

Submitter: Erik Nicholson

On Behalf Of:

Committee: Senate Committee On Judiciary

Measure, Appointment or Topic: SB178

I am writing to express my strong opposition to the proposal to codify the authority of Oregon's district attorneys to charge fees to private criminal defense attorneys for access to discovery—the evidence against their clients.

This policy is not only unjust, but fundamentally incompatible with the principles of due process and the presumption of innocence enshrined in our Constitution.

Due Process and the Presumption of Innocence Are Not for Sale

Every individual accused of a crime in is presumed innocent until proven guilty. That is not a hollow slogan—it is a foundational right that undergirds our entire legal system. Yet charging defense attorneys to access discovery effectively punishes defendants before they've had their day in court. It turns due process into a pay-to-play system. If the state is allowed to charge for access to the very evidence it intends to use to convict someone, we have already compromised the fairness of the process.

The Fees Harm the Most Vulnerable Defendants

These discovery fees are not absorbed by well-resourced law firms. They are passed directly to defendants—many of whom are just above the income threshold to qualify for a public defender, but still struggle to afford private counsel. These are working-class Oregonians: parents, laborers, students—people already making painful sacrifices to afford a competent defense. Adding discovery fees only worsens the access-to-justice crisis in this state.

Many private criminal defense attorneys are already operating on razor-thin margins, often undercharging for their work to serve those who fall through the cracks of the public defense system. By placing additional financial burdens on these attorneys, this policy threatens to push even more of them out of criminal defense entirely—further exacerbating Oregon's public defense crisis.

There Are Better, Fairer Alternatives

If the concern is cost recovery, there are far more just and equitable solutions. A modest, reasonable fee assessed at the end of a case—but only upon a guilty finding—would allow the state to recoup costs without compromising due process or placing an undue burden on innocent people. In this model, individuals found not

guilty would not be financially penalized for defending themselves. That's the kind of system that reflects the values of a fair and impartial legal process.

Conclusion

Access to discovery is not a luxury. It is a legal and moral necessity. No person should have to pay to see the evidence that may determine their freedom. We cannot continue to build a system that punishes people simply for being accused. We must build one that honors the Constitution, upholds fairness, and protects the rights of every Oregonian—regardless of income.

I urge you to reject this harmful policy and consider alternatives that do not violate the core principles of justice. Thank you for your time and your service to the people of Oregon