant is serving a sentence or sanction imposed under ORS 423.478 (2)(d) or (e), the court may order the local supervisory authority to supervise the defendant. The committing magistrate may also authorize, limit or prohibit the release of a sentenced defendant upon pass, furlough, leave, work or educational release.

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

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

(4) A defendant confined in a county jail and placed upon educational release or upon work release shall, during the hours in which not so engaged or employed, be confined in the county jail unless the court by order otherwise directs or unless the sheriff otherwise directs in the absence of a contrary order by the court. The defendant's net earnings shall be paid to the sheriff, who shall deduct therefrom and pay such sums as may be ordered by the court for the defendant's board, restitution, fine, support of dependents and necessary personal expense. Any balance remaining shall be retained by the sheriff until the defendant's discharge from custody, whereupon the balance shall be paid to the defendant. [Amended by 1959 c.345 §1; 1973 c.836 §270; 1981 c.568 §1; 1989 c.790 §15; 1993 c.14 §8; 1999 c.661 §1]

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

(1) When the judge sentences the defendant to confinement in a county jail as a condition of probation, the judge shall sentence the defendant directly to the custody of the sheriff or the supervisory authority, as defined in rules of the Oregon Criminal

Justice Commission, with jurisdiction over the county jail.

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

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

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

**137.525 Probation for person convicted of crime described in ORS 163.305 to 163.467; examination; report; written consent of convicted person.** (1) If a person pleads guilty or no contest to, or is found guilty of, a crime described in ORS 163.305 to 163.467, and if the court contemplates sentencing the person to probation, the court, before entering judgment, may order that the person undergo an examination by a psychiatrist or other physician found qualified and appointed by the court to determine whether available medical treatment would be likely to reduce such biological, emotional or psychological impulses, including any paraphilia, which may be the cause of the criminal conduct and, if so, whether the person is a suitable candidate medically for such treatment. Such medical treatments may include the taking of prescribed medication.

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

(3) A sentence of probation under this section shall not be imposed except upon the

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

**137.530 Investigation and report of parole and probation officers; statement of victim.** (1) Parole and probation officers, when directed by the court, shall fully investigate and report to the court in writing on the circumstances of the offense, criminal record, social history and present condition and environment of any defendant. Unless the court directs otherwise in individual cases, a defendant may not be sentenced to probation until the report of the investigation has been presented to and considered by the court.

(2) Whenever a presentence report is made, the preparer of the report shall make a reasonable effort to contact the victim and obtain a statement describing the effect of the defendant's offense upon the victim. If the victim is under 18 years of age, the preparer shall obtain the consent of the victim's parent or guardian before contacting the victim. The preparer of the report shall include the statement of the victim in the presentence investigation report. If the preparer is unable to contact the victim or if the victim declines to make a statement, the preparer shall report that the preparer was unable to contact the victim after making reasonable efforts to do so, or, if contact was made with the victim, that the victim declined to make a statement for purposes of this section. Before taking a statement from the victim, the preparer of the report shall inform the victim that the statement will be made available to the defendant and the defendant's attorney prior to sentencing as required under ORS 137.079.

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

(4) As used in this section, "victim" means the person or persons who have suffered financial, social, psychological or physical harm as a result of an offense, and includes, in the case of any homicide or abuse of corpse in any degree, an appropriate member of the immediate family of the decedent. [Amended by 1983 c.723 §1; 1993 c.14 §10; 1993 c.294 §4; 2005 c.264 §2]

**137.533 Probation without entering judgment of guilt; when appropriate; effect of violating condition of probation.**

(1) Whenever a person pleads guilty to or is found guilty of a misdemeanor other than driving while under the influence of intoxicants or other than a misdemeanor involving domestic violence as defined in ORS 135.230, the court may defer further proceedings and place the person on probation, upon motion of the district attorney and without entering a judgment of guilt, if the person:

- (a) Consents to the disposition;
- (b) Has not previously been convicted of any offense in any jurisdiction;
- (c) Has not been placed on probation under ORS 475.245;
- (d) Has not completed a diversion under ORS 135.881 to 135.901; and
- (e) Agrees to pay a fee equal to \$100. The person must pay the amount within 90 days of imposition unless the court allows payment at a later time.

(2) A district attorney may submit a motion under subsection (1) of this section if, after considering the factors listed in subsection (3) of this section, the district attorney finds that disposition under this section would be in the interests of justice and of benefit to the person and the community.

(3) In determining whether disposition under this section is in the interests of justice and of benefit to the person and the community, the district attorney shall consider at least the following factors:

- (a) The nature of the offense. However, the offense must not have involved injury to another person.
- (b) Any special characteristics or difficulties of the person.
- (c) Whether there is a probability that the person will cooperate with and benefit from alternative treatment.
- (d) Whether an available program is appropriate to the needs of the person.
- (e) The impact of the disposition upon the community.
- (f) Recommendations, if any, of the involved law enforcement agency.
- (g) Recommendations, if any, of the victim.
- (h) Provisions for restitution.
- (i) Any mitigating circumstances.

(4) Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon the person's fulfillment of the terms and conditions of probation, the court



shall discharge the person and dismiss the proceedings against the person. A discharge and dismissal under this section is without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. A person may be discharged and have proceedings dismissed only once under this section.

(5) Subsections (1) to (4) of this section do not affect any domestic violence sentencing programs. [1999 c.819 §§1,2; 2011 c.597 §124]

**Note:** 137.533 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.540 Conditions of probation; evaluation and treatment; fees; effect of failure to abide by conditions; modification.**

(1) The court may sentence the defendant to probation subject to the following general conditions unless specifically deleted by the court. The probationer shall:

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

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

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

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

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

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

(g) Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency.

(h) Permit the parole and probation officer to visit the probationer or the probationer's work site or residence and to conduct a walk-through of the common areas and of the rooms in the residence occupied by or under the control of the probationer.

(i) Consent to the search of person, vehicle or premises upon the request of a repre-

sentative of the supervising officer if the supervising officer has reasonable grounds to believe that evidence of a violation will be found, and submit to fingerprinting or photographing, or both, when requested by the Department of Corrections or a county community corrections agency for supervision purposes.

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

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

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

(m) Report as required and abide by the direction of the supervising officer.

(n) If recommended by the supervising officer, successfully complete a sex offender treatment program approved by the supervising officer and submit to polygraph examinations at the direction of the supervising officer if the probationer:

(A) Is under supervision for a sex offense under ORS 163.305 to 163.467;

(B) Was previously convicted of a sex offense under ORS 163.305 to 163.467; or

(C) Was previously convicted in another jurisdiction of an offense that would constitute a sex offense under ORS 163.305 to 163.467 if committed in this state.

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

(p) If required to report as a sex offender under ORS 163A.015, report with the Department of State Police, a city police department, a county sheriff's office or the supervising agency:

(A) When supervision begins;

(B) Within 10 days of a change in residence;

(C) Once each year within 10 days of the probationer's date of birth;

(D) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

(E) Within 10 days of a change in work, vocation or attendance status at an institution of higher education.

(q) Submit to a risk and needs assessment as directed by the supervising officer.

(2) In addition to the general conditions, the court may impose any special conditions of probation that are reasonably related to the crime of conviction or the needs of the

probationer for the protection of the public or reformation of the probationer, or both, including, but not limited to, that the probationer shall:

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

(b) For felonies committed on or after November 1, 1989:

(A) Be confined in the county jail, or be subject to other custodial sanctions under community supervision, or both, as provided by rules of the Oregon Criminal Justice Commission; and

(B) Comply with any special conditions of probation that are imposed by the supervising officer in accordance with subsection (9) of this section.

(c) For crimes committed on or after December 5, 1996, sell any assets of the probationer as specifically ordered by the court in order to pay restitution.

(d) For crimes constituting delivery of a controlled substance, as those terms are defined in ORS 475.005, or for telephonic harassment under ORS 166.090, or for crimes involving domestic violence, as defined in ORS 135.230, be prohibited from using Internet websites that provide anonymous text message services.

(3)(a) If a person is released on probation following conviction of stalking under ORS 163.732 (2)(b) or violating a court's stalking protective order under ORS 163.750 (2)(b), the court may include as a special condition of the person's probation reasonable residency restrictions.

(b) If the court imposes the special condition of probation described in this subsection and if at any time during the period of probation the victim moves to a location that causes the probationer to be in violation of the special condition of probation, the court may not require the probationer to change the probationer's residence in order to comply with the special condition of probation.

(4) When a person who is a sex offender is released on probation, the court shall impose as a special condition of probation that the person not reside in any dwelling in which another sex offender who is on probation, parole or post-prison supervision re-

sides, without the approval of the person's supervising parole and probation officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides, without the approval of the director of the probation agency that is supervising the person or of the county manager of the Department of Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole and probation officer of a person subject to the requirements of this subsection shall review the person's living arrangement with the person's sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. As used in this subsection:

(a) "Dwelling" has the meaning given that term in ORS 469B.100.

(b) "Dwelling" does not include a residential treatment facility or a halfway house.

(c) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(d) "Sex offender" has the meaning given that term in ORS 163A.005.

(5)(a) If the person is released on probation following conviction of a sex crime, as defined in ORS 163A.005, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the court, if requested by the victim, shall include as a special condition of the person's probation that the person not reside within three miles of the victim unless:

(A) The victim resides in a county having a population of less than 130,000 and the person is required to reside in that county;

(B) The person demonstrates to the court by a preponderance of the evidence that no mental intimidation or pressure was brought to bear during the commission of the crime;

(C) The person demonstrates to the court by a preponderance of the evidence that imposition of the condition will deprive the person of a residence that would be materially significant in aiding in the rehabilitation of the person or in the success of the probation; or

(D) The person resides in a halfway house. As used in this subparagraph, "halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(b) A victim may request imposition of the special condition of probation described in this subsection at the time of sentencing in person or through the prosecuting attorney.

(c) If the court imposes the special condition of probation described in this subsection and if at any time during the period of probation the victim moves to within three miles of the probationer's residence, the court may not require the probationer to change the probationer's residence in order to comply with the special condition of probation.

(6) When a person who is a sex offender, as defined in ORS 163A.005, is released on probation, the Department of Corrections or the county community corrections agency, whichever is appropriate, shall notify the city police department, if the person is going to reside within a city, and the county sheriff's office of the county in which the person is going to reside of the person's release and the conditions of the person's release.

(7) Failure to abide by all general and special conditions of probation may result in arrest, modification of conditions, revocation of probation or imposition of structured, intermediate sanctions in accordance with rules adopted under ORS 137.595.

(8) The court may order that probation be supervised by the court. If the court orders that probation be supervised by the court, the defendant shall pay a fee of \$100 to the court. Fees imposed under this subsection in the circuit court shall be deposited by the clerk of the court in the General Fund. Fees imposed in a justice court under this subsection shall be paid to the county treasurer. Fees imposed in a municipal court under this subsection shall be paid to the city treasurer.

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

(b) When the court orders a defendant placed under the supervision of the Department of Corrections or a community corrections agency, the supervising officer may file with the court a proposed modification to the special conditions of probation. The supervising officer shall provide a copy of the proposed modification to the district attorney and the probationer. If the district attorney:

(A) Files an objection to the proposed modification less than five judicial days after the proposed modification was filed, the court shall schedule a hearing no later than 10 judicial days after the proposed modification was filed, unless the court finds good cause to schedule a hearing at a later time.

(B) Does not file an objection to the proposed modification less than five judicial days after the proposed modification was filed, the proposed modification becomes effective five judicial days after the proposed modification was filed.

(10) A court may not order revocation of probation as a result of the probationer's failure to pay restitution unless the court determines from the totality of the circumstances that the purposes of the probation are not being served.

(11) It is not a cause for revocation of probation that the probationer failed to apply for or accept employment at any workplace where there is a labor dispute in progress. As used in this subsection, "labor dispute" has the meaning for that term provided in ORS 662.010.

(12)(a) If the court determines that a defendant has violated the terms of probation, the court shall collect a \$25 fee from the defendant and may impose a fee for the costs of extraditing the defendant to this state for the probation violation proceeding if the defendant left the state in violation of the conditions of the defendant's probation. The fees imposed under this subsection become part of the judgment and may be collected in the same manner as a fine.

(b) Probation violation fees collected under this subsection in the circuit court shall be deposited by the clerk of the court in the General Fund. Extradition cost fees collected in the circuit court under this subsection shall be deposited by the clerk of the court in the Arrest and Return Account established by ORS 133.865. Fees collected in a justice court under this subsection shall be paid to the county treasurer. Fees collected in a municipal court under this subsection shall be paid to the city treasurer.

