

Enrolled Senate Bill 321

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CHAPTER

AN ACT

Relating to crime; creating new provisions; amending section 1, chapter 105, Oregon Laws 2022; and declaring an emergency.

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

SECTION 1. (1) Notwithstanding ORS 138.510 (3) and (4), at any time before December 30, 2024, a person may file a petition for post-conviction relief under ORS 138.510 to 138.680 claiming, as grounds for relief, that the person was convicted of a criminal offense as the result of a nonunanimous jury verdict.

(2) ORS 138.550 does not apply to petitions for post-conviction relief described in this section.

(3)(a) Notwithstanding ORS 138.530, in a post-conviction relief proceeding claiming, as grounds for relief, that the person was convicted of a criminal offense as the result of a nonunanimous jury verdict, the petitioner has the burden of proving, by a preponderance of the evidence, that the conviction resulted from a nonunanimous jury verdict.

(b) Evidence that a jury verdict was nonunanimous is limited to:

- (A) A verdict form;**
- (B) A written jury poll;**
- (C) An audio or video recording of the trial; or**
- (D) A transcript of the trial.**

(c) Notwithstanding paragraph (b) of this subsection, if a recording or transcript of the trial reflects that the jury was polled after issuing the verdict, but either does not indicate or is ambiguous concerning whether the verdict was unanimous, the court may order a review in camera of the file of the district attorney, the defense attorney or the court, relating to the underlying conviction, and may consider any evidence concerning the jury's verdict within the file or files that the court determines to be credible.

(d) This subsection applies to petitions for post-conviction relief filed on or after the effective date of this 2023 Act.

(4) Notwithstanding ORS 138.520, if post-conviction relief is granted under this section, the court shall vacate the judgment as to the specific conviction that resulted from the nonunanimous jury verdict, or grant such other relief as stipulated by the parties.

(5) A petitioner with an appeal pending in an appellate court on the effective date of this 2023 Act, from a judgment on a petition under ORS 138.510 to 138.680, may by motion seek

leave of the appellate court to vacate the judgment and remand to the circuit court so that the petitioner may file an amended petition indicating the petitioner's intent to proceed under the provisions of this section. Upon the receipt of such a motion, the appellate court may vacate the judgment and remand to the circuit court if:

(a) The petition asserted as grounds for relief either that the petitioner was convicted of a criminal offense as the result of a nonunanimous jury verdict, or that counsel was ineffective for a reason related to the petitioner's conviction resulting from a nonunanimous jury verdict; and

(b) The motion described in this subsection is filed within 90 days after the effective date of this 2023 Act.

(6) If a judgment of conviction is vacated on the grounds that the person was convicted of a criminal offense as the result of a nonunanimous jury verdict, upon retrial, if the trial court determines that evidence other than witness testimony that was previously admitted during the trial that resulted in the nonunanimous guilty verdict is unavailable because the evidence was lawfully destroyed or otherwise rendered unavailable through no fault of the state or the defendant, or that the evidence is unavailable despite reasonable efforts to preserve the evidence:

(a) The state may present in the state's case in chief or rebuttal case, and the defendant may present in the defendant's case in chief, a transcript or portion thereof, a recording of the prior proceeding or portion thereof, or any other previously admitted exhibit, concerning the unavailable evidence from the previous trial.

(b) The court shall instruct the jury:

(A) That the evidence is unavailable;

(B) That the jury may not attribute the unavailability to the state or the defendant, or fault either party for failing to produce the unavailable evidence; and

(C) That the jury may not speculate as to why the evidence is unavailable.

(c) The court may not instruct the jury pursuant to ORS 10.095 (7) or (8) regarding the transcripts, recordings of the prior proceeding or exhibits described in paragraph (a) of this subsection.

(7) Except as otherwise provided in this section, all provisions of ORS 138.510 to 138.680 apply to petitions for post-conviction relief described in this section.

(8) As used in this section, "conviction" includes a finding of guilty except for insanity.

SECTION 2. (1) Section 1 of this 2023 Act is repealed on January 2, 2026.

(2) The repeal of section 1 of this 2023 Act does not affect:

(a) A petition or amended petition for post-conviction relief described in section 1 of this 2023 Act filed within the time limitations described in section 1 of this 2023 Act.

