

SB 321 -1, -3 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Prepared By: Lucy Ohlsen, LPRO Analyst

Meeting Dates: 3/21, 4/4

WHAT THE MEASURE DOES:

Creates a process by which a person convicted or found guilty except for insanity by nonunanimous jury verdict may file a petition for post-conviction relief within one year of effective date of measure. Limits eligibility for relief to persons currently in the custody of the Department of Corrections and serving a sentence for a conviction based on a nonunanimous jury verdict. Specifies evidentiary requirements to prove verdict was nonunanimous. State a person may not file a petition for post-conviction relief if the petition would be based on a criminal offense committed against a person under 18 years of age. Creates process allowing persons with a pending petition for post-conviction relief to amend petition to include a claim under new provision within 120 days of effective date of the measure. In a retrial for a conviction vacated under this provision, provides jury instructions regarding evidence that was admitted in the original trial but is no longer available. Repeals certain provisions relating to post-conviction relief on January 1, 2027. Authorizes district attorney to charge reasonable reimbursement fee for cost of providing copies of discovery materials in criminal case. Repeals authority January 1, 2024. Repeals provisions requiring a sentencing court to order a presentence report for certain felony offenses. Appropriates \$6 million from the General Fund to be allocated to the Department of Justice for expenses of the department, district attorney offices and community-based organizations providing services to crime victims, resulting from carrying out the provisions of the measure. Takes effect on 91st day following adjournment sine die.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Removes limitations on eligibility for relief. Provides petitions for relief may be filed until December 30, 2024. Changes repeal date of certain provisions relating to post-conviction relief from January 1, 2026 to January 1, 2025. Deletes sections related to district attorney authority to charge reasonable reimbursement fee for cost of providing copies of discovery materials in criminal case. Deletes section related to provisions requiring a sentencing court to order a presentence report for certain felony offenses. Deletes effective date and declares emergency, effective on passage.

-3 Removes limitations on eligibility for relief. Provides petitions for relief may be filed until December 30, 2024. Provides standard proof is preponderance of the evidence in section specifying evidentiary requirements to prove verdict was nonunanimous. Clarifies that evidentiary requirements apply to petitions filed on or after effective date. Modifies directions to court when post-conviction relief is granted. Deletes section providing process allowing persons with pending petition for post-conviction relief to amend petition to add claim under this measure. Modifies process allowing persons with a pending appeal from a petition for post-conviction relief to amend petition to include a claim under new provision within 90 days of effective date of the measure. In a retrial for a conviction vacated under the measure clarifies jury instructions regarding evidence that was previously admitted in the original trial but is no longer available and adds recording of the prior proceeding to types of evidence subject to jury instruction. Repeals certain provisions relating to post-conviction relief on January 2, 2026. Modifies scope and amount of appropriation provision to \$2 million from the General Fund to be allocated to the Department of Justice for expenses of district attorney offices resulting from carrying out the provisions of the measure. Deletes sections related to district attorney authority to charge reasonable reimbursement fee for cost of providing copies of discovery materials in criminal case. Deletes section related to provisions requiring a

sentencing court to order a presentence report for certain felony offenses. Deletes effective date and declares emergency, effective on passage. Removes language from Senate Bill 1584 (2022) to clarify that reversal or vacation of a conviction because of a nonunanimous jury verdict is not sufficient to prove wrongful conviction.

BACKGROUND:

Article I, Section 11, was adopted into the Oregon Constitution in 1934 and states that, in the circuit court, ten members of the jury may render a verdict of guilty or not guilty for serious offenses, except for the crime of first degree murder, which shall be found only by a unanimous verdict. As a result, from 1934 until April 2020, juries in Oregon were instructed that to reach a verdict of guilty in criminal cases, at least 10 out of 12 jurors must agree upon the verdict. In *Ramos v. Louisiana*, the U.S. Supreme Court held in 2020 that the Sixth Amendment's unanimous verdict requirement to convict a defendant of a serious offense applies to state and federal criminal trials equally by way of the Fourteenth Amendment, rendering nonunanimous jury verdicts unconstitutional. In a subsequent case, *Edwards v. Vannoy*, the U.S. Supreme Court held that the *Ramos* jury unanimity rule did not apply retroactively on federal collateral review. However, the court noted that states may choose whether to allow retroactivity for state post-conviction cases. In 2022, The Oregon Supreme Court held in *Watkins v. Ackley* that the *Ramos* jury unanimity rule does apply retroactively under state law, meaning that anyone who had a non-unanimous jury conviction is entitled to a new trial. In order to get a new trial, an individual must file a postconviction relief (PCR) claim.

Senate Bill 321 creates a process by which a person convicted or found guilty except for insanity by a nonunanimous jury verdict may file a petition for post-conviction relief and appropriates funds for expenses related to carrying out provisions of the measure. It provides explicit authority to a district attorney to charge reasonable reimbursement fees for costs related to providing discovery materials and repeals provisions requiring a sentencing court to order a presentence report for certain felony offenses.