

**SB 321 A STAFF MEASURE SUMMARY**

**Senate Committee On Judiciary**

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**Action Date:** 04/04/23

**Action:** Do pass with amendments and requesting referral to Ways and Means. (Printed A-Engrossed.)

**Vote:** 3-2-0-0

**Yeas:** 3 - Gelser Blouin, Manning Jr, Prozanski

**Nays:** 2 - Linthicum, Thatcher

**Fiscal:** Fiscal impact issued

**Revenue:** No revenue impact

**Prepared By:** Lucy Ohlsen, LPRO Analyst

**Meeting Dates:** 3/21, 4/4

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**WHAT THE MEASURE DOES:**

Creates a process by which a person convicted or found guilty except for insanity by nonunanimous jury verdict may file a petition for post-conviction relief until December 30, 2024. Specifies evidentiary requirements, for petitions filed on or after effective date of measure, to prove verdict was nonunanimous and provides standard proof is preponderance of the evidence. Specifies directions to court when post-conviction relief is granted. Provides process allowing persons with a pending appeal from a petition for post-conviction relief to amend petition to include a claim under new provision within 90 days of effective date of the measure. In a retrial for a conviction vacated under the measure, provides jury instructions regarding evidence that was previously admitted in the original trial but is no longer available and specifies evidence subject to jury instruction. Repeals certain provisions relating to post-conviction relief on January 2, 2026. Appropriates \$2 million from the General Fund to be allocated to the Department of Justice for expenses of district attorney offices resulting from carrying out the provisions of the measure. Clarifies that reversal or vacation of a conviction because of a nonunanimous jury verdict is not sufficient to prove wrongful conviction. Declares emergency, effective on passage.

**ISSUES DISCUSSED:**

- Overview of relevant cases
- Need for orderly process
- Form of proof of unanimity

**EFFECT OF AMENDMENT:**

Removes limitations on eligibility for relief. Provides petitions for relief may be filed until December 30, 2024. Provides standard proof is preponderance of the evidence in section specifying evidentiary requirements to prove verdict was nonunanimous. Clarifies that evidentiary requirements apply to petitions filed on or after effective date. Modifies directions to court when post-conviction relief is granted. Deletes section providing process allowing persons with pending petition for post-conviction relief to amend petition to add claim under this measure. Modifies process allowing persons with a pending appeal from a petition for post-conviction relief to amend petition to include a claim under new provision within 90 days of effective date of the measure. In a retrial for a conviction vacated under the measure, clarifies jury instructions regarding evidence that was previously admitted in the original trial but is no longer available and adds recording of the prior proceeding to types of evidence subject to jury instruction. Repeals certain provisions relating to post-conviction relief on January 2, 2026. Modifies scope and amount of appropriation provision to \$2 million from the General Fund to be allocated to the Department of Justice for expenses of district attorney offices resulting from carrying out the provisions of the measure. Deletes sections related to district attorney authority to charge reasonable reimbursement fee for cost of providing copies of discovery materials in criminal case. Deletes section related to provisions requiring a

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sentencing court to order a presentence report for certain felony offenses. Deletes effective date and declares emergency, effective on passage. Removes language from Senate Bill 1584 (2022) to clarify that reversal or vacation of a conviction because of a nonunanimous jury verdict is not sufficient to prove wrongful conviction.

### **BACKGROUND:**

Article I, Section 11, was adopted into the Oregon Constitution in 1934 and states that, in the circuit court, ten members of the jury may render a verdict of guilty or not guilty for serious offenses, except for the crime of first degree murder, which shall be found only by a unanimous verdict. As a result, from 1934 until April 2020, juries in Oregon were instructed that to reach a verdict of guilty in criminal cases, at least 10 out of 12 jurors must agree upon the verdict. 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 that the *Ramos* jury unanimity rule did not apply retroactively on federal collateral review. However, the court noted that states may choose whether to allow retroactivity for state post-conviction cases. In 2022, The Oregon Supreme Court held in *Watkins v. Ackley* that the *Ramos* jury unanimity rule does apply retroactively under state law, meaning that anyone who had a nonunanimous jury conviction is entitled to a new trial. In order to get a new trial, an individual must file a post-conviction relief (PCR) claim.

Senate Bill 321 A creates 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 and appropriates funds for expenses related to carrying out provisions of the measure. The measure also specifies certain nontestimonial evidence may be used in certain circumstances upon retrial of a case.