



AGENDA

Join Zoom Meeting

Topic: MCPSCC Meeting
Time: Jan 18, 2022 04:00 PM Pacific Time
Join Zoom Meeting
<https://us06web.zoom.us/j/87230694469>

Marion County Public Safety Coordinating Council

Date: Tuesday, January 18, 2022
Time: 4:00 p.m. to 6:00 p.m.
Place: Courthouse Square, BOC Office
Staff: Hitesh Parekh, BOC Office
Phone: (503) 588-5212

In Person Meeting At:
Courthouse Square, BOC Office
555 Court St, 5th Floor
BOC Office
Salem 97309

4:00 - 4:15 PM

1. Administrative (Information/Action)

Kevin Cameron, Chair

- Welcome and introductions
- Announcements & upcoming events
- Vice-Chair Appointment MCPSCC
- Memberships
- Approve October 12, 2021 MCPSCC meeting minutes

4:15 - 5:15 PM

2. Public Safety Legislation Effective January 1, 2022

Paige Clarkson et al.

(Information/Discussion)

- Mugshots
- New SB 819 "conviction integrity" statute and DA Policy
- Clemency "update"- numbers
- Covid impact on cases & jail
- BM110 early impacts (PowerPoint Presentation)
- Legislative concerns for "Short Session" 2022 - Ramos, DCS Statute fix, etc.
- Lack of attorneys appointed on defense cases
- In custody defendants with no representation (Shannon Wilson)

5:15 - 5:20 PM

3. 2021-23 JRI Final Grant and Supplemental Grant Amounts

Undersheriff Wood

(Information/Discussion)

5:20 - 5:35 PM

4. Criminal Justice Advisory Council (CJAC)

Judge Tracy Prall

(Information/Discussion/Possible Action)

5:35 - 5:55 PM

5. Marion County Prison Usage, CJC Quarterly Report

Ian Davidson, CJC

(Information/Discussion/Possible Action)

5:55 - 6:00 PM

6. Emerging Issues/Other Business

All

(Information/Discussion/Possible Action)

6:00 PM

ADJOURN

ATTACHMENT A

DRAFT OCTOBER 12, 2021
MEETING
MINUTES MCPSCC

**MARION COUNTY PUBLIC SAFETY COORDINATING COUNCIL
MINUTES**

**October 12, 2021, 4:00 PM
Courthouse Square
Salem, OR**

MCPSCC: Joe Budge, Mark Caillier, Kevin Cameron, Rob Carney, Paige Clarkson, Jayne Downing, Don Frederickson, Tamra Goettsch, Roland Herrera, Chris Hoy, Linda Hukari, Levi Herrera-Lopez; Joe Kast, Alison Kelley, Pete McCallum, Todd McCann, Ed McKenney, Tracy Prall, Dave Rash, and Hitesh Parekh (recorder).

GUESTS: Chad Ball, Angie Denning, Raquel Moore-Green, Kevin Karvandi, and Ron Williams

1. ADMINISTRATIVE (INFORMATION/ACTION)

Meeting called to order at 4:05 P.M. by Commissioner Kevin Cameron.

Welcome and introductions

- Introductions were made.
- Commissioner Cameron welcomed new council members, Executive Director of Public Defender Inc. of Marion County Shannon Wilson, and Salem City Council member Chris Hoy to the council.
- Presiding Judge Tracy Prall, Judge Geyer, and Trial Court Administrator Linda Hukari have all been reappointed for another two-year term on the council.

Announcements & Upcoming Events

- Marion County Community Services Director Tamra Goettsch said CASA of Marion County will be holding a fundraiser in December. Those interested in attending should contact her.
- City of Salem Police Chief Trevor Womack asked for feedback from council members (who live in Salem) on the City Police Department’s three-year strategic plan.

Ratifications

Criminal Justice Commission 2021-23 Justice Reinvestment Initiative (JRI) grant application submission.

- At the July 27 council meeting, the council approved the 2021- 23 JRI Plan and supplemental grant programs for funding.
- Application was submitted to meet deadline on August 25.

