Chapter 137

Judgment and Execution; Parole and Probation by the Court

137.010

NOTES OF DECISIONS

1. In general

This section is declaratory of the pre-existing power of the court to determine the punishment applicable when that is left undetermined between certain limits or kinds, but it does not authorize the court to impose a punishment in any case which the law has not otherwise prescribed for the commission of the offense. United States v. Watkinds, (1880) 7 Sawy. 85, 6 Fed 152.

The court in imposing punishment is limited strictly to the provisions of the applicable statutes, and any deviation from the statute in the mode, extent or place of punishment renders the judgment void. State v. Cotton, (1965) 240 Or 252, 400 P2d 1022.

The court is entitled to consider defendant's education and background in sentencing and in granting or denying probation. State v. Smith, (1971) 92 Or App Adv Sh 1655, 487 P2d 90.

A trial court has inherent power to impose concurrent or consecutive sentences in appropriate situations. State v. Penland, (1971) 92 Or App Adv Sh 1766, 486 P2d 1314, Sup Ct review denied.

2. Under former statute similar to 1971 amendment

When revocation of probation was properly commenced before the expiration of the term, the court retained jurisdiction, even though final hearing and adjudication were after end of probationary period, and no part of probationary period counted as service of sentence. State v. Ludwig, (1959) 218 Or 483, 344 P2d 764.

Circuit court had no authority to suspend the last two years of a sentence and place the prisoner, whose sentence was for two years nine months, on parole and probation. Rightnour v. Gladden, (1959) 219 Or. 342, 347 P2d 103.

An order of the court suspending the imposition of sentence and releasing the defendant on probation was not an order from which defendant could appeal, except for excessiveness. State v. Gates, (1962) 230 Or 84, 368 P2d 605.

Probation was a release by the court before sentence had commenced. Id.

When a court suspended the pronouncement of sentence, the judicial process had not been completed. Id.

Probation, before or after sentence and before commitment, was a matter of grace which rested entirely within the sole discretion of the trial court. State v. Montgomery, (1964) 237 Or 593, 392 P2d 642.

The circuit court retained jurisdiction of prisoners placed on probation. West v. Gladden, (1968) 249 Or 18, 436 P2d 556.

FURTHER CITATIONS: Coffman v. Gladden, (1961) 229 Or 99, 366 P2d 171; State v. Burke, (1964) 236 Or 366, 388 P2d 467; State v. Commedore, (1964) 239 Or 82, 396 P2d 216; Gebhart v. Gladden, (1966) 243 Or 145, 412 P2d 29; Sobota v. Williard, (1967) 247 Or 151, 427 P2d 758; Hintz v. Gladden, (1968) 249 Or 569, 439 P2d 884; State v. Sisney, (1968) 250 Or 198, 440 P2d 372; State v. Stevens, (1969) 253 Or 563, 456 P2d 494; State v. Johnson, (1969) 1 Or App 363, 462 P2d 687; State v. Lincoln, (1971) 5 Or App 138, 483 P2d 92; State v. Morasch, (1971) 5 Or App 211, 483 P2d 474; State v. Ragghianti, (1971) 5 Or App 498, 484 P2d 1125; State v. Williams, (1971) 5 Or App 508, 484 P2d 1113.

ATTY. GEN. OPINIONS: Power of justice of peace to suspend execution of sentence to pay a fine, 1930-32, p 328; right of justice of the peace to suspend imposition or execution of sentence as to part of fine, 1932-34, p 688; authority of justice of the peace to allow a defendant to pay a fine in installments, or to give any extension of time within which to pay the fine assessed in the judgment, 1936-38, p 537; suspension of a portion of a sentence by a justice of the peace where defendant is not placed on probation and the whole sentence remains operative, 1942-44, p 22; suspending a sentence consisting of a fine, 1950-52, p 298; power of court to suspend a fine, 1952-54, p 166; court's power to superimpose a parole period upon a maximum sentence, 1952-54, p 240; discretion of court to place defendant on probation, 1956-58, p 56; discretion of court to place defendant under jurisdiction of state board, 1956-58, p 56.

