

COMMITTEE ON JUDICIARY
Room 14, State Capitol
Salem, Oregon

O R E G O N V E H I C L E C O D E

ARTICLE 14. CLASSES OF OFFENSES;
DISPOSITION OF OFFENDERS

Preliminary Draft No. 2

May 1974

INTRODUCTORY NOTE: This draft includes several sections that are based largely on recommendations submitted to the Subcommittee on Adjudication by the Consulting Committee. The draft is meant to provide a basis for further examination and discussion of these tentative proposals dealing with classification of traffic offenses, penalties and certain procedural provisions. The reader's comments are solicited.

Reporter: Donald L. Paillette Subcommittee on Adjudication

O R E G O N V E H I C L E C O D E

ARTICLE ____ . CLASSES OF OFFENSES;

DISPOSITION OF OFFENDERS

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#

Section 1. (Traffic infraction described.) (1) An offense defined in the Oregon Vehicle Code is a traffic infraction if it is so designated in the statute defining the offense or if the offense is punishable only by a fine, forfeiture, suspension or revocation of a license or other privilege, or other civil penalty.

(2) A person who commits a traffic infraction shall not suffer any disability or legal disadvantage based upon conviction of a crime.

(3) Except as a statute relating to a traffic infraction otherwise expressly provides, the criminal and criminal procedure laws of this state relating to a violation as described in ORS 161.505 and 161.565 apply with equal force and effect to a traffic infraction.

COMMENTARY

A. Summary

This section describes a "traffic infraction," the basic term proposed for the purpose of classifying the majority of vehicle code offenses in a noncriminal category.

The Oregon Criminal Code now defines two kinds of "offense" -- "crimes" and "violations." (See ORS 161.505, 161.515 and 161.565.) A traffic infraction, while it would be an offense inasmuch as it would be punishable by a fine or other civil penalty, would not be a crime because no imprisonment would attach to it. It would be the same as a violation because of the nature of the penalty, and were the proposed draft to be adopted by the committee, it would be necessary to amend ORS 161.505, defining an offense, to include the new term.

The limitation on the types of penalties allowable for a traffic infraction as described in subsection (1) is not meant to infringe upon the general authority of the court to place an offender on probation. See ORS 137.010. The intent of the draft is to provide the judge with the greatest possible number of sentencing options. See § 9 infra.

Although the generic term, "violation," could be employed for grading and "decriminalizing" the Vehicle Code, the new term, "traffic infraction," is suggested instead. For one thing, even though by definition it would be a type of offense, the term is instantly identifiable as being non-criminal in nature. Furthermore, it also is clearly separated from criminal code offenses and would carry no criminal onus. The classification of the offense, nevertheless, would be consistent with the concept incorporated in the Oregon Criminal Code that imprisonment ought not be available as a punitive sanction unless the conduct that gives rise to an offense warrants the type of social condemnation that is and should be implicit in the concept of "crime."

B. Derivation

"Traffic infraction" is a term that undoubtedly will be used with increasing frequency throughout the country in the near future. The National Advisory Commission on Criminal Justice Standards and Goals has endorsed a proposal that most traffic offenses should be handled administratively rather than criminally. The recommendation by the Task Force on Courts, named by the U. S. Law Enforcement Assistance Administration, was similar to a plan for administrative adjudication offered by a task force of the National Highway Safety Advisory Committee in 1973. Both reports recommend retention of criminal procedures for "serious" offenses and both recommend that other traffic offenses be reclassified as "infractions."

C. Relationship to Existing Law

Most traffic offenses, including minor offenses, are misdemeanors because they carry penalties providing for imprisonment up to one year or fine or both. (E.g., ORS 483.990, 483.991.) A few of the serious offenses, such as hit and run involving injury, are felonies. This traditional criminal classification of traffic violations is used by an overwhelming majority of states. The infraction classification for all but the most serious traffic offenses is being considered by the District of Columbia, Florida, Maryland, Michigan and Rhode Island. Only New York, California, New Jersey, Ohio, Pennsylvania and Minnesota have classified most

moving traffic offenses as noncriminal. These states reserve criminal classification for the kind of crimes that are characterized by Oregon law as "major" traffic offenses, such as DUII, eluding a police officer, hit and run, and a few others.

Section 2. (Classification of traffic infractions.) Traffic infractions are classified for the purpose of sentence into the following categories:

- (1) Class A traffic infractions;
- (2) Class B traffic infractions;
- (3) Class C traffic infractions; and
- (4) Class D traffic infractions.

COMMENTARY

A. Summary

The section classifies traffic infractions into four separate categories. Each traffic offense, excepting those to be classified as crimes, would be graded into one of the classes. The offense category of "Class A traffic infraction," while not a "crime," would be reserved for the more serious or "major" type of infraction. This category would be subject to a substantially greater fine than other traffic infractions (see section 3, *infra*) and, in the case of repeated offenses (see section 4, *infra*), would elevate into the crime classification.

B. Derivation

The classification technique is the same as that used in the Oregon Criminal Code. (See ORS 161.505 et. seq.)

C. Relationship to Existing Law

The existing vehicle code does not classify offenses, but generally uses the cumbersome and confusing "990" section method for assigning penalties to particular offenses.

Section 3. (Fines for traffic infractions.) (1) Except as otherwise provided in section 4 of this Article or in the statute defining the offense, the penalty for committing a traffic infraction shall be a fine only.

(2) A sentence to pay a fine for a traffic infraction shall be a sentence to pay an amount not exceeding:

- (a) \$1,000 for a Class A traffic infraction.
- (b) \$250 for a Class B traffic infraction.
- (c) \$100 for a Class C traffic infraction.
- (d) \$50 for a Class D traffic infraction.

COMMENTARY

A. Summary

This section limits the penalty for a traffic infraction to a fine only and establishes the maximum fines for each of the four categories of traffic infractions. The amount of the fine is to be fixed by the court within the applicable limit. The section does not require the court to impose a mandatory fine, even for the Class A category, but would allow flexibility in fitting the penalty to the particular case.

