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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 decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty. An order exercising that authority may be included as part of the judgment of conviction.

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

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

137.012 Suspension of imposition or execution of sentence of person convicted of certain sexual offenses; term of probation. If the court suspends the imposition or execution of a part of a sentence of, or imposes a sentence of probation on, any person convicted of violating or attempting to violate ORS 163.365, 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 s.2; 1993 c.14 s.2; 1993 c.301 s.2; 1999 c.161 s.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 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 s.10]

137.015 [1971 c.328 s.1; 1973 c.346 s.1; 1979 c.341 s.1; 1983 c.125 s.1; 1985 c.277 s.1; 1989 c.844 s.1; repealed by 1987 c.905 s.37]

137.017 Disposition of fines, costs and forfeited security deposits received by court. Except as otherwise specifically provided by law, all fines, costs and forfeited security deposits ordered paid in criminal actions and proceedings, as defined in ORS 131.005, in the circuit court shall be accounted for and distributed as provided in ORS 137.293 and 137.295, as monetary obligations payable to the state. [1981 s.s. c.3 s.102; 1983 c.763 s.42; 1987 c.905 s.5; 1999 c.1051 s.253]

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

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

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

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

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

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

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

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

(a) Is physically present before the court; or

(b) Is imprisoned and does not object to appearing before the court by means of simultaneous television transmission allowing the court to observe and communicate with the defendant and the defendant to observe and communicate with the court.

(3) Notwithstanding subsection (2) of this section, appearance by simultaneous television transmission shall not be permitted unless the facilities used enable the defendant to consult privately with defense counsel during the proceedings. [Amended by 1993 c.581 s.1; 1997 c.827 s.1]

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

137.050 Nonattendance or nonappearance of released defendant when 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 s.257]

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

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 for the term, deliver the defendant into the custody of the jailor of this county. By order of the court.

Witness my hand and seal of said circuit court, affixed at _____, in said county, this ____ day of _____, 2____.
[L. S.]

C D, Clerk of the Court

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

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

137.071 Requirements for judgments. This section establishes requirements for judgments in actions and proceedings resulting from a person being accused and tried for the commission of an offense. The judge shall assure the creation and filing of a judgment that complies with this section in such action or proceedings. On appeal, the appellate court may give leave as provided in ORS 19.270 for entry of a judgment that complies with this section but may not reverse or set aside a judgment, determination or disposition on the sole ground that the document fails to comply with this section. No particular form of words is required, but every judgment in a criminal action or proceeding must comply with all the following:

- (1) It must be in writing, plainly titled as a judgment and set forth in a separate document.
- (2) It must clearly identify the court and file number or other identifier used by the court for that case.
- (3) It must clearly identify the defendant.
- (4) It must clearly identify all of the following:
 - (a) The attorney for the state; and
 - (b) The attorney, if any, for the defendant, whether the court determined the defendant to be indigent for purposes of court appointed counsel in the case, and, if so, whether the court appointed counsel for the defendant in the case. If there is no attorney for the defendant, it must specify whether the defendant knowingly waived any right to an attorney after having been informed of that right.

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

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

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

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

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

(a) The identity of the judgment creditor.

(b) The identity of the judgment debtor.

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

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

(A)(i) Except as otherwise provided in sub-subparagraph (ii) of this subparagraph, this paragraph requires both the total amount of the money judgment, excluding any amount that is suspended, and a listing of amounts and identification for the fines, assessments, costs, restitution and any other monetary obligations imposed in the sentence as part of the money judgment.

(ii) When the court is unable to determine the full amount of restitution at the time of sentencing, the court may include the amount that can be determined or establish a maximum amount based on a recommendation by the district attorney subject to modification under ORS 137.107.

(B) Except as provided in ORS 137.107, money required to be paid as a condition of probation:

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

(ii) Is not a money judgment or docketable in the judgment docket and does not survive revocation of probation if not included in the money judgment section, even if the amount is included in another part of the judgment, unless the money judgment is amended under ORS 137.107.

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

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

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

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

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

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

(d) The separate section must contain no other provisions except what is specifically required by this subsection and subsection (9) of this section and shall not include requirements to pay money that are not part of the money judgment.

(11) It must be signed by the judge rendering the judgment and dated as of the date of signature. [1989 c.472 s.2; 1995 c.117 s.1; 1997 c.526 s.3]

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

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

for entry of judgment.

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

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

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

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 181.594, 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 s.19; 1997 c.538 s.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 s.3; 1971 c.743 s.323; repealed by 1973 c.836 s.358]

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

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

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

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

(d) Burglary in the first degree, as defined in ORS 164.225;

(e) Assault in the first degree, as defined in ORS 163.185;

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

(g) 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 professional nurse, a licensed practical nurse, a qualified medical technician, a licensed physician or a person acting under the direction or control of a licensed physician.

(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 ss.2,5; 1993 c.14 s.3; 1993 c.33 s.298; 1993 c.301 s.3; 1999 c.97 s.1]

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

(Presentence Report)

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

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

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

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

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

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

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

(3) If parts of the presentence report or other written information described in subsection (1) of this section are not disclosed under subsection (2) of this section, the court shall inform the parties that information has not been disclosed

and shall state for the record the reasons for the court's action. The action of the court in excepting information shall be reviewable on appeal.

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

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

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

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

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

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

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

(Aggravation or Mitigation)

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

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

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

(a) Any evidence received during the proceeding;

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

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

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

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

(Compensatory Fine)

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

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

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

(Restitution)

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

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

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

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

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

137.106 Restitution to victims; criteria; objections by defendant. (1) When a person is convicted of a crime, or a violation as described in ORS 153.008, that has resulted in pecuniary damages, unless the presentence investigation report contains such a presentation, the district attorney shall investigate and present to the court, prior to or at the time of sentencing, evidence of the nature and amount of such damages. In addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim.

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

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

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

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

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

(4) For crimes committed on or after December 5, 1996, the court shall order the prompt payment of the restitution whenever possible. [1977 c.371 s.2; 1983 c.724 s.1; 1993 c.533 s.1; 1997 c.313 s.23; 1999 c.1051 s.124]

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 137.071. [1997 c.526 s.2]

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.

137.109 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, or by a defendant's commission of a violation described in ORS 153.008, 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 which were the basis for the restitution. However, the court shall credit any restitution paid by the defendant to a victim against any judgment in favor of the victim in such civil action.

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

137.110 [Repealed by 1973 c.836 s.358]

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

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

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

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

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

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

137.117 [1955 c.636 s.10; 1961 c.266 s.1; 1961 c.424 s.4; repealed by 1971 c.743 s.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. An assignment by the state may be to the Department of Revenue or a private collection agency. An assignment by a municipal court or by a justice court may be to a private collection agency. Nothing in this section limits the right of a municipal court or a justice court to assign for collection judgments in matters other than criminal actions.

(2) The 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, but shall 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.

(3) As used in this section, "criminal action" has the meaning given that term in ORS 131.005. [1993 c.531 s.1; 1995 c.512 s.2; 1997 c.801 s.99; 1999 c.64 s.1]

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

137.119 [1963 c.320 s.1; 1969 c.502 s.3; 1969 c.597 s.124; repealed by 1971 c.743 s.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 s.2; 1971 c.743 s.324; 1977 c.372 s.12; 1987 c.320 s.29; 1989 c.790 s.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 s.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 s.2; repealed by 1991 c.67 s.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 or conduct. [1987 c.2 s.12; 1991 c.67 s.29; 1991 c.111 s.14; 1995 c.657 s.2]

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; or

(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.

(b) A person placed in the custody of the Oregon Youth Authority under this subsection 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.

(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.

(b) When a person under 16 years of age is waived under ORS 419C.349, 419C.352, 419C.364 or 419C.370 and subsequently is sentenced to a term of imprisonment in the county jail, the sheriff shall transfer the person to a 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 Department 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. [1967 c.585 s.4; 1971 c.743 s.325; 1973 c.836 s.262; 1985 c.631 s.5; 1987 c.320 s.30; 1993 c.33 s.299; 1993 c.546 s.118; 1995 c.422 ss.57,57a; 1995 c.423 s.12a; 1999 c.109 s.5]

137.125 [1955 c.660 s.3; repealed by 1967 c.585 s.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 s.2]

137.127 [1955 c.660 s.5; repealed by 1967 c.585 s.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 ss.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 s.4; 1983 c.721 s.1; 1985 c.16 s.447; 1993 c.692 s.3; 1999 c.1051 s.68a]

137.130 [Repealed by 1987 c.550 s.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 incarceration 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.

(3) If the defendant does not consent to donate labor as required by ORS 137.128, the period of community service must be served under the supervision and control of the Department of Corrections. [1995 c.615 s.5]

(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, 167.320, 167.322, 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 s.1]

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.