137.015

ATTY. GEN. OPINIONS: Collection of assessment for police training with bail deposit, (1971) Vol 35, p 740.

137.020

NOTES OF DECISIONS

The provision that "two days shall elapse between the receiving of a verdict and the pronouncing of sentence," did not apply to a conviction in the recorder's court of a city. Mayhew v. Eugene, (1910) 56 Or 102, 104 P 727, Ann Cas 1912C, 33.

137.072

ATTY. GEN. OPINIONS: Extent diagnostic examination by division is immune from civil suit, 1966-68, p 540.

137.075

ATTY. GEN. OPINIONS: Extent diagnostic examination by division is immune from civil suit, 1966-68, p 540.

137.080

NOTES OF DECISIONS

After judgment has been rendered against a prisoner, and he has been committed thereunder, the court has no power to revise such judgment and increase the sentence imposed. State v. Cannon, (1884) 11 Or 312, 2 P 191.

The sentencing court is required to take actual testimony only when requested by either party. Barber v. Gladden, (1961) 228 Or 140, 363 P2d 771, cert. denied, 396 US 838, 82 S Ct 869, 7 L Ed 2d 843.

The court is entitled to consider defendant's education and background in sentencing and in granting or denying probation. State v. Smith, (1971) 92 Or App Adv Sh 1655, 487 P2d 90.

FURTHER CITATIONS: State v. Waterhouse, (1957) 209 Or 424, 307 P2d 327; Coffman v. Gladden, (1961) 229 Or 99, 366 P2d 171; State v. Scott, (1964) 237 Or 390, 390 P2d 328; Gebhart v. Gladden, (1966) 243 Or 145, 412 P2d 29; State v. Shirley, (1970) 1 Or App 635, 465 P2d 743.

ATTY. GEN. OPINIONS: Meaning of "circumstances," 1954-56, p 208; use of presentence report prepared by State Board of Parole and Probation, 1954-56, p 208.

137.090

NOTES OF DECISIONS

The court may order or consider a presentence report only after a plea or verdict of guilty. State v. Shirley, (1970) 1 Or App 635, 465 P2d 743. **Distinguished in** State v. Burgess, (1971) 5 Or App 164, 483 P2d 101.

If the trial judge does not seek the information regarding defendant's previous record but has it inadvertently thrust upon him, it is presumed that the judge in performing his official duty when he is judge and the trier of facts will not consider such evidence in making his decision. State v. Burgess, (1971) 5 Or App 164, 483 P2d 101.

A defendant has no constitutional right to receive a copy of a presentence investigation report. Buchea v. Sullivan, (1971) 92 Or App Adv Sh 1501, 485 P2d 1244.

FURTHER CITATIONS: State v. Peddicord, (1957) 209 Or 360, 306 P2d 416.

ATTY. GEN. OPINIONS: Impoundment procedure, 1966-68, p 461.

LAW REVIEW CITATIONS: 6 WLJ 394.

137.110

NOTES OF DECISIONS

It is not a denial of due process for a trial judge to inform himself of matters connected with the commission of a crime that were not developed in the course of a trial. Admire v. Gladden, (1961) 227 Or 370, 362 P2d 380, cert. denied, 368 US 971, 82 S Ct 449, 7 L Ed 400. Barber v. Gladden, (1961) 228 Or 140, 363 P2d 771, cert. denied, 369 US 838, 82 S Ct 869, 7 L Ed 2d 843.

ORS 137.530 amended this section by implication. State v. Scott, (1964) 237 Or 390, 390 P2d 328.

The court may consider an admission of another crime in imposing sentence. State v. Chilton, (1970) 1 Or App 593, 465 P2d 495.

FURTHER CITATIONS: State v. Ridder, (1949) 185 Or 134, 202 P2d 482; State v. Shirley, (1970) 1 Or App 635, 465 P2d 743.

ATTY. GEN. OPINIONS: Use of presentence report prepared by State Board of Parole and Probation, 1954-56, p 208.