B. Derivation

The section is based on Oregon Criminal Code provisions.

C. Relationship to Existing Law

This kind of penalty provision would be new for the vehicle code.

Section 4. (Certain offenses not classified as traffic infractions.) (1) Each of the following vehicle code offenses is classified as a traffic crime:

(a) Failure to perform the duties of a driver involved in an accident or collision which results in injury or death to any person.

(b) Fleeing or attempting to elude a police officer.

(c) Reckless driving.

(d) Driving a motor vehicle in violation of any driver's license restriction or suspension resulting from moving violations or from failure to comply with a court order.

(e) A Class A traffic infraction, if the defendant has been convicted of one or more Class A traffic infractions or traffic crimes within a five-year period immediately preceding the commission of the offense and the previous conviction was not part of the same transaction as the present offense.

(2) As used in paragraph (e) of subsection (1) of this section, "Class A traffic infraction" includes:

(a) Driving under the influence of intoxicating liquor, dangerous drugs or narcotic drugs;

(b) Driving with .15 percent or more blood alcohol content;

(c) Failure to perform the duties of a driver involved in an accident or collision which results only in damage to the property of another; and

(d) Driving a motor vehicle while license is suspended or revoked as the result of failure to file proof of future financial responsibility as required under ORS chapter 486.

(3) In any jury trial of a traffic crime as described in paragraph (e) of subsection (1) of this section, at the request of the defendant, proof of any previous conviction shall be submitted only to the trial judge, and the fact of the previous conviction shall not otherwise be made known to the jury.

COMMENTARY

Subsection (1) of this section classifies certain vehicle code offenses as traffic crimes. These offenses would be designated in the substantive code as a specific class of either felony or misdemeanor. As crimes they would continue to be adjudicated under the traditional criminal procedures.

With regard to driving in violation of a license restriction, the draft contemplates that this offense is serious enough to warrant the criminal label because it is ordinarily an intentional act. However, the vehicle code probably should draw a distinction between the person whose license is suspended because of failure to show financial responsibility and one whose license has been restricted or suspended because of a major violation or a series of minor moving violations or from failure to obey a court order as provided under § 9 *infra*. The draft subscribes to the view that driving while suspended for failure to show financial responsibility would be a traffic infraction.

Subsection (2) classifies certain offenses as Class A traffic infractions for the specific purpose of determining the crime described in paragraph (d) of subsection (1). The offenses named in paragraphs (a), (b), (c) and (d) of subsection (2) would be included within the term "Class A traffic infraction" and, of course, presuppose that the four named offenses would be so classified in the substantive vehicle code. The type of case covered under paragraphs (a) and (b) would be the non-reckless DUIL or .15 driver who is a first offender. If he were driving recklessly, it would constitute a crime under paragraph (c) of subsection (1). If he were a repeat offender within a five year period, it would be a crime by operation of paragraph (e). If additional offenses were classified as Class A infractions in the substantive revision, they would automatically be included for the purpose of paragraph (e) of subsection (1).

Subsection (3) is meant to prevent any previous conviction from prejudicing the jury in the trial of the instant offense. The previous conviction would serve only to classify the subsequent charge as a traffic crime for sentencing purposes.

Section 5. (Trial; burden of proof; pre-trial discovery.) (1)

The trial of any traffic infraction shall be by the court without a jury.

(2) The state, municipality or political subdivision shall have the burden of proving the alleged traffic infraction by a preponderance of the evidence.

(3) The pre-trial discovery rules in ORS 135.805 to 135.873 apply to traffic infraction cases.

COMMENTARY

Subsection (1) eliminates the jury trial for traffic infractions. Article III of the United States Constitution provides that the trial of all "crimes" shall be by jury, and the sixth amendment provides for jury trial "in all criminal prosecutions." These provisions have been construed as not applying to what are commonly referred to as "petty offenses." A violation, for which no imprisonment is authorized, would clearly be within the U.S. Supreme Court's concept of a petty offense. See, Duncan v. Louisiana, 391 US 145 (1968), and Baldwin v. New York, 399 US 66 (1970).

Subsection (2) establishes a "preponderance of the evidence" standard of proof. Inasmuch as traffic infractions would be civil in nature, the draft adopts a civil case standard of proof.

Subsection (3) adopts the pre-trial discovery provisions of the Criminal Procedure Code. Although a traffic infraction would not involve a "criminal prosecution," the nature and heavy volume of such cases could create a procedural nightmare if civil discovery rules were applied. The provision in ORS 135.805 that limits pre-trial discovery in which no charge is filed in circuit court to cases in which the defendant serves a written request for discovery is meant to apply to traffic infractions in lower courts.

Section 8. (Counsel for state and defendant.) (1) At any trial involving a traffic infraction only, counsel shall not be provided at public expense.

(2) At any trial involving a traffic infraction only, the district attorney shall not appear unless required by the trial judge.

(3) As used in subsection (2) of this section, "district attorney" includes, where appropriate, a city attorney and county counsel.

COMMENTARY

For Commentary, see Preliminary Draft No. 2, pp. 10, 11.

Section 7. (Counsel for state.) (1) At any trial involving a traffic infraction only, the district attorney shall not appear unless required by the trial judge.

(2) As used in subsection (1) of this section:

(a) "State" includes, where appropriate, political subdivisions and municipalities.

(b) "District attorney" includes, where appropriate, a city attorney and county counsel.

COMMENTARY

This section would require the prosecutor to represent the state in traffic infraction trials only if required by the trial judge. This would permit routine traffic infractions to be presented by the issuing officer, but provide for the presence of the prosecutor if the nature of the case required it.

Section 8. (Prosecution involving traffic infraction not a bar to subsequent charge.) Notwithstanding the provisions of ORS 131.505 to 131.535, if a person commits both a crime and a traffic infraction as part of the same criminal episode, the prosecution for one offense shall not bar the subsequent prosecution for the other. However, evidence of the first conviction shall not be admissible in any subsequent prosecution for the other offense.

