

# ANALYSIS

## Public Defense Commission Nonunanimous Jury Convictions

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**Analyst:** John Borden

**Request:** Acknowledge receipt of a report on nonunanimous jury convictions.

**Analysis:** In order to better understand the timing and impact of nonunanimous jury conviction caseloads and resulting costs on the Public Defense Commission (PDC), the budget report for the Commission's 2023-25 budget measure, SB 5532 (2023), included the following budget note:

**Nonunanimous Jury Conviction Reporting:** *The Public Defense Services Commission is instructed to report to the 2025 Legislature on the Commission's trial and appellate caseloads and costs, including a caseload projection for the 2025-27 biennium, related to nonunanimous jury convictions under the U.S. Supreme Court decision in Ramos v. Louisiana (2020) and the Oregon Supreme Court decision in Watkins v. Ackley (2022).*

In 2020, the United States Supreme Court ruled, in *Ramos v. Louisiana*, that nonunanimous jury verdict convictions in felony cases are unconstitutional and that the Sixth Amendment to the U.S. Constitution required unanimous verdicts. This ruling applied to ongoing cases but left to the individual states to determine the retroactive application of the decision.

In 2022, the Oregon Supreme Court ruled, in *Watkins v. Ackley*, that the U.S. Supreme Court's ruling in *Ramos v. Louisiana* applied retroactively under state law. This ruling meant that a felony defendant who had a nonunanimous jury conviction may be entitled to a new trial after filing a postconviction relief claim (PCR) challenging their conviction. If relief was granted, the district attorney could refile the case in circuit court or choose to let the PCR judgement stand and not retry the case.

Through SB 321 (2023), the Legislature established a two-year statute of limitation for nonunanimous jury verdict conviction cases and provided an evidentiary criterion for petitioners in a PCR case and for retrial. A person convicted of a criminal offense as a result of a nonunanimous jury verdict had until December 30, 2024, to file a petition for PCR. The petitioner must prove, by preponderance of the evidence, that the conviction resulted from a nonunanimous jury, and 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 is to grant PCR and vacate the judgement as to the specific conviction that resulted from the

nonunanimous jury verdict. The ability to file a petition for PCR repeals on January 1, 2026, however, the repeal date does not affect a petition or amended petition for a PCR case that had been filed within the specified time frame, or a retrial resulting from vacating a conviction.

The Legislature provided one-time General Fund in both the 2021-23 biennium (\$1.1 million) and 2023-25 biennium (\$3 million) for nonunanimous jury verdict conviction cases. PDC reports that in 2021-23, public defense was provided in 400 trial-level cases, at a cost of \$1.5 million General Fund, and 249 cases, at a cost of \$1.1 million General Fund, for the 2023-25 biennium (as of January 2, 2025). This includes costs related to provider contracts, non-contract hourly attorneys, and case-related costs.

PDC reported no actual appellate-level caseloads, state staff, or non-contract hourly attorney costs for PCR appeals, but stated that such costs have been minimal. PDC did not include cases on remand and which district attorneys are trying, as these cases are no longer considered PCR cases, but rather new circuit court cases. PDC states the no further costs are anticipated for nonunanimous jury cases in the 2025-27 biennium or beyond.

**Recommendation:** The Legislative Fiscal Office recommends acknowledging receipt of the report.

# Oregon Public Defense Commission

## Daniel

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**Request:** Report on trial and appellate caseloads and costs related to nonunanimous jury convictions by the Oregon Public Defense Commission.

**Recommendation:** Acknowledge receipt of the report.

**Discussion:** The budget report for Senate Bill 5532 (2023) includes a budget note directing the Oregon Public Defense Commission (OPDC) to report to the 2025 Legislature on the Commission's trial and appellate caseloads and costs, including a caseload projection for the 2025-27 biennium, related to nonunanimous jury convictions under the U.S. Supreme Court decision in *Ramos v. Louisiana* (2020) and the Oregon Supreme Court decision in *Watkins v. Ackley* (2022).

In 2020, the U.S. Supreme Court took up the constitutionality of nonunanimous jury verdicts in *Ramos v. Louisiana*. The court held that the Sixth Amendment to the U.S. Constitution required unanimous verdicts, meaning nonunanimous jury verdicts in felony cases are unconstitutional. On December 30, 2022, in *Watkins v. Ackley*, the Oregon Supreme Court ruled that the *Ramos* ruling retroactively applied under state law. Anyone formerly convicted by a nonunanimous jury was entitled to a new trial, as long as they filed a postconviction relief (PCR) claim by December 31, 2024, due to the time-limited ruling on *Watkins*.

