

House Bill 2958

Sponsored by Representative RUIZ (Presession filed.)

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**.

Provides that person may file petition for post-conviction relief within reasonable amount of time after discovering or meaningfully understanding adverse immigration consequences of conviction. Adds failure to be informed of or meaningfully understand adverse immigration consequence at time of plea as grounds upon which court shall grant relief. Specifies relief.

Creates process by which person who completed diversion or similar program may file motion requesting court to allow person to withdraw plea of guilty or no contest and enter plea of not guilty.

A BILL FOR AN ACT

1
2 Relating to convictions; creating new provisions; and amending ORS 138.510, 138.520 and 138.530.

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

4 **SECTION 1.** ORS 138.510 is amended to read:

5 138.510. (1) Except as otherwise provided in ORS 138.540, any person convicted of a crime under
6 the laws of this state may file a petition for post-conviction relief pursuant to ORS 138.510 to
7 138.680.

8 (2) A petition for post-conviction relief may be filed by one person on behalf of another person
9 who has been convicted of aggravated murder and sentenced to death only if the person filing the
10 petition demonstrates by a preponderance of the evidence that:

11 (a) The person sentenced to death is unable to file a petition on the person's own behalf due to
12 mental incapacity or because of a lack of access to the court; and

13 (b) The person filing the petition has a significant relationship with the person sentenced to
14 death and will act in the best interest of the person on whose behalf the petition is being filed.

15 (3) **Except as provided in subsection (4) of this section**, a petition pursuant to ORS 138.510
16 to 138.680 must be filed within two years of the following, unless the court on hearing a subsequent
17 petition finds grounds for relief asserted which could not reasonably have been raised in the original
18 or amended petition:

19 (a) If no appeal is taken, the date the judgment or order on the conviction was entered in the
20 register.

21 (b) If an appeal is taken, the date the appeal is final in the Oregon appellate courts.

22 (c) If a petition for certiorari to the United States Supreme Court is filed, the later of:

23 (A) The date of denial of certiorari, if the petition is denied; or

24 (B) The date of entry of a final state court judgment following remand from the United States
25 Supreme Court.

26 *[(4) A one-year filing period shall apply retroactively to petitions filed by persons whose convictions
27 and appeals became final before August 5, 1989, and any such petitions must be filed within one year
28 after November 4, 1993. A person whose post-conviction petition was dismissed prior to November 4,*

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 1993, cannot file another post-conviction petition involving the same case.]

2 [(5) The remedy created by ORS 138.510 to 138.680 is available to persons convicted before May
3 26, 1959.]

4 [(6) In any post-conviction proceeding pending in the courts of this state on May 26, 1959, the
5 person seeking relief in such proceedings shall be allowed to amend the action and seek relief under
6 ORS 138.510 to 138.680. If such person does not choose to amend the action in this manner, the law
7 existing prior to May 26, 1959, shall govern the case.]

8 **(4)(a) A petition asserting grounds described in ORS 138.530 (1)(e) as the basis for relief**
9 **may be filed within a reasonable amount of time after the petitioner discovered or mean-**
10 **ingfully understood the adverse immigration consequences of the conviction.**

11 **(b) A petition described in this subsection may be filed only by a petitioner who has**
12 **completed the sentence associated with the conviction.**

13 **SECTION 2.** ORS 138.520 is amended to read:

14 138.520. (1) The relief which a court may grant or order under ORS 138.510 to 138.680 shall in-
15 clude release, new trial, modification of sentence, and such other relief as may be proper and just.
16 The court may also make supplementary orders to the relief granted, concerning such matters as
17 rearrangement, retrial, custody and release on security.

18 **(2) Notwithstanding subsection (1) of this section, if a court grants relief based on the**
19 **petitioner's establishment of grounds described in ORS 138.530 (1)(e), in addition to any other**
20 **relief granted, the court shall vacate the judgment of conviction.**

21 **SECTION 3.** ORS 138.530 is amended to read:

22 138.530. (1) Post-conviction relief pursuant to ORS 138.510 to 138.680 shall be granted by the
23 court when one or more of the following grounds is established by the petitioner:

24 (a) A substantial denial in the proceedings resulting in petitioner's conviction, or in the appel-
25 late review thereof, of petitioner's rights under the Constitution of the United States, or under the
26 Constitution of the State of Oregon, or both, and which denial rendered the conviction void.

27 (b) Lack of jurisdiction of the court to impose the judgment rendered upon petitioner's con-
28 viction.

29 (c) Sentence in excess of, or otherwise not in accordance with, the sentence authorized by law
30 for the crime of which petitioner was convicted; or unconstitutionality of such sentence.

31 (d) Unconstitutionality of the statute making criminal the acts for which petitioner was con-
32 victed.

33 **(e) The conviction resulted from a guilty or no contest plea and, at the time of entry of**
34 **the plea, the petitioner had not been informed of or did not meaningfully understand the**
35 **adverse immigration consequences of the conviction.**

36 (2) Whenever a person petitions for relief under ORS 138.510 to 138.680, ORS 138.510 to 138.680
37 shall not be construed to deny relief where such relief would have been available prior to May 26,
38 1959, under the writ of habeas corpus, nor shall it be construed to affect any powers of executive
39 clemency or pardon provided by law.

40 (3) ORS 138.510 to 138.680 shall not be construed to limit the original jurisdiction of the Su-
41 preme Court in habeas corpus as provided in the Constitution of this state.

42 **SECTION 4. (1) A person is eligible to file a motion described in subsection (2) of this**
43 **section if:**

44 **(a) The person entered a diversion, conditional discharge, probation or deferred sentenc-**
45 **ing program under ORS 135.881 to 135.901, 137.533 or 813.200 to 813.270 or any other provision**

1 of law on a criminal charge;

2 (b) The diversion, conditional discharge, probation or deferred sentencing agreement re-
3 quired the person to enter a plea of guilty or no contest; and

4 (c) The person completed the diversion, conditional discharge, probation or deferred
5 sentencing program and the court dismissed the charge.

6 (2) A person described in subsection (1) of this section may file a motion requesting that
7 the court vacate the order of dismissal, allow the person to withdraw the person's plea of
8 guilty or no contest and enter a plea of not guilty, and enter an order dismissing the charge.
9 The person shall file the motion in the court in which the diversion, conditional discharge,
10 probation or deferred sentencing occurred. The person shall serve a copy of the motion on
11 the district attorney.

12 (3) Upon receipt of a motion described in subsection (2) of this section, the court shall
13 determine whether the person meets the eligibility criteria in subsection (1) of this section.
14 The court may set a hearing. If the court finds that the person meets the eligibility criteria,
15 the court shall grant the motion and proceed accordingly.

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