

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. Creates procedure by which person with post-conviction relief petition pending in circuit court or on appeal on effective date of Act may proceed under process. Directs court to instruct jury concerning certain unavailable evidence if conviction is vacated and case is retried. Appropriates moneys to Emergency Board for allocation to Department of Justice for expenses of department and other entities resulting from creation of process and retrial of vacated convictions. Sunsets on January 1, 2027.

Temporarily authorizes district attorney to charge reasonable reimbursement fee for cost of providing copies of discovery materials in criminal case. Sunsets on January 1, 2025.

Removes requirement that court order presentence report when defendant is convicted of specified offenses.

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
3 144.791; and prescribing an effective date.

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

5 **SECTION 1. (1)(a) Notwithstanding ORS 138.510 (3) and (4), and ex-**
6 **cept as provided in paragraph (b) of this subsection, at any time within**
7 **one year after the effective date of this 2023 Act, a person may file a**
8 **petition for post-conviction relief under ORS 138.510 to 138.680 claim-**
9 **ing, as grounds for relief, that the person was convicted of a criminal**
10 **offense as the result of a nonunanimous jury verdict, if the person is**
11 **in custody serving a sentence on that conviction.**

1 (b) A person may not file a petition for post-conviction relief under
2 the provisions of this section based on a criminal offense committed
3 against a person under 18 years of age.

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

6 (3)(a) Notwithstanding ORS 138.530, in a post-conviction relief pro-
7 ceeding based on a petition described in this section, the petitioner has
8 the burden of proving, by clear and convincing evidence, that the
9 conviction resulted from a nonunanimous jury verdict.

10 (b) Evidence that a jury verdict was nonunanimous is limited to:

11 (A) A verdict form;

12 (B) A written jury poll;

13 (C) An audio or video recording of the trial; or

14 (D) A transcript of the trial.

15 (c) Notwithstanding paragraph (b) of this subsection, if a recording
16 or transcript of the trial reflects that the jury was polled after issuing
17 the verdict, but either does not indicate or is ambiguous concerning
18 whether the verdict was unanimous, the court may order a review in
19 camera of the file of the district attorney, the defense attorney or the
20 court, relating to the underlying conviction, and may consider any
21 evidence concerning the jury's verdict within the file or files that the
22 court determines to be credible.

23 (4)(a) Notwithstanding ORS 138.530, in a post-conviction relief pro-
24 ceeding based on a petition described in this section, if the court finds
25 that the petitioner has established by clear and convincing evidence
26 that a conviction resulted from a nonunanimous jury verdict, the
27 court shall grant post-conviction relief on that conviction.

28 (b) Notwithstanding ORS 138.520, if post-conviction relief is granted
29 under paragraph (a) of this subsection, the court shall vacate the
30 specific judgment of conviction that resulted from the nonunanimous
31 jury verdict.

1 **(5) If a judgment of conviction is vacated under subsection (4) of**
2 **this section, and the prosecuting attorney proceeds with either the**
3 **same criminal charges or charges based on the same criminal episode**
4 **as the original charges, upon conviction of those charges, the**
5 **petitioner shall receive credit for time served under ORS 137.370. If the**
6 **petitioner is convicted of a different offense based on the same crimi-**
7 **nal episode as the original conviction, the court shall indicate in the**
8 **judgment that the new crime of conviction was committed as part of**
9 **the same criminal episode as the original crime of conviction.**

10 **(6)(a) A petitioner with a post-conviction relief petition pending in**
11 **circuit court on the effective date of this 2023 Act may proceed under**
12 **the provisions of this section if the petitioner files an amended petition**
13 **within 120 days after the effective date of this 2023 Act indicating the**
14 **petitioner's intent to proceed under the provisions of this section.**

