

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action: Do Pass
Vote: 9 - 0 - 0
Yeas: Barker, Bonamici, Cameron, Flores, Komp, Krieger, Read, Whisnant, Macpherson
Nays: 0
Exc.: 0
Prepared By: Bill Taylor, Counsel
Meeting Dates: 5/14

WHAT THE MEASURE DOES: Prohibits the petitioner in a post-conviction relief proceeding to compel the victim to testify, either by deposition or hearing, unless a court allows the petitioner to do so. Requires the court to allow a petitioner to compel a victim to testify if the petitioner can demonstrate good cause by showing that the victim has information that is material to the post-conviction relief proceeding, is favorable to the petitioner and is other than what is admitted at trial. Allows the victim to appear by telephone with court permission. Declares an emergency; effective upon passage.

ISSUES DISCUSSED:

- Often used to harass victims
- Usually the issue in post-conviction relief is the petitioner's claim that at trial he or she did not receive constitutionally adequate representation from his or her attorney

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: ORS 138.510 to 138.680 sets forth the process and procedure for filing a petition for post-conviction relief. A petition for post-conviction relief challenges the lawfulness of the criminal judgment or the proceedings upon which it is based (ORS 138.540). For example, the petitioner may challenge the judgment based on a claim that his or her attorney was inadequate and thus deprived the petitioner of a fair trial. This contrasts with a direct appeal where the issues are limited to review of the legal decisions of the trial judge.

Post-conviction relief is not a criminal proceeding, but a civil proceeding. As such, it is governed by the Oregon Rules of Civil Procedure (ORCP). The ORCP allow a party to take the testimony of any person and attendance may be compelled by subpoena (ORCP 39A).