COMMENTARY

This section removes the traffic infraction from the operation of the former jeopardy statutes and would allow a criminal charge and a later traffic infraction charge or vice versa out of the same criminal episode. If the Class A traffic infractions were the ones contemplated by this draft (see s 4, supra), even though relatively serious, they would still be considered as civil offenses. As a result, if a criminal episode involved both a first offender DUIL and reckless driving, for example, a prosecution for DUIL would not bar the subsequent prosecution for the criminal charge.

Section 9. (Trial judge's authority to order suspension of license, permit or right to apply.) (1) If a defendant is convicted of any traffic offense and fails or refuses to pay a fine imposed by the judge or to comply with any condition upon which payment of the fine was suspended, the judge, in addition to or instead of any other method authorized by law for enforcing a court order, may order the defendant's driver's license, permit or right to apply to be suspended or restricted until he complies with the conditions of the order.

(2) If a defendant is convicted of a traffic crime or a Class A traffic infraction, in addition to any fine or imprisonment authorized by law, including probation and suspension of imposition or execution of any sentence upon conditions ordered by the court, the judge may also:

(a) Order the defendant's driver's license, permit or right to apply to be suspended until he successfully completes a defensive driving or other appropriate driver improvement course conducted by the Motor Vehicles Division or other rehabilitative program;

(b) Order the defendant's driver's license, permit or right to apply to be suspended or restricted for not more than 90 days; or

(c) Order the defendant to successfully complete a defensive driving or other appropriate driver improvement course conducted by the Motor Vehicles Division or other rehabilitative program within a period of time fixed by the judge, with the penalty for failure to comply with the order a future suspension or restriction of the defendant's driver's license, permit or right to apply.

(3) If the trial judge orders a suspension under subsection (1) or paragraph (a) or (b) of subsection (2) of this section, he shall take possession of the defendant's driver's license or permit. If the judge orders a suspension under subsection (1) of this section, he shall retain the defendant's license or permit as part of the court's record of the case, and immediately forward a copy of the suspension order to the Motor Vehicles Division. When the defendant pays the fine as ordered, the judge shall return the license or permit to the defendant and immediately forward a copy of an order to reinstate the license or permit to the division.

(4) If the judge orders a suspension under paragraph (a) or (b) of subsection (2) of this section, he shall immediately forward the defendant's driver's license or permit along with a copy of the order of suspension to the Motor Vehicles Division. If the defendant successfully completes a defensive driving course or other rehabilitative program, the division shall reinstate the defendant's license, permit or right to apply, return any license or permit to the defendant and notify the trial judge in writing that the defendant has complied with the judge's order.

(5) Upon receipt of any order entered by a trial judge under this section, the Motor Vehicles Division shall immediately make proper entry in its files and records and take other action, as necessary, to implement the judge's order.

COMMENTARY

This section would specifically empower the trial judge to order a suspension of a license, permit or right to apply to enforce payment of a fine or requirement that the defendant complete an MVD driving course or otherwise comply with the court's order. Implicit in the section is the recognition of a judge's authority to suspend payment of any fine.

Subsection (1) would apply to any traffic offense -- crimes or traffic infractions -- in which a fine has been imposed or the payment thereof has been suspended.

Subsection (2) would apply to traffic crimes or Class A traffic infractions -- the more serious offenses -- which would warrant remedial action such as the defendant's compulsory completion of a driving course. Under both subsection (1) and paragraphs (a) or (b) of subsection (2) the judge would take the defendant's license from him. Paragraph (c) spells out the authority of the judge to order the defendant to complete an appropriate driving course or other rehabilitative program on pain of having his license suspended for noncompliance.

Subsection (3) distinguishes between the two reasons for the suspension, and provides that if nonpayment of the fine is the grounds for the suspension, the judge would retain possession of the license. The license would be returned by the court when the fine is paid. The judge would notify MVD by a copy of the respective order when the suspension is ordered and when the license is reinstated.

Subsection (4) requires the judge to forward the license itself along with the suspension order inasmuch as the condition imposed here would be within the control of MVD rather than the court. The reinstatement of the defendant would be by action of MVD instead of the court, although the division would be required to advise the judge when the defendant completes the driving course.

Subsection (5) merely spells out the obvious necessity for the MVD to make the proper changes in its records regarding the suspension or reinstatement of any driver.

The draft does not include a system of uniform orders and procedures that would eliminate uncertainty as to the day to day license status of a driver. It's important that this be done, but the Consulting Committee considered it advisable that this be by appropriate rules of the Minor Court Rules Committee rather than by statute.

Section 10. (Appeals.) Appeals in traffic infraction cases shall be as provided in [Engrossed Senate Bill 403 (1973)].

COMMENTARY

Appeals could be handled in whatever manner the legislature authorizes for minor court appeals generally, although this draft strongly recommends SB 403. (See Appendix).

Chapter 623, Oregon Laws 1971, increased the jurisdiction of the district court and made it a court of record, effective July 1, 1973. Chapter 134, Oregon Laws 1973, (Senate Bill 593) delays the effective date of the 1971 law until July 1, 1975. Another bill, SB 403, introduced during the 1973 legislative session also would make district court a court of record, but provides for appeal on the record to the Court of Appeals instead of circuit court. This bill failed in the Senate Judiciary Committee which supported SB 593 instead. The 1975 Legislature undoubtedly will be taking another look at this area, particularly in connection with the recommendations to come out of the Committee on Judiciary regarding the Vehicle Code and adjudication procedures.

The draft assumes that in the case of traffic infractions either side could appeal and, further, that appeal should be to the Court of Appeals as provided in SB 403.