(13) As used in this section, "attends," "institution of higher education," "works" and "carries on a vocation" have the meanings given those terms in ORS 163A.005. [Amended by 1965 c.346 §1; 1969 c.597 §125; 1977 c.371 §3; 1977 c.380 §2; 1981 c.671 §1; 1983 c.588 §2; 1985 c.818 §2; 1987 c.780 §3; 1989 c.790 §16; 1991 c.196 §1; 1991 c.630 §5; 1991 c.731 §1; 1993 c.14 §11; 1993 c.680 §16; 1997 c.313 §24; 1999 c.626 §11; amendments by 1999 c.626 §34 repealed by 2001 c.884 §1; 2001 c.726 §§1,2; 2001 c.884 §5; 2005 c.264 §3; 2005 c.558 §1; 2005 c.567 §8; 2005 c.576 §1a; 2005 c.642 §1; 2009 c.111 §1; 2009 c.204 §5; 2009 c.659 §§21,23; 2009 c.713 §11; 2011 c.595 §162; 2013 c.649 §24; 2015 c.198 §1; 2015 c.350 §2; 2017 c.21 §40; 2017 c.670 §3; 2017 c.689 §1]

**137.542 Probation conditions related to medical use of cannabis.** (1) As used in this section, "cannabinoid concentrate," "cannabinoid extract," "medical cannabinoid product," "registry identification card" and "usable marijuana" have the meanings given those terms in ORS 475B.791.

(2) Notwithstanding ORS 137.540, the conditions of supervision of a person who holds a registry identification card and is sentenced to probation related to the use of usable marijuana, medical cannabinoid products, cannabinoid concentrates or

cannabinoid extracts must be imposed in the same manner as the conditions of supervision of a person sentenced to probation related to prescription drugs. [2016 c.24 §51]

**137.545 Period of probation; discharge from probation; proceedings in case of violation of conditions.** (1) Subject to the limitations in ORS 137.010 and to rules of the Oregon Criminal Justice Commission for felonies committed on or after November 1, 1989:

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

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

(2) At any time during the probation period, the court may issue a warrant and cause a defendant to be arrested for violating any of the conditions of probation. Any parole and probation officer, police officer or other officer with power of arrest may arrest a probationer without a warrant for violating any condition of probation, and a statement by the parole and probation officer or arresting officer setting forth that the probationer has, in the judgment of the parole and probation officer or arresting officer, violated the conditions of probation is sufficient warrant for the detention of the probationer in the county jail until the probationer can be brought before the court or until the parole and probation officer or supervisory personnel impose and the offender agrees to structured, intermediate sanctions in accordance with the rules adopted under ORS 137.595. Disposition shall be made during the first 36 hours in custody, excluding Saturdays, Sundays and holidays, unless later disposition is authorized by supervisory personnel. If authorized by supervisory personnel, the disposition shall take place in no more than five judicial days. If the offender does not consent to structured, intermediate sanctions imposed by the parole and probation officer or supervisory personnel in accordance with the rules adopted under ORS 137.595, the parole and probation officer, as soon as practicable, but within one judicial day, shall report the arrest or detention to the court that imposed the probation. The parole and probation officer shall promptly submit to the court a report showing in what manner the probationer has violated the conditions of probation.

(3) Except for good cause shown or at the request of the probationer, the probationer shall be brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending a violation or revocation hearing or pending transfer to the

jurisdiction of another court where the probation was imposed. In lieu of an order that the probationer be held, the magistrate may release the probationer upon the condition that the probationer appear in court at a later date for a probation violation or revocation hearing. If the probationer is being held on an out-of-county warrant, the magistrate may order the probationer released subject to an additional order to the probationer that the probationer report within seven calendar days to the court that imposed the probation.

(4) When a probationer has been sentenced to probation in more than one county and the probationer is being held on an out-of-county warrant for a probation violation, the court may consider consolidation of some or all pending probation violation proceedings pursuant to rules made and orders issued by the Chief Justice of the Supreme Court under ORS 137.547:

(a) Upon the motion of the district attorney or defense counsel in the county in which the probationer is held; or

(b) Upon the court's own motion.

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

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

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

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

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

(7) A defendant who has been previously confined in the county jail as a condition of probation pursuant to ORS 137.540 or as part of a probationary sentence pursuant to the rules of the Oregon Criminal Justice Commission may be given credit for all time thus served in any order or judgment of confinement resulting from revocation of probation.

(8) In the case of any defendant whose sentence has been suspended but who has not been sentenced to probation, the court

may issue a warrant and cause the defendant to be arrested and brought before the court at any time within the maximum period for which the defendant might originally have been sentenced. Thereupon the court, after summary hearing, may revoke the suspension of sentence and cause the sentence imposed to be executed.

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

(10) The probationer may admit or deny the violation by being physically present at the hearing or by means of simultaneous electronic transmission as described in ORS 131.045.

(11) The victim has the right:

(a) Upon request made within the time period prescribed in the notice required by ORS 147.417, to be notified of any hearing before the court that may result in the revocation of the defendant's probation for a felony or person Class A misdemeanor. The notification shall be provided by:

(A) The district attorney if the defendant is not supervised by the supervisory authority or if the defendant is supervised by the supervisory authority and the district attorney initiates a request with the court for a probation violation or revocation hearing.

(B) The supervisory authority if the defendant is supervised by the supervisory authority and the supervisory authority initiates a request with the court for a probation violation or revocation hearing.

(b) To appear personally at the hearing.

(c) If present, to reasonably express any views relevant to the issues before the court.

(12) As used in this section:

(a) "Person Class A misdemeanor" has the meaning given that term in the rules of the Oregon Criminal Justice Commission.

(b) "Supervisory authority" has the meaning given that term in ORS 144.087. [Formerly 137.550; 2003 c.577 §14; 2005 c.264 §4; 2005 c.566 §11; 2009 c.178 §28; 2009 c.660 §§20,32; 2011 c.596 §§1,5]

**137.547 Consolidation of probation violation proceedings; rules.** (1) Notwithstanding any other provision of law, the Chief Justice of the Supreme Court may make rules or issue orders under ORS 1.002 to establish procedures for the consolidation of probation violation proceedings pending against a probationer in multiple circuit courts.

(2) Rules made or orders issued under this section:

(a) Shall require the consent of the probationer to a consolidated probation violation proceeding and written waivers by the probationer as determined necessary or fair.

(b) Shall require the approval of the judge of any responding court, the initiating court and any appropriate court being considered for a consolidated probation violation proceeding.

(c) Shall require the approval of the district attorney of the county for any responding court, the initiating court and any court being considered as an appropriate court. [1999 c.614 §1; 2005 c.264 §5; 2013 c.155 §1]

**Note:** 137.547 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.550** [Amended by 1955 c.688 §2; 1965 c.346 §2; 1971 c.743 §326; 1987 c.908 §1; 1989 c.790 §17; 1991 c.196 §2; 1993 c.14 §12; 1993 c.581 §2; 1993 c.680 §17; 1997 c.313 §11; 1999 c.614 §2; renumbered 137.545 in 1999]

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

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

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

**137.553 Use of citations for probation violations authorized.** (1) In addition to any authority granted under ORS 137.545, a court may authorize the use of citations to direct its probationers who violate conditions of probation to appear before the court. The following apply to the use of citations under this subsection:

(a) A court may authorize issuance of citations under this subsection only by officers who are permitted under ORS 137.545 to make an arrest without a warrant.

(b) Nothing in this subsection limits the authority, under ORS 137.545, of a parole and probation officer, police officer or other officer to arrest for violation of conditions of probation even if the officer is authorized under this section to issue a citation.

(c) A court may impose any conditions upon an authorization under this subsection

that the court considers appropriate. The conditions may include, but are not limited to, requirements that citation authority be sought on a case-by-case basis, provision for citation in all cases that meet certain conditions, allowance of citation for certain types of cases or designation of certain cases where citations shall not be used.

(2) The cited probationer shall appear before the court at the time, date and court specified in the citation. If the probationer fails to appear at the time, date and court specified in the citation, the court may issue a warrant of arrest, upon the request of the supervisor of probation, or upon request of the district attorney, or upon the court's own motion. [1987 c.761 §2; 2005 c.264 §6]

**137.557 Citation; procedure; contents.**

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

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

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

(b) The name of the probationer cited.

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

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

(e) A notice to the effect that:

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

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

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

**137.560 Copies of certain judgments to be sent to Department of Corrections.**

Within 10 days following the issuing of any judgment of suspension of imposition or execution of sentence or of probation of any person convicted of a crime, or of the continuation, extension, modification or revocation of any such judgment, or of the discharge of such person, or the recommen-

dation by the court to the Governor of the pardon of such person, provided such person is under the jurisdiction of the Department of Corrections, the court issuing such a judgment shall cause prompt delivery of a copy of the same to the Director of the Department of Corrections. [Amended by 1973 c.836 §271; 1979 c.75 §1; 1987 c.320 §39; 1991 c.111 §16; 1993 c.18 §23]

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

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

(2) If the statement is approved in writing by the judge of the court to which the parole and probation officer is attached. [Amended by 1973 c.836 §272; 1993 c.14 §13; 2005 c.264 §7]

**137.580 Effect of transfer of probationer from one agency to another.**

Whenever the transfer mentioned in ORS 137.570 is made, the court making it shall send to the probation agency to whose supervision the probationer is transferred a copy of all the records of the court as to the offense, criminal record and social history of the probationer. The probation agency shall report concerning the conduct and progress of the probationer to the court that sentenced the probationer to probation. Parole and probation officers or agencies shall have, with respect to persons transferred to their supervision from any other jurisdiction, all the powers and be subject to all the duties now imposed by law upon them in regard to probationers received on probation from courts in their own jurisdiction. [Amended by 1973 c.836 §273; 1993 c.14 §14; 2005 c.264 §8]

**137.590 Appointment of parole and probation officers and assistants; chief parole and probation officer.**

The judge or judges of any court of criminal jurisdiction, including municipal courts, may appoint, with the prior approval of the governing body of the county or city involved, and at pleasure remove, parole and probation officers and clerical assistants that may be necessary. Parole and probation officers

appointed by the court shall be selected because of definite qualifications as to character, personality, ability and training. In courts where more than one parole and probation officer is appointed, one shall be designated chief parole and probation officer and shall have general supervision of the probation work of parole and probation officers appointed by and under the direction of the court. Appointments shall be in writing and entered on the records of the court. Parole and probation officers and clerical assistants appointed under this section are not state officers or employees, and their compensation and expenses shall not be paid by the state. [Amended by 1971 c.633 §12; 1973 c.836 §274; 1981 s.s. c.3 §38; 2005 c.264 §9]

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

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

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

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

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

(2) Notwithstanding ORS 137.124 and 423.478 and any other provision of law, the sentencing judge shall retain authority:

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

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

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

(d) To impose and require an offender to serve a period of incarceration not to exceed 180 days as a sanction for revocation of probation.

(3) In no case may the sentencing judge cause a probationer to be brought before the court for a hearing and revoke probation or impose other or additional sanctions after the probationer has completed a structured, intermediate sanction imposed by the Department of Corrections or a county community corrections agency pursuant to rules adopted under ORS 137.595. [1993 c.680 §10; 1995 c.423 §9a]

**Note:** See note under 137.592.

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

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

(a) A system of structured, intermediate probation violation sanctions that may be

imposed by the Department of Corrections or a county community corrections agency on a probationer who waives in writing a probation violation hearing, admits or affirmatively chooses not to contest the violations alleged in a probation violation report and consents to the sanctions;

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

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

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

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

(f) Procedures for notifying district attorneys and the courts of probation violations admitted by probationers and the sanctions imposed by the Department of Corrections or county community corrections agencies; and

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

(3) Jail confinement imposed as a custodial sanction by the Department of Corrections or a county community corrections agency pursuant to rules adopted under this section may not exceed 60 days per violation report. The total number of days of jail confinement for all violation reports per conviction may not exceed the maximum number of available jail custody units under rules adopted by the Oregon Criminal Justice Commission.

(4) Nonjail confinement imposed as a custodial sanction by the Department of Corrections or a county community corrections agency pursuant to rules adopted under this section may not exceed the maximum number of available nonjail custody units under rules adopted by the Oregon Criminal Justice Commission. [1993 c.680 §11; 1999 c.121 §1; 2001 c.962 §93; 2005 c.264 §10]

**Note:** See note under 137.592.

**Note:** Legislative Counsel has substituted "chapter 680, Oregon Laws 1993," for the words "this Act" in section 11, chapter 680, Oregon Laws 1993, compiled as 137.595. Specific ORS references have not been substituted, pursuant to 173.160. These sections may be determined by referring to the 1993 Comparative Section Table located in Volume 20 of ORS.