15 **(b)(A) A petitioner with an appeal pending in an appellate court on**
16 **the effective date of this 2023 Act, from a judgment on a petition under**
17 **ORS 138.510 to 138.680 asserting as grounds for relief either that the**
18 **petitioner was convicted of a criminal offense as the result of a non-**
19 **unanimous jury verdict or that counsel was inadequate for reasons**
20 **related to the petitioner's conviction resulting from a nonunanimous**
21 **jury verdict, may by motion seek leave of the appellate court to vacate**
22 **the judgment and remand to the circuit court so that the petitioner**
23 **may file an amended petition indicating the petitioner's intent to**
24 **proceed under the provisions of this section.**

25 **(B) A motion described in subparagraph (A) of this paragraph must**
26 **be filed within 90 days after the effective date of this 2023 Act.**

27 **(C) An amended petition described in subparagraph (A) of this par-**
28 **agraph must be filed within 120 days after the date of entry of the**
29 **appellate judgment vacating and remanding to the circuit court.**

30 **(D) Following the entry of an appellate court judgment remanding**
31 **to the circuit court, the circuit court, after addressing the claims**

1 **subject to the provisions of this section, shall enter a general judg-**
2 **ment disposing of those claims and any other claims raised in the or-**
3 **iginal petition.**

4 **(c) Nothing in this subsection precludes a person from filing a new**
5 **petition for post-conviction relief under subsection (1) of this 2023 Act.**

6 **(7) Notwithstanding subsection (6) of this section, if a petition or**
7 **amended petition for post-conviction relief contains both a claim of**
8 **grounds for relief based on the fact that the person was convicted of**
9 **a criminal offense as the result of a nonunanimous jury verdict and**
10 **any other grounds for relief, only the grounds for relief based on the**
11 **nonunanimous jury verdict are subject to the provisions of this sec-**
12 **tion.**

13 **(8) The filing of a petition for post-conviction relief described in this**
14 **section, or the filing of an amended petition under subsection (6) of**
15 **this section, does not:**

16 **(a) Preclude or affect the filing of other concurrent or subsequent**
17 **post-conviction relief petitions claiming grounds for relief other than**
18 **a conviction resulting from a nonunanimous jury verdict, if such pe-**
19 **titions are otherwise permitted to be filed under ORS 138.510 to 138.680.**

20 **(b) Create or revive any claim for relief otherwise barred by ORS**
21 **138.510 to 138.680.**

22 **(9) If a judgment of conviction is vacated under this section, upon**
23 **retrial, if the trial court determines that evidence other than witness**
24 **testimony that was properly admitted during the trial that resulted in**
25 **the nonunanimous guilty verdict is unavailable because the evidence**
26 **was lawfully destroyed or otherwise rendered unavailable through no**
27 **fault of the state or the defendant:**

28 **(a) The state may present in the state's case in chief or rebuttal**
29 **case, and the defendant may present in the defendant's case in chief,**
30 **a transcript or portion thereof, or any other properly admitted exhibit,**
31 **concerning the unavailable evidence from the previous trial.**

1 (b) The court shall instruct the jury:

2 (A) That the evidence is unavailable;

3 (B) That the jury may not attribute the unavailability to the state
4 or the defendant, or fault either party for failing to produce the un-
5 available evidence; and

6 (C) That the jury may not speculate as to why the evidence is un-
7 available.

8 (c) The court may not instruct the jury pursuant to ORS 10.095 (7)
9 or (8) regarding the transcripts or exhibits described in paragraph (a)
10 of this subsection.

11 (10) Except as otherwise provided in this section, all provisions of
12 ORS 138.510 to 138.680 apply to petitions for post-conviction relief de-
13 scribed in this section.

14 (11) As used in this section, “conviction” includes a finding of guilty
15 except for insanity.

16 SECTION 2. (1) Section 1 of this 2023 Act is repealed on January 1,
17 2027.

18 (2) The repeal of section 1 of this 2023 Act does not affect:

19 (a) A petition or amended petition for post-conviction relief de-
20 scribed in section 1 of this 2023 Act filed within the time limitations
21 described in section 1 of this 2023 Act.

22 (b) A retrial resulting from the vacating of a conviction pursuant
23 to section 1 of this 2023 Act.

