



Legislative Testimony

Oregon Criminal Defense Lawyers Association

April 28, 2015

The Honorable Jeff Barker, Chair
House Judiciary Committee, Members

RE: Senate Bill 363-A testimony in support

Dear Chair Barker and Members,

The Oregon Criminal Defense Lawyers Association is an organization of attorneys who represent juveniles and adults in delinquency, dependency, and criminal prosecutions and appeals throughout the state of Oregon. Thank you for the opportunity to submit the following comments in support of Senate Bill 363-A.

1. Senate Bill 363-A is a simple bill that redresses a practice which negatively impacts access to justice. It prohibits a district attorney's office from charging the defendant a fee as a condition of performing duties under the expungement statute, ORS 137.225. This bill is necessary because some county district attorney offices are imposing "processing fees" on defendants in the range of \$40 to \$100 as a condition of processing their expungement petitions. These fees have not been sanctioned by this legislative body.

2. When a defendant seeks to set aside the record of an arrest or a conviction, ORS 137.225 (2)(a) requires the defendant to submit a copy of the motion and the defendant's fingerprints to the office of the district attorney that prosecuted the case. The district attorney reviews the motion to determine whether the person is eligible for set-aside given the nature of their crimes and criminal history. In the event the person is eligible, the district attorney forwards the fingerprint card to the Oregon State Police to conduct a record check to assure eligibility. The language in ORS 137.225 (2)(c) uses compulsory language: "The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police." In the event OSP determines the applicant's record is clear, the district attorney so advises the court.

3. This legislative body has authorized two fees associated with an application for set-aside.

(a) An \$80 fee payable to the Oregon State Police is to be submitted along with the application to set aside the record of a conviction. This \$80 fee is to compensate OSP for its time in conducting the record check. This fee is non-waivable; without payment, the expungement petition cannot move forward. In the event of true indigency, this fee alone can deprive a person otherwise eligible for an expungement to ever secure relief.

(b) A \$252 filing fee payable to the Circuit Court when an application is filed to set aside the record of a conviction. [See ORS 1327.225 (d)] This \$252 filing fee is subject to an order of the Chief Justice authorizing waiver in the event of indigency or deferred payments.

4. In recent years, several county district attorney offices have added a third fee, a “processing fee” as a pre-requisite to processing an application for a set aside. These “processing fees” are to be paid directly to the district attorney’s office, are not subject to waiver for indigency, and are not authorized by this legislative body. If they are not paid, the district attorney’s office refuses to process the application for set aside or forward the fingerprint card to OSP, even if the \$80 check payable to OSP is enclosed with the application.

5. While the following list is not comprehensive, we have obtained information that these counties impose “processing fees” in the following amounts: Benton County, \$100; Crook County, \$60; Curry County, \$60; Deschutes County, \$40; Jackson County, \$96; Lane County, \$90; Linn County, \$80; Morrow County \$100.

6. Fees imposed on a defendant in a criminal matter must be expressly authorized by this legislative body, else every state agency or county government could recoup their costs of performing duties imposed by law. This issue presents the core essence of access to justice. The ability to set aside a record of conviction or arrest can be the single, most impactful event in facilitating an offender’s re-entry into society. An offender’s opportunity at re-entry ought not be held captive to a fee imposed by a government body for merely performing duties imposed by statute, at least not done unilaterally without full debate and authorization by this legislative body.

7. We urge your support of SB 363 – A.

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have any questions.

Respectfully submitted,

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