

A-Engrossed
Senate Bill 554

Ordered by the Senate April 13
Including Senate Amendments dated April 13

Sponsored by Senators GORSEK, THATCHER, PROZANSKI, GELSER BLOUIN, MANNING JR, Representatives MORGAN, SANCHEZ; Senator LINTHICUM (at the request of Forensic Justice Project and Innocence Project) (Presession filed.)

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 may file post-conviction relief petition due to currently available relevant forensic scientific evidence at any time after conviction. **Specifies additional proof requirements when petitioner seeks relief from conviction resulting from guilty or no contest plea. Describes how currently available relevant forensic scientific evidence must be established in court.**

A BILL FOR AN ACT

1
2 Relating to forensic science; creating new provisions; and amending ORS 138.510.

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

4 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 138.510 to**
5 **138.680.**

6 **SECTION 2. (1)(a) Notwithstanding ORS 138.510 (3) and (4), a person convicted of a crime**
7 **may file a petition for post-conviction relief based on currently available forensic scientific**
8 **evidence at any time after entry of the judgment of conviction.**

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

11 **(2) Notwithstanding ORS 138.530, in a post-conviction relief proceeding based on a petition**
12 **described in this section:**

13 **(a) The court shall grant relief if the court finds that:**

14 **(A) Relevant forensic scientific evidence is currently available and was not ascertainable**
15 **through the exercise of reasonable diligence by the petitioner at the time of:**

16 **(i) The proceedings resulting in the petitioner's conviction; or**

17 **(ii) A prior proceeding for post-conviction relief based on a petition described in this**
18 **section;**

19 **(B) The currently available relevant forensic scientific evidence:**

20 **(i) Was not available to be offered by the petitioner in the proceedings resulting in the**
21 **petitioner's conviction; or**

22 **(ii) Undermines forensic scientific evidence presented in the proceedings resulting in the**
23 **petitioner's conviction; and**

24 **(C) If the currently available relevant forensic scientific evidence had been presented in**
25 **the proceedings resulting in the petitioner's conviction, there is a reasonable probability**

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 there would have been a different outcome.

2 (b) A petitioner who seeks relief from a conviction resulting from a guilty or no contest
3 plea must further establish, by a preponderance of the evidence:

4 (A) That forensic scientific evidence believed to be factual, probative or material to the
5 issue of guilt was known to the petitioner at the time of entering the plea; and

6 (B) That the forensic scientific evidence was a material factor in the petitioner's decision
7 to plead guilty or no contest.

8 (3) When determining under subsection (2) of this section whether currently available
9 relevant forensic scientific evidence was not ascertainable through the exercise of reasonable
10 diligence on or before a specific date, the court shall consider whether the relevant forensic
11 scientific evidence has changed since:

12 (a) The applicable trial date or dates, or date of entry of a plea of guilty or no contest,
13 for a determination made with respect to an initial post-conviction relief petition or an initial
14 petition described in this section; or

15 (b) The date on which the prior petition for post-conviction relief was filed, for a deter-
16 mination made with respect to a subsequent petition described in this section.

17 (4) In a post-conviction relief proceeding based on a petition described in this section:

18 (a) Forensic scientific evidence is considered to be undermined if currently available rel-
19 evant forensic scientific evidence exists that repudiates the foundational validity of the
20 forensic scientific evidence or the applied validity of a scientific method or technique under-
21 lying the forensic scientific evidence.

22 (b) Currently available relevant forensic scientific evidence must be established by cred-
23 ible expert testimony or declaration, peer-reviewed literature or published reports from re-
24 cognized organizations of scientific research showing that experts in the relevant scientific
25 community, substantial in number or expertise, have concluded that a change in scientific
26 understanding has emerged or has further developed in the petitioner's favor. The court shall
27 give great weight to evidence that a consensus has developed in the relevant scientific com-
28 munity, including the scientific community relating to a particular discipline and all fields
29 of scientific knowledge on which that discipline relies, and not limited to practitioners or
30 proponents within a particular scientific or technical field or discipline.

