

Oregon Law Commission  
JUSTICE AND MUNICIPAL COURTS APPEALS WORK GROUP  
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May 7, 2026

**Should Appeals from Circuit Court to Court of Appeals in Violation Cases Proceed as Civil or Criminal Cases?**

A small work group of the Justice and Municipal Courts Appeals Work Group has tentatively decided that appeals in violation cases adjudicated in circuit court (originally and on appeal from a justice or municipal court not of record) or in a justice or municipal court of record should continue to proceed under ORS chapter 19. The work group was interested in illustrations of practical differences between an appeal in a violation case under ORS chapter 19 versus chapter 138.<sup>1</sup> Arguably, the presence, or absence, of legal authority to pursue an appeal and to address issues that typically arise on appeal, is a practical consideration.

Here is one example:

**19.205 Appealable judgments and orders.** (1) Unless otherwise provided by law, a limited judgment, general judgment or supplemental judgment, as those terms are defined by ORS 18.005, may be appealed as provided in this chapter. A judgment corrected under ORCP 71 may be appealed only as provided in ORS 18.107 and 18.112.

(2) An order in an action that affects a substantial right, and that effectively determines the action so as to prevent a judgment in the action, may be appealed in the same manner as provided in this chapter for judgments.

(3) An order that is made in the action after a general judgment is entered and that affects a substantial right, including an order granting a new trial, may be appealed in the same manner as provided in this chapter for judgments.

(4) No appeal to the Court of Appeals shall be taken or allowed in any action for the recovery of money or damages only unless it appears from the pleadings that the amount in controversy exceeds \$250.

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<sup>1</sup> Much of the information in this memorandum is reflected in the analysis of ORS chapters 19 and 138 that accompanied my previous memorandum. I apologize to the work group members for not making the import of that information more apparent.

(5) An appeal may be taken from the circuit court in any special statutory proceeding under the same conditions, in the same manner and with like effect as from a judgment or order entered in an action, unless appeal is expressly prohibited by the law authorizing the special statutory proceeding.

(6) Nothing in ORS chapter 18 affects the authority of an appellate court to dismiss an appeal or to remand a proceeding to the trial court under ORS 19.270 (4) based on the appellate court's determination that the appeal has not been taken from an appealable judgment or order.

Except for subsection (5), which has a counterpart in ORS chapter 138, none of the other provisions of ORS 19.205 apply to violation cases. The construct of limited, general, and supplemental judgments applies only to civil cases and has no application to violation cases whatsoever. Subsection (6) has no application to violation cases because, again, ORS chapter 18 applies to civil cases, not violation cases. Thus, it appears that no appeal may be taken from a judgment (or order) under ORS 19.205.

Here is another example:

**19.245 Who may appeal; appeal of default judgments and judgments taken by confession; appeal of stipulated judgments.** (1) Except as provided in subsections (2) and (3) of this section, any party to a judgment may appeal from the judgment.

(2) A party to a judgment given by confession or for want of an answer may not appeal from the judgment except as follows:

(a) A plaintiff, third party plaintiff or a party who pleaded a cross-claim or counterclaim may appeal from the judgment if the judgment is not in accord with the relief demanded in the complaint.

(b) A defendant may appeal from the judgment if the trial court has entered a default judgment against the defendant as a sanction or has denied a motion to set aside a default order or judgment.

(c) A defendant may appeal from the judgment if it is void.

(3) A party to a stipulated judgment may appeal from the judgment only if:

(a) The judgment specifically provides that the party has reserved the right to appellate review of a ruling of the trial court in the cause; and

(b) The appeal presents a justiciable controversy.

Except possibly the provisions relating to default judgments, none of the provisions of ORS 19.245 apply to violation cases.

By contrast, here are the parts of ORS chapter 138 addressing appealable decisions and who may appeal in criminal cases:

**138.020 Who may appeal.** Either the state or the defendant may as a matter of right appeal from a judgment in a criminal action in the cases prescribed in ORS 138.010 to 138.310, and not otherwise.