**137.596 Probation violations; custodial sanctions; rules.** The Oregon Criminal Justice Commission shall amend its rules to increase the jail and nonjail custody units that can be imposed as custodial sanctions for probation violations under ORS 137.595. The commission shall base the amendments on the existing rule structure and may not increase existing sanction limits by more than 60 days. [2001 c.737 §1]

**Note:** See note under 137.592.

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

**Note:** See note under 137.592.

**137.599 Hearing prior to, or after, imposition of sanctions.** Prior to the imposition of any structured, intermediate sanction or within four judicial days after receiving notice that a structured, intermediate sanction has been imposed on a probationer pursuant to rules adopted under ORS 137.595, the court, upon motion of the district attorney or on its own motion, may cause the probationer to be brought before the court for a hearing, and may revoke probation or impose such other or additional sanctions or modify the conditions of probation as authorized by law. In no case may the sentencing judge cause a probationer to be brought before the court for a hearing and revoke probation or impose other or additional sanctions after the probationer has completed a structured, intermediate sanction imposed by the Department of Corrections or a county community corrections agency pursuant to rules adopted under ORS 137.595. [1993 c.680 §13]

**Note:** See note under 137.592.

**137.600** [Repealed by 1955 c.491 §9]

**137.610 Performance by Department of Corrections staff of duties of parole and probation officers appointed by judge.** The judge or judges of any court of criminal jurisdiction, including municipal courts, may request at any time the staff of the Department of Corrections to perform any of the duties that might be required of



a parole and probation officer appointed by the court pursuant to ORS 137.590. All requests for services of the staff shall be made upon the Director of the Department of Corrections, who shall order the prompt performance of any such requested service whenever members of the staff are available for such duty. [Amended by 1969 c.597 §126; 1987 c.320 §40; 2005 c.264 §11]

**137.620 Powers of parole and probation officers; oath of office; bond; audit of accounts.** (1) As used in this section, “parole and probation officer” has the meaning given that term in ORS 181A.355.

(2) Parole and probation officers of the Department of Corrections or a county community corrections agency and those appointed by the court have the powers of peace officers in the execution of their duties, but are not active members of the regular police force. Each parole and probation officer appointed by the court, before entering on the duties of office, shall take an oath of office. Each parole and probation officer who collects or has custody of money shall execute a bond in a penal sum to be fixed by the court, with sufficient sureties approved thereby, conditioned for the honest accounting of all money received by the parole and probation officer as a parole and probation officer. The accounts of all parole and probation officers are subject to audit at any time by the proper fiscal authorities. [Amended by 1973 c.836 §275; 1987 c.320 §41; 2005 c.264 §1]

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

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

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

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

(d) To give each person under their supervision a statement of the conditions of probation or program participation and to instruct the person regarding the conditions.

(e) To keep informed concerning the conduct and condition of persons under their supervision by visiting, requiring reports and otherwise.

(f) To use all suitable methods, not inconsistent with the condition of probation or program participation, to aid and encourage persons under their supervision and to effect improvement in their conduct and condition.

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

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

(2) Parole and probation officers of the Department of Corrections have duties as specified by rule adopted by the Director of the Department of Corrections.

(3) Notwithstanding subsection (2) of this section, parole and probation officers may not be required to collect from persons under their supervision any fees to offset the costs of supervising the probation, including but not limited to those ordered pursuant to ORS 137.540 or 423.570. [Amended by 1969 c.597 §127; 1981 c.447 §1; 1987 c.320 §42; 1993 c.14 §15; 2005 c.264 §12]

**137.633 Earned reduction of supervision period; rules.** (1) A person convicted of a felony or a designated drug-related misdemeanor and sentenced to probation or to the legal and physical custody of the supervisory authority under ORS 137.124 (2) is eligible for a reduction in the period of probation or local control post-prison supervision for complying with terms of probation or post-prison supervision, including the payment of restitution and participation in recidivism reduction programs.

(2) The maximum reduction under this section may not exceed 50 percent of the period of probation or local control post-prison supervision imposed.

(3) A reduction under this section may not be used to shorten the period of probation or local control post-prison supervision to less than six months.

(4)(a) The Department of Corrections shall adopt rules to carry out the provisions of this section.

(b) The supervisory authority shall comply with the rules adopted under this section.

(5) As used in this section:

(a) “Designated drug-related misdemeanor” has the meaning given that term in ORS 423.478.

(b) “Local control post-prison supervision” means post-prison supervision that is supervised by a local supervisory authority pursuant to ORS 144.101. [2013 c.649 §17; 2015 c.140 §1; 2017 c.706 §19]

**Note:** 137.633 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

### DETERMINATE SENTENCES

**137.635 Determinate sentences required for certain felony convictions.** (1) When, in the case of a felony described in subsection (2) of this section, a court sentences a convicted defendant who has previously been convicted of any felony designated in subsection (2) of this section, the sentence shall not be an indeterminate sentence to which the defendant otherwise would be subject under ORS 137.120, but, unless it imposes a death penalty under ORS 163.105, the court shall impose a determinate sentence, the length of which the court shall determine, to the custody of the Department of Corrections. Any mandatory minimum sentence otherwise provided by law shall apply. The sentence shall not exceed the maximum sentence otherwise provided by law in such cases. The convicted defendant who is subject to this section shall not be eligible for probation. The convicted defendant shall serve the entire sentence imposed by the court and shall not, during the service of such a sentence, be eligible for parole or any form of temporary leave from custody. The person shall not be eligible for any reduction in sentence pursuant to ORS 421.120 or for any reduction in term of incarceration pursuant to ORS 421.121.

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

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

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

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

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

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

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

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

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

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

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

(3) When the court imposes a sentence under this section, the court shall indicate in

the judgment that the defendant is subject to this section. [1989 c.1 §§2,3; 1991 c.386 §6; 1993 c.692 §5; 1995 c.79 §49; 2003 c.14 §59]

**137.637 Determining length of determinate sentences.** When a determinate sentence of imprisonment is required or authorized by statute, the sentence imposed shall be the determinate sentence or the sentence as provided by the rules of the Oregon Criminal Justice Commission, whichever is longer. [1989 c.790 §82; 1995 c.520 §2]

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

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

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

### OREGON CRIMINAL JUSTICE COMMISSION

**137.651 Definitions for ORS 137.654, 137.656 and 137.658.** As used in ORS 137.654, 137.656 and 137.658:

(1) "Commission" means the Oregon Criminal Justice Commission.

(2) "Criminal justice system" includes all activities and agencies, whether state or local, public or private, pertaining to the prevention, prosecution and defense of offenses, the disposition of offenders under the criminal law and the disposition or treatment of juveniles adjudicated to have committed an act which, if committed by an adult, would be a crime. The "criminal justice system" includes police, public prosecutors, defense counsel, courts, correction systems, mental health agencies, crime victims and all public and private agencies providing services in connection with those elements, whether voluntarily, contractually or by order of a court. [1985 c.558 §1; 1995 c.420 §4; 1997 c.433 §1]

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

**137.653** [1985 c.558 §2; 1987 c.879 §18; 1989 c.548 §1; 1993 c.188 §2; repealed by 1995 c.420 §14]

**137.654 Oregon Criminal Justice Commission; membership; terms; meetings.**

(1) There is established the Oregon Criminal Justice Commission consisting of nine members. The Governor shall appoint seven members who are subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution. The President of the Senate shall appoint one state Senator as a nonvoting member. The Speaker of the House of Representatives shall appoint one state Representative as a nonvoting member. Members serve at the pleasure of the appointing authority. The Governor shall ap-

point members of the commission consistent with the following:

(a) Members shall be appointed with consideration of the different geographic regions of the state.

(b) Not more than four members may belong to the same political party. Party affiliation is determined by the appropriate entry on official election registration cards.

(2)(a) The term of office of each member is four years or until the end of a legislative member's legislative term, whichever occurs first. Before the expiration of the term of a member, the appointing authority shall appoint a successor whose term begins immediately upon the expiration of the term of the current member. A member is eligible for reappointment but may serve no more than two consecutive terms.

(b) In case of a vacancy for any cause, the appointing authority shall appoint a person to fill the office for the unexpired term. When a person is appointed under this paragraph, the unexpired term may not be considered for purposes of the limitation to two consecutive terms of service.

(3) The Governor shall appoint one of the commissioners as chairperson, to serve at the pleasure of the Governor. The members of the commission shall elect from among themselves a vice chairperson who shall preside over meetings and exercise the functions of the chairperson during absence or disability of the chairperson. The chairperson and vice chairperson shall execute the duties determined by the commission to be necessary.

(4) The chairperson shall appoint one member, subject to the approval of the commission, to serve on an executive committee with the chairperson and vice chairperson. The executive committee may exercise the powers and responsibilities of the commission between meetings of the commission. All action taken by the executive committee not previously authorized must be submitted to the commission for approval at the next regular or special meeting.

(5) A majority of the voting members of the commission constitutes a quorum for the transaction of business.

(6) The commission shall meet at least once a month, at a time and place determined by the commission. The commission shall also meet at such other times and places as are specified by the call of the chairperson. If a majority of members, in writing, request a special meeting, the chairperson shall designate a time for a special meeting as requested.

(7) The Governor shall appoint an executive director for the commission who shall be in the exempt service and who shall be

responsible for the performance of duties assigned by the commission. Subject to the State Personnel Relations Law, the executive director may employ appropriate staff to carry out the duties assigned by the commission.

(8) Members of the commission are entitled to expenses as provided in ORS 292.495. Subject to the availability of funds, members of a committee established under ORS 137.658 who are not commission members may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties, subject to ORS 292.495 (2). Any legislative members are entitled to payment of compensation and expense reimbursement under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(9) The commission is subject to the provisions of ORS 291.201 to 291.222 and 291.232 to 291.260.

(10) The commission shall consult with and seek advice and counsel of the Chief Justice of the Supreme Court and the State Court Administrator on any matter that impacts the operation of the courts. The Chief Justice may have a representative participate in any meeting of the commission. [1995 c.420 §1; 1999 c.172 §1; 2001 c.919 §4]

**Note:** See note under 137.651.

**137.655** [1985 c.558 §3; subsections (8) and (9) enacted as 1991 c.885 §6; 1993 c.188 §1; repealed by 1995 c.420 §14]

**137.656 Purpose and duties of commission; rules.** (1) The purpose of the Oregon Criminal Justice Commission is to improve the effectiveness and efficiency of state and local criminal justice systems by providing a centralized and impartial forum for statewide policy development and planning.

(2) The primary duty of the commission is to develop and maintain a state criminal justice policy and comprehensive, long-range plan for a coordinated state criminal justice system that encompasses public safety, offender accountability, crime reduction and prevention and offender treatment and rehabilitation. The plan must include, but need not be limited to, recommendations regarding:

(a) Capacity, utilization and type of state and local prison and jail facilities;

(b) Implementation of community corrections programs;

(c) Alternatives to the use of prison and jail facilities;

(d) Appropriate use of existing facilities and programs;

(e) Whether additional or different facilities and programs are necessary;

(f) Methods of assessing the effectiveness of juvenile and adult correctional programs, devices and sanctions in reducing future criminal conduct by juvenile and adult offenders;

(g) Methods of reducing the risk of future criminal conduct; and

(h) The effective utilization of local public safety coordinating councils.

(3) Other duties of the commission are:

(a) To conduct joint studies by agreement with other state agencies, boards or commissions on any matter within the jurisdiction of the commission.

(b) To provide Oregon criminal justice analytical and statistical information to federal agencies and serve as a clearinghouse and information center for the collection, preparation, analysis and dissemination of information on state and local sentencing practices.

(c) To provide technical assistance and support to local public safety coordinating councils.

(d) To receive grant applications to start or expand drug court programs as defined in ORS 3.450, to make rules to govern the grant process and to award grant funds according to the rules.

(e) To prepare the racial and ethnic impact statements described in ORS 137.683 and 137.685.

(4) The commission shall establish by rule the information that must be submitted under ORS 137.010 (9) and the methods for submitting the information. A rule adopted under this subsection must be approved by the Chief Justice of the Supreme Court before it takes effect.

(5) The commission may:

(a) Apply for and receive gifts and grants from any public or private source.

(b) Award grants from funds appropriated by the Legislative Assembly to the commission or from funds otherwise available from any other source, for the purpose of carrying out the duties of the commission.

