

Enrolled
House Bill 2225

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

CHAPTER

AN ACT

Relating to appeals from judgments in violation proceedings; amending ORS 138.057 and 153.121.

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

SECTION 1. ORS 153.121 is amended to read:

153.121. An appeal from a judgment in a violation proceeding may be taken by either party as follows:

(1) From a proceeding in justice court or municipal court, as provided in ORS 138.057 for appeals of violations.

(2) From a proceeding in circuit court, as provided in ORS chapter 19, **except that the standard of review is the same as for an appeal from a judgment in a proceeding involving a misdemeanor or felony.**

SECTION 2. ORS 138.057 is amended to read:

138.057. (1)(a) If a justice court or municipal court has become a court of record under ORS 51.025 or 221.342, an appeal from a judgment involving a violation shall be as provided in ORS chapter 19 for appeals from judgments entered by circuit courts, **except that the standard of review is the same as for an appeal from a judgment in a proceeding involving a misdemeanor or felony.** If a justice court or municipal court has not become a court of record under ORS 51.025 or 221.342, the appeal from a judgment involving a violation entered by the justice court or municipal court may be taken to the circuit court for the county in which the justice court or municipal court is located. An appeal to a circuit court must be taken in the manner provided in this subsection.

(b) Within 30 days after the entry of the judgment by the justice court or municipal court, a party who wishes to appeal the decision must serve a copy of the notice of appeal on the adverse party and must file the original notice of appeal with the justice court or municipal court along with proof of service on the adverse party or an acknowledgment of service signed by the adverse party.

(c) If the appeal is made by the defendant from the decision of a municipal court, the copy of the notice of appeal must be served on the city attorney. If the appeal is made by the defendant from a decision in a justice court, the copy of the notice of appeal must be served on the district attorney for the county.

(d) No undertaking shall be required of the party filing a notice of appeal under the provisions of this subsection.

(e) Upon filing of the notice of appeal, the justice court or municipal court shall forward all files relating to the case to the circuit court to which the appeal is taken.

(f) The circuit court shall treat a matter appealed under this subsection as though the case had been originally filed with the circuit court and shall try the case anew, disregarding any irregularity or imperfection in the proceedings in the justice court or municipal court.

(g) Upon entry of a judgment in the matter, the judgment may be appealed as provided in subsection (2) of this section.

(2) Subject to the provisions of this subsection, an appeal from a judgment involving a violation entered by a circuit court may be taken as provided in ORS chapter 19.

(a) For the purpose of meeting the requirements imposed by ORS 19.240, the copy of the notice of appeal must be served on:

(A) The city attorney, if the appeal is made by the defendant from a decision initially made in a municipal court.

(B) The district attorney for the county, if the appeal is made by the defendant from a decision initially made in a justice court.

(b) Notwithstanding ORS 19.270, timely service on the city attorney or district attorney under the provisions of this subsection is not jurisdictional and the Court of Appeals may extend the time for that service.

(c) Notwithstanding any provision of ORS chapter 19, an undertaking on appeal is not required for an appeal from a judgment involving a violation.

(d) The filing of a notice of an appeal from a judgment involving a violation does not act to automatically stay the judgment.

(e) The standard of review for an appeal under this subsection is the same as for an appeal from a judgment in a proceeding involving a misdemeanor or felony.

(3) In any case in which only violations are charged, the state may not appeal from an order dismissing the case that is entered by reason of a police officer's failure to appear at the trial of the matter.

Passed by House February 21, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 1, 2005

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President of Senate

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

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Secretary of State