(b) A retrial resulting from the vacating of a conviction pursuant to section 1 of this 2023 Act.

SECTION 3. Section 1, chapter 105, Oregon Laws 2022, is amended to read:

Sec. 1. (1) A person may petition for compensation for wrongful conviction against the state if all of the following requirements are satisfied:

(a) The person was convicted of one or more felonies and subsequently imprisoned as a result of the conviction or convictions;

(b)(A) The person's conviction was reversed or vacated and either the charges were dismissed or on retrial the person was found not guilty; or

(B) The person received a grant of gubernatorial pardon;

(c) The person did not commit the crime or crimes for which the person was convicted and was not an accessory or accomplice to or otherwise involved in the acts that were the basis of the conviction; and

(d) The person did not commit perjury, fabricate evidence or by the person's own conduct cause or bring about the conviction. A confession or admission later found to be false or a guilty plea does

not constitute committing perjury, fabricating evidence or causing or bringing about the conviction under this paragraph.

(2) For the purposes of subsection (1) of this section:

(a) Reversal or vacation of a conviction because the conviction was obtained following a finding of guilt by a nonunanimous jury is not[, *by itself,*] sufficient to prove that the person did not commit the crime or crimes for which the person was convicted.

(b) "Convicted" or "conviction" includes an adjudication of a person within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age if the adjudication resulted in the person's placement in custody of the Oregon Youth Authority or the Department of Corrections for at least one year.

(3) A person may file a petition for compensation under this section in the Circuit Court for Marion County or in the circuit court for the county of conviction. The petitioner shall serve the petition on the Attorney General, who shall represent the state in all proceedings on the petition. The petitioner shall also mail a copy of the complaint to the District Attorney of the county of conviction.

(4)(a) A petition under this section is a civil action. The Oregon Rules of Civil Procedure and the Oregon Evidence Code apply to a petition under this section unless otherwise specified in this section.

(b) The court, in exercising its discretion regarding the weight and admissibility of evidence submitted under this section, may in the interest of justice give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by a petitioner or those acting on a petitioner's behalf. The court may not diminish the petitioner's burden of proof as set forth in subsection (5)(a) of this section.

(c) The fact finder in a proceeding under this section may receive proof by declarations, depositions, oral testimony or other competent evidence, including but not limited to transcripts of testimony or documents and evidence filed with the court in any proceeding that gave rise to the conviction, reversal or vacation of the conviction, or from retrial following reversal.

(5)(a) If a petitioner proves the elements of subsection (1) of this section by a preponderance of the evidence, the court shall enter a judgment awarding damages as follows:

(A) Except as provided in paragraph (b) of this subsection, \$65,000 for each year of imprisonment, as adjusted under subsection (8) of this section; and

(B) \$25,000, as adjusted under subsection (8) of this section, for each additional year served on parole or post-prison supervision or each additional year the petitioner was required to register as a sex offender, whichever is greater.

(b) A petitioner is not entitled to damages for any period of incarceration during which the petitioner was concurrently serving a sentence for a conviction of another crime for which the petitioner was lawfully incarcerated.

(c) Punitive damages may not be awarded under this section.

(6)(a) Except as provided in paragraph (b) of this subsection, the court shall order that an award under subsection (5) of this section be paid as a combination of an initial payment not to exceed \$100,000 or 25 percent of the award, whichever is greater, and the remainder as an annuity not to exceed \$80,000 per year. The petitioner shall designate a beneficiary or beneficiaries for the annuity.

(b) The court may order that the award be paid in one lump sum if the court finds that it is in the best interests of the petitioner.

(7) In addition to the damages awarded under subsection (5) of this section, the court:

(a) Shall award to the petitioner reasonable attorney fees and costs incurred in connection with a petition filed under this section;

(b) Shall award to the petitioner reimbursement for all restitution, assessments, fees, court costs and all other sums paid by the petitioner as required by pretrial orders, incarceration, and the judgment and sentence in any proceeding that gave rise to the conviction, reversal or vacation of the conviction, or from retrial following reversal; and

(c) May award to the petitioner access to existing state, local or other programs that provide services, including, but not limited to, counseling, housing assistance, eligibility for medical assistance as defined in ORS 414.025, educational assistance, job training, legal services to regain custody of children, assistance with food and transportation and personal financial literacy assistance, as appropriate.

