



Mike Schmidt, District Attorney

1200 SW 1st Ave., Suite 5200
Portland, OR 97204-1193
Phone: 503-988-3162 Fax: 503-988-3643

M E M O R A N D U M

TO: Honorable Sen. Prozanski, Chair

FROM: Aaron Knott, Policy Director

SUBJECT: Testimony on SB 698

DATE: 3/2/2023

Every state in the U.S. allows a person to expunge certain criminal records. The expungement process is typically initiated by the person with the criminal record by filing a petition or motion with the court where the individual was convicted or arrested.

Recently an increasing number of states have passed laws making the process automatic—rather than petitioner-initiated—with the intent of removing the barriers to criminal record expungement. As of April, 2021, 11 states had passed automatic expungement laws.¹ Today, twenty-two states have enacted laws to automatically expunge various eligible adult criminal records.²

Oregon needs to join our sister states in moving to a system of automated expungement. Oregon's current system is complicated, expensive, and creates huge barriers to relief for individuals who are completely deserving of having their criminal convictions removed under Oregon law, but who lack the resources, education, language skills or other touchpoints which frequently act to disenfranchise our most vulnerable community members from accessing justice and relief. Moving to a system of automation is a necessary step in making sure that justice is provided to everyone who deserves it – not just those individuals lucky enough to have access to legal services.

¹ Kristian Hernández, More States Consider Automatic Criminal Record Expungement, PEW, (May 25, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/05/25/more-states-consider-automatic-criminal-record-expungement>.

² 50-State Comparison: Expungement, Sealing, & Other Record Relief, COLLATERAL CONSEQUENCES RESOURCE CENTER, <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside-2/> (last visited Mar. 1, 2023).

That said, while MCDA is dedicated to the ultimate outcome of implementing a system of automated expungement, there are significant outstanding technical and logistical issues which prevent us from being able to offer our full support to SB 698 at this time. As we have learned from studying other states, the automatic expungement process is complicated, complex, and state and system-specific. To create a responsible, efficient and cost-effective system, it is imperative that every voice is heard—including victims, people with criminal records, and agencies and stakeholders who have obligations under the expungement statute.

THE CURRENT VERSION OF SENATE BILL 698 NEEDS MORE WORK.

Although this is not an exhaustive list, MCDA has identified multiple concerns with SB 698 that are listed below.

- If a person was convicted of a crime where there was a victim, there is no mechanism for the victim to be notified of the automatic expungement or process for the victim to submit a statement to the criminal file (even if it will be ultimately sealed), the court or a judge.
- A prosecuting attorney’s discretionary objection due to a defendant’s “circumstances and behavior” creating a risk to public safety was eliminated. Of particular concern is where a person is convicted for a domestic violence crime, and then a court subsequently grants a protective order (a.k.a. restraining order) against the person. We are concerned that the removal of this basis for objection will allow expungements to be granted for individuals who have violated stalking orders, restraining orders and other civil orders which are directly relevant to public safety.
- It is unclear whether or how the person who is the subject of the criminal record is ever notified that their record has been sealed or can ever obtain a certified copy of their criminal record once it has been expunged. This is especially problematic for those individuals who need or want to access their criminal record for immigration purposes.
- The bill requires that restitution be paid prior to automatic expungement, but does not mention compensatory fines.
- Due process requires that anyone provided or denied a benefit by the state be provided notice, a hearing, and an opportunity to be heard. It is not clear how this right will be upheld within an automated system, or what the recourse will be if the automated system denies a petition in error.

- The role of the District Attorney remains somewhat unclear in present discussions. Under existing law, the DA and the Oregon State Police are jointly responsible for determining whether a person is disqualified from receiving an expungement because they have an out of state conviction or are presently incarcerated. If the DA retains this functionality under an automated system, this will trigger thousands of additional petition requests that prosecutor's offices are not resourced to handle. If we do not retain this functionality, it is not clear whether that information will be retained in the expungement determination. There is a consequence regardless of which decision is made.

Again, it is important to reiterate that these observations are made with the sincere goal of moving Oregon toward a system of automated expungement. However, the process of implementation for an objective of this complexity is crucially important. Some of the points outlined above are not appropriate to be delegated by statute for administrative implementation – they must be made by the legislature. These decisions need to be made in a careful and deliberate manner. We look forward to further discussions to resolve these complex issues but cannot lend our full support to this important concept until they are complete.

Contact: Aaron Knott, MCDA Policy Director aaron.knott@mcdca.us