## Enrolled

# House Bill 2133

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Presession filed (at the request of Attorney General Hardy Myers for Department of Justice)

CHAPTER ..................................................

AN ACT

Relating to post-conviction proceedings; amending ORS 138.640 and 138.650.

**Be It Enacted by the People of the State of Oregon:**

SECTION 1. ORS 138.650 is amended to read:
138.650. (1) Either the petitioner or the defendant may appeal to the Court of Appeals within 30 days after the entry of a judgment on a petition pursuant to ORS 138.510 to 138.680. The manner of taking the appeal and the scope of review by the Court of Appeals and the Supreme Court shall be the same as that provided by law for appeals in criminal actions, except that:

[*(1)*] (a) The trial court may provide that the transcript contain only such evidence as may be material to the decision of the appeal; and

[*(2)*] (b) With respect to ORS 138.081 (1), if petitioner appeals, petitioner shall cause the notice of appeal to be served on the attorney for defendant, and, if defendant appeals, defendant shall cause the notice of appeal to be served on the attorney for petitioner or, if petitioner has no attorney of record, on petitioner.

**(2)(a) Upon motion of the petitioner, the Court of Appeals shall grant the petitioner leave to file a notice of appeal after the time limit described in subsection (1) of this section if:**

**(A) The petitioner, by clear and convincing evidence, shows that the failure to file a timely notice of appeal is not attributable to the petitioner personally; and**

**(B) The petitioner shows a colorable claim of error in the proceeding from which the appeal is taken.**

**(b) The request for leave to file a notice of appeal after the time limit described in subsection (1) of this section shall be filed no later than 90 days after entry of the judgment from which the petitioner seeks to appeal and shall be accompanied by the notice of appeal sought to be filed. A request for leave under this subsection may be filed by mail. The date of filing shall be the date of mailing if the request is mailed as provided in ORS 19.260.**

**(c) The Court of Appeals may not grant relief under this subsection unless the defendant has received notice of and an opportunity to respond to the petitioner's request for relief.**

**(3) An appeal under this section taken by the defendant stays the effect of the judgment. If the petitioner is incarcerated, the trial court may stay the petitioner's sentence pending the defendant's appeal and order conditional release or security release, in accordance with ORS 135.230 to 135.290, only if:**

**(a) The post-conviction court's judgment vacates the judgment of conviction or reduces the sentence or sentences imposed upon conviction;**

(b) The petitioner has completed any other sentence of incarceration to which the petitioner is subject; and

(c) The petitioner otherwise would be entitled to immediate release from incarceration under the court's judgment.

SECTION 2. ORS 138.640 is amended to read:

138.640. (1) After deciding the issues raised in the proceeding, the court shall enter a judgment denying the petition or granting the appropriate relief. The judgment may include orders as provided in ORS 138.520. The judgment must clearly state the grounds on which the cause was determined, and whether a state or federal question was presented and decided.

(2) If the court grants the petitioner relief, the judgment is not enforceable in the petitioner's favor until:

(a) The petitioner causes a certified copy of the judgment to be entered in the circuit court in which the petitioner's conviction and sentence were rendered; and

(b) The petitioner serves a certified copy of the judgment on the district attorney of the county in which the petitioner's conviction and sentence were rendered.

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Passed by House April 10, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 14, 2007

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President of Senate

Received by Governor:

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**Approved:**

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Governor

**Filed in Office of Secretary of State:**

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Secretary of State