(Post-Judgment Procedures)

137.140 Imprisonment when county jail is not suitable for safe confinement. Whenever it appears to the court that there is no sufficient jail of the proper county, as provided in ORS 137.330, suitable for the confinement of the defendant, the court may order the confinement of the defendant in the jail of an adjoining county or, if there is no sufficient and suitable jail in the adjoining county, then in the jail of any county in the state. [Amended by 1973 c.836 s.263; 1987 c.550 s.3]

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

137.160 [Repealed by 1961 c.520 s.1]

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 s.19; 1973 c.836 s.264; 1985 c.540 s.36; 1997 c.801 s.65b]

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 s.3; 1991 c.111 s.15; 1997 c.801 s.65c]

137.180 Docketing of judgment to pay fine or costs or to forfeit security. (1) If a court enters a judgment that requires that a defendant pay money, whether as a fine, fee, assessment or as costs and disbursements of the action, as restitution or as any other monetary obligation, or enters a judgment for the forfeiture of security under ORS 135.280, the clerk shall enter the judgment in the register of actions and:

(a) Shall docket the money judgment portion of the judgment in the judgment docket if the offense is a felony or misdemeanor; and

(b) May docket the money judgment portion of the judgment in the judgment docket if the court so orders and the offense is a violation as described in ORS 153.008.

(2) Notwithstanding subsection (1) of this section, the clerk shall rely on the existence of a separate section within

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

- (a) The judgment for the payment of money is required to but does not comply with ORS 137.071.
- (b) The clerk is unable to ascertain the specific information from the separate section under ORS 137.071.
- (3) The clerk is not liable for entering any information in the judgment docket that reflects information actually contained in a judgment or decree whether or not the information in the judgment or decree is correct or properly presented.
- (4) Entry and docketing of judgment under this section has the same effect as a judgment in a civil action, as provided in ORS 18.320, 18.350, 18.360 and 18.400. The judgment is a judgment in favor of the state and may be enforced only by the state. [Amended by 1987 c.709 s.2; 1989 c.472 s.5; 1995 c.658 s.77; 1997 c.801 s.62; 1999 c.1051 s.126]

137.183 Interest on judgments; amount; calculation; distribution. Judgments in criminal actions bear interest at the rate of nine percent per annum from the date of entry of the judgment. The clerk of the court shall calculate interest on each category of monetary obligation established by ORS 137.295 for the purpose of distribution of the interest in the manner provided in ORS 137.295. Interest shall accrue monthly on the first day of each month, beginning with the first day of the second full calendar month after the monetary obligation first becomes due. [1999 c.1064 s.2]

Note: Section 5, chapter 1064, Oregon Laws 1999, provides:

Sec. 5. (1) Sections 2, 3 and 4 of this 1999 Act [1.190, 1.192 and 137.183] and the amendments to ORS 137.295 by section 1 of this 1999 Act become operative on July 1, 2003.

(2) Section 2 of this 1999 Act [137.183] and the amendments to ORS 137.295 by section 1 of this 1999 Act apply only to judgments entered on or after July 1, 2003. [1999 c.1064 s.5]

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 s.32 (137.220 enacted in lieu of 137.190)]

137.200 [Repealed by 1971 c.743 s.432]

137.205 [1963 c.600 s.12; 1967 c.372 s.3; repealed by 1971 c.743 s.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 s.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 s.33 (enacted in lieu of 137.190)]

137.225 Order setting aside conviction or record of arrest; fees; prerequisites; limitations. (1)(a) At any time after the lapse of three years from the date of pronouncement of judgment, any defendant who has fully complied with and performed the sentence of the court and whose conviction is described in subsection (5) of this section by motion

may apply to the court wherein that conviction was entered for entry of an order setting aside the conviction; or

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

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

(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. 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 Bureau of Criminal Identification.

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

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

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

(a) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205 when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

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

(c) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, except for:

(A) Any sex crime; and

(B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

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

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

(d) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.

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

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

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

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

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

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

- (i) Criminal mistreatment in the first degree under ORS 163.205; and
- (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).
- (C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would constitute child abuse, as defined in ORS 419B.005, or any sex crime.
- (D) A violation.
- (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section do not apply to:
 - (a) A person convicted of, or arrested for, a state or municipal traffic offense;
 - (b) A person convicted, within the 10-year period immediately preceding the filing of the motion pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations, whether or not the other conviction is for conduct associated with the same criminal episode that caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this section, a conviction which has been set aside under this section shall be considered for the purpose of determining whether this paragraph is applicable; or
 - (c) A person who at the time the motion authorized by subsection (1) of this section is pending before the court is under charge of commission of any crime.
- (7) The provisions of subsection (1)(b) of this section do not apply to a person arrested within the three-year period immediately preceding the filing of the motion for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated with the same criminal episode that caused the arrest that is sought to be set aside.
- (8) The provisions of subsection (1) of this section apply to convictions and arrests which occurred before, as well as those which occurred after, September 9, 1971. There shall be no time limit for making such application.
- (9) For purposes of any civil action in which truth is an element of a claim for relief or affirmative defense, the provisions of subsection (3) of this section providing that the conviction, arrest or other proceeding be deemed not to have occurred shall not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interest of justice.
- (10) Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order shall have no other effect on the orders setting aside the conviction or the arrest record.
- (11) Unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice, the court shall grant the motion and enter an order as provided in subsection (3) of this section if the defendant has been convicted of one of the following crimes and is otherwise eligible for relief under this section:
 - (a) Abandonment of a child, ORS 163.535.
 - (b) Attempted assault in the second degree, ORS 163.175.
 - (c) Assault in the third degree, ORS 163.165.
 - (d) Coercion, ORS 163.275.
 - (e) Criminal mistreatment in the first degree, ORS 163.205.
 - (f) Attempted escape in the first degree, ORS 162.165.
 - (g) Incest, ORS 163.525, 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) Criminally negligent homicide, ORS 163.145.
 - (k) Attempted robbery in the second degree, ORS 164.405.
 - (L) Robbery in the third degree, ORS 164.395.
 - (m) Supplying contraband, ORS 162.185.
 - (n) Unlawful use of a weapon, ORS 166.220.
- (12) As used in this section, "sex crime" has the meaning given that term in ORS 181.594. [1971 c.434 s.2; 1973 c.680 s.3; 1973 c.689 s.1a; 1973 c.836 s.265; 1975 c.548 s.10; 1975 c.714 s.2; 1977 c.286 s.1; 1983 c.556 s.1; 1983 c.740 s.17; 1987 c.320 s.31; 1987 c.408 s.1; 1987 c.864 s.6; 1989 c.774 s.1; 1991 c.830 s.6; 1993 c.546 s.98; 1993 c.664 s.2; 1995 c.429 s.9; 1995 c.743 s.1; 1999 c.79 s.1]

(Alcoholic or Drug-Dependent Person)

137.227 Evaluation after conviction to determine if defendant is alcoholic or drug-dependent person; agencies to perform evaluation. (1) After a defendant has been convicted of a crime, the court may cause the

defendant to be evaluated to determine if the defendant is an alcoholic or a drug-dependent person, as those terms are defined in ORS 430.306. The evaluation shall be conducted by an agency or organization designated under subsection (2) of this section.

(2) The court shall designate agencies or organizations to perform the evaluations required under subsection (1) of this section. The designated agencies or organizations must meet the standards set by the office of Alcohol and Drug Abuse Programs to perform the evaluations for drug dependency and must be approved by the office of Alcohol and Drug Abuse Programs. Wherever possible, a court shall designate agencies or organizations to perform the evaluations that are separate from those that may be designated to carry out a program of treatment for alcohol or drug dependency. [1991 c.630 s.1]

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

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

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

Note: See note under 137.227.

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

Note: See note under 137.227.

(Effects of Felony Conviction)

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

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

137.250 [Formerly 421.112; 1973 c.836 s.267; repealed by 1975 c.781 s.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 s.4]

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

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

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

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

- (a) The defendant is discharged or paroled from imprisonment; or
- (b) The defendant's conviction is set aside.

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

- (a) The defendant is discharged or paroled from imprisonment; or
- (b) The defendant's conviction is set aside.

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

- (a) Holding a public office or an office of a political party or becoming or remaining a candidate for either office;
- (b) Holding a position of private trust;
- (c) Acting as a juror; or
- (d) Exercising the right to vote.

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

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

Note: Section 2, chapter 499, Oregon Laws 1999, provides:

Sec. 2. The amendments to ORS 137.281 by section 1 of this 1999 Act apply to persons imprisoned in any federal correctional institution prior to, on or after the effective date of this 1999 Act [October 23, 1999]. [1999 c.499 s.2]

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 s.3; 1979 c.284 s.116; 1987 c.320 s.33]

(Unitary Assessment)

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

- (a) \$105 in the case of a felony.
- (b) \$65 in the case of a misdemeanor.
- (c) \$95 in the case of a conviction for driving under the influence of intoxicants.
- (d) \$35 in the case of a violation as described in ORS 153.008.

