Note: identified as Article 11 but Judgment; Parole and Probation by Court is Article 14 in Final Draft and Report - Nov. 1972

CRIMINAL LAW REVISION COMMISSION
311 State Capitol
Salem, Oregon

CRIMINAL PROCEDURE

PART V. POST-TRIAL PROVISIONS

ARTICLE 11. PAROLE, PROBATION AND RELATED PROVISIONS

"Judgment and Execution," Parole and Probation

Preliminary Draft No. 1; September 1972

Reporter: Donald L. Paillette Subcommittee No. 3

ARTICLE 11. PAROLE, PROBATION AND RELATED PROVISIONS

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Preliminary Draft No. 1; September 1972

Section 1. Sections 3 and 4 of this Article are added to and made a part of ORS chapter 137.

COMMENTARY

The section incorporates into ORS chapter 137 the proposed new sections dealing with the matter of presentence reports.

(ORS 137.010 to 137.070 are not affected by this draft.)

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 unless otherwise specifically provided by law.

(2) When a person is convicted of an offense, 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 sentence for any period of not more than five years.

(3) If the court suspends the imposition or execution of sentence, the court may also place the defendant on probation for a definite or indefinite period of not less than one nor more than five years.

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

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

(a) A term of imprisonment; or

(b) A fine; or

(c) Both imprisonment and a fine; or

(d) Discharge of the defendant.

(6) 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.
[Amended by 1971 c.743 §322]

137.015 Assessment in addition to fine or bail forfeiture; increased bail deposit to cover assessment. (1) Whenever a court imposes a fine, or orders a bail forfeiture, as a penalty for violation of a law of this state or an ordinance of a city or county except an ordinance relating to cars unlawfully left or parked, an assessment in addition to such fine, or bail fortfeiture shall be collected and forwarded within 30 days of receipt of such assessments by the clerk of the court or the county treasurer to the State Treasurer to be credited to the Police Standards and Training Account established by ORS 181.690. The amount of the assessment shall be as follows:

(a) When fine or forfeiture is $5 to $14.99, $1.

(b) When fine or forfeiture is $15 to $49.99, $2.

(c) When fine or forfeiture is $50 to $99.99, $3.

(d) When fine or forfeiture is $100 or over, $5.

(2) When any deposit of bail is made for an offense to which this section applies, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed in subsection (1) of this section.

(3) If bail is forfeited the assessment prescribed in this section shall be forwarded to the State Treasurer pursuant to this section. If bail is returned, the assessment made thereon shall also be returned.
[1971 c.328 §1]

137.020 Time for pronouncing judgment; 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) The time appointed shall be at least two days after the verdict, if the court intends to remain in session so long, or if not, as remote a time as can reasonably be allowed; but in no case can the judgment be given, except by the consent of the defendant, in less than six hours after the verdict.

(3) At the time court pronounces judgment the defendant, if present, shall be advised of his right to appeal and of the procedure for protecting such right. If the defendant is not present, the court shall advise him in writing of his right to appeal and of the procedure for protecting such right.
[Amended by 1971 c.565 §18a]

137.030 Presence of defendant at pronouncement of judgment. 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 his absence.

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 he is to bring him before it for judgment; and the officer shall do so accordingly.

137.050 Nonattendance at pronouncement of judgment of defendant who has given bail or deposited money; bench warrant. (1) If the defendant has given bail or deposited money in lieu thereof and does not appear for judgment when his personal attendance is necessary, the court may forfeit the undertaking of bail or the money deposited. In addition, 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.

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

CIRCUIT (OR DISTRICT) COURT FOR THE COUNTY OF ———, STATE OF OREGON

IN THE NAME OF THE STATE OF OREGON

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

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

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

[L. S.] C D, Clerk of the Court

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

137.070 Counties to which bench warrant may issue; service. The bench warrant mentioned in ORS 137.050 may issue to one or more counties of the state and may be served in the same manner as provided in ORS 135.180, in case of a bench warrant upon an indictment.

(ORS 137.072 and 137.075 are repealed by this draft.)

137.072 Diagnostic examination of defendant. (1) As used in this section, "examination" includes a scientific study of the person, his career and life history, the cause of his criminal act and recommendations for his care, training and employment with a view to his reformation.

(2) Upon the request of any defendant in a felony proceedings who has not been convicted or, although convicted, has not been sentenced, the court before which the defendant appears may request the Corrections Division to cause the defendant to be given an examination at a designated diagnostic facility if the division finds that the defendant is a suitable subject for such an examination. If the division agrees to give such an examination, the court shall order the person be taken by the sheriff to the facility for the examination. When the examination is completed, the Administrator of the Corrections Division shall notify the sheriff who shall go to the facility and accept and retain custody of the person, subject to further order of the court.
[1967 c.585 §2]

137.075 Report to court and to convicted person. (1) Within 60 days after completing the diagnostic examination, the Administrator of the Corrections Division shall file with the court a written report of findings and conclusions relative to the examination. The immunities granted under ORS 137.115 are applicable to the examination and report under this section and ORS 137.072, 137.124, 137.320, 423.020 and 423.090.

