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### M E M O R A N D U M

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**TO:** Honorable Sen. Prozanski, Chair

**FROM:** Aaron Knott, MCDA Policy Director

**SUBJECT:** Testimony regarding SB 397

**DATE:** 2/23/2021

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The record of a person's arrest or conviction comes with far reaching consequences. A person with a criminal record is substantially disadvantaged in obtaining housing, maintaining employment or receiving crucial benefits and program eligibility that can be the difference-maker in meeting basic needs. Oregon's expungement laws are complicated, expensive, difficult to administer and prone to bureaucratic bottlenecks which delay the granting of relief. Under current law, a person convicted of aggravated theft, a Class B felony, must wait 20 years from the time of conviction before petitioning for expungement. This period greatly exceeds the duration in which a person can typically be expected to "age out" of criminal behavior, especially given that they must remain crime free during this time. Additionally, a person who petitions to expunge a conviction, arrest, dismissal or acquittal must pay hundreds of dollars to do so, a requirement that inevitably tends to restrict the availability of expungement to the more affluent.

Senate Bill 397 is a laudable step forward in working to simplify and reduce barriers to the use of the expungement process. However, as written, the bill raises extensive technical and operational questions which will badly tax existing resources dedicated to expungement processing in the offices of District Attorneys across the state and which has the potential to delay processing times of expungement requests. As such, the Multnomah County District Attorney's Office is presently neutral on this proposal. Because of the profound need to reform the expungement process, it is our sincere hope that we can work to resolve these technical issues in the days to come and support a bill for passage in the current legislative session. To this end, we have joined with our partners at Metropolitan Public Defenders to convene a table to attempt to reach consensus on this bill as quickly as possible.

The remainder of this testimony will briefly outline some of the challenges posed by the bill as written.

**SB 397 significantly impairs a DA's ability to locate disqualifying convictions.** Since 1975, ORS 137.225 has required that any motion for expungement must be accompanied by a valid fingerprint card to be submitted to Oregon State Police for identification purposes along with an \$80 fee to OSP. This procedure serves two functions - 1) it allows the District Attorney to definitively identify the defendant and thereby locate any records of convictions, arrest, or outstanding warrants for them, and 2) provides the District Attorney with records of any previous expungement orders that have been granted in Oregon. SB397 eliminates this procedure entirely. This greatly increases the possibility that a person will receive an expungement to which they are not entitled because the District Attorney could not identify prior convictions.

**SB 397 imposes unworkably strict timelines for processing an expungement request.** Whereas current law has no strict timeline for responding to an expungement motion, allowing for our office to do necessary investigation, inform defendants of any errors or hindrances that might be correctable prior to a court ruling, and notify victims of such motions, SB397 provides an absolute deadline of 30 days from receiving the motion to filing any objection. The 30-day deadline is highly problematic for our workflow. There are simply too many time-consuming and multi-faceted tasks between receiving a motion and filing an objection to consistently and effectively meet such a short deadline. Our office is statutorily and constitutionally required to notify victims of an expungement motion and any hearing that may be set relating to the motion. A 30 day window both minimizes the chances we can find a victim, especially in older cases, and reduces their ability to meaningfully participate in the process.

Our office often works collaboratively with those who are pursuing expungement to help identify and correct any errors in their application. Pro se defendants often submit partial applications for expungement which are missing required documents or attestations. Rather than forcing these applicants to restart the application process, we attempt to work with them to fill these gaps. With a 30-day deadline, we would have no time to head off such issues at the front end and would be forced to simply file a notice of objection.

**SB397 will create a major increase in expungement requests that is likely to increase processing delays.** The Multnomah County District Attorney's Office processes roughly 1500-2000 expungement requests per year, the lion's share of which are assigned to one FTE. SB 397 reduces timelines after which a person is eligible to file an expungement: From 10 years to 3 years, for Class C Felonies, and from 20 years to 7 years, for Class B Felonies. We expect that this will cause a significant spike in workload as thousands of cases become immediately eligible for expungement years earlier than expected. This, combined with the compression of timelines elsewhere in

the bill, will place an incredible pressure on the very limited resources dedicated to the processing of expungement requests, which may have the undesired effect of actually reducing our ability to process requests in a timely manner.

**These concerns can be resolved by amendment.** While these concerns are significant, they are not insurmountable. Our expungement laws are in dire need of revisitation and we applaud our colleagues at Metropolitan Public Defender for driving this important conversation. We look forward to continuing to work with the proponents to resolve our concerns and move to a position of full support.

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