

ANALYSIS

Item 22: District Attorneys Nonunanimous Jury Convictions

Analyst: John Borden

Request: Allocate \$1,000,000 General Fund from the special purpose appropriation to the Emergency Board for expenses of district attorneys related to nonunanimous jury convictions.

Analysis: The state agency “District Attorneys” is requesting the release of a \$1 million special purpose appropriation for expenses of district attorneys for victim assistance, investigation, temporary staffing, and other one-time, non-routine prosecution expenses related to nonunanimous jury convictions.

The “District Attorneys” agency provides funding for the compensation of the 36 district attorney (DA) positions, their tort liability insurance, other standard state agency costs, and costs related to grand jury recordation. The 2023-25 legislatively adopted budget for District Attorneys is \$16.5 million General Fund and 36 positions (36.00 FTE). Counties are responsible for funding deputy district attorney positions, investigators, and other staff, as well as related services and supplies.

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 in 2021 that the Ramos jury unanimity rule did not apply retroactively on federal collateral review. The court noted, however, that states may choose whether to allow retroactivity for state post-conviction cases. The Oregon Supreme Court in 2022 held in *Watkins v. Ackley* that the Ramos jury unanimity rule applied retroactively under state law, meaning that anyone who had a nonunanimous jury conviction is entitled to a new trial.

To get a new trial, an individual must file a post-conviction relief (PCR) claim. The 2023 Legislature enacted SB 321, which created 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 until two years after the Watkins decision date (December 30, 2022 to December 30, 2024). After December 30, 2024, while no new case filing may occur, those that are filed within the statute of limitations will take time to be reviewed and potentially re-adjudicated.

The total number of post-conviction case under *Ramos/Watkins*, and their timing, is unknown; however, initial estimates are that there could be up to 2,000 cases. In a preliminary report to the Legislative Fiscal Office, agencies are reporting that an estimated 878 cases were filed in circuit courts during the 2021-23 biennium and to-date for the 2023-25 biennium, there are approximately 730 active cases with 17 cases being stayed. Four counties comprise 86% of the cases with the highest caseloads reported in Umatilla (239), Marion (169), Malheur (150), and Washington (50) counties. While these figures are thought to be predominately related to nonunanimous jury convictions, the data is not uniquely identified and may include other PCR cases unrelated to *Ramos/Watkins*. The Department of Justice’s Appellate Division is reporting 20 active cases. Public Defense Services Commission was only able to provide partial data for some hourly cases, but not data for the Appellate Division state staff, contract

provider attorneys, and hourly-paid attorneys. No *Ramos/Watkins* caseload data accompanied the DA request.

The 2025 Legislature can expect to receive updates on *Ramos/Watkins* cases, as the Department of Justice and the Public Defense Services Commission were instructed to report on trial and appellate caseloads and costs, including a caseload projection for the 2025-27 biennium, related to nonunanimous jury convictions.

The 2023 Legislature approved a \$1 million special purpose appropriation to the Emergency Board for expenses of district attorneys for victim assistance, investigation, temporary staffing, and other one-time, non-routine prosecution expenses related to nonunanimous jury convictions. The Oregon District Attorneys Association (ODAA), through a survey of DA offices, provided the following information; however, ODAA continues to work with DA offices on more complete documentation of expenses. The “Other Expenses” category in the table includes such costs as victim emergency funds, transcriptions, witness travel and lodging, and deputy district attorney positions, which represent the majority of expense.

	Reporting District Attorney Office/County	Victim Assistance	Investigation	Temporary Staffing	Other Expenses	Estimated Expenditures	% Total
1	Multnomah County	\$ 295,160	\$ 367,873	\$ 290,343	\$ 6,000	\$ 959,375	41.7%
2	Washington County	\$ 92,724	\$ 20,000	\$ 45,677	\$ 689,098	\$ 847,499	36.8%
3	Marion County	\$ 58,006	\$ 6,661	\$ 88,833	\$ 113,308	\$ 266,808	11.6%
4	Clackamas County	\$ 30,008	\$ 9,691	\$ 6,040	\$ 158,301	\$ 204,040	8.9%
5	Deschutes County	\$ 4,494	\$ 6,018	\$ 525	\$ 7,500	\$ 18,537	0.8%
6	Linn County				\$ 4,000	\$ 4,000	0.2%
	Total	\$480,392	\$ 410,243	\$ 431,418	\$ 978,207	\$ 2,300,260	100.0%
		21%	18%	19%	43%	100%	

The Legislative Fiscal Office recommends release of the special purpose appropriation and that the Department of Justice disperse funding, if approved by the Legislature, based on sufficient documentation being provided by individual DA offices/counties related to nonunanimous jury conviction expenditures consistent with the language and intent of the special purpose appropriation.

