

SENATE AMENDMENTS TO SENATE BILL 1511

By COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

February 17

- 1 On page 1 of the printed bill, line 2, after “135.815” insert “and 144.791”.
- 2 Delete lines 4 through 28.
- 3 On page 2, delete lines 1 through 18 and insert:
- 4 **“SECTION 1. (1)(a) Notwithstanding ORS 138.510 (3) and (4), and except as provided in**
- 5 **paragraph (b) of this subsection, at any time within one year after the effective date of this**
- 6 **2022 Act, a person may file a petition for post-conviction relief under ORS 138.510 to 138.680**
- 7 **claiming, as grounds for relief, that the person was convicted of a criminal offense as the**
- 8 **result of a nonunanimous jury verdict, if the person is in custody serving a sentence on that**
- 9 **conviction.**
- 10 **“(b) A person may not file a petition for post-conviction relief under the provisions of this**
- 11 **section based on a criminal offense committed against a person under 18 years of age.**
- 12 **“(2) ORS 138.550 does not apply to petitions for post-conviction relief described in this**
- 13 **section.**
- 14 **“(3)(a) Notwithstanding ORS 138.530, in a post-conviction relief proceeding based on a**
- 15 **petition described in this section, the petitioner has the burden of proving, by clear and**
- 16 **convincing evidence, that the conviction resulted from a nonunanimous jury verdict.**
- 17 **“(b) Evidence that a jury verdict was nonunanimous is limited to:**
- 18 **“(A) A verdict form;**
- 19 **“(B) A written jury poll;**
- 20 **“(C) An audio or video recording of the trial; or**
- 21 **“(D) A transcript of the trial.**
- 22 **“(c) Notwithstanding paragraph (b) of this subsection, if a recording or transcript of the**
- 23 **trial reflects that the jury was polled after issuing the verdict, but either does not indicate**
- 24 **or is ambiguous concerning whether the verdict was unanimous, the court may order a re-**
- 25 **view in camera of the file of the district attorney, the defense attorney or the court, relating**
- 26 **to the underlying conviction, and may consider any evidence concerning the jury’s verdict**
- 27 **within the file or files that the court determines to be credible.**
- 28 **“(4)(a) Notwithstanding ORS 138.530, in a post-conviction relief proceeding based on a**
- 29 **petition described in this section, if the court finds that the petitioner has established by**
- 30 **clear and convincing evidence that a conviction resulted from a nonunanimous jury verdict,**
- 31 **the court shall grant post-conviction relief on that conviction.**
- 32 **“(b) Notwithstanding ORS 138.520, if post-conviction relief is granted under paragraph (a)**
- 33 **of this subsection, the court shall vacate the specific judgment of conviction that resulted**
- 34 **from the nonunanimous jury verdict.**
- 35 **“(5) If a judgment of conviction is vacated under subsection (4) of this section, and the**

1 prosecuting attorney proceeds with either the same criminal charges, or charges based on
2 the same criminal episode as the original charges, upon conviction of those charges, the
3 petitioner shall receive credit for time served under ORS 137.370. If the petitioner is con-
4 victed of a different offense based on the same criminal episode as the original conviction,
5 the court shall indicate in the judgment that the new crime of conviction was committed as
6 part of the same criminal episode as the original crime of conviction.

7 “(6)(a) A petitioner with a post-conviction relief petition pending in circuit court on the
8 effective date of this 2022 Act may proceed under the provisions of this section if the
9 petitioner files an amended petition within 120 days after the effective date of this 2022 Act
10 indicating the petitioner’s intent to proceed under the provisions of this section.

11 “(b)(A) A petitioner with an appeal pending in an appellate court on the effective date
12 of this 2022 Act, from a judgment on a petition under ORS 138.510 to 138.680 asserting as
13 grounds for relief either that the petitioner was convicted of a criminal offense as the result
14 of a nonunanimous jury verdict or that counsel was inadequate for reasons related to the
15 petitioner’s conviction resulting from a nonunanimous jury verdict, may by motion seek
16 leave of the appellate court to vacate the judgment and remand to the circuit court so that
17 the petitioner may file an amended petition indicating the petitioner’s intent to proceed un-
18 der the provisions of this section.

19 “(B) A motion described in subparagraph (A) of this paragraph must be filed within 90
20 days after the effective date of this 2022 Act.