(c) Adopt rules to carry out the provisions of this subsection. [1995 c.420 §3; 1997 c.433 §2; 1999 c.1053 §44; 2005 c.10 §3; 2005 c.503 §11; 2005 c.706 §24; 2007 c.71 §36; 2007 c.682 §3; 2009 c.308 §1; 2013 c.600 §§7,9; 2017 c.614 §7]

**Note:** See note under 137.651.

**137.657** [1989 c.790 §91; repealed by 1995 c.420 §14]

**137.658 Authority of chairperson to create committees within commission.** (1) The chairperson of the Oregon Criminal Justice Commission may create any committees within the commission as the chairperson may think necessary. Persons who are not

commission members may be appointed as members to serve on the committees with the approval of the commission.

(2) The chairperson shall appoint members of committees created under this section in such a manner as to ensure representation from all segments of the criminal justice system that are affected by the work of the committee. In selecting members for committee assignments, the chairperson shall consider, but is not limited to, representatives from the following:

(a) The Attorney General;

(b) The Director of the Department of Corrections;

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

(d) The Superintendent of State Police;

(e) The chief administrative employee of the Psychiatric Security Review Board;

(f) The Director of Human Services;

(g) The Director of the Oregon Health Authority;

(h) The Director of the Oregon Youth Authority;

(i) Trial judges;

(j) Judges of the Oregon Supreme Court or Court of Appeals;

(k) Majority and minority parties of the House of Representatives and the Senate;

(l) District attorneys;

(m) Criminal defense attorneys;

(n) County sheriffs;

(o) County commissioners;

(p) County community corrections directors;

(q) Chiefs of police;

(r) Victims of crime;

(s) The public at large;

(t) The director of a nonprofit entity created for the purpose of increasing understanding of the adult and juvenile justice systems and promotion of effective policies for prevention and control of crime; and

(u) Private contract providers. [1995 c.420 §2; 1997 c.433 §3; 2001 c.900 §23; 2009 c.595 §98]

**Note:** See note under 137.651.

**137.659** [1987 c.619 §9; 1991 c.455 §1; repealed by 1995 c.420 §14]

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

**137.661 Agency cooperation with commission.** All officers, boards, commissions and other agencies of the State of Oregon shall cooperate with the Oregon Criminal Justice Commission to accomplish the duties imposed upon the Oregon Criminal Justice Commission. [1985 c.558 §6; 1995 c.420 §5]

**Note:** See note under 137.651.

**137.662 Oregon Criminal Justice Commission Account.** The Oregon Criminal Justice Commission Account is established separate and distinct from the General Fund. All moneys received by the Oregon Criminal Justice Commission, other than appropriations from the General Fund, and except those moneys described in ORS 131A.460, shall be deposited into the account and are continuously appropriated to the commission to carry out the duties, functions and powers of the commission. [2001 c.716 §1; 2009 c.78 §56]

**Note:** See note under 137.651.

**137.663** [1987 c.619 §3; 1989 c.790 §38; 1993 c.188 §3; repealed by 1995 c.420 §14]

**137.665** [1989 c.790 §89; 1993 c.692 §6; repealed by 1995 c.420 §14]

**137.667 Amendments to sentencing guidelines; submitting to Legislative Assembly; rules.** (1) The Oregon Criminal Justice Commission shall review all new legislation that creates new crimes or modifies existing crimes. The commission shall adopt by rule any necessary modifications to the crime seriousness scale of the guidelines to reflect the actions of the Legislative Assembly and may classify offenses as person felonies or person misdemeanors for purposes of the rules.

(2) The commission may adopt by majority vote of all of its members who are eligible to vote amendments to the sentencing guidelines approved by section 87, chapter 790, Oregon Laws 1989. The commission shall submit the amendments to the Legislative Assembly for its approval. The amendments do not become effective unless approved by the Legislative Assembly by law. The effective date of the amendments is the date specified by the Legislative Assembly in the law approving the amendments or, if the Legislative Assembly does not specify a date, the effective date of the law approving the amendments. The Legislative Assembly may by law amend, repeal or supplement any of the amendments.

(3) The provisions of subsection (2) of this section do not apply to amendments to the guidelines adopted by the commission that:

(a) Are required to implement enactments of the Legislative Assembly;

(b) Are required under ORS 421.512 (2) or subsection (1) of this section; or

(c)(A) Renumber rules or parts of rules, change internal references to agree with statute or rule numbers, delete references to repealed statutes or rules, substitute statute references for chapter numbers, change capitalization and spelling for the purpose of

uniformity or correct manifest clerical, grammatical or typographical errors; and

(B) Do not alter the sense, meaning, effect or substance of the rule amended.

(4) If a rule adopted under subsection (1) of this section is not approved by the next regular Legislative Assembly following the adoption of the rule, the rule is repealed on January 1 following adjournment sine die of that Legislative Assembly. [1989 c.790 §94a; 1993 c.681 §6; 1993 c.692 §7; 1995 c.420 §6; 1997 c.691 §3; 1999 c.966 §2; 2003 c.453 §4]

**Note:** See note under 137.651.

**137.669 Guidelines control sentences; mandatory sentences.** The guidelines adopted under ORS 137.667, together with any amendments, supplements or repealing provisions, shall control the sentences for all crimes committed after the effective date of such guidelines. Except as provided in ORS 137.637 and 137.671, the incarcerative guidelines and any other guidelines so designated by the Oregon Criminal Justice Commission shall be mandatory and constitute presumptive sentences. [1987 c.619 §5; 1989 c.790 §95; 1995 c.420 §7; 1997 c.691 §4]

**Note:** See note under 137.651.

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

**137.671 Authority of court to impose sentence outside guidelines.** (1) The court may impose a sentence outside the presumptive sentence or sentence range made presumptive under ORS 137.669 for a specific offense if it finds there are substantial and compelling reasons justifying a deviation from the presumptive sentence.

(2) Whenever the court imposes a sentence outside the presumptive sentence it shall set forth the reasons for its decision in the manner required by rules of the Oregon Criminal Justice Commission. [1987 c.619 §6; 1989 c.790 §39; 1995 c.420 §8]

**Note:** See note under 137.651.

**137.673 Validity of rules.** Rules adopted by the Oregon Criminal Justice Commission shall not be declared invalid solely because of irregularities in procedural rulemaking, including but not limited to the provisions of ORS 183.335 or 183.400 (4)(c). [1989 c.790 §73; 1995 c.420 §9; 2001 c.220 §2; 2005 c.382 §3]

**Note:** See note under 137.651.

**137.675** [1993 c.680 §14; repealed by 1995 c.420 §14]

**137.677** [1993 c.680 §15; repealed by 1995 c.420 §14]

**137.680 Development of specialty court standards.** (1) As used in this section, "specialty courts" means drug court programs as defined in ORS 3.450, veterans' courts, mental health courts or any other similar court or docketing system.

(2)(a) The Oregon Criminal Justice Commission shall serve as a clearinghouse and information center for the collection, prepa-

ration, analysis and dissemination of the best practices applicable to specialty courts.

(b) After consulting with the Judicial Department, the commission shall develop evidence-based standards that may be applied to specialty courts. The standards must:

(A) Be designed to reduce recidivism in a cost-effective manner; and

(B) When appropriate, target medium-risk and high-risk offenders.

(3) The Chief Justice of the Supreme Court may issue an order applicable to specialty courts. The order may include a requirement that a circuit court that operates a specialty court review the standards described in subsection (2) of this section. [2013 c.649 §39]

**Note:** 137.680 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.683 Racial and ethnic impact statements for proposed legislation; rules.** (1) As used in this section, “criminal offender population” means all persons who are convicted of a crime or adjudicated for an act that, if committed by an adult, would constitute a crime.

(2)(a) Upon written request from a member of the Legislative Assembly from each major political party, the Oregon Criminal Justice Commission shall prepare a racial and ethnic impact statement on proposed legislation that is related to crime and likely to have an effect on the criminal justice system.

(b) The statement shall describe the effects of the proposed legislation on the racial and ethnic composition of the criminal offender population.

(3) A racial and ethnic impact statement must be impartial, simple and understandable and must include, for racial and ethnic groups for which data are available, the following:

(a) An estimate of how the proposed legislation would change the racial and ethnic composition of those likely to be convicted of a criminal offense created or modified by the proposed legislation;

(b) An estimate of the average length of incarceration that each racial and ethnic composition group receives as a sentence, if applicable;

(c) A statement of the methodologies and assumptions used in preparing the estimate; and

(d) An estimate of the racial and ethnic composition of the crime victims who may be affected by the proposed legislation.

(4) The commission shall adopt rules to carry out the provisions of this section. [2017 c.614 §2]

**Note:** 137.683 and 137.685 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.685 Racial and ethnic impact statements for state measures; hearing.**

(1)(a) Upon written request from a member of the Legislative Assembly from each major political party, the Oregon Criminal Justice Commission shall prepare a racial and ethnic impact statement for a state measure that is related to crime and likely to have an effect on the criminal justice system.

(b) The racial and ethnic impact statement must:

(A) Describe the effects of the state measure on the racial and ethnic composition of the criminal offender population as defined in ORS 137.683;

(B) Include the information described in ORS 137.683 (3); and

(C) Be impartial, simple and understandable.

(2) If the commission has prepared a racial and ethnic impact statement for a state measure, not later than the 110th day before a special election held on the date of a primary election or any general election at which the state measure is to be submitted to the people, the commission shall file the statement with the Secretary of State.

(3) Not later than the 100th day before the election at which the measure is to be voted upon, the Secretary of State shall hold a hearing in Salem upon reasonable statewide notice to receive suggestions for changes to the statement or to receive other information. At the hearing, any person may submit suggested changes or other information orally or in writing. Written suggestions and any other information also may be submitted at any time before the hearing.

(4) The commission shall consider suggestions and any other information submitted under subsection (3) of this section and may file a revised statement with the Secretary of State not later than the 90th day before the election at which the measure is to be voted upon.

(5) The Secretary of State shall certify the statement not later than the 90th day before the election at which the measure is to be voted upon.

(6) All statements prepared under this section shall be made available to the public.

(7) A failure to prepare, file or certify a statement does not prevent inclusion of the

measure in the voters' pamphlet. [2017 c.614 §3]

**Note:** Section 13, chapter 614, Oregon Laws 2017, provides:

**Sec. 13.** Section 3 of this 2017 Act [137.685] and the amendments to ORS 251.185 by section 9 of this 2017 Act apply to elections held on or after the first Tuesday after the first Monday in November 2018. [2017 c.614 §13]

**Note:** See note under 137.683.

**(Temporary provisions relating to Justice Reinvestment Program)**

**Note:** Sections 52, 53 and 56, chapter 649, Oregon Laws 2013, provide:

**Sec. 52.** The Justice Reinvestment Account is established, separate and distinct from the General Fund. All moneys in the account are continuously appropriated to the Oregon Criminal Justice Commission for the purpose of making grants to counties in accordance with section 53 of this 2013 Act. [2013 c.649 §52]

**Sec. 53.** (1)(a) In consultation with the Justice Reinvestment Grant Review Committee established under subsection (2) of this section, the Oregon Criminal Justice Commission shall administer the Justice Reinvestment Program described in this section. From funds appropriated to the commission for purposes of the program, the commission shall award grants to counties that establish a process to assess offenders and provide a continuum of community-based sanctions, services and programs that are designed to reduce recidivism and decrease the county's utilization of imprisonment in a Department of Corrections institution while protecting public safety and holding offenders accountable.

(b) Notwithstanding paragraph (a) of this subsection, no less than 10 percent of grant funds awarded under this section must be distributed to community-based nonprofit organizations that provide services to victims of crime.

(2) The Justice Reinvestment Grant Review Committee is established, consisting of the following members:

(a) The Governor shall appoint the following five members:

- (A) One member shall be a district attorney.
- (B) One member shall be a county sheriff.
- (C) One member shall be a chief of police.
- (D) One member shall be a county commissioner.
- (E) One member shall be a community corrections director who is not a sheriff.

(b) The President of the Senate shall appoint two nonvoting members from among members of the Senate.

(c) The Speaker of the House of Representatives shall appoint two nonvoting members from among members of the House of Representatives.

(3)(a) A majority of the voting members of the committee constitutes a quorum for the transaction of business.

(b) The committee shall elect one of its members to serve as chairperson.

(c) If there is a vacancy for any cause, the appointing authority shall make an appointment to become effective immediately.

(d) The committee shall meet at times and places specified by the call of the chairperson or a majority of the voting members of the committee.

(e) Legislative members of the committee shall be entitled to payment of compensation and expenses under ORS 171.072, payable from funds appropriated to the Legislative Assembly.

