

House Bill 2131

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen F. Rosenblum)

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**.

Establishes process by which person may file notice of intent to pursue post-conviction relief in order to commence proceeding and, if eligible, obtain appointed attorney.

A BILL FOR AN ACT

1 Relating to post-conviction relief; creating new provisions; and amending ORS 138.510 and 138.560.

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

3 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 138.510 to**
4 **138.680.**

5 **SECTION 2. (1) In addition to using the process described in ORS 138.560, a person may**
6 **commence a proceeding for post-conviction relief pursuant to ORS 138.510 to 138.680 by filing**
7 **a notice of intent to pursue post-conviction relief with the clerk of the circuit court for the**
8 **county in which the person is imprisoned or, if the person is not imprisoned, with the clerk**
9 **of the circuit court for the county in which the person's conviction and sentence were ren-**
10 **dered.**

11 **(2)(a) A notice of intent to pursue post-conviction relief described in this section must**
12 **be filed within 60 days of the following:**

13 **(A) If no appeal is taken, the date the judgment on the conviction was entered in the**
14 **register.**

15 **(B) If an appeal is taken, the date the appeal is final in the Oregon appellate courts.**

16 **(C) If a petition for certiorari to the United States Supreme Court is filed, the later of:**

17 **(i) The date of denial of certiorari, if the petition is denied; or**

18 **(ii) The date of entry of a final state court judgment following remand from the United**
19 **States Supreme Court.**

20 **(b) The notice shall identify the proceedings in which the person was convicted, and any**
21 **related appellate proceedings, and shall provide the date of entry of judgment and sentence**
22 **of the conviction.**

23 **(c) Except as otherwise provided in ORS 138.590, a person filing notice under this section**
24 **must pay the filing fee established under ORS 21.135 at the time of filing a notice under this**
25 **section but need not pay any additional filing fee upon filing the petition.**

26 **(3) A person filing notice under this section may ask in the notice to proceed as a fi-**
27 **nancially eligible person under ORS 138.590. If the person does not ask to proceed as a fi-**
28 **nancially eligible person, the notice must state whether the person has or will retain counsel**
29 **at the person's own expense or whether the person will proceed without counsel.**

30 **(4) Upon the filing of a timely notice under this section, the circuit court shall:**
31

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 (a) Consider and rule upon any request to proceed as a financially eligible person under
 2 ORS 138.590;

3 (b) Forward a copy of the notice in the same manner as a copy of a petition is forwarded
 4 under ORS 138.560 (1); and

5 (c) Issue a scheduling order setting a date by which the petition for post-conviction relief
 6 must be filed.

7 (5) If a notice filed under this section is untimely, the circuit court shall dismiss the
 8 proceeding without prejudice or grant the person leave to file a petition in the manner oth-
 9 erwise required by law. When granting such leave, the circuit court may not extend or oth-
 10 erwise increase any time allowed for filing a petition under ORS 138.510.

11 (6) If no petition is filed by the date specified in the scheduling order, the circuit court
 12 shall dismiss the proceeding with prejudice.

13 **SECTION 3.** ORS 138.510 is amended to read:

14 138.510. (1) Except as otherwise provided in ORS 138.540, any person convicted of a crime under
 15 the laws of this state may file a petition for post-conviction relief pursuant to ORS 138.510 to
 16 138.680.

17 (2) A petition for post-conviction relief may be filed by one person on behalf of another person
 18 who has been convicted of aggravated murder and sentenced to death only if the person filing the
 19 petition demonstrates by a preponderance of the evidence that:

20 (a) The person sentenced to death is unable to file a petition on the person's own behalf due to
 21 mental incapacity or because of a lack of access to the court; and

22 (b) The person filing the petition has a significant relationship with the person sentenced to
 23 death and will act in the best interest of the person on whose behalf the petition is being filed.

24 (3) **Except as otherwise provided in section 2 of this 2023 Act,** a petition pursuant to ORS
 25 138.510 to 138.680 must be filed within two years of the following, unless the court on hearing a
 26 subsequent petition finds grounds for relief asserted which could not reasonably have been raised
 27 in the original or amended petition:

28 (a) If no appeal is taken, the date the judgment [*or order*] on the conviction was entered in the
 29 register.

