

# Enrolled Senate Bill 258

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CHAPTER .....

AN ACT

Relating to appeals of violations; creating new provisions; and amending ORS 138.500.

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

**SECTION 1.** ORS 138.500 is amended to read:

138.500. (1) If a defendant in a criminal action or a petitioner in a proceeding pursuant to ORS 138.510 to 138.680 wishes to appeal from an appealable adverse final order or judgment of a circuit court and if the person is without funds to employ suitable counsel possessing skills and experience commensurate with the nature and complexity of the case for the appeal, the person may request the circuit court from which the appeal is or would be taken to appoint counsel to represent the person on appeal. The following apply to a request under this subsection:

(a) The request shall be in writing and shall be made within the time during which an appeal may be taken or, if the notice of appeal has been filed, at any time thereafter. The request shall include a brief statement of the assets, liabilities and income in the previous year of the person unless the court already determined the person to be financially eligible for appointed counsel at state expense for purposes of the specific case, in which instance, the written request need only so indicate. However, if a request relies on a court's previous determination that the person is financially eligible, the court, in its discretion, may require the person to submit a new statement of assets, liabilities and income.

(b) If, based upon a request under paragraph (a) of this subsection, the court finds that petitioner or defendant previously received the services of appointed counsel or currently is without funds to employ suitable counsel for an appeal, the court shall appoint counsel to represent petitioner or defendant on the appeal.

(2)(a) Notwithstanding subsection (1) of this section, when a defendant has been sentenced to death, the request for appointed counsel shall be made to the Supreme Court. The Supreme Court shall appoint suitable counsel to represent the defendant on the appeal.

(b) After the notice of appeal has been filed, the Court of Appeals has concurrent authority to appoint or substitute counsel or appoint or substitute a legal advisor for the defendant under ORS 138.504.

(c) The Supreme Court has concurrent authority to appoint or substitute counsel or appoint or substitute a legal advisor for the defendant under ORS 138.504 in connection with review of a Court of Appeals decision under ORS 2.520.

(d) Neither the Court of Appeals nor the Supreme Court may substitute one appointed counsel for another under paragraph (b) or (c) of this subsection except pursuant to the policies, procedures, standards and guidelines of the Public Defense Services Commission.

(3) Whenever a defendant in a criminal action or a petitioner in a proceeding pursuant to ORS 138.510 to 138.680 has filed a notice of appeal from an appealable adverse final order or judgment of a circuit court and the person is without funds to pay for a transcript, or portion thereof, necessary to present adequately the case upon appeal, the person may request the public defense services executive director to have the transcript, or portion thereof, furnished to the person. The following apply to a request under this subsection:

(a) The request shall be in writing and, shall include a brief statement of the assets, liabilities and income in the previous year of the person.

(b) If, based upon a request under paragraph (a) of this subsection, the public defense services executive director finds that the person is unable to pay for the transcript, the public defense services executive director shall have furnished to the person that portion of the transcript as may be material to the decision on appeal, if the public defense services executive director finds that the transcript or portion thereof is necessary.

(c) The cost of the transcript under paragraph (b) of this subsection shall be in the amount prescribed in ORS 21.470 and paid for as provided by the policies, procedures, standards and guidelines of the Public Defense Services Commission.

(4) After submission of the original brief by counsel, the public defense services executive director shall determine the cost of briefs and any other expenses of appellant, except transcripts, necessary to appellate review and a reasonable amount of compensation for counsel appointed under this section. Compensation payable to appointed counsel shall be as established under ORS 151.216. On any review by the Supreme Court of the judgment of the Court of Appeals a person for whom counsel has been appointed shall by similar procedure recover the cost of briefs, any other expense of the review and compensation for counsel.

(5) Costs, expenses and compensation determined by the public defense services executive director under subsection (4) of this section shall be paid by the public defense services executive director from funds available for that purpose.

(6) If the public defense services executive director denies, in whole or in part, costs, expenses and compensation submitted for review and payment, the person who submitted the payment request may appeal the decision to the Chief Judge of the Court of Appeals, if the appeal is in the Court of Appeals, or to the Chief Justice of the Supreme Court, if the appeal is in the Supreme Court. The Chief Judge, Chief Justice or the designee of the Chief Judge or Chief Justice, as appropriate, shall review the public defense services executive director's decision for abuse of discretion. The decision of the Chief Judge, the Chief Justice or the designee of the Chief Judge or Chief Justice is final.

(7) The provisions of this section shall apply in favor of the defendant in a criminal action or the petitioner in a proceeding pursuant to ORS 138.510 to 138.680 when the person is respondent in an appeal taken by the state in a criminal action or by the defendant in a proceeding pursuant to ORS 138.510 to 138.680.

**(8) As used in this section, "criminal action" does not include an action that involves only violations.**

~~[(8)]~~ **(9)** As used in subsection (4) of this section, "counsel" includes a legal advisor appointed under ORS 138.504.

**SECTION 2. The amendments to ORS 138.500 by section 1 of this 2005 Act apply to appeals filed before, on or after the effective date of this 2005 Act.**

**Passed by Senate February 16, 2005**

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Secretary of Senate

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President of Senate

**Passed by House June 17, 2005**

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Speaker of House

**Received by Governor:**

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

**Approved:**

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Governor

**Filed in Office of Secretary of State:**

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

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Secretary of State