

Oregon Law Commission
JUSTICE AND MUNICIPAL COURTS APPEALS WORK GROUP
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**PROPOSED AMENDMENTS TO FACILITATE APPEALS IN VIOLATION CASES TO COURT
OF APPEALS UNDER ORS CHAPTER 19**

SECTION 1. ORS 138.057 is repealed.

SECTION 2. ORS 19.005 is amended to read:

19.005 Definitions. As used in this chapter:

- (1) “Exhibits” means exhibits offered and received or rejected in the trial court.
- (2) “Judgment” means a judgment or appealable order, as provided in ORS 19.205.
- (3) “Notice of appeal” includes a notice of cross-appeal.
- (4) “Record” or “record of the case” means the trial court file and any transcript, narrative statement and exhibits.
- (5) “Supersedeas undertaking” means an undertaking on appeal that secures performance of a judgment being appealed and operates to stay enforcement of the judgment pending appeal.
- (6) “Transcript” means the transcript of the court reporter’s report as provided in ORS 8.340, 8.350 and 8.360 and any transcript of an audio record prepared under ORS 19.370.
- (7) “Trial court file” means all the original papers filed in the trial court whether before or after judgment, including but not limited to the summons and proof of service thereof, pleadings, motions, affidavits, depositions, stipulations, orders, jury instructions, the judgment, the notice of appeal and the undertaking on appeal.
- (8) “Undertaking for costs” means an undertaking on appeal that secures payment of costs and disbursements that may be awarded against an appellant on appeal, and any amounts that may be awarded to the respondent under the provisions of ORS 19.445.

(9) “Undertaking on appeal” means a promise secured by sureties or by money, bond or any other security described in ORS 22.020. “Undertaking on appeal” includes undertakings for costs and supersedeas undertakings.

(10) “Violation” means an offense described in ORS 153.008.

SECTION 3. Sections 4 through 11 are added to and made a part of ORS chapter 19.

SECTION 4. Appeals generally from decisions in a prosecution of a violation. (1) Except as provided in subsection (2) of 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.

(2) The provisions of ORS 19.205(1), (2), (3), (4), and (6), 19.215, 19.225, 19.245, 19.275, 19.312, 19.330, 19.335, 19.340, 19.355, 19.415(3) and (4), 19.425(2), 19.440, and 19.445 do not apply to an appeal in a prosecution of a violation.¹

(3) 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 involving the prosecution of a violation.²

SECTION 5. Defendant appeals in a prosecution of a violation. (1) Notwithstanding ORS 19.205 and 19.235, in a prosecution for a violation, a defendant may appeal from:

¹ Work Group members may not agree to this proposed new provision excluding the listed sections of ORS 19 from application to appeals in violations cases, but the proposed provision highlights the many provisions of ORS ch19 that do not apply to violation cases.

² Deputy Public Defender Jimmy Brewer, a member of the earlier iteration of the Work Group, objected to appeals in violation cases proceeding under ORS ch 138 because judgments and orders in special statutory proceedings created by cities and counties involving violations cases would not be appealable under ORS ch 138. The example he gave is that the city of Portland has adopted a civil forfeiture proceeding for owners of vehicles that have accumulated a certain amount of unpaid parking fines. This subsection is intended to address that concern. (Incidentally, the proceeding in the example would not have been appealable under ORS ch 19 either.)

(a) A judgment convicting the defendant of one or more charges and imposing sentence, regardless of the type of sentence imposed.

(b) A judgment entered under ORS 153.090(2) involving a determination of a payment schedule for monetary sanctions imposed, including restitution.

(c) An order denying a motion for relief from default under ORS 153.105(1) or an order denying relief from judgment under ORS 153.105(3).