24 SECTION 3. (1) In addition to and not in lieu of any other appro-
25 priation, there is appropriated to the Emergency Board, for the
26 biennium beginning July 1, 2023, out of the General Fund, the amount
27 of \$6,000,000, to be allocated to the Department of Justice for expenses
28 of the department, district attorney offices and community-based or-
29 ganizations that provide services to crime victims, resulting from
30 carrying out the provisions of section 1 of this 2023 Act.

31 (2) The Department of Justice may distribute moneys received

1 **pursuant to subsection (1) of this section to district attorney offices**
2 **and community-based organizations that provide services to crime**
3 **victims, so long as the distribution is for expenses incurred by those**
4 **entities resulting from carrying out the provisions of section 1 of this**
5 **2023 Act.**

6 **SECTION 4.** ORS 135.815 is amended to read:

7 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the
8 district attorney shall disclose to a represented defendant the following ma-
9 terial and information within the possession or control of the district attor-
10 ney:

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

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

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

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

23 (A) Which the district attorney intends to offer in evidence at the trial;

24 or

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

26 (e) If actually known to the district attorney, any record of prior criminal
27 convictions of persons whom the district attorney intends to call as wit-
28 nesses at the trial; and the district attorney shall make a good faith effort
29 to determine if such convictions have occurred.

30 (f) All prior convictions of the defendant known to the state that would
31 affect the determination of the defendant's criminal history for sentencing

1 under rules of the Oregon Criminal Justice Commission.

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

3 (A) Exculpate the defendant;

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

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

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

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

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

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

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

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

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

28 (a) Any report prepared by a police officer relating to field tests, inter-
29 views, observations and other information relating to the charged offense;

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

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

1 and

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

3 (4)(a) If a defendant is not represented by a lawyer, the district attorney
4 shall disclose to the defendant all of the information described in subsections
5 (1) and (3) of this section except for the personal identifiers of the victim and
6 any witnesses.

7 (b) Notwithstanding paragraph (a) of this subsection, the district attorney
8 shall disclose the personal identifiers of the victim and any witnesses if the
9 trial court orders the disclosure. A trial court shall order the district at-
10 torney to disclose the personal identifiers of the victim and any witnesses
11 if the trial court finds that:

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

13 (B)(i) The victim or witness is a business or institution and disclosure of
14 the information would not represent a risk of harm to the victim or witness;
15 or

16 (ii) The need for the information cannot reasonably be met by other
17 means.

18 **(5) The district attorney may charge a reasonable reimbursement**
19 **fee for the cost of providing copies of materials required to be dis-**
20 **closed under this section, including but not limited to documents,**
21 **photographs, reports, audio recordings, video recordings or electron-**
22 **ically stored information.**

23 [(5)(a)] **(6)(a)** Unless authorized by the trial court to disclose the infor-
24 mation, a lawyer representing a defendant, or a representative of the lawyer,
25 may not disclose to the defendant personal identifiers of a victim or witness
26 obtained under subsections (1) and (3) of this section.

27 (b) The trial court shall order the lawyer, or representative of the lawyer,
28 to disclose to the defendant the personal identifiers of a victim or witness
29 if the court finds that:

30 (A) The defendant's lawyer has requested the district attorney to disclose
31 the information to the defendant;

1 (B) The district attorney has refused to disclose the information to the
2 defendant; and

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

5 [(6)] (7) As used in this section:

6 (a) “Personal identifiers” means:

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

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

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

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

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

21 **SECTION 5.** ORS 135.815, as amended by section 4 of this 2023 Act, is
22 amended to read:

23 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the
24 district attorney shall disclose to a represented defendant the following ma-
25 terial and information within the possession or control of the district attor-
26 ney:

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

31 (b) Any written or recorded statements or memoranda of any oral state-

1 ments made by the defendant, or made by a codefendant if the trial is to be
2 a joint one.

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

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

8 (A) Which the district attorney intends to offer in evidence at the trial;

9 or

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

11 (e) If actually known to the district attorney, any record of prior criminal
12 convictions of persons whom the district attorney intends to call as wit-
13 nesses at the trial; and the district attorney shall make a good faith effort
14 to determine if such convictions have occurred.

