

SERIOUS TRAFFIC OFFENSES

Amendment

Section ¹₅. (Definitions for ORS 484.700 to 484.750.) ORS 484.705 is amended to read:

484.705. (1) As used in ORS 484.700 to 484.750, unless the context requires otherwise, "habitual offender" means any person, resident or nonresident, who within a five-year period, has been convicted of or forfeited bail for the number and kinds of traffic offenses described by paragraphs (a) and (b) of this subsection, as evidenced by the records maintained by the division.

(a) Three or more of any one or more of the following offenses:

(A) Manslaughter or criminally negligent homicide resulting from the operation of a motor vehicle;

(B) Driving while under the influence of intoxicating liquor, dangerous drugs or narcotic drugs as defined by [subsection (2) of ORS 483.992 or 483.999] section -- of this 1975 Act;

(C) Driving a motor vehicle while his license, permit or privilege to drive has been suspended or revoked as defined by [ORS 482.650] section -- of this 1975 Act;

(D) Reckless driving as defined by subsection (1) of ORS 483.992 or dangerous driving as defined by sections -- and -- of this 1975 Act;

(E) Failure of the driver of a motor vehicle involved in an accident resulting in the death of or injury to any person or damage to any vehicle being driven or attended by a person to perform the duties required by subsections (1) and (2) of ORS 483.602.

(b) Twenty or more of any one or more offenses involving the operation of a motor vehicle which violations are required to be reported to the division, including offenses enumerated in paragraph (a) of this subsection; however, no person shall be considered a habitual offender under this paragraph until his 21st conviction or bail forfeiture within a five-year period when the 20th conviction or bail forfeiture occurs after a lapse of two years or more from the last preceding conviction or bail forfeiture.

(2) The offenses included in paragraphs (a) and (b) of subsection (1) of this section include city traffic offenses, as defined by ORS 484.010, and offenses under any federal law, or any law of another state, including subdivisions thereof, substantially conforming thereto but do not include nonmoving offenses as defined in ORS 483.346 to 483.545.

(3) As used in ORS 484.700 to 484.750, "division" means the Motor Vehicles Division of the Department of Transportation or a similar agency of another state.

APPEALS IN TRAFFIC INFRACTION CASES

Commentary

The draft provisions relating to traffic infractions presuppose that appeals in such cases would be in the same manner as provided for minor court appeals generally.

Chapter 623, Oregon Laws 1971, as amended by the 1973 Legislature, makes district court a court of record effective July 1, 1975, but continues to provide that appeals from district court judgments shall be to the circuit court.

The Judiciary Committee, as part of its package of proposed vehicle code legislation, will introduce a bill patterned upon SB 403, which was introduced during the 1973 legislative session. The committee's bill also would make district court a court of record, would specifically authorize a taped record of the proceedings and would provide for appeal to the Court of Appeals.

Justice and municipal courts could elect to adopt the appeals procedures of district courts in traffic infraction cases, except that in the case of an appeal from such courts the cause would be tried de novo upon the record.

CLASSES OF OFFENSES; DISPOSITION OF OFFENDERS

Proposed Amendments

Section _____. (Adding provision relating to review by Court of Appeals.) Section ____ of this Act is added to and made a part of ORS 2.510 to 2.600.

Section _____. (Scope of review by Court of Appeals in traffic infraction cases.) (1) Upon an appeal from a district court judgment in a traffic infraction case, the scope of review by the Oregon Court of Appeals shall be as provided in section 3, Article VII (Amended), of the Oregon Constitution.

(2) No judgment shall be reversed or modified under subsection (1) of this section, except for error substantially affecting the rights of a party.

(3) Upon an appeal to the Court of Appeals from a justice court or municipal court judgment in a traffic infraction case, the cause shall be tried anew upon the record.

Section ____ . (Appeals from justice and municipal courts.) (1)

A justice court or municipal court, at its option, may elect to provide for appeals in traffic infraction cases to be on the record as provided by law for appeals from district court. Otherwise, an appeal from a justice or municipal court shall be tried de novo in the circuit court for the county in which the traffic infraction conviction occurs.

(2) If a justice or municipal court elects to follow district court appeal procedures, it shall provide for a record to be made of any trial of a traffic infraction in the same manner as provided by law for the trial of a traffic infraction in district court.

Section 12. (Use of chemical analyses to show intoxication.)

ORS 483.642 is amended to read:

483.642. (1) At the trial of any civil or criminal action, suit or proceeding arising out of the acts committed by a person driving a motor vehicle while under the influence of intoxicating liquor, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's breath, blood, urine or saliva shall [give rise to the following presumptions:] have the following evidentiary effect:

[(a) Not more than .05 percent by weight of alcohol in his blood, supports a disputable presumption that he was not then under the influence of intoxicating liquor.]

[(b)](a) [More than .05 percent but 1] Less than [.10] .08 percent by weight of alcohol in his blood, is indirect evidence that may be used to determine whether or not he was then under the influence of intoxicating liquor.

[(c)](b) Not less than [.10] .08 percent by weight of alcohol in his blood, [supports a disputable presumption that he was then] constitutes being under the influence of intoxicating liquor.

(2) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood.

(3) Nothing in this section is intended to limit the introduction of any competent evidence bearing upon the question of whether or not a person has been under the influence of intoxicating liquor.

Section 8. (Counsel for state and defendant.) (1) At any trial involving a traffic infraction only, defense 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.] (a) Notwithstanding any other provision of law, no party to a case involving a traffic infraction only shall appear by counsel unless, not less than ten days prior to the time set for trial, notice of appearance by counsel is filed with the court and served on the opposing party.

(b) Failure to file the notice required by this section shall bar appearance by counsel and shall not constitute grounds for continuance of the time set for trial.

COMMENTARY:

Subsection (2) (a) contemplates, among others, ORS 8.660 (Attendance by district attorney of all terms of court having jurisdiction of public offenses within his county) and ORS 9.320 (State appears by attorney in all actions to which it is a party).

Amended

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**.

A BILL FOR AN ACT

1
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 ¹⁹⁷⁵~~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 ministrator 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 ¹⁹⁷⁵ ~~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] ¹⁹⁷⁵ ~~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] ¹⁹⁷⁵ 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 ¹⁹⁷⁵ 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 ¹⁹⁷⁵~~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 ¹⁹⁷⁵~~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 ^{releases the} ~~places~~ defendant on bail in
12 accordance with ORS ^{135.285} ~~[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 ^{released on security} ~~admitted to bail~~, that his ^{security amount} ~~bail~~ be exonerated, or if money has
18 been deposited instead of ^{security deposit} ~~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 ¹⁹⁷⁵ ~~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 ¹⁹⁷⁵ 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 ¹³³ 147.

24 (D) In proceedings relating to probation or parole.

25 ~~(E) In proceedings arising under ORS chapter 168.~~

26 (E) (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 a
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 ¹⁹⁷⁵~~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, ^{1975.} ~~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.~~]