(d) An amended or corrected version of a judgment or order described in paragraphs (a) to (c) of this subsection.³

(2) A defendant may cross-appeal when the prosecution appeals an order prior to trial suppressing evidence as provided in Section 6(c) of this 2027 Act. The failure to file a cross-appeal under this subsection does not waive a defendant's right to appeal a particular ruling of the trial court on appeal from the judgment of conviction and sentence.⁴

(3) In addition to the required contents of a notice of appeal under ORS 19.240, in a prosecution for a violation, if the appellant is appealing from a judgment of conviction based on a plea of guilty or no contest, the defendant must include a claim that the trial court failed to comply with requirements of law in imposing or failing to impose a sentence.⁵

³ Proposed new Section 4 is derived from ORS 55.250, ORS 221.389, and 138.035, governing, respectively, defendant's appeals from justice and municipal courts not of record to circuit court, and governing appeals from circuit court and justice and municipal courts of record to the Court of Appeals. I omitted those provisions that would apply only misdemeanors, and I tweaked the provision related to restitution because ORS 153.090(2) has unique provisions about imposition of restitution in default cases. I also include a new provision to account for the possibility that a defendant could invoke a justice or municipal court's inherent authority alluded to in ORS 153.105(3) to grant relief from judgment respecting decisions under ORS 153.090(4) or ORS 153.096. See ORS 55.250, ORS 153.090 and ORS 153.105 in the Appendix to this memorandum.

⁴ This subsection is derived from ORS 138.035(5), 55.250(3) and 221.389(4).

⁵ This subsection is derived from ORS 138.085(1)(b).

SECTION 6.⁶ Prosecution appeals in a prosecution of a violation. (1) In a prosecution for a violation, the prosecution may appeal 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 made prior to trial suppressing evidence.**
- (d) An order made prior to trial for the return or restoration of things seized.**
- (e) An order arresting the judgment.**
- (f) An order made after a guilty finding dismissing or setting aside one or more counts in the accusatory instrument.**
- (g) An order granting a new trial.**
- (h) An order granting a motion for relief from default under ORS 153.105(1) or granting relief from judgment under ORS 153.105(3).**

(2) Notwithstanding subsection (1)(a) of this section, the prosecution may not appeal the dismissal of a violation by reason of a police officer's failure to appear at the trial on the matter if the police officer was timely provided with notice of the trial date.

SECTION 7.⁷ Service of notice of appeal requirements on appeal in a prosecution of a violation. (1) 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,**

⁶ This subsection is derived from ORS 138.045, 55.255, and 221.392.

⁷ This section is derived from ORS 138.057(3)(b).

(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.

(2) 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.

SECTION 8. No undertaking required.⁸ Notwithstanding any provision of this chapter, a party taking an appeal in a prosecution for a violation is not required to file an undertaking for costs on appeal.

SECTION 9. Stays on appeal.⁹ (1) The defendant filing a notice of an appeal in a prosecution of a violation does not act to stay the judgment or order, but the judgment or order may be stayed as provided in ORS 19.350, except that the court may condition staying the payment of a monetary obligation on the defendant:

(a) Depositing, pending resolution of the appeal, the whole or any part of the monetary obligation with the clerk of the trial court;

(b) Filing an undertaking with sufficient sureties;

(c) Submitting to an examination of assets; or

⁸ This section is derived from ORS 138.057(3)(d).

⁹ This section is derived from ORS 138.057(3)(e) but removes reference to stays under ORS 138.285 and 138.295, consistent with the Work Group's preference to have appeals in violation cases proceed as civil cases rather than criminal cases.

(d) Refraining from dissipating the assets of the defendant.¹⁰

(2) An appeal taken by the state stays the effect of the judgment or order in favor of the defendant, so that the release agreement and, if applicable, the security for release, is held for the appearance and surrender of the defendant until the final determination of the appeal and the proceedings consequent thereon, if any; but if the defendant is in custody, the defendant may be released by the court subject to ORS 135.230 to 135.290, pending the appeal.¹¹

SECTION 10. Standard and scope of appellate review in violation cases. (1) The standard of review on appeal in a prosecution for a violation shall be as provided in ORS 19.415(1) and (2).¹²

(2) In a prosecution for a violation, on appeal by a party of an order or judgment other than the judgment of conviction and sentence, except as otherwise specified by law, the court may review only the order or judgment from which the appeal is taken and any issue necessary to decide the appeal.

¹⁰ This section would resolve a conflict in current law regarding whether stays on appeal should be subject to ORS 19.350 or ORS 138.285 and 138.295. See subsection (3) of ORS 55.280 and 221.440 addressing stays on appeal from justice and municipal courts not of record. If the Work Group agrees with this proposed section, both of those statutes should be amended to track these provisions, see Sections 17 and 18 of the "Conforming Amendments" part of this document. ORS 138.285 and 138.295 need to be amended to clarify that they apply only to misdemeanors and felonies; see Sections 19 and 20 of the "Conforming Amendments."

