

# Senate Bill 321

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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 **as introduced**.

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. 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 resulting from creation of process and retrial of vacated convictions. Sunsets on January 1, 2027.

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.

## A BILL FOR AN ACT

1  
2 Relating to crime; creating new provisions; amending ORS 135.815 and 144.791; and prescribing an  
3 effective date.

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

5 **SECTION 1.** (1)(a) **Notwithstanding ORS 138.510 (3) and (4), and except as provided in**  
6 **paragraph (b) of this subsection, at any time within one year after the effective date of this**  
7 **2023 Act, a person may file a petition for post-conviction relief under ORS 138.510 to 138.680**  
8 **claiming, as grounds for relief, that the person was convicted of a criminal offense as the**  
9 **result of a nonunanimous jury verdict, if the person is in custody serving a sentence on that**  
10 **conviction.**

11 (b) **A person may not file a petition for post-conviction relief under the provisions of this**  
12 **section based on a criminal offense committed against a person under 18 years of age.**

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

15 (3)(a) **Notwithstanding ORS 138.530, in a post-conviction relief proceeding based on a pe-**  
16 **tition described in this section, the petitioner has the burden of proving, by clear and con-**  
17 **vincing evidence, that the conviction resulted from a nonunanimous jury verdict.**

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

19 (A) **A verdict form;**

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

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

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

23 (c) **Notwithstanding paragraph (b) of this subsection, if a recording or transcript of the**  
24 **trial reflects that the jury was polled after issuing the verdict, but either does not indicate**

**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 or is ambiguous concerning whether the verdict was unanimous, the court may order a re-  
2 view in camera of the file of the district attorney, the defense attorney or the court, relating  
3 to the underlying conviction, and may consider any evidence concerning the jury's verdict  
4 within the file or files that the court determines to be credible.

5 (4)(a) Notwithstanding ORS 138.530, in a post-conviction relief proceeding based on a pe-  
6 tition described in this section, if the court finds that the petitioner has established by clear  
7 and convincing evidence that a conviction resulted from a nonunanimous jury verdict, the  
8 court shall grant post-conviction relief on that conviction.

9 (b) Notwithstanding ORS 138.520, if post-conviction relief is granted under paragraph (a)  
10 of this subsection, the court shall vacate the specific judgment of conviction that resulted  
11 from the nonunanimous jury verdict.

12 (5) If a judgment of conviction is vacated under subsection (4) of this section, and the  
13 prosecuting attorney proceeds with either the same criminal charges or charges based on the  
14 same criminal episode as the original charges, upon conviction of those charges, the  
15 petitioner shall receive credit for time served under ORS 137.370. If the petitioner is con-  
16 victed of a different offense based on the same criminal episode as the original conviction,  
17 the court shall indicate in the judgment that the new crime of conviction was committed as  
18 part of the same criminal episode as the original crime of conviction.

19 (6)(a) A petitioner with a post-conviction relief petition pending in circuit court on the  
20 effective date of this 2023 Act may proceed under the provisions of this section if the  
21 petitioner files an amended petition within 120 days after the effective date of this 2023 Act  
22 indicating the petitioner's intent to proceed under the provisions of this section.

23 (b)(A) A petitioner with an appeal pending in an appellate court on the effective date of  
24 this 2023 Act, from a judgment on a petition under ORS 138.510 to 138.680 asserting as  
25 grounds for relief either that the petitioner was convicted of a criminal offense as the result  
26 of a nonunanimous jury verdict or that counsel was inadequate for reasons related to the  
27 petitioner's conviction resulting from a nonunanimous jury verdict, may by motion seek  
28 leave of the appellate court to vacate the judgment and remand to the circuit court so that  
29 the petitioner may file an amended petition indicating the petitioner's intent to proceed un-  
30 der the provisions of this section.

31 (B) A motion described in subparagraph (A) of this paragraph must be filed within 90  
32 days after the effective date of this 2023 Act.

