

# House Bill 2210

Sponsored by Representative WILDE (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Conforms felony jury verdict statute with constitutional rule requiring guilty verdicts to be unanimous. Requires not guilty verdicts in cases involving felonies to be unanimous.

Establishes process by which person with qualifying conviction based on nonunanimous jury verdict may apply to have conviction set aside.

Directs district attorneys to make reasonable efforts to identify convictions based on nonunanimous jury verdicts and notify convicted person of ability to set aside conviction.

## A BILL FOR AN ACT

1  
2 Relating to nonunanimous jury verdicts; creating new provisions; and amending ORS 136.450.

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

4 **SECTION 1.** ORS 136.450 is amended to read:

5 136.450. The verdict of a trial jury in a criminal action shall be [*by concurrence of at least 10*  
6 *of 12 jurors*] **unanimous**.

7 **SECTION 2.** (1) **Notwithstanding ORS 137.225, a person with a qualifying conviction based**  
8 **on a nonunanimous jury verdict may apply to the court in which the judgment of conviction**  
9 **was entered for entry of an order setting aside the conviction as provided in this section.**

10 (2)(a) **The person may file a motion under this section at any time following entry of**  
11 **judgment of conviction for a qualifying conviction.**

12 (b) **A person filing a motion under this section is not required to pay the filing fee es-**  
13 **tablished under ORS 21.135 or any other fee.**

14 (c) **By filing a motion under this section, the person agrees not to attempt to recoup any**  
15 **restitution the person has paid as part of the sentence for the conviction.**

16 (3)(a) **At the time of filing the motion, the person shall serve a copy of the motion upon**  
17 **the office of the district attorney of the county in which the judgment of conviction was**  
18 **entered.**

19 (b) **The district attorney, within 30 days after the filing of the motion under paragraph**  
20 **(a) of this subsection, may file an objection to granting the motion only on the basis that the**  
21 **person's conviction is not a qualifying conviction.**

22 (c) **If no objection from the district attorney is received by the court within 30 days after**  
23 **the filing of the motion, the court shall grant the motion and enter an order as described in**  
24 **subsection (5) of this section.**

25 (4) **If the court receives an objection from the district attorney, the court shall hold a**  
26 **hearing to determine whether the conviction sought to be set aside is a qualifying conviction.**  
27 **The person has the burden of establishing, by a preponderance of the evidence, that the**  
28 **conviction is a qualifying conviction. If the court determines that the conviction is a quali-**  
29 **ifying conviction, the court shall grant the motion and enter an order as provided in sub-**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 section (5) of this section.

2 (5) Upon granting a motion to set aside a qualifying conviction under this section, the  
3 court shall enter an appropriate order, which shall include an order waiving any outstanding  
4 fines or fees associated with the conviction. Upon the entry of the order, the person for  
5 purposes of the law shall be deemed not to have been previously convicted and the court shall  
6 issue an order sealing the record of conviction and other official records in the case, in-  
7 cluding the records of arrest, citation or charge.

8 (6) The clerk of the court shall forward a certified copy of the order to such agencies as  
9 directed by the court. A certified copy must be sent to the Department of Corrections when  
10 the person has been in the custody of the Department of Corrections. Upon entry of the or-  
11 der, the conviction, arrest, citation, charge or other proceeding shall be deemed not to have  
12 occurred, and the person may answer accordingly any questions relating to its occurrence.

13 (7) As used in this section, “qualifying conviction” means a conviction:

14 (a) Based on a nonunanimous jury verdict;

15 (b) For which the convicted person has completed any term of probation or post-prison  
16 supervision ordered by the court as part of the sentence; and

17 (c) For which the convicted person has fully paid any restitution ordered by the court  
18 as part of the sentence.

19 **SECTION 3.** No later than December 31, 2023, the district attorney of each county shall  
20 make reasonable efforts to:

21 (1) Identify convictions based upon nonunanimous verdicts; and

22 (2) Notify the convicted person of the ability to request that the conviction be set aside  
23 under section 2 of this 2021 Act.

24 **SECTION 4.** Section 2 of this 2021 Act is repealed on December 31, 2023.  
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