

A-Engrossed Senate Bill 321

Ordered by the Senate April 14
Including Senate Amendments dated April 14

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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.

Creates process by which person convicted or found guilty except for insanity as result of non-unanimous jury verdict may file petition for post-conviction relief [*within one year of effective date of Act*] **at any time before December 30, 2024**. Creates procedure by which person with post-conviction relief petition [*pending in circuit court or*] on appeal on effective date of Act may proceed under process. Directs court to instruct jury concerning certain unavailable evidence if conviction is vacated and case is retried. Appropriates moneys to Emergency Board for allocation to Department of Justice for expenses of [*department and other entities*] **district attorney offices** resulting from creation of process and retrial of vacated convictions. Sunsets on [*January 1, 2027*] **January 2, 2026**.

[*Temporarily authorizes district attorney to charge reasonable reimbursement fee for cost of providing copies of discovery materials in criminal case. Sunsets on January 1, 2025.*]

[*Removes requirement that court order presentence report when defendant is convicted of specified offenses.*]

[*Takes effect on 91st day following adjournment sine die.*]

Declares emergency, effective on passage.

A BILL FOR AN ACT

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

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

5 **SECTION 1. (1) Notwithstanding ORS 138.510 (3) and (4), at any time before December**
6 **30, 2024, a person may file a petition for post-conviction relief under ORS 138.510 to 138.680**
7 **claiming, as grounds for relief, that the person was convicted of a criminal offense as the**
8 **result of a nonunanimous jury verdict.**

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

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

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

16 **(A) A verdict form;**

17 **(B) A written jury poll;**

18 **(C) An audio or video recording of the trial; or**

19 **(D) A transcript of the trial.**

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

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

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

12 (5) A petitioner with an appeal pending in an appellate court on the effective date of this
13 2023 Act, from a judgment on a petition under ORS 138.510 to 138.680, may by motion seek
14 leave of the appellate court to vacate the judgment and remand to the circuit court so that
15 the petitioner may file an amended petition indicating the petitioner's intent to proceed un-
16 der the provisions of this section. Upon the receipt of such a motion, the appellate court
17 may vacate the judgment and remand to the circuit court if:

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

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

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

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

35 (b) The court shall instruct the jury:

36 (A) That the evidence is unavailable;

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

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

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

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

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

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

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

3 (a) A petition or amended petition for post-conviction relief described in section 1 of this
4 2023 Act filed within the time limitations described in section 1 of this 2023 Act.

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

7 **SECTION 3.** (1) In addition to and not in lieu of any other appropriation, there is appro-
8 priated to the Emergency Board, for the biennium beginning July 1, 2023, out of the General
9 Fund, the amount of \$2,000,000, to be allocated to the Department of Justice for expenses of
10 district attorney offices resulting from carrying out the provisions of section 1 of this 2023
11 Act.

12 (2) The Department of Justice may distribute moneys received pursuant to subsection (1)
13 of this section to district attorney offices, so long as the distribution is for expenses incurred
14 by those entities resulting from carrying out the provisions of section 1 of this 2023 Act.

15 **SECTION 4.** Section 1, chapter 105, Oregon Laws 2022, is amended to read:

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

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

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

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

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

26 (d) The person did not commit perjury, fabricate evidence or by the person's own conduct cause
27 or bring about the conviction. A confession or admission later found to be false or a guilty plea does
28 not constitute committing perjury, fabricating evidence or causing or bringing about the conviction
29 under this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

21 (6)(a) Except as provided in paragraph (b) of this subsection, the court shall order that an award
22 under subsection (5) of this section be paid as a combination of an initial payment not to exceed
23 \$100,000 or 25 percent of the award, whichever is greater, and the remainder as an annuity not to
24 exceed \$80,000 per year. The petitioner shall designate a beneficiary or beneficiaries for the annuity.

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

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

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

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

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

39 (8) Beginning in 2023, and every year thereafter, the State Court Administrator shall determine
40 the percentage increase or decrease in the cost of living for the previous calendar year, based on
41 changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as pub-
42 lished by the Bureau of Labor Statistics of the United States Department of Labor. On or before
43 July 1 of the year in which the State Court Administrator makes the determination required by this
44 subsection, the State Court Administrator shall adjust the amounts prescribed under subsection (5)
45 of this section for the following calendar year by multiplying the amounts applicable to the calendar

1 year in which the adjustment is made by the percentage amount determined under this subsection.
2 The adjustment may not exceed three percent for any year. The State Court Administrator shall
3 round the adjusted limitation amount to the nearest \$100, but the unrounded amount shall be used
4 to calculate the adjustments to the amounts in subsequent calendar years. The adjusted amounts
5 become effective on July 1 of the year in which the adjustment is made, and apply to all petitions
6 filed under this section on or after July 1 of that year and before July 1 of the subsequent year.

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

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

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

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

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

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

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

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

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

42 (b) The grant of pardon to the petitioner.

43 (14) Any party to a proceeding under this section may appeal from the judgment of the circuit
44 court on a petition filed under this section by filing a notice of appeal within the time and in the
45 manner specified in ORS chapter 19 for civil appeals to the Court of Appeals. Any party filing a

1 notice of appeal under this subsection must note in the notice of appeal that the case is subject to
2 this subsection. For purposes of any appeals under this section, the Attorney General shall represent
3 the state in all appellate proceedings. The party filing the notice of appeal shall serve the notice
4 of appeal on the Attorney General and on the district attorney for the county of conviction.

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

9 **SECTION 5. This 2023 Act being necessary for the immediate preservation of the public**
10 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
11 **on its passage.**

12 _____