(2) A certified copy of the report shall be sent by registered mail by the clerk of the court to the convicted person, his counsel and the district attorney.
[1967 c.585 §3]

COMMENTARY

The Corrections Division recommends the repeal of ORS 137.072 and 137.075. The recommendation states: "It is considered a punitive measure to send an untried man to a maximum security institution. Tried and untried prisoners should be separated. Mental Hospital Resources should be utilized when mental competence is the issue. (OSCI has experienced expenditure of as much as $4,000 on one individual for diagnostic examination . . . the statute does not provide an ability to recover reimbursement.)"

NOTE: ORS 161.735, the statutory procedure for determining whether a person is a dangerous offender incorporates by reference the immunities granted by ORS 137.075 (3). The former statute will be amended to preserve those immunities, and necessary amendments made in the other statutes affected by the repeal.

(ORS 137.080 and 137.100 are not affected by this draft.)

137.080 Consideration of circumstances in aggravation or mitigation of punishment. 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 a 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.

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

Section 2. ORS 137.090 is amended to read:

137.090. (Proof of circumstances; presentence investigation.) The circumstances which are alleged to justify aggravation or mitigation of the punishment shall be presented by the testimony of witnesses examined in open court, except that when a witness is so sick or infirm as to be unable to attend, his deposition 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. The court may consider the report of presentence investigation conducted by probation officers pursuant to ORS 137.530. [A copy of such report may be made available to counsel for the defendant and the state a reasonable time before pronouncement of sentence.]

COMMENTARY

The statute is amended to delete reference to the discretionary authority of the court to make copies of the presentence report available to counsel. The draft proposes new provisions covering disclosure of the presentence report.

Section 3. Presentence report; general principles of disclosure. The presentence report prepared under ORS 137.530 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.

(2) The Corrections Division, Parole Board and other persons or agencies having a legitimate professional interest in the information likely to be contained therein.

(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 and his counsel, as provided in section 4 of this Article.

COMMENTARY

The proposed section stresses the fact that the presentence report is not a public record and states affirmatively to which persons or agencies the report shall be available. The section is based on ABA Standards Relating to Sentencing Alternatives and Procedures, s. 4.3 (Approved Draft, 1968).

Section 4. Presentence report; disclosure to parties; court's authority to except parts from disclosure. (1) A copy of the presentence report shall be made available to the district attorney and defense counsel a reasonable time before the sentencing of the defendant.

(2) The court may except from disclosure to the defendant and his counsel parts of the presentence report which are not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation if known by the defendant, or sources of information which were obtainable only on a promise of confidentiality.

(3) If parts of the presentence report are not disclosed under subsection (2) of this section, the court shall inform the defendant and his counsel 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.

COMMENTARY

A. Summary

The proposed section provides for mandatory disclosure of the presentence report to respective counsel a reasonable time before sentencing. (Subsection (1)).

Although based on the premise that disclosure of the information in the presentence report is generally desirable, the draft recognizes the fact that there may be extraordinary circumstances in which the court, for one or more of the reasons specified, may consider it advisable to withhold certain parts of the report from disclosure. (Subsection (2)).

If the court does except parts of the report from disclosure, it is required to inform the defendant and his

attorney, and to state the reasons for nondisclosure for the record. The court's action would be reviewable on appeal. (Subsection (3)).

B. Derivation

The section is taken from ABA Standards Relating to Sentencing Alternatives and Procedures, ss. 4.4, 4.5 (Approved Draft 1968).

C. Relationship to Existing Law

Under ORS 137.090 a copy of the presentence report "may be made available to counsel for the defendant and the state a reasonable time before pronouncement of sentence."

The question of disclosure of presentence reports to the parties has produced much controversy. There is a division among the statutes on the point. According to the ABA commentary, none has been found which flatly forbids disclosure to the defendant. Most maintain a position of silence which has usually been interpreted as placing disclosure within the discretion of the sentencing court. There are a few statutes which specifically require disclosure or which in terms leave the issue to the court.

There have been numerous proposals that have attempted to draw an intermediate line between complete disclosure and complete secrecy.

(1) The President's Crime Commission recommended that "in the absence of compelling reasons for nondisclosure of special information, the defendant and his counsel should be permitted to examine the entire presentence report."

(2) Other proposals have often proceeded from the view that the defendant does not need the whole report, but merely the facts on which it is based. Sources of information, together with the opinion of the probation officer, can properly remain a privileged communication between the officer and the judge.

(3) The Model Penal Code has taken the view that the court should advise the defendant and his attorney of the factual contents and conclusions of any presentence or psychiatric reports. The sources of information need not be disclosed.

(4) Finally, a fourth view is expressed by an amendment once proposed to the Federal Rules of Criminal Procedure. If the defendant is represented by counsel, the court shall

permit the counsel to read the presentence report, from which the sources of confidential information may be excluded. If unrepresented, the court shall communicate or have communicated to the defendant the essential facts in the report of the presentence investigation.

There have been three basic arguments made against disclosure of the presentence report to the defendant:

(1) Confidentiality. To get information, especially of an intimate sort, the social investigator must be able to give firm assurances of confidentiality. If people generally learn that supplying information will get them into court or plunge them into a neighborhood feud, they will no longer share their knowledge and impressions. Likewise social agencies would have to be closed to probation officers if the information were required to be disclosed to the defendant.

(2) Delay. The defendant will challenge everything in the report and thereby transform the sentencing process into a much more lengthy affair than it has to be. In turn this could lead to dispensing with the report altogether to avoid delay.