Recommendation: The Legislative Fiscal Office recommends that the Joint Interim Committee on Ways and Means recommend appropriating \$1,000,000 General Fund, with a corresponding decrease in the special purpose appropriation to the Emergency Board for expenses of district attorneys related to nonunanimous jury convictions, to the Department of Justice for District Attorneys in a budget reconciliation bill during the 2024 legislative session for expenses related to nonunanimous jury convictions.

District Attorneys and their Deputies Gehringer

Request: Allocate \$1,000,000 from the Special Purpose Appropriation made to the Emergency Board for expenses of district attorneys for victim assistance, investigation, temporary staffing, and other one-time, non-routine prosecution expenses related to non-unanimous jury convictions.

Recommendation: Approve the request during the 2024 Legislative Session.

Discussion: In 2020, the United States Supreme Court ruling in *Ramos v. Louisiana* held that the Sixth Amendment to the United States Constitution required unanimous verdicts for serious crimes. On December 30, 2022, in *Watkins v. Ackley*, the Oregon Supreme Court ruled that the *Ramos* ruling applies retroactively under state law. This means anyone who had a non-unanimous jury conviction is entitled to a new trial.

In order to get a new trial, a qualifying individual must file a postconviction relief (PCR) claim. While there is no limit on how long ago a conviction may have occurred in order to qualify, there is a time limit to bring PCR claims arising from *Watkins*. The statute of limitations is currently two years from the *Watkins* decision.

When a case involving victims returns to a District Attorney's office, the DA utilizes victim advocates and support staff to reach out and gauge the victims' interest in retrying the case and will work with them through the duration of the case. Should the DA decide to pursue a case, they must evaluate the feasibility of investigating and retrying cases that could date back decades, essentially restarting the entire legal process.

In the 2023 Legislative Session, the Oregon Legislature included a Special Purpose Appropriation of \$1.0 million in Senate Bill 5506 for expenses of district attorneys for victim assistance, investigation, temporary staffing, and other one-time, non-routine prosecution expenses related to non-unanimous jury convictions.

As district attorney offices are already utilizing victim advocacy resources, investigative services, and alternative staffing to retry these cases successfully, they are applying resources in different ways. The Oregon District Attorneys Association conducted a statewide survey asking DA offices how much they had spent or planned to spend on *Watkins* cases specific to the four categories identified in the Special Purpose Appropriation. The agency used these results to formulate this request for Special Purpose Appropriation funding.

Though most counties reported they had not yet received *Watkins* cases for review, six counties—Clackamas, Deschutes, Linn, Marion, Multnomah, and Washington—had expended, or have planned *Watkins* case expenses before the end of the 2023-25 biennium. Anticipated *Watkins* case expenses for these counties totaled \$2.2 million for the 2023-25 biennium.

The District Attorneys are requesting the full allocation of the \$1.0 million from the Special Purpose Appropriation to be released to the Department of Justice for distribution to the six requesting counties. The District Attorneys plan to proportionally allocate the funds based on the total requests made by each county, as shown in the chart below.

County DA	Special Purpose Appropriation categories	Amount (\$)
Clackamas	Victim Assistance, investigation costs, temporary staffing, and other expenses	80,912.83
Deschutes	Victim Assistance, investigation costs, and other expenses	8,102.81
Linn	Other expenses	1,780.84
Marion	Victim Assistance, investigation costs, temporary staffing, and other expenses	138,690.50
Multnomah	Victim Assistance, investigation costs, and temporary staffing	397,739.07
Washington	Victim Assistance, investigation costs, temporary staffing, and other expenses	372,773.95
		\$ 1,000,000.00

The recommendation is to approve the request as one-time funding per information provided in the Senate Bill 5506 Budget Report.

Legal Reference: Increase the General Fund appropriation made by chapter 356, section 1, Oregon Laws 2023, for the Department of Justice, to District Attorneys, by \$1,000,000 for the 2023-25 biennium.

Decrease the General Fund special purpose appropriation to the Emergency Board by chapter 605, section 6(1), Oregon Laws 2023 for allocation to the Department of Justice for expenses of district attorneys for victim assistance, investigation, and temporary staffing and other one-time, nonroutine prosecution expenses related to non-unanimous jury convictions by \$1,000,000 for the 2023-25 biennium.

December 4, 2023

Senator Elizabeth Steiner, Co-Chair
Representative Tawna Sanchez, Co-Chair
Interim Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs Steiner and Sanchez:

Nature of the Request

The District Attorneys (Agency 197) request the full \$1,000,000.00 allocation of the Special Purpose Appropriation to the Department of Justice for District Attorneys for non-unanimous jury convictions provided for in SB 5506 (2023).