MOTION: Don Frederickson made a motion to ratify Marion County Sheriff’s Office 2021-23 JRI grant application of \$4,186,797 and supplemental grant application of \$917,435. Mark Callier seconded. Motion passes unanimously.

Approval of July 27, 2021, MCPSCC Meeting Minutes

MOTION: Ed McKenney made a motion to approve the July 27, 2021, MCPSCC meeting minutes. Jayne Downing seconded. Motion passes unanimously.

2. NOTABLE PUBLIC SAFETY LEGISLATION FROM 2021 LEGISLATIVE SESSION

Marion County District Attorney Paige Clarkson reviewed and summarized some of the notable public safety legislation that passed (or failed) in the 2021 legislative session.

- SB 649- Baily’s Bill relating to sexual abuse in the second degree included the coach but not teacher-so bill fixed this.
- SB 48- Pre-trial release bill. Working closely with Sheriff’s Office and jail to determine how this will affect Marion County. Don’t want to change the pre-trial release process for Marion County. Creates chief justice advisory committee to set some standards for counties as to who can be released pre-trial and under what circumstances.

- SB 397- Made some changes to expungement where an offender can clear his/her record of arrest and conviction. Bill attempts to bring Oregon in line with what is being done in most other states. Allows judge to see if there is a public safety reason to deny individual expungement. If there is a denial -a hearing in front of a judge will take place.
- SB 751-Is about discovery. Marion County already meets many of these requirements but will work with defense bar to ensure county is following discovery rules.
- SB 755-Ballot Measure 110 implementation of the decriminalization of street drugs. There isn't much to implement but does give standards to courts and how to refer individuals for treatment.
- HB 3273-Governs the use of booking photos. After January 2022 booking photos will not be on any web sites or released by any public safety body unless individual is convicted-with a few exceptions.
- SB 803- Attempts to address catalytic converter theft. Rampant with electric vehicles. Bill requires scrap metal places to require proof of ownership of the convertor.
- SB 819- Conviction integrity bill championed by the Multnomah County District Attorney's Office. Attempt to allow defendants and district attorney (DA) offices to go forward and present to the court any case they believe should be resentenced or reviewed again. Vehicle by which DA's can look at the integrity of a conviction or sentence.
- All four Ballot Measure 11 repeal bills failed to pass. HB 2002 was a comprehensive bill that included the BM 11 repeals, and another version of this bill could resurface in the 2022 legislative session.
- Legislature also discussed an Oregon Judicial Department bill which proposed charging district attorneys a fee for filing criminal charges. Bill was defeated.
- Bill that sought to repeal certain prostitution measures was also defeated.
 - Although bill is well intentioned and trying to stop criminalization of human trafficking victims- a lot of preliminary work needs to be done first.
- In 2019 the legislature significantly narrowed aggravated murder and the types of cases the death penalty could apply to through SB 1013. At the time SB 1013 was passed, legislators said it would not be retroactive. Then a Marion County death penalty case involving an inmate-on-inmate offense in our county jail came up. Inmate attacked and killed another inmate. He was convicted and sentenced to death, but the Oregon Supreme Court found last week that the death penalty could not apply to him. This means that for those individuals sentenced to death in Oregon, SB 1013 is retroactive. Concerning for several reasons: Even though the legislature has it on record that SB 1013 is not to be retroactive, the supreme court (a separate branch of government) found that it can be retroactive. In essence, if the crime was committed today, it would not be eligible for the death penalty. Another example is SB 1008 which was the Ballot Measure 11 juvenile reform bill. SB 1008 would make most juvenile cases no longer eligible for automatic BM 11 sentences. Concern is the same argument could apply - if these BM 11 crimes were committed today - they would not fall under BM 11 crimes of the past. So, brings up issue of how all the different branches of government interplay with each other. Judicial branch is telling the legislative branch that what they meant and intended to do is in fact not what they did. Also sheds light on the clemency process. Here the executive branch of government or the governor can grant people clemency release, commutation, and pardon. Ms. Clarkson has seen more requests for clemency this last year and a half than her predecessors have seen over their entire careers. Concern that there are other branches of government weighing in and undoing the work on adjudicating cases where juries and judges have seen fit to pass a certain sentence and make certain findings. Ms. Clarkson is very concerned about what this means for the criminal justice system, victims, and fidelity of the criminal justice system. These are discussions we should have as a community – not something that the legislature decides. If our standards have changed then voters should weigh in on this.

