

SB 1511-8
(LC 98)
2/14/22 (JLM/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO
SENATE BILL 1511**

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**
5 **except as provided in paragraph (b) of this subsection, 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 a**
9 **criminal offense as the result of a nonunanimous jury verdict, if the**
10 **person is in custody serving a sentence on that conviction.**

11 **“(b) A person may not file a petition for post-conviction relief under**
12 **the provisions of this section based on a criminal offense committed**
13 **against a person under 18 years of age.**

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

16 **“(3)(a) Notwithstanding ORS 138.530, in a post-conviction relief**
17 **proceeding based on a petition described in this section, the petitioner**
18 **has the burden of proving, by clear and convincing evidence, that the**
19 **conviction resulted from a nonunanimous jury verdict.**

20 **“(b) Evidence that a jury verdict was nonunanimous is limited to:**

21 **“(A) A verdict form;**

1 **“(B) A written jury poll;**

2 **“(C) An audio or video recording of the trial; or**

3 **“(D) A transcript of the trial.**

4 **“(c) Notwithstanding paragraph (b) of this subsection, if a recording**
5 **or transcript of the trial reflects that the jury was polled after issuing**
6 **the verdict, but either does not indicate or is ambiguous concerning**
7 **whether the verdict was unanimous, the court may order a review in**
8 **camera of the file of the district attorney, the defense attorney or the**
9 **court, relating to the underlying conviction, and may consider any**
10 **evidence concerning the jury’s verdict within the file or files that the**
11 **court determines to be credible.**

12 **“(4)(a) Notwithstanding ORS 138.530, in a post-conviction relief**
13 **proceeding based on a petition described in this section, if the court**
14 **finds that the petitioner has established by clear and convincing evi-**
15 **dence that a conviction resulted from a nonunanimous jury verdict,**
16 **the court shall grant post-conviction relief on that conviction.**

17 **“(b) Notwithstanding ORS 138.520, if post-conviction relief is**
18 **granted under paragraph (a) of this subsection, the court shall vacate**
19 **the specific judgment of conviction that resulted from the nonunani-**
20 **mous jury verdict.**

21 **“(5) If a judgment of conviction is vacated under subsection (4) of**
22 **this section, and the prosecuting attorney proceeds with either the**
23 **same criminal charges, or charges based on the same criminal episode**
24 **as the original charges, upon conviction of those charges, the**
25 **petitioner shall receive credit for time served under ORS 137.370. If the**
26 **petitioner is convicted of a different offense based on the same crimi-**
27 **nal episode as the original conviction, the court shall indicate in the**
28 **judgment that the new crime of conviction was committed as part of**
29 **the same criminal episode as the original crime of conviction.**

30 **“(6)(a) A petitioner with a post-conviction relief petition pending in**

1 circuit court on the effective date of this 2022 Act may proceed under
2 the provisions of this section if the petitioner files an amended petition
3 within 120 days after the effective date of this 2022 Act indicating the
4 petitioner’s intent to proceed under the provisions of this section.

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

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

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

20 “(D) Following the entry of an appellate court judgment remanding
21 to the circuit court, the circuit court, after addressing the claims
22 subject to the provisions of this section, shall enter a general judg-
23 ment disposing of those claims, and any other claims raised in the
24 original petition.

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

27 “(7) Notwithstanding subsection (6) of this section, if a petition or
28 amended petition for post-conviction relief contains both a claim of
29 grounds for relief based on the fact that the person was convicted of
30 a criminal offense as the result of a nonunanimous jury verdict and

1 any other grounds for relief, only the grounds for relief based on the
2 nonunanimous jury verdict are subject to the provisions of this sec-
3 tion.

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

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

11 “(b) Create or revive any claim for relief otherwise barred by ORS
12 138.510 to 138.680.

13 “(9) If a judgment of conviction is vacated under this section, upon
14 retrial, if the trial court determines that evidence other than witness
15 testimony that was properly admitted during the trial that resulted in
16 the nonunanimous guilty verdict is unavailable because the evidence
17 was lawfully destroyed or otherwise rendered unavailable through no
18 fault of the state or the defendant:

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

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

24 “(A) That the evidence is unavailable;

25 “(B) That the jury may not attribute the unavailability to the state
26 or the defendant, or fault either party for failing to produce the un-
27 available evidence; and

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

30 “(c) The court may not instruct the jury pursuant to ORS 10.095 (7)

1 or (8) regarding the transcripts or exhibits described in paragraph (a)
2 of this subsection.

