

**FISCAL IMPACT OF PROPOSED LEGISLATION**

**Measure: SB 1511 - 6**

81st Oregon Legislative Assembly – 2022 Regular Session  
Legislative Fiscal Office

*Only Impacts on Original or Engrossed  
Versions are Considered Official*

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**Measure Description:**

Creates process by which person convicted or found guilty except for insanity as result of nonunanimous jury verdict may file petition for post-conviction relief within one year of effective date of Act. Allows District Attorneys to charge Public Defense Services Commission and nonindigent individuals a reasonable reimbursement discovery fee.

**Government Unit(s) Affected:**

Criminal Justice Commission (CJC), Oregon Judicial Department (OJD), Department of Justice (DOJ), District Attorneys and their Deputies (DAs), Public Defense Services Commission (PDSC), Counties, Oregon Health Authority (OHA), Department of Corrections (DOC), Psychiatric Security Review Board (PSRB)

**Summary of Fiscal Impact:**

Costs related to the measure may require budgetary action - See analysis.

**Analysis:**

This measure creates a process for a person convicted or found guilty except for insanity as a result of nonunanimous jury verdict to file a petition for post-conviction relief within one year of effective date of Act. If judgement of conviction or guilty except for insanity is repealed, the prosecuting attorney may continue with the original charges and the petitioner will receive credit for time served. If judgement determines the petitioner is convicted of a different crime based on the same original evidence, the court will determine if the judgment of the new crime conviction was committed as part of the original episode. This provision sunsets on January 1, 2025. This measure codifies the long standing practice that allows district attorneys to charge Public Defense Service Commission and nonindigent individuals a reimbursement fee for providing copies of materials required to be disclosed in discovery such as documents, photographs, reports, audio recording, video recordings and electronically stored information in criminal cases. This measure takes effect on the 91st day following adjournment sine die.

Department of Justice (DOJ):

The fiscal impact for DOJ is indeterminate at this time. DOJ cannot predict the exact caseload for Appellate and Trial Division courts but is anticipating post-conviction cases to be filed. In the current biennium, they are anticipating some appeals, but most will be in the next biennium therefore, it is unclear how many will offset other Defense of Criminal Convictions appeals.

DOJ estimates the fiscal impact of the measure to be \$7.7 million General Fund and \$1.1 million Other Funds, eight positions (4.83 FTE) for the 2021-23 biennium and \$8.9 million General Fund and \$1.8 million Other Funds, eight positions (8.00 FTE) for the 2023-25 biennium. The revenue source of the Other Fund consists of the Defense of Criminal Convictions (DCC) General Fund appropriation.

In the current biennium, the Trial Division anticipates hiring three Assistant Attorney General (AAG) positions (1.75 FTE), two Legal Secretary positions (1.17 FTE), and one Paralegal position (0.58 FTE) at an estimated cost of \$1.5 million General Fund and \$1.1 million Other Funds, DCC funds; starting May 1, 2022. This would be in addition to Ramos resources already included for the Trial and Appellate Division 2021-23 legislatively adopted

budget. In the 2023-25 biennium DOJ anticipates hiring three AAG positions (3.00 FTE), two Legal Secretary positions (2.00 FTE), and one Paralegal position (1.00 FTE) at an estimated cost of \$2.5 million General Fund and \$1.8 million Other Funds.

While the measure does not explicitly direct services to District Attorney Victim Advocate Programs (DAVAP'), DOJ estimates that \$5.9 million in General Fund will be needed for the Crime Victim and Survivor Services Division (CVSSD) for distribution to District Attorney (DA) offices. In addition to the grant funding, CVSSD estimates the division will need to hire two Program Analyst 2 positions (1.33 FTE), estimated cost of \$333,643 General Fund, starting March 1, 2022. DOJ estimates the fiscal impact to be \$5.9 million General Fund and two Program Analyst positions (2.00 FTE), estimated cost of \$500,797 General Fund for the 2023-25 biennium.

Judicial Department:

The Oregon Judicial Department (OJD) estimates a minimum fiscal impact of \$1.1 million General Fund, nine positions (4.50 FTE) for the 2021-23 biennium. OJD reports there is no fiscal impact for the 2023-25 biennium due to the timeframe for filing new petitions to be one-year from the effective date of the bill and OJD reports with additional judicial and staff resources, the agency can effectively work down the current backlog of existing cases.