Summary of discussion

Q: Death penalty returned to Oregon in 1984 by constitutional amendment?

A: The death penalty was voted in favorably twice by Oregonians, most recently in 1984. Constitutional provision that if you are convicted of aggravated murder and the jury makes certain findings you are eligible for the death penalty. The legislature took that aggravated murder statute and redefined it, which was a clever way of changing what was eligible for the death penalty. Killing a police officer was aggravated murder, but now it must be premeditated to constitute aggravated murder that was never required to be proven before. So

now this will call into question all cases where the officer might be the victim. Difficult for the prosecution to prove premeditation moving forward.

Q: In appellate law there has been a long tradition of statutory construction. Did the court not follow this methodology?

A: Not really.

Q: Prosecution of prostitution/victims of human trafficking.

A: The DA's Office is concerned that youth are being trafficked, but only way we can intervene is with law enforcement. Frankly, the DA doesn't even charge victims of human trafficking, but they do get arrested and we try to divert them from an actual criminal charge. Everyone is willing to say this isn't the best way to get these individuals services, but where are those services and who is offering them? Need to look at this since getting arrested is not the best way to get services. These are great conversations, and this venue is a good place to have them.

Q: When was last time Oregon carried out a death sentence?

A: 1997. In past a death sentence used to keep you separate in Oregon. Not anymore. Those sentenced to death can now be with the general population.

Jayne: As a FYI, working on not charging victims of human trafficking in Marion County. Good update to do at a future meeting and perfect example of how our county does things well.

Levi: I have heard the same comments about juvenile services. Need to bring Troy Gregg into this conversation and discuss at a future council meeting.

3. SHERIFF'S OFFICE FY 2021-23 BIENNIAL PLAN RATIFICATION

Marion County Sheriff's Office Parole and Probation Division (P&P) Commander Kevin Karvandi Presented this item.

Summary of presentation:

- Executive Committee of the MCPSCC has already heard this presentation.
- Every biennium the State Department of Corrections (DOC) requires community corrections plans from all community corrections agencies in the state.
 - Plan describes how the DOC administered money will be spent on community corrections programs.
 - Plan is the foundation for core services and must align with the state's legislatively approved budget.
 - The Marion County Public Safety Coordinating Council must recommend that the board of commissioners approve the plan.
- Commander Karvandi described the criminal justice system in Marion County and how funding to each county was determined by the state.
- Marion County's allocation of state funds increased from 9.11% in 2019-21 to 9.69% for this next biennium (2021-23) to \$27.5 M.
- Funding for other comparable counties (Clackamas, Washington, Jackson, and Lane) decreased slightly.
- Senate Bill 620 reduced revenues to the county by \$1.7 M due to an abolishment of community corrections supervision fees.
 - Marion county used to charge \$40 per month per offender.
- SB 497 passed and allows counties to receive funding for certain misdemeanor crimes, domestic violence, and sex offenders.
 - Prior to this legislation, county only received funding on felony cases.
- Other funding sources for community corrections programs in the county include Justice Reinvestment, Measure 57, and Family Sentencing Alternative Program.
- Personnel costs are the largest budget increases for the P&P Division.
 - Average caseload per officer has decreased from 75 to 55.
 - In 2008 caseloads totaled 4,400. Today they are at 2,800.
- Marion County avoided 20,261 prison days because of employing prison reduction programs such as SB 416.
- The county's new arrests, convictions, new incarcerations, are also decreasing.
- Transition from jail to community program is a new program that started in 2019-21.
 - Everyone in custody is given a plan before they leave the jail.
- SOAR graduates' new arrest rate was 52% compared to 82.5% for the general population.

- Future goals of the Sheriff's Office Parole and Probation Division are to reduce recidivism, increase offender accountability, reduce the prison population, expand program capacity for prison diversion and reentry.

Commissioner Cameron said at the last meeting of the council, the council approved the JRI grant.

