

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: SB 243 Eliminates unnecessary delay and expense in criminal appeals by reinstating a time period after which a motion in arrest of judgment is “deemed denied” if the trial court has not yet ruled upon the motion.

Submitted by: Criminal Law Section

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1. Does this amend current law or program? Yes

Amends ORS 136.535

2. PROBLEM PRESENTED (including level of severity):

A motion in arrest of judgment is a motion that a party can file after judgment in a criminal case. A party must file such a motion within a certain number of days from judgment entry. Historically, a trial court could (1) rule on the motion or (2) do nothing, in which case the motion would be deemed denied a certain number of days after it had been filed.

Prior to 2003, the timelines for filing post-trial motions, like motions in arrest of judgment, were different in criminal and civil cases. In criminal cases, the motions had to be filed within 5 days of judgment entry, whereas in civil cases, the motions had to be filed within 10 days. The “deemed denied” for the motions was 20 days in criminal cases and 55 in civil cases.

In 2003, the legislature amended the Oregon Revised Statutes to make the timelines for the motions in criminal cases the same as in civil cases. But, because of the way the various statutes interacted, the amendments had the effect of inadvertently eliminating the “deemed denied” date for motions in arrest of judgment.

A “deemed denied” date is important for post-trial motions, like motions in arrest of judgment and motions for new trial, because it prevents the cases from lingering in the trial court. A party cannot initiate an appeal while a motion in arrest of judgment or a motion for new trial is pending. A “deemed denied” date ensures that a party will not have to wait for an indefinite period before being able to initiate an appeal.

But, with the inadvertent elimination of a “deemed denied” date for motions in arrest of judgments, a party that files a motion in arrest of judgment cannot initiate an appeal until the trial court rules on the motion. This causes unnecessary delay and paperwork that did not exist previously and does not exist in connection with similar motions (motions for new trial in criminal and civil cases, motions to set aside the verdict in civil cases).

Nothing in the legislative history of the statutes relating to motions in arrest of judgment indicates that the legislature intended to eliminate the “deemed denied” date for such motions. When the legislature amended the statutes in 2003 it was simply trying to change the timeline for filing such motions, so that it would be the same as in civil cases.

3. SOLUTION:

Amend the law to reinstate a “deemed denied” date for motions in arrest of judgment.

4. PUBLIC POLICY IMPLICATION of this proposed legislative change:

None, merely clarifies an existing statute.

5. Could the problem be addressed through a NON-LEGISLATIVE SOLUTION, such as administrative rule or education? No.

6. COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL? No.

7. IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED or interested in this change. Who would support it and who would oppose it?

The change would affect those who file and rule on motions in arrest of judgment in criminal cases and those who appeal cases involving such motions. Reinstatement of a “deemed denied” date would give those who file and rule on the motions a specific date by which the motion would be decided and would give those who appeal cases involving such motions a specific date by which the appeal would have to be initiated.

Constituencies would include criminal defense trial and appellate lawyers, and trial and appellate courts. Prosecutors at the trial and appellate level would need to know of the change, but they would be less affected by it because they do not file motions in arrest of judgment and, in the majority of criminal appeals, they represent the respondent, not the appellant, and therefore do not file the notice of appeal.

8. Has this been introduced in a prior session? No.