(2) The unitary assessment shall include, in addition to the amount in subsection (1) of this section:

- (a) \$40 if the defendant was driving a vehicle that requires a commercial driver license to operate and the conviction was for violating:
 - (A) ORS 811.100 by driving at a speed at least 10 miles per hour greater than is reasonable and prudent under the circumstances; or
 - (B) ORS 811.115 by driving at least 65 miles per hour; and
- (b) \$500 if the crime of conviction is a crime found in ORS chapter 163.

(3) Subject to subsection (4) of this section, the court in any case may waive payment of the unitary assessment, in whole or in part, if, upon consideration, the court finds that payment of the assessment or portion thereof would impose upon the defendant a total monetary obligation inconsistent with justice in the case. In making its determination under this subsection, the court shall consider:

- (a) The financial resources of the defendant and the burden that payment of the unitary assessment will impose, with due regard to the other obligations of the defendant; and
- (b) The extent to which such burden can be alleviated by allowing the defendant to pay the monetary obligations imposed by the court on an installment basis or on other conditions to be fixed by the court.

(4) If a defendant is convicted of an offense, the court may waive all or part of the unitary assessment required under subsections (1) and (2)(a) of this section only if the court imposes no fine on the defendant. [1987 c.905 s.1; 1991 c.460 s.14; 1993 c.33 s.300; 1993 c.637 s.1; 1993 c.770 ss.1,3; 1995 c.555 s.1; 1997 c.872 s.27; 1999 c.1051 s.127; 1999 c.1056 s.1d; 1999 c.1095 s.6]

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

137.293 All monetary obligations constitute single obligation on part of convicted person. All fines, costs, assessments, restitution, compensatory fines and other monetary obligations imposed upon a convicted person in a circuit, justice or municipal court, shall constitute a single obligation on the part of the convicted person. The clerk shall subdivide the total obligation as provided in ORS 137.295 according to the various component parts of the obligation and shall credit and distribute accordingly, among those subdivisions, all moneys received. [1987 c.905 s.2]

Note: See note under 137.290.

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

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

- (a) Category 1 consists of compensatory fines under ORS 137.101.
- (b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS 419C.450 and a monetary obligation imposed under ORS 811.706.
- (c) Category 3 consists of the unitary assessment imposed under ORS 137.290, costs imposed under ORS 151.505 or 161.665 and those fines, costs, forfeited security amounts and other monetary obligations payable to the state or to the General Fund of the state in criminal and quasi-criminal cases for which moneys the law does not expressly provide other disposition.
- (d) Category 4 consists of monetary obligations imposed upon the defendant as a result of the conviction, but

which do not fall under category 1, category 2 or category 3 of the obligation categories. These include, but are not limited to, fines and other monetary obligations that the law expressly directs be paid to an agency, person or political subdivision of the state, and any other obligation to reimburse for payment of a reward under ORS 131.897.

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

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

(5) The clerk shall monthly transfer the moneys credited under category 1 and under category 2 to the victims for whose benefit moneys under that category were ordered paid. The clerk of a circuit court shall monthly transfer the moneys credited under category 3 as directed by the State Court Administrator for deposit in the State Treasury to the credit of the Criminal Fine and Assessment Account established under ORS 137.300. The clerk of a justice or municipal court shall monthly transfer the moneys credited under category 3 to the Department of Revenue as provided in ORS 305.830.

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

(7) When category 1, category 2 and category 3 have been entirely paid and any obligation remains owing under category 4, the clerk shall credit further payments by the defendant to the obligations under category 4 and shall monthly transfer the moneys so received to the appropriate recipient, giving first priority to counties and cities entitled to revenues generated by prosecutions in justice and municipal courts and giving last priority to persons entitled to moneys as reimbursement for reward under ORS 131.897. [1987 c.905 s.3; 1991 c.460 s.13; 1993 c.33 s.301; 1995 c.782 s.3; 1997 c.761 s.10; 1999 c.1051 s.128]

Note: The amendments to 137.295 by section 1, chapter 1064, Oregon Laws 1999, become operative July 1, 2003, and apply only to judgments entered on or after July 1, 2003. See section 5, chapter 1064, Oregon Laws 1999. The text that is operative on and after July 1, 2003, is set forth for the user's convenience.

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

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

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

(b) Category 2 consists of restitution as defined in ORS 137.103 and restitution under ORS 419C.450 and a monetary obligation imposed under ORS 811.706.

(c) Category 3 consists of the unitary assessment imposed under ORS 137.290, costs imposed under ORS 151.505 or 161.665 and those fines, costs, forfeited security amounts and other monetary obligations payable to the state or to the General Fund of the state in criminal and quasi-criminal cases for which moneys the law does not expressly provide other disposition.

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

(3) As long as there remains unpaid any obligation under category 1, including any interest accrued on that obligation, the clerk shall credit toward category 1 all of each payment received.

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

(5) The clerk shall monthly transfer the principal amount of the moneys credited under category 1 and under category 2, and all interest that has accrued on those principal amounts, to the victims for whose benefit moneys under that category were ordered paid. The clerk of a circuit court shall monthly transfer the principal amount of the moneys credited under category 3 as directed by the State Court Administrator for deposit in the State Treasury to the credit of the Criminal Fine and Assessment Account established under ORS 137.300. The clerk of a justice or municipal court shall monthly transfer the principal amount of the moneys credited under category 3 to the Department of Revenue as

provided in ORS 305.830. The clerk shall transfer all interest on the principal amount of the moneys credited under category 3 to the State Court Administrator for deposit in the Court Facilities Account established under ORS 1.190.

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

(7) When category 1, category 2 and category 3 have been entirely paid and any obligation remains owing under category 4, the clerk shall credit further payments by the defendant to the obligations under category 4 and shall monthly transfer the principal amount of the moneys so received to the appropriate recipient, giving first priority to counties and cities entitled to revenues generated by prosecutions in justice and municipal courts and giving last priority to persons entitled to moneys as reimbursement for reward under ORS 131.897. The clerk shall transfer all interest on the principal amount of the moneys credited under category 4 to the agency, person or political subdivision of the state entitled to the principal amount. All interest on monetary obligations owing to the state under category 4 shall be transferred to the State Court Administrator for deposit in the Court Facilities Account established under ORS 1.190.

Note: See note under 137.290.

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

Note: See note under 137.290.

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

(a) 15.0949 percent of moneys in the account shall be transferred to the Police Standards and Training Account established under ORS 181.690.

(b) 8.4537 percent of moneys in the account shall be transferred to the Criminal Injuries Compensation Account established under ORS 147.225.

(c) 4.0834 percent of moneys in the account shall be transferred to the Intoxicated Driver Program Fund established under ORS 813.270.

(d) 46.9869 percent of moneys in the account shall be transferred to the General Fund to be used for general governmental expenses.

(e) 2.2640 percent of the moneys in the account shall be reserved to be distributed as provided in ORS 137.305.

(f) 2.6652 percent of the moneys in the account shall be transferred to the Department of State Police and is continuously appropriated to the department.

(g) 0.7597 percent of moneys in the account shall be transferred to the Department of State Police and is continuously appropriated to the department for the purpose of enhanced enforcement of traffic laws against drivers of commercial motor vehicles.

(h) 8.4537 percent of the moneys in the account shall be transferred to the Child Abuse Multidisciplinary Intervention Account established in ORS 418.746.

(i) 0.8515 percent of the moneys in the account shall be transferred to the Domestic Violence Fund established under ORS 108.660.

(j) 3.3388 percent of the moneys in the account shall be transferred to the Department of State Police and is continuously appropriated to the department for the purpose of performing forensic laboratory analyses and maintaining the forensic services implied consent unit.

(k) 1.1599 percent of the moneys in the account shall be transferred to the Domestic Violence Fund established under ORS 108.660 and is continuously appropriated for the purposes of ORS 108.620 (1)(a) to (c).

(L) 0.4352 percent of the moneys in the account shall be transferred to the Safety Education Fund created by ORS 802.155.

(m) 1.9896 percent of the moneys in the account shall be transferred to the subaccount established pursuant to section 36 (1), chapter 1084, Oregon Laws 1999, or a successor subaccount, account or fund.

(n) 2.0781 percent of moneys in the account shall be transferred to the Emergency Medical Services Enhancement Account established under ORS 442.625.

(o) 0.6927 percent of the moneys in the account shall be transferred to the Sexual Assault Victims Fund established under ORS 409.285.

(p) 0.6927 percent of the moneys in the account shall be transferred to the Public Safety Memorial Fund established by ORS 243.950.

(2) The Department of Revenue shall report to the State Office for Services to Children and Families monthly on the amount of moneys transferred to the Child Abuse Multidisciplinary Intervention Account under subsection (1)(h) of this section. In making the report, the Department of Revenue shall specify the amount of moneys received from the state courts in each county and from each city court. [1987 c.905 s.7; 1989 c.904 s.49; 1991 c.460 s.2; 1993 c.741 s.1; 1993 c.770 ss.2,4; 1995 c.555 ss.2,3; 1997 c.872 s.28; 1999 c.1056 ss.2,2c; 1999 c.1084 s.38]

Note: See note under 137.290.