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

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

8 **“SECTION 2. (1) Section 1 of this 2022 Act is repealed on January
9 1, 2026.**

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

11 **“(a) A petition or amended petition for post-conviction relief de-
12 scribed in section 1 of this 2022 Act filed within the time limitations
13 described in section 1 of this 2022 Act.**

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

16 **“SECTION 3. (1) In addition to and not in lieu of any other appro-
17 priation, there is appropriated to the Emergency Board, for the
18 biennium ending June 30, 2023, out of the General Fund, the amount
19 of \$6,000,000, to be allocated to the Department of Justice for expenses
20 of the department, district attorney offices and community-based or-
21 ganizations providing services to crime victims, resulting from carry-
22 ing out the provisions of section 1 of this 2022 Act.**

23 **“(2) The Department of Justice may distribute moneys received
24 pursuant to subsection (1) of this section to district attorney offices
25 and community-based organizations providing services to crime vic-
26 tims, so long as the distribution is for expenses incurred by those en-
27 tities resulting from carrying out the provisions of section 1 of this
28 2022 Act.”.**

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

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

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

3 “135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the
4 district attorney shall disclose to a represented defendant the following ma-
5 terial and information within the possession or control of the district attor-
6 ney:

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

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

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

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

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

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

22 “(e) If actually known to the district attorney, any record of prior crimi-
23 nal convictions of persons whom the district attorney intends to call as
24 witnesses at the trial; and the district attorney shall make a good faith effort
25 to determine if such convictions have occurred.

26 “(f) All prior convictions of the defendant known to the state that would
27 affect the determination of the defendant’s criminal history for sentencing
28 under rules of the Oregon Criminal Justice Commission.

29 “(g) Any material or information that tends to:

30 “(A) Exculpate the defendant;

1 “(B) Negate or mitigate the defendant’s guilt or punishment; or
2 “(C) Impeach a person the district attorney intends to call as a witness
3 at the trial.

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

5 “(A) Shall occur regardless of whether the material or information is re-
6 corded or in writing.

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

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

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

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

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

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

27 “(b) Any report relating to the test results;

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

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

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

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

10 “(A) The defendant has requested the information; and

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

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

16 “[5] *The district attorney may charge a reasonable reimbursement fee for*
17 *the cost of providing copies of materials required to be disclosed under this*
18 *section, including but not limited to documents, photographs, reports, audio*
19 *recordings, video recordings or electronically stored information.]*

20 “[6)(a)] **(5)(a)** Unless authorized by the trial court to disclose the information,
21 a lawyer representing a defendant, or a representative of the lawyer,
22 may not disclose to the defendant personal identifiers of a victim or witness
23 obtained under subsections (1) and (3) of this section.

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

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

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

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

3 “[7] (6) As used in this section:

4 “(a) ‘Personal identifiers’ means:

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

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

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

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

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

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

20 “144.791. (1) When a person is convicted of a felony, including a felony
21 sexual offense, the sentencing court may order a presentence report upon its
22 own motion or upon the request of the district attorney or the defendant.

23 “[2] *The sentencing court shall order a presentence report if the defendant*
24 *is convicted of a felony sexual offense unless:]*

25 “[a] *The defendant, as part of the same prosecution, is convicted of ag-*
26 *gravated murder;]*

27 “[b] *The felony sexual offense requires the imposition of a mandatory*
28 *minimum prison sentence and no departure is sought by the court, district at-*
29 *torney or defendant; or]*

30 “[c] *The felony sexual offense requires imposition of a presumptive prison*

1 *sentence and no departure is sought by the court, district attorney or defend-*
2 *ant.]*

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

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

9 “(b) Determine what additional information must be included in the pre-
10 sentence report; and

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

12 **“SECTION 7. The amendments to ORS 135.815 by section 5 of this**
13 **2022 Act become operative on January 1, 2024.**

14 **“SECTION 8. This 2022 Act takes effect on the 91st day after the**
15 **date on which the 2022 regular session of the Eighty-first Legislative**
16 **Assembly adjourns sine die.”.**

17