TO: **Sen. Floyd Prozanski, Chair**
Sen. Kim Thatcher, Vice-Chair
Members of Senate Committee On Judiciary

FR: **Oregon District Attorneys Association**

RE: **SB 1169 – Strongly Oppose**

March 18, 2025

Thank you for the opportunity to offer our significant concerns in regard to SB 1169.

Presently, the conditional discharge process allows defendants charged with misdemeanors and class C felonies (other than DUIIs) to enter into probation before pleading guilty provided that the court and the district attorney agree to the conditional discharge. If the defendant completes all of the conditions of agreement, then the charge will be dismissed. If the defendant does not complete the conditions of the agreement, then the court may find the defendant guilty.

SB 1169 would be an unprecedented and fundamental change to Oregon's criminal justice system by amending the conditional discharge process under ORS 137.532 in a way that will harm victims and the community, undermine treatment courts, and remove district attorneys from the process. The process created by SB 1169 ignores the traditional balance between judges, defense attorneys, and prosecutors; it applies to some of the most violent crimes; and it introduces uncertainty in the conditional discharge process by creating an ambiguous test for entry and an undefined hearing to determine guilt if someone fails to complete the conditions of probation.

ODAA has multiple concerns about SB 1169 discussed below:

1.) **SB 1169 applies to serious crimes and will harm victims and the community.**

The list of crimes encompassed by SB 1169 would include crimes of domestic violence, sex abuse, possession and distribution of child sex abuse material (CSAM),

firearms offenses, and more. SB 1169 would go further by undermining recidivist sentencing statutes like ORS 137.717 (repeat property offender statute) and ORS 137.635 (aka Denny Smith), which is most often applied to offenders who repeatedly burglarize homes.

The conduct and harm required for many of these crimes is often aggravated and has a significant effect on the victims and the community. This impact is often long term and can lead to other harmful outcomes for victims and the community. Allowing offenders who commit these sorts of crimes to have a conditional discharge does not recognize the harm that they inflict on victims and on the community. Presently, the district attorney is the voice of the community and the voice of the victim in the conditional discharge process—SB 1169 removes that voice.

2.) **SB 1169 would likely disincentivize individuals from wanting to enter treatment courts where they are required to plead guilty to enter.**

There are many established and successful treatment courts across the state that will likely be affected by this change because they require participants to enter guilty pleas before entering their programs. Guilty pleas are often required before entering a treatment court because the first step in treatment is an acceptance of responsibility—an evidence-based best practice of the national treatment court models.

Mental Health Courts, Drug Courts, DUII Courts, Community Courts, Domestic Violence Deferred Sentencing Courts, Veterans Courts, and more may lose participants who are unwilling to enter guilty pleas as a result of the conditional discharge option created by SB 1169. Without participants, these programs will fail because funding is often dependent on maintaining a minimum number of participants. These programs have been shown to be successful at reducing recidivism and creating better lives for participants—losing these programs would harm our communities.

3.) **ODAA has several legal and procedural concerns about how this process would function because a person has not admitted guilt.**

We are concerned that the court does not have the authority to impose jail or other sanctions as a part of this deferment probation, unlike treatment courts. Even if the court could provide sanctions, what would the limits be? Could there be liability to the court, state, or treatment providers if the person served sanctions, then had deferment terminated but was not later found guilty by the court?

If a person fails out of deferment after 36 months and then is found guilty and placed on 60 months of probation? Do they get credit for the 36 months they have already served? If not, could this possibly be in violation of the maximum length of probation.

4.) **This process will result in a backlog of cases that will further burden the Criminal Justice System and could last for years.**

The bill creates a system where even if the defendant does not complete the required conditions, the case then moves to another unclear and possibly lengthy phase.

The court must still subsequently find the person guilty in a hearing with an unclear process, unclear standards, and unclear burden. Is it going to be like a stipulated facts trial or does the State need to put on some evidence? The defendant has previously waived many rights, but depending on the court, the judge may require witnesses and other traditional evidence to make a guilty finding, which may mean that years after the offense the State would need to find witnesses and other evidence to prove the crime. None of this is good for victims or the community. Even after a guilty finding, a person would likely start back on a probation similar to the one they recently failed, which is not an efficient process.

5.) SB 1169 will allow the court to defer crimes that are currently not expungable.

Oregon law already contemplates expungement relief for individuals who have completed a deferred sentencing program. The expungement statutes in Oregon are expansive and would apply to many crimes with some important exceptions including sex crimes, child abuse crimes, traffic crimes, and Criminally Negligent Homicide. Despite the fact that those crimes are so serious that they are not expungable, SB 1169 makes those crimes eligible for a conditional discharge. SB 1169 fails to recognize the harm that these crimes inflict on victims and our community.

6.) The language of SB 1169 fails to recognize the traditional balance of powers between the executive branch and judicial branch in the criminal justice system.

By removing the District Attorney from this process, the language of this bill places virtually no check and balance on the judiciary. Our system of justice works because of checks and balance of power. For instance, there are several checks and balances on the District Attorney's executive power, such as the grand jury, defense attorneys, trial courts, appellate courts, and the legislature. By removing the executive branch's check on the judiciary, SB 1169 has removed all oversight of the operation of the program and shifted what was once balance between victims and the community on the one hand and defendants on the other to a program weighted greatly in favor of the interest of criminal defendants.

7.) SB 1169 will lead to inequities from county to county and even courtroom to courtroom.

This bill will also lead to disparate treatment of offenders across the state. The criteria listed for the court are extremely subjective, so we will invariably have different outcomes depending on the county and even the individual judge. Some courts in various jurisdictions will use the process regularly, and other counties will not, or not in the same manner. This circumstance will treat similarly situated people much differently around the state, or even the same courthouse, for the same or similar conduct. If the disparate treatment is so significant it is considered unfair, it may be held to be unconstitutional based on violations of defendants' due process and equal protection rights.