

Senate Bill 1511

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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**.

Creates process by which person convicted or found guilty except for insanity as result of non-unanimous 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 prescribing an effective date.

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

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

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

11 (3)(a) **Notwithstanding ORS 138.530, in a post-conviction relief proceeding based on a pe-**
12 **tition described in this section, the petitioner has the burden of proving, by a preponderance**
13 **of the evidence, that the conviction or finding of guilty except for insanity resulted from a**
14 **nonunanimous jury verdict.**

15 (b) **Evidence that a jury verdict was nonunanimous shall consist of:**

16 (A) **Court transcripts;**

17 (B) **Court or case records;**

18 (C) **Contemporaneous recordings; or**

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

20 (4)(a) **Notwithstanding ORS 138.530, in a post-conviction relief proceeding based on a pe-**
21 **tition described in this section, if the court finds that the petitioner has established by a**
22 **preponderance of the evidence that a conviction or finding of guilty except for insanity re-**
23 **sulted from a nonunanimous jury verdict, the court shall grant post-conviction relief on that**
24 **conviction or finding.**

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

28 (5) **If a judgment of conviction or of guilty except for insanity is vacated under subsection**

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 (4) of this section, and the prosecuting attorney proceeds with either the same criminal
 2 charges, or charges based on the same criminal episode as the original charges, upon con-
 3 viction or finding of guilty except for insanity of those charges, the petitioner shall receive
 4 credit for time served under ORS 137.370. If the petitioner is convicted of a different offense
 5 based on the same criminal episode as the original conviction, the court shall indicate in the
 6 judgment that the new crime of conviction was committed as part of the same criminal epi-
 7 sode as the original crime of conviction.

8 (6) The filing of a petition for post-conviction relief described in this section does not
 9 preclude or affect the filing of other concurrent or subsequent post-conviction relief petitions
 10 claiming grounds for relief other than a conviction or finding of guilty except for insanity
 11 resulting from a nonunanimous jury verdict, if such petitions are otherwise permitted to be
 12 filed under ORS 138.510 to 138.680.

13 (7) Except as otherwise provided in this section, all provisions of ORS 138.510 to 138.680
 14 apply to petitions for post-conviction relief described in this section.

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

16 (2) The repeal of section 1 of this 2022 Act does not affect a petition for post-conviction
 17 relief described in section 1 of this 2022 Act filed within one year of the effective date of this
 18 2022 Act.

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

20 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall
 21 disclose to a represented defendant the following material and information within the possession or
 22 control of the district attorney:

23 (a) The names, addresses and telephone numbers of persons whom the district attorney intends
 24 to call as witnesses at any stage of the trial, together with their relevant written or recorded
 25 statements or memoranda of any oral statements of such persons.

26 (b) Any written or recorded statements or memoranda of any oral statements made by the de-
 27 fendant, or made by a codefendant if the trial is to be a joint one.

28 (c) Any reports or statements of experts, made in connection with the particular case, including
 29 results of physical or mental examinations and of scientific tests, experiments or comparisons which
 30 the district attorney intends to offer in evidence at the trial.

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

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

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

34 (e) If actually known to the district attorney, any record of prior criminal convictions of persons
 35 whom the district attorney intends to call as witnesses at the trial; and the district attorney shall
 36 make a good faith effort to determine if such convictions have occurred.

37 (f) All prior convictions of the defendant known to the state that would affect the determination
 38 of the defendant's criminal history for sentencing under rules of the Oregon Criminal Justice Com-
 39 mission.

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

41 (A) Exculpate the defendant;

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

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

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

45 (A) Shall occur regardless of whether the material or information is recorded or in writing.

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

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

6 (A) Expands any obligation under a statutory provision or the Oregon or United States Consti-
 7 tution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement
 8 officers.

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

11 (3) Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation of
 12 ORS 813.010 in which an instrument was used to test a person's breath, blood or urine to determine
 13 the alcoholic content of the person's blood the district attorney shall disclose to a represented de-
 14 fendant at least the following material and information within the possession or control of the dis-
 15 trict attorney:

16 (a) Any report prepared by a police officer relating to field tests, interviews, observations and
 17 other information relating to the charged offense;

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

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

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

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

24 (b) Notwithstanding paragraph (a) of this subsection, the district attorney shall disclose the
 25 personal identifiers of the victim and any witnesses if the trial court orders the disclosure. A trial
 26 court shall order the district attorney to disclose the personal identifiers of the victim and any
 27 witnesses 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 the information would
 30 not represent a risk of harm to the victim or witness; or

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

32 **(5) The district attorney may charge a reasonable reimbursement fee for the cost of**
 33 **providing copies of materials required to be disclosed under this section, including but not**
 34 **limited to documents, photographs, reports, audio recordings, video recordings or electron-**
 35 **ically stored information.**

36 ~~[(5)(a)]~~ **(6)(a)** Unless authorized by the trial court to disclose the information, a lawyer repre-
 37 senting a defendant, or a representative of the lawyer, may not disclose to the defendant personal
 38 identifiers of a victim or witness obtained under subsections (1) and (3) of this section.

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

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

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

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

45 ~~[(6)]~~ **(7)** As used in this section:

1 (a) “Personal identifiers” means:

2 (A) In relation to a witness, the witness’s address, telephone number, Social Security number
3 and date of birth and the identifying number of the witness’s depository account at a financial in-
4 stitution, as defined in ORS 706.008, or credit card account.

5 (B) In relation to a victim, the victim’s address, electronic mail address, telephone number, So-
6 cial Security number, date of birth, any user names or other identifying information associated with
7 the victim’s social media accounts and the identifying number of the victim’s depository account at
8 a financial institution, as defined in ORS 706.008, or credit card account.

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

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

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

13 **SECTION 4. This 2022 Act takes effect on the 91st day after the date on which the 2022**
14 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

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