



## Oregon Alliance to End Violence Against Women



February 8th, 2024  
Regarding HB 4097 - Expungement  
Domestic and Sexual Violence Survivor Advocate Feedback

On behalf of the above-noted organizations, we appreciate the opportunity to submit feedback regarding certain aspects of the pending amendments to HB 4097, which would reform several areas of Oregon's expungement statutes. Each of our organizations has policy expertise regarding domestic violence and sexual assault and it is from the perspective of the impact on survivors that we respectfully submit these comments.

These comments are submitted with the goal of ensuring fairness, equity, and safety in the criminal justice process, for victims as well as for defendants. Any conversation about these issues must be founded on the acknowledgement that our carceral system, and its after-effects, impact Oregon's Black, Indigenous, and communities of color disproportionately, due to longstanding systemic and structural racism. It is critical to recognize that these biases and inequities have devastating impact on crime victim as well as on defendants, and we urge policy makers to prioritize victims as well as defendants in all reform discussions.

Fundamentally, we support the streamlining of the expungement process to remove unnecessary barriers for defendants, *assuming underlying sound policy and consideration of victim impact and victims' rights*. It is with these principles in mind that we provide the below feedback regarding HB 4097 and the impact of the expungement system on victims of domestic and sexual violence crimes.

### **Greater Accountability Needed for Violations of Protections Orders**

The expungement statutes as they currently pertain to violations of protection orders do not adequately address the safety and well-being of survivors. It is well-documented that violation of a protection order is a sign of dangerousness and lethality, and should be treated as such. There are sound policy reasons to treat domestic violence, sexual violence, and stalking cases carefully, due to what we know to be patterns of abuse that escalate and repeat often between multiple victims and over time.

The law currently recognizes the importance of a history of violence in many ways, including:

- Our child custody and parenting time statutes provide that parents with a history of domestic or sexual violence are presumed not to be suitable custodial parents, and courts are required to take this evidence into account when fashioning detailed parenting time provisions; (see for example ORS 107.102(5)(b); ORS 107.137(1),(2), and (6))
- Our child welfare system takes this kind of history into account in making child safety assessments, including "failure to protect" assessments;

- Our housing statutes and employment protections take into account the fact that survivors are often stalked or abused and threatened at home or at work and allow for lease breaking or workplace safety measures if there is a history of abuse. (See for example ORS 90.445 et seq and ORS 659A.270 et seq)

If a record of contempt of court for violation of a protection order were to disappear from the record, then the survivor has the burden of having to re-prove each of these instances in order to ensure protection for the survivor and children in future proceedings. If a judgment of contempt for a protection order violation disappears from the record, this could also affect important accountability aspects of our system such as bail and the “gridblock” sentencing scheme if there are later person-related crimes.

Survivors, particularly survivors of color, face immense barriers to accessing the criminal and civil justice systems regarding their experiences of violence and abuse. Our sincere hope is that we can find agreement on the importance of addressing these victim safety issues while also removing procedural and financial barriers to expungement that are addressed in other areas of the bill.

To address the above concerns and principles, we jointly advocated with the workgroup that these issues be addressed in the bill. After negotiation and discussion, our coalition agreed with the bill proponents that the below language would be added as an amendment. The Dash 1 amendment does not get this quite right, so we will be pleased to consider working to ensure that the language reflects the agreement. With this language incorporated, we could positively support this concept.

**Agreed upon language is below:**

The intent of this amendment is to address judgments and charges of contempt for violation of certain protective orders, and how these charges/judgments interface with the expungement statutes, as follows:

- **Waiting period:** Amending ORS 137.225 (1) (b) and (7)(a) to provide that judgments/findings of contempt for violation of certain protective orders should not be eligible for expungement until after five years from the date of the judgment or the release from imprisonment for the judgment sought to be set aside, whichever is later;
- **Pending charges:** Amending ORS 137.225 (7)(a) to provide that pending charges for contempt for violation of certain protective orders would act as a bar on eligibility for expungement while the charges are pending;
- **Protection order judgment/findings to which these rules will apply:** Applies to findings of contempt for violation of protection order issued under the following authorities: ORS 107.095(1)(c) or (d); ORS 107.700 to 107.735; ORS 124.005 to 124.040; ORS 133.035; ORS 135.247; or ORS 163.760 to 166.543.

Thank you for your consideration.