

74th OREGON LEGISLATIVE ASSEMBLY - 2007 Regular Session
STAFF MEASURE SUMMARY
Senate Committee on Judiciary

MEASURE: **SB 985**
CARRIER: **Sen. Bates**

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action: Do Pass
Vote: 5 - 0 - 0
 Yea: Beyer, Kruse, Prozanski, Walker, Burdick
 Nay: 0
 Exc.: 0
Prepared By: Bill Taylor, Counsel
Meeting Dates: 3/26,

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. Effective upon passage.

ISSUES DISCUSSED:

- “Victim” is someone who is listed on the indictment as the “victim”
- Person seeking post-conviction relief has already been convicted and unsuccessfully appealed the legal decisions of the trial court
- Post-conviction relief involves collateral matters such as inadequacy of counsel

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).