Were this draft or a similar approach adopted by the Judiciary Committee, the procedural provisions relating to appeals could be submitted by the committee to the Legislature as a separate bill. While the Consulting Committee strongly recommends SB 403 which was drafted and approved by the district judges in 1973, it deals only with district courts, and the Judiciary Committee will need to consider procedures for appeals from both municipal courts and justice of the peace courts.

Justice of the peace courts could well be covered by the same system as district courts. It might be that each municipality could elect at its option to adopt SB 403 and be subject to the same appellate procedure or continue its court as a nonrecord court. In the latter case it might be well to consider allowing for de novo appeals from such municipal courts to the district court, from which point on the matter would be handled as if it originated in the district court.

OREGON LEGISLATIVE ASSEMBLY—1973 REGULAR SESSION

ENGROSSED

Senate Bill 403

Ordered by the Senate June 15
(Including Amendments by Senate June 15)

Sponsored by Senator BROWNE, Representative COLE

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.

Provides that when district court judgment is filed in circuit court and becomes lien on real property it may be enforced in circuit court. Provides that certain jurisdiction granted district court does not affect jurisdiction of any justice court and in counties with no district court, circuit court has jurisdiction to hear all matters otherwise assigned to district court. Transfers jurisdiction from circuit courts to Court of Appeals to hear appeals from judgment or decree of district courts. Revises certain procedures for filing appeals from district courts. Requires audio record reporting devices to be used for reporting in district courts unless some other form of reporting is authorized by order of Supreme Court. Provides that such audio record is transcript of proceedings. Requires Court of Appeals to establish rules and procedures for preparation, distribution, filing and challenging such transcripts. Provides for district court reporter. Repeals specified provisions. Makes other changes.

Declares emergency. Takes effect June 30, 1973; but except that specified sections become operative on [January 1, 1974] July 1, 1975.

NOTE: Matter in bold face in an amended section is new; matter (*italic and bracketed*) is existing law to be omitted; complete new sections begin with **SECTION**.

1 A BILL FOR AN ACT

2 Relating to the administration of justice, including but not limited to
3 district courts and the Court of Appeals; creating new provisions;
4 amending ORS 2.510, 46.060, 46.250, 46.260, 46.740, 138.050, 156.630,
5 157.080, and sections 4, 7, 8, 9, 16 and 17, chapter 623, Oregon Laws
6 1971; repealing ORS 46.200 and section 15, chapter 623, Oregon Laws
7 1971; and declaring an emergency.

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

9 Section 1. ORS 46.060 is amended to read:

10 46.060. (1) **Except as provided in this section, the district courts shall**
11 **have exclusive jurisdiction** [*except for the jurisdiction of the justice*
12 *courts*] **in the following cases:**

13 (a) **For the recovery of money or damages only when the amount**
14 **claimed does not exceed \$3,000. When, in such a case arising out of con-**
15 **tract, the ends of justice demand that an account be taken or that the**
16 **contract or contracts be reformed or canceled, the district court shall have**
17 **jurisdiction to decree such accounting, reformation or cancellation.**

18 (b) **For the recovery of specific personal property when the value of**
19 **the property claimed and the damages for the detention do not exceed**
20 **\$3,000.**

21 (c) **For the recovery of any penalty or forfeiture, whether given by**
22 **statute or arising out of contract, not exceeding \$3,000.**

23 (d) **To give judgment without trial upon the confession of the de-**
24 **fendant for any of the causes of action specified in this section, except for**
25 **a penalty or forfeiture imposed by statute.**

26 (e) **To hear and determine actions of forcible entry and detainer.**

27 (f) **To enforce, marshal and foreclose liens upon personal property**
28 **where the amount claimed for such liens does not exceed \$3,000, and to**
29 **render personal judgment therein in favor of any party.**

30 (g) **Actions and proceedings of interpleader and in the nature thereof,**
31 **when the amount of money or the value of the property involved does not**
32 **exceed \$3,000.**

33 (h) **Actions and proceedings, whether legal or equitable, to preserve**
34 **the property or rights of any party to an action of which the court has**

1 jurisdiction, and to enforce the collection of its own judgments, including
2 all actions and proceedings in the nature of creditors' bills, and, in aid
3 of execution, to subject the interest of a judgment debtor in personal
4 property to the payment of such judgment [.] , but when a district court
5 judgment is filed in the circuit court judgment docket and becomes a lien
6 on real property it may be enforced in circuit court. District courts shall
7 not have jurisdiction to appoint receivers.

8 (2) The jurisdiction granted the district court in subsection (1) of this
9 section does not affect the jurisdiction of any justice court and in counties
10 with no district court the circuit court has jurisdiction to hear all matters
11 otherwise assigned to the district court.

12 [(2)] (3) Whenever an action or proceeding is properly brought in a
13 district court, the court shall have jurisdiction to hear and determine,
14 preserve and enforce all rights involved therein, including all cases in
15 equity when pleaded as defensive matter, and to exercise all legal and
16 equitable remedies necessary or proper for complete determination of
17 the rights of the parties, subject to the limitations imposed by this section.

18 [(3)] (4) Wherever in this chapter reference is made to actions or
19 proceedings, it includes any equitable proceeding of which a district
20 court has jurisdiction, and reference to "costs of transfer" includes fees
21 to the clerk of the district court for a transcript of the cause and includes
22 fees to the clerk of the circuit court for filing the appearances of both the
23 moving party and the responding party. The costs of transfer shall be
24 tendered to the clerk of the district court.

25 [(4)] (5) Whenever it shall appear from the pleadings in any cause
26 that the title to real property is in dispute, the court shall order the
27 pleading raising that question stricken, unless within five days the party
28 who has raised such issue shall file with the clerk of the district court a
29 written motion for the transfer of the cause to the circuit court, ac-
30 companied by the tender of the costs of such transfer.

31 Section 2. Section 4, chapter 623, Oregon Laws 1971, is amended to
32 read:

33 Sec. 4. [(1)] Subject to provisions of law specifically applicable to
34 district courts, a district court is a court of record [whose judgments and

1 decrees have the same force and effect and may be pleaded in the same
2 manner as judgments and decrees of a circuit court].