(4) An application for a grant described in this section must be submitted by a local public safety coordinating council convened under ORS 423.560.

(5)(a) During a grant application period established by the commission, the proportion of grant funds available to each county shall be determined in accordance with the formula used to distribute baseline funding under ORS 423.483.

(b) At the conclusion of the grant application period, the commission shall award grants to counties in accordance with rules adopted by the commission. If unallocated funds remain at the conclusion of the grant acceptance period, the commission may establish a supplemental grant period and distribute the unallocated funds.

(6) The commission shall regularly evaluate the community-based sanctions, services and programs funded under this section. The commission shall report the results of an evaluation conducted under this section to a committee of the Legislative Assembly related to the judiciary.

(7)(a) Before applying for grant funds to administer a community-based program described in subsection (9)(a)(D) of this section, the county must obtain the consent of the presiding judge of the judicial district in which the county is located.

(b) A grant application to administer a community-based program described in subsection (9)(a)(D) of this section must include the costs of appointed counsel.

(8) After consulting with the Justice Reinvestment Grant Review Committee, the commission shall adopt rules to administer the Justice Reinvestment Program. The rules must include:

(a) A methodology for reviewing and approving grant applications and distributing grant funds. Rules described in this paragraph must provide the Justice Reinvestment Grant Review Committee with the ability to approve grant applications, subject to final approval by the commission.

(b) A process for evaluating the efficacy of community-based sanctions, services and programs funded under this section.

(9) As used in this section:

(a) "Community-based programs" includes:

- (A) Work release programs;
- (B) Structured, transitional leave programs;
- (C) Evidence-based programs designed to reduce recidivism that include the balanced administration of sanctions, supervision and treatment;
- (D) Administering a reentry court under section 29 of this 2013 Act; and
- (E) Specialty courts aimed at medium-risk and high-risk offenders.

(b) "County" includes a regional collection of counties. [2013 c.649 §53; 2013 c.649 §54]

**Sec. 56.** Sections 52 and 53 of this 2013 Act are repealed on July 1, 2023. [2013 c.649 §56]

**Note:** Sections 59 and 60, chapter 649, Oregon Laws 2013, provide:

**Sec. 59.** (1) Not less than once per biennium, the Oregon Criminal Justice Commission shall, in conjunction with the Department of Corrections, identify:

(a) The avoided costs to state government resulting from the passage of this 2013 Act; and

(b) Any increased costs to local governments resulting from the passage of this 2013 Act.

(2) No later than January 1 of each odd-numbered year, the commission shall submit a report to the Justice Reinvestment Grant Review Committee established under section 53 of this 2013 Act and to the Legislative

Assembly in the manner provided by ORS 192.245, that includes the determinations described in subsection (1) of this section and describes the methodology employed by the commission in reaching those determinations.

(3) As used in this section, “avoided costs” includes the costs of operating correctional facilities and the costs associated with constructing additional prison capacity. [2013 c.649 §59]

**Sec. 60.** Section 59 of this 2013 Act is repealed on July 1, 2023. [2013 c.649 §60]

### (Temporary provisions relating to Safety and Savings Act)

**Note:** Sections 1, 9, 10 and 14, chapter 673, Oregon Laws 2017, provide:

**Sec. 1.** Sections 7 to 10 of this 2017 Act, the amendments to ORS 137.717 and 421.168 and section 1, chapter 830, Oregon Laws 2015, by sections 2, 4, 5 and 6 of this 2017 Act and the repeal of section 16, chapter 649, Oregon Laws 2013, by section 3 of this 2017 Act shall be known and may be cited as the Safety and Savings Act. [2017 c.673 §1]

**Sec. 9.** (1) The Oregon Criminal Justice Commission shall establish a program to award supplemental grant funds to counties for downward departure prison diversion programs as part of the Justice Reinvestment Program described in section 53, chapter 649, Oregon Laws 2013. Notwithstanding sections 52 and 53 (1)(a), chapter 649, Oregon Laws 2013, the commission shall use the moneys described in section 7 of this 2017 Act for supplemental grant funds for downward departure prison diversion programs in counties selected by the commission to receive the supplemental grant funds. The commission shall give preference to counties establishing downward departure prison diversion programs on or after the effective date of this 2017 Act [August 8, 2017].

(2) The commission shall monitor the downward departure prison diversion programs described in subsection (1) of this section and evaluate prison utilization by counties that receive the supplemental grant funds. The commission shall annually report the evaluation findings to the Joint Interim Committee on Ways and Means. [2017 c.673 §9]

**Sec. 10.** The Oregon Criminal Justice Commission shall study the impact of this 2017 Act [chapter 673, Oregon Laws 2017] on prison utilization, recidivism and public safety and report the results of the study to the interim committees of the Legislative Assembly related to the judiciary, in the manner provided in ORS 192.245, no later than February 1 of each year. [2017 c.673 §10]

**Sec. 14.** (1) Section 9 of this 2017 Act is repealed on July 1, 2023.

(2) Section 10 of this 2017 Act is repealed on January 2, 2028. [2017 c.673 §14]

### (Temporary provisions relating to studies and reports by commission)

**Note:** Section 1, chapter 698, Oregon Laws 2017, provides:

**Sec. 1.** (1) The Oregon Criminal Justice Commission shall study, track and account for all public moneys appropriated for and expended on the provision of alcohol and drug treatment.

(2) The commission shall, when performing the study described in subsection (1) of this section, examine:

(a) Treatment provided by state agencies and other public entities;

(b) Treatment provided by private entities through contracts with public entities; and

(c) Outcomes of each type of treatment and, specifically, the effect of outcomes on the criminal justice system.

(3) The Oregon Health Authority, the Department of Human Services, the Department of Corrections and the Oregon Youth Authority shall assist the commission in the performance of the study described in this section and, to the extent permitted by laws relating to confidentiality, furnish information the commission considers necessary to perform the study.

(4) The commission shall submit a report detailing the results of the study to the interim committees of the Legislative Assembly related to the judiciary in the manner provided by ORS 192.245 no later than September 15, 2019. [2017 c.698 §1]

**Note:** Section 24, chapter 706, Oregon Laws 2017, provides:

**Sec. 24.** The Oregon Criminal Justice Commission shall study the effect that the reduction of certain unlawful possession of a controlled substance offenses from a felony to a misdemeanor has had on the criminal justice system, rates of recidivism and the composition of the population of persons convicted of felony offenses. The commission shall submit a report detailing the results of the study to the interim committees of the Legislative Assembly related to the judiciary in the manner provided by ORS 192.245 no later than September 15, 2018. [2017 c.706 §24]

## PRESUMPTIVE SENTENCES, MANDATORY MINIMUM SENTENCES AND ADULT PROSECUTION OF 15-, 16- AND 17-YEAR-OLD OFFENDERS

**137.689 Oregon Crimefighting Act.** This section and ORS 137.690 and 813.011 shall be known as the Oregon Crimefighting Act. [2011 c.1 §1]

**Note:** 137.689 was enacted into law but was not added to or made a part of ORS chapter 137 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.

**137.690 Major felony sex crime.** a. Any person who is convicted of a major felony sex crime, who has one (or more) previous conviction of a major felony sex crime, shall be imprisoned for a mandatory minimum term of 25 years.

b. “Major felony sex crime” means rape in the first degree (ORS 163.375), sodomy in the first degree (ORS 163.405), unlawful sexual penetration in the first degree (ORS 163.411), or using a child in a display of sexually explicit conduct (ORS 163.670).

c. “Previous conviction” includes a conviction for the statutory counterpart of a major felony sex crime in any jurisdiction, and includes a conviction in the same sentencing proceeding if the conviction is for a separate criminal episode as defined in ORS 131.505. [2011 c.1 §2]

**Note:** 137.690 was enacted into law but was not added to or made a part of ORS chapter 137 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.



**137.700 Offenses requiring imposition of mandatory minimum sentences.**

(1) Notwithstanding ORS 161.605, when a person is convicted of one of the offenses listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995, or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on or after October 4, 1997, or of the offense described in subsection (2)(c) of this section and the offense was committed on or after January 1, 2008, the court shall impose, and the person shall serve, at least the entire term of imprisonment listed in subsection (2) of this section. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason whatsoever under ORS 421.121 or any other statute. The court may impose a greater sentence if otherwise permitted by law, but may not impose a lower sentence than the sentence specified in subsection (2) of this section.

(2) The offenses to which subsection (1) of this section applies and the applicable mandatory minimum sentences are:

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>(a)(A) Murder, as defined in ORS 163.115.....300 months</li> <li>(B) Attempt or conspiracy to commit aggravated murder, as defined in ORS 163.095.....120 months</li> <li>(C) Attempt or conspiracy to commit murder, as defined in ORS 163.115. ....90 months</li> <li>(D) Manslaughter in the first degree, as defined in ORS 163.118.....120 months</li> <li>(E) Manslaughter in the second degree, as defined in ORS 163.125.....75 months</li> <li>(F) Assault in the first degree, as defined in ORS 163.185.....90 months</li> <li>(G) Assault in the second degree, as defined in ORS 163.175.....70 months</li> <li>(H) Except as provided in paragraph (b)(G) of this subsection, kidnapping in the first degree, as defined in ORS 163.235.....90 months</li> <li>(I) Kidnapping in the second degree, as defined in ORS 163.225.....70 months</li> <li>(J) Rape in the first degree, as defined in ORS 163.375 (1)(a), (c) or (d).....100 months</li> <li>(K) Rape in the second degree, as defined in ORS 163.365.....75 months</li> </ul> | <ul style="list-style-type: none"> <li>(L) Sodomy in the first degree, as defined in ORS 163.405 (1)(a), (c) or (d).....100 months</li> <li>(M) Sodomy in the second degree, as defined in ORS 163.395.....75 months</li> <li>(N) Unlawful sexual penetration in the first degree, as defined in ORS 163.411 (1)(a) or (c).....100 months</li> <li>(O) Unlawful sexual penetration in the second degree, as defined in ORS 163.408. ....75 months</li> <li>(P) Sexual abuse in the first degree, as defined in ORS 163.427.....75 months</li> <li>(Q) Robbery in the first degree, as defined in ORS 164.415.....90 months</li> <li>(R) Robbery in the second degree, as defined in ORS 164.405.....70 months</li> <li>(b)(A) Arson in the first degree, as defined in ORS 164.325, when the offense represented a threat of serious physical injury. ....90 months</li> <li>(B) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.....70 months</li> <li>(C) Compelling prostitution, as defined in ORS 167.017.....70 months</li> <li>(D) Rape in the first degree, as defined in ORS 163.375 (1)(b). ....300 months</li> <li>(E) Sodomy in the first degree, as defined in ORS 163.405 (1)(b). ....300 months</li> <li>(F) Unlawful sexual penetration in the first degree, as defined in ORS 163.411 (1)(b). ....300 months</li> <li>(G) Kidnapping in the first degree, as defined in ORS 163.235, when the offense is committed in furtherance of the commission or attempted commission of an offense listed in subparagraph (D), (E) or (F) of this paragraph.....300 months</li> <li>(c) Aggravated vehicular homicide, as defined in ORS 163.149.....240 months</li> </ul> |
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[1995 c.2 §1; 1995 c.421 §1; 1995 c.422 §47; 1997 c.852 §2; 2006 c.1 §1; 2007 c.867 §5]

**Note:** Section 3 (2), chapter 1, Oregon Laws 2006, provides:

**Sec. 3.** (2) The amendments to ORS 137.700 by section 1 of this 2006 Act apply only to a person who was at least 18 years of age at the time the person committed an offense described in ORS 137.700 (2)(b)(D), (E), (F) or (G). [2006 c.1 §3(2)]

**Note:** 137.700 to 137.707 were enacted into law but were not added to or made a part of ORS chapter 137 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.

**137.705 Definitions for ORS 137.705 and 137.707.** (1)(a) As used in this section and ORS 137.707:

(A) “Charged” means the filing of an accusatory instrument in a court of criminal jurisdiction alleging the commission of an offense listed in ORS 137.707.

(B) “Detention facility” has the meaning given that term in ORS 419A.004.

(C) “Prosecuted” includes pretrial and trial procedures, requirements and limitations provided for in criminal cases.

(b) Unless otherwise provided in ORS 137.707, ORS chapters 137 and 138 apply to proceedings under ORS 137.707.

(2)(a) Notwithstanding ORS 419B.100 and 419C.005, a person 15, 16 or 17 years of age at the time of committing the offense may be charged with the commission of an offense listed in ORS 137.707 and may be prosecuted as an adult.

(b) The district attorney shall notify the juvenile court and the juvenile department when a person under 18 years of age is charged with an offense listed in ORS 137.707.