Q: I noticed your share of caseloads has increased to be second in the state. Usually Marion County is at number 3. What is driving this change?

A: We've been second for several biennium now. If looking at allocation history - the lowest being 9.11% and the highest 9.69% - a declining trend in populations is good. Pandemic has been challenging to counties to move cases - we've been more progressive, but some counties have been slower in moving their cases through the system. Multnomah, Clackamas, Washington counties probation cases have decreased, while Marion and Jackson counties increased. (Marion County Circuit Courts did a great presentation in December 2020 on how the county kept moving cases during the pandemic.)

MOTION: Tamra Goettsch made a motion to ratify the 2021-23 CJC plan. Seconded by Ed McKenney. Motion passes unanimously.

4. CRIMINAL JUSTICE ADVISORY COUNCIL (CJAC) UPDATE

Marion County Circuit Court Presiding Judge Tracy Prall presented this item. Summary of presentation:

- Criminal Justice Advisory Council (CJAC) has been very proactive since the start of the pandemic.
- County stepped up and rented the Grand Theater in Salem so that cases can continue to be tried.
- In June the Delta variant created another emergency, and the chief justice of the supreme court ordered counties to return to social distancing.
- This created space problems and county rented the Grand Theater again for the courts.
- District Attorney's Office has more than 24 murder cases
- Public defender overwhelmed with too many Ballot Measure 11 offenses, and unable to take on any additional cases.
- So courts rented out G-Pod at the jail, and after a week of conferences, 56 cases settled - a 64% settlement rate.
- Jail is back to housing 300 inmates for several weeks now.
- Goal was to get jail back where they were not releasing the worst of the worst.
- Defense attorney cases are now slowly decreasing.
- 28 Ballot Measure 11 cases went out to probationary sentences or institutions and are out of Marion County's jurisdiction.
- 50% of these individuals had been in our jail for 180 days, two for more than a year, and one for 405 days.
- So processed individuals that had been there for a long time and dealt with some very complicated cases.
- Appreciated Sheriff's offer to use G-Pod. May need to do another week of settlements in mid-December or January to keep the caseloads manageable.
- For out of custody clients will do another round of settlements in the Grand Theater.
- 180 cases being processed there on a weekly basis. Will keep caseloads more manageable.
- Very concerned that jail was having to turn away some individuals since ensuring the safety of the community is a priority. Important for businesses to know that the court is open and accessible to them and trying civil cases unlike other. Most counties are not. Employment issues, elderly abuse cases etc. Just impactful that we got grant and can use other resources. Chief Justice controls whether we social distance or not.

5. HEALTH JUSTICE RECOVERY ALLIANCE PRESENTATION ON MEASURE 110

Ron Williams, outreach director, Health Justice Recovery Alliance made this presentation. Summary of presentation:

- In 2021 the Oregon Legislature passed Senate bill 755 which decriminalizes possession of small amount of drugs and treats people with a substance use disorder through a healthcare approach.
- Health Justice Recovery Alliance was formed after this bill passed.
- Bill established Behavioral Health Resource Networks in all 36 Oregon counties for services to stabilize people on their path to recovery; that youth be referred to the juvenile system in lieu of adult courts; and requiring

that law enforcement provide information on how to obtain screening when issuing Class E violations to individuals in possession of a small amount of drugs.

- Between February 1 to August 31, 2021 there were 1,208 Class E violation cases while 566 individuals did not appear for treatment.
- Most of the citations were for possession of meth (67%) and heroin (23%). The citation process involves scheduling a confidential screening. If the individual completes the screening, he or she can avoid paying the \$100 fine.
- More than \$30 million has been invested so far in 2021 from Measure 110 in Oregon's communities.
 - 70 organizations have been funded with grants/amended contracts - some of which have hired peer support specialists and expanded access to treatment services for the indigent and uninsured.
 - Other added recovery, supportive, and transitional housing to their services.
 - In June 2021, the state legislature approved \$302 M in funding for measure 110 services over the next two years.

Summary of discussion

Q: How do you measure success?

