

# Chapter 157

2007 EDITION

## Appeals in Criminal Actions; Writ of Review

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**157.005 Applicability of chapter.** The provisions of this chapter apply only to justice courts that have not become courts of record under ORS 51.025. Appeals of criminal judgments in justice courts that have become courts of record under ORS 51.025 shall be as provided in ORS chapter 138 for appeals from judgments of circuit courts. [1999 c.682 §8]

**157.010 Appeal to circuit court from justice court.** In a criminal action in a justice court, except where the judgment is given on a plea of guilty, an appeal may be taken from a judgment of conviction to the circuit court for the county in which the judgment is given, as prescribed in this chapter, and not otherwise. [Amended by 1985 c.342 §12; 1995 c.658 §87]

**157.020 Who may appeal; appealable judgments and orders.** (1) Except as provided in subsection (2) of this section, an appeal may be taken only by the defendant and whether or not the judgment is that the defendant pay a fine or be imprisoned.

(2) The plaintiff may take an appeal from:

- (a) An order made before jeopardy attaches dismissing the accusatory instrument;
- (b) An order arresting the judgment;
- (c) An order made before jeopardy attaches suppressing evidence; or
- (d) An order made before jeopardy attaches for the return or restoration of things seized. [Amended by 1959 c.196 §1; 1967 c.528 §1; 1971 c.644 §2; 1985 c.342 §13]

**157.030 Time and manner of taking appeal.** The appeal is taken in the same manner and within the same time as in the case of an appeal from a judgment in a civil action, except that:

(1) The notice thereof shall be served upon the district attorney for the county, or the deputy of the district attorney, or upon the private prosecutor in the action;

(2) When the notice of appeal has been filed with the court from which the appeal is being taken, the appellate court shall have jurisdiction of the cause. Failure to serve a notice of appeal on the appropriate attorney shall not preclude jurisdiction in the appellate court; and

(3) No undertaking providing for the payment of costs and disbursements shall be required. [Amended by 1989 c.123 §1]

**157.040 Justice's duty as to making and delivering transcript.** If the defendant is in custody at the time the appeal is allowed, the justice shall make the proper transcript and deliver it to the clerk of the appellate court within 10 days from the date the appeal is taken. [Amended by 1985 c.342 §14]

**157.050 Effect of allowance of appeal.** An allowance of an appeal does not stay the proceedings on the judgment unless the defendant:

(1) Makes a release agreement or a security release deposit as provided in ORS 135.230 to 135.290; or

(2) Gives the security required by ORS 810.300 to 810.330 as an undertaking on appeal. [Amended by 1973 c.836 §338; 1974 c.35 §2; 1983 c.338 §895A]

**157.060 When appeal is perfected; amendment of pleadings in appellate court.** From the filing of the transcript with the clerk of the appellate court the appeal is perfected and the action is deemed pending therein for trial upon the issue tried in the justice court. In a criminal action, the appellate court has the same authority to allow an amendment of the pleadings on an appeal that it has on an appeal in a civil action. [Amended by 1985 c.342 §15]

**157.065 Powers of appellate court.** The appellate court may give a final judgment in the cause, to be enforced as a judgment of such court; or the appellate court may give such other judgment or order as may be proper, and direct that the cause be remitted to the court below for further proceedings in accordance with the decision of the appellate court. [1959 c.558 §49; 1981 c.178 §10]

**157.070 Writ of review in criminal actions.** No provision of ORS 157.010 to 157.065, in relation to appeals or the right to appeal in criminal actions, shall be construed to prevent either party in a justice court from having an interlocutory order which involves the constitutionality of a statute or of the proceedings which may affect the final judgment or the judgment reviewed in the circuit court for errors in law appearing upon the face of the judgment or the proceedings connected therewith, as provided in ORS 34.010 to 34.100. [Amended by 1959 c.592 §1]

**157.080** [Repealed by 1975 c.611 §16 (157.081 enacted in lieu of 157.080)]

**157.081** [1975 c.611 §17 (enacted in lieu of 157.080); renumbered 46.810]

CHAPTERS 158 TO 160

[Reserved for expansion]

