

D R A F T

SUMMARY

Creates process by which person convicted or found guilty except for insanity as result of nonunanimous jury verdict may file petition for post-conviction relief within one year of effective date of Act. Sunsets on January 1, 2025.

Authorizes district attorney to charge reasonable reimbursement fee for cost of providing copies of discovery materials in criminal case.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 135.815; and pre-
3 scribing an effective date.

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

5 **SECTION 1. (1) Notwithstanding ORS 138.510 (3) and (4), at any time**
6 **within one year after the effective date of this 2022 Act, a person may**
7 **file a petition for post-conviction relief under ORS 138.510 to 138.680**
8 **claiming, as grounds for relief, that the person was convicted of, or**
9 **found guilty except for insanity for, a criminal offense as the result**
10 **of a nonunanimous jury verdict.**

11 **(2) ORS 138.550 does not apply to petitions for post-conviction relief**
12 **described in this section.**

13 **(3)(a) Notwithstanding ORS 138.530, in a post-conviction relief pro-**
14 **ceeding based on a petition described in this section, the petitioner has**
15 **the burden of proving, by a preponderance of the evidence, that the**
16 **conviction or finding of guilty except for insanity resulted from a**
17 **nonunanimous jury verdict.**

18 **(b) Evidence that a jury verdict was nonunanimous shall consist**

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.

1 of:

2 (A) Court transcripts;

3 (B) Court or case records;

4 (C) Contemporaneous recordings; or

5 (D) Any similar evidence the court determines to be credible.

6 (4)(a) Notwithstanding ORS 138.530, in a post-conviction relief pro-
7 ceeding based on a petition described in this section, if the court finds
8 that the petitioner has established by a preponderance of the evidence
9 that a conviction or finding of guilty except for insanity resulted from
10 a nonunanimous jury verdict, the court shall grant post-conviction
11 relief on that conviction or finding.

12 (b) Notwithstanding ORS 138.520, if post-conviction relief is granted
13 under paragraph (a) of this subsection, the court shall vacate the
14 specific judgment of conviction, or of guilty except for insanity, that
15 resulted from the nonunanimous jury verdict.

16 (5) If a judgment of conviction or of guilty except for insanity is
17 vacated under subsection (4) of this section, and the prosecuting at-
18 torney proceeds with either the same criminal charges, or charges
19 based on the same criminal episode as the original charges, upon
20 conviction or finding of guilty except for insanity of those charges, the
21 petitioner shall receive credit for time served under ORS 137.370. If the
22 petitioner is convicted of a different offense based on the same crimi-
23 nal episode as the original conviction, the court shall indicate in the
24 judgment that the new crime of conviction was committed as part of
25 the same criminal episode as the original crime of conviction.

26 (6) The filing of a petition for post-conviction relief described in this
27 section does not preclude or affect the filing of other concurrent or
28 subsequent post-conviction relief petitions claiming grounds for relief
29 other than a conviction or finding of guilty except for insanity re-
30 sulting from a nonunanimous jury verdict, if such petitions are oth-
31 erwise permitted to be filed under ORS 138.510 to 138.680.

1 **(7) Except as otherwise provided in this section, all provisions of**
2 **ORS 138.510 to 138.680 apply to petitions for post-conviction relief de-**
3 **scribed in this section.**

4 **SECTION 2.** **(1) Section 1 of this 2022 Act is repealed on January 1,**
5 **2025.**

6 **(2) The repeal of section 1 of this 2022 Act does not affect a petition**
7 **for post-conviction relief described in section 1 of this 2022 Act filed**
8 **within one year of the effective date of this 2022 Act.**

9 **SECTION 3.** ORS 135.815 is amended to read:

10 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the
11 district attorney shall disclose to a represented defendant the following ma-
12 terial and information within the possession or control of the district attor-
13 ney:

14 (a) The names, addresses and telephone numbers of persons whom the
15 district attorney intends to call as witnesses at any stage of the trial, to-
16 gether with their relevant written or recorded statements or memoranda of
17 any oral statements of such persons.

18 (b) Any written or recorded statements or memoranda of any oral state-
19 ments made by the defendant, or made by a codefendant if the trial is to be
20 a joint one.

21 (c) Any reports or statements of experts, made in connection with the
22 particular case, including results of physical or mental examinations and of
23 scientific tests, experiments or comparisons which the district attorney in-
24 tends to offer in evidence at the trial.

25 (d) Any books, papers, documents, photographs or tangible objects:

26 (A) Which the district attorney intends to offer in evidence at the trial;
27 or

28 (B) Which were obtained from or belong to the defendant.

29 (e) If actually known to the district attorney, any record of prior criminal
30 convictions of persons whom the district attorney intends to call as wit-
31 nesses at the trial; and the district attorney shall make a good faith effort

1 to determine if such convictions have occurred.

