

House Bill 2283

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

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 **as introduced**.

Prevents post-conviction relief court from granting relief based on new federal constitutional rule unless United States Supreme Court holds rule must be applied retroactively. Imposes time limit for asserting claims based on rule required to be applied retroactively.

A BILL FOR AN ACT

1
2 Relating to retroactivity of new rules of federal law; creating new provisions; and amending ORS
3 138.510 and 138.530.

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

5 **SECTION 1.** ORS 138.530 is amended to read:

6 138.530. (1) Post-conviction relief pursuant to ORS 138.510 to 138.680 shall be granted by the
7 court when one or more of the following grounds is established by the petitioner:

8 (a) A substantial denial in the proceedings resulting in petitioner's conviction, or in the appel-
9 late review thereof, of petitioner's rights under the Constitution of the United States, or under the
10 Constitution of the State of Oregon, or both, and which denial rendered the conviction void.

11 (b) Lack of jurisdiction of the court to impose the judgment rendered upon petitioner's con-
12 viction.

13 (c) Sentence in excess of, or otherwise not in accordance with, the sentence authorized by law
14 for the crime of which petitioner was convicted; or unconstitutionality of such sentence.

15 (d) Unconstitutionality of the statute making criminal the acts for which petitioner was con-
16 victed.

17 (2) Whenever a person petitions for relief under ORS 138.510 to 138.680, ORS 138.510 to 138.680
18 shall not be construed to deny relief where such relief would have been available prior to May 26,
19 1959, under the writ of habeas corpus, nor shall it be construed to affect any powers of executive
20 clemency or pardon provided by law.

21 (3) ORS 138.510 to 138.680 shall not be construed to limit the original jurisdiction of the Su-
22 preme Court in habeas corpus as provided in the Constitution of this state.

23 (4) **Unless the United States Supreme Court issues a decision holding that a new federal**
24 **constitutional rule must be applied retroactively by state courts, a court may not grant relief**
25 **under ORS 138.510 to 138.680 based on a new federal constitutional rule that is announced**
26 **after:**

27 (a) **If no appeal is taken, the date the judgment of conviction is entered in the register.**

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

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

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

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.

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

SECTION 2. ORS 138.510 is amended to read:

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

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

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

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

(3) A petition pursuant to ORS 138.510 to 138.680 must be filed within two years of the following, unless the court on hearing a subsequent petition finds grounds for relief asserted which could not reasonably have been raised in the original or amended petition:

(a) If no appeal is taken, the date the judgment [*or order on the*] of conviction [*was*] is entered in the register.

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

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

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

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

(4) A one-year filing period shall apply retroactively to petitions filed by persons whose convictions and appeals became final before August 5, 1989, and any such petitions must be filed within one year after November 4, 1993. A person whose post-conviction petition was dismissed prior to November 4, 1993, cannot file another post-conviction petition involving the same case.

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

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

(6) If a petitioner seeks relief under ORS 138.510 to 138.680 based on a new federal constitutional rule that the United States Supreme Court has held must be applied retroactively by state courts, the petitioner must file a petition or an amended petition that asserts a claim based on the new rule within 180 days of the United States Supreme Court decision or within the time allowed under subsection (3) of this section, whichever is later.

SECTION 3. The amendments to ORS 138.510 and 138.530 by sections 1 and 2 of this 2009 Act apply to petitions for post-conviction relief filed on or after the effective date of this 2009 Act.