(3) Harmful to defendant. Disclosure would be affirmatively harmful to the rehabilitative efforts of the defendant. If complete disclosure is made, it will impede defendant's progress with psychiatrists or probation officers.

Each of the above arguments is buttressed with the argument that it is not unfair to the defendant to proceed against him in this manner. This is not an action at law but a social problem. The probation officer can be as trusted as the defense attorney to insure the accuracy of the report.

The major problem with all of the above arguments is that each is aimed at a specific evil which may be a legitimate cause for concern but does not support nondisclosure in all cases irrespective of the existence of the possibility of the evil.

Therefore, subsection (1) begins with a sense of relevance, coupled with the principle that at the very least fairness to the defendant should dictate disclosure in the absence of countervailing reasons which are applicable to his case. The simplest and fairest method of implementing this principle is to permit the parties to inspect the report. This represents the majority view of the ABA Advisory Committee that promulgated the Standards.

Subsection (1) also provides for full disclosure to the prosecuting attorney. He too is interested in the accuracy of the report and his interest will best be served by allowing him to compare it with information at his disposal.

Subsection (2) provides that in extraordinary cases the court may withhold three types of information for stated reasons.

(1) Irrelevant material. No purpose would be served if defendant were to be shown scurrilous information which was clearly irrelevant to the sentencing decision. The principle which generally supports disclosure need not be pushed to extremes if there is a chance that the information may do some positive harm.

(2) Diagnostic material. There are likewise good reasons for withholding from the defendant personally information of a diagnostic nature.

(3) Information obtainable only on a promise of confidentiality. This, too, in some cases may properly be withheld. This would not mean, however, that sources of information should routinely be promised confidentiality, merely that if the source was willing to provide information only if promised confidentiality, that this promise should be recognized by the court. This varies slightly from the ABA position. (See s. 4.4).

In order to avoid abuse of the above stated exceptions the proposal would require that the court explicitly state for the record the reasons for the nondisclosure of any item of information, and that it inform the defendant that a deletion has occurred so that he may have the matter, along with all of the other issues in the case, reviewed on appeal.

The question of whether a defendant has a constitutional right to see a presentence report considered by a judge in the determination of his sentence was before the Oregon Supreme Court in the recent case of Buchea v. Sullivan, 94 Adv Sh 1693 (June 1972). The defendant had pleaded guilty to attempted burglary in a dwelling, and a presentence report was ordered. The defendant requested permission to see the report and the request was denied. The trial judge sentenced the defendant to the maximum term allowable. The defendant's argument was he had a right under the Sixth and Fourteenth Amendments to the U. S. Constitution and under Art. I, s. 11, of the Oregon Constitution to see the presentence report, specifically that part relating to his prior criminal record.

In a majority opinion the Court held that there is no constitutional requirement of complete disclosure of all information used in the sentencing process. However, if the information in the presentence report can affect the defendant's sentence and it is readily identifiable, public in nature, and none of the reasons for nondisclosure can apply to it, that "constitutional fairness" requires disclosure. Therefore, it is error not to furnish a defendant with a copy of that part of a presentence report that relates to his prior criminal record. The court stated further that it did not mean by its holding that it is not good practice for a trial judge to disclose the balance of the presentence report, if, in his opinion, there are no valid reasons for its confidentiality.

In a concurring opinion, Tongue, J., agrees with the majority's result but does not believe the right is a constitutional one. His reasoning is that ORS 137.090 confers upon the trial judge the discretion whether or not to make all or part of the report available, and that this is judicial discretion, subject to review for abuse. Further, it would be an abuse of such discretion to withhold from the defendant that part of the report dealing with his prior criminal record. Justice Tongue also suggests that the matter of disclosure of the presentence report is a proper subject for consideration by the Criminal Law Revision Commission.

(ORS 137.110 is repealed by this draft.)

137.110 Other evidence of circumstances not admissible. No affidavit or testimony or representation of any kind, verbal or written, can be offered to or received by the court in aggravation or mitigation of the punishment, except as provided in ORS 137.080 to 137.100.

(ORS 137.120 is not affected by this draft.)

137.120 Indeterminate sentence. (1) Each minimum period of imprisonment in the penitentiary which prior to June 14, 1939, was provided by law for the punishment of felonies, and each such minimum period of imprisonment for felonies, hereby is abolished.

(2) Whenever any person is convicted of a felony, the court shall, unless it imposes other than a sentence to serve a term of imprisonment in the custody of the Corrections Division, 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.

(3) This section does not affect the indictment, prosecution, trial, verdict, judgment or punishment of any felony committed before June 14, 1939, and all laws now and before that date in effect relating to such a felony are continued in full force and effect as to such a felony.

[Amended by 1967 c.372 §2; 1971 c.743 §324]

Section 5. ORS 137.124 is amended to read:

ORS 137.124. (Commitment of defendant to Corrections Division; place of confinement; transfer of inmates.) (1) If the court imposes a sentence of imprisonment upon conviction of a felony, it shall not designate the [penal or] correctional [institution] facility in which the defendant is to be confined but shall commit the defendant to the legal and physical custody of the Corrections Division.

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

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

COMMENTARY

The section is amended to delete references to penal institution and replace it with correctional "facility," a term defined in the new Criminal Code. (ORS 162.135 (2)). This makes the terminology in this section consistent with the substantive code definition.