(c) The filing of an accusatory instrument in a criminal court under ORS 137.707 divests the juvenile court of jurisdiction in the matter if juvenile court jurisdiction is based on the conduct alleged in the accusatory instrument or any conduct arising out of the same act or transaction. Upon receiving notice from the district attorney under paragraph (b) of this subsection, the juvenile court shall dismiss, without prejudice, the juvenile court proceeding and enter any order necessary to transfer the matter or transport the person to the criminal court for further proceedings. Nothing in this paragraph affects the authority or jurisdiction of the juvenile court with respect to other matters or conduct.

(3)(a) A person charged with a crime under ORS 137.707 who is 16 or 17 years of age shall be detained in custody in a detention facility, unless the director of the county juvenile department and the sheriff agree to detain the person in a jail or other place where adults are detained. A person detained in accordance with this paragraph is subject to release on the same terms and conditions as for adults.

(b) If a person charged with a crime under ORS 137.707 is under 16 years of age, the person may not be detained, either before conviction or after conviction but before ex-

ecution of the sentence, in a jail or other place where adults are detained. [1995 c.422 §48; 2011 c.122 §1]

**Note:** See second note under 137.700.

**137.707 Adult prosecution of 15-, 16- or 17-year-old offenders; mandatory minimum sentences; lesser included offenses; transfer to juvenile court.** (1)(a) Notwithstanding any other provision of law, when a person charged with aggravated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c) of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.

(b) A district attorney, the Attorney General or a juvenile department counselor may not file in juvenile court a petition alleging that a person has committed an act that, if committed by an adult, would constitute aggravated murder or an offense listed in subsection (4) of this section if the person was 15, 16 or 17 years of age at the time the act was committed.

(2) When a person charged under this section is convicted of an offense listed in subsection (4) of this section, the court shall impose at least the presumptive term of imprisonment provided for the offense in subsection (4) of this section. The court may impose a greater presumptive term if otherwise permitted by law, but may not impose a lesser term. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason under ORS 421.121 or any other provision of law. ORS 138.052, 163.105 and 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated murder under ORS 163.095 except that a person who was under 18 years of age at the time the offense was committed is not subject to a sentence of death.

(3) The court shall commit the person to the legal and physical custody of the Department of Corrections.

(4) The offenses to which this section applies and the presumptive sentences are:

(a)(A) Murder, as defined in ORS 163.115.....300 months

(B) Attempt or conspiracy to commit aggravated murder, as defined in ORS 163.095.....120 months

(C) Attempt or conspiracy to commit murder, as defined in ORS 163.115.....90 months

(D) Manslaughter in the first degree, as defined in ORS 163.118.....120 months

(E) Manslaughter in the second degree, as defined in ORS 163.125.....75 months

(F) Assault in the first degree, as defined in ORS 163.185.....90 months

(G) Assault in the second degree, as defined in ORS 163.175.....70 months

(H) Kidnapping in the first degree, as defined in ORS 163.235.....90 months

(I) Kidnapping in the second degree, as defined in ORS 163.225.....70 months

(J) Rape in the first degree, as defined in ORS 163.375....100 months

(K) Rape in the second degree, as defined in ORS 163.365.....75 months

(L) Sodomy in the first degree, as defined in ORS 163.405.....100 months

(M) Sodomy in the second degree, as defined in ORS 163.395.....75 months

(N) Unlawful sexual penetration in the first degree, as defined in ORS 163.411.....100 months

(O) Unlawful sexual penetration in the second degree, as defined in ORS 163.408.....75 months

(P) Sexual abuse in the first degree, as defined in ORS 163.427.....75 months

(Q) Robbery in the first degree, as defined in ORS 164.415.....90 months

(R) Robbery in the second degree, as defined in ORS 164.405.....70 months

(b)(A) Arson in the first degree, as defined in ORS 164.325, when the offense represented a threat of serious physical injury.....90 months

(B) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.....70 months

(C) Compelling prostitution, as defined in ORS 167.017 (1)(a), (b) or (d).....70 months

(c) Aggravated vehicular homicide, as defined in ORS 163.149.....240 months

(5) If a person charged with an offense under this section is found guilty of a lesser included offense and the lesser included offense is:

(a) An offense listed in subsection (4) of this section, the court shall sentence the person as provided in subsection (2) of this section.

(b) Not an offense listed in subsection (4) of this section:

(A) But constitutes an offense for which waiver is authorized under ORS 419C.349, the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court does not retain jurisdiction, the court shall:

(i) Order that a presentence report be prepared;

(ii) Set forth in a memorandum any observations and recommendations that the court deems appropriate; and

(iii) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411.

(B) And is not an offense for which waiver is authorized under ORS 419C.349, the court may not sentence the person. The court shall:

(i) Order that a presentence report be prepared;

(ii) Set forth in a memorandum any observations and recommendations that the court deems appropriate; and

(iii) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411.

(6) When a person is charged under this section, other offenses based on the same act or transaction shall be charged as separate counts in the same accusatory instrument and consolidated for trial, whether or not the other offenses are aggravated murder or offenses listed in subsection (4) of this section. If it appears, upon motion, that the state or the person charged is prejudiced by the joinder and consolidation of offenses, the court may order an election or separate trials of counts or provide whatever other relief justice requires.

(7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty of aggravated murder or an offense listed in subsection (4) of this section and one or more other offenses, the court shall impose the sentence for aggravated murder or the offense listed in subsection (4) of this section as provided in subsection (2) of this section and shall impose sentences for the other offenses as otherwise provided by law.

(b) If a person charged and tried as provided in subsection (6) of this section is not found guilty of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one of the other charges that constitutes an offense for which waiver is authorized under ORS 419C.349, the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court does not retain jurisdiction, the court shall:

(A) Order that a presentence report be prepared;

(B) Set forth in a memorandum any observations and recommendations that the court deems appropriate; and

(C) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411. [1995 c.422 §49; 1995 c.421 §4; 1997 c.852 §3; 1999 c.1055 §12; 2007 c.867 §6; 2011 c.334 §2]

**Note:** See second note under 137.700.

**137.709 Application of ORS 137.700 and 137.707.** ORS 137.700 and 137.707 do not apply to a person who is under 15 years of age at the time the person commits a crime listed in ORS 137.700 or 137.707. [2011 c.337 §1]

**Note:** 137.709 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.712 Exceptions to ORS 137.700 and 137.707.** (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395, unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first degree as defined in ORS 163.427 (1)(a)(A) or

robbery in the second degree as defined in ORS 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2) of this section and finds that a substantial and compelling reason under the rules of the Oregon Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and any other statute.

(b) In order to make a dispositional departure under this section, the court must make the following additional findings on the record:

(A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this subsection;

(B) A sentence of probation will be more effective than a prison term in reducing the risk of offender recidivism; and

(C) A sentence of probation will better serve to protect society.

(2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on the record by a preponderance of the evidence:

(a) If the conviction is for manslaughter in the second degree:

(A) That the victim was a dependent person as defined in ORS 163.205 who was at least 18 years of age;

(B) That the defendant is the mother or father of the victim;

(C) That the death of the victim was the result of an injury or illness that was not caused by the defendant;

(D) That the defendant treated the injury or illness solely by spiritual treatment in accordance with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual treatment would bring about the victim's recovery from the injury or illness;

(E) That no other person previously under the defendant's care has died or sustained significant physical injury as a result of or despite the use of spiritual treatment, regardless of whether the spiritual treatment was used alone or in conjunction with medical care; and

(F) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section or for criminal mistreatment in the second degree.

(b) If the conviction is for assault in the second degree:

(A) That the victim was not physically injured by means of a deadly weapon;

(B) That the victim did not suffer a significant physical injury; and

(C) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(c) If the conviction is for kidnapping in the second degree:

(A) That the victim was at least 12 years of age at the time the crime was committed; and

(B) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(d) If the conviction is for robbery in the second degree:

(A) That the victim did not suffer a significant physical injury;

(B) That, if the defendant represented by words or conduct that the defendant was armed with a dangerous weapon, the representation did not reasonably put the victim in fear of imminent significant physical injury;

(C) That, if the defendant represented by words or conduct that the defendant was armed with a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical injury; and

(D) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual abuse in the first degree:

(A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the offense;

(B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of this section;

(C) That the defendant has not been previously found to be within the jurisdiction of a juvenile court for an act that would have been a felony sexual offense if the act had been committed by an adult;

(D) That the defendant was no more than five years older than the victim at the time of the offense;

(E) That the offense did not involve sexual contact with any minor other than the victim; and

(F) That the victim's lack of consent was due solely to incapacity to consent by reason of being under 18 years of age at the time of the offense.

(f) If the conviction is for unlawful sexual penetration in the second degree:

(A) That the victim was 12 years of age or older at the time of the offense;

(B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of this section;

(C) That the defendant has not been previously found to be within the jurisdiction of a juvenile court for an act that would have been a felony sexual offense if the act had been committed by an adult;

(D) That the defendant was no more than five years older than the victim at the time of the offense;

(E) That the offense did not involve sexual contact with any minor other than the victim;

(F) That the victim's lack of consent was due solely to incapacity to consent by reason of being under 18 years of age at the time of the offense; and

(G) That the object used to commit the unlawful sexual penetration was the hand or any part thereof of the defendant.

(3) In making the findings required by subsections (1) and (2) of this section, the court may consider any evidence presented at trial and may receive and consider any additional relevant information offered by either party at sentencing.

(4) The crimes to which subsection (2)(a)(F), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section refer are:

(a) A crime listed in ORS 137.700 (2) or 137.707 (4);

(b) Escape in the first degree, as defined in ORS 162.165;

(c) Aggravated murder, as defined in ORS 163.095;

(d) Criminally negligent homicide, as defined in ORS 163.145;

(e) Assault in the third degree, as defined in ORS 163.165;

(f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);

(g) Rape in the third degree, as defined in ORS 163.355;

(h) Sodomy in the third degree, as defined in ORS 163.385;

(i) Sexual abuse in the second degree, as defined in ORS 163.425;

(j) Stalking, as defined in ORS 163.732;

(k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person felony under the rules of the Oregon Criminal Justice Commission;

(L) Arson in the first degree, as defined in ORS 164.325;

(m) Robbery in the third degree, as defined in ORS 164.395;

(n) Intimidation in the first degree, as defined in ORS 166.165;

(o) Promoting prostitution, as defined in ORS 167.012; and

(p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L) of this subsection.

(5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section violates a condition of probation by committing a new crime, the court shall revoke the probation and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Justice Commission.

(6) As used in this section:

(a) "Conviction" includes, but is not limited to:

(A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS 419C.005, if the person was at least 15 years of age at the time the person committed the offense that brought the person within the jurisdiction of the juvenile court. "Conviction" does not include a juvenile court adjudication described in this subparagraph if the person successfully asserted the defense set forth in ORS 419C.522.

(B) A conviction in another jurisdiction for a crime that if committed in this state would constitute a crime listed in subsection (4) of this section.

(b) "Previous conviction" means a conviction that was entered prior to imposing sentence on the current crime provided that the prior conviction is based on a crime committed in a separate criminal episode. "Previous conviction" does not include a conviction for a Class C felony, including an attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was entered within the 10-year period immediately preceding the date on which the current crime was committed.

(c) "Significant physical injury" means a physical injury that:

(A) Creates a risk of death that is not a remote risk;

(B) Causes a serious and temporary disfigurement;

(C) Causes a protracted disfigurement; or

(D) Causes a prolonged impairment of health or the function of any bodily organ. [1997 c.852 §1; 1999 c.614 §3; 1999 c.954 §2; 2001 c.851 §5; 2005 c.843 §22; 2011 c.291 §3]

**Note:** 137.712 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.717 Presumptive sentences for certain property offenders.** (1) When a court sentences a person convicted of:

(a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225 or aggravated identity theft under ORS 165.803, the presumptive sentence is 24 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated identity theft under ORS 165.803;

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

(C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime of conviction was committed while the defendant was on supervision for the previous conviction or less than three years after the date the defendant completed the period of supervision for the previous conviction.

(b) Unauthorized use of a vehicle under ORS 164.135, mail theft or receipt of stolen mail under ORS 164.162, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS 164.377, robbery in the third degree under ORS 164.395, forgery in the first degree under ORS 165.013, criminal possession of a forged instrument in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b), possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is 18 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking

in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803;

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

(C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime of conviction was committed while the defendant was on supervision for the previous conviction or less than three years after the date the defendant completed the period of supervision for the previous conviction.