A: Secretary of State's Office will be doing an audit in 2023 and there are very specific measurements that must be made as specified in SB 755. Additionally, the Oregon Health Authority has convened an evaluation stakeholder advisory group that's developing the measurements by which we can evaluate the program. Will take some time to see results. Have to be patient.

6. CAHOOTS IN SALEM

- Commissioner Camron presented this item. Summary of presentation:
- Marion County is working with the City of Salem and just toured the newly proposed Navigation Center.
- County also wants a sobering center, but additional contributions are needed to fund it.
 - Need to establish low-barrier access treatment services such as detox for these individuals.
 - Councilor Hoy added that this is an ongoing conversation about providing the best continuum of services for our community.
 - All committed to providing the right service for the right situation. In a lot of cases do need a robust law enforcement response but want to complement and not duplicate services.

7. LIBERTY HOUSE IRESPECT& PROTECT CAMPAIGN PRESENTATION

Ms. Alison Kelley, executive director, Liberty House made this presentation.

Summary of presentation:

- Liberty House is the Child Abuse Assessment Center serving Marion and Polk Counties and serves up to 1,200 children annually.
 - Medical providers and family support specialists diagnose for abuse and neglect concerns.
 - Ms. Kelley co-chairs the Marion County Child Abuse Multi-Disciplinary Team along with Brandon Murphy from the Marion County District Attorney's Office.
- Ms. Kelly described the problem of children being solicited for nude photos at an early age on cell phones and then thinking this was normal when entering school.
- Liberty House facilitated 18 months of community focus groups with parents, teachers, youth, district attorneys, and law enforcement to discuss this and develop a robust program to educate community.
- Team developed a curriculum which is now being piloted throughout the 6th grade level at the Salem Keizer School district.
 - Ms. Kelley is very excited about this.
 - Wants a deeper community collaboration focusing on child sexual abuse and digital abuse, both of which are preventable. Website at iRespectandProtect.com has more information.
 - Cell phones are not bad, but kids need to be guided in their use.
 - So, visit website and spread the word.
 - Any child with a cell phone is at risk.
- Kevin, we can get in front of other city councils too.

Our next meeting is in January 2022.

8. EMERGING ISSUES/OTHER BUSINESS

Woodburn Fire Chief Joe Budge said Murray, Smith and Associates, Inc (MSA) is providing professional consultant services to the City of Woodburn in developing a Water Master Plan Update. Will impact public safety. Item will be brought before the MCPSCC when a project manager is hired with an implementation timeline.

ADJOURNED

ATTACHMENT B

SENATE BILL 819
CONVICTION INTEGRITY STATUTE

SB 819 POLICY

It is the policy of the Marion County District Attorney's Office to uphold Oregon's constitutional and statutory principals related to sentencing of convicted persons. Those principles include protection of society, victim safety, personal responsibility, accountability, reformation, and public faith in the criminal justice system.

Beginning January 1, 2022, applications may be submitted to the Marion County District Attorney's Office for consideration of a petition pursuant to SB 819. Incomplete applications will not be considered. Applications must comply with the requirements listed below. Consistent with this policy, completed applications will be screened and reviewed by designated personnel. Any decision to file a joint petition will be made by the District Attorney.

Section 1

Who may apply under the language of SB 819?

- Any person previously sentenced in Marion County, Oregon for a felony offense that is not eligible to be set aside under ORS 137.225¹, *except* a person convicted of Aggravated Murder

Section 2

Whose application will not be considered by the Marion County District Attorney's Office?

- Any person who may apply to the court pursuant to ORS 161.705 to reduce a felony to a misdemeanor
- Any person convicted of any degree of homicide (Aggravated Murder, Murder, Murder in the First Degree, Murder in the Second Degree, Manslaughter in the First Degree, Manslaughter in the Second Degree, Criminally Negligent Homicide) after April 1, 1995, *unless* the person is asserting actual innocence
- Any person whose conviction is on direct appeal or who is challenging their conviction in a post-conviction or habeas corpus proceeding or appeal from a post-conviction or habeas corpus judgment

¹ The following links can provide access to Oregon laws related to set aside (aka "expungement"): https://oregon.public.law/statutes/ors_137.225; <https://www.courts.oregon.gov/courts/marion/help/Pages/setaside.aspx>. The Marion County District Attorney's Office is prohibited from giving legal advice on eligibility for set aside.