137.304 Maximum distribution under ORS 137.303. (1) Notwithstanding the percentages established for distributions from the Criminal Fine and Assessment Account under ORS 137.303, the maximum distribution in any biennium may not exceed the following amounts:

(a) \$14,158,775 to the Police Standards and Training Account under the provisions of ORS 137.303 (1)(a).

(b) \$7,929,422 to the Criminal Injuries Compensation Account under the provisions of ORS 137.303 (1)(b).

(c) \$3,830,154 to the Intoxicated Driver Program Fund under the provisions of ORS 137.303 (1)(c).

(d) \$2,499,891 to the Department of State Police under the provisions of ORS 137.303 (1)(f).

(e) \$712,624 to the Department of State Police under the provisions of ORS 137.303 (1)(g).

(f) \$7,929,422 to the Child Abuse Multidisciplinary Intervention Account under the provisions of ORS 137.303 (1)(h).

(g) \$2,572,635 to the Domestic Violence Fund under the provisions of ORS 137.303 (1)(i) and (k).

(h) \$3,131,745 to the Department of State Police under the provisions of ORS 137.303 (1)(j).

(i) \$408,198 to the Safety Education Fund under the provisions of ORS 137.303 (1)(L).

(j) \$1,866,226 to the Children's Trust Endowment Fund under the provisions of ORS 137.303 (1)(m).

(k) \$1,876,822 to the Emergency Medical Services Enhancement Account established under ORS 442.625.

(L) \$625,607 to the Sexual Assault Victims Fund established under ORS 409.285.

(m) \$625,607 to the Public Safety Memorial Fund established by ORS 243.950.

(2) Any moneys not distributed under ORS 137.303 by reason of the limits imposed by this section shall be transferred to the General Fund to be used for general governmental expenses. [1999 c.1095 s.8; 1999 c.1095 ss.9,10,11]

Note: 137.304 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.

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

(1) If the monthly distribution to the Police Standards and Training Account pursuant to ORS 137.303 (1)(a), ORS 137.015 (1985 Replacement Part) and ORS 813.240 (1)(b) (1985 Replacement Part), is not at least \$536,000, then the Department of Revenue shall distribute from the reserved moneys such amount as will make up the shortage for the month.

(2) If the monthly distribution to the Criminal Injuries Compensation Account pursuant to ORS 137.303 (1)(b) after deduction of the amount described in ORS 147.391 is not at least \$179,000, then the Department of Revenue shall distribute from the reserved moneys such amount as will make up the shortage for the month.

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

(4) If any moneys reserved under ORS 137.303 (1)(e) remain undistributed after the procedure described in subsections (1) to (3) of this section, those moneys shall cease to be reserved and shall remain in the Criminal Fine and Assessment Account for distribution in the following month. [1987 c.905 s.8; 1991 c.460 s.15; 1993 c.637 s.4; 1993 c.770 s.6; 1995 c.440 s.2; 1997 c.872 s.29; 1999 c.867 s.9]

Note: See note under 137.290.

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

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

(County Assessment)

137.308 Authorized uses of assessments. (1) The county treasurer shall deposit 60 percent of the moneys received under ORS 137.309 (6) to (8) into the general fund of the county to be used for the purpose of planning, operating and maintaining county juvenile and adult corrections programs and facilities and drug and alcohol programs approved by the Governor's Council on Alcohol and Drug Abuse Programs. Expenditure by the county of the funds described in this subsection shall be made in a manner that is consistent with the approved community corrections plan for that county; however, a county may not expend more than 50 percent of the funds on the construction or operation of a county jail. Prior to budgeting the funds described in this subsection, a county shall consider any comments received from, and upon request shall consult with, the governing body of a city that forwards assessments under ORS 137.307 (1991 Edition) concerning the proposed uses of the funds.

(2) The county treasurer shall deposit 40 percent of the moneys received under ORS 137.309 (6) to (8) into the county's court facilities security account established under ORS 1.182. [1989 c.860 s.4; 1993 c.196 s.4; 1993 c.637 s.14; 1999 c.1051 s.255]

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

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

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

- (a) \$5, when the fine or forfeiture is \$5 to \$14.99.
- (b) \$12, when the fine or forfeiture is \$15 to \$49.99.
- (c) \$14, when the fine or forfeiture is \$50 to \$99.99.
- (d) \$20, when the fine or forfeiture is \$100 to \$249.99.
- (e) \$24, when the fine or forfeiture is \$250 to \$499.99.
- (f) \$59, when the fine or forfeiture is \$500 or more.

(3) Assessments imposed under subsections (1) to (5) of this section shall be collected as provided in subsections (6) to (8) of this section.

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

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

(6) Except as provided in subsection (7) of this section, within 60 days after receipt of such assessment by the clerk of a circuit or municipal court or by a justice of a justice court, the assessment shall be paid to the county treasurer of the county in which the court is located.

(7) Prior to making payment to the county treasurer as provided in subsections (6) and (8) of this section, the clerk of a circuit, municipal or justice court:

- (a) Shall withhold and deposit in the State Treasury to the credit of the Law Enforcement Medical Liability

Account the following amounts:

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

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

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

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

(8) A city that lies in more than one county shall pay the assessments it collects to each county in proportion to the percent of the population of the city that resides in each county. [1991 c.778 ss.4,5; 1993 c.14 s.6; 1993 c.196 s.1; 1993 c.637 ss.13,13a; 1999 c.1051 s.254]

EXECUTION OF JUDGMENT

(Imprisonment)

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

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

137.320 Delivery of defendant when committed to Department of Corrections; credit on sentence. (1) When a judgment includes commitment to the legal and physical custody of the Department of Corrections, the sheriff shall deliver the defendant, together with a copy of the entry of judgment and a statement signed by the sheriff of the number of days the defendant was imprisoned prior to delivery, to the superintendent of the Department of Corrections institution to which the defendant is initially assigned pursuant to ORS 137.124. 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 towards the term of the sentence. [Amended by 1955 c.660 s.14; 1967 c.232 s.1; 1967 c.585 s.5; 1971 c.619 s.1; 1973 c.631 s.1; 1981 c.424 s.1; 1987 c.320 s.34; 1995 c.423 s.29]

137.330 Where judgment of imprisonment in county jail is executed. (1) Except as provided in ORS 137.333,

137.140 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 137.140 shall receive and keep such prisoner in the same manner as if the prisoner had been ordered, sentenced or delivered to the jailor by an officer or court of the jailor's own county; but the county in which the prisoner would be imprisoned except for the provisions of ORS 137.140 shall pay all the expenses of keeping and maintaining the prisoner in said jail. [Amended by 1987 c.550 s.4; 1996 c.4 s.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 corrections entity formed under ORS 190.265. [1996 c.4 s.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 s.432]

137.350 [Repealed by 1987 c.247 s.1]

137.360 [Repealed by 1987 c.247 s.1]

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

(2) Except as provided in 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 the crime for which sentence is imposed; and

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

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

(4) 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 towards 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. [Amended by 1955 c.660 s.15; 1965 c.463 s.19; 1967 c.232 s.2; 1973 c.562 s.2; 1973 c.631 s.4; 1981 c.424 s.2; 1987 c.251 s.4; 1987 c.320 s.35; 1995 c.657 s.20]

137.372 Credit for time served as part of probationary sentence. (1) Notwithstanding the provisions of ORS 137.370 (2)(a), an offender who has been revoked from a probationary sentence for a felony committed on or after November 1, 1989, shall receive credit for the time served in jail after arrest and before commencement of the probationary sentence or for the time served in jail as part of the probationary sentence unless the sentencing judge

orders otherwise.

(2) Notwithstanding the provisions of ORS 137.320 (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. [1989 c.790 s.81; 1993 c.692 s.4; 1995 c.657 s.13]

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 the county or city jail, falls on Saturday, Sunday or a legal holiday, the prisoner shall be released on the first day preceding the date of release which is not a Saturday, Sunday or legal holiday, except for prisoners of a county or city jail serving a mandatory minimum term specifically limited to weekends who shall only be released at the time fixed in the sentence. [1953 c.532 s.1; 1955 c.660 s.16; 1971 c.290 s.1; 1979 c.487 s.10; 1987 c.320 s.36]

137.380 Discipline, treatment and employment of prisoners. A judgment of commitment to the custody of the Department of Corrections need only specify the duration of confinement as provided in ORS 137.120. Thereafter the manner of the confinement and the treatment and employment of a person shall be regulated and governed by whatever law is then in force prescribing the discipline, treatment and employment of persons committed. [Amended by 1955 c.32 s.1; 1955 c.660 s.17; 1959 c.687 s.1; 1973 c.836 s.268; 1987 c.320 s.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 s.3]

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

137.410 [Repealed by 1967 c.372 s.13]

137.420 [Repealed by 1967 c.372 s.13]

137.430 [Repealed by 1967 c.372 s.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 s.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 s.269; 1987 c.709 s.1]

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

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

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

(A) Issue satisfactions of money judgments; or

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

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

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

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

(4)(a) Except as provided in paragraph (b) of this subsection, when the entries in the register, the judgment docket 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 upon the judgment docket that the judgment has been paid in full. Notation upon the judgment docket under this subsection constitutes a satisfaction of the judgment. The clerk of the court is not civilly liable for any act or omission in making the notation on the judgment docket 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 judgment as a satisfaction issued for 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 judgment shall remain a lien against all real property not specifically released. [1989 c.472 s.4; 1993 c.145 s.1; 1997 c.801 s.68]

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 138.012.