Agency Action

The 2023 Legislature passed SB 5506, which included a Special Purpose Appropriation of \$1 million to the Emergency Board for expenses of district attorneys for victim assistance, investigation, temporary staffing, and other one-time, non-routine prosecution expenses related to non-unanimous jury convictions.

Non-unanimous jury convictions are returning to district attorney offices across the state. While each case presents its own complexities, these offices are dedicating all available resources to address this renewed challenge.

When a case returns to a district attorney's office, especially those involving victims, the office engages victim advocates and support staff to reach out and gauge the victims' interest in retrying the case. Across Oregon, many offices have found that victims prefer to avoid the trial experience, often seeking case resolution or complete dismissal. Assessing a victim's willingness to participate involves a thorough and emotionally taxing process, demanding experienced advocates to navigate the turmoil and emotional strain of revisiting the original offense. Throughout the case's lifespan, district attorney offices collaborate with victims, offering resources, facilitating logistics, and providing guidance on the legal process as these cases reenter their jurisdiction.

Should an office decide to pursue a case, they must evaluate the feasibility of retrying cases that could date back decades, essentially restarting the entire legal process. As District Attorneys and Deputy District Attorneys reconstruct these cases, victim advocates continue offering support, ensuring the victims' voices are heard and they remain involved.

As district attorney offices exercise investigative services, victim advocacy resources, and staffing to retry these cases successfully, and they are applying their resources in different ways. For example, Marion County has hired its own contract attorney to act as a special

deputy and assist the county specifically to work on Watkins/Ramos cases. To aid in the understanding of the resources each office was utilizing, the Oregon District Attorneys Association conducted a survey across the state asking offices how much they had spent or would spend on Watkins cases specific to the three buckets identified in the SPA. The majority of counties reported they had not received Watkins cases for review. However, the survey revealed that six counties—Clackamas, Deschutes, Linn, Marion, Multnomah, and Washington—had expended, or would expend before the end of the 2023-25 biennium, costs specific to the retrial of Watkins cases. Those counties reported combined expenses of \$2,246,332.57 in anticipated expenses for the 2023-25 biennium.

The counties surveyed provided the following estimated costs for the 2023-25 biennium.

- Multnomah County is estimating \$235,160.00 in total expenses specifically relating to victim assistance, \$367,872.50 in additional investigative costs, and \$290,342.50 in temporary staffing.
- Washington County is estimating \$92,600.00 in total expenses specifically relating to victim assistance, \$20,000.00 relating to investigation costs, \$45,600.00 in temporary staffing, and \$679,100 in other costs relating to retrying Watkins cases.
- Clackamas County is estimating \$30,008.00 in total expenses specifically relating to victim assistance, \$9,691.00 relating to investigation costs, \$6,040.00 relating to temporary staffing, and \$136,002.00 in other expenses.
- Marion County is estimating \$68,292.26 in total expenses specifically relating to victim assistance, \$7,592.09 relating to investigation costs, \$134,154.24 relating to temporary staffing, and \$101,478.77 in other expenses.
- Deschutes County is estimating \$5,000 in total expenses specifically relating to victim assistance, \$6,000 relating to investigation costs, and \$7,200 in other expenses.
- Linn County is estimating \$4,000.00 in other expenses relating to retrying Watkins cases.

The District Attorneys are requesting the full allocation of the \$1,000,000 from the Special Purpose Appropriation to be released to the Department of Justice for distribution to the six counties. While the projected District Attorney-related expenses exceed the designated SPA, The District Attorneys will proportionally allocate the \$1,000,000 based on the request made by each county. That proportional formula multiplied by % of \$1,000,0000 results in approximately 40% of the appropriation to Multnomah County, 37% to Washington County, 14% to Marion County, 8% to Clackamas County, ~.8% to Deschutes County, ~.2% to Linn County, that allocation will look as follows:

- \$397,739.07 to Multnomah County.
- \$372,773.95 to Washington County
- \$138,690.50 to Marion County
- \$80,912.83 to Clackamas County
- \$8,102.81 to Deschutes County
- \$1,780.84 to Linn County

Action Requested

The District Attorneys (Agency 197) request \$1,000,00.00 allocation of the Special Purpose Appropriation to the Department of Justice for District Attorneys for non-unanimous jury convictions provided for in SB 5506 (2023) be released.

Legislation Affected

Oregon Laws 2023, Chapter 356, section 1.

Sincerely,

A handwritten signature in blue ink, appearing to read "Reed West", with a stylized flourish extending to the right.

Reed West
The District Attorneys

cc:

William O'Donnell, Chief Financial Officer, DOJ
Dan Primus, President, Oregon District Attorneys Association