¹¹ This subsection is derived from ORS 138.295.

¹² ORS 138.057(3)(f) currently provides: "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." That provision is obscure because the standard of review on appeal is the same regardless of whether a case is civil or criminal, and that standard is set out in ORS 19.415(1) (" * * * the scope of review shall be as provided in section 3, Article VII (Amended) of the Oregon Constitution.) and (2) ("No judgment shall be reversed or modified except for error substantially affecting the rights of a party.)

SECTION 11. To the extent they apply to a prosecution for a violation, the provisions of ORS 138.005, 138.010, 138.105, 138.115, 138.210, 138.225, 138.227, and 138.275 apply to an appeal in a prosecution of a violation.¹³

CONFORMING AMENDMENTS

SECTION 12. ORS 55.150 is amended to read:

55.150. (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] **55.155** to 55.335.

SECTION 13. ORS 55.285 is amended to read:

55.285. [(1)] Upon entry by the circuit court of an order or judgment:

[(a)] [(1)] In a matter involving a violation, the order or judgment may be appealed as provided in ORS [138.057] **chapter 19 for appeals from a circuit court.**

[(b)] (2) In a matter involving a misdemeanor, the order or judgment may be appealed as provided in ORS 138.010 to 138.310.

¹³ In this subsection, I propose to make the listed provisions of ORS chapter 138 applicable to appeals in violation cases; other Work Group members may disagree with the proposal.

[(2) In any case in which only a violation or 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 on the matter if the police officer was timely provided with notice of the trial date.]

SECTION 14. ORS 221.367 is amended to read:

221.367. (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~~] **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.

SECTION 15. ORS 221.367 is amended to read:

221.367. (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~~] **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.

SECTION 16. ORS 221.407 is amended to read:

221.407. (1) [(a)] The state or a city may appeal an order or judgment of the circuit court to the Court of Appeals:

[(A)] (a) In a proceeding involving a violation, as provided in ORS [138.057] chapter 19 for appeals from a circuit court, subject to the provisions of ORS 221.389(5) and (6).

[(B)] (b) In a proceeding involving a misdemeanor or a traffic crime as defined in ORS 801.545, as provided in ORS 138.010 to 138.310.

[(b) In any case in which only a violation or 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 on the matter if the police officer was timely provided with notice of the trial date].

[(2)(a) If the order or judgment of the circuit court being appealed arises from a violation or misdemeanor defined by state law or a traffic crime as defined in ORS 801.545, the defendant may appeal the order or judgment to the Court of Appeals:

(A) In a proceeding involving a violation, as provided in ORS 138.057.

(B) In a proceeding involving a misdemeanor, as provided in ORS 138.010 to 138.310.

(b) The defendant may appeal an order or judgment arising from a violation or misdemeanor defined by city charter or ordinance as provided in ORS 221.389 (5) and (6).]

[(3)(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 section is intended to affect the authority of the municipal court or circuit court to stay enforcement of the judgment under ORS 19.350, 138.285 or 138.295 or any other authority.]

SECTION 17. ORS 55.280 is amended to read:

55.280. (1) A defendant filing notice of appeal from a judgment of conviction and sentence of a misdemeanor described in this subsection does not stay enforcement of the judgment unless the defendant:

(a) If sentenced to confinement, executes a release agreement or makes a security release deposit as provided in ORS 135.230 to 135.290; or

(b) On conviction of a traffic crime as defined in ORS 801.545, gives the security required by ORS 810.300 to 810.330 as an undertaking on appeal.

(2) A defendant filing notice of appeal from a judgment **or order** involving a violation does not automatically stay enforcement of the judgment **or order**, **but the defendant may seek a discretionary stay as provided in subsection (3) of this section.**

(3) ~~[Nothing in this section is intended to affect the authority of the justice court or circuit court to stay enforcement of the judgment under ORS 19.350, 138.285 or 138.295 or any other authority.]~~ **(a) Except as provided in paragraph (d) of this subsection a party seeking a stay under this section must first request a stay from the trial court. The trial court may act on a request for a stay before or after a notice of appeal is filed. The time for filing a notice of appeal is not tolled by the making of a request for a stay under this section or by the trial court's action on the request.**

(b) The trial court shall consider the following factors in deciding whether to grant a stay under this section, in addition to such other factors as the trial court considers important:

(i) The likelihood of the appellant prevailing on appeal.