21 “(C) An amended petition described in subparagraph (A) of this paragraph must be filed
22 within 120 days after the date of entry of the appellate judgment vacating and remanding to
23 the circuit court.

24 “(D) Following the entry of an appellate court judgment remanding to the circuit court,
25 the circuit court, after addressing the claims subject to the provisions of this section, shall
26 enter a general judgment disposing of those claims, and any other claims raised in the ori-
27 ginal petition.

28 “(e) Nothing in this subsection precludes a person from filing a new petition for post-
29 conviction relief under subsection (1) of this 2022 Act.

30 “(7) Notwithstanding subsection (6) of this section, if a petition or amended petition for
31 post-conviction relief contains both a claim of grounds for relief based on the fact that the
32 person was convicted of a criminal offense as the result of a nonunanimous jury verdict and
33 any other grounds for relief, only the grounds for relief based on the nonunanimous jury
34 verdict are subject to the provisions of this section.

35 “(8) The filing of a petition for post-conviction relief described in this section, or the fil-
36 ing of an amended petition under subsection (6) of this section, does not:

37 “(a) Preclude or affect the filing of other concurrent or subsequent post-conviction relief
38 petitions claiming grounds for relief other than a conviction resulting from a nonunanimous
39 jury verdict, if such petitions are otherwise permitted to be filed under ORS 138.510 to
40 138.680.

41 “(b) Create or revive any claim for relief otherwise barred by ORS 138.510 to 138.680.

42 “(9) If a judgment of conviction is vacated under this section, upon retrial, if the trial
43 court determines that evidence other than witness testimony that was properly admitted
44 during the trial that resulted in the nonunanimous guilty verdict is unavailable because the
45 evidence was lawfully destroyed or otherwise rendered unavailable through no fault of the

1 state or the defendant:

2 “(a) The state may present in the state’s case in chief or rebuttal case, and the defendant
3 may present in the defendant’s case in chief, a transcript or portion thereof, or any other
4 properly admitted exhibit, concerning the unavailable evidence from the previous trial.

5 “(b) The court shall instruct the jury:

6 “(A) That the evidence is unavailable;

7 “(B) That the jury may not attribute the unavailability to the state or the defendant, or
8 fault either party for failing to produce the unavailable evidence; and

9 “(C) That the jury may not speculate as to why the evidence is unavailable.

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

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

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

15 “**SECTION 2.** (1) Section 1 of this 2022 Act is repealed on January 1, 2026.

16 “(2) The repeal of section 1 of this 2022 Act does not affect:

17 “(a) A petition or amended petition for post-conviction relief described in section 1 of this
18 2022 Act filed within the time limitations described in section 1 of this 2022 Act.

19 “(b) A retrial resulting from the vacating of a conviction pursuant to section 1 of this
20 2022 Act.

21 “**SECTION 3.** (1) In addition to and not in lieu of any other appropriation, there is ap-
22 propriated to the Emergency Board, for the biennium ending June 30, 2023, out of the Gen-
23 eral Fund, the amount of \$6,000,000, to be allocated to the Department of Justice for
24 expenses of the department, district attorney offices and community-based organizations
25 providing services to crime victims, resulting from carrying out the provisions of section 1
26 of this 2022 Act.

27 “(2) The Department of Justice may distribute moneys received pursuant to subsection
28 (1) of this section to district attorney offices and community-based organizations providing
29 services to crime victims, so long as the distribution is for expenses incurred by those enti-
30 ties resulting from carrying out the provisions of section 1 of this 2022 Act.”.

31 In line 19, delete “3” and insert “4”.

32 On page 4, delete lines 13 and 14 and insert:

33 “**SECTION 5.** ORS 135.815, as amended by section 4 of this 2022 Act, is amended to read:

34 “135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall
35 disclose to a represented defendant the following material and information within the possession or
36 control of the district attorney:

