

## Chapter 157

### Appeals in Criminal Actions; Writ of Review

LAW REVIEW CITATIONS: 4 WLJ 170.

157.010

#### NOTES OF DECISIONS

Where a city recorder exercises the jurisdiction of a justice of the peace, an appeal lies as provided in this section, but where the recorder gives judgment for a violation of a city ordinance no appeal lies unless given by the city charter. *Sellers v. City of Corvallis*, (1874) 5 Or 273; *La Fayette v. Clark*, (1881) 9 Or 225; *City of Corvallis v. Stock*, (1885) 12 Or 391, 7 P 524; *Barton v. City of La Grande*, (1889) 17 Or 577, 22 P 111; *Cunningham v. Berry*, (1889) 17 Or 622, 22 P 115.

The judgment of a justice court may be reviewed by writ of review. *Davenport v. Justice Court*, (1921) 101 Or 507, 199 P 621.

A defendant tried and convicted in a justice or district court who appeals to the circuit court has the burden to prosecute his appeal with reasonable diligence. *State v. Dodson*, (1961) 226 Or 458, 360 P2d 782.

ORS 134.120 does not apply to a trial in circuit court on appeal from a lower court. *Id.*

ATTY. GEN. OPINIONS: Fees required of defendant upon appeal of criminal conviction from district court, 1960-62, p 241.

157.020

#### NOTES OF DECISIONS

A city may not appeal from a judgment of acquittal on a charge of violation of a city ordinance. *Portland v. Erickson*, (1900) 39 Or 1, 62 P 753.

FURTHER CITATIONS: *Hill v. State*, (1893) 23 Or 446, 32 P 160; *Fones v. Murdock* (1916) 80 Or 340, 157 P 148.

157.030

#### NOTES OF DECISIONS

Failure to file the notice of appeal and to have the appeal allowed by the justice renders the attempted appeal abortive. *State v. Zingsem*, (1879) 7 Or 137.

Where no notice is given or served upon the district attorney or private prosecutor, the appeal is ineffective. *State v. Connolly*, (1907) 49 Or 406, 90 P 902.

Except as to notice and undertaking, the appeal is taken in the same manner as in civil cases. *State v. Fetsch*, (1917) 85 Or 45, 165 P 1179.

FURTHER CITATIONS: *State v. Archerd*, (1933) 144 Or 309, 24 P2d 5; *France v. Weinstein*, (1960) 224 Or 100, 355 P2d 621.

ATTY. GEN. OPINIONS: Manner of appeal from justice court in criminal actions, 1924-26, p 105; fee for filing notice of appeal by nonindigent, 1956-58, p 85; fees required of defendant upon appeal of criminal conviction from district court, 1960-62, p 241.

157.040

#### NOTES OF DECISIONS

Actual physical custody, not constructive custody, is contemplated by this provision. *State v. Freauff*, (1926) 117 Or 214, 243 P 87; *City of Bend v. Allen*, (1933) 141 Or 329, 18 P2d 215.

FURTHER CITATIONS: *State v. Zingsem*, (1879) 7 Or 137; *France v. Weinstein*, (1960) 224 Or 100, 355 P2d 621.

157.050

ATTY. GEN. OPINIONS: Disposition of fines and forfeited bail, 1960-62, p 22.

157.060

#### NOTES OF DECISIONS

An amendment may not change the nature of the charge nor add any new cause of action. *State v. Jones*, (1889) 18 Or 256, 22 P 840.

157.070

#### NOTES OF DECISIONS

This section does not widen the scope of the writ of review as construed under ORS 34.050, but makes an exception to the statute abolishing writs of error and certiorari in criminal actions. *Bechtold v. Wilson*, (1947) 182 Or 360, 186 P2d 525, 187 P2d 675.

Writ of review is not appropriate means to obtain review of the denial of a motion for a change of judge. *State v. Etling*, (1970) 256 Or 3, 470 P2d 950.

157.080

#### NOTES OF DECISIONS

A defendant tried and convicted in a justice or district court who appeals to the circuit court has the burden to prosecute his appeal with reasonable diligence. *State v. Dodson*, (1961) 226 Or 458, 360 P2d 782.

ORS 134.120 does not apply to a trial in circuit court on appeal from a lower court. *Id.*

FURTHER CITATIONS: *State v. Etling*, (1970) 256 Or 3, 470 P2d 950.

ATTY. GEN. OPINIONS: Fee for filing notice of appeal by nonindigent, 1956-58, p 85.