33 (C) An amended petition described in subparagraph (A) of this paragraph must be filed  
34 within 120 days after the date of entry of the appellate judgment vacating and remanding to  
35 the circuit court.

36 (D) Following the entry of an appellate court judgment remanding to the circuit court,  
37 the circuit court, after addressing the claims subject to the provisions of this section, shall  
38 enter a general judgment disposing of those claims and any other claims raised in the ori-  
39 ginal petition.

40 (c) Nothing in this subsection precludes a person from filing a new petition for post-  
41 conviction relief under subsection (1) of this 2023 Act.

42 (7) Notwithstanding subsection (6) of this section, if a petition or amended petition for  
43 post-conviction relief contains both a claim of grounds for relief based on the fact that the  
44 person was convicted of a criminal offense as the result of a nonunanimous jury verdict and  
45 any other grounds for relief, only the grounds for relief based on the nonunanimous jury

1 verdict are subject to the provisions of this section.

2 (8) The filing of a petition for post-conviction relief described in this section, or the filing  
3 of an amended petition under subsection (6) of this section, does not:

4 (a) Preclude or affect the filing of other concurrent or subsequent post-conviction relief  
5 petitions claiming grounds for relief other than a conviction resulting from a nonunanimous  
6 jury verdict, if such petitions are otherwise permitted to be filed under ORS 138.510 to  
7 138.680.

8 (b) Create or revive any claim for relief otherwise barred by ORS 138.510 to 138.680.

9 (9) If a judgment of conviction is vacated under this section, upon retrial, if the trial  
10 court determines that evidence other than witness testimony that was properly admitted  
11 during the trial that resulted in the nonunanimous guilty verdict is unavailable because the  
12 evidence was lawfully destroyed or otherwise rendered unavailable through no fault of the  
13 state or the defendant:

14 (a) The state may present in the state's case in chief or rebuttal case, and the defendant  
15 may present in the defendant's case in chief, a transcript or portion thereof, or any other  
16 properly admitted exhibit, concerning the unavailable evidence from the previous trial.

17 (b) The court shall instruct the jury:

18 (A) That the evidence is unavailable;

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

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

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

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

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

27 **SECTION 2.** (1) Section 1 of this 2023 Act is repealed on January 1, 2027.

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

29 (a) A petition or amended petition for post-conviction relief described in section 1 of this  
30 2023 Act filed within the time limitations described in section 1 of this 2023 Act.

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

33 **SECTION 3.** (1) In addition to and not in lieu of any other appropriation, there is appro-  
34 priated to the Emergency Board, for the biennium beginning July 1, 2023, out of the General  
35 Fund, the amount of \$6,000,000, to be allocated to the Department of Justice for expenses of  
36 the department, district attorney offices and community-based organizations that provide  
37 services to crime victims, resulting from carrying out the provisions of section 1 of this 2023  
38 Act.

39 (2) The Department of Justice may distribute moneys received pursuant to subsection (1)  
40 of this section to district attorney offices and community-based organizations that provide  
41 services to crime victims, so long as the distribution is for expenses incurred by those enti-  
42 ties resulting from carrying out the provisions of section 1 of this 2023 Act.

43 **SECTION 4.** ORS 135.815 is amended to read:

44 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall  
45 disclose to a represented defendant the following material and information within the possession or

1 control of the district attorney:

2 (a) The names, addresses and telephone numbers of persons whom the district attorney intends  
 3 to call as witnesses at any stage of the trial, together with their relevant written or recorded  
 4 statements or memoranda of any oral statements of such persons.

5 (b) Any written or recorded statements or memoranda of any oral statements made by the de-  
 6 fendant, or made by a codefendant if the trial is to be a joint one.

7 (c) Any reports or statements of experts, made in connection with the particular case, including  
 8 results of physical or mental examinations and of scientific tests, experiments or comparisons which  
 9 the district attorney intends to offer in evidence at the trial.