137.120

NOTES OF DECISIONS

This section was designed to leave indeterminate that portion of the maximum sentence which the prisoner would serve; therefore, circuit court could not impose a two-year-nine-months' sentence and suspend the serving of the last two years. Rightnour v. Gladden, (1959) 219 Or 342, 347 P2d 103.

The imposition of a sentence for a specified period is to be construed as fixing the maximum period to be served under an indeterminate sentence. Mitchell v. Gladden, (1961) 229 Or 192, 366 P2d 907.

The trial court, in decreeing confinement, exercises its discretion only in determining the maximum term that a prisoner may be held. State v. Montgomery, (1964) 237 Or 593, 392 P2d 642.

This section did not violate the equal protection clause of the U.S. Const., Am. 14. Miller v. Gladden, (1964) 228 F Supp 802, aff'd, 341 F2d 972.

FURTHER CITATIONS: Calderwood v. Young, (1957) 212 Or 197, 315 P2d 561, 319 P2d 184.

ATTY. GEN. OPINIONS: Language of sentence and its legal meaning, 1956-58, p 121; suspending execution of part of sentence, 1958-60, p 157; parole under three consecutive life sentences, (1971) Vol 35, p 787.

LAW REVIEW CITATIONS: 6 WLJ 377-379.

137.124

NOTES OF DECISIONS

A sentence within the statutory limitation is valid unless it is the product of abuse of discretion, itself usually limited to improper motivation. State v. Walley, (1969) 1 Or App 189, 460 P2d 370; State v. Gavie, (1970) 1 Or App 576, 463 P2d 595, Sup Ct **review denied.**

FURTHER CITATIONS: State v. Arenas, (1969) 253 Or. 215, 453 P2d 915.

ATTY. GEN. OPINIONS: Correctional institution defined, 1962-64, p 380; Board of Control's authority to transfer inmates between the MacLaren School and the Correctional Institution, 1964-66, p 44; initial assignment by division contrary to initial statutory assignment, 1966-68, p 540; parole under three consecutive life sentences, (1971) Vol 35, p 787.

LAW REVIEW CITATIONS: 2 EL 212.

137.130

LAW REVIEW CITATIONS: 39 OLR 342.

137.170

NOTES OF DECISIONS

A journal entry, "It is therefore ordered that the said defendant be confined in the petitentiary for the term of ten years..." is a final judgment. State v. Branton, (1907) 49 Or 86, 87 P 535.

The judgment need not specify that the court informed accused of his constitutional and statutory rights. In re Loundagin, (1929) 129 Or 652, 278 P 950.

The judgment entry need not incorporate the whole record and proceedings. Id.

FURTHER CITATIONS: State v. Gilbert, (1883) 55 Or 596, 112 P 436; Daugharty v. Gladden, (1959) 217 Or 567, 341 P2d 1069.

ATTY. GEN. OPINIONS: Impoundment procedure, 1966-68, p 461.

137.180

NOTES OF DECISIONS

Where the convict has disposed of his property, the lien of the state upon the property of the convict for its costs in the criminal prosecution must be enforced by suit in equity. State v. Munds, (1879) 7 Or 80.

The judgment for costs must be entered in the judgment lien docket within a reasonable time, and where this is not done, a purchaser in good faith will take the property discharged from the lien. Id.

This section does not define or determine the nature or effect of the judgment rendered, but affords merely a remedy, or definite process whereby it may be regularly enforced. United States v. Mitchell (1908) 163 Fed. 1014.

This section does not waive the state's immunity from suit and does not authorize the joinder of the state in an action to foreclose a mortgage on land on which the state has a lien by virtue of a judgment in a criminal case against the owner of the land. Fed. Land Bank v. Schermerhorn, (1937) 155 Or 533, 64 P2d 1337.

FURTHER CITATIONS: Whitley v. Murphy, (1874) 5 Or 328, 20 Am Rep 741.

ATTY. GEN. OPINIONS: Requirement as to docketing of judgment upon docket, 1924-26, p 553; duty of justice of peace to file with county clerk a transcript of judgment of conviction, 1940-42, p 46; duty of clerk to docket judgment although its execution is suspended, 1952-54, p 65.