(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 indigent.

(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 rendered 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 s.5; 1999 c.1055 s.2]

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 Mental Health and Developmental Disability Services Division 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 Mental Health and Developmental Disability Services Division 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 Mental Health and Developmental Disability Services Division 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 s.3]

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 s.5; repealed by 1981 c.873 s.9]

137.466 Judicial determination of defendant's mental capacity. (1) If the court has ordered the Mental Health and Developmental Disability Services Division 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 s.4]

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 s.6]

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

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

enclosure of a Department of Corrections institution designated by the Director of the Department of Corrections. The superintendent of the institution shall be present at the execution and shall invite the presence of one or more physicians, the Attorney General and the sheriff of the county in which the judgment was rendered. At the request of the defendant, the superintendent shall allow no more than two clergymen designated by the defendant to be present at the execution. At the discretion of the superintendent, no more than five friends and relatives designated by the defendant may be present at the execution. The superintendent shall allow the presence of any peace officers as the superintendent thinks expedient.

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

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

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

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

137.475 [1979 c.2 s.7; repealed by 1981 c.873 s.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 Board of Medical Examiners for the State of Oregon and the Oregon State Board of Nursing.

(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, nurse and emergency medical technician licensed by the Board of Medical Examiners of the State of Oregon or the Oregon State Board of Nursing. [1999 c.1055 s.9]

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 s.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 s.16]

Note: See note under 137.464.

137.510 [Amended by 1955 c.660 s.18; 1955 c.688 s.1; repealed by 1971 c.743 s.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 s.1; 1973 c.836 s.270; 1981 c.568 s.1; 1989 c.790 s.15; 1993 c.14 s.8; 1999 c.661 s.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 s.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 s.3; 1993 c.14 s.9]

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

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

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

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

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 the unitary assessment for which the person would have been liable under ORS 137.290 if the person had been convicted. The person must pay the unitary assessment within 90 days of imposition unless the court allows payment at a later time. The person shall pay the unitary assessment to the clerk of the court, who shall account for and distribute the moneys as provided in ORS 137.293 and 137.295.

(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 ss.1,2]

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

- (a) Pay supervision fees, fines, restitution or other fees ordered by the court.
- (b) Not use or possess controlled substances except pursuant to a medical prescription.
- (c) Submit to testing of breath or urine for controlled substance or alcohol use if the probationer has a history of substance abuse or if there is a reasonable suspicion that the probationer has illegally used controlled substances.
- (d) Participate in a substance abuse evaluation as directed by the supervising officer and follow the recommendations of the evaluator if there are reasonable grounds to believe there is a history of substance abuse.
- (e) Remain in the State of Oregon until written permission to leave is granted by the Department of Corrections or a county community corrections agency.
- (f) If physically able, find and maintain gainful full-time employment, approved schooling, or a full-time combination of both. Any waiver of this requirement must be based on a finding by the court stating the reasons for the waiver.
- (g) Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency.
- (h) Permit the probation officer to visit the probationer or the probationer's residence or work site, and report as required and abide by the direction of the supervising officer.
- (i) Consent to the search of person, vehicle or premises upon the request of a representative of the supervising officer if the supervising officer has reasonable grounds to believe that evidence of a violation will be found, and submit to fingerprinting or photographing, or both, when requested by the Department of Corrections or a county community corrections agency for supervision purposes.
- (j) Obey all laws, municipal, county, state and federal.
- (k) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections or a county community corrections agency.
- (L) Not possess weapons, firearms or dangerous animals.
- (m) If under supervision for, or previously convicted of, a sex offense under ORS 163.305 to 163.467, and if recommended by the supervising officer, successfully complete a sex offender treatment program approved by the supervising officer and submit to polygraph examinations at the direction of the supervising officer.
- (n) Participate in a mental health evaluation as directed by the supervising officer and follow the recommendation of the evaluator.
- (o) If required to report as a sex offender under ORS 181.596, report with the Department of State Police, a chief of police, a county sheriff or the supervising agency:
 - (A) When supervision begins;
 - (B) Within 10 days of a change in residence; and
 - (C) Once each year within 10 days of the probationer's date of birth.

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

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

(b) For felonies committed on or after November 1, 1989, be confined in the county jail, or be subject to other custodial sanctions under community supervision, or both, as provided by rules of the Oregon Criminal Justice Commission.

(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.

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

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

(5) 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.

(6) It shall not be a cause for revocation of probation that the probationer failed to apply for or accept employment at any workplace where there is a labor dispute in progress. As used in this subsection, "labor dispute" has the meaning for that term provided in ORS 662.010. [Amended by 1965 c.346 s.1; 1969 c.597 s.125; 1977 c.371 s.3; 1977 c.380 s.2; 1981 c.671 s.1; 1983 c.588 s.2; 1985 c.818 s.2; 1987 c.780 s.3; 1989 c.790 s.16; 1991 c.196 s.1; 1991 c.630 s.5; 1991 c.731 s.1; 1993 c.14 s.11; 1993 c.680 s.16; 1997 c.313 s.24; 1999 c.626 s.11]

Note: See first note under 137.593.

Note: Section 23, chapter 626, Oregon Laws 1999, provides:

Sec. 23. (1) Except as otherwise provided in subsection (2) of this section, sections 1 and 22 of this 1999 Act and the amendments to ORS 137.540, 144.102, 144.270, 181.586, 181.588, 181.589, 181.594, 181.595, 181.596, 181.597, 181.598, 181.599, 181.600, 181.601, 181.603, 181.604, 181.606, 419A.260 and 423.478 by sections 2 to 21 of this 1999 Act apply to persons convicted of crimes before, on or after the effective date of this 1999 Act [September 1, 1999].

(2) The amendments to ORS 137.540, 144.102, 144.270, 181.586, 181.588, 181.589, 181.594, 181.595, 181.596, 181.597, 181.598, 181.599, 181.600, 181.601, 181.603, 181.604, 181.606, 419A.260 and 423.478 by sections 2 to 21 of this 1999 Act apply to persons who, on or after the effective date of this 1999 Act, are:

(a) Convicted of a crime listed in ORS 181.594 (2)(L) to (p) or (s), an attempt to commit a crime listed in ORS 181.594 (2)(L) to (p) or burglary if committed with the intent to commit a crime listed in ORS 181.594 (2)(L) to (p) or (s) or convicted of an equivalent crime in another jurisdiction;

(b) Found to be within the jurisdiction of the juvenile court for having committed an act that if committed by an adult would constitute a crime listed in ORS 181.594 (2)(L) to (p) or (s), an attempt to commit a crime listed in ORS 181.594 (2)(L) to (p) or burglary if committed with the intent to commit a crime listed in ORS 181.594 (2)(L) to (p) or (s); or

(c) Found by a court in another jurisdiction to have committed an act while the person was under 18 years of age that if committed by an adult would constitute the equivalent of a crime listed in ORS 181.594 (2)(L) to (p) or (s), an attempt to commit a crime listed in ORS 181.594 (2)(L) to (p) or burglary if committed with the intent to commit a crime listed in ORS 181.594 (2)(L) to (p) or (s).

(3) The amendments to ORS 163.345 by section 24 of this 1999 Act apply to offenses committed on or after the effective date of this 1999 Act. [1999 c.626 s.23; 1999 c.626 s.23a]

Note: The amendments to 137.540 by section 34, chapter 626, Oregon Laws 1999, become operative July 1, 2002. See section 46, chapter 626, Oregon Laws 1999. The text that is operative on and after July 1, 2002, is set forth for the user's convenience.

