

March 21, 2023

**TO: Sen. Floyd Prozanski, Chair
Sen. Kim Thatcher, Vice-Chair
Members of the Senate Committed on Judiciary**

FR: Oregon District Attorney's Association

RE: SB 1065 – OPPOSE as drafted

Thank you for the opportunity to offer our concerns regarding SB 1065. ODAA recognizes this bill seeks to simplify and reduce barriers for Oregonians in expunging convictions for the possession of controlled substances (“PCS”), in amounts addressed by Measure 110. In 2021, ODAA supported SB 397, an extensive reform of expungement law. SB 397 was the result of extensive discussion, interim workgroups, and review by affected parties to ensure it was done properly, without unintended consequences. Unfortunately, SB 1065 has not undergone such a necessary review and revision with stakeholders.

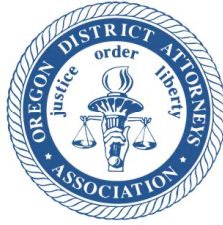
SB 1065 will significantly overburden already stressed resources dedicated to expungement processing in district attorney’s offices and will delay current processing times. It will also introduce a lack of clarity into expungement law and does not account for situations where plea negotiations resulted in a conviction for PCS as opposed to other offenses. ODAA encourages this committee to send this legislation to an interim workgroup to be vetted by public safety partners and others, to ensure all concerns have been addressed.

1. SB 1065 imposes unworkable timelines for processing an expungement request.

Current law has a 120-day timeline for responding to an expungement motion, allowing for offices 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. The proposed 30-day deadline does not allow for these numerous and time-consuming tasks. Further, many unrepresented defendants often submit partial applications for expungement that are missing required documents or attestations. With a 30-day deadline, offices would have no time to head off such issues at the front end and would be forced to simply file a notice of objection.

Further, the 30-day timeline will delay the expungement requests of other applicants. Because the existing expungement statutes have longer timelines, district attorney’s offices will be forced to review PCS expungement requests before considering any others.

2. SB 1065 creates confusion and lack of clarity in expungement law and court proceedings.



SB 1065 introduces confusion into the expungement process for PCS convictions. The bill creates a new statutory structure, separate from ORS 137.225 (the existing expungement statute). This means any existing case law or processes will not apply, which will inevitably lead to confusion, inconsistent application, and the need for litigation to clarify.

For example, it is unclear whether victims must be notified and given the ability to make a statement at the hearing. In the past, many PCS convictions were the result of a negotiated plea deal in which other offenses were dismissed, including those with victims or more serious offenses such as Delivery of a Controlled Substance. This was due to a variety of factors, like ensuring defendants had access to substance abuse treatment. Current expungement law ensures victims of the offenses that had been negotiated have an opportunity to be informed of an expungement petition, to be present, and make a statement consistent with their constitutional rights. Without incorporating SB 1065 into ORS 137.225, there would be no mechanism for victims to have input in these situations.

Additional issues with the current draft include:

- There is no clarity as to how the law would be applied with restitution. The language ensuring restitution must be paid in full under the existing statute is not the same as language proposed in SB 1065, raising the question of whether payment would be required prior to expungement.
- There is no clarity as to whether the evidence code will apply to these proceedings, which would heavily affect the costs associated with preparing for a hearing and court capacity.
- The bill does not require a motion for expungement to be accompanied by a valid fingerprint card, meaning it is impossible for the state to ensure the applicant is in fact the person whom could apply for expungement.