3 [(2) ORS 18.310 to 18.370 and 18.400 to 18.430 apply to judgments and
4 decrees of a district court.]

5 Section 3. ORS 46.250 is amended to read:

6 46.250. (1) Any party to a judgment or decree in a civil action or pro-
7 ceeding in a district court, other than a judgment or decree given by
8 confession or for want of an answer or a judgment in the small claims
9 department, may appeal therefrom to the [circuit court for the county in
10 which the district court is located] **Court of Appeals**. The plaintiff may
11 appeal from a judgment or decree given by confession or for want of an
12 answer where such judgment or decree is not in accordance with the
13 relief demanded in the complaint. An appeal may be taken only when
14 the amount of money or the value of the property involved, exclusive of
15 costs and disbursements, is more than \$50. The party appealing is known
16 as the appellant and the adverse party as the respondent, but the title of
17 the action or proceeding is not thereby changed.

18 (2) For the purpose of appeal therefrom the following are considered
19 judgments or decrees of a district court:

20 (a) An order affecting a substantial right, and which in effect de-
21 termines the action or proceeding so as to prevent a judgment or decree
22 therein.

23 (b) A final order affecting a substantial right, and made in an action
24 or proceeding after judgment or decree.

25 (c) An order setting aside a judgment and granting a new trial.

26 (3) An appeal shall be taken by the filing of a written notice with
27 the [clerk of the district court] **State Court Administrator** within [10]
28 20 days after the [rendition] entry of the judgment or decree. Where any
29 party has filed a motion for a new trial or for a judgment notwithstand-
30 ing the verdict the notice shall be filed within 20 days from the earlier
31 of either the date of entry of the order disposing of the motion or the
32 date the motion is deemed denied. Any other party desiring appeal must
33 file notice within five days after the expiration of the time otherwise
34 allowed in this subsection. The notice shall be served on the adverse party,

1 or his attorney, and the original notice with proof of service indorsed
2 thereon filed with the [court] State Court Administrator. A copy of
3 the notice shall be served on the clerk of the district court. A written
4 acknowledgment of service by the respondent, or his attorney, indorsed
5 on the notice of appeal shall be sufficient proof of service. [*Concurrently*
6 *with the filing of the notice the appellant shall give an undertaking for*
7 *the costs and disbursements on the appeal as provided in ORS 53.040.*
8 *Except as provided in this section and section 7 of this 1971 Act, the*
9 *appeal shall be taken in conformance with ORS chapter 53. The appeal*
10 *shall be considered perfected when the notice and the undertaking have*
11 *been filed with the clerk of the district court.*]

12 (4) Concurrent with the filing of the notice, the appellant shall file
13 an undertaking with the clerk of the district court. The undertaking must
14 be given with one or more sureties, to the effect the appellant will pay
15 all damages, costs and disbursements that may be awarded against him
16 on appeal. The undertaking does not stay the proceedings unless it
17 further provides that the appellant will satisfy any judgment that may
18 be against him on appeal. Within five days after the filing of the under-
19 taking the adverse party or his attorney may except in district court to
20 the sufficiency of the sureties in the undertaking or he shall be deemed
21 to have waived his right thereto. The appeal shall be considered perfected
22 when the notice and the undertaking have been filed in accordance with
23 this section.

24 [(4)] (5) [*The appeal shall be heard by the circuit court judge as-*
25 *signed to hear the case by the presiding judge of the circuit court.*] Im-
26 mediately upon service of the notice of appeal the clerk of the district
27 court shall notify the district court reporter who shall authenticate and
28 deposit the transcript with the clerk. If a party within the period allowed
29 for the notice of appeal requests to review the transcript for the purpose
30 of determining whether to appeal, the clerk shall, pursuant to local court
31 rule, allow the party a reasonable opportunity to review it.

32 (6) Except as provided in this section and section 4 of this 1973 Act
33 an appeal from district court shall be taken as far as possible in conform-
34 ance with ORS chapter 19.

1 Section 4. Section 7, chapter 623, Oregon Laws 1971, is amended to
2 read:

3 Sec. 7. (1) [*Within 30 days after filing notice of the appeal, the ap-*
4 *pellant shall cause a record of the case to be filed with the clerk of the*
5 *circuit court.*] **Upon service of the notice of appeal the clerk shall prepare**
6 **the record.** The record shall include a copy of all the material entries in
7 the docket of the district court relating to the cause and the appeal, and
8 all the original papers relating to the cause and the appeal and filed with
9 the district court. The record may include [*such report, transcript pre-*
10 *pared by an individual reporter or transcript electronically reported, or*
11 *statement of the proceedings in the district court as authorized by and*
12 *prepared pursuant to law and to rules made by the district court, which*
13 *rules shall be substantially uniform throughout the state and approved*
14 *by the Supreme Court*] **designated exhibits and the transcript of the pro-**
15 **ceedings in the district court. Upon the request of the State Court Ad-**
16 **ministrators the clerk shall deliver the record of the case .**

17 (2) **Unless some other form of reporting is specifically authorized by**
18 **order of the Supreme Court, reporting in district court shall be by an**
19 **audio record reporting device designated by the Supreme Court and oper-**
20 **ated under such rules as that court may prescribe. The transcript of pro-**
21 **ceedings reported in this manner shall be the audio record.**

22 [(2)] (3) [*If the record of the case is not filed within the time pro-*
23 *vided, the circuit court, within the time provided for that filing, may by*
24 *order extend the time for the filing upon such terms as the circuit court*
25 *considers just.*] **Extensions of time for the performance of any act in**
26 **connection with the preparation of the record may be granted by the**
27 **Court of Appeals under such rules as that court may prescribe.**

28 [(3)] (4) The [*circuit court*] **Court of Appeals by rule shall establish**
29 **procedure for the filing of transcript from the district court and for**
30 **the preparation and distribution to the parties, upon payment of the cost**
31 **of reproduction, the necessary copies of the original transcript. These rules**
32 **shall include a procedure to challenge the transcript. The Court of Appeals**
33 **shall also establish by rule the procedure for the filing of written briefs**
34 **and the presentation of oral argument on such case.**

1 [(4)] (5) The appeal shall be heard and determined by the [circuit
2 court] **Court of Appeals** on [that] the record. Upon an appeal from a judg-
3 ment, the judgment shall be reviewed only as to questions of law appearing
4 upon the record, and shall be reversed or modified only for errors sub-
5 stantially affecting the rights of the appellant. Upon an appeal from a
6 decree, the suit shall be tried anew upon the record.