(ORS 137.130 to 137.220 are not affected by this draft.)

137.130 Imprisonment when there is no county jail. Whenever there is no jail in a county, every judicial or other officer of the county who has power to order, sentence or deliver any person to the county jail may order, sentence or deliver such person to the jail of an adjoining county or, if there is no jail in any adjoining county, to the nearest county jail.

137.140 Imprisonment when county jail is not suitable for safe confinement. Whenever it appears to the court, at the time of giving judgment of imprisonment in the county jail, that there is no sufficient jail in the proper county, as provided in ORS 137.330, suitable for the safe confinement of the defendant, the court may order the judgment to be executed in the jail of any county in the state.

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

137.160 [Repealed by 1961 c.520 §1]

137.170 Entry of judgment on conviction. When judgment upon a conviction is given, the clerk shall enter the same in the journal, stating briefly the crime for which the conviction has been had. Such entry may be made at any time.
[Amended by 1959 c.638 §19]

137.180 Docketing of judgment to pay fine or costs. A judgment that the defendant pay money, either as a fine or as costs and disbursements of the action, or both, shall be docketed as a judgment in a civil action and with like effect, as provided in ORS 18.320, 18.350 and 18.400.

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

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

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

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

Section 6. ORS 137.225 is amended to read:

137.225 Order setting aside conviction; prerequisites; limitations. (1) Every defendant convicted of a Class C felony or a crime punishable as either a felony or a misdemeanor in the discretion of the court, or misdemeanor, including a violation of a municipal ordinance for which a jail sentence may be imposed, at any time after the lapse of three years from the date of pronouncement of judgment, if he has fully complied with and performed the sentence of the court, and is not under charge of commission of any crime, may move the court wherein such conviction was entered for an entry of an order setting aside such conviction. A copy of the motion shall be served upon the office of the prosecuting attorney who prosecuted the crime and opportunity be given to contest the motion. 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. If the court determines that the circumstances and behavior of the applicant from the date of conviction to the date of the hearing on the motion warrant setting aside the conviction, it shall enter an appropriate order. Upon the entry of such an order, the applicant for purposes of the law shall be deemed not to have been previously convicted and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest resulting in the criminal proceeding. The clerk of the court shall forward a certified copy of the order to the keeper of the records of the Corrections Division. 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.

(2) The provisions of subsection (1) do not apply to:

(a) A state or municipal traffic offense; or

(b) A person convicted of more than one offense, excluding motor vehicle violations, whether the second or additional convictions occurred in the same action in which the conviction as to which relief is sought occurred or in another action; or

(c) A person who previously had a conviction set aside pursuant to this section.

(3) The provisions of subsection (1) apply to convictions which occurred before, as well as those which occurred after, September 9, 1971.
[1971 c.434 §2]

COMMENTARY

The Corrections Division recommended an amendment to provide for a service of motion on the Corrections Division for all persons committed to the care of the Corrections Division. The provisions of the statute state that three years must have elapsed from the time of the entry of the judgment and the sentence of the court must have been fully complied with and performed. If the person is under the custody of the Corrections Division, then his sentence is not complied with as the authority of the Corrections Division of the individual ceases after full compliance with the sentence. The full compliance appears to mean successful completion of any parole.

Therefore, the request by the Corrections Division to receive notice of the motion to set aside would serve no interest because the sentence must be completely served for a motion to be made and hence the Corrections Division would not have any authority over the petitioner. The amendment to ORS 137.225 is proposed because the interest of the Corrections Division comes into play once the court orders the conviction set aside. Since the Corrections Division will have records concerning the defendant and these records are official records, the specific inclusion of the Corrections Division at this point will clear any ambiguity concerning the sealing of official records.

(ORS 137.230 is not affected by this draft.)

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

Section 7. ORS 137.240 is amended to read:

137.240. (Effect of felony conviction on civil and political rights; restoration of civil rights; exceptions.) (1) Conviction of a felony:

(a) Suspends all the civil and political rights of the person so convicted.

(b) Forfeits all public offices and all private trusts, authority or power during the term or duration of any imprisonment.

(2) However, a person convicted of a felony may lawfully exercise all civil rights during any period of parole or probation or upon final discharge from imprisonment.

(3) The provisions of subsections (1) and (2) of this section are not intended to render a person convicted of a felony incapable of:

(a) Making a will; or

(b) Making a power of attorney; or

(c) [Incapable of] Making and acknowledging a sale or conveyance of property [.] ; or

(d) Appearing and maintaining or defending an action for child custody or dissolution of marriage; or

(e) Appearing and maintaining or defending a cause of action, while imprisoned or on bail, arising from acts other than official acts of the Corrections Division or its agents; or

(f) Appearing and maintaining or defending a civil action, suit or proceeding allowed under any other statute.

(4) Nothing in this section prevents a person convicted of a felony and imprisoned as a penalty therefor from entering into a civil

contract of marriage during the period of imprisonment if in the judgment of the administrator of the Corrections Division the marriage would contribute to the person's rehabilitation and the administrator consents to the marriage.

COMMENTARY

The amendments to ORS 137.240, 44.230 and 44.240 are proposed by the Oregon State Bar Committee on Detention and Corrections.