Section 3

Contents of Application

Applications **must** include the following documentation; incomplete applications will not be considered.

- A copy of the Judgment from any case where the applicant is seeking relief
(Item 1)

- A copy of any appellate judgment or post-conviction/habeas judgment related to the underlying conviction(s), or a statement that no appeal, post-conviction, or habeas proceeding was filed
(Item 2)

- A copy of the applicant's DOC supervision, disciplinary, programming, educational and vocational record, available upon request to:
OISC Information Request Specialist
Oregon Department of Corrections
24499 SW Grahams Ferry Road
Wilsonville, OR 97070-5670
Email: OISCINFO@doc.state.or.us
Phone: (503) 570-6919, Fax: (503) 570-6902

The applicant may, but is not required to, include a copy of any DOC substance abuse or mental health treatment records.

(Item 3)

- A statement of facts, written by the applicant, concerning the crime(s) of commission resulting in the judgment of conviction. The statement should include the applicant's account of any crimes dismissed or not filed as a result of plea negotiations known to the applicant. The applicant's statement should focus on personal responsibility and accountability, or, in the case where the applicant asserts actual innocence, why the applicant is innocent of the crimes of conviction. This document should be titled, "*Statement of Accountability*" or "*Statement of Actual Innocence*"
(Item 4)

- A statement by the applicant of the relief sought and why (e.g. release from custody, reduction in sentence, dismissal of charge). In explaining why the relief sought should be allowed, the applicant should focus on: protection of society, victim safety, personal responsibility, accountability, reformation, and public faith in the criminal justice system. This document should be titled, "*Statement of Relief*"
(Item 5)

Section 4

Application Considerations

The Marion County District Attorney's Office will only consider complete applications. If an application is incomplete, the application will be returned to the applicant along with a rejection letter. Any person seeking reconsideration will have to resubmit a completed application; the Marion County District Attorney's Office will not hold incomplete applications awaiting additional information.

Only the rare and extraordinary case will be considered for a joint petition for reconsideration of a conviction or sentence.

Absent extraordinary circumstances, the Marion County District Attorney's Office will not consider sentencing modifications for any sexual offense, violent felony involving the use or threatened use of a firearm, cases where the defendant's criminal history or history of violence is extensive, cases where the defendant was afforded a downward departure or participation in a treatment court or 416 program, cases where the defendant stipulated to the sentence in exchange for dismissal of charges or avoidance of a departure sentence, and cases where the victim opposes modification or the victim's safety is compromised by the applicant's release.

Section 5

Review Process

1. Applications will be received and reviewed for completeness as defined in **Sections 1, 2 and 3**. Incomplete applications will be returned to the applicant.
2. Completed applications will be screened by personnel from the Marion County District Attorney's Office to determine if the application is eligible for review.
3. A designated deputy district attorney will be assigned to review the application. Particular attention will be given to any case where newly identified or discovered evidence calls into question the integrity of the original conviction. The investigating law enforcement agency should be notified about the new evidence and any further request for investigation should go through the agency, absent extraordinary circumstances. The designated deputy district attorney will recommend denial or further review of the applicant's request by the SB 819 Review Committee based on the criteria set out in SB 819.

4. The SB 819 Review Committee will be comprised of at least one Deputy District Attorney, one Trial Team Supervisor and/or one Major Case Chief. The SB 819 Review Committee will make the final decision regarding denial of an applicant's request or decide whether the applicant's request should be forwarded to the District Attorney for consideration of a Joint Petition for Reconsideration of a Conviction or Sentence.

In making its determination, the SB 819 Review Committee should make an evidence-based decision about whether the court would grant the petition at a hearing based on the criteria designated in SB 819.

If the SB 819 Review Committee forwards an application to the District Attorney recommending that a joint petition be filed, the SB 819 Review Committee shall explain why the conviction(s) and/or sentence no longer advances the interests of justice.