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

- (a) Pay supervision fees, fines, restitution or other fees ordered by the court.
- (b) Not use or possess controlled substances except pursuant to a medical prescription.
- (c) Submit to testing of breath or urine for controlled substance or alcohol use if the probationer has a history of substance abuse or if there is a reasonable suspicion that the probationer has illegally used controlled substances.
- (d) Participate in a substance abuse evaluation as directed by the supervising officer and follow the recommendations of the evaluator if there are reasonable grounds to believe there is a history of substance abuse.
- (e) Remain in the State of Oregon until written permission to leave is granted by the Department of Corrections or a county community corrections agency.
- (f) If physically able, find and maintain gainful full-time employment, approved schooling, or a full-time combination of both. Any waiver of this requirement must be based on a finding by the court stating the reasons for the waiver.
- (g) Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency.
- (h) Permit the probation officer to visit the probationer or the probationer's residence or work site, and report as required and abide by the direction of the supervising officer.
- (i) Consent to the search of person, vehicle or premises upon the request of a representative of the supervising officer if the supervising officer has reasonable grounds to believe that evidence of a violation will be found, and submit to fingerprinting or photographing, or both, when requested by the Department of Corrections or a county community corrections agency for supervision purposes.
- (j) Obey all laws, municipal, county, state and federal.
- (k) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections or a county community corrections agency.
- (L) Not possess weapons, firearms or dangerous animals.
- (m) If under supervision for, or previously convicted of, a sex offense under ORS 163.305 to 163.467, and if recommended by the supervising officer, successfully complete a sex offender treatment program approved by the supervising officer and submit to polygraph examinations at the direction of the supervising officer.
- (n) Participate in a mental health evaluation as directed by the supervising officer and follow the recommendation of the evaluator.

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

- (a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after November 1, 1989, be confined to the county jail or be restricted to the probationer's own residence or to the premises thereof, or be subject to any combination of such confinement and restriction, such confinement or restriction or combination thereof to be for a period not to exceed one year or one-half of the maximum period of confinement that could be imposed for the offense for which the defendant is convicted, whichever is the lesser.
- (b) For felonies committed on or after November 1, 1989, be confined in the county jail, or be subject to other custodial sanctions under community supervision, or both, as provided by rules of the Oregon Criminal Justice Commission.
- (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.

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

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

(5) 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.

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

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 such as the court determines and may, in the discretion of the court, be continued or extended.

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

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

(3) Except for good cause shown or at the request of the probationer, the probationer shall be brought before a magistrate during the first 36 hours of custody, excluding holidays, Saturdays and Sundays. That magistrate, in the exercise of discretion, may order the probationer held pending 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)(a) If requested by the probationer and agreed to by the court, the probationer may admit or deny the violation without being physically present at the hearing if the probationer appears before the court by means of simultaneous television transmission allowing the court to observe and communicate with the defendant and the defendant to observe and communicate with the court.

(b) Notwithstanding paragraph (a) of this subsection, appearance by simultaneous television transmission shall not be permitted unless the facilities used enable the defendant to consult privately with defense counsel during the proceedings.

(11)(a) 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 by the district attorney of any hearing before the court that may result in the revocation of the defendant's probation;

(B) To appear personally at the hearing; and

(C) If present, to reasonably express any views relevant to the issues before the court.

(b) Failure of the district attorney to notify the victim under paragraph (a) of this subsection or failure of the victim to appear at the hearing does not affect the validity of the proceeding. [Formerly 137.550]

137.547 Consolidation of probation violation proceedings. (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 provide that if a probationer is alleged to have violated the conditions of a sentence of probation in more than one court, an initiating court may consider consolidation of some or all pending probation violation proceedings before one or more appropriate courts:

(A) Upon the motion of the district attorney or the defense counsel in the county in which the probationer is in custody or otherwise before the court; or

(B) Upon the court's own motion.

(b) May determine which courts are appropriate courts for the consolidation of probation violation proceedings in described circumstances or establish a process for determining an appropriate court.

(c) Shall require the consent of the probationer to a consolidated probation violation proceeding and written waivers by the probationer as determined necessary or fair.

(d) 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.

(e) 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.

(f) May provide for the recall of warrants in any court other than the appropriate court as convenient to accomplish the purposes of this section.

(g) May provide for the transmission of copies of such papers, records or other information to or from courts, district attorneys and probation officers as is necessary, appropriate or convenient for a consolidated probation violation proceeding under this section.

(h) May provide any processes necessary, appropriate or convenient for the proceeding before the appropriate court and for the appropriate court to make a disposition of the cases that are consolidated in a proceeding under this section.

(i) May include any rules or orders establishing other procedures necessary, appropriate or convenient for the fair and expeditious resolution of consolidated probation violation proceedings under this section.

(3) When an appropriate court transmits the judgment it enters for a consolidated probation violation proceeding under this section to the initiating court, if different from the appropriate court, and to a responding court for filing, thereafter that judgment is for all purposes the same as a judgment of the court of the initiating or responding county with regard to the matters on which that judgment makes determination and disposition.

(4) As used in this section:

(a) "Appropriate court" means the court most appropriate to hold a consolidated probation violation proceeding under this section given the totality of the circumstances involving the alleged probation violations and multiple jurisdiction proceedings. The circumstances include, but are not limited to:

(A) The location, residence or work location of the probationer;

(B) The location of the probationer's probation officer;

(C) The location of any witnesses or victims of the alleged violations or of any alleged new offenses with which

the probationer is charged;

(D) The location of any victims of the offense for which the probationer was sentenced to probation;

(E) The nature and location of previous offenses for which the probationer is serving a sentence;

(F) The nature of any new offenses with which the probationer is charged;

(G) The resources of local jails;

(H) The nature and location of any services that may be appropriate as a consequence of the alleged violation or new charges;

(I) Whether the judge who imposed the original sentence provided in the original judgment direction to return any probation violation proceedings to that judge; and

(J) The interests of local courts and district attorneys concerning the probationer and any disposition that a court may impose concerning the probationer.

(b) "Initiating court" means the court in which a probationer is in custody or otherwise before the court.

(c) "Responding court" means a court other than an initiating court or appropriate court that entered a judgment under which the probationer is currently serving a sentence of probation and which court consents to the consolidation of probation violation proceedings in an appropriate court under this section. [1999 c.614 s.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 s.2; 1965 c.346 s.2; 1971 c.743 s.326; 1987 c.908 s.1; 1989 c.790 s.17; 1991 c.196 s.2; 1993 c.14 s.12; 1993 c.581 s.2; 1993 c.680 s.17; 1997 c.313 s.11; 1999 c.614 s.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 s.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 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 s.2]

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

- (2) Each copy of the citation issued under ORS 137.553 shall contain:
- (a) The name of the court at which the cited probationer is to appear.
 - (b) The name of the probationer cited.
 - (c) A brief description of the asserted probation violation, the date, the time and the place at which the violation occurred, the date on which the citation was issued and the name of the officer who issued the citation.
 - (d) The time, date and place at which the cited probationer is to appear in court.
 - (e) A notice to the effect that:
 - (A) The citation is not itself a motion to revoke probation, but that such a motion will be filed and a copy provided to the probationer when the probationer appears at court;
 - (B) The probationer must appear in court at the time set in the citation; and
 - (C) If the probationer fails to appear as directed, the court may immediately issue a warrant for the probationer's arrest or the probationer may immediately be taken into custody by the officer responsible for supervising the probation. [1987 c.761 s.3]

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

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

- (1) If such probation officer sends to the court desiring to make such transfer a written statement that the probation officer will exercise supervision over such person.
- (2) If the statement is approved in writing by the judge of the court to which such probation officer is attached. [Amended by 1973 c.836 s.272; 1993 c.14 s.13]

137.580 Effect of transfer of probationer from one agency to another. Whenever the transfer mentioned in ORS 137.570 is made, the court making it shall send to the probation agency to whose supervision the probationer is transferred a copy of all the records of such court as to the offense, criminal record and social history of the probationer. The probation agency shall report concerning the conduct and progress of the probationer to the court that sentenced the probationer to probation. Probation officers or agencies shall have, with respect to persons transferred to their supervision from any other jurisdiction, all the powers and be subject to all the duties now imposed by law upon them in regard to probationers received on probation from courts in their own jurisdiction. [Amended by 1973 c.836 s.273; 1993 c.14 s.14]

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

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

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

(2) Decisions to incarcerate offenders in state prisons for violation of the conditions of probation must be made upon a reasonably systematic basis that will insure that available prison space is used to house those offenders who constitute a serious threat to the public, taking into consideration the availability of both prison space and local resources. [1993 c.680 s.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 s.10; 1995 c.423 s.9a]

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

Sec. 9. (1) ORS 137.593, 137.595, 137.597 and 137.599 and ORS 137.675 (1993 Edition) and ORS 137.677 (1993 Edition) and the amendments to ORS 137.540 by section 16, chapter 680, Oregon Laws 1993, apply to:

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

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

(A) The sentencing judge orders, on or after September 1, 1993, that the person be subject to ORS 137.593, 137.595, 137.597 and 137.599 and ORS 137.675 (1993 Edition) and ORS 137.677 (1993 Edition) and the amendments to ORS 137.540 by section 16, chapter 680, Oregon Laws 1993; and

(B) The probationer consents in writing or on the record to be subject to ORS 137.593, 137.595, 137.597 and 137.599 and ORS 137.675 (1993 Edition) and ORS 137.677 (1993 Edition) and the amendments to ORS 137.540 by section 16, chapter 680, Oregon Laws 1993.