ORS 137.240 is amended to allow an inmate of a penal or corrections institution to sue or defend a civil cause of action in person. Also, subsection (4) contains an amendment proposed by House Bill 1164 (1971) allowing the marriage of an inmate if the Administrator of the Corrections Division consents and the marriage would contribute to the inmate's rehabilitation.

The crucial constitutional question occurs with respect to the right established in 42 USC 1983 (Civil Rights Act) which allows a person to sue in federal court when and if any of his constitutional rights, privileges and immunities are abridged by any other person under color of statute, ordinance, regulation, custom or usage of any state or territory.

The provisions of ORS 137.240 would conflict with 42 USC 1983 but for the fact that ORS 137.240 applies to convicted persons. The ambiguity arises because the words of 42 USC 1983 and the Oregon Constitution, Art. I, s. 10, stipulate that the right to due process applies to all men, with no mention of convicted persons:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, ... " 42 USC 1983.
>
> " . . . and every man shall have remedy by due course of law for injury done him in his person, property, or reputation." Or Const Art I, s. 10.

Two federal cases, Houghton v. Shafer, 392 US 639 (1968), and Cooper v. Pate, 378 US 546 (1964), held that a prisoner could bring an action under 42 USC 1983 when his law books were confiscated and when there was a denial of privileges due to religious beliefs. Apparently the federal courts have not allowed suit where the warden's power to enforce rules is at issue. (See 6 Will LJ 525 (1970)).

The above ambiguity is not fully resolved in the proposed amendment to ORS 137.240 but proposed subsection (3) (f) states that an inmate may proceed with " . . . [a] proceeding allowed under any statute." The apparent effect of this subsection is to allow the courts of Oregon to decide the ultimate limits of due process for the inmates of the penal and correctional institutions. Arguably "any statute" will include the Civil Rights Act, 42 USC 1983, and any other federal or state statute establishing rights of action for persons.

Section 8. ORS 44.230 is amended to read:

44.230. (Order for deposition or production of prisoner.) (1) If the witness is a prisoner confined in a prison within this state, an order for his examination in the prison upon deposition, or for his temporary removal and production before a court or officer for the purpose of being orally examined, may be made as follows:

(a) By the court or judge in which the action, suit or proceeding is pending, unless it is a court of a justice of the peace.

(b) By any judge of a court of record when the action, suit or proceeding is pending in a justice's court, or when the witness' deposition, affidavit or oral examination is required before a judge or other person out of court.

(2) The order shall only be made upon the affidavit of the party desiring it, or someone on his behalf, showing the nature of the action, suit or proceeding, the testimony expected from the witness and its materiality.

(3) If the witness is imprisoned in the county where the action, suit or proceeding is pending, and for a cause other than a sentence for a felony, or if he is a party plaintiff or defendant, his production may be required; in all other cases, his examination shall be taken by deposition.

Section 9. ORS 44.240 is amended to read:

44.240. (Production of witness confined in state penal or correctional institution.) (1) Whenever a court or judge makes an order for the temporary removal and production of a witness who is confined in a state penal or correctional institution within this state before a court or officer for the purpose of being orally examined, the superintendent of the institution shall deliver, at the institution, the witness to the sheriff of the county in which the court or judge making the order is located.

(2) The sheriff shall give his signed receipt upon delivery to him of the witness under subsection (1) of this section, and shall be responsible for the custody of the witness until he returns the witness to the institution. Upon the return of the witness to the institution by the sheriff, the superintendent shall give his signed receipt therefor to the sheriff.

(3) At the time of the delivery of the witness to the sheriff under subsection (1) of this section, or at any time while the witness is in the custody of the sheriff as provided in subsection (2) of this section, the superintendent may deliver to the sheriff a list of persons who may communicate with the witness or with whom the witness may communicate. Except as otherwise required by law, upon receipt of the list and while the witness is in his custody, the sheriff shall permit communication only between the witness and those persons designated by the list.

(4) The institution shall not be liable for any expense incurred in connection with the witness while the witness is in the custody of the sheriff as provided in subsection (2) of this section. If the witness is a party plaintiff, the sheriff shall recover costs of his care from the plaintiff, and shall have a lien upon any judgment for the plaintiff.

COMMENTARY

Under the present statute, an inmate of the Oregon State Penitentiary, Oregon State Correctional Institution, or the Oregon Women's Correctional Center cannot prosecute a civil action while incarcerated even though he or she has a valid cause of action that arose prior to his or her conviction. The statute also prevents an inmate on work or school release from prosecuting a valid claim if it arises during the period of his work or school release. Although an inmate may be sued civilly while incarcerated, he does not have the right to appear and defend in person.

The statute should be amended to enable an inmate (including those on work release or school release) to initiate and prosecute a civil action for a cause of action arising before or during his incarceration with the exception of those actions involving controversies between inmates and the Corrections Division pertaining to their care, custody or control while incarcerated, since means are already available to the inmates to pursue such alleged violations. Among the available remedies are federal habeas corpus and civil rights actions. It is the opinion of the committee that the Administrative Procedures Act is also available in appropriate cases until such time as the Corrections Division is exempted in whole or in part from its operation. Proposed sub-section (e) of section (3) of ORS 137.240 would allow an inmate to utilize the Administrative Procedures Act to obtain review of official acts of the Division of Corrections as long as the Administrative Procedures Act allows such action.

