

A-Engrossed
Senate Bill 44

Ordered by the Senate March 5
Including Senate Amendments dated March 5

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Directs appellate court to notify parties to appeal when appellate court receives corrected or supplemental judgment from trial court. Provides that party may appeal from corrected or supplemental judgment within 30 days from date *[appellate court provides notice to parties]* **party receives notice of entry of corrected or supplemental judgment. Specifies when party must file amended notice of appeal.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to appeals; creating new provisions; amending ORS 138.071 and 138.083; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 138.083 is amended to read:

6 138.083. (1)(a) The sentencing court *[shall retain]* **retains** authority irrespective of any notice
7 of appeal after entry of judgment of conviction to modify its judgment and sentence to correct any
8 arithmetic or clerical errors or to delete or modify any erroneous term in the judgment. The court
9 may correct the judgment either on the motion of one of the parties or on the court's own motion
10 after written notice to all the parties.

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

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

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

22 (c) If a sentencing court enters a supplemental judgment under this subsection while an appeal
23 of the judgment of conviction is pending, the **sentencing** court shall immediately forward a copy
24 of the supplemental judgment to the appellate court. **The appellate court shall notify the parties**
25 **to the appeal when the appellate court receives the supplemental judgment. Except as pro-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **vided in subsection (3) of this section**, any modification of the appeal necessitated by the supple-
2 mental judgment may be made in the manner specified by rules adopted by the appellate court.

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

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

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

12 **SECTION 2.** ORS 138.071 is amended to read:

13 138.071. (1) Except as provided in this section, a notice of appeal must be served and filed not
14 later than 30 days after the judgment or order appealed from was entered in the register.

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

17 (a) The date of entry of the order disposing of the motion; or

18 (b) The date on which the motion is deemed denied.

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

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

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

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

31 **(b) A party does not intend to assign error to any part of the corrected or supplemental**
32 **judgment, the party need only file a notice of intent to proceed with the appeal not later than**
33 **30 days after the party receives notice that the corrected or supplemental judgment has been**
34 **entered.**

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

37 (A) The defendant, by clear and convincing evidence, shows that the failure to file a timely no-
38 tice of appeal is not attributable to the defendant personally; and

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

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

43 (c) The request for leave to file a notice of appeal after the time limits prescribed in subsections
44 (1) to (3) of this section must be filed no later than 90 days after entry of the order or judgment
45 being appealed. The request for leave to file a notice of appeal after the time limit prescribed in

1 subsection (4) of this section must be filed no later than 90 days after the [*defendant receives*] **party**
2 **receives** notice that the judgment has been entered. A request for leave under this subsection must
3 be accompanied by the notice of appeal, may be filed by mail and is deemed filed on the date of
4 mailing if the request is mailed as provided in ORS 19.260.

5 (d) The court may not grant relief under this subsection unless the state has notice and oppor-
6 tunity to respond to the defendant's request for relief.

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

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

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

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

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