137.210

NOTES OF DECISIONS

The purpose of this section is to deter institution of prosecutions malicious or without probable cause by imposing costs and disbursements as a penalty. State v. Rand, (1941) 166 Or 396, 111 P2d 82, 112 P2d 1034.

The complaint was valid in a criminal action in a municipal court although it was not indorsed by the private prosecutor. Id.

FURTHER CITATIONS: Kuhnhausen v. Stadelman, (1944) 174 Or 290, 148 P2d 239, 149 P2d 168.

137.220

NOTES OF DECISIONS

1. Under former similar statute

The judgment roll was the highest record of the judicial action of the court. State v. Gilbert, (1883) 55 Or 596, 112 P 436; State v. Walton, (1907) 50 Or 142, 91 P 490, 13 LRA(NS) 811.

Where county clerk was derelict in duty in making up judgment roll, application was made to Supreme Court for order directing him to comply with statute. State v. Walker, (1926) 119 Or 618, 249 P 635.

The Supreme Court, in determining whether or not a judgment was reversible, would not go beyond the judgment roll. Tellkamp v. McIlvaine, (1948) 184 Or 474, 199 P2d 246.

137.240

NOTES OF DECISIONS

This section suspends a prisoner's right to commence an action. Boatwright v. State Ind. Acc. Comm., (1966) 244 Or 140, 416 P2d 328; Newton v. Cupp (1970) 3 Or App 434, 474 P2d 532; Hinch v. State Comp. Dept., (1970) 4 Or App 76, 475 P2d 976, Sup Ct **review denied.**

The suspension of civil rights does not suspend the running of a statute of limitation. Grasser v. Jones, (1921) 102 Or 214, 201 P 1069, 18 ALR 529.

The conviction of a county court judge of burglary automatically vacated his office without a proceeding or action brought for his removal. Fehl v. Jackson Co., (1945) 177 Or 200, 161 P2d 782.

FURTHER CITATIONS: Burnett v. Gladden, (1964) 228 F Supp 527; State v. Cartwright, (1966) 246 Or 120, 418 P2d 822.

ATTY. GEN. OPINIONS: Service of process upon convict, 1930-32, p 151; parole as rendering a person eligible to appointment as a notary public, 1932-34, p 64; recovery of escheated property by a convict as affected by suspension of civil rights, 1934-36, p 106; persons having served sentences as disqualified from old-age assistance, 1936-38, p 135; restoration of civil rights, 1938-40, p 518; marriage as civil right that is not political, 1940-42, p 333; applicability to prisoners without regard to when they were paroled, 1940-42, p 333; conviction in a sister state of a crime punishable by imprisonment in the penitentiary as to forfeiture of the voting privileges of the convicted person in this state, 1944-46, p 499.

LAW REVIEW CITATIONS: 6 WLJ 525-534.

137.250

CASE CITATIONS: Burnett v. Gladden, (1964) 228 F Supp 527; State v. Anderson, (1964) 239 Or 200, 396 P2d 558.

137.260

ATTY. GEN. OPINIONS: Primary election nominee having previous felony conviction, 1960-62, p 460.

137.270

NOTES OF DECISIONS

If the property of the convicted person has been aliened, it is chargeable with the incumbrance in the inverse order of its alienation, that is, the property last sold is to be first charged. Knott v. Shaw, (1875) 5 Or 482.

The lien may be enforced by execution issued on the judgment of conviction; but if the convict has disposed of his property the lien must be enforced by suit in equity. State v. Munds, (1879) 7 Or 80.

If entry of the judgment for costs has been delayed unreasonably, a purchaser in good faith will take the property discharged from the lien. Id.

When the party upon whose property the lien attached has died and the property has gone into the hands of an executor or administrator, its disposition in accordance with the law relating to probate proceedings must be regarded as binding. Bower v. Holladay, (1889) 18 Or 491, 22 P 553.

The lien is superior to a mortgage given to defray the expense of defending the convict. Hansel v. Norblad, (1915) 78 Or 38, 151 P 962.

