

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 554**

1 On page 1 of the printed bill, delete lines 4 through 31.

2 Delete pages 2 and 3 and insert:

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

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

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

11 **“(2) Notwithstanding ORS 138.530, in a post-conviction relief pro-**
12 **ceeding based on a petition 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**
15 **was not ascertainable through the exercise of reasonable diligence by**
16 **the petitioner at the time of:**

17 **“(i) The proceedings resulting in the petitioner’s conviction; or**

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

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

21 **“(i) Was not available to be offered by the petitioner in the pro-**

1 **ceedings resulting in the petitioner’s conviction; or**

2 **“(ii) Undermines forensic scientific evidence presented in the pro-**
3 **ceedings resulting in the petitioner’s conviction; and**

4 **“(C) If the currently available relevant forensic scientific evidence**
5 **had been presented in the proceedings resulting in the petitioner’s**
6 **conviction, there is a reasonable probability there would have been a**
7 **different outcome.**

8 **“(b) A petitioner who seeks relief from a conviction resulting from**
9 **a guilty or no contest plea must further establish, by a preponderance**
10 **of the evidence:**

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

14 **“(B) That the forensic scientific evidence was a material factor in**
15 **the petitioner’s decision to plead guilty or no contest.**

16 **“(3) When determining under subsection (2) of this section whether**
17 **currently available relevant forensic scientific evidence was not**
18 **ascertainable through the exercise of reasonable diligence on or before**
19 **a specific date, the court shall consider whether the relevant forensic**
20 **scientific evidence has changed since:**

21 **“(a) The applicable trial date or dates, or date of entry of a plea of**
22 **guilty or no contest, for a determination made with respect to an ini-**
23 **tial post-conviction relief petition or an initial petition described in**
24 **this section; or**

25 **“(b) The date on which the prior petition for post-conviction relief**
26 **was filed, for a determination made with respect to a subsequent pe-**
27 **tition described in this section.**

28 **“(4) In a post-conviction relief proceeding based on a petition de-**
29 **scribed in this section:**

30 **“(a) Forensic scientific evidence is considered to be undermined if**

1 **currently available relevant forensic scientific evidence exists that re-**
2 **pudiates the foundational validity of the forensic scientific evidence**
3 **or the applied validity of a scientific method or technique underlying**
4 **the forensic scientific evidence.**

5 **“(b) Currently available relevant forensic scientific evidence must**
6 **be established by credible expert testimony or declaration, peer-**
7 **reviewed literature or published reports from recognized organizations**
8 **of scientific research showing that experts in the relevant scientific**
9 **community, substantial in number or expertise, have concluded that**
10 **a change in scientific understanding has emerged or has further de-**
11 **veloped in the petitioner’s favor. The court shall give great weight to**
12 **evidence that a consensus has developed in the relevant scientific**
13 **community, including the scientific community relating to a partic-**
14 **ular discipline and all fields of scientific knowledge on which that**
15 **discipline relies, and not limited to practitioners or proponents within**
16 **a particular scientific or technical field or discipline.**

17 **“(c) The court may deny relief if the currently available forensic**
18 **scientific evidence was ascertainable through the exercise of reason-**
19 **able diligence at the time a previous post-conviction relief petition**
20 **described in this section was filed.**

21 **“(d) The court may not deny relief due to the fact that:**

22 **“(A) The petitioner provided a confession or admission related to**
23 **the crime of conviction, either before or after entry of judgment of**
24 **conviction;**

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

26 **“(C) The petitioner has completed the sentence associated with the**
27 **conviction.**

28 **“(e) Notwithstanding paragraph (d)(B) of this subsection, the court**
29 **may consider the petitioner’s plea and any statements, admissions or**
30 **confessions associated with the plea in evaluating whether the**

1 **petitioner has met the burden of proof for relief under this section.**

2 **“(5) This section does not create additional liabilities for an expert**
3 **who repudiates the expert’s original opinion provided at a hearing or**
4 **trial, or whose opinion has been undermined by later scientific re-**
5 **search or technological advancements.**

6 **“(6) As used in this section:**

7 **“(a) ‘Applied validity’ means the reliability of a scientific method**
8 **or technique in practice.**

9 **“(b) ‘Forensic science’ means the application of scientific or tech-**
10 **anical practices to the recognition, collection, analysis and interpreta-**
11 **tion of evidence in criminal law.**

12 **“(c) ‘Forensic scientific evidence’ includes scientific or technical**
13 **knowledge, a testifying forensic analyst’s or scientific expert’s scien-**
14 **tific or technical knowledge or opinion, reports or testimony offered**
15 **by scientific experts or forensic analysts, scientific standards, or a**
16 **scientific method or technique upon which scientific evidence is based.**

17 **“(d) ‘Foundational validity’ means the reliability of a scientific**
18 **method or technique to be repeatable, reproducible and accurate in a**
19 **scientific setting.**

20 **“SECTION 3. ORS 138.510 is amended to read:**

21 **“138.510. (1) Except as otherwise provided in ORS 138.540, any person**
22 **convicted of a crime under the laws of this state may file a petition for**
23 **post-conviction relief pursuant to ORS 138.510 to 138.680.**

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

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

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

4 “(3) **Except as provided in section 2 of this 2023 Act**, a petition pur-
5 suant to ORS 138.510 to 138.680 must be filed within two years of the fol-
6 lowing, unless the court on hearing a subsequent petition finds grounds for
7 relief asserted which could not reasonably have been raised in the original
8 or amended petition:

9 “(a) If no appeal is taken, the date the judgment or order on the con-
10 viction was entered in the register.

11 “(b) If an appeal is taken, the date the appeal is final in the Oregon ap-
12 pellate courts.

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

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

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

18 “(4) **Except as provided in section 2 of this 2023 Act**, a one-year filing
19 period shall apply retroactively to petitions filed by persons whose con-
20 victions and appeals became final before August 5, 1989, and any such pe-
21 titions must be filed within one year after November 4, 1993. A person whose
22 post-conviction petition was dismissed prior to November 4, 1993, cannot file
23 another post-conviction petition involving the same case.

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

26 “(6) In any post-conviction proceeding pending in the courts of this state
27 on May 26, 1959, the person seeking relief in such proceedings shall be al-
28 lowed to amend the action and seek relief under ORS 138.510 to 138.680. If
29 such person does not choose to amend the action in this manner, the law
30 existing prior to May 26, 1959, shall govern the case.”.