5. If the District Attorney determines that a joint application may be warranted, the District Attorney shall request that the Victim Assistance Division contact the victim or victims of the crime and the District Attorney will meet personally with any victim who requests such a meeting to hear their position on the petition.

Only after consideration of the victim's or victims' position will the District Attorney make a final decision on the matter.

Section 6

Re-application

1. Applicants whose applications are rejected as incomplete may re-apply at any time with a completed application for consideration.
2. Previously denied petitions will not be re-considered until 5 years have lapsed from previous denial. An applicant must re-submit a new application in compliance with **Section 3**.

ATTACHMENT C

BALLOT MEASURE 110
EARLY IMPACTS



Ballot Measure 110

STATEWIDE & LOCAL IMPACTS

The 411 on 110 (and then SB 755)

- ▶ Passed by voters November 2020 Election
- ▶ Effective February 1, 2021
- ▶ DECRIMINALIZED most PCS Charges to Class E VIOLATIONS
- ▶ \$100 Maximum Fine-no other possible penalties (\$45 min fine)
- ▶ If individual completes treatment **SCREENING** within 45 days of citation, case is dismissed
- ▶ Law Enforcement to provide screening info at time of citation

By The Numbers Across the State (through 10/31/21=9 months)

- ▶ 1491 Class E Violations Filed
- ▶ 49 were reduced from earlier filings
- ▶ 1442 filed after 2/1/21 effective date
- ▶ 1027 Resulted in CONVICTIONS for PCS violation
 - ▶ 361 in Court
 - ▶ 666 after Failing to Appear on Citations
 - ▶ (87 Dismissed)
 - ▶ 324 Still Pending
 - ▶ 10 Involved Juveniles
- ▶ 7 Assessments/Screening Verified

Who?

- ▶ 107 People have multiple violations
- ▶ Methamphetamine 67%
- ▶ Heroin 22%

- ▶ 108 were NON-Oregon Residents

- ▶ Marion County: 61

By comparison Josephine had highest at 267, Polk 40, Lane 136, Clackamas 6, Washington 36, Multnomah 65

Who?

- ▶ Males 70.5%
- ▶ White 76.9%
- ▶ Black 2.1%
- ▶ Hispanic 4%

- ▶ 30-39 Years 40.4%
- ▶ 21-29 Years 26%
- ▶ 40-49 Years 19.4%

More Than Numbers

- ▶ 2021: **70 confirmed** overdose/drug related deaths; **40 pending** toxicology results
- ▶ 2020: 47 accidental ODs and 9 suicide deaths related to OD/drug poisoning
- ▶ 2019: 27 accidental ODs and 8 suicide ODs.
- ▶ 2021 has a 48.9% increase in OD/drug related deaths (confirmed), with a potential of a 134% increase (with pending returned) over 2020. Compared to 2019, 2021 is a 100% increase over that year with current confirmed cases, with a potential for a 214% increase over 2019 overall

Other Concerns: Crime Attendant to SUD

- ▶ Burglary
- ▶ Retail & Car Theft
- ▶ Robbery

- ▶ DUII

- ▶ Domestic & Family Violence
- ▶ Child Abuse & Neglect
- ▶ Homicide

ATTACHMENT D

RAMOS RETROACTIVITY CONCERNS
WHITEPAPER



LC 98

ODAA *Ramos* Retroactivity Concerns

BACKGROUND: In 1934, Oregon voters amended the Oregon constitution to allow for non-unanimous jury verdicts. Since then, Oregon prosecutors, judges, and defense attorneys followed that law—allowing 10-2 or 11-1 for all felony verdicts except murder. In 1972, the Supreme Court of United States upheld this practice, confirming that the United States Constitution did not require unanimous jury verdicts before someone can be convicted of a crime.⁽¹⁾ However, in April 2020, the U.S. Supreme Court changed the rules. In *Ramos v. Louisiana*, the Court determined that the U.S. Constitution now requires a unanimous jury verdict to convict someone of a serious offense.⁽²⁾

Despite being a major change to constitutional law, the Supreme Court held in a separate case that the new unanimity requirement did not automatically apply backwards, or “retroactively.”⁽³⁾ That is, defendants previously convicted and serving sentences were not entitled to a retrial unless they can show that their verdict was non-unanimous.⁽⁴⁾ Defendants who can show that their pre-April 2020 verdict was non-unanimous are currently being retried in Circuit Courts across Oregon. That count is currently around 500 cases.