(8) Beginning in 2023, and every year thereafter, the State Court Administrator shall determine the percentage increase or decrease in the cost of living for the previous calendar year, based on changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor. On or before July 1 of the year in which the State Court Administrator makes the determination required by this subsection, the State Court Administrator shall adjust the amounts prescribed under subsection (5) of this section for the following calendar year by multiplying the amounts applicable to the calendar year in which the adjustment is made by the percentage amount determined under this subsection. The adjustment may not exceed three percent for any year. The State Court Administrator shall round the adjusted limitation amount to the nearest \$100, but the unrounded amount shall be used to calculate the adjustments to the amounts in subsequent calendar years. The adjusted amounts become effective on July 1 of the year in which the adjustment is made, and apply to all petitions filed under this section on or after July 1 of that year and before July 1 of the subsequent year.

(9)(a) If, on the date a judgment is entered under subsection (5) of this section, the petitioner has won a monetary award against a public body as defined in ORS 174.109 in a separate civil action related to the same subject, or has entered into a settlement agreement with a public body as defined in ORS 174.109 related to the same subject, the amount of economic damages awarded in the separate action or received in the settlement agreement, less any sums paid to litigate the other civil action or obtain the settlement agreement, including, but not limited to, attorney fees, costs and expert fees, shall be deducted from the sum of money to which the petitioner is entitled under this section. The court shall include in the judgment an award to the state of any amount deducted pursuant to this subsection.

(b) If paragraph (a) of this subsection does not apply and if, after the date the judgment is entered under subsection (5) of this section, the petitioner wins a monetary award against a public body as defined in ORS 174.109 in a separate civil action related to the same subject, or enters into a settlement agreement with a public body as defined in ORS 174.109 related to the same subject, the petitioner shall reimburse the state for the sum of money paid under the judgment entered under subsection (5) of this section, less any sums paid to litigate the other civil action or obtain the settlement agreement, including, but not limited to, attorney fees, costs and expert fees. A reimbursement required under this subsection may not exceed the amount of the economic damages awarded in the separate civil action or received in the settlement agreement.

(c) An award under this section shall not be offset by any expenses incurred by a public body as defined in ORS 174.109 to secure the petitioner's custody or conviction, or to feed, clothe, house or provide medical services to the petitioner as a result of the petitioner's incarceration.

(10) Compensation awarded as a result of a petition for compensation for wrongful conviction under this section is excluded from gross income and is not subject to taxation.

(11) A petition under this section is not subject to ORS 30.260 to 30.300.

(12)(a) If the petitioner prevails on a petition under this section, the petitioner may request that judgment include a certificate of innocence finding that the petitioner was innocent of all crimes for which the petitioner was wrongfully convicted.

(b) Upon entry of a judgment granting a petition under this section, the court shall order the associated convictions and arrest records be set aside and sealed from all applicable state and federal systems pursuant to this subsection. The court shall enter the set aside order regardless of whether the petitioner has other criminal convictions or pending criminal cases.

(13) Notwithstanding ORS 12.115, a petition under this section must be filed no later than two years after:

(a) The date of dismissal of the criminal charges against the petitioner or finding of not guilty on retrial, whichever is later; or

(b) The grant of pardon to the petitioner.

(14) Any party to a proceeding under this section may appeal from the judgment of the circuit court on a petition filed under this section by filing a notice of appeal within the time and in the manner specified in ORS chapter 19 for civil appeals to the Court of Appeals. Any party filing a notice of appeal under this subsection must note in the notice of appeal that the case is subject to this subsection. For purposes of any appeals under this section, the Attorney General shall represent the state in all appellate proceedings. The party filing the notice of appeal shall serve the notice of appeal on the Attorney General and on the district attorney for the county of conviction.

(15) This section does not preclude the Department of Corrections from providing reentry services to a petitioner under this section that are provided to other persons, including, but not limited to, financial assistance, housing assistance, mentoring and counseling. Services may be provided while an action is pending and after any judgment is entered, as appropriate for the petitioner.

SECTION 4. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by Senate June 20, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House June 21, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State