10 (d) Any books, papers, documents, photographs or tangible objects:

11 (A) Which the district attorney intends to offer in evidence at the trial; or

12 (B) Which were obtained from or belong to the defendant.

13 (e) If actually known to the district attorney, any record of prior criminal convictions of persons  
 14 whom the district attorney intends to call as witnesses at the trial; and the district attorney shall  
 15 make a good faith effort to determine if such convictions have occurred.

16 (f) All prior convictions of the defendant known to the state that would affect the determination  
 17 of the defendant's criminal history for sentencing under rules of the Oregon Criminal Justice Com-  
 18 mission.

19 (g) Any material or information that tends to:

20 (A) Exculpate the defendant;

21 (B) Negate or mitigate the defendant's guilt or punishment; or

22 (C) Impeach a person the district attorney intends to call as a witness at the trial.

23 (2)(a) The disclosure required by subsection (1)(g) of this section:

24 (A) Shall occur regardless of whether the material or information is recorded or in writing.

25 (B) Shall occur without delay in accordance with ORS 135.845 and prior to the entry of any  
 26 guilty plea pursuant to an agreement with the state. If the existence of the material or information  
 27 is not known at that time, the disclosure shall be made upon discovery without regard to whether  
 28 the represented defendant has entered or agreed to enter a guilty plea.

29 (b) Nothing in subsection (1)(g) of this section:

30 (A) Expands any obligation under a statutory provision or the Oregon or United States Consti-  
 31 tution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement  
 32 officers.

33 (B) Imposes any obligation on the district attorney to provide material or information beyond  
 34 the obligation imposed by the Oregon and United States Constitutions.

35 (3) Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation of  
 36 ORS 813.010 in which an instrument was used to test a person's breath, blood or urine to determine  
 37 the alcoholic content of the person's blood the district attorney shall disclose to a represented de-  
 38 fendant at least the following material and information within the possession or control of the dis-  
 39 trict attorney:

40 (a) Any report prepared by a police officer relating to field tests, interviews, observations and  
 41 other information relating to the charged offense;

42 (b) Any report relating to the test results;

43 (c) A copy of the form provided to the defendant under ORS 813.100 (2)(b); and

44 (d) Any checklist prepared by the operator of the instrument for the test.

45 (4)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the

1 defendant all of the information described in subsections (1) and (3) of this section except for the  
 2 personal identifiers of the victim and any witnesses.

3 (b) Notwithstanding paragraph (a) of this subsection, the district attorney shall disclose the  
 4 personal identifiers of the victim and any witnesses if the trial court orders the disclosure. A trial  
 5 court shall order the district attorney to disclose the personal identifiers of the victim and any  
 6 witnesses if the trial court finds that:

7 (A) The defendant has requested the information; and

8 (B)(i) The victim or witness is a business or institution and disclosure of the information would  
 9 not represent a risk of harm to the victim or witness; or

10 (ii) The need for the information cannot reasonably be met by other means.

11 **(5) The district attorney may charge a reasonable reimbursement fee for the cost of**  
 12 **providing copies of materials required to be disclosed under this section, including but not**  
 13 **limited to documents, photographs, reports, audio recordings, video recordings or electron-**  
 14 **ically stored information.**

15 [(5)(a)] **(6)(a)** Unless authorized by the trial court to disclose the information, a lawyer repre-  
 16 senting a defendant, or a representative of the lawyer, may not disclose to the defendant personal  
 17 identifiers of a victim or witness obtained under subsections (1) and (3) of this section.

18 (b) The trial court shall order the lawyer, or representative of the lawyer, to disclose to the  
 19 defendant the personal identifiers of a victim or witness if the court finds that:

20 (A) The defendant’s lawyer has requested the district attorney to disclose the information to the  
 21 defendant;

22 (B) The district attorney has refused to disclose the information to the defendant; and

23 (C) The need for the information cannot reasonably be met by other means.

