

B-Engrossed
Senate Bill 321

Ordered by the Senate June 12
Including Senate Amendments dated April 14 and June 12

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary and Ballot Measure 110 Implementation)

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 at any time before December 30, 2024. Creates procedure by which person with post-conviction relief petition 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 district attorney offices resulting from creation of process and retrial of vacated convictions.*] Sunsets on January 2, 2026.

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.**

20 **(c) Notwithstanding paragraph (b) of this subsection, if a recording or transcript of the**
21 **trial reflects that the jury was polled after issuing the verdict, but either does not indicate**
22 **or is ambiguous concerning whether the verdict was unanimous, the court may order a re-**
23 **view in camera of the file of the district attorney, the defense attorney or the court, relating**

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 to the underlying conviction, and may consider any evidence concerning the jury’s verdict
2 within the file or files that the court determines to be credible.

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

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

8 (5) A petitioner with an appeal pending in an appellate court on the effective date of this
9 2023 Act, from a judgment on a petition under ORS 138.510 to 138.680, may by motion seek
10 leave of the appellate court to vacate the judgment and remand to the circuit court so that
11 the petitioner may file an amended petition indicating the petitioner’s intent to proceed un-
12 der the provisions of this section. Upon the receipt of such a motion, the appellate court
13 may vacate the judgment and remand to the circuit court if:

14 (a) The petition asserted as grounds for relief either that the petitioner was convicted
15 of a criminal offense as the result of a nonunanimous jury verdict, or that counsel was in-
16 effective for a reason related to the petitioner’s conviction resulting from a nonunanimous
17 jury verdict; and

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

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

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

31 (b) The court shall instruct the jury:

32 (A) That the evidence is unavailable;

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

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

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

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

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

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

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

44 (a) A petition or amended petition for post-conviction relief described in section 1 of this
45 2023 Act filed within the time limitations described in section 1 of this 2023 Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (A) Except as provided in paragraph (b) of this subsection, \$65,000 for each year of

1 imprisonment, as adjusted under subsection (8) of this section; and

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

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

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

9 (6)(a) Except as provided in paragraph (b) of this subsection, the court shall order that an award
10 under subsection (5) of this section be paid as a combination of an initial payment not to exceed
11 \$100,000 or 25 percent of the award, whichever is greater, and the remainder as an annuity not to
12 exceed \$80,000 per year. The petitioner shall designate a beneficiary or beneficiaries for the annuity.

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

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

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

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

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

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

40 (9)(a) If, on the date a judgment is entered under subsection (5) of this section, the petitioner
41 has won a monetary award against a public body as defined in ORS 174.109 in a separate civil action
42 related to the same subject, or has entered into a settlement agreement with a public body as de-
43 fined in ORS 174.109 related to the same subject, the amount of economic damages awarded in the
44 separate action or received in the settlement agreement, less any sums paid to litigate the other
45 civil action or obtain the settlement agreement, including, but not limited to, attorney fees, costs

1 and expert fees, shall be deducted from the sum of money to which the petitioner is entitled under
2 this section. The court shall include in the judgment an award to the state of any amount deducted
3 pursuant to this subsection.

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

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

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

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

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

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

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

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

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

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

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

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