

**TESTIMONY ON SB 321
BEFORE THE SENATE COMMITTEE ON JUDICIARY
MARCH 21, 2023**

**PRESENTED BY: KAITI FERGUSON, SENIOR STAFF COUNSEL
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Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

My name is Kaiti Ferguson, Senior Staff Counsel at the Oregon Judicial Department (OJD). OJD is neutral on SB 321 with the -1 amendment. We are in the process of reviewing the -1 amendment, and we offer this testimony to provide some initial observations as to how we understand this bill with the -1 amendment will function and note that we have some technical feedback to provide.

As a preliminary matter, the bill with the -1 amendment applies to only petitions for post-conviction relief that are filed on or after the effective date of the bill, which is effective upon passage. Cases that are currently pending in the circuit or appellate courts will be governed by the provisions of the bill with the -1 amendment only upon amended petition or motion of the petitioner.

SB 321 with the -1 amendment also includes the following provisions:

1. A two-year statute of limitations that starts December 30, 2022, to file a petition for post-conviction relief under ORS 138.510 to 138.680 claiming as grounds for relief that the person was convicted of a criminal offense as a result of a nonunanimous jury verdict.
2. Section 1 (3), which requires a petitioner to prove by clear and convincing evidence that their conviction resulted from a nonunanimous jury verdict using types of evidence specified in the bill.
3. Section 1 (9), which governs the admissibility of transcripts in retrials after a conviction has been vacated based on a petition for post-conviction relief that is filed under the bill.
4. An appropriation to the Department of Justice to provide funding for district attorney offices and community-based organizations that provide services to crime victims.

SB 321 with the -1 amendment removes the limits on who may file a petition for post-conviction relief based on a nonunanimous jury verdict that are in Section 1(1) of SB 321 as introduced – that is, the provisions that limit the bill to persons in custody and exclude persons whose convictions were based on criminal offenses committed against a person under 18 years of age.

The background for SB 321 is a 2020 decision from the United States Supreme Court, *Ramos v. Louisiana*, 140 S Ct 1390 (2020), which held that the Sixth and Fourteenth Amendments to the United States Constitution require that guilty verdicts in criminal trials be unanimous and ended Oregon’s longstanding practice of allowing nonunanimous jury verdicts in felony cases. Since that decision, Oregon’s circuit courts have received a significant increase in the number of petitions seeking post-conviction relief. Those cases are currently moving through the courts and are in a variety of procedural postures.

On December 30, 2022, the Oregon Supreme Court decided *Watkins v. Ackley*, 370 Or 604 (2022), which held that the constitutional rule from *Ramos* must be applied “retroactively” in a

post-conviction proceeding challenging Oregon felony convictions raising the *Ramos* issue that were final before the *Ramos* decision. After *Watkins*, courts and parties are actively working to resolve a significant portion of the cases that were stayed pending the outcome of that case.

The Oregon Court of Appeals has issued summary reversals of post-conviction judgments in approximately 65 cases and remanded those cases to the post-conviction trial court in light of *Watkins*. Of the hundreds of post-conviction cases pending in Oregon circuit courts, as of March 19, 2023, there are approximately 86 pending post-conviction cases that contain stand-alone *Ramos* claims based on at least one nonunanimous jury verdict, as well as many other pending post-conviction cases that involve claims that counsel was inadequate for reasons related to a conviction resulting from a nonunanimous jury verdict. Additionally, since January 1, 2023, at least 63 cases have been reversed by a post-conviction court on a *Ramos* issue and sent back to the trial court for possible retrial. The chart below depicts the overall number of post-conviction relief filings and pending petitions over the past several years.

Unless the petitioner in a pending post-conviction proceeding moves the court or amends their petition to come under the bill, the provisions of SB 321 with the -1 amendment will not apply to pending post-conviction cases and potential retrials that result from those cases. Accordingly, the cases that are currently moving through the courts will be subject to different procedural rules, such as the burden of proof in a post-conviction proceeding and the admission of evidence upon retrial, than the cases filed after the effective date of the bill with the -1 amendment.

Again, OJD is continuing to review and evaluate SB 321 with the -1 amendment and would appreciate the opportunity to provide some technical feedback.

I would like to also briefly acknowledge the prior work done during the 2022 legislative session in which stakeholders were convened to meet and discuss proposed legislation to provide an express statutory mechanism for a person to obtain post-conviction relief for convictions that were the result of nonunanimous jury verdicts, which was the basis of SB 321 as introduced. OJD appreciated that collaborative process. If a workgroup is convened to discuss future amendments to the bill, OJD would welcome the opportunity to participate and provide its perspective on technical and operational issues unique to courts.

Thank you for the opportunity to provide testimony today.

Post-Conviction Relief Filings and Pending Petitions from 2019-2022

Post-Conviction Relief Filings

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