(ii) Whether the appeal is taken in good faith and not for the purpose of delay.

(iii) Whether there is any support in fact or in law for the appeal.

(iv) The nature of the harm to the appellant, to other parties, to other persons and to the public that will likely result from the grant or denial of a stay.

(c) The court may condition staying the payment of a monetary obligation on the defendant:

(i) Depositing, pending resolution of the appeal, the whole or any part of the monetary obligation with the clerk of the trial court;

(ii) Filing an undertaking with sufficient sureties;

(iii) Submitting to an examination of assets; or

(iv) Refraining from dissipating the assets of the defendant.

(d) The defendant may request a stay pending appeal from the circuit court in the first instance, and the circuit court may act on that request without requiring the party to seek a stay from the justice court, if the defendant establishes that the filing of a request for a stay with the justice court would be futile or that the justice court is unable or unwilling to act on the request within a reasonable time. In considering a request for a stay under this subsection, the circuit court shall consider the factors set out in paragraph (b) of this subsection in addition to any other factors the court considers important.¹⁴

(4) An appeal taken by the state stays the effect of the judgment or order in favor of the defendant, so that the release agreement and, if applicable, the security for release, is held for the appearance and surrender of the defendant until the final determination of the appeal and the proceedings consequent thereon, if any; but if the defendant is in custody, the defendant may be released by the court subject to ORS 135.230 to 135.290, pending the appeal.¹⁵

SECTION 18. ORS 221.404 is amended to read:

221.404. (1) A defendant filing notice of appeal from a judgment of conviction and sentence of a misdemeanor described in this subsection does not stay enforcement of the judgment unless the defendant:

(a) If sentenced to confinement, executes a release agreement or makes a security release deposit as provided in ORS 135.230 to 135.290; or

(b) On conviction of a traffic crime as defined in ORS 801.545, gives the security required by ORS 810.300 to 810.330 as an undertaking on appeal.

¹⁴ Subsection (3) is derived from ORS 19.350, set out in the Appendix to this memorandum, except paragraph (c), which is derived from ORS 138.285(4).

¹⁵ This subsection is derived from ORS 138.295.

(2) A defendant filing notice of appeal from a judgment **or order** involving a violation does not automatically stay enforcement of the judgment **or order**, **but the defendant may seek a discretionary stay as provided in subsection (3) of this section.**

(3) ~~[Nothing in this section is intended to affect the authority of the justice court or circuit court to stay enforcement of the judgment under ORS 19.350, 138.285 or 138.295 or any other authority.]~~ **(a) Except as provided in paragraph (d) of this subsection a party seeking a stay under this section must first request a stay from the trial court. The trial court may act on a request for a stay before or after a notice of appeal is filed. The time for filing a notice of appeal is not tolled by the making of a request for a stay under this section or by the trial court's action on the request.**

(b) The trial court shall consider the following factors in deciding whether to grant a stay under this section, in addition to such other factors as the trial court considers important:

(i) The likelihood of the appellant prevailing on appeal.

(ii) Whether the appeal is taken in good faith and not for the purpose of delay.

(iii) Whether there is any support in fact or in law for the appeal.

(iv) The nature of the harm to the appellant, to other parties, to other persons and to the public that will likely result from the grant or denial of a stay.

(c) The court may condition staying the payment of a monetary obligation on the defendant:

(i) Depositing, pending resolution of the appeal, the whole or any part of the monetary obligation with the clerk of the trial court;

(ii) Filing an undertaking with sufficient sureties;

(iii) Submitting to an examination of assets; or

(iv) Refraining from dissipating the assets of the defendant.