(2) If it cannot be determined whether the felony was committed on or after September 1, 1993, the crime shall be deemed, for purposes of ORS 137.593, 137.595, 137.597 and 137.599 and ORS 137.675 (1993 Edition) and ORS 137.677 (1993 Edition) and the amendments to ORS 137.540 by section 16, chapter 680, Oregon Laws 1993, to have been committed prior to September 1, 1993. [1993 c.680 s.9; 1995 c.420 s.13]

Note: See note under 137.592.

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

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

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

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

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

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

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

(f) Procedures for notifying district attorneys and the courts of probation violations admitted by probationers and the sanctions imposed by the Department of Corrections or county community corrections agencies; and

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

(3) Jail confinement imposed as a custodial sanction by the Department of Corrections or a county community corrections agency pursuant to rules adopted under this section shall not exceed 60 days per violation report. The total number of days of jail confinement for all violation reports per conviction shall not exceed the maximum number of available jail custody units under rules adopted by the 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 shall not exceed the maximum number of available nonjail custody units under rules adopted by the Oregon Criminal Justice Commission. [1993 c.680 s.11; 1999 c.121 s.1]

Note: Section 2, chapter 121, Oregon Laws 1999, provides:

Sec. 2. The amendments to ORS 137.595 by section 1 of this 1999 Act apply to probation violations occurring on or after the effective date of this 1999 Act [October 23, 1999]. [1999 c.121 s.2]

Note: See note under 137.592 and first note under 137.593.

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 18 of ORS.

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

Note: See note under 137.592 and first note under 137.593.

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 s.13]

Note: See note under 137.592 and first note under 137.593.

137.600 [Repealed by 1955 c.491 s.9]

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

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

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

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

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

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

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

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

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

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

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

(Determinate Sentences)

137.635 Determinate sentences required for certain felony convictions. (1) When, in the case of a felony described in subsection (2) of this section, a court sentences a convicted defendant who has previously been convicted of any felony designated in subsection (2) of this section, the sentence shall not be an indeterminate sentence to which the defendant otherwise would be subject under ORS 137.120, but, unless it imposes a death penalty under ORS 163.105, the court shall impose a determinate sentence, the length of which the court shall determine, to the custody of the Department of Corrections. Any mandatory minimum sentence otherwise provided by law shall apply. The sentence shall not exceed the maximum sentence otherwise provided by law in such cases. The convicted defendant who is subject to this section shall not be eligible for probation. The convicted defendant shall serve the entire sentence imposed by the court and shall not, during the service of such a sentence, be eligible for parole or any form of temporary leave from custody. The person shall not be eligible for any reduction in sentence pursuant to ORS 421.120 or for any reduction in term of incarceration pursuant to ORS 421.121.

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

- (a) Murder, as defined in ORS 163.115, and any aggravated form thereof.
- (b) Manslaughter in the first degree, as defined in ORS 163.118.
- (c) Assault in the first degree, as defined in ORS 163.185.
- (d) Kidnapping in the first degree, as defined in ORS 163.235.
- (e) Rape in the first degree, as defined in ORS 163.375.
- (f) Sodomy in the first degree, as defined in ORS 163.405.
- (g) Unlawful sexual penetration in the first degree, as defined in ORS 163.411.
- (h) Burglary in the first degree, as defined in ORS 164.225.
- (i) Arson in the first degree, as defined in ORS 164.325.
- (j) Robbery in the first degree, as defined in ORS 164.415.

(3) When the court imposes a sentence under this section, the court shall indicate in the judgment that the defendant is subject to this section. [1989 c.1 ss.2,3; 1991 c.386 s.6; 1993 c.692 s.5; 1995 c.79 s.49]

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 s.82; 1995 c.520 s.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 s.1]

137.650 [Repealed by 1961 c.359 s.1]

OREGON CRIMINAL JUSTICE COMMISSION

(Generally)

137.651 Definitions. 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 s.1; 1995 c.420 s.4; 1997 c.433 s.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 s.2; 1987 c.879 s.18; 1989 c.548 s.1; 1993 c.188 s.2; repealed by 1995 c.420 s.14]

137.654 Oregon Criminal Justice Commission; membership; terms; meetings. (1) There is established the Oregon Criminal Justice Commission consisting of seven members appointed by the Governor, subject to confirmation by the Senate pursuant to section 4, Article III of the Oregon Constitution. Members serve at the pleasure of the Governor. The Governor shall appoint 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. Before the expiration of the term of a member, the Governor 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 Governor 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 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 s.1; 1999 c.172 s.1]

Note: See note under 137.651.

137.655 [1985 c.558 s.3; subsections (8) and (9) enacted as 1991 c.885 s.6; 1993 c.188 s.1; repealed by 1995 c.420 s.14]

137.656 Purpose and duties of commission. (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; and
- (g) Methods of reducing the risk of future criminal conduct.

(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 on state and local sentencing practices.

(c) To provide technical assistance and support to local public safety coordinating councils.

(d) To implement the recommendations of the Juvenile Crime Prevention Advisory Committee, as approved by the Governor.

(e) In cooperation with other state and federal agencies, to coordinate technical assistance efforts on a statewide and county-specific basis relating to juvenile crime prevention programs and services.

(4) The commission may contract with local governments or other entities to administer juvenile crime prevention programs and services. In accordance with the applicable provisions of ORS 183.310 to 183.550, the commission may adopt rules necessary for the administration of juvenile crime prevention programs and services. [1995 c.420 s.3; 1997 c.433 s.2; 1999 c.1053 s.44]

Note: See note under 137.651.

137.657 [1989 c.790 s.91; repealed by 1995 c.420 s.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 administrator of the Mental Health and Developmental Disability Services Division;
- (g) The Director of the Oregon Youth Authority;
- (h) Trial judges;
- (i) Judges of the Oregon Supreme Court or Court of Appeals;
- (j) Majority and minority parties of the House of Representatives and the Senate;
- (k) District attorneys;
- (L) Criminal defense attorneys;
- (m) County sheriffs;
- (n) County commissioners;
- (o) County community corrections directors;
- (p) Chiefs of police;
- (q) Victims of crime;
- (r) The public at large;

(s) 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

(t) Private contract providers. [1995 c.420 s.2; 1997 c.433 s.3]

Note: See note under 137.651.

137.659 [1987 c.619 s.9; 1991 c.455 s.1; repealed by 1995 c.420 s.14]

137.660 [Repealed by 1961 c.359 s.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 s.6; 1995 c.420 s.5]

Note: See note under 137.651.

137.663 [1987 c.619 s.3; 1989 c.790 s.38; 1993 c.188 s.3; repealed by 1995 c.420 s.14]

137.665 [1989 c.790 s.89; 1993 c.692 s.6; repealed by 1995 c.420 s.14]

137.667 Amendments to sentencing guidelines; submitting to Legislative Assembly. (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 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 shall not become effective unless approved by the Legislative Assembly by statute. The effective date of the amendments shall be the date specified by the Legislative Assembly in the statute approving the amendments. The Legislative Assembly may by statute amend, repeal or supplement any of the amendments.

(3) The provisions of subsection (2) of this section do not apply to amendments to the guidelines adopted by the commission that are required to implement enactments of the Legislative Assembly or under ORS 421.512 (2) or subsection (1) of this section.

(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 s.94a; 1993 c.681 s.6; 1993 c.692 s.7; 1995 c.420 s.6; 1997 c.691 s.3; 1999 c.966 s.2]

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 s.5; 1989 c.790 s.95; 1995 c.420 s.7; 1997 c.691 s.4]

Note: See note under 137.651.

137.670 [Repealed by 1961 c.359 s.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 s.6; 1989 c.790 s.39; 1995 c.420 s.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 (10)(a) or 183.400 (4)(c). [1989 c.790 s.73; 1995 c.420 s.9]

Note: See note under 137.651.

137.675 [1993 c.680 s.14; repealed by 1995 c.420 s.14]

137.677 [1993 c.680 s.15; repealed by 1995 c.420 s.14]

MANDATORY MINIMUM SENTENCES AND ADULT PROSECUTION OF 15-, 16- AND 17-YEAR-OLD OFFENDERS

137.700 Offenses requiring imposition of mandatory minimum sentences. (1) 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, 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:

-
- (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.....	70 months

[1995 c.2 s.1; 1995 c.421 s.1; 1995 c.422 s.47; 1997 c.852 s.2]

Note: 137.700 to 137.707 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.

137.705 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) "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 jail or other place where adults are detained subject to release on the same terms and conditions as for adults.

(b) Notwithstanding paragraph (a) of this subsection, the sheriff and the director of the county juvenile department may agree to detain the person charged in a place other than the county jail.