**138.035 Appeal by defendant.** (1)(a) A defendant may take an appeal from the circuit court, or from a municipal court or a justice court that has become a court of record under ORS 51.025 or 221.342, to the Court of Appeals from a judgment:

(A) Conclusively disposing of all counts in the accusatory instrument or conclusively disposing of all counts severed from other counts;

(B) Convicting the defendant of at least one count; and

(C) Imposing sentence on all counts of which the defendant was convicted.

(b) For the purposes of this subsection, if the trial court merges a determination of guilt on one count with a determination of guilt on another count and imposes a sentence on the merged determinations of guilt, the trial court has conclusively disposed of the merged counts.

(2)(a) A defendant may appeal a judgment ordering payment of restitution but not specifying the amount of restitution.

(b) A defendant may appeal a supplemental judgment awarding restitution.

(3) A defendant may appeal a judgment or order extending a period of probation, imposing a new or modified condition of probation or of sentence suspension, or imposing or executing a sentence upon revocation of probation or sentence suspension.

(4) A defendant may appeal an amended or corrected judgment entered after the judgment of conviction and sentence.

(5) A defendant may cross-appeal when the state appeals pursuant to ORS 138.045.

**138.045 Appeal by state.** (1) The state may take an appeal from the circuit court, or from a municipal court or a justice court that has become a court of record under ORS 51.025 or 221.342, to the Court of Appeals from:

(a) An order made prior to trial dismissing or setting aside one or more counts in the accusatory instrument;

(b) An order allowing a demurrer;

(c) An order arresting the judgment;

- (d) An order made prior to trial suppressing evidence;
  - (e) An order made prior to trial for the return or restoration of things seized;
  - (f) For a felony committed on or after November 1, 1989, a judgment, amended judgment or corrected judgment of conviction;
  - (g) For any felony, a judgment, amended judgment, supplemental judgment, corrected judgment or post-judgment order, that denied restitution or awarded less than the amount of restitution requested by the state;
  - (h) An order or judgment in a probation revocation hearing finding that a defendant who was sentenced to probation under ORS 137.712 has not violated a condition of probation by committing a new crime;
  - (i) An order made after a guilty finding dismissing or setting aside one or more counts in the accusatory instrument; or
  - (j) An order granting a new trial.
- (2) Notwithstanding subsection (1) of this section, when the state chooses to appeal an order described in subsection (1)(a), (b) or (d) of this section, the state shall take the appeal to the Supreme Court if the defendant is charged with murder or aggravated murder.

Recall that, in HB 2460, the previous iteration of this Work Group adapted the provisions of ORS 138.035 and 138.045 to describe decisions of justice and municipal court not of record in misdemeanor and violation cases that are appealable to circuit court. It would be a hearty measure of irony if those same decisions would not be appealable from circuit courts and justice and municipal courts of record to the Court of Appeals in violation cases.

Another example; note in particular subsection (6), which has no counterpart in ORS chapter 19:

**138.005 Definitions for ORS 138.010 to 138.310.** As used in ORS 138.010 to 138.310:

- (1) Unless the context requires otherwise, the terms defined in ORS 19.005 have the meanings set forth in ORS 19.005.
- (2) “Appealable” means, in reference to a judgment or order rendered by a trial court, that the judgment or order is, by law, subject to appeal by a party.
- (3) “Colorable claim of error” means an argument that is plausible, grounded in the facts of the case, and reasonable under current law or a reasonable extension or modification of current law.

(4) “Reviewable” means, in reference to a particular decision of a trial court on appeal from an appealable judgment or order, that the appellate court may, by law, consider the decision and resolve an issue regarding the decision.

(5) “Sentence” means all legal consequences established or imposed by the trial court after conviction of an offense, including but not limited to:

(a) Forfeiture, imprisonment, cancellation of license, removal from office, monetary obligation, probation, conditions of probation, discharge, restitution and community service; and

(b) Suspension of imposition or execution of any part of a sentence, extension of a period of probation, imposition of a new or modified condition of probation or of sentence suspension, and imposition or execution of a sentence upon revocation of probation or sentence suspension.

