

Enrolled Senate Bill 44

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CHAPTER

AN ACT

Relating to appeals; creating new provisions; amending ORS 138.071 and 138.083; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 138.083 is amended to read:

138.083. (1)(a) The sentencing court [*shall retain*] **retains** authority irrespective of any notice of appeal after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic or clerical errors or to delete or modify any erroneous term in the judgment. The court may correct the judgment either on the motion of one of the parties or on the court's own motion after written notice to all the parties.

(b) If a sentencing court enters a corrected judgment under this subsection while an appeal of the judgment is pending, the **sentencing** court shall immediately forward a copy of the corrected judgment to the appellate court. **The appellate court shall notify the parties to the appeal when the appellate court receives the corrected judgment. Except as provided in subsection (3) of this section,** any modification of the appeal necessitated by the corrected judgment shall be made in the manner specified by rules adopted by the appellate court.

(2)(a) A judgment that orders payment of restitution but does not specify the amount of restitution imposed is final for the purpose of appealing the judgment.

(b) Notwithstanding the filing of a notice of appeal, the sentencing court retains authority to determine the amount of restitution and to enter a supplemental judgment to specify the amount and terms of restitution.

(c) If a sentencing court enters a supplemental judgment under this subsection while an appeal of the judgment of conviction is pending, the **sentencing** court shall immediately forward a copy of the supplemental judgment to the appellate court. **The appellate court shall notify the parties to the appeal when the appellate court receives the supplemental judgment. Except as provided in subsection (3) of this section,** any modification of the appeal necessitated by the supplemental judgment may be made in the manner specified by rules adopted by the appellate court.

(3)(a) If the appellant intends to assign error to any part of the corrected or supplemental judgment, the appellant must file an amended notice of appeal from the corrected or supplemental judgment.

(b) If the appellant does not intend to assign error to any part of the corrected or supplemental judgment, the appellant need only file a notice of intent to proceed with the appeal. Such notice is not jurisdictional.

(4) As used in this section, “appellant” means the attorney of record in the appellate court for the appellant or, if the appellant is not represented by an attorney, the appellant personally.

SECTION 2. ORS 138.071 is amended to read:

138.071. (1) Except as provided in this section, a notice of appeal must be served and filed not later than 30 days after the judgment or order appealed from was entered in the register.

(2) If a motion for new trial or motion in arrest of judgment is served and filed, a notice of appeal must be served and filed within 30 days from the earlier of the following dates:

- (a) The date of entry of the order disposing of the motion; or
- (b) The date on which the motion is deemed denied.

(3) A defendant cross-appealing must serve and file the notice of cross-appeal within 10 days of the expiration of the time allowed in subsection (1) of this section.

[(4) If the trial court enters a corrected or a supplemental judgment under ORS 138.083, a notice of appeal from the corrected or supplemental judgment must be filed not later than 30 days after the defendant receives notice that the judgment has been entered.]

(4) If the trial court enters a corrected or supplemental judgment under ORS 138.083 or under any other statutory provision while an appeal of the judgment of conviction is pending and:

(a) A party intends to assign error to any part of the corrected or supplemental judgment, the party must file an amended notice of appeal from the corrected or supplemental judgment not later than 30 days after the party receives notice that the corrected or supplemental judgment has been entered.

(b) A party does not intend to assign error to any part of the corrected or supplemental judgment, the party need only file a notice of intent to proceed with the appeal not later than 30 days after the party receives notice that the corrected or supplemental judgment has been entered.

(5)(a) Upon motion of a defendant, the Court of Appeals shall grant the defendant leave to file a notice of appeal after the time limits described in subsections (1) to (4) of this section if:

(A) The defendant, by clear and convincing evidence, shows that the failure to file a timely notice of appeal is not attributable to the defendant personally; and

(B) The defendant shows a colorable claim of error in the proceeding from which the appeal is taken.

(b) A defendant is not entitled to relief under this subsection for failure to file timely notice of cross-appeal when the state appeals pursuant to ORS 138.060 (1)(c) or (2)(a).

(c) The request for leave to file a notice of appeal after the time limits prescribed in subsections (1) to (3) of this section must be filed no later than 90 days after entry of the order or judgment being appealed. The request for leave to file a notice of appeal after the time limit prescribed in subsection (4) of this section must be filed no later than 90 days after the *[defendant receives]* **party receives** notice that the judgment has been entered. A request for leave under this subsection must be accompanied by the notice of appeal, may be filed by mail and is deemed filed on the date of mailing if the request is mailed as provided in ORS 19.260.

(d) The court may not grant relief under this subsection unless the state has notice and opportunity to respond to the defendant’s request for relief.

(e) The denial of a motion under paragraph (a) of this subsection is a bar to post-conviction relief under ORS 138.510 to 138.680 on the same ground, unless the court provides otherwise.

(6) As used in this section, “party” means the attorney of record in the appellate court for the party or, if the party is not represented by an attorney, the party personally.

SECTION 3. The amendments to ORS 138.071 and 138.083 by sections 1 and 2 of this 2013 Act apply to corrected and supplemental judgments entered on or after the effective date of this 2013 Act.

SECTION 4. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by Senate March 7, 2013

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 6, 2013

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State