2 (f) All prior convictions of the defendant known to the state that would
3 affect the determination of the defendant's criminal history for sentencing
4 under rules of the Oregon Criminal Justice Commission.

5 (g) Any material or information that tends to:

6 (A) Exculpate the defendant;

7 (B) Negate or mitigate the defendant's guilt or punishment; or

8 (C) Impeach a person the district attorney intends to call as a witness
9 at the trial.

10 (2)(a) The disclosure required by subsection (1)(g) of this section:

11 (A) Shall occur regardless of whether the material or information is re-
12 corded or in writing.

13 (B) Shall occur without delay in accordance with ORS 135.845 and prior
14 to the entry of any guilty plea pursuant to an agreement with the state. If
15 the existence of the material or information is not known at that time, the
16 disclosure shall be made upon discovery without regard to whether the re-
17 presented defendant has entered or agreed to enter a guilty plea.

18 (b) Nothing in subsection (1)(g) of this section:

19 (A) Expands any obligation under a statutory provision or the Oregon or
20 United States Constitution to disclose, or right to disclosure of, personnel
21 or internal affairs files of law enforcement officers.

22 (B) Imposes any obligation on the district attorney to provide material
23 or information beyond the obligation imposed by the Oregon and United
24 States Constitutions.

25 (3) Except as otherwise provided in ORS 135.855 and 135.873, in prose-
26 cutions for violation of ORS 813.010 in which an instrument was used to test
27 a person's breath, blood or urine to determine the alcoholic content of the
28 person's blood the district attorney shall disclose to a represented defendant
29 at least the following material and information within the possession or
30 control of the district attorney:

31 (a) Any report prepared by a police officer relating to field tests, inter-

1 views, observations and other information relating to the charged offense;

2 (b) Any report relating to the test results;

3 (c) A copy of the form provided to the defendant under ORS 813.100 (2)(b);

4 and

5 (d) Any checklist prepared by the operator of the instrument for the test.

6 (4)(a) If a defendant is not represented by a lawyer, the district attorney

7 shall disclose to the defendant all of the information described in subsections

8 (1) and (3) of this section except for the personal identifiers of the victim and

9 any witnesses.

10 (b) Notwithstanding paragraph (a) of this subsection, the district attorney

11 shall disclose the personal identifiers of the victim and any witnesses if the

12 trial court orders the disclosure. A trial court shall order the district at-

13 torney to disclose the personal identifiers of the victim and any witnesses

14 if the trial court finds that:

15 (A) The defendant has requested the information; and

16 (B)(i) The victim or witness is a business or institution and disclosure of

17 the information would not represent a risk of harm to the victim or witness;

18 or

19 (ii) The need for the information cannot reasonably be met by other

20 means.

21 **(5) The district attorney may charge a reasonable reimbursement**

22 **fee for the cost of providing copies of materials required to be dis-**

23 **closed under this section, including but not limited to documents,**

24 **photographs, reports, audio recordings, video recordings or electron-**

25 **ically stored information.**

26 [(5)(a)] **(6)(a)** Unless authorized by the trial court to disclose the infor-

27 mation, a lawyer representing a defendant, or a representative of the lawyer,

28 may not disclose to the defendant personal identifiers of a victim or witness

29 obtained under subsections (1) and (3) of this section.

30 (b) The trial court shall order the lawyer, or representative of the lawyer,

31 to disclose to the defendant the personal identifiers of a victim or witness

1 if the court finds that:

2 (A) The defendant’s lawyer has requested the district attorney to disclose
3 the information to the defendant;

4 (B) The district attorney has refused to disclose the information to the
5 defendant; and

6 (C) The need for the information cannot reasonably be met by other
7 means.

8 [(6)] (7) As used in this section:

9 (a) “Personal identifiers” means:

10 (A) In relation to a witness, the witness’s address, telephone number, So-
11 cial Security number and date of birth and the identifying number of the
12 witness’s depository account at a financial institution, as defined in ORS
13 706.008, or credit card account.

14 (B) In relation to a victim, the victim’s address, electronic mail address,
15 telephone number, Social Security number, date of birth, any user names or
16 other identifying information associated with the victim’s social media ac-
17 counts and the identifying number of the victim’s depository account at a
18 financial institution, as defined in ORS 706.008, or credit card account.

19 (b) “Representative of the lawyer” has the meaning given that term in
20 ORS 40.225.

21 (c) “Represented defendant” means a defendant who is represented by a
22 lawyer in a criminal action.

23 (d) “Social media” has the meaning given that term in ORS 659A.330.

24 **SECTION 4. This 2022 Act takes effect on the 91st day after the date**
25 **on which the 2022 regular session of the Eighty-first Legislative As-**
26 **sembly adjourns sine die.**

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