(6) “State” includes, in addition to the State of Oregon and when referencing a party:

(a) The county, in an appeal from a justice court that has become a court of record under ORS 51.025 in which the county is the plaintiff; and

(b) The city, in an appeal from a municipal court that has become a court of record under ORS 221.342 in which the city is the plaintiff.

In my view, as a practical matter, ORS 138.020, 138.035, and ORS 138.040 facilitate appeals in violation cases as compared with the corresponding provisions of ORS chapter 19 that do not.

In addition to ORS 19.205 and 19.245, for a party looking for guidance on how to take and pursue an appeal in a violation case, none the following statutes in ORS chapter 19 provide any help whatsoever. (I have not set out the content of each statute, but I think the title of each statute accurately reflects the inapplicability of the statute to violation cases):

- 19.215 Determining amount in controversy in class action for purposes of appeal
- 19.225 Appealability of certain orders in class actions
- 19.275 Continuing jurisdiction of trial court in certain domestic relations cases
- 19.300 Undertakings on appeal generally; filing and service
- 19.305 Qualifications of sureties; objections
- 19.310 Waiver, reduction or limitation of undertaking
- 19.312 Supersedeas undertaking in certain actions against tobacco product manufacturer
- 19.315 Requirements for use of letter of credit

- 19.320 Expiration and renewal of letter of credit
- 19.325 Payment on letter of credit
- 19.330 Stays generally<sup>2</sup>
- 19.335 Stay by filing of supersedeas undertaking
- 19.340 Waiver of supersedeas undertaking; sale of perishables
- 19.345 Enforcement of judgment in contract action notwithstanding appeal
- 19.350 Discretionary stay by court
- 19.355 Stay of domestic relations judgment
- 19.360 Appellate review of trial court orders relating to undertakings and stays
- 19.375 Allocating cost of transcript
- 19.415 Scope of appellate review\*
- 19.420 Action by appellate court on appeal; review of order granting new trial (1), (2) or judgment notwithstanding verdict\*
- 19.425(2) Directing restitution in civil cases
- 19.430 Review of trial court order granting a new trial on court's own initiative
- 19.440 Award of attorney fees authorized by statute
- 19.445 Damages upon affirmance of judgment

By contrast, for the same party looking for guidance on how to take and pursue an appeal in a violation cases, these statutes that are part of ORS chapter 138 provide such guidance.<sup>3</sup>

- 138.010 Mode of review; abolition of writs of error and certiorari
- 138.030 Parties designated “appellant” and “respondent”; title of action
- 138.065 Appeal from judgment or order deciding special statutory proceeding
- 138.071 Time within which appeal must be taken
- 138.081 Service and filing of notice of appeal [*should be amended to include the service provisions in ORS 138.057*]
- 138.085 Content requirements for certain notices of appeal
- 138.090 Signature to notice of appeal
- 138.105 Matters reviewable on appeal by defendant [*may need to be amended to allow appeals from denials of motions for relief from default in violation cases*]

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\* These statutes, defining the Court of Appeals scope of review on appeal in civil cases, are rendered inapplicable by the provisions of ORS 138.057 and other statutes providing that the scope of review applicable to misdemeanor and felony cases apply to violation cases.

<sup>3</sup> Recall that ORS 131.005(6) defines “criminal action” as follows: “\* \* \* an action at law by means of which a person is accused of the commission of a violation, misdemeanor or felony.”

