

## FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: SB 321 - 3

82nd Oregon Legislative Assembly – 2023 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.

### Government Unit(s) Affected:

Counties, Criminal Justice Commission, Department of Corrections, Department of Justice, District Attorneys, Judicial Department, Oregon Health Authority, Psychiatric Security Review Board, Public Defense Services Commission

### 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 of a criminal offense as a result of a nonunanimous jury verdict to file a petition for post-conviction relief until December 30, 2024. The petitioner must prove, by preponderance of the evidence, that the conviction resulted from a nonunanimous jury; evidence is limited to a verdict form, a written jury poll, an audio or video recording of the trial, or a transcript of the trial.

If the court finds that the petitioner provided evidence that the conviction resulted from a nonunanimous jury verdict, the court shall grant post-conviction relief and vacate the judgement as to the specific conviction that resulted from the nonunanimous jury verdict. The ability to file a petition for post-conviction relief created by this measure is repealed on January 1, 2026; however, the repeal does not affect a petition or amended petition for post-conviction relief filed within the specified time frame or a retrial resulting from vacating a conviction pursuant to the measure.

This measure appropriates, on a one-time basis, \$2 million General Fund to the Emergency Board for the 2023-25 biennium to be allocated to the Department of Justice (DOJ) for expenses of district attorney offices as long as the distribution is for expenses incurred by those entities resulting from carrying out the provisions of section 1 of the measure.

The measure declares an emergency and is effective upon passage.

### Case Law v. SB 321 -3 Fiscal Impact

The fiscal impact of SB 321 -3 requires qualification. Under current case law (*Watkins v. Ackley* applies the U.S. Supreme Court ruling in *Ramos v. Louisiana*) and Oregon Revised Statute, petitioners are allowed to file post-conviction relief of cases challenging their nonunanimous jury conviction. Persons with nonunanimous jury verdict felony convictions have some period of time from the date of the *Watkins v. Ackley* court decision to challenge their conviction. SB 321 3 clarifies in statute a two-year statute of limitation for these cases and provides an evidentiary criterion for petitioners in a post-conviction relief case and upon retrial.

The measure otherwise creates no new statutory obligations related to *Watkins/Ramos* cases, which may proceed regardless of the measure. Appellate and circuit courts will continue to hear post-conviction relief

challenges. Some challenges will be successful, the verdict vacated, and a convicted adult-in-custody released from prison. In some cases with a vacated verdict, a retrial may occur at the discretion of the prosecutor. Victim notifications would also continue to occur as would county transport of incarcerated petitioners.

The measure does not change the population of eligible petitioners under current case law and statute or the number of petitioners who have already filed, or may file, under either *Watkins v. Ackley* or *Ramos v. Louisiana*. However, some petitions could be filed pursuant to SB 321 -3 after the effective date of the measure that may be time-barred without the express two-year statute of limitation in the measure. In summary, the measure itself creates no new fiscal impact on the state's public safety system other than the number of requests for court records by persons considering filing petitions and the \$2 million General Fund to the Emergency Board.

The budgetary implications for case law under the *Watkins v. Ackley* or *Ramos v. Louisiana* are separate from the measure. Of note, the 2023-25 current service level does provide some resources for DOJ and the Public Defense Services Commission.

If allocated by the Emergency Board, the \$2 million General Fund appropriation would require DOJ to distribute the funds to district attorney offices; however, the measure is silent how much each district attorneys' offices are to receive and what specific expenses. The measure also does not provide for the reimbursement of DOJ administrative costs related to the distribution and administration of funds. Therefore, DOJ and counties would have an indeterminate fiscal impact.

Of note, the funding for DA offices is hybrid. The state DA agency budget only funds the compensation of the 36 DA positions, tort liability, other standard agency costs, and grand jury recordation. Apart from the state DA budget, DOJ provides county DA offices with victim assistance funding. Counties are responsible for funding deputy district attorney positions, investigators, and all other staff, as well as office space, and related services and supplies. In addition, counties fund prosecutorial expenses related to grand jury proceedings such as expert and other witness fees.

#### Other Entities

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

This measure requires a subsequent referral to the Joint Committee on Ways and Means for consideration of its budgetary impact on the State's General Fund and the Emergency Board.