24 [(6)] **(7)** As used in this section:

25 (a) “Personal identifiers” means:

26 (A) In relation to a witness, the witness’s address, telephone number, Social Security number  
 27 and date of birth and the identifying number of the witness’s depository account at a financial in-  
 28 stitution, as defined in ORS 706.008, or credit card account.

29 (B) In relation to a victim, the victim’s address, electronic mail address, telephone number, So-  
 30 cial Security number, date of birth, any user names or other identifying information associated with  
 31 the victim’s social media accounts and the identifying number of the victim’s depository account at  
 32 a financial institution, as defined in ORS 706.008, or credit card account.

33 (b) “Representative of the lawyer” has the meaning given that term in ORS 40.225.

34 (c) “Represented defendant” means a defendant who is represented by a lawyer in a criminal  
 35 action.

36 (d) “Social media” has the meaning given that term in ORS 659A.330.

37 **SECTION 5.** ORS 135.815, as amended by section 4 of this 2023 Act, is amended to read:

38 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall  
 39 disclose to a represented defendant the following material and information within the possession or  
 40 control of the district attorney:

41 (a) The names, addresses and telephone numbers of persons whom the district attorney intends  
 42 to call as witnesses at any stage of the trial, together with their relevant written or recorded  
 43 statements or memoranda of any oral statements of such persons.

44 (b) Any written or recorded statements or memoranda of any oral statements made by the de-  
 45 fendant, or made by a codefendant if the trial is to be a joint one.

1 (c) Any reports or statements of experts, made in connection with the particular case, including  
 2 results of physical or mental examinations and of scientific tests, experiments or comparisons which  
 3 the district attorney intends to offer in evidence at the trial.

4 (d) Any books, papers, documents, photographs or tangible objects:

5 (A) Which the district attorney intends to offer in evidence at the trial; or

6 (B) Which were obtained from or belong to the defendant.

7 (e) If actually known to the district attorney, any record of prior criminal convictions of persons  
 8 whom the district attorney intends to call as witnesses at the trial; and the district attorney shall  
 9 make a good faith effort to determine if such convictions have occurred.

10 (f) All prior convictions of the defendant known to the state that would affect the determination  
 11 of the defendant's criminal history for sentencing under rules of the Oregon Criminal Justice Com-  
 12 mission.

13 (g) Any material or information that tends to:

14 (A) Exculpate the defendant;

15 (B) Negate or mitigate the defendant's guilt or punishment; or

16 (C) Impeach a person the district attorney intends to call as a witness at the trial.

17 (2)(a) The disclosure required by subsection (1)(g) of this section:

18 (A) Shall occur regardless of whether the material or information is recorded or in writing.

19 (B) Shall occur without delay in accordance with ORS 135.845 and prior to the entry of any  
 20 guilty plea pursuant to an agreement with the state. If the existence of the material or information  
 21 is not known at that time, the disclosure shall be made upon discovery without regard to whether  
 22 the represented defendant has entered or agreed to enter a guilty plea.

23 (b) Nothing in subsection (1)(g) of this section:

24 (A) Expands any obligation under a statutory provision or the Oregon or United States Consti-  
 25 tution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement  
 26 officers.

27 (B) Imposes any obligation on the district attorney to provide material or information beyond  
 28 the obligation imposed by the Oregon and United States Constitutions.

29 (3) Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation of  
 30 ORS 813.010 in which an instrument was used to test a person's breath, blood or urine to determine  
 31 the alcoholic content of the person's blood the district attorney shall disclose to a represented de-  
 32 fendant at least the following material and information within the possession or control of the dis-  
 33 trict attorney:

34 (a) Any report prepared by a police officer relating to field tests, interviews, observations and  
 35 other information relating to the charged offense;

36 (b) Any report relating to the test results;

37 (c) A copy of the form provided to the defendant under ORS 813.100 (2)(b); and

38 (d) Any checklist prepared by the operator of the instrument for the test.

39 (4)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the  
 40 defendant all of the information described in subsections (1) and (3) of this section except for the  
 41 personal identifiers of the victim and any witnesses.