(c) Theft in the first degree under ORS 164.055 or identity theft under ORS 165.800, the presumptive sentence is 13 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803; or

(B) Four or more previous convictions for any combination of crimes listed in subsection (2) of this section.

(2) The crimes to which subsection (1) of this section applies are:

(a) Theft in the second degree under ORS 164.045;

(b) Theft in the first degree under ORS 164.055;

(c) Aggravated theft in the first degree under ORS 164.057;

(d) Unauthorized use of a vehicle under ORS 164.135;

(e) Mail theft or receipt of stolen mail under ORS 164.162;

(f) Burglary in the second degree under ORS 164.215;

(g) Burglary in the first degree under ORS 164.225;

(h) Criminal mischief in the second degree under ORS 164.354;

(i) Criminal mischief in the first degree under ORS 164.365;

(j) Computer crime under ORS 164.377;

(k) Forgery in the second degree under ORS 165.007;

(L) Forgery in the first degree under ORS 165.013;

(m) Criminal possession of a forged instrument in the second degree under ORS 165.017;

(n) Criminal possession of a forged instrument in the first degree under ORS 165.022;

(o) Fraudulent use of a credit card under ORS 165.055;

(p) Identity theft under ORS 165.800;

(q) Possession of a stolen vehicle under ORS 819.300;

(r) Trafficking in stolen vehicles under ORS 819.310; and

(s) Any attempt to commit a crime listed in this subsection.

(3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this section shall be increased by two months for each previous conviction the person has that:

(A) Was for any of the crimes listed in subsection (1) or (2) of this section; and

(B) Was not used as a predicate for the presumptive sentence described in subsection (1)(a) or (b) of this section.

(b) Previous convictions may not increase a presumptive sentence described in subsection (1)(a) or (b) of this section by more than 12 months under this subsection.

(4) The court may impose a sentence other than the sentence provided by subsection (1) or (3) of this section if the court imposes:

(a) A longer term of incarceration that is otherwise required or authorized by law; or

(b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) or (3) of this section.

(5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under subsection (4) of this section to a term of incarceration that exceeds the period of time described in ORS 161.605.

(6) The court shall sentence a person under this section to at least the presumptive sentence described in subsection (1)(a) or (b) or (3) of this section, unless the parties stipulate otherwise or the court finds that:

(a) The person was not on probation, parole or post-prison supervision for a crime listed in subsection (1) of this section at the time of the commission of the current crime of conviction;

(b) The person has not previously received a downward departure from a presumptive sentence for a crime listed in subsection (1) of this section;

(c) The harm or loss caused by the crime is not greater than usual for that type of crime; and

(d) In consideration of the nature of the offense and the harm to the victim, a downward departure will:

(A) Increase public safety;

(B) Enhance the likelihood that the person will be rehabilitated; and

(C) Not unduly reduce the appropriate punishment.

(7) When the court imposes a sentence of probation for a conviction for theft in the first degree or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS 144.087 may require the person to receive a high level of supervision for at least 12 months, and may extend the period of high-level supervision for all or part of the remaining probationary term.

(8)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(9) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

(10) As used in this section:

(a) "Downward departure" means a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission.

(b) "Previous conviction" includes:

(A) Convictions occurring before, on or after July 1, 2003; and

(B) Convictions entered in any other state or federal court for comparable offenses. [1996 c.3 §1; 1999 c.1022 §§2,4,7; 2001 c.784 §1; 2007 c.584 §2; 2008 c.14 §7; 2009 c.660 §§8,11; 2013 c.649 §5; 2017 c.673 §5]

**Note:** The amendments to 137.717 by section 7, chapter 649, Oregon Laws 2013, become operative July 1, 2023, and apply to crimes committed on or after July 1, 2023. See section 8, chapter 649, Oregon Laws 2013.

The amendments to 137.717 by section 6, chapter 673, Oregon Laws 2017, become operative July 1, 2023, and apply to sentences imposed on or after July 1, 2023. See sections 12 and 13, chapter 673, Oregon Laws 2017. The text that is operative on and after July 1, 2023, is set forth for the user's convenience.

**137.717.** (1) When a court sentences a person convicted of:

(a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395 or aggravated identity theft under ORS 165.803, the presumptive sentence is 24 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated identity theft under ORS 165.803;

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

(C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime of conviction was committed while the defendant was on supervision for the previous conviction or less than three years after the date the defendant completed the period of supervision for the previous conviction.

(b) Unauthorized use of a vehicle under ORS 164.135, mail theft or receipt of stolen mail under ORS 164.162, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS 164.377, forgery in the first degree under ORS 165.013, criminal possession of a forged instrument in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b), possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is 18 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803;

(B) Two or more previous convictions for any combination of the crimes listed in subsection (2) of this section; or

(C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime of conviction was committed while the defendant was on supervision for the previous conviction or less than three years after the date the defendant completed the period of supervision for the previous conviction.

(c) Theft in the first degree under ORS 164.055 or identity theft under ORS 165.800, the presumptive sentence is 13 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803; or



(B) Four or more previous convictions for any combination of crimes listed in subsection (2) of this section.

(2) The crimes to which subsection (1) of this section applies are:

- (a) Theft in the second degree under ORS 164.045;
- (b) Theft in the first degree under ORS 164.055;
- (c) Aggravated theft in the first degree under ORS 164.057;
- (d) Unauthorized use of a vehicle under ORS 164.135;
- (e) Mail theft or receipt of stolen mail under ORS 164.162;
- (f) Burglary in the second degree under ORS 164.215;
- (g) Burglary in the first degree under ORS 164.225;
- (h) Criminal mischief in the second degree under ORS 164.354;
- (i) Criminal mischief in the first degree under ORS 164.365;
- (j) Computer crime under ORS 164.377;
- (k) Forgery in the second degree under ORS 165.007;
- (L) Forgery in the first degree under ORS 165.013;
- (m) Criminal possession of a forged instrument in the second degree under ORS 165.017;
- (n) Criminal possession of a forged instrument in the first degree under ORS 165.022;
- (o) Fraudulent use of a credit card under ORS 165.055;
- (p) Identity theft under ORS 165.800;
- (q) Possession of a stolen vehicle under ORS 819.300;
- (r) Trafficking in stolen vehicles under ORS 819.310; and
- (s) Any attempt to commit a crime listed in this subsection.

(3)(a) A presumptive sentence described in subsection (1)(a) or (b) of this section shall be increased by two months for each previous conviction the person has that:

- (A) Was for any of the crimes listed in subsection (1) or (2) of this section; and
- (B) Was not used as a predicate for the presumptive sentence described in subsection (1)(a) or (b) of this section.

(b) Previous convictions may not increase a presumptive sentence described in subsection (1)(a) or (b) of this section by more than 12 months under this subsection.

(4) The court may impose a sentence other than the sentence provided by subsection (1) or (3) of this section if the court imposes:

- (a) A longer term of incarceration that is otherwise required or authorized by law; or
- (b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) or (3) of this section.

(5) Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under subsection (4) of this section to a term of incarceration that exceeds the period of time described in ORS 161.605.

(6) The court shall sentence a person under this section to at least the presumptive sentence described in subsection (1)(a) or (b) or (3) of this section, unless the parties stipulate otherwise or the court finds that:

- (a) The person was not on probation, parole or post-prison supervision for a crime listed in subsection (1) of this section at the time of the commission of the current crime of conviction;
- (b) The person has not previously received a downward departure from a presumptive sentence for a crime listed in subsection (1) of this section;
- (c) The harm or loss caused by the crime is not greater than usual for that type of crime; and
- (d) In consideration of the nature of the offense and the harm to the victim, a downward departure will:
  - (A) Increase public safety;
  - (B) Enhance the likelihood that the person will be rehabilitated; and
  - (C) Not unduly reduce the appropriate punishment.

(7) When the court imposes a sentence of probation for a conviction for theft in the first degree or identity theft or under subsection (6) of this section, the supervisory authority as defined in ORS 144.087 may require the person to receive a high level of supervision for at least 12 months, and may extend the period of high-level supervision for all or part of the remaining probationary term.

(8)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(9) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

(10) As used in this section:

(a) "Downward departure" means a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission.

(b) "Previous conviction" includes:

(A) Convictions occurring before, on or after July 1, 2003; and

(B) Convictions entered in any other state or federal court for comparable offenses.

**Note:** 137.717 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.719 Presumptive life sentence for certain sex offenders upon third conviction.** (1) The presumptive sentence for a sex crime that is a felony is life imprisonment without the possibility of release or parole if the defendant has been sentenced for sex crimes that are felonies at least two times prior to the current sentence.

(2) The court may impose a sentence other than the presumptive sentence provided by subsection (1) of this section if the court imposes a departure sentence author-

ized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons.

(3) For purposes of this section:

(a) Sentences for two or more convictions that are imposed in the same sentencing proceeding are considered to be one sentence; and

(b) A prior sentence includes:

(A) Sentences imposed before, on or after July 31, 2001; and

(B) Sentences imposed by any other state or federal court for comparable offenses.

(4) As used in this section, “sex crime” has the meaning given that term in ORS 163A.005. [2001 c.884 §4]

**Note:** 137.719 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.721** [2005 c.708 §8; 2009 c.191 §1; 2009 c.660 §§15,16; renumbered 475.935 in 2009]

**137.725 Presumptive life sentence for certain sex offenders upon second conviction.** (1) The presumptive sentence for a crime described in subsection (3) of this section is life imprisonment without the possibility of release or parole if, at the time of the offense, the defendant has a prior conviction for a crime described in subsection (4) of this section.

(2) The court may impose a sentence other than the presumptive sentence provided by subsection (1) of this section if the court imposes a departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons.

(3) The crimes to which the sentence described in subsection (1) of this section applies are:

(a) Rape in the first degree under ORS 163.375;

(b) Sodomy in the first degree under ORS 163.405; and

(c) Unlawful sexual penetration in the first degree under ORS 163.411.

(4) The prior convictions that give rise to a sentence described in subsection (1) of this section are:

(a) Rape in the first degree under ORS 163.375;

(b) Sodomy in the first degree under ORS 163.405;

(c) Unlawful sexual penetration in the first degree under ORS 163.411;

(d) An equivalent federal offense; and

(e) An equivalent offense in another state. [2017 c.699 §1]

**Note:** 137.725 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

### SENTENCING REQUIREMENTS CONCERNING DEFENDANT'S ELIGIBILITY FOR CERTAIN TYPES OF LEAVE, RELEASE OR PROGRAMS

**137.750 Sentencing requirements concerning defendant's eligibility for certain types of leave, release or programs.** (1) When a court sentences a defendant to a term of incarceration upon conviction of a crime, the court shall order on the record in open court as part of the sentence imposed that the defendant may be considered by the executing or releasing authority for any form of temporary leave from custody, reduction in sentence, work release or program of conditional or supervised release authorized by law for which the defendant is otherwise eligible at the time of sentencing, unless the court finds on the record in open court substantial and compelling reasons to order that the defendant not be considered for such leave, release or program.

(2) The executing or releasing authority may consider the defendant for a program described in subsection (1) of this section only upon order of the sentencing court appearing in the judgment.

(3) As used in this section:

(a) “Executing or releasing authority” means the Department of Corrections, State Board of Parole and Post-Prison Supervision, Oregon Youth Authority, Psychiatric Security Review Board, sentencing court or supervisory authority.

(b) “Supervisory authority” has the meaning given that term in ORS 144.087. [1997 c.313 §14; 2008 c.35 §2; 2011 c.708 §19; 2013 c.229 §8; 2017 c.442 §17]

**Note:** The amendments to 137.750 by section 17, chapter 442, Oregon Laws 2017, become operative July 1, 2018. See section 36, chapter 442, Oregon Laws 2017. The text that is operative until July 1, 2018, is set forth for the user's convenience.

**137.750.** (1) When a court sentences a defendant to a term of incarceration upon conviction of a crime, the court shall order on the record in open court as part of the sentence imposed that the defendant may be considered by the executing or releasing authority for any form of temporary leave from custody, reduction in sentence, work release or program of conditional or supervised release authorized by law for which the defendant is otherwise eligible at the time of sentencing, unless the court finds on the record in open court substantial and compelling reasons to order that the defendant not be considered for such leave, release or program.

(2) The executing or releasing authority may consider the defendant for a program described in subsec-

tion (1) of this section only upon order of the sentencing court appearing in the judgment.

(3) As used in this section:

(a) "Executing or releasing authority" means the Department of Corrections, State Board of Parole and Post-Prison Supervision, Oregon Youth Authority, Psychiatric Security Review Board, Oregon Health Authority, sentencing court or supervisory authority.