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

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

19 (A) Exculpate the defendant;

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

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

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

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

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

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

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

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

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

13 (a) Any report prepared by a police officer relating to field tests, inter-
14 views, observations and other information relating to the charged offense;

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

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

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

19 (4)(a) If a defendant is not represented by a lawyer, the district attorney
20 shall disclose to the defendant all of the information described in subsections
21 (1) and (3) of this section except for the personal identifiers of the victim and
22 any witnesses.

23 (b) Notwithstanding paragraph (a) of this subsection, the district attorney
24 shall disclose the personal identifiers of the victim and any witnesses if the
25 trial court orders the disclosure. A trial court shall order the district at-
26 torney to disclose the personal identifiers of the victim and any witnesses
27 if the trial court finds that:

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

29 (B)(i) The victim or witness is a business or institution and disclosure of
30 the information would not represent a risk of harm to the victim or witness;

31 or

1 (ii) The need for the information cannot reasonably be met by other
2 means.

3 [(5) *The district attorney may charge a reasonable reimbursement fee for the*
4 *cost of providing copies of materials required to be disclosed under this section,*
5 *including but not limited to documents, photographs, reports, audio recordings,*
6 *video recordings or electronically stored information.*]

7 [(6)(a)] **(5)(a)** Unless authorized by the trial court to disclose the infor-
8 mation, a lawyer representing a defendant, or a representative of the lawyer,
9 may not disclose to the defendant personal identifiers of a victim or witness
10 obtained under subsections (1) and (3) of this section.

11 (b) The trial court shall order the lawyer, or representative of the lawyer,
12 to disclose to the defendant the personal identifiers of a victim or witness
13 if the court finds that:

14 (A) The defendant's lawyer has requested the district attorney to disclose
15 the information to the defendant;

16 (B) The district attorney has refused to disclose the information to the
17 defendant; and

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

20 [(7)] **(6)** As used in this section:

21 (a) "Personal identifiers" means:

22 (A) In relation to a witness, the witness's address, telephone number, So-
23 cial Security number and date of birth and the identifying number of the
24 witness's depository account at a financial institution, as defined in ORS
25 706.008, or credit card account.

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

31 (b) "Representative of the lawyer" has the meaning given that term in

1 ORS 40.225.

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

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

5 **SECTION 6.** ORS 144.791 is amended to read:

6 144.791. (1) When a person is convicted of a felony, including a felony
7 sexual offense, the sentencing court may order a presentence report upon its
8 own motion or upon the request of the district attorney or the defendant.

9 *[(2) The sentencing court shall order a presentence report if the defendant*
10 *is convicted of a felony sexual offense unless:]*

11 *[(a) The defendant, as part of the same prosecution, is convicted of aggra-*
12 *vated murder;]*

13 *[(b) The felony sexual offense requires the imposition of a mandatory min-*
14 *imum prison sentence and no departure is sought by the court, district attorney*
15 *or defendant; or]*

16 *[(c) The felony sexual offense requires imposition of a presumptive prison*
17 *sentence and no departure is sought by the court, district attorney or defend-*
18 *ant.]*

19 *[(3)]* (2) The Department of Corrections shall:

20 (a) Require that a presentence report provide an analysis of what dispo-
21 sition is most likely to reduce the offender’s criminal conduct, explain why
22 that disposition would have that effect and provide an assessment of the
23 availability to the offender of any relevant programs or treatment in or out
24 of custody, whether provided by the department or another entity;

25 (b) Determine what additional information must be included in the pre-
26 sentence report; and

27 (c) Establish a uniform presentence report form.

28 **SECTION 7.** The amendments to ORS 135.815 by section 5 of this
29 **2023 Act become operative on January 1, 2025.**

30 **SECTION 8.** This 2023 Act takes effect on the 91st day after the date
31 **on which the 2023 regular session of the Eighty-second Legislative**

1 **Assembly adjourns sine die.**

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