LC 98 proposes to broaden the retroactive look back on non-unanimous verdicts even further.

Retrying potentially thousands of cases comes with a huge cost.

Cost to Victims: “Horrible. Painful. Difficult.” These are the words of victims as *Ramos* retrials are already rolling out across the state.⁽⁵⁾ Asking mainly women and children⁽⁶⁾ to testify against their abusers, again, is wrong when the rules were followed during the first trial *and the U.S Supreme Court has determined there is no constitutional right to a retrial.*

Cost to Justice: Violent offenders benefit from evidence that only degrades over time. They benefit from victims and witnesses forgetting or misremembering details, moving, or going missing. They benefit from the significant harm that they caused because many victims will be too traumatized to come back to court, potentially years later, to face their offender yet again. LC 98’s presumption that a conviction might not have occurred is not justice when balanced against a child being required to re-remember specific details about the worst thing that ever happened to them.

Cost to Taxpayers: The vast majority of the cases affected by LC 98 will be sexual offenses against women and children. These trials are some of the most complicated, lengthy, and litigious under Oregon law. In addition, costs will likely include:

- Inmates being transferred back from state prison to local (already full) county jails to await their new trial;
- Counties forced to spend significant tax dollars to retry cases already completed, *where the court followed the law as it existed at the time*;
- The Judicial Department needing to schedule potentially thousands of cases for retrial, while jails are full with recent offenders awaiting their *first* trial, with COVID backlogs around the state;
- Added defense costs when Oregon Public Defense Services can't meet their current obligations - LC 98 only adds more individuals sitting in Oregon jails awaiting OPDS to assign them a lawyer.

Who Benefits from LC 98?

The majority of offenders that will benefit from a retrial will be white, male assault and sex offenders, see [CJC Report](#) to Senate Judiciary Committee in 2021, which will disproportionately affect women and child victims.

Where is the Conversation?

The Legislature must take a thoughtful, careful approach to this policy. To date, LC 98 has not been vetted beyond its supporters. ⁽⁷⁾ Over the past few years Oregon's communities and crime victims have seen firsthand what happens when retroactive policy is adopted and implemented – forcing Oregon's crime victims to relive the worst times of their lives and/or allow for early release of potentially violent offenders.

¹ See *Apodaca et. al. v. Oregon*, 92 S. Ct. 1628 (1972).

² *Ramos v. Louisiana*, 140 S. Ct. 1390, 1394-99 (2020).

³ See *Edwards v. Vannoy*, 141 S. Ct. 1547 (2021)(stating such).

⁴ An offender who objected to a non-unanimous jury instruction can also receive a retrial if the state is unable to show that the verdict was unanimous. See *State v. Scott*, 309 Or App 615 (2021)(stating such.)

⁵ See e.g., [An 'emotional toll': Stinky Feet daycare abuse trial begins for the third time \(statesmanjournal.com\)](#)

⁶ Because murder has long-required unanimous verdicts, *Ramos* mainly affects assault and sexual assault cases, the vast-majority of which have women and children as victims.

⁷ Thorough review of proposed language is especially critical with such major, complicated legislation. For example, recent substantial "criminal justice reform" bills were applied retroactively even after promises to the contrary: SB 1013(2019) was passed with assurances it wasn't retroactive, but then was found to apply death penalty reform retroactively almost immediately after it was passed; and SB 1008(2019), which the Governor applied retroactively to serious juvenile offenders despite the Legislature being promised it wasn't retroactive. Furthermore, courts have also broadened the impact of these major policy reforms, which the Legislature did not foresee. See e.g., *State v. Bartol*, 368 Or. 598 (2021) (holding that SB 1013(2019), which while it did not apply retroactively by its terms, violated Oregon's Constitution and required vacating the death penalty for previously imposed sentences that fell outside the scope of SB 1013's new eligibility.)