31 (c) The court may deny relief if the currently available forensic scientific evidence was
32 ascertainable through the exercise of reasonable diligence at the time a previous post-
33 conviction relief petition described in this section was filed.

34 (d) The court may not deny relief due to the fact that:

35 (A) The petitioner provided a confession or admission related to the crime of conviction,
36 either before or after entry of judgment of conviction;

37 (B) The conviction was based on a plea of guilty or no contest; or

38 (C) The petitioner has completed the sentence associated with the conviction.

39 (e) Notwithstanding paragraph (d)(B) of this subsection, the court may consider the
40 petitioner's plea and any statements, admissions or confessions associated with the plea in
41 evaluating whether the petitioner has met the burden of proof for relief under this section.

42 (5) This section does not create additional liabilities for an expert who repudiates the
43 expert's original opinion provided at a hearing or trial, or whose opinion has been under-
44 mined by later scientific research or technological advancements.

45 (6) As used in this section:

1 (a) **“Applied validity” means the reliability of a scientific method or technique in practice.**

2 (b) **“Forensic science” means the application of scientific or technical practices to the**
3 **recognition, collection, analysis and interpretation of evidence in criminal law.**

4 (c) **“Forensic scientific evidence” includes scientific or technical knowledge, a testifying**
5 **forensic analyst’s or scientific expert’s scientific or technical knowledge or opinion, reports**
6 **or testimony offered by scientific experts or forensic analysts, scientific standards, or a sci-**
7 **entific method or technique upon which scientific evidence is based.**

8 (d) **“Foundational validity” means the reliability of a scientific method or technique to**
9 **be repeatable, reproducible and accurate in a scientific setting.**

10 **SECTION 3.** ORS 138.510 is amended to read:

11 138.510. (1) Except as otherwise provided in ORS 138.540, any person convicted of a crime under
12 the laws of this state may file a petition for post-conviction relief pursuant to ORS 138.510 to
13 138.680.

14 (2) A petition for post-conviction relief may be filed by one person on behalf of another person
15 who has been convicted of aggravated murder and sentenced to death only if the person filing the
16 petition demonstrates by a preponderance of the evidence that:

17 (a) The person sentenced to death is unable to file a petition on the person’s own behalf due to
18 mental incapacity or because of a lack of access to the court; and

19 (b) The person filing the petition has a significant relationship with the person sentenced to
20 death and will act in the best interest of the person on whose behalf the petition is being filed.

21 (3) **Except as provided in section 2 of this 2023 Act,** a petition pursuant to ORS 138.510 to
22 138.680 must be filed within two years of the following, unless the court on hearing a subsequent
23 petition finds grounds for relief asserted which could not reasonably have been raised in the original
24 or amended petition:

25 (a) If no appeal is taken, the date the judgment or order on the conviction was entered in the
26 register.

27 (b) If an appeal is taken, the date the appeal is final in the Oregon appellate courts.

28 (c) If a petition for certiorari to the United States Supreme Court is filed, the later of:

29 (A) The date of denial of certiorari, if the petition is denied; or

30 (B) The date of entry of a final state court judgment following remand from the United States
31 Supreme Court.

32 (4) **Except as provided in section 2 of this 2023 Act,** a one-year filing period shall apply
33 retroactively to petitions filed by persons whose convictions and appeals became final before August
34 5, 1989, and any such petitions must be filed within one year after November 4, 1993. A person
35 whose post-conviction petition was dismissed prior to November 4, 1993, cannot file another post-
36 conviction petition involving the same case.

37 (5) The remedy created by ORS 138.510 to 138.680 is available to persons convicted before May
38 26, 1959.

39 (6) In any post-conviction proceeding pending in the courts of this state on May 26, 1959, the
40 person seeking relief in such proceedings shall be allowed to amend the action and seek relief under
41 ORS 138.510 to 138.680. If such person does not choose to amend the action in this manner, the law
42 existing prior to May 26, 1959, shall govern the case.

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