County having judgment for costs in criminal action is entitled to enforce its lien against proceeds of subsequent mortgage foreclosure sale in possession of mortgagee. Niedermeyer, Inc. v. Fehl, (1936) 153 Or 656, 57 P2d 1086.

The state has a lien in all cases of commission of or attempt to commit a felony from the time of such act, upon all the property of defendant for the purpose of satisfying any judgment which may be given against him and for the costs and disbursements in the proceedings against him. Id.

The state's immunity from suit is not waived by this section; nor does the section authorize the joinder of the

state in an action to foreclose a mortgage on land on which the state holds a lien by virtue of a judgment in a criminal case. Federal Land Bank v. Schermerhorn, (1937) 155 Or 533, 64 P2d 1337.

Where a homestead settler was convicted of a crime, the lien prescribed by this section did not attach to the property where the title was still in the federal government. State v. O'Neil, (1879) 7 Or 141.

FURTHER CITATIONS: Whitley v. Murphy, (1874) 5 Or 328, 20 Am Rep 741; United States v. Mitchell, (1908) 163 Fed 1014.

137.310

NOTES OF DECISIONS

Neither this nor any other section requires the judge to sign the journal or the commitment. Long v. Minto, (1916) 81 Or 281, 158 P 805.

ATTY. GEN. OPINIONS: Enforcement of judgment imposing fine upon delinquent defendant who is a resident of another county, 1954-56, p 90.

137.320

NOTES OF DECISIONS

Death of defendant, convicted of an assault with intent to kill and adjudged to serve a prison sentence and to pay costs and disbursements, satisfies the sentence to prison, but does not effect that portion of the judgment relating to costs and disbursements. Whitley v. Murphy, (1874) 5 Or 328, 20 Am Rep 741.

The clerk discharges his duty when he enters the judgment in the journal and gives a certified copy of the entry to the sheriff who then delivers the body of the defendant together with a copy of the entry of judgment to the keeper of the prison. Long v. Minto, (1916) 81 Or 281, 158 P 805.

This section does not authorize the sheriff to examine the convictions of men in his custody. Delaney v. Shobe, (1964) 235 F Supp 662.

It was not error to refuse defendant's motion to remain in county jail after his conviction of felony during the pendency of habitual criminal proceedings against him. State v. Bailleaux, (1959) 218 Or 356, 343 P2d 1110, cert. denied, 362 US 923, 80 S Ct 677, 4 L Ed2d 742.

FURTHER CITATIONS: State v. Nelson, (1967) 246 Or 321, 424 P2d 223.

ATTY. GEN. OPINIONS: Imprisonment in penitentiary in lieu of fine, 1960-62, p 349; application of 1967 amendment to inmates, 1966-68, p 317; initial assignment by division contrary to initial statutory assignment, 1966-68, p 540.

137.330

CASE CITATIONS: State v. Nelson, (1967) 246 Or 321, 424 P2d 223.

137.370

NOTES OF DECISIONS

Time while on probation does not count as service of sentence upon revocation of probation. State v. Ludwig, (1959) 218 Or 483, 344 P2d 764.

"Voluntary absent" refers to a prisoner who is absent unlawfully, not absent in order to participate in post-conviction proceedings. Strong v. Gladden, (1961) 225 Or 345, 358 P2d 520.

Delay in execution of judgment of commitment does not give criminal right to discharge because of such delay. Knowles v. Gladden, (1961) 227 Or 408, 362 P2d 763, cert. denied, 368 US 999, 82 S Ct 627, 7 L Ed 2d 537.

Subsection (2) means only that the time spent in a county jail after arrest and prior to delivery at a state penal institution shall be credited against the ultimate sentence to the state institution. State v. Mathewson, (1970) 4 Or App 104, 477 P2d 222.

It was not error to refuse defendant's motion to remain in county jail after his conviction of felony during the pendency of habitual criminal proceedings against him. State v. Bailleaux, (1959) 218 Or 356, 343 P2d 1110, cert. denied, 362 US 923, 80 S Ct 677, 4 L Ed 2d 742.