7 Section 5. Section 8, chapter 623, Oregon Laws 1971, is amended to
8 read:

9 Sec. 8. (1) **The Court of Appeals has jurisdiction over a case when the
10 notice of appeal is filed in accordance with ORS 46.250. The proper filing
11 of notice is jurisdictional and may not be waived or extended.**

12 [(1)] (2) When it appears to the [circuit court] **Court of Appeals**
13 that the record of the case filed as provided in section [7] 4 of this [1971]
14 **1973 Act** is erroneous or incomplete in any particular substantially affect-
15 ing the merits of the appeal, on motion of a party or on its own motion
16 the court may make such order to correct or supplement the record as
17 may be just or may dismiss the appeal if the error or omission is without
18 reasonable excuse.

19 [(2)] (3) The [circuit court at any time after the record of the case
20 is filed] **Court of Appeals** once it has jurisdiction, or the district court at
21 any time before the record of the case is filed as provided in section [7] 4
22 of this [1971] **1973 Act**, may dismiss the appeal on motion based upon stip-
23 ulation of the parties. If the dismissal is made by the district court, the
24 clerk thereof shall send a certified copy of the order to the [clerk of the
25 circuit court] **State Court Administrator**.

26 [(3)] (4) The [circuit court] **Court of Appeals** may dismiss an appeal
27 if it is not properly taken and perfected; but an appeal may not be dis-
28 missed on the motion of the respondent on account of the appellant's under-
29 taking therefor being defective, if the appellant, before the determination
30 of the motion to dismiss, executes a sufficient undertaking and files it with
31 the [circuit court] **Court of Appeals**, upon such terms as [the circuit] that
32 court considers just.

33 [(4)] (5) A dismissal of an appeal constitutes an affirmance of the
34 judgment or decree of the district court appealed from.

1 Section 6. Section 9, chapter 623, Oregon Laws 1971, is amended to
2 read:

3 Sec. 9. (1) Upon an appeal under ORS 46.250 from a district court,
4 the [*circuit court*] **Court of Appeals** may affirm, reverse or modify the
5 judgment or decree appealed from, or may, if necessary and proper, order a
6 new trial.

7 (2) The decision of the [*circuit court*] **Court of Appeals** shall be entered
8 in the journal, and the cause remitted by mandate to the district court for
9 further proceedings as therein directed. If a new trial is ordered, upon
10 the receipt of the mandate by the clerk of the district court, the decision
11 and order shall be entered in the docket and thereafter the cause is con-
12 sidered pending and for trial in the district court, according to the direc-
13 tion of the [*circuit court*] **Court of Appeals**. If a new trial is not ordered,
14 upon the receipt of the mandate by the clerk of the district court, a judg-
15 ment or decree shall be entered in the docket, according to the direction
16 of the [*circuit court*] **Court of Appeals**, in like manner and with like effect
17 as if the judgment or decree was given in the district court.

18 (3) If judgment or decree is given against the appellant, it shall be
19 entered against his sureties also, in like manner and with like effect, ac-
20 cording to the nature and extent of their undertaking.

21 (4) Except as provided in ORS 18.350, an appeal does not discharge the
22 lien of a judgment or decree and, unless it is reversed, the lien thereof
23 is merged and continued in the affirmed or modified judgment or decree
24 given on appeal, from the time [*of the entry of the judgment or decree in*
25 *the docket of the district court*] **the judgment or decree attains lien status.**

26 (5) Unless otherwise ordered by the [*circuit court*] **Court of Appeals**,
27 the original papers relating to the cause and the appeal filed with the
28 [*clerk of the circuit court*] **State Court Administrator** as provided in [*sub-*
29 *section (1) of section 7 of*] **section 4 of this [1971] 1973 Act** shall be returned
30 to the clerk of the district court after the appeal has been disposed of
31 **but transcripts shall remain on file with the State Court Administrator.**

32 (6) Except as provided in this section and section 5 of this 1973 Act,
33 **an appeal to the Court of Appeals from the district court shall be dis-**
34 **posed of in conformance with ORS chapter 19.**

1 Section 7. ORS 46.740 is amended to read:

2 46.740. In suitable books the clerk of the district court and his deputies
3 shall keep a permanent record of all actions, suits, proceedings, decrees and
4 judgments had or rendered in the district court, which books shall be a
5 public record to be known as "The Docket of the District Court." The
6 clerk shall enter in these books the following:

7 (1) The title of every action, suit or proceeding commenced, with the
8 names of all parties thereto.

9 (2) The name and date of the making or filing of every pleading.

10 (3) The amount of money prayed for in the complaint or counterclaim
11 or, if the relief sought be other than a money judgment, a succinct conden-
12 sation of the relief sought.

13 (4) The date of issuance of every summons, writ of attachment or
14 execution, or other process.

15 (5) The date of the service of every summons, the name of the party
16 upon whom made and the date of the return, or, if the defendant cannot
17 be found, a statement to that effect, and where substituted service was
18 made, a brief statement to that effect.

19 (6) The date of the return of every writ or other process together
20 with a brief statement of the substance thereof.

21 (7) The date of the making or entry of every order and a brief state-
22 ment of the substance thereof.

23 (8) A brief statement of the relief granted on every judgment, includ-
24 ing costs and disbursements.

