

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

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

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**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).