FURTHER CITATIONS: State v. Froembling, (1964) 237 Or 616, 391 P2d 390; West v. Gladden, (1968) 249 Or 18, 436 P2d 556; State v. Jones, (1968) 250 Or 59, 440 P2d 371; State v. Penland, (1971) 92 Or App Adv Sh 1766, 486 P2d 1314, Sup Ct review denied.

ATTY. GEN. OPINIONS: When sentence expires, 1958-60, p 89; commencement of second sentence when first set aside, 1960-62, p 72; commencement of sentence commuted from death to life, eligibility for parole, 1964-66, p 91; application of 1967 amendment to inmates, 1966-68, p 317; when second term of inmate commences, 1966-68, p 339; parole under consecutive sentences of 10 years and life, 1966-68, p 549.

137.380

ATTY. GEN. OPINIONS: Correctional institution defined, 1962-64, p 380.

137.390

NOTES OF DECISIONS

Time passed by defendant while at home in another county cannot be counted as part of term. Keyes v. Chrisman, (1926) 118 Or 626, 247 P 807.

FURTHER CITATIONS: In re Matthews, (1923) 109 Or 88, 93, 219 P 194.

137.450

CASE CITATIONS: United States v. Mitchell, (1908) 163 Fed 1014, 1016.

ATTY. GEN. OPINIONS: Collection of costs as matter of discretion by county authorities, 1936-38, p 263; enforcement of criminal judgment when defendant not in county, 1954-56, p 90.

137.520

ATTY. GEN. OPINIONS: Extent of court's jurisdiction to parole a person sentenced for six months or more and committed to county jail, 1946-48, p 383; court's power to superimpose a parole period upon a maximum sentence, 1952-54, p 240; revocation of parole granted by committing magistrate, 1962-64, p 366.

LAW REVIEW CITATIONS: 6 WLJ 371; 2 EL 212.

137.530

NOTES OF DECISIONS

This section amended ORS 137.110 by implication. State v. Scott, (1964) 237 Or 390, 390 P2d 328.

The trial court in its discretion may order a presentence report. Id.

It was not error for the report to include arrests or hearsay statements. Id.

FURTHER CITATIONS: State v. Shirley, (1970) 1 Or App 635, 465 P2d 743; Buchea v. Sullivan, (1971) 92 Or App Adv Sh 1501, 485 P2d 1244.

ATTY. GEN. OPINIONS: Defining authority of board to refuse to make presentence report to justice of the peace, 1964-66, p 377.

137.540

NOTES OF DECISIONS

It was not improper, as a matter of law, for the sentencing judge to impose as a condition of probation that the person refrain from drinking intoxicants. Sobota v. Williard, (1967) 247 Or 151, 427 P2d 758.

The conditions imposed were reasonable. State v. Tuck, (1969) 1 Or App 516, 462 P2d 175, Sup Ct **review denied;** cert. denied, 402 US 982.

FURTHER CITATIONS: State v. Cartwright, (1966) 246 Or 120, 418 P2d 822; State v. Sisney, (1968) 250 Or 198, 440 P2d 372; State v. Frye, (1970) 2 Or App 192, 465 P2d 736; State v. Seymour, (1971) 5 Or App 109, 482 P2d 754.

ATTY. GEN. OPINIONS: Providing for installment payments of a fine where no provision is made for probation by justice of peace, 1942-44, p 22; discretion of court to place defendant on probation, 1956-58, p 56; discretion of court to place defendant under jurisdiction of state board, 1956-58, p 56; retaking probationers under Out-of-State Supervision Compact, (1969) Vol 34, p 502.

137.550

NOTES OF DECISIONS

A parolee may successfully contest the revocation of his parole if he can prove that the revocation was without cause. Anderson v. Alexander, (1951) 191 Or 409, 229 P2d 633, 230 P2d 770, 29 ALR2d 1051; State v. Rout, (1970) 4 Or App 99, 477 P2d 230.

It is not necessary to revocation that the person on probation be convicted of a new crime but only that the trial judge be satisfied that the purposes of probation are not being served or that the terms thereof have been violated. State v. Frye, (1970) 2 Or App 192, 465 P2d 736; State v. Spicer, (1970) 3 Or App 80, 471 P2d 865; State v. Hall, (1970) 4 Or App 28, 476 P2d 930; City of Portland v. Olson, (1971) 4 Or App 380, 481 P2d 641.