25 (9) A brief statement of the substance of every decree.

26 [(10) *Entries for the docketing of judgments and decrees under col-*
27 *umns headed as follows: Judgment Debtors; Judgment Creditors; Amount*
28 *of Judgment; When Docketed; Appeal, When Allowed; Decision on Appeal;*
29 *Satisfaction, When Entered.*]

30 [(11)] (10) The amounts of money received on execution or tendered
31 into court.

32 [(12)] (11) The satisfaction of the attorney's lien, if any.

33 [(13)] (12) All costs that accrued subsequent to the entry of the judg-
34 ment.

1 [(14)] (13) A brief statement of the substance of every order relating
2 to admission to bail, to the taking of bail or to commitment for want of bail.

3 [(15)] (14) Every other matter that is material or specially required
4 by any statute.

5 [(16)] (15) Nothing contained in subsections (1) to [(15)] (14) of this
6 section shall require or permit verbatim entries to be made in the docket
7 of the district court unless the context of any such subsection so requires.

8 Section 8. ORS 156.630 is amended to read:

9 156.630. Criminal cases in district courts shall be reported [*either by*
10 *an individual reporter or by an electronic device except in the discretion*
11 *of the judge and upon request by the defendant and the state that the re-*
12 *porting requirement be waived*] **except that arraignments need not be**
13 **reported if some other suitable record is maintained. Pursuant to local**
14 **court rule reporting may be waived in advance of trial if both the defendant**
15 **and the state agree and the judge in his discretion determines such a**
16 **waiver to be appropriate. Waiver of reporting constitutes waiver of the**
17 **right to appeal issues not otherwise preserved in the record. Reporting of**
18 **criminal cases shall be in accordance with section 4 of this 1973 Act.**

19 Section 9. ORS 157.080 is amended to read:

20 157.080. (1) In a criminal or quasi-criminal action or proceeding in a
21 district court, an appeal may be taken by the defendant from a judgment
22 of conviction to the [*circuit court for the county in which the district*
23 *court is located.*] **Court of Appeals unless otherwise prohibited by law.**

24 (2) **The public prosecutor may only take an appeal from:**

25 (a) **An order made prior to trial dismissing a complaint or information;**

26 (b) **An order sustaining a plea of former conviction or acquittal;**

27 (c) **An order arresting the judgments; or**

28 (d) **An order made prior to trial suppressing evidence.**

29 [(2)] (3) An appeal under either subsection (1) or (2) of this section
30 is taken and proceedings had thereon in the manner provided in ORS
31 46.250, [*and*] sections [7 to 9 of this 1971 Act] **4 to 6 of this 1973 Act, and the**
32 **appeals provisions of ORS chapter 138, in so far as those sections are or**
33 **can be made applicable, except that:**

1 (a) [*If a written notice*] **Notice of appeal by a defendant** is [*served, it*
2 *shall be*] served on the district attorney for the county or his deputy.

3 (b) An undertaking of the appellant to the effect that he will pay all
4 costs and disbursements that may be awarded against him on the appeal
5 is not required.

6 [(c) *If the defendant is in custody at the time the appeal is allowed,*
7 *the clerk of the district court shall cause the record of the case to be de-*
8 *livered to the clerk of the circuit court within 30 days after the allowance*
9 *of the appeal.*]

10 [(d)] (c) Allowance of the appeal does not stay the proceedings on
11 the judgment unless **the district court judge places defendant on bail in**
12 **accordance with ORS 140.030** and the defendant gives an undertaking of
13 bail on appeal as provided in ORS 140.100.

14 [(e)] (d) If judgment against the defendant is reversed on appeal
15 without the ordering of a new trial, the [*circuit court*] **Court of Appeals**
16 shall direct, if he is in custody, that he be discharged therefrom, or if he
17 has been admitted to bail, that his bail be exonerated, or if money has
18 been deposited instead of bail, that it be refunded to the depositor.

19 **SECTION 10.** ORS 46.200 is repealed and section 11 of this Act is en-
20 acted in lieu thereof.

21 **SECTION 11.** Civil proceedings in district court, from which there is a
22 right to appeal, shall be reported if requested by one of the parties. Re-
23 porting shall be in accordance with section 4 of this 1973 Act. If no request
24 is made and no transcript is prepared, the parties shall be deemed to
25 waive the right to appeal on issues not otherwise preserved in the record.

26 Section 12. ORS 46.260 is amended to read:

27 46.260. Subject to provisions of law specifically applicable to district
28 courts [*an appeal may be taken to the Court of Appeals or the Supreme*
29 *Court from any part of any judgment, decree or other final order of the*
30 *circuit court upon an appeal from a district court, in the manner provided*
31 *for appeals from the circuit court.*] **any party aggrieved by a final decision**
32 **of the Court of Appeals on a case from the district court may petition**
33 **the Supreme Court for review of that decision in the manner provided for**
34 **petitions of review.**