(c) 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 execution of the sentence, in a jail or other place where adults are detained. [1995 c.422 s.48]

Note: See 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, 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 138.012, 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..... 70 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 419.349, 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.

Note: See note under 137.700.

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 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 defendant is the mother or father of the victim;

(B) That the death of the victim was the result of an injury or illness that was not caused by the defendant;

(C) 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;

(D) 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

(E) 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.

(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)(E), (b)(C), (c)(B) and (d)(D) 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.

(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 s.1; 1999 c.614 s.3; 1999 c.954 s.2]

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.

(Temporary provisions relating to sentencing persons under ORS 137.700 and 137.707)

Note: Sections 5 to 7a, chapter 852, Oregon Laws 1997, provide:

Sec. 5. (1) This section applies to prosecutions for assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225 or robbery in the second degree as defined in ORS 164.405 if:

(a) The offense was committed on or after April 1, 1995, but before the effective date of this Act [October 4, 1997]; and

(b) A sentence has been imposed before the effective date of this Act.

(2) Only upon joint written consent of the sentenced defendant and the state, as represented by the district attorney of the county of conviction, the court of conviction may entertain, in accordance with section 1 of this Act [137.712], a petition for a resentencing hearing. The petition must allege facts sufficient to establish a basis under section 1 of this Act for imposition of a sentence less than the minimum sentence. The district attorney may file a response either in support of or in opposition to the petition.

(3) When a petition is filed under subsection (2) of this section, the sentencing court shall determine, based on the defendant's petition and the response, if any, filed by the district attorney, whether the defendant is eligible under section 1 of this Act for a sentence less than the minimum sentence and whether a lesser sentence may be appropriate. If the court determines that the defendant is eligible and that a lesser sentence may be appropriate, the court may order a resentencing hearing, otherwise the court shall enter an order denying the defendant's petition.

(4) If the court orders a resentencing hearing, the court shall determine at the hearing, in accordance with section 1 of this Act, whether imposition of a lesser sentence is warranted. If the court determines that a lesser sentence is warranted, it shall state on the record the substantial and compelling reasons in support of the lesser sentence, vacate the judgment, impose the lesser sentence and enter an amended judgment. If the court determines that a lesser sentence is not warranted, it shall enter an order denying the defendant's petition. [1997 c.852 s.5]

Sec. 6. (1) This section applies to prosecutions for assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225 or robbery in the second degree as defined in ORS 164.405 if:

(a) The offense was committed on or after April 1, 1995, but before the effective date of this Act [October 4, 1997]; and

(b) A sentence has not been imposed before the effective date of this Act.

(2) Only upon joint written consent of the convicted defendant and the state, the court in which the prosecution of an offense described in subsection (1) of this section is pending may entertain a motion requesting that the defendant be sentenced under section 1 of this Act [137.712]. The district attorney may file a response either in support of or in opposition to the motion.

(3) When a motion is filed under subsection (2) of this section, the court shall determine whether the defendant is eligible under section 1 of this Act for a sentence less than the minimum sentence and whether a lesser sentence may be appropriate. If the court determines that the defendant is eligible and that a lesser sentence may be appropriate, the court may impose sentence as provided in section 1 of this Act. Otherwise the court shall enter an order denying the motion. [1997 c.852 s.6]

Sec. 7. The sentencing court retains authority, irrespective of any notice of appeal after entry of judgment of conviction, to modify its judgment and sentence to reflect the results of a resentencing hearing ordered under section 5 of this Act. If a sentencing court enters an amended judgment under section 5 of this Act, the court shall immediately forward a copy of the amended judgment to the appellate court. Any modification of the appeal necessitated by the amended judgment shall be pursuant to an appropriate order by the appellate court. [1997 c.852 s.7]

Sec. 7a. If any court holds that the requirement of joint written consent by the state and defendant required for the court to entertain a petition for resentencing or a motion for alternate sentencing under section 5 or 6 of this Act is invalid, it is the intent of the Legislative Assembly that the joint written consent requirement is nonseverable from the other portions of sections 5, 6 and 7 of this Act and sections 5, 6 and 7 of this Act shall be entirely invalidated but the rest of this Act shall stand. [1997 c.852 s.7a]

137.717 Additional offenses requiring imposition of presumptive sentences. (1) When a court sentences a person convicted of:

(a) Burglary in the first degree under ORS 164.225, the presumptive sentence is 19 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 burglary in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405 or robbery in the first degree under ORS 164.415; or

(B) Four previous convictions for any combination of the other crimes listed in subsection (2) of this section.

(b) Unauthorized use of a vehicle under ORS 164.135, possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, 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 either unauthorized use of a vehicle under ORS 164.135, 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 or trafficking in stolen vehicles under ORS 819.310; or

(B) Four previous convictions for any combination of the other crimes listed in subsection (2) of this section.

(c) Theft in the first degree under ORS 164.055, aggravated theft in the first degree under ORS 164.057, burglary

in the second degree under ORS 164.215 or criminal mischief in the first degree under ORS 164.365, 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 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 or trafficking in stolen vehicles under ORS 819.310; or

(B) Four previous convictions for any combination of the crimes listed in subsection (2) of this section.

(d) 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 identity theft under ORS 165.800, 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) or computer crime under ORS 164.377; or

(B) Four previous convictions for any combination of forgery in the second degree under ORS 165.007, criminal possession of a forged instrument in the second degree under ORS 165.017 or fraudulent use of a credit card under ORS 165.055 (4)(a).

(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) Burglary in the second degree under ORS 164.215;

(f) Burglary in the first degree under ORS 164.225;

(g) Criminal mischief in the first degree under ORS 164.365;

(h) Possession of a stolen vehicle under ORS 819.300; and

(i) Trafficking in stolen vehicles under ORS 819.310.

(3) The court may impose a sentence other than the sentence provided by subsection (1) 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) of this section.

(4) As used in this section, "previous conviction" includes:

(a) Convictions occurring before, on or after July 1, 1997; and

(b) Convictions entered in any other state or federal court for comparable offenses.

(5) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079. [1996 c.3 s.1; 1999 c.1022 ss.2,4]

Note: The amendments to 137.717 by section 7, chapter 1022, Oregon Laws 1999, become operative July 1, 2001. See section 8, chapter 1022, Oregon Laws 1999. The text that is operative on and after July 1, 2001, is set forth for the user's convenience.

137.717. (1) When a court sentences a person convicted of:

(a) Burglary in the first degree under ORS 164.225, the presumptive sentence is 19 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 burglary in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405 or robbery in the first degree under ORS 164.415; or

(B) Four previous convictions for any combination of the other crimes listed in subsection (2) of this section.

(b) Unauthorized use of a vehicle under ORS 164.135, possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, 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 either unauthorized use of a vehicle under ORS 164.135, 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 or trafficking in stolen vehicles under ORS 819.310; or

(B) Four previous convictions for any combination of the other crimes listed in subsection (2) of this section.

(c) Theft in the first degree under ORS 164.055, aggravated theft in the first degree under ORS 164.057, burglary in the second degree under ORS 164.215 or criminal mischief in the first degree under ORS 164.365, 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 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 or trafficking in stolen vehicles under ORS 819.310; or

(B) Four previous convictions for any combination of the crimes listed in subsection (2) of this section.

(d) 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 identity theft under ORS 165.800, 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) or computer crime under ORS 164.377; or

(B) Four previous convictions for any combination of forgery in the second degree under ORS 165.007, criminal possession of a forged instrument in the second degree under ORS 165.017 or fraudulent use of a credit card under ORS 165.055 (4)(a).

(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) Burglary in the second degree under ORS 164.215;

(f) Burglary in the first degree under ORS 164.225;

(g) Criminal mischief in the first degree under ORS 164.365;

(h) Possession of a stolen vehicle under ORS 819.300; and

(i) Trafficking in stolen vehicles under ORS 819.310.

(3) The court may impose a sentence other than the sentence provided by subsection (1) 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) of this section.

(4) As used in this section, "previous conviction" includes:

(a) Convictions occurring before, on or after July 1, 1997; and

(b) Convictions entered in any other state or federal court for comparable offenses.

(5)(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.

(6) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

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.

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, alternative incarceration program 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 programs.

(2) The executing or releasing authority may consider the defendant for the programs 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, 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 s.14]

Note: 137.750, 137.752 and 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.

137.752 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 s.15]

Note: See 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 s.16]

Note: See 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 who the court finds 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 court finds that 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 s.1]

Note: 137.765, 137.767, 137.769 and 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 presentence report, the examination reports and the evidence in the case or on the sentence hearing, 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) Unless the parties stipulate otherwise, the state has the burden of proving beyond a reasonable doubt that the person is a sexually violent dangerous offender. [1999 c.163 s.3]

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 indigent, the defendant may request approval and preauthorization of the payment of the expenses of a psychiatrist, psychologist or other expert as provided in ORS 135.055 (3). [1999 c.163 s.4]

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 indigent, 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 s.7]

Note: See note under 137.765.

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