

Date:	April 7, 2025
To:	Chair Prozanski, Vice Chair Thatcher, Members of the Senate Judiciary Committee
From:	Association of Oregon Counties Legislative Affairs Manager Tim Dooley
Subject:	Support – SB 178

Thank you for the opportunity to testify in support of SB 178. For the record, I am Tim Dooley, for the Association of Oregon Counties, representing Oregon County Governments.

This bill was brought at AOC’s request to address an unintended consequence of SB 751 from 2021, when the discovery laws were updated. We have engaged with Senator Prozanski’s workgroup this session and thank him for convening all the stakeholders to have a robust discussion.

In 2021, the definition of “disclose” was changed to say “provide” from “afford the adverse party an opportunity to inspect or copy the material”. This prompted some in the defense bar to argue that district attorneys do not have authority to charge fees for discovery materials, which has been the current and past practice for most DAs in the state, excepting extremely small frontier counties.

District Attorney discovery fees are set by county commissioners as part of the county-wide fee schedule and are designed to cover costs associated with providing discovery items from flash drives to copies to the support staff required to operate the logistics of a complex – and constitutionally required system. County budgets are based on recovering costs associated with discovery. These costs are billed to OPDC for those represented by public defenders and directly to the firm for privately retained defense counsel. To be clear, District Attorneys do not withhold discovery if they are not paid. They provide the legally required disclosures to the defense attorney and submit an invoice in good faith that it will be paid.

As my colleague from OCDLA will explain, and has submitted into the record, discovery costs are expensive. Counties acknowledge that and believe that actually enhances our point that counties should be able to recover costs. A multi-million dollar hit to the general fund will greatly impact service delivery, especially in small and medium-sized counties. 21 of Oregon’s 36 counties have budget deficits this year and even those without deficits

are facing difficult budget scenarios. For example, Benton County just announced a