(d) The defendant may request a stay pending appeal from the circuit court in the first instance, and the circuit court may act on that request without requiring the party to seek a stay from the justice court, if the defendant establishes that the filing of a request for a stay with the justice court would be futile or that the justice court is unable or unwilling to act on the request within a reasonable time. In considering a request for a stay under this subsection, the circuit court shall consider the factors set out in paragraph (b) of this subsection in addition to any other factors the court considers important.¹⁶

(4) An appeal taken by the state stays the effect of the judgment or order in favor of the defendant, so that the release agreement and, if applicable, the security for release, is held for the appearance and surrender of the defendant until the final determination of the appeal and the proceedings consequent thereon, if any; but if the defendant is in custody, the defendant may be released by the court subject to ORS 135.230 to 135.290, pending the appeal.¹⁷

SECTION 19. ORS 19.285 is amended to read:

138.285. (1)(a) A justice [;] or municipal **of record** or a circuit court may enter an order in a [criminal action as defined in ORS 131.005] **prosecution of a misdemeanor or felony** staying execution of a sentence, or a portion of a sentence, pending the resolution of an appeal.

* * * *

SECTION 20. ORS 19.295 is amended to read:

138.295. **In a prosecution of a misdemeanor or felony**, an appeal taken by the state stays the effect of the judgment or order in favor of the defendant, so that the release agreement and, if applicable, the security for release, is held for the appearance and surrender of the defendant until the final determination of the appeal and the proceedings consequent thereon, if any; but if the defendant is in custody, the defendant may be released by the court subject to ORS 135.230 to 135.290, pending the appeal.

¹⁶ Subsection (3) is derived from ORS 19.350, set out in the Appendix to this memorandum, except paragraph (c), which is derived from ORS 138.285(4).

¹⁷ This subsection is derived from ORS 138.295.

APPENDIX

55.250 Appeal and cross-appeal by defendant. (1) In a proceeding involving a violation or misdemeanor, a defendant may appeal from:

(a) A judgment convicting the defendant of one or more charges and imposing sentence, regardless of the type of sentence imposed.

(b) A judgment ordering payment of restitution but not specifying the amount of restitution, or a supplemental judgment awarding restitution.

(c) A judgment or order imposing or executing a sentence upon revocation of probation or sentence suspension.

(d) A judgment or order that is an amended or corrected version of a judgment or order described in paragraphs (a) to (c) of this subsection.

(2) In a proceeding involving a violation, the defendant may appeal an order denying a motion for relief from default under ORS 153.105.

(3) A defendant may cross-appeal when the prosecution appeals an order prior to trial suppressing evidence as provided in ORS 55.255 (1)(c). The failure to file a cross-appeal under this subsection does not waive a defendant's right to appeal a particular ruling of the justice court on appeal from the judgment of conviction and sentence.

153.090 Provisions of judgment. (1) Judgments entered under this chapter may include:

(a) Imposition of a sentence to pay a fine;

(b) Costs and restitution authorized by law;

(c) A requirement that the fine, costs and restitution, if any, be paid out of the presumptive fine;

(d) Remission of any balance of a presumptive fine to the defendant; and

(e) Any other provision authorized by law.

(2) Notwithstanding ORS 137.106, if the court orders restitution in a default judgment entered under ORS 153.102, a defendant may allege an inability to pay the full amount of monetary sanctions imposed, including restitution, and request a hearing to determine whether the defendant is unable to pay or to establish a payment schedule by filing a written request with the court within one year after the entry of the judgment. The court shall set a hearing on the issue of the defendant's ability to pay upon receipt of the request and shall give notice to the district attorney. The district attorney shall give notice to the victim of the date, time and place of the

hearing. The court may determine a payment schedule for monetary sanctions imposed, including restitution ordered under this subsection, if the defendant establishes at the hearing that the defendant is unable to pay the ordered restitution in full.

(3) If a trial is held in a violation proceeding, or a default judgment is entered against the defendant under ORS 153.102, the court may impose any fine within the statutory limits for the violation. If a defendant pleads no contest under ORS 153.061 (3) and the court accepts the plea and enters judgment against the defendant, the amount of the fine imposed against the defendant by the court may not exceed the presumptive fine established for the violation under ORS 153.019 and 153.020.

(4) A judge may suspend operation of any part of a judgment entered under this chapter upon condition that the defendant pay the nonsuspended portion of a fine within a specified period of time. If the defendant fails to pay the nonsuspended portion of the fine within the specified period of time, the suspended portion of the judgment becomes operative without further proceedings by the court and the suspended portion of the fine becomes immediately due and payable.

(5) The court may not issue notice to the Department of Transportation to suspend the defendant's driving privileges unless a trial has been required. The failure of the defendant to appear at the trial does not prevent the court from issuing notice to the department to suspend the defendant's driving privileges.

(6) Entry of a default judgment under ORS 153.102 does not preclude the arrest and prosecution of the defendant for the crime of failure to appear in a violation proceeding under ORS 153.992.

(7) If a person held commercial driving privileges as described in ORS 807.018 at the time the offense was committed, a court may not defer entry of a judgment or allow an individual to enter into a diversion program that would prevent a conviction for a traffic offense from appearing on the driving record of the holder. This subsection applies to all traffic offenses, whether committed while driving a motor vehicle or a commercial motor vehicle, but does not apply to parking violations.

153.096 Suspension of fine in certain cases. (1) In any proceeding for a violation under ORS 830.990 or 830.997, the court may conditionally suspend all or part of any fine or penalty to be imposed on the defendant if the defendant appears personally and agrees to complete at the defendant's own expense a Safe Boating Education Course approved by the State Marine Board under ORS 830.110 (18), within time limits imposed by the court.

(2) In any proceeding for a violation under ORS 830.990 or 830.997, the court shall notify the State Marine Board if the defendant fails to appear at any time as required by law or the court, or fails to comply with any order of the court.

153.105 Relief from judgment. (1) If a judgment is entered against a defendant under ORS 153.102, the court may relieve a defendant from the judgment upon a showing that the failure of the defendant to appear was due to mistake, including clerical mistake, inadvertence, surprise or excusable neglect, or that the court committed a legal error in entering the judgment. A motion for relief under this section must be made by the defendant within a reasonable time, and in no event may a motion under this section be made more than one year after entry of judgment.

(2) If the defendant makes an oral request for relief under this section or the court rules on the request orally, or both, the court shall note in the docket that the defendant requested relief from judgment and the court's disposition of the request.

(3) This section does not limit the inherent authority of the court to relieve a party from a judgment within a reasonable time after entry of the judgment.

55.280 Stay of enforcement of judgment. (1) A defendant filing notice of appeal from a judgment of conviction and sentence of a misdemeanor described in this subsection does not stay enforcement of the judgment unless the defendant:

(a) If sentenced to confinement, executes a release agreement or makes a security release deposit as provided in ORS 135.230 to 135.290; or

(b) On conviction of a traffic crime as defined in ORS 801.545, gives the security required by ORS 810.300 to 810.330 as an undertaking on appeal.

(2) A defendant filing notice of appeal from a judgment involving a violation does not automatically stay enforcement of the judgment.

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

19.350 Discretionary stay by court. (1) A party may seek a stay of judgment pending a decision on appeal in the manner provided by this section only if the judgment may not be stayed under the provisions of ORS 19.335 or 19.340, or under any other provision of law specifying a procedure or grounds for staying the judgment. A stay of judgment may not be granted under this section if any other provision of law specifies that a stay may not be granted pending a decision on appeal.

(2) Except as provided in subsection (5) of this section, a party seeking a stay under the provisions of this section must first request a stay from the trial court. The trial court may act on a request for a stay before or after a notice of appeal is filed. The time for filing a notice of appeal is not tolled by the making of a request for a stay under this section or by the trial court's action on the request.

(3) The trial court shall consider the following factors in deciding whether to grant a stay under this section, in addition to such other factors as the trial court considers important:

(a) The likelihood of the appellant prevailing on appeal.

(b) Whether the appeal is taken in good faith and not for the purpose of delay.

(c) Whether there is any support in fact or in law for the appeal.

(d) The nature of the harm to the appellant, to other parties, to other persons and to the public that will likely result from the grant or denial of a stay.

(4) The trial court has discretion to impose reasonable conditions on the grant of a stay under the provisions of this section. The court may require that a supersedeas undertaking be filed in a specified amount as a condition of granting a stay under the provisions of this section.

(5) A party may request a stay pending appeal from the appellate court in the first instance, and the appellate court may act on that request without requiring the party to seek a stay from the trial court, if the party establishes that the filing of a request for a stay with the trial court would be futile or that the trial court is unable or unwilling to act on the request within a reasonable time. In considering a request for a stay under this subsection, the appellate court shall consider the factors set out in subsection (3) of this section in addition to any other factors the court considers important.