If the statute were amended as suggested above, an inmate would be able to pursue a valid cause of action or defend himself personally in court even though he is serving a sentence of incarceration. We believe this would aid in the rehabilitation of Oregon inmates because they would no longer be shut off completely from society. Directly related to rehabilitation is the proposed new section (4) of ORS 137.240 which would allow a prisoner to enter into marriage subject to the approval of the administrator of the Corrections Division.

If ORS 137.240 is amended, it would be desirable to amend ORS 44.230 to allow prisoners who are plaintiffs or defendants to personally appear in court. The committee's proposed amendment would not modify the rule requiring most prisoner witnesses to be examined by deposition. Since this would result in additional costs to counties required to house a prisoner during a trial, we propose that ORS 44.240, which presently places the financial burden for care and housing of witnesses upon the sheriff (and the county), be amended to provide that if a prisoner plaintiff is housed in a county jail, the sheriff shall recover costs of his care and shall have a lien upon any judgment in favor of the prisoner plaintiff.

Section 10. ORS 137.250 is amended to read:

137.250. (Restoration of political rights; effect of parole or probation revocation and commitment on civil and political rights.) (1) The political rights of a person convicted of a felony shall be restored to him automatically upon final discharge from probation, parole or imprisonment.

(2) Revocation of parole or probation and commitment to the [penitentiary or correctional institution] Corrections Division and placement in a correctional facility suspends civil and political rights.

COMMENTARY

This section contains conforming amendments.

(ORS 137.260 to 137.375 are not affected by this draft.)

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 his political rights.

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 him for any fine on account thereof and for the costs and disbursements in the proceedings against him 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.

137.310 Authorizing execution of judgment; detention of defendant. (1) When a judgment has been pronounced, a certified copy of the entry thereof upon the journal 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.

137.320 Delivery of defendant when committed to Corrections Division. (1) When the judgment includes commitment to the legal and physical custody of the Corrections Division, 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 his delivery, to the superintendent of the penal or correctional institution to which the defendant is initially assigned pursuant to ORS 137.124. Time spent in custody by the defendant after his arrest and before his delivery to the Corrections Division shall be credited towards the term of the sentence.

(2) 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.

[Amended by 1955 c.660 §14; 1967 c.232 §1; 1967 c.585 §5; 1971 c.619 §1]

137.330 Where judgment of imprisonment in county jail is executed. (1) Except as provided in ORS 137.130 and 137.140, a judgment of imprisonment in the county jail shall be executed by confinement in the jail of the county where the judgment is given, except that when the place of trial has been changed, the confinement shall take place in the jail of the county where the action was commenced.

(2) The jailor of any county jail to which a prisoner is ordered, sentenced or delivered pursuant to ORS 137.130 or 137.140 shall receive and keep such prisoner in the same manner as if he had been ordered, sentenced or delivered to him by an officer or court of his own county; but the county in which the prisoner would be imprisoned except for the provisions of ORS 137.130 or 137.140 shall pay all the expenses of keeping and maintaining him in said jail.

137.350 Woman officer to accompany woman or girl to place of confinement. If any woman or girl charged with a crime is sentenced to any place of confinement, she shall be accompanied to such place by a woman officer who shall be appointed and compensated in the same manner as provided in ORS 133.780.

137.360 Duty of judge and sheriff to appoint woman officer to accompany woman ordered to institution. (1) Whenever an order has been made by any court of this state for the confinement of any female within any of the penal, reformatory or eleemosynary institutions of this state and by reason thereof it becomes the duty of any judge to appoint any person to accompany the female to such institution, the judge shall appoint a woman for that purpose.

(2) Whenever under the laws of this state it becomes the duty of the sheriff of any county to convey any female to any of the penal, reformatory or eleemosynary institutions of this state, the sheriff shall cause such person to be accompanied by a female attendant to the place of confinement.

137.370 Commencement of term of imprisonment in state penal or correctional institution; voluntary absence. (1) Except as provided in subsection (2) of this section, when a person is sentenced to imprisonment in the penitentiary or the correctional institution, his term of confinement therein commences from the day of his delivery at the penitentiary or correctional institution to the proper officer thereof.

(2) The time that a person sentenced to imprisonment in the penitentiary or the correctional institution is confined after arrest and prior to his delivery thereat is considered part of his sentence actually served in the penitentiary or the correctional institution. 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.

(3) Except in the case of a person enrolled in a work release program established under ORS 144.420, no time during which a person sentenced to imprisonment in the penitentiary or the correctional institution is voluntarily absent from the penitentiary or correctional institution can be counted as a part of the term for which such person was sentenced.

[Amended by 1955 c.660 §15; 1965 c.463 §19; 1967 c.232 §2]

137.375 Release of prisoners whose terms expire on legal holidays. (1) When the date of release from imprisonment of any inmate in the county or city jail falls on Saturday, Sunday or a legal holiday, such person shall be released on the preceding day unless the inmate is serving a mandatory minimum sentence specifically limited to weekends in which case he shall only be released at the time fixed in the sentence.

(2) When the date of release from imprisonment of any inmate in an adult correctional facility under the jurisdiction of the Corrections Division falls on Saturday, Sunday or a legal holiday, the inmate shall be released on the first day preceding the date of release which is not a Saturday, Sunday or legal holiday.

