



# Oregon

Office of Public Defense Services

Appellate Division

1175 Court Street NE

Salem, Oregon 97301-4030

Telephone (503) 378-3349

Fax (503) 378-2163

[www.oregon.gov/opds](http://www.oregon.gov/opds)

**Testimony of Shawn Wiley, Chief Deputy Defender  
Supporting SB 44 with Dash 1 Amendment  
Senate Judiciary Committee  
February 26, 2013**

Chair Prozanski and Members of the Committee:

Thank you for the opportunity to provide information in support of Senate Bill 44, as amended by the Dash 1 amendment. The bill, as amended, is a procedural fix to a problem that has plagued our office and the Court of Appeals for several years, the determination of when the deadline or filing an amended notice of appeal runs.

If a person is convicted of a crime, the court issues a judgment that sets out the conviction and the sentence the person received. Often, the person will decide to appeal, which requires the person's attorney to file a notice of appeal in the appellate courts.

Occasionally, someone at the trial level will notice a mistake in the judgment – a small item of sentencing was omitted, like a fine, or the written judgment didn't match the judge's pronouncement of sentence at the hearing, etc. The trial judge then issues a corrected or supplemental judgment. If the defendant wants to appeal from the changes made by the new judgment, the defendant must file an amended notice of appeal. The problem is that due to limited funding and resources, the new judgments are often not forwarded to the appellate courts or to the appellate lawyer for the defendant. The result is that frequently no one on appeal has any idea that a new judgment in the case has been issued. Often the deadline for filing an amended notice of appeal has run. In addition, the situation creates headaches for the Court of Appeals, who must now figure out when the amended notice of appeal was due.

Our office tried to address some of these problems in 2007 with a bill that set the deadline for filing the amended notice of appeal from the day defendant receives notice of the new judgment, but the Supreme Court recently interpreted that statute in a manner that did not solve the problem. So we are asking the legislature to amend ORS 138.071 to specify that the amended notice of appeal is due 30 days from when the defendant's appellate lawyer receives notice of the new judgment.

Our office worked with the Judicial Department to come up with language that met everyone's needs, resulting in the dash-1 amendments before you.

I urge passage of the dash-1 amendments to Senate Bill 44. Thank you for your consideration. Please feel free to contact me with any questions or concerns that you may have.