42 (b) Notwithstanding paragraph (a) of this subsection, the district attorney shall disclose the  
 43 personal identifiers of the victim and any witnesses if the trial court orders the disclosure. A trial  
 44 court shall order the district attorney to disclose the personal identifiers of the victim and any  
 45 witnesses if the trial court finds that:

1 (A) The defendant has requested the information; and

2 (B)(i) The victim or witness is a business or institution and disclosure of the information would  
3 not represent a risk of harm to the victim or witness; or

4 (ii) The need for the information cannot reasonably be met by other means.

5 *[(5) The district attorney may charge a reasonable reimbursement fee for the cost of providing  
6 copies of materials required to be disclosed under this section, including but not limited to documents,  
7 photographs, reports, audio recordings, video recordings or electronically stored information.]*

8 *[(6)(a)]* **(5)(a)** Unless authorized by the trial court to disclose the information, a lawyer repre-  
9 senting a defendant, or a representative of the lawyer, may not disclose to the defendant personal  
10 identifiers of a victim or witness obtained under subsections (1) and (3) of this section.

11 (b) The trial court shall order the lawyer, or representative of the lawyer, to disclose to the  
12 defendant the personal identifiers of a victim or witness if the court finds that:

13 (A) The defendant’s lawyer has requested the district attorney to disclose the information to the  
14 defendant;

15 (B) The district attorney has refused to disclose the information to the defendant; and

16 (C) The need for the information cannot reasonably be met by other means.

17 *[(7)]* **(6)** As used in this section:

18 (a) “Personal identifiers” means:

19 (A) In relation to a witness, the witness’s address, telephone number, Social Security number  
20 and date of birth and the identifying number of the witness’s depository account at a financial in-  
21 stitution, as defined in ORS 706.008, or credit card account.

22 (B) In relation to a victim, the victim’s address, electronic mail address, telephone number, So-  
23 cial Security number, date of birth, any user names or other identifying information associated with  
24 the victim’s social media accounts and the identifying number of the victim’s depository account at  
25 a financial institution, as defined in ORS 706.008, or credit card account.

26 (b) “Representative of the lawyer” has the meaning given that term in ORS 40.225.

27 (c) “Represented defendant” means a defendant who is represented by a lawyer in a criminal  
28 action.

29 (d) “Social media” has the meaning given that term in ORS 659A.330.

30 **SECTION 6.** ORS 144.791 is amended to read:

31 144.791. (1) When a person is convicted of a felony, including a felony sexual offense, the sen-  
32 tencing court may order a presentence report upon its own motion or upon the request of the dis-  
33 trict attorney or the defendant.

34 *[(2) The sentencing court shall order a presentence report if the defendant is convicted of a felony  
35 sexual offense unless:]*

36 *[(a) The defendant, as part of the same prosecution, is convicted of aggravated murder;]*

37 *[(b) The felony sexual offense requires the imposition of a mandatory minimum prison sentence and  
38 no departure is sought by the court, district attorney or defendant; or]*

39 *[(c) The felony sexual offense requires imposition of a presumptive prison sentence and no depar-  
40 ture is sought by the court, district attorney or defendant.]*

41 *[(3)]* **(2)** The Department of Corrections shall:

42 (a) Require that a presentence report provide an analysis of what disposition is most likely to  
43 reduce the offender’s criminal conduct, explain why that disposition would have that effect and  
44 provide an assessment of the availability to the offender of any relevant programs or treatment in  
45 or out of custody, whether provided by the department or another entity;

1 (b) Determine what additional information must be included in the presentence report; and

2 (c) Establish a uniform presentence report form.

3 **SECTION 7. The amendments to ORS 135.815 by section 5 of this 2023 Act become oper-**  
4 **ative on January 1, 2025.**

5 **SECTION 8. This 2023 Act takes effect on the 91st day after the date on which the 2023**  
6 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

7