(b) "Supervisory authority" has the meaning given that term in ORS 144.087.

**Note:** 137.750 to 137.754 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.751 Determination of defendant's eligibility for release on post-prison supervision under ORS 421.508.** (1) When a court sentences a defendant to a term of incarceration that exceeds one year, the defendant may request a determination of the defendant's eligibility for release on post-prison supervision under ORS 421.508 (4). The court shall order in the judgment that the Department of Corrections may release the defendant on post-prison supervision under ORS 421.508 (4) only if, after a hearing, the court finds that:

(a) The defendant meets the eligibility requirements of subsections (2) and (3) of this section;

(b) The defendant was not on probation, parole or post-prison supervision for an offense listed in ORS 137.712 (4) or 811.705 (2)(b) at the time of the commission of the current crime of conviction;

(c) The defendant has not previously been released on post-prison supervision under ORS 421.508 (4);

(d) The harm or loss caused by the crime is not greater than usual for that type of crime;

(e) The crime was not part of an organized criminal operation; and

(f) After considering the nature of the offense and the harm to the victim, the defendant's successful completion of the program would:

(A) Increase public safety;

(B) Enhance the likelihood that the defendant would be rehabilitated; and

(C) Not unduly reduce the appropriate punishment.

(2) Except as provided in subsection (4) of this section, a defendant may not be released on post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime under ORS 163.145, 163.165 (1)(a) or (b), 163.525 or 811.705 (2)(b).

(3) A defendant may not be released on post-prison supervision under ORS 421.508 (4)

if the defendant is being sentenced for a crime listed in ORS 137.700, 137.707 or 163.095 or a sex crime as defined in ORS 163A.005.

(4) Notwithstanding subsection (1) of this section, the parties may stipulate to a defendant's eligibility for release on post-prison supervision under ORS 421.508 (4). If the court accepts the stipulation, the court does not need to make explicit findings regarding the factors described in subsection (1)(b) to (f) of this section. The parties may not stipulate to the defendant's release on post-prison supervision under ORS 421.508 (4) if the defendant is being sentenced for a crime described in subsection (3) of this section.

(5) If the court makes the findings described in subsection (1) of this section or accepts the stipulation of the parties under subsection (4) of this section, the court shall:

(a) Order on the record in open court as part of the sentence imposed that the defendant may be considered by the department for release on post-prison supervision under ORS 421.508 (4); and

(b) Include the order described in paragraph (a) of this subsection in the judgment.

(6) Subject to the requirements of this section, the court may order that the defendant serve a minimum period of incarceration before the defendant is released on post-prison supervision under ORS 421.508 (4). Nothing in this section authorizes the release of the defendant on post-prison supervision before the defendant has served the period of time described in ORS 421.508 (4)(b). [2008 c.35 §1; 2009 c.713 §17]

**Note:** See second note under 137.750.

**137.752 Requirements when defendant committed to custody of county.** (1) When a court commits a defendant to the custody of a supervisory authority of a county under ORS 137.124, the court shall order on the record in open court as part of the sentence imposed that the defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS 423.478, unless the court finds on the record in open court substantial and compelling reasons to order that the defendant not be considered for alternative sanctions.

(2) The supervisory authority may consider the defendant for alternative sanctions only upon order of the sentencing court appearing in the judgment.

(3) As used in this section, "supervisory authority" has the meaning given that term in ORS 144.087. [1997 c.313 §15]

**Note:** See second note under 137.750.

**137.754 Authority of court to modify judgment to comply with ORS 137.750 and 137.752.** Notwithstanding any other provision of law, a sentencing court retains authority after entry of a judgment of conviction to modify its judgment and sentence to comply with the requirements of ORS 137.750 or 137.752 when:

(1) The judgment was entered on or after December 5, 1996;

(2) The crime of conviction was committed on or after December 5, 1996; and

(3) The judgment and sentence failed to comply with the provisions of ORS 137.750 or 137.752. [1997 c.313 §16]

**Note:** See second note under 137.750.

### SEXUALLY VIOLENT DANGEROUS OFFENDERS

**137.765 Sexually violent dangerous offenders; definitions; mandatory lifetime post-prison supervision.** (1) As used in this section:

(a) "History of sexual assault" means that a person has engaged in unlawful sexual conduct that:

(A) Was not committed as part of the same criminal episode as the crime for which the person is currently being sentenced; and

(B) Seriously endangered the life or safety of another person or involved a victim under 12 years of age.

(b) "Sexually violent dangerous offender" means a person who has psychopathic personality features, sexually deviant arousal patterns or interests and a history of sexual assault and presents a substantial probability of committing a crime listed in subsection (3) of this section.

(2) Notwithstanding ORS 161.605, when a person is convicted of a crime listed in subsection (3) of this section, in addition to any sentence of imprisonment required by law, a court shall impose a period of post-prison supervision that extends for the life of the person if:

(a) The person was 18 years of age or older at the time the person committed the crime; and

(b) The person is a sexually violent dangerous offender.

(3) The crimes to which subsection (2) of this section applies are:

(a) Rape in the first degree and sodomy in the first degree if the victim was:

(A) Subjected to forcible compulsion by the person;

(B) Under 12 years of age; or

(C) Incapable of consent by reason of mental defect, mental incapacitation or physical helplessness;

(b) Unlawful sexual penetration in the first degree; and

(c) An attempt to commit a crime listed in paragraph (a) or (b) of this subsection. [1999 c.163 §1; 2005 c.463 §§11,16; 2007 c.16 §6]

**Note:** 137.765 to 137.771 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**137.767 Presentence investigation and examination.** (1)(a) A court shall order a presentence investigation and an examination of the defendant by a psychiatrist or psychologist upon motion of the district attorney if:

(A) The defendant is convicted of a crime listed in ORS 137.765 (3); and

(B) In the opinion of the court, there is reason to believe that the defendant is a sexually violent dangerous offender as defined in ORS 137.765.

(b) The court may appoint one or more qualified psychiatrists or psychologists to examine the defendant in the local correctional facility.

(2) The state shall pay all costs connected with an examination under this section.

(3) The examination performed pursuant to this section must be completed within 30 days if the defendant is in custody or within 60 days if the defendant is not in custody. The court may order extensions not exceeding 30 days. Each psychiatrist or psychologist appointed to examine a defendant under this section shall file with the court a written report of findings and conclusions, including an evaluation of whether the defendant is predisposed to commit a crime listed in ORS 137.765 (3) because the defendant has:

(a) Psychopathic personality features; and

(b) Sexually deviant arousal patterns or interests.

(4) No statement made by a defendant under this section may be used against the defendant in any civil proceeding or in any other criminal proceeding.

(5) Upon receipt of the examination and presentence reports the court shall set a time for a sentence hearing. At the sentence hearing the district attorney and the defendant may question any psychiatrist or psychologist who examined the defendant pursuant to this section.

(6) If, after considering the evidence in the case or in the sentence hearing, the jury

or, if the defendant waives the right to a jury trial, the court finds that the defendant is a sexually violent dangerous offender, the court shall sentence the defendant as provided in ORS 137.765.

(7) The fact that a person is a sexually violent dangerous offender is an enhancement fact, as defined in ORS 136.760, and ORS 136.765 to 136.785 apply to making a determination of the fact. [1999 c.163 §3; 2005 c.463 §§12,17; 2007 c.16 §7]

**Note:** See note under 137.765.

**137.769 Defendant's right to independent examination.** (1) When a defendant is examined under ORS 137.767, the defendant may retain a psychiatrist, psychologist or other expert to perform an examination on the defendant's behalf. A psychiatrist, psychologist or other expert retained by the defendant must be provided reasonable access to:

(a) The defendant for the purpose of the examination; and

(b) All relevant medical and psychological records and reports.

(2) If the defendant is financially eligible for appointed counsel at state expense, the defendant may request preauthorization to incur the fees and expenses of a psychiatrist, psychologist or other expert as provided in ORS 135.055 (3). [1999 c.163 §4; 2001 c.962 §97; 2003 c.449 §6]

**Note:** See note under 137.765.

**137.771 Resentencing hearing; petition; findings; modification of sentence.** (1) No sooner than 10 years after a person sentenced under ORS 137.765 is released to post-prison supervision, the person may petition the sentencing court for a resentencing hearing requesting that the judgment be modified to terminate post-prison supervision. The district attorney of the county must be named and served as a respondent in the petition. The district attorney may file a response either in support of or in opposition to the petition.

(2) Upon filing the petition, the court may order an examination as provided in ORS 137.767. If the court orders an examination and the petitioner is financially eligible for appointed counsel at state expense, the court may appoint counsel for the petitioner, as provided in ORS 135.050, if the court determines that there are substantial or complex issues involved and the petitioner appears incapable of self-representation.

(3) The court shall review the petition and may hold a hearing on the petition. However, if the state opposes the petition, the court shall hold a hearing on the petition. In determining whether to amend the judgment, the court shall consider:

(a) The nature of the crime for which the petitioner was sentenced to lifetime post-prison supervision;

(b) The degree of violence involved in the crime;

(c) The age of the victim;

(d) The petitioner's prior history of sexual assault;

(e) Whether the petitioner continues to have psychopathic personality features or sexually deviant arousal patterns or interests;

(f) Other criminal and relevant noncriminal behavior of the petitioner before and after conviction;

(g) The period of time during which the petitioner has not reoffended;

(h) Whether the petitioner has successfully completed a court-approved sex offender treatment program; and

(i) Any other relevant factors.

(4) If the court finds by clear and convincing evidence that the petitioner does not present a substantial probability of committing a crime listed in ORS 137.765 (3), the court shall amend the judgment and impose a lesser sentence.

(5) The sentencing court retains authority to modify its judgment and sentence to reflect the results of a resentencing hearing ordered under this section.

(6) Not less than five years after the denial of a petition under this section, a person sentenced under ORS 137.765 may petition again for a resentencing hearing under subsections (1) to (5) of this section. [1999 c.163 §7; 2001 c.962 §98]

**Note:** See note under 137.765.

## MISCELLANEOUS

**137.924 Supervisory authority to provide information to Employment Department.** When a defendant is committed to the supervisory authority of the county pursuant to ORS 137.124, the supervisory authority shall forward the name, date of birth and Social Security number of the defendant to the Director of the Employment Department for purposes of making a determination of eligibility under ORS 657.155. [2011 c.90 §1]

**Note:** 137.924 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**Note:** Sections 1 and 10, chapter 614, Oregon Laws 2017, provide:

**Sec. 1. Task Force on Public Safety.** (1) The Task Force on Public Safety is established, consisting of 13 members appointed to two-year terms as follows:

(a) The President of the Senate shall appoint two members from among members of the Senate.

(b) The Speaker of the House of Representatives shall appoint two members from among members of the House of Representatives.

(c) The Chief Justice of the Supreme Court shall appoint two members.

(d) The Governor shall appoint seven members as follows:

(A) One member shall be a county commissioner.

(B) One member shall be a district attorney.

(C) One member shall be a criminal defense attorney.

(D) Two members shall be representatives of law enforcement.

(E) One member shall be a representative of community corrections directors who is not a sheriff.

(F) One member shall be a representative of a community-based organization that provides services to victims of crime.

(2) The task force shall:

(a) Study security release in Oregon, focusing on reducing racial and ethnic disparity in pretrial incarceration, including:

(A) Repealing statutes authorizing security release in favor of courts, or another entity with delegated authority, making release decisions;

(B) Utilizing pretrial release risk assessments; and

(C) Methods of reducing failure to appear at court hearings;

(b) Study the impact of criminal fines and fees; and

(c) Review the implementation of the Justice Reinvestment Program.

(3) No later than September 15, 2018, the task force shall submit to the Legislative Assembly, in the manner provided by ORS 192.245, a report that describes the findings of the task force. The report may include rec-

ommendations for legislation. The task force shall provide a copy of the report to the Governor.

(4) A majority of the members of the task force constitutes a quorum for the transaction of business.

(5) Official action by the task force requires the approval of a majority of the members of the task force.

(6) The task force shall elect one of its members to serve as chairperson.

(7) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(8) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the members of the task force.

(9) The task force may adopt rules necessary for the operation of the task force.

(10) Upon request, the Oregon Criminal Justice Commission, the Department of Corrections and the Oregon Department of Administrative Services shall provide staff support to the task force.

(11) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation or reimbursement for expenses and serve as volunteers on the task force.

(12) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties. [2017 c.614 §1]

**Sec. 10.** Section 1 of this 2017 Act is repealed on the date of the convening of the 2023 regular session of the Legislative Assembly as specified in ORS 171.010 [February 1, 2023]. [2017 c.614 §10]

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