TO: **Sen. Floyd Prozanski, Chair**
Sen. Kim Thatcher, Vice Chair
Senate Committee on Judiciary

FR: **Oregon District Attorney's Association**

RE: **Concerns with proposed amendments for SB 169**

April 1, 2025

Chair Prozanski and Members of the Senate Committee on Judiciary:

SB 169, with the forthcoming amendment we expect will mirror SB 554(2022), will significantly undermine the stability of criminal convictions in Oregon. This can be determined despite its full scope not yet understood.

In short, SB 169 with the forthcoming amendment, is overbroad because it provides a brand new, expansive, and very expensive post-conviction legal procedure to challenge convictions. Most importantly, however, it undermines a victim's right to finality in convictions by allowing never-ending appeals. Despite the concept being proposed originally in 2023 (SB 554), ODAA has not been part of any conversations nor negotiations to address and study the numerous public safety issues SB 169 creates. Furthermore, criminal justice partners already have tools to address the concerns SB 169 seeks to address, making such sweeping changes to criminal convictions unnecessary in Oregon.

Therefore, ODAA respectfully urges this committee to reconsider the sweeping changes this law would create for the following reasons:

- **Overbroad**: SB 169 with the forthcoming amendment is sweeping in it's scope. It applies to:
    - Any conviction, regardless of age;
    - Individuals who admitted guilt through guilty or no contest pleas;
    - any "scientific … practice… that interprets evidence . . . " Sec 6(b)
    - Allows for subsequent petitions.
- **Too Easy to Obtain Relief:** SB 169 would allow people to have their convictions vacated—often years or decades later—without having to establish, or even allege, that they are factually innocent of the offense of conviction.
- **Expensive:** By allowing the availability of such broad and sweeping claims for post-conviction relief, the bill would significantly increase costs for all parts of the criminal justice system, including Public Defense lawyers, District Attorneys, the Department of Justice, and the Judicial Branch. Furthermore, individuals who were previously incarcerated could sue the state in any case where the prosecution can no longer proceed with a new trial due to lack of resources, destroyed evidence or missing victims.
- **No time restrictions:** In addition to creating a new claim for relief, SB 169 makes that claim available for anyone to challenge any conviction—no matter how old, so long as they are still living.
- **Includes Guilty Pleas:** SB 169 also extends to individuals who admitted their conduct and pled guilty. In those cases, there will be no record showing what evidence the state would have relied on if the

case had gone to trial. Years later, if the defendant can point to some "relevant" new development in science or technology, they may be allowed to have their pleas withdrawn and force the state to try the case for the first time. This would apply to eyewitness identification, interrogation techniques,

- **Finality:** By allowing endless, repetitive re-litigation of old convictions, this bill will undermine public trust in the finality of convictions—a cornerstone of our judicial system—often at the expense of the victims who must revisit extremely traumatic crimes every time a new claim is filed.

Oregon Law Already Provides for Relief:

The Oregon Legislature has created and passed many impactful criminal justice reform laws. Some of these new laws provide mechanisms to vacate unjust convictions and programs to compensate those who can prove they were wrongfully convicted.

In 2019, the Legislature enacted significant reforms to allow for relief in cases involving newly discovered DNA evidence (including evidence newly available due to advances in DNA technology). ORS 138.688-138.700. These statutes already provide a safety valve for re-examining these issues but is limited to cases where the new evidence shows that the convicted person is actually innocent.

In 2021, the Legislature provided district attorneys with authority to jointly petition (with the defendant) "for reconsideration of a conviction" that "no longer advances the interests of justice." ORS 137.218(1)(a). That authority would extend to an agreement to vacate a conviction based on new evidence. In other words, in situations where there is broad agreement that a wrongful conviction has occurred, current statutes already provide adequate mechanisms for vacating those convictions.

In 2022, the Legislature also created an avenue to allow people who were wrongly convicted and actually innocent of their alleged offense to be financially compensated for the time they were incarcerated or on probation. Since all these statutory changes are still in their infancy, and their long-term impacts are still being realized, now is not the time to make an additional change to the PCHA.

Finally, the Governor has the constitutional power to pardon convictions and commute sentences, particularly if new evidence calls the conviction into doubt or otherwise undermines confidence in whether justice was served.

SB 169 creates an entirely new basis for post-conviction relief that goes far beyond the type of relief available in the current Post-Conviction Hearing Act (PCHA), which generally only allows for relief when a defendant's conviction was the result of a constitutional violation or entered by a court lacking jurisdiction to do so. SB 169 would require relitigating convictions when no constitutional violation is even alleged. Even beyond the current trial, appeal, and post-conviction relief process, current law already has numerous safety valves (articulated above) to provide relief for individuals who were convicted but are actually innocent.

SB 169 Language is So Broad Litigation May Be Continuous and Ongoing:

SB 169 would create a broad new exception that undermines the finality of criminal cases, which is a very important aspect of the criminal justice system, especially for defendants and victims. Many cases potentially involve some sort of scientific or technical evidence, and almost every field of science and technology continues to develop incrementally. As a result, under SB 169, every time a criminal defendant could point to some new "relevant" evidence that would not have been previously available, the defendant could file a new post-conviction petition.

“Relevancy” is an extremely low standard; any minor change in the science could potentially qualify, and the defendant would get an entirely new trial if the judge decides there is a “reasonable probability” that there would have been a different outcome. That is also a very low standard; juries are unpredictable, and there may often be a reasonable probability of any outcome to a case. The result is likely to be many otherwise valid criminal convictions vacated and returned to district attorneys to re-prosecute from the start. That will further burden a criminal justice system that is already stretched beyond the breaking point. Moreover, victims and witnesses will be required to recall and relive traumatic events from their past after reasonably believing the process was complete.

Finally, because SB 169 places no limitations on the number of times someone can seek this new form of post-conviction relief, all the previously identified problems will repeat themselves over and over again. Individuals who may initially be unsuccessful in petitioning under SB 169 will have every incentive to repeatedly file petitions with every incremental development in science or technology that arguably could form the basis of a new claim.