- 1 **SECTION 13.** Section 15, chapter 623, Oregon Laws 1971, is repealed.
- 2 Section 14. Section 16, chapter 623, Oregon Laws 1971, is amended to
3 read:
- 4 Sec. 16. ORS 46.065 [,46.274 and 46.276 are] is repealed.
- 5 Section 15. Section 17, chapter 623, Oregon Laws 1971, is amended to
6 read:
- 7 Sec. 17. [*This Act*] **Chapter 623, Oregon Laws 1971, and this 1973 Act**
8 shall not affect any appeal [*to circuit court that was perfected*] **of a case**
9 **tried in district court** before the effective date of this Act. Such appeals
10 shall be tried by the circuit court in accordance with the law existing
11 on the date the [*appeal was perfected*] **case was tried in district court .**
- 12 Section 16. ORS 2.510 is amended to read:
- 13 2.510. (1) As part of the judicial branch of state government, there is
14 created a court of justice to be known as the Court of Appeals.
- 15 (2) The Court of Appeals shall have exclusive jurisdiction of appeals
16 in the following matters:
- 17 (a) Appeals from judgments, as defined in ORS 19.005, of circuit courts
18 in criminal cases:
- 19 (A) Arising under ORS 138.010 to 138.300 and 138.510 to 138.680.
- 20 (B) In habeas corpus proceedings seeking to adjudicate the validity
21 of any conviction or imprisonment; but this subparagraph does not abrogate
22 the original habeas corpus jurisdiction of the Supreme Court.
- 23 (C) In extradition proceedings under ORS chapter 147.
- 24 (D) In proceedings relating to probation or parole.
- 25 (E) In proceedings arising under ORS chapter 168.
- 26 (F) In proceedings arising under ORS 221.360.
- 27 (b) Appeals from judgments, as defined in ORS 19.005, of circuit courts:
- 28 (A) In proceedings arising under ORS 111.105.
- 29 (B) In proceedings arising under ORS 118.350.
- 30 (C) In guardianship and conservatorship proceedings.
- 31 (D) In adoption proceedings under ORS 109.305 to 109.400.
- 32 (c) Appeals from judgments, as defined in ORS 19.005, of circuit courts
33 exercising jurisdiction under ORS chapter 419.
- 34 (d) Appeals from judgments, as defined in ORS 19.005, of circuit courts:

1 (A) In suits for [*divorce, either absolute*] **dissolution of marriage or**
2 **separation** from bed and board.

3 (B) In suits for annulment of the marriage contract.

4 (C) In suits or other proceedings relating to child custody or support.

5 (D) In filiation proceedings.

6 (e) Appeals from judgments, as defined in ORS 19.005, of circuit
7 courts on any action of or failure to act by state agencies, as defined by ORS
8 183.310 or 291.002 or by any agency of local government, except orders and
9 rulings that are appealable to the Oregon Tax Court.

10 (f) In proceedings for review of orders of state agencies in a contested
11 case as defined in ORS 183.310.

12 (g) **All appeals from district courts as defined in ORS 46.250 and**
13 **157.080.**

14 (3) Nothing in this section is intended to provide or create a right of
15 appeal where such right is not otherwise provided or created by law.

16 Section 17. ORS 138.050 is amended to read:

17 138.050. A defendant who has plead guilty may take an appeal from a
18 judgment on conviction where it imposes an excessive fine or excessive,
19 cruel or unusual punishment. If the judgment of conviction is in the circuit
20 court or the district court, the appeal shall be taken to the Court of Ap-
21 peals; if it is in the [*district court,*] justice of the peace court or municipal
22 court or city recorder's court, the appeal shall be taken to the circuit court
23 of the county in which such court is located. On such appeal, the appellate
24 court shall only consider the question whether an excessive fine or exces-
25 sive, cruel or unusual punishment not proportionate to the offense
26 has been imposed. If in the judgment of the appellate court the fine im-
27 posed is excessive or the punishment imposed is excessive, unusual or
28 cruel and not proportionate to the offense, it shall direct the court from
29 which the appeal is taken to impose the punishment which should be
30 administered.

31 **SECTION 18.** Sections 19 to 22 of this 1973 Act are added to and made
32 a part of ORS chapter 46.

33 **SECTION 19.** (1) When district court proceedings are reported by an

1 audio record reporting device, the district court reporter is the individual
2 operating the device during the proceeding.

3 (2) The governing body of the county shall pay out of the funds of
4 the county such amounts as will reasonably compensate a district court
5 reporter.

6 (3) In civil cases the clerk of the district court is authorized to collect
7 from the parties to a proceeding a total fee of \$8 for each day or part
8 thereof during which a record of the proceedings is kept with an audio
9 reporting device. Where both parties have requested the reporting, the
10 fee will be shared evenly. Where one party is willing to waive reporting
11 the fee will be paid fully by the party requesting the reporting.

12 **SECTION 20.** If the Supreme Court specifically orders that a district
13 court report its proceedings by court stenographer, then the judge of the
14 district court shall appoint a reporter who shall take the same oath and
15 perform the same duties in the district court as is provided by statute for
16 the circuit court reporter. Such a reporter shall receive the same fee as
17 is provided by statute respecting the circuit court reporter. Cases reported
18 in accordance with such an order shall be appealed to the Court of Appeals
19 in accordance with ORS chapter 19.

20 **SECTION 21.** (1) In any case filed in the district court where a party
21 asserts, or the court on its own motion suggests, that the case filed in the
22 court is properly within the jurisdiction of the circuit court, the district
23 court shall refer the case to the circuit court which shall decide the ques-
24 tion of jurisdiction at the trial level. If the circuit court decides the case
25 was properly filed in the district court it shall remand the case to that
26 court for trial but if the circuit court determines that the case should have
27 been filed in circuit court it shall retain jurisdiction and treat the case
28 as properly filed. The circuit court shall refer to the district court any case
29 erroneously filed in the circuit court.

30 (2) No case filed in the circuit court or district court shall be dismissed
31 by either court solely for having been filed in the wrong court, but shall
32 be considered timely filed in the court ultimately determined to have jur-
33 isdiction. The plaintiff shall bear the costs of transfer if the case is brought
34 in the wrong court.

1 (3) If the appellate court decides that jurisdiction was improperly de-
2 cided at the trial level, it shall remand the case to the proper trial court
3 with instructions for that court to perform whatever actions the appellate
4 court determines justice to require.

5 **SECTION 22.** The district court reporter shall retain transcripts of
6 civil trials until the right to appeal has terminated. In criminal trials the
7 district court reporter shall retain the transcript for two years from the
8 entry of judgment.

9 **SECTION 23.** This Act being necessary for the immediate preservation
10 of the public peace, health and safety, an emergency is declared to exist,
11 and this Act takes effect on June 30, 1973; but, except for section 13 of
12 this Act, this Act and chapter 623, Oregon Laws 1971, shall first be opera-
13 tive on July 1, 1975.

