



METROPOLITAN PUBLIC DEFENDER SERVICES, INC.

February 22, 2021

To: Senate Committee On Judiciary and Ballot Measure 110 Implementation
From: Carl Macpherson, Executive Director, Metropolitan Public Defender

Re: **Support for SB 397**

Dear Chair Prozanski, Vice Chair Thatcher, and Members of the Committee:

Metropolitan Public Defender (MPD), a 501(c)(3) non-profit law firm, is the largest trial-level public defense service provider in Oregon. We have the primary public defense contracts in Multnomah and Washington Counties. As such, our more than 170-member staff provide criminal public defense for more than 15,000 cases a year.

One of MPD's divisions is the grant-funded Community Law Division (CLD), which serves clients of established community and local government partners. One of CLD's specialties includes record clearance—specifically, adult set-asides—in order to diminish the downstream effects of criminal legal system involvement. Since August 2017, CLD has prepared 5,112 motions to set aside, and evaluated even more clients' expungement eligibility.

Given our background and expertise, I write in **strong support of SB 397**. We believe there should be a mechanism for those with criminal records to re-enter their communities and become productive members of it, obtain employment that provides a livable wage, secure safe and stable housing, and be free from the stigma of a criminal record that should not define them.

SB 397 addresses what we believe are equity and family issues, as almost half of American children have a parent with a criminal record. Further, we know that people of color are disproportionately affected by the system, and the collateral consequences of being arrested, charged, convicted, and incarcerated. Given that those with criminal records tend to have lower earning potential, and experience housing insecurity, record clearance is a powerful tool to help Oregon families. In fact, a University of Michigan study¹ concluded that those who receive set-asides are: (1) much less likely to recidivate; and (2) their wages rise by 22% within two years.

As a point of clarification, SB 397 does not change the current requirement that set-asides are only available to those who have “completed the sentence of the court.” Practically speaking, this means people who seek to set-asides have done everything the court has asked of them. This includes

¹ J.J. Prescott and Sonja B. Starr, Expungement of Criminal Convictions: An Empirical Study, Law and Economics Research Paper Series, Paper No. 19-001 (March 2019), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3353620.

completing supervision, paying court fines and fees, paying restitution, and engaging in other court-mandated requirements (i.e., community service). For many, freeing themselves from criminal legal system involvement also includes engaging in substance abuse or mental health treatment or counseling.

SB 397 does address issues the current law contains regarding excessive waiting periods. Oregon has some of the longest waiting periods in the country, and those waiting periods are not aligned with the current research. For example, Oregon requires people who have been convicted for a *non-person*, class B felony to wait 20 years. If, while waiting, the person receives a conviction or non-conviction (e.g., a simple arrest without charges filed), they are disqualified from setting aside that non-person, class B felony conviction. *See* ORS 137.225(5)(a). Additionally, a person is only eligible if they have just one conviction in the 10-years preceding the filing of their motion to set aside. If they have multiple convictions in a case or another conviction within that 10 year “look back” period, the person often must wait another 10 years. These waiting periods are simply too long and we support the changes in SB 397.

Furthermore, non-convictions should be immediately eligible. Non-convictions include arrests where no charges are filed, dismissals, and acquittals. Currently, a conviction can block a person from setting aside their non-convictions for 10 years, and other non-convictions can block a person from setting aside a non-conviction for 3 years. No one should suffer the harm of having a non-conviction on their record, as this runs contrary to the presumption of innocence and due process. Therefore, we support the changes in SB 397.

Finally, the filing fee and fingerprint requirements result in low-income Oregonians being unable to avail themselves of the benefits of a record clearance. This leads to a disparate outcome—people with means can afford to set-aside their criminal record, and people who are indigent continue to struggle with stigma and legal discrimination in employment and housing. Therefore, we support the elimination of the fees and fingerprint requirement in SB 397.

MPD believes no one should be defined, and further disenfranchised, by a criminal act. The collateral consequences of both convictions, and non-convictions, are extensive and lead to further destabilization of individuals and their communities, which ultimately works against public safety. The goal should be to restore those who are “justice involved” to their communities, and ensure they have the tools to be productive. **We support SB 397** because it meets that goal and works toward a more equitable system.

Thank you for your time and consideration.

Sincerely,


Carl Macpherson
Executive Director