

SENATE AMENDMENTS TO SENATE BILL 321

By COMMITTEE ON JUDICIARY

April 14

1 On page 1 of the printed bill, line 2, after “amending” delete the rest of the line and delete line
2 3 and insert “section 1, chapter 105, Oregon Laws 2022; and declaring an emergency.”.

3 Delete lines 5 through 24 and delete pages 2 through 8 and insert:

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

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

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

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

15 **“(A) A verdict form;**

16 **“(B) A written jury poll;**

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

18 **“(D) A transcript of the trial.**

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

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

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

30 **“(5) A petitioner with an appeal pending in an appellate court on the effective date of this**
31 **2023 Act, from a judgment on a petition under ORS 138.510 to 138.680, may by motion seek**
32 **leave of the appellate court to vacate the judgment and remand to the circuit court so that**
33 **the petitioner may file an amended petition indicating the petitioner’s intent to proceed un-**
34 **der the provisions of this section. Upon the receipt of such a motion, the appellate court**
35 **may vacate the judgment and remand to the circuit court if:**

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

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

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

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, a recording of
16 the prior proceeding or portion thereof, or any other previously admitted exhibit, concerning
17 the unavailable evidence from the previous trial.

18 “(b) The court shall instruct the jury:

19 “(A) That the evidence is unavailable;

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

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

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

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

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

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

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

31 “(a) A petition or amended petition for post-conviction relief described in section 1 of this
32 2023 Act filed within the time limitations described in section 1 of this 2023 Act.

33 “(b) A retrial resulting from the vacating of a conviction pursuant to section 1 of this
34 2023 Act.

35 “SECTION 3. (1) In addition to and not in lieu of any other appropriation, there is ap-
36 propriated to the Emergency Board, for the biennium beginning July 1, 2023, out of the
37 General Fund, the amount of \$2,000,000, to be allocated to the Department of Justice for
38 expenses of district attorney offices resulting from carrying out the provisions of section 1
39 of this 2023 Act.

40 “(2) The Department of Justice may distribute moneys received pursuant to subsection
41 (1) of this section to district attorney offices, so long as the distribution is for expenses in-
42 curred by those entities resulting from carrying out the provisions of section 1 of this 2023
43 Act.

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

45 “Sec. 1. (1) A person may petition for compensation for wrongful conviction against the state

1 if all of the following requirements are satisfied:

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

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

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

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

10 “(d) The person did not commit perjury, fabricate evidence or by the person’s own conduct cause
11 or bring about the conviction. A confession or admission later found to be false or a guilty plea does
12 not constitute committing perjury, fabricating evidence or causing or bringing about the conviction
13 under this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 “(b) The grant of pardon to the petitioner.

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

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

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