30 (b) If an appeal is taken, the date the appeal is final in the Oregon appellate courts.

31 (c) If a petition for certiorari to the United States Supreme Court is filed, the later of:

32 (A) The date of denial of certiorari, if the petition is denied; or

33 (B) The date of entry of a final state court judgment following remand from the United States
 34 Supreme Court.

35 (4) A one-year filing period shall apply retroactively to petitions filed by persons whose con-
 36 victions and appeals became final before August 5, 1989, and any such petitions must be filed within
 37 one year after November 4, 1993. A person whose post-conviction petition was dismissed prior to
 38 November 4, 1993, cannot file another post-conviction petition involving the same case.

39 (5) The remedy created by ORS 138.510 to 138.680 is available to persons convicted before May
 40 26, 1959.

41 [*6) In any post-conviction proceeding pending in the courts of this state on May 26, 1959, the*
 42 *person seeking relief in such proceedings shall be allowed to amend the action and seek relief under*
 43 *ORS 138.510 to 138.680. If such person does not choose to amend the action in this manner, the law*
 44 *existing prior to May 26, 1959, shall govern the case.*]

45 **SECTION 4.** ORS 138.560 is amended to read:

1 138.560. (1) **Except as otherwise provided in section 2 of this 2023 Act**, a proceeding for
 2 post-conviction relief pursuant to ORS 138.510 to 138.680 shall be commenced by filing a petition
 3 with the clerk of the circuit court for the county in which the petitioner is imprisoned or, if the
 4 petitioner is not imprisoned, with the clerk of the circuit court for the county in which the
 5 petitioner’s conviction and sentence [*was*] **were** rendered. Except as otherwise provided in ORS
 6 138.590, the petitioner must pay the filing fee established under ORS 21.135 at the time of filing a
 7 petition under this section. If the petitioner prevails, the petitioner shall recover the fee pursuant
 8 to the Oregon Rules of Civil Procedure. The clerk of the court in which the petition is filed shall
 9 enter and file the petition and bring it promptly to the attention of such court. A copy of the peti-
 10 tion need not be served by petitioner on the defendant, but, in lieu thereof, the clerk of the court
 11 in which the petition is filed shall immediately forward a copy of the petition to the Attorney Gen-
 12 eral or other attorney for the defendant named in ORS 138.570.

13 (2) For the purposes of ORS 138.510 to 138.680, a person released on parole, post-prison super-
 14 vision or conditional pardon shall be deemed to be imprisoned in the institution from which the
 15 person was released.

16 (3) Except when petitioner’s conviction was for a misdemeanor, the release of the petitioner
 17 from imprisonment during the pendency of proceedings instituted pursuant to ORS 138.510 to 138.680
 18 shall not cause the proceedings to become moot. Such release of petitioner shall not change the
 19 venue of the proceedings out of the circuit court in which the proceedings were commenced and
 20 shall not affect the power of such court to transfer the proceedings as provided in subsection (4)
 21 of this section.

22 (4) Whenever the petitioner is imprisoned in a Department of Corrections institution and the
 23 circuit court for the county in which the petitioner is imprisoned finds that the hearing upon the
 24 petition can be more expeditiously conducted in the county in which the petitioner was convicted
 25 and sentenced, the circuit court upon its own motion or the motion of a party may order the
 26 petitioner’s case to be transferred to the circuit court for the county in which petitioner’s conviction
 27 and sentence were rendered. The court’s order is not reviewable by any court of this state.

28 (5) When a petitioner who is imprisoned in a Department of Corrections institution is trans-
 29 ferred to another Department of Corrections institution, the circuit court in which a post-conviction
 30 relief proceeding is pending may deny a motion for a change of venue to the county where the
 31 petitioner is transferred. The court’s order is not reviewable by any court of this state.

32 **SECTION 5. Section 2 of this 2023 Act and the amendments to ORS 138.510 and 138.560**
 33 **by sections 3 and 4 of this 2023 Act apply to convictions for which final judgment is entered**
 34 **on or after the effective date of this 2023 Act.**