



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

**FR: Amanda Dalton
On behalf of OR District Attorneys Association (ODAA)**

RE: SB 697 & SB 698 - OPPOSE

March 1, 2023

The Oregon District Attorneys Association is opposed to the proposed changes to expungement law contained in SB 697 and 698. As currently drafted SB 697 and 698 do not merely automate Oregon's expungement process, they would have a significant and adverse impact on crime victims and survivors, degrade public safety, raise concerns with how our electronic criminal records would interface with federal records, and deprive the significant expungement reforms that were past in SB 397 (2021) from having a fair opportunity to have impact. The proposals are also much broader in scope and effect than those that have been implemented in other states that have sought to pursue automation.

Oregon currently allows individuals to petition the court to set aside or "expunge" their prior criminal convictions. This process requires the submission of fingerprints to the Oregon State Police to confirm identity and perform a comprehensive criminal records check. The process also allows for victim notification of the petition and provides District Attorneys the opportunity to object to the petition in court. The court may only deny the petition of an otherwise eligible person if it finds by clear and convincing evidence that "circumstances and behavior of the person, from the date of the conviction the person is seeking to set aside to the date of the hearing on the motion, do not warrant granting the motion due to the circumstances and behavior creating a risk to public safety." For example, the court could deny a petition based on a person's non-compliance with a restraining order or no contact order with a victim.

When a court grants a petition for expungement it not only shields the fact of the conviction from the public or employers it legally prevents the conviction from being used by the court in calculating a person's criminal history, licensing and professional boards are prevented from considering the convictions in determining whether to grant licenses, and certain rights like the

right to possess and own a firearm are restored. This is why it is so important that any steps to move to an automated system are done thoughtfully, intentionally and ensures a balance to public safety interests.

The Legislature in 2021 passed SB 397, a heavily negotiated expungement reform package, which made significant revisions to the expungement laws. These changes included broadening the convictions eligible for expungement as well as reducing the waiting period a person would have to wait to apply for expungement and have only had 1-year to fully impact those eligible for relief. The bill reduced the waiting period for a Class B felony from 20 years to 7 years, Class A misdemeanors to 3 years and Class B and C misdemeanors to 1 year from the date of conviction or release.

Our specific concerns with SB 697 and 698 are as follows:

Victim Impact:

The current petition-based process allows for sufficient time for District Attorneys to attempt to locate and inform victims that a petition for expungement has been received and it allows District Attorneys the opportunity to oppose the petition at a court hearing if circumstances warrant, in addition to offering the victim an opportunity to comment and participate. SB 697 and 698 would remove the role of the victim entirely by removing their opportunity for notice and attendance at the court hearing.

Additionally, the negative consequences of automation for crime victims are compounded because SB 697 and 698 would make a significant number of domestic violence, sex and person felony crimes eligible for this automatic expungement process without any opportunity for input from their victims.

Public Safety:

The bills would remove the requirement that the petitioner submit fingerprints for a comprehensive out of state criminal background check. The lack of this information would create a significant risk to public safety because it could result in a loophole that could allow a person the ability to automatically expunge a domestic violence assault conviction that occurred in Oregon even though they had a subsequent domestic violence conviction in Washington.

Under current law the District Attorneys are empowered to object to a petition when the person demonstrates circumstances and behaviors that create a risk to public safety. SB 698 and 697 would eliminate this option and deprive the criminal justice system of a valuable tool to aid the courts in ensuring only individuals who are not a public safety risk can expunge their criminal record.

Criminal Conviction Records System Issues:

Like all states, the Oregon State Police enter all criminal convictions into a Federal government national database. This allows for checks of a person's out of state criminal record. The Federal

government requires fingerprint identification to either enter a new conviction or remove a conviction record. SB 697 and 698 would remove the fingerprinting requirement and create two tiers of criminal record. One, that is expunged in Oregon through the automated process and another unexpunged federal record because no fingerprints were submitted.

Additionally, the proposed automated system does not make it clear what recourse there would be if the wrong conviction was automatically expunged because there was not a fingerprint confirmation. Would the State have the ability to remedy the mistake, or would there be no way to correct an unjustified automatic expungement?

Proposal is Much Broader than Other States:

Several states do have automatic expungements laws but with significantly more narrow criteria for application. Utah, for example, only allows misdemeanors to be eligible and only Class A drug possession misdemeanors and all class B and C misdemeanors are fully eligible for automatic expungement. Pennsylvania's law does not apply to most person-to-person criminal convictions. Additionally, in Pennsylvania the records are "sealed" and not legally expunged. This means that the records are not available for public use, but continue to be used by courts in calculating a person's criminal record and history.

ODAA thanks the committee for the opportunity to offer written testimony in opposition to SB 697 and 698. If this is a policy direction the Committee wants to pursue we urge you to appoint an interim workgroup to facilitate a deliberative process with stakeholder input that allows for the necessary time and consideration that has been missing from these efforts to-date.