

FISCAL IMPACT OF PROPOSED LEGISLATION

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

Measure: SB 1511 - A

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

Prepared by: Emily Coates
Reviewed by: Tom MacDonald, Amanda Beitel, John Borden, John Terpening
Date: 2/16/2022

Measure Description:

Creates process for a person convicted of a criminal offense as result of nonunanimous jury verdict to file a petition for post-conviction relief within one year of effective date of Act. The person must be in custody serving a sentence on that conviction.

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 of a criminal offense as result of nonunanimous jury verdict to file a petition for post-conviction relief within one year of the effective date of Act. The person must be in custody serving a sentence on that conviction. If the sentence being served is on a criminal offense committed against a person under 18 years of age, that person is not eligible to file a petition for post-conviction relief. The petitioner must prove, by clear and convincing limited evidence, that the conviction resulted from a nonunanimous jury. If the court finds that the petitioner established clear and convincing evidence that the conviction results from a nonunanimous jury verdict, the court shall grant post-conviction relief.

If judgement of conviction is repealed, the prosecuting attorney may proceed with the original charges and the petitioner will receive credit for time served or if judgement determines the petitioner is convicted of a different crime based on the same original evidence, the court will need to determine if the judgment of the new crime conviction was committed as part of the original episode. The ability to file a petition for post-conviction relief created by this measure is repealed on January 1, 2026.

This measure appropriates \$6 million General Fund to the Emergency Board for the biennium ending June 30, 2023. The Emergency Board shall allocate these funds to the Department of Justice (DOJ) for expenses of the Department, district attorney offices and community-based organizations providing services to crime victims. The Legislative Fiscal Office (LFO) notes that the Emergency Board appropriation does not provide for other expenses of the public safety systems such as the courts and public defense services.

Department of Justice:

DOJ estimates the fiscal impact of this measure to be \$1.8 million General Fund and \$1.1 million Other Funds, eight positions (4.83 FTE) for the 2021-23 biennium and \$3 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, noted above.

The agency anticipates the Trial Division will need to hire three Assistant Attorney General (AAG) positions (1.75 FTE), two Legal Secretary positions (1.17 FTE), and one Paralegal position (0.58 FTE) \$1.5 million General Fund

and \$1.1 million Other Fund for the 2021-23 biennium. In the 2023-25 biennium DOJ anticipates three AAG positions (3.00 FTE), two Legal Secretary positions (2.00 FTE), and one Paralegal position (1.00 FTE); estimated cost of \$2.5 million General Fund and \$1.9 million Other Funds. This would be in addition to Ramos resources already included for the Trial and Appellate Division 2021-23 legislatively adopted budget.

The \$6 million General Fund appropriation to the Emergency Board would be used by the Crime Victim and Survivor Services Division (CVSSD) for departmental expenses, district attorney offices, and community-based organization providing services to crime victims. DOJ states that these funds will be used for victim assistance programs, 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. In addition to the appropriation, CVSSD estimates the division will need to hire a Program Analyst 2 and a Program Analyst 3 at an estimated cost \$344,756 General Fund for the 2021-23 biennium and \$500,797 for the 2023-25 biennium. DOJ cost estimate may be understated by \$17,738 due to a discrepancy in position costing with the agency's fiscal impact. In addition, a third position requested by DOJ is not included in this fiscal impact statement as the position was requested after the committee had acted on the measure.

Judicial Department:

The Oregon Judicial Department (OJD) estimates a fiscal impact of \$1.1 million General Fund and 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 that the agency can reduce 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 Department to seek additional funding beyond the \$1.1 million General Fund noted above. OJD is unable to 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 at an average cost per-case is \$1,372. OJD is unable to determine the number of additional petitions for post-conviction relief beyond the cases already filed; however, the agency knows there will be additional cases. The 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 DA charging a discovery fee. 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 of 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. This measure removes the authority for DAs to charge a reasonable reimbursement fee to PDSC as of January 1, 2024. Currently, PDSC's budget includes funds available for fees therefore, once the provision is repealed, there will be an 18-month reduction of \$4,500,000 General Fund for PDSC.

Department of Corrections:

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 and Counties:

District Attorneys (DAs) estimate that the DAs office will need supplemental funding from DOJ for crime victim support. 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.

The section in the measure related to discovery fees codifies the current practices of DA charging a discovery fee and would have no fiscal impact on the DAs if PDSC returns to reimbursing discovery costs. If not, the DAs will have a fiscal impact associated with this provision of the measure. This measure removes the authority for DAs to charge a reasonable reimbursement fee to PDSC as of January 1, 2024. There is an estimated 18-month reduction of \$4.5 million in fees collected.

Counties estimate this measure will have an 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 timeframe, LFO believes if the costs to implement this measure exceed available funding, agencies may need to request additional General Fund allocations from the Emergency Board or additional funding during the regular budget process. LFO notes the possibility exists for a decrease in eligible cases, which is unknown and not assumed in the estimated fiscal impacts discussed above. Further analysis of the measure will be required in the Joint Committee on Ways and Means.