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# Chapter 157

## 1977 REPLACEMENT PART

### Appeals in Criminal Actions; Writ of Review

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### CROSS REFERENCES

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**157.010 Appeal to circuit court from justice's court.** In a criminal action in a justice's 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 of the county in which the judgment is given, as prescribed in this chapter, and not otherwise.

**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 he pay a fine or be imprisoned. The right of appeal granted herein shall apply to all municipal courts notwithstanding ORS 221.350.

(2) The plaintiff may take an appeal from:

- (a) An order made prior to trial dismissing a complaint or information;
- (b) An order sustaining a plea of former conviction or acquittal;
- (c) An order arresting the judgment; or
- (d) An order made prior to trial suppressing evidence.

[Amended by 1959 c.196 §1, 1967 c.528 §1, 1971 c.644 §2]

**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 the notice thereof shall be served upon the district attorney for the county, or his deputy, or upon the private prosecutor in the action; provided, however, that in such cases no undertaking providing for the payment of costs and disbursements shall be required.

**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 circuit court within 10 days from the date the appeal is taken.

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

fendant:

(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 484.120 to 484.140 as an undertaking on appeal.

[Amended by 1973 c.836 §338, 1974 s.s. c.35 §2]

**157.060 When appeal is perfected; amendment of pleadings in appellate court.** From the filing of the transcript with the clerk of the circuit court the appeal is perfected and the action is to be deemed pending therein for trial upon the issue tried in the justice's 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.

**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 mandate of the appellate court.

[1959 c.558 §49]

**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's 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]

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.  
 Done at Salem, Oregon,  
 October 1, 1977.

Thomas G. Clifford  
 Legislative Counsel

**CHAPTERS 158 TO 160**

[Reserved for expansion]

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