

Senate Bill 44

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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 **as introduced**.

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.

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 authority irrespective of any notice of appeal
7 after entry of judgment of conviction to modify its judgment and sentence to correct any arithmetic
8 or clerical errors or to delete or modify any erroneous term in the judgment. The court may correct
9 the judgment either on the motion of one of the parties or on the court's own motion after written
10 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.** Any modification of the appeal necessitated
15 by the corrected judgment shall be made in the manner specified by rules adopted by the appellate
16 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.** Any modification
26 of the appeal necessitated by the supplemental judgment may be made in the manner specified by
27 rules adopted by the appellate court.

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

29 138.071. (1) Except as provided in this section, a notice of appeal must be served and filed not

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 later than 30 days after the judgment or order appealed from was entered in the register.

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

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

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

8 (4) If the trial court enters a corrected or a supplemental judgment under ORS 138.083, a notice
 9 of appeal from the corrected or supplemental judgment must be filed not later than 30 days after the
 10 [*defendant receives*] **date the appellate court provides notice to the parties under ORS 138.083**
 11 that the judgment has been [*entered*] **received by the appellate court.**

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

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

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

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

20 (c) The request for leave to file a notice of appeal after the time limits prescribed in subsections
 21 (1) to (3) of this section must be filed no later than 90 days after entry of the order or judgment
 22 being appealed. The request for leave to file a notice of appeal after the time limit prescribed in
 23 subsection (4) of this section must be filed no later than 90 days after the [*defendant receives*] **date**
 24 **the appellate court provides notice to the parties under ORS 138.083** that the judgment has been
 25 [*entered*] **received by the appellate court.** A request for leave under this subsection must be ac-
 26 companied by the notice of appeal, may be filed by mail and is deemed filed on the date of mailing
 27 if the request is mailed as provided in ORS 19.260.

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

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

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

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

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