OJD anticipates that the Department will need to create temporary judicial teams to address the existing backlog cases and begin processing new claims that will be filed. OJD anticipates court staff workloads will increase due to handling motions, requests for records to support a claim of a nonunanimous jury conviction, and objections regarding the admission of evidence and related jury instructions

OJD reports some aspects of this measure are indeterminate and could require the agency to seek additional funds in addition to \$1.1 million General Fund. OJD cannot determine how many new petitions for post-convictions relief will be filed in circuit court, how many requests for court records by persons considering filing petitions OJD will receive and how many trials there will be in cases where conviction is reversed. For all convictions repealed, the district attorney will determine whether to retry the underlying criminal case. OJD cannot determine how many cases will need to be refiled however, the agency anticipates this will occur in some cases and result in the filing of additional felony cases in circuit courts, an average cost per-case is \$1,372. OJD cannot determine the number of additional petitions for post-conviction relief beyond the cases already filed although, the agency knows there will be additional cases, an average per-case cost for a post-conviction relief case is \$2,672.

Public Defense Services Commission:

The fiscal impact for the Public Defense Services Commission (PDSC) is indeterminate at this time. PDSC determines approximately 250 post-conviction relief petitions will be filed due to a nonunanimous verdict, an average cost per-case of \$6,007 (costs include attorney fees and all other ancillary costs such as investigation, travel, and other services). Currently, PDSC is funding these expenditures through 2021-23 legislatively adopted resources but indicates that if an individual seeks post-conviction relief as a result of the measure, additional costs would be incurred and would require supplemental funding.

The section in the measure related to discovery fees codifies the current practices of PDSC. Historically, PDSC has spent \$6 million General Fund per biennium to reimburse district attorneys for discover costs for indigent defendants. This amount of funding is included in the agency's 2021-23 legislatively adopted budget; however, a portion of the funding is being held by the Emergency Board as a special purpose appropriation. Therefore, there may be no fiscal impact to this provision of the measure. LFO notes that PDSC stopped reimbursing DA offices for the cost of discovery fees on January 1, 2022; however, LFO presumes PDSC will return to reimbursing these costs, but is uncertain if that will occur retroactively back to January 1, 2022. If not, PDSC will have a fiscal impact associated with this provision of the measure.

Department of Correction:

The Department of Corrections (DOC) anticipates the fiscal impact to be minimal and that any additional workload can be absorbed within current operations. DOC reports this measure would reduce the number of adults in custody (AIC), however, according to the Criminal Justice Commission (CJC) which provides bed impact estimates to DOC, the exact decrease cannot be determined. CJC does not have adequate access to the data needed to determine how many AIC's were convicted or found guilty except for inanity from nonunanimous jury verdicts. Even with that data, CJC would need to make assumptions on the number of offenders who may receive a retrial, how many may have a sentence reduction, and what the disposition of that reduction might be.

District Attorneys & Counties:

District Attorneys (DAs) estimate that the DAs office will need supplemental funding from DOJ's CVSSD. DAs estimate the counties will need to hire 42.95 full-time victim advocates at a base rate of \$137,000, totaling \$5.9 million General Fund. These costs include salary, benefits, supplies, and expenses and do not include any deputy district attorney positions. LFO notes the total funding of \$5.9 million does not leave remaining funds for victim assistance programs, including notification and therapeutic services to address trauma that a retrial will necessarily cause, particularly for victims of child sexual and physical abuse, victims of adult sexual and physical abuse, and victims of other violent crimes.

DAs authority to charge reasonable fees for the provision of discovery has no fiscal impact, as it codifies current practice and if PDSC returns to reimbursing discovery costs. If not, the DAs will have a fiscal impact associated with this provision of the measure.

Counties estimate this measure will have indeterminate, but potentially significant, fiscal impact at this time due to increased caseload and costs associated with transferring defendants from DOC to county jails.

There is a minimal fiscal impact for the Psychiatric Security Review Board. There is no fiscal impact for Criminal Justice Commission or Oregon Health Authority.

Due to agencies not being able to determine how many of cases will arise in the one-year time frame, LFO believes if the costs to implement this measure exceed available funding, agencies may need to request a supplemental appropriation from the Emergency Board or request additional funding during the regular budget process. Further analysis of the measure will be required in the Joint Committee on Ways and Means.