To track cases subject to the retroactive ruling, OPDC identified cases potentially subject to *Watkins* and compared them against cases for which a PCR claim was filed. Ultimately, OPDC found 649 cases or petitions were served by the Commission's contracted or hourly providers between the 2021-23 and 2023-25 biennia, and a total of \$2.5 million was expended in relation to PCR cases under *Watkins* or *Ramos*. No additional cases or costs are projected for the 2027-29 biennium, given the deadline to file a PCR claim was December 31, 2024.



# Oregon

## Oregon Public Defense Commission

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3/12/2025

The Honorable Kate Lieber, Co-Chair  
The Honorable Tawna Sanchez, Co-Chair  
Joint Committee on Ways and Means  
900 Court Street NE  
H-178 State Capitol  
Salem, OR 97301-4048

Dear Co-Chairs:

### Nature of the Request

This letter is in response to a budget note from SB 5532 (2023), which states:

The Public Defense Services Commission is instructed to report to the 2025 Legislature on the Commission's trial and appellate caseloads and costs, including a caseload projection for the 2025-27 biennium, related to nonunanimous jury convictions under the U.S. Supreme Court decision in *Ramos v. Louisiana* (2020) and the Oregon Supreme Court decision in *Watkins v. Ackley* (2022).

### Agency Action

In 2020 the United States Supreme Court took up the constitutionality of nonunanimous jury verdicts in *Ramos*. The court held that the Sixth Amendment to the United States Constitution required unanimous verdicts. This means that nonunanimous jury verdicts in felony cases are unconstitutional. That ruling settled the question for any case that was still actively before the court, either at trial or on appeal but left the question of what happened to cases that had already been fully resolved.

On December 30, 2022, in *Watkins*, the Oregon Supreme Court ruled that the *Ramos* ruling applied retroactively (going backwards) under state law. This meant that anyone who was convicted by a nonunanimous jury would be entitled to a new trial. In order to get a new trial, someone needs to file and prevail—that is, persuade a court to grant relief—in a postconviction relief (PCR) claim. Those claims under *Watkins* are time-limited to two years from the *Watkins* ruling. This meant that all nonunanimous jury claims relying on *Watkins* had to be filed by December 31, 2024. Due to this deadline, all expenses related to *Watkins* PCR claims were incurred by the end of the 23-25 biennium.

If a nonunanimous conviction is reversed at PCR, the underlying criminal case will be remanded to the criminal trial court. There, the district attorney in that county of conviction will determine whether to re-prosecute the case or not. From the Commission's perspective, the newly filed cases- which come with new case numbers- are no longer *Watkins/Ramos* cases. That status is ended when a case receives a PCR ruling.

Determining how to track these cases required the Commission to determine which cases could be potentially subject to *Watkins* and then track those cases separately should a PCR be filed. We used a combination of three methods to find those cases. First, we asked for, and the attorney general

subsequently returned, a list of PCR cases served by the Oregon Department of Justice; second, a provider contracted by the commission provided a list of PCR cases; and third, commission staff evaluated expenditures in two previous biennia for records associated with a *Ramos* or *Watkins* tag in the commission’s subaccounting system. Those lists were combined, and duplicated case numbers between the lists were eliminated.

The commission found that 649 cases or petitions were served by the commission’s contracted or hourly providers. Since July 1, 2019, the commission recognized \$2,532,358 in costs related to the PCR cases under *Watkins* or *Ramos*.

	21-23 Biennium		23-25 Biennium	
	Unique cases served*	Expenditures	Unique cases served*	Expenditures
<b>Total</b>	<b>400</b>	<b>1,482,075</b>	<b>249</b>	<b>1,050,283</b>
Contracted providers	211	1,114,886	65	373,673
Court mandated expenses	33	50,778	42	226,109
Preauthorized expenses	210	316,411	182	450,501

\*Cases can cross program areas; a case may have both CME and PAE expenses.

The Commission does not project any cases or costs for the 27-29 biennium because the deadline to file those cases was December 31, 2024.

The Commission has no projections or costs for *Watkins/Ramos* cases in the appellate caseload. While PCR cases could be appealed, their numbers would be minimal and picked up by the current appellate post-conviction contractor within the existing contract. Just like in the trial court, successful PCR cases could result in new cases that could eventually make their way to Appellate, but these cases would not be considered *Ramos/Watkins* upon refile.

**Action Requested**

The Oregon Public Defense Commission requests acknowledgment of this report.

**Legislation Affected**

None

Sincerely,



Jessica Kampfe  
Executive Director

cc:

Amanda Beitel, Legislative Fiscal Officer  
John Borden, Principal Legislative Analyst, LFO  
Kate Nass, Chief Financial Officer  
Allison Daniel, Policy and Budget Analyst, CFO