- 138.115 Matters reviewable on appeal by state [*may need to be amended to allow appeals from grants of motions for relief from default in violation cases*]
- 138.210 Failure to file brief by appellant; appearance by defendant
- 138.225 Summary affirmation
- 138.227 Joint motion to vacate and remand
- 138.255 Court of Appeals certification of appeal to Supreme Court in lieu of disposition; party request for Supreme Court review
- 138.257 Determination on appeal
- 138.275 Notice to parties concerning modified judgment or order or supplemental judgment

Apart from the effect of these statutes in ORS chapter 138 on the parties, some of the statutes are intended to assist the Court of Appeals in efficiently deciding appeals including in violation cases. If those statutes are not applicable to appeals in violation cases, the Court of Appeals is deprived of the efficiency those statutes were adopted to promote.

If the work group ultimately decides that appeals in violation cases from circuit court and from justice and municipal courts of record to the Court of Appeals should proceed under ORS chapter 19, at a minimum, the work group should amend ORS 138.057 to merely refer the read to ORS chapter 19 and move all its substantive provisions to ORS chapter 19. And, consistent with that action, ORS 55.150 and 221.367 should be amended as shown below. Alternatively, if ORS 55.150 and 221.367 are amended to correctly identify the court to which any appeal should be taken, there is no need for ORS 138.057 at all and it could simply be repealed and its substantive provisions made a part of ORS chapter 19.

**138.057 Appeal from judgment involving violation.** *[(1) If a justice court or municipal court has become a court of record under ORS 51.025 or 221.342, an appeal from a judgment involving a violation shall be as provided in ORS chapter 19 for appeals from judgments entered by circuit courts, except that the standard of review is the same as for an appeal from a judgment in a proceeding involving a misdemeanor or felony.*

*(2)(a) If a justice court or municipal court has not become a court of record under ORS 51.025 or 221.342, the appeal from a judgment involving a violation entered by the justice court or municipal court may be taken to the circuit court for the county in which the justice court or municipal court is located as follows:*

- (A) For a justice court, as provided in ORS 55.160 to 55.335; and*
- (B) For a municipal court, as provided in ORS 221.369 to 221.407.*

*(b) No undertaking shall be required of the party filing a notice of appeal under the provisions of this subsection.*

*[(3)(a) Subject to the provisions of this subsection, an appeal from a judgment involving a violation entered by a circuit court may be taken as provided in ORS chapter 19.*

*(b) For the purpose of meeting the requirements imposed by ORS 19.240, the copy of the notice of appeal must be served on:*

*(A) The city attorney, if the appeal is made by the defendant from a decision initially made in a municipal court.*

*(B) The district attorney for the county, if the appeal is made by the defendant from a decision initially made in a justice court.*

*(c) Notwithstanding ORS 19.270, timely service on the city attorney or district attorney under the provisions of this subsection is not jurisdictional and the Court of Appeals may extend the time for that service.*

*(d) Notwithstanding any provision of ORS chapter 19, an undertaking on appeal is not required for an appeal from a judgment involving a violation.*

*(e)(A) The filing of a notice of an appeal from a judgment involving a violation does not act to automatically stay the judgment.*

*(B) Nothing in this paragraph is intended to affect the authority of the circuit court to stay enforcement of the judgment under ORS 19.350, 138.285 or 138.295 or any other authority.*

*(f) The standard of review for an appeal under this subsection is the same as for an appeal from a judgment in a proceeding involving a misdemeanor or felony.*

*(g) In any case in which only violations are charged, the state may not appeal from an order dismissing the case that is entered by reason of a police officer's failure to appear at the trial of the matter if the police officer was timely provided with notice of the trial date.]*

**(1) As used in this section, "violation" means an offense described in ORS 153.008.**

**(2) In a prosecution for a violation, an appeal from a decision of a circuit court or a justice court or municipal court of record under ORS 51.025 or 221.342 must be taken as provided in ORS chapter 19.**

**55.150 Court to which appeal is taken.** (1) If a justice court has become a court of record under ORS 51.025:

(a) An appeal in a proceeding involving a violation shall be taken to the Court of Appeals as provided in [*ORS 138.057*] **ORS chapter 19 for appeals from a circuit court.**

(b) An appeal in a proceeding involving a misdemeanor shall be taken to the Court of Appeals as provided in ORS 138.010 to 138.310 for appeals from a circuit court.