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

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

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

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

1 “(A) Which the district attorney intends to offer in evidence at the trial; or
2 “(B) Which were obtained from or belong to the defendant.
3 “(e) If actually known to the district attorney, any record of prior criminal convictions of per-
4 sons whom the district attorney intends to call as witnesses at the trial; and the district attorney
5 shall make a good faith effort to determine if such convictions have occurred.
6 “(f) All prior convictions of the defendant known to the state that would affect the determi-
7 nation of the defendant’s criminal history for sentencing under rules of the Oregon Criminal Justice
8 Commission.
9 “(g) Any material or information that tends to:
10 “(A) Exculpate the defendant;
11 “(B) Negate or mitigate the defendant’s guilt or punishment; or
12 “(C) Impeach a person the district attorney intends to call as a witness at the trial.
13 “(2)(a) The disclosure required by subsection (1)(g) of this section:
14 “(A) Shall occur regardless of whether the material or information is recorded or in writing.
15 “(B) Shall occur without delay in accordance with ORS 135.845 and prior to the entry of any
16 guilty plea pursuant to an agreement with the state. If the existence of the material or information
17 is not known at that time, the disclosure shall be made upon discovery without regard to whether
18 the represented defendant has entered or agreed to enter a guilty plea.
19 “(b) Nothing in subsection (1)(g) of this section:
20 “(A) Expands any obligation under a statutory provision or the Oregon or United States Con-
21 stitution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement
22 officers.
23 “(B) Imposes any obligation on the district attorney to provide material or information beyond
24 the obligation imposed by the Oregon and United States Constitutions.
25 “(3) Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation of
26 ORS 813.010 in which an instrument was used to test a person’s breath, blood or urine to determine
27 the alcoholic content of the person’s blood the district attorney shall disclose to a represented de-
28 fendant at least the following material and information within the possession or control of the dis-
29 trict attorney:
30 “(a) Any report prepared by a police officer relating to field tests, interviews, observations and
31 other information relating to the charged offense;
32 “(b) Any report relating to the test results;
33 “(c) A copy of the form provided to the defendant under ORS 813.100 (2)(b); and
34 “(d) Any checklist prepared by the operator of the instrument for the test.
35 “(4)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the
36 defendant all of the information described in subsections (1) and (3) of this section except for the
37 personal identifiers of the victim and any witnesses.
38 “(b) Notwithstanding paragraph (a) of this subsection, the district attorney shall disclose the
39 personal identifiers of the victim and any witnesses if the trial court orders the disclosure. A trial
40 court shall order the district attorney to disclose the personal identifiers of the victim and any
41 witnesses if the trial court finds that:
42 “(A) The defendant has requested the information; and
43 “(B)(i) The victim or witness is a business or institution and disclosure of the information would
44 not represent a risk of harm to the victim or witness; or
45 “(ii) The need for the information cannot reasonably be met by other means.

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

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

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

9 “(A) The defendant’s lawyer has requested the district attorney to disclose the information to
10 the defendant;

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

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

13 “[(7)] (6) As used in this section:

14 “(a) ‘Personal identifiers’ means:

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

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

22 “(b) ‘Representative of the lawyer’ has the meaning given that term in ORS 40.225.

23 “(c) ‘Represented defendant’ means a defendant who is represented by a lawyer in a criminal
24 action.

25 “(d) ‘Social media’ has the meaning given that term in ORS 659A.330.

26 “**SECTION 6.** ORS 144.791 is amended to read:

27 “144.791. (1) When a person is convicted of a felony, including a felony sexual offense, the sen-
28 tencing court may order a presentence report upon its own motion or upon the request of the dis-
29 trict attorney or the defendant.

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

32 “[(a) *The defendant, as part of the same prosecution, is convicted of aggravated murder;*]

33 “[(b) *The felony sexual offense requires the imposition of a mandatory minimum prison sentence*
34 *and no departure is sought by the court, district attorney or defendant; or]*

35 “[(c) *The felony sexual offense requires imposition of a presumptive prison sentence and no depar-*
36 *ture is sought by the court, district attorney or defendant.*]

37 “[(3)] (2) The Department of Corrections shall:

38 “(a) Require that a presentence report provide an analysis of what disposition is most likely to
39 reduce the offender’s criminal conduct, explain why that disposition would have that effect and
40 provide an assessment of the availability to the offender of any relevant programs or treatment in
41 or out of custody, whether provided by the department or another entity;

42 “(b) Determine what additional information must be included in the presentence report; and

43 “(c) Establish a uniform presentence report form.

44 “**SECTION 7. The amendments to ORS 135.815 by section 5 of this 2022 Act become op-**
45 **erative on January 1, 2024.**

