



**TO: Sen. Floyd Prozanski, Chair
Sen. Kim Thatcher, Vice Chair
Senate Committee on Judiciary**

FR: Oregon District Attorney's Association

RE: Concerns with SB 554

February 3, 2023

Chair Prozanski and Members of the Senate Committee on Judiciary:

SB 554 would dramatically reshape the criminal justice system in Oregon and throw thousands of legally valid convictions into question. We respectfully urge the committee to reconsider the sweeping changes this law would create for the following reasons:

- **Unnecessary:** Even beyond the current trial, appeal, and post-conviction relief process, current law already has numerous safety valves to provide relief for individuals who were convicted but are actually innocent. SB 554 creates an entirely new basis for post-conviction relief that goes far beyond the type of relief available in the current Post-Conviction Hearing Act (PCHA), which generally only allows for relief when a defendant's conviction was the result of a constitutional violation or entered by a court lacking jurisdiction to do so. SB 554 would require relitigating convictions when no constitutional violation is even alleged.
- **Too Easy to Obtain Relief:** SB 554 would allow people to have their convictions vacated—often years later—without having to establish, or even allege, that they are actually innocent of the offense of conviction.
- **Expensive:** By allowing the availability of such broad and sweeping claims for post-conviction relief, the bill would significantly increase costs for all parts of the criminal justice system, including Public Defense lawyers, District Attorneys, the Department of Justice, and the Judicial Branch.
- **Eliminates Statute of Ultimate Repose:** In addition to creating a new claim for relief, SB 554 makes that claim available for anyone to challenge any conviction—no matter how old, so long as they are still living.
- **Includes Guilty Pleas:** SB 554 is particularly concerning because it extends to individuals who admitted their conduct and pled guilty. In those cases, there will be no record showing what evidence the state would have relied on if the case had gone to trial. Years later, if the defendant can point to some “relevant” new development in science or technology, they may be allowed to have their pleas withdrawn and force the state to try the case for the first time.
- **Finality:** By allowing endless, repetitive re-litigation of old convictions, this bill will undermine public trust in the finality of convictions—a cornerstone of our judicial system—often at the expense of the victims and witnesses who will delay closure and revisit extremely traumatic crimes every time a new claim is filed.

Oregon Law Already Provides for Relief:

The Oregon Legislature has created and passed many impactful criminal justice reform laws. Some of these new laws provide mechanisms to vacate unjust convictions and programs to compensate those who can prove they were wrongfully convicted.

In 2019, the Legislature enacted significant reforms to allow for relief in cases involving newly discovered DNA evidence (including evidence newly available due to advances in DNA technology). ORS 138.688-138.700. These statutes already provide a safety valve for re-examining these issues, but is limited to cases where the new evidence shows that the convicted person is actually innocent.

In 2021, the Legislature provided district attorneys with authority to jointly petition (with the defendant) “for reconsideration of a conviction” that “no longer advances the interests of justice.” ORS 137.218(1)(a). That authority would extend to an agreement to vacate a conviction based on new evidence. In other words, in situations where there is broad agreement that a wrongful conviction has occurred, current statutes already provide adequate mechanisms for vacating those convictions.

In 2022, the Legislature also created an avenue to allow people who were wrongly convicted and actually innocent of their alleged offense to be financially compensated for the time they were incarcerated or on probation. Since all these statutory changes are still in their infancy, and their long-term impacts are still being realized, now is not the time to make an additional change to the PCHA.

Finally, the Governor has the constitutional power to pardon convictions and commute sentences, particularly if new evidence calls the conviction into doubt or otherwise undermines confidence in whether justice was served.

SB 554 Language is So Broad Litigation May Be Continuous and Ongoing:

SB 554 would create a broad new exception that undermines the finality of criminal cases, which is a very important aspect of the criminal justice system, especially for defendants and victims. Many cases potentially involve some sort of scientific or technical evidence, and almost every field of science and technology continues to develop incrementally. As a result, under SB 554, every time a criminal defendant could point to some new “relevant” evidence that would not have been previously available, the defendant could file a new post-conviction petition.

“Relevancy” is an extremely low standard; any minor change in the science could potentially qualify, and the defendant would get an entirely new trial if the judge decides there is a “reasonable probability” that there would have been a different outcome. That is also a very low standard; juries are unpredictable, and there may often be a reasonable probability of any outcome to a case. The result is likely to be many otherwise valid criminal convictions vacated and returned to district attorneys to re-prosecute from the start. That will further burden a criminal justice system that is already stretched beyond the breaking point. Moreover, victims and witnesses will be required to recall and relive traumatic events from their past after reasonably believing the process was complete.

Finally, because SB 554 places no limitations on the number of times someone can seek this new form of post-conviction relief, all the previously identified problems will repeat themselves over and over again. Individuals who may initially be unsuccessful in petitioning under SB 554 will have every incentive to repeatedly file petitions with every incremental development in science or technology that arguably could form the basis of a new claim.