(c) An appeal in a civil action shall be taken to the Court of Appeals as provided in ORS chapter 19 for appeals from a circuit court.

(2) If a justice court has not become a court of record under ORS 51.025, an appeal from a proceeding involving a violation or misdemeanor or a civil action shall be taken to the circuit court of the county in which the justice court is located and in the manner provided in ORS 52.815, 52.820 and 55.160 to 55.335.

**221.367 Court to which appeal is taken.** (1) If a municipal court has become a court of record under ORS 221.342:

(a) An appeal in a proceeding involving a violation shall be taken to the Court of Appeals as provided in [*ORS 138.057*] **ORS chapter 19 for appeals from a circuit court.**

(b) An appeal in a proceeding involving a misdemeanor shall be taken to the Court of Appeals as provided in ORS 138.010 to 138.310 for appeals from a circuit court.

(2) If a municipal court has not become a court of record under ORS 221.342, an appeal shall be taken to the circuit court of the county in which the municipal court is located and in the manner provided in ORS 221.369 to 221.407.

Further, a new statute should be added to ORS chapter 19:

**19.XXX. Appeal from decision in a prosecution of a violation. (1) As used in this section, “violation” means an offense described in ORS 153.008.**

**(2) Except as provided in this section, in an action for prosecution of a violation, a party may appeal from a decision of a circuit court or a justice court or municipal court of record under ORS 51.025 or 221.342 as provided in this chapter.**

**(3) In any action in which only a violation is charged, the state may not appeal from an order dismissing the action that is entered by reason of a police officer’s failure to appear at the trial of the**

action if the police officer was timely provided with notice of the trial date.

**(4) (a) For the purpose of meeting the requirements imposed by ORS 19.240, a party filing a notice of appeal under this section must serve a copy of the notice of appeal on:**

**(A) If a defendant appeals a decision made by a municipal court of record or initially made in a municipal court not of record, the city attorney,**

**(B) If a defendant appeals a decision made by a justice court of record or initially made in a justice court not of record:**

**(i) The district attorney for the county in which the violation was prosecuted;**

**(ii) In a prosecution of a violation by a private party under ORS 153.058, the attorney for the private party or, if the private party is not represented by an attorney, the private party.**

**(b) Notwithstanding ORS 19.270, with respect to an appeal by a defendant, timely service on the city attorney, district attorney, private party or attorney for a private party under this subsection is not jurisdictional and the Court of Appeals may extend the time for that service.**

**(5) Notwithstanding any provision of this chapter, a party taking an appeal under this section in a prosecution for a violation is not required to file an undertaking.**

**(6) The filing of a notice of an appeal under this does not act to automatically stay the judgment, but the decision may be stayed as provided in ORS 138.285 and 138.295.**

**(7) The standard of review for an appeal under this section is the same as for an appeal from a judgment in a prosecution of a misdemeanor or felony.**

**(8) To the extent they apply to a prosecution for a violation, the provisions of ORS 138.005, 138.010, 138.020, 138.035, 138.045, 138.071, 138.081, 138.085, 138.090, 138.105, 138.115, 138.210,**

**138.227, 138.275, 138.285, and 138.295 apply to an appeal under this section.**

**(9)(a) The provisions of ORS 19.205(1), (2), (3), (4), and (6), 19.215, 19.245, 19.275, 19.300, 19.303, 19.310, 19.312, 19.315, 19.320, 19.325, 19.330, 19.335, 19.340, 19.345, 19.350, 19.355, 19.360, 19.375, 19.415, 19.420(1) and (2), 19.425(2), 19.430, 19.440, and 19.445 do not apply to an appeal under this section.**

**(b) Subsection (5) of ORS 19.205 applies to an appeal from a decision in prosecution of a violation, except that “special statutory proceeding” includes any proceeding civil in nature adopted by a city, county or other political subdivision of the state pursuant to authority conferred by the Constitution or statute of this state.**