Since the grant, denial or revocation of probation is descretionary with the trial court, the question is whether the trial court acted arbitrarily or capriciously. State v. Dupree, (1970) 3 Or App 303, 472 P2d 824, Sup Ct **review denied;** State v. Rout, (1970) 4 Or App 490, 477 P2d 224.

A parole may be revoked by the State Board of Parole and Probation without notice or hearing. Anderson v. Alexander, (1951) 191 Or 409, 229 P2d 663, 230 P2d 770, 29 ALR2d 1051.

When revocation of probation is properly commenced before the expiration of the term, the court retains jurisdiction, even though final hearing and adjudication are after end of probationary period, and no part of probationary period counts as service of sentence. State v. Ludwig, (1959) 218 Or 483, 344 P2d 764.

Revocation of probation is necessarily included in imposition of a sentence involving imprisonment. State v. Gates, (1962) 230 Or 84, 368 P2d 605.

The time limitation refers to the issuance, but not the execution, of the warrant. Bryant v. State, (1963) 233 Or 459, 379 P2d 951.

The circuit court does not lose jurisdiction of a convicted person who absconds from probation and remains absent from the state until after the expiration of the maximum probation period. Id.

Defendant is entitled to be represented by counsel at the revocation hearing if no sentence was imposed prior to probation. Gebhart v. Gladden, (1966) 243 Or 145, 412 P2d 29.

Unless a person on probation expressly waives the assistance of counsel, the trial court should not proceed with a revocation hearing in the absence of defense counsel. Perry v. Williard, (1967) 247 Or 145, 427 P2d 1020.

The court is not authorized to amend a previous sentence after probation is granted. State v. Stevens, (1969) 253 Or 563, 456 P2d 494.

A report by the probation officer to the court is not required when the court issues the warrant. State v. Seymour, (1971) 5 Or App 109, 482 P2d 754.

Adequate procedural safeguards are required in proceedings to revoke suspension of imposition and of execution of sentence. State v. Morasch, (1971) 5 Or App 211, 483 P2d 474.

When the Multnomah County Circuit Court revoked plaintiff's probation and ordered two previously suspended sentences to run concurrently with the sentence of the Washington County Circuit Court, for which plaintiff was imprisoned, the former were not void but would commence to run upon the termination of the latter sentence. Lee v. Gladden, (1958) 214 Or 601, 330 P2d 171, 332 P2d 203.

FURTHER CITATIONS: Cloman v. Clark, (1964) 237 Or 364, 391 P2d 647; Barker v. Ireland, (1964) 238 Or 1, 392 P2d 769; State v. Ramirez, (1967) 247 Or 317, 429 P2d 572; State v. Skinner, (1969) 254 Or 447, 461 P2d 62; State v. Ragghianti, (1971) 5 Or App 498, 484 P2d 1125; Thompson v. Cupp, (1971) 5 Or App 393, 484 P2d 858.

ATTY. GEN. OPINIONS: Service of sentences by prisoner on parole convicted of another crime, 1938-40, p 450; authority of judge accepting plea of guilty to terminate probation and discharge prisoner, 1938-40, p 733; imposition of sentence upon violation of conditions of probation, 1948-50, p 214; authority of probation officer to release a man taken into custody under this section, 1948-50, p 353; revocation of parole granted by committing magistrate, 1962-64, p 366.

137.560

ATTY. GEN. OPINIONS: Court forwarding copies of probation orders, 1956-58, p 56.

137.580

CASE CITATIONS: Gebhart v. Gladden, (1966) 243 Or 145, 412 P2d 29.

137.590

ATTY. GEN. OPINIONS: Defining authority of board to refuse to make presentence report to justice of the peace, 1964-66, p 377.

137.610

ATTY. GEN. OPINIONS: Discretion of court to use services of state board, 1956-58, p 56; defining authority of board to refuse to make presentence report to justice of the peace, 1964-66, p 377.