[1953 c.532 §1; 1955 c.660 §16; 1971 c.290 §1]

Section 11. ORS 137.380 is amended to read:

137.380. (Treatment and employment of prisoners.) A judgment of [imprisonment in the penitentiary or the Oregon State Correctional Institution] commitment to the Corrections Division need only specify the duration of confinement. Thereafter the manner of the confinement and the treatment and employment of a person [sentenced to imprisonment in any penal, correctional or reformatory institution] shall be regulated and governed by whatever law is then in force prescribing the discipline, [of such institution and the] treatment and employment of persons [sentenced to confinement therein] committed.

COMMENTARY

This section conforms the statutes to other changes proposed by the draft and eliminates obsolete references to sentences of imprisonment.

(ORS 137.390 to 137.450 are not affected by this draft.)

137.390 Commencement and termination of term of imprisonment in county jail; treatment of prisoners therein. The commencement 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.

137.440 Return of 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 he acted, with a statement of his doings indorsed thereon, and the clerk shall file the same and annex it to the trial court file, as defined in ORS 19.005.
[Amended by 1967 c.471 §4]

137.450 Enforcement of money judgment in criminal action. A judgment against the defendant in a criminal action or the private prosecutor, so far as it requires the payment of a fine or costs and disbursements of the action, or both, may be enforced as a judgment in a civil action.

Section 12. ORS 137.520 is amended to read:

137.520. Power of committing magistrate to parole and arrange for employment of persons confined in county jail. (1) The committing magistrate may establish rules and regulations under which any prisoner who is confined in any county jail for any period under six months may be allowed to go upon parole outside the county jail, but to remain while on parole in the legal custody and under the control of the court, and subject to being taken back into confinement at the discretion of the court.

(2) If such a prisoner prior to sentence for any crime or offense has been regularly employed, the court, at the time of sentencing, may, by order, direct the sheriff of the county to arrange for such prisoner to continue his employment in the county or contiguous to the county where imprisoned, so far as possible. If such prisoner had no regular employment the court, at the time of sentencing, may, by order, authorize the sheriff to obtain gainful employment for him at prevailing rate of wage for such work and at fair and reasonable hours per day or week. After sentence, or after a prisoner has been confined to a county jail as a condition of probation, the sheriff of the county may grant the prisoner the privilege of leaving secure custody during necessary and reasonable hours for the purpose of:

(a) Working in the county or contiguous to the county where imprisoned at gainful employment that has been approved by the sheriff for such a purpose.

(b) Obtaining in the state additional education, including but not limited to vocational, technical and general education.

(3) Between the hours or periods when the prisoner is not employed he shall be confined in jail unless the court by order, or the sheriff, otherwise directs.

(4) The net earnings of such prisoner shall be payable to the sheriff. From such net earnings the sheriff, to the extent ordered by the court, may pay for such prisoner's board, both inside and outside of jail, and personal expenses and the support of such prisoner's lawful dependents, if any, and, if sufficient funds are available after making the foregoing payments, pay in whole or in part the preexisting debts of such prisoner. Any balance shall be retained until such prisoner has been discharged, whereupon it shall be paid to him.

(5) The committing magistrate may parole to the [State Board of Parole and Probation] Corrections Division any person sentenced to be confined in the county jail for a period of six months or more.

COMMENTARY

The amendments to subsections (2) and (3), taken from House Bill 1608 (1971 Regular Session), would allow county sheriffs to temporarily release persons for work or educational purposes after sentencing or confinement.

The amendment to subsection (5) is recommended by the Corrections Division.

(ORS 137.530 is not affected by this draft.)

137.530 Investigation and report of probation officers. 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 placed on probation until the report of such investigation has been presented to and considered by the court. Whenever desirable, and facilities exist therefor, such investigation shall include physical and mental examinations of such defendants.

COMMENTARY

The Corrections Division suggests an amendment to ORS 137.530 to provide for mandatory presentence reports for all felonies and those misdemeanors that the Corrections Division and the court agree upon. This suggestion is the same as House Bill 1170 (1971 Regular Session) which had a fiscal impact of $255,798 according to the Legislative Fiscal Office.

The Corrections Division's proposal is not adopted in this draft because of the fiscal implications. The subcommittee recommends that if the Commission desires to submit a recommendation favoring mandatory presentence reports that it be a separate bill.

(ORS 137.540 and 137.550 are not affected by this draft.)

137.540 Determination and modification of conditions of probation. The court shall determine, and may at any time modify, the conditions of probation, which may include, as well as any others, that the probationer shall:

(1) Avoid injurious or vicious habits.

(2) Avoid places or persons of disreputable or harmful character.

(3) Report to the probation officer as directed by the court or probation officer.

(4) Permit the probation officer to visit him at his place of abode or elsewhere.

(5) Answer all reasonable inquiries of the probation officer.

(6) Work faithfully at suitable employment.

(7) Remain within a specified area.

(8) Pay his fine, if any, in one or several sums.

(9) Be confined to the county jail 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.

(10) Make reparation or restitution to the aggrieved party for the damage or loss caused by offense, in an amount to be determined by the court.

(11) Support his dependents.

(12) Remain under the supervision and control of the Corrections Division.

[Amended by 1965 c.346 §1; 1969 c.597 §125]

137.550 Period of probation; discharge from probation; proceedings in case of violation of conditions. (1) Subject to the limitations in ORS 137.010:

(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, and a statement by the probation officer setting forth that the probationer has, in his judgment, violated the conditions of probation is sufficient warrant for the detention of the probationer in the county jail, house of detention or local prison, when designated in such statement, until the probationer can be brought before the court. The probation officer shall forthwith report such arrest or detention to the court and submit to the court a report showing in what manner the probationer has violated his probation. Thereupon the court, after summary hearing, may revoke the probation and suspension of sentence and cause the sentence imposed to be executed or, if no sentence has been imposed, impose any sentence which originally could have been imposed. A defendant who has been previously confined in the county jail as a condition of probation pursuant to ORS 137.540 shall be given credit for all time thus served in any order or judgment of confinement resulting from revocation of his probation. In the case of any defendant whose sentence has been suspended but who is not on 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.

[Amended by 1955 c.688 §2; 1965 c.346 §2; 1971 c.746 §326]

Section 13. ORS 137.560 is amended to read:

137.560. (Copies of certain orders to be sent to Director of Parole and Probation.) Within 10 days following the issuing of any order 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 order, or of the discharge of such person, or the recommendation by the court to the Governor of the pardon of such person, the judge issuing such an order shall send a copy of the same to the [Director of Parole and Probation] Corrections Division Administrator.

COMMENTARY

The amendment is recommended by the Corrections Division.

Section 14. ORS 137.570 is amended to read:

137.570. (Authority to transfer probationer from one officer to another; procedure.) A court may transfer a person on probation under its jurisdiction from the supervision of one probation [officer] agency to that of another probation [officer] agency. Whenever a person placed on probation resides in or is to remove to a locality outside the jurisdiction of the court which placed such person on 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 he is to remove:

(1) If such probation officer sends to the court desiring to make such transfer a written statement that he 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.

COMMENTARY

The Corrections Division recommends that the statute be amended to expressly state that it has authority over the transfer of a person on probation. The subcommittee holds the view that once a person is placed on probation to the Corrections Division that agency now has the authority to make such intra-agency transfers of the probationer as are necessary to discharge the division's probation responsibilities.

At the same time, however, there may be cases of probation not involving the Corrections Division, such as those in which an individual is placed on probation to a private person or agency. The statute, as amended, recognizes this fact and, therefore, leaves the court with that authority.

Section 15. ORS 137.580 is amended to read:

137.580. (Effect of transfer of probationer from one officer to another.) Whenever the transfer mentioned in ORS 137.570 is made, the court making it shall send to the probation [officer] 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 [officer] agency shall report concerning the conduct and progress of the probationer to the court that placed him on 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.

COMMENTARY

See commentary to ORS 137.570.

Section 16. ORS 137.590 is amended to read:

137.590 Appointment of probation officers and assistants; chief probation officer; compensation. The judge or judges of any court of criminal jurisdiction, including municipal courts, may appoint, and at pleasure remove, such men and women 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. A copy of each order of appointment shall be filed in the office of the State Board of Parole and Probation. No probation officer or clerical assistant appointed by the court under this section shall receive any compensation from the state, any county or any municipality.

COMMENTARY

This statute authorizes the court to appoint probation officers to work under the direction of the court. The amendment, recommended by the Corrections Division, deletes the requirement of filing a copy of each order of appointment with the State Board of Parole and Probation. The amendment also removes the restriction against paying such officers out of public funds.

(ORS 137.610 is not affected by this draft.)

137.610 Performance by Corrections Division 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 Corrections Division 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 Administrator of the Corrections Division, who shall order the prompt performance of any such requested service whenever members of the staff are available for such duty.
[Amended by 1969 c.597 §126]

Section 17. ORS 137.620 is amended to read:

137.620. (Powers of probation officers; oath of office; bond; audit of accounts.) Probation officers of the Corrections Division 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 his office, shall take an oath of office [, to be administered by the court making the appointment]. 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 him as probation officer. The accounts of all probation officers shall be subject to audit at any time by the proper fiscal authorities.

COMMENTARY

The amendments accomplish several things: First, the oath of office requirement is confined to probation officers appointed by the court, leaving this type of detail to the Corrections Division for its own officers. Second, the oath for other probation officers need not be administered by the court, itself. Third, the distinction between Corrections Division probation officers and those appointed by the court is clarified.

(ORS 137.630 is not affected by this draft.)

137.630 Duties of probation officers. The duties of probation officers shall be:

(1) 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.

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

(3) To collect from persons under their supervision such payments as are ordered by the courts for which they serve, and to disburse the money so received under the direction of such courts.

(4) To give each person under their supervision a statement of the conditions of probation and to instruct him regarding them; 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, to aid and encourage such persons and to effect improvement in their conduct and condition.

(5) To keep detailed records of the work done and accurate and complete accounts of all money collected and disbursed and to give and obtain receipts therefor; and to make such reports to the courts and to the Corrections Division as such courts require.
[Amended by 1969 c.597 §127]

(ORS 137.990 is repealed by this draft.)

137.990 Penalties. (1) Violation of ORS 137.110 may be punished as a contempt.

(2) Violation of ORS 137.360 is punishable upon conviction by a fine of not less than $25 nor more than $500.
[Amended by 1971 c.743 §327]

COMMENTARY

Subsection (1) of the statute refers to ORS 137.110 which is also repealed. Subsection (2) appears to be a needless penalty provision relating to ORS 137.360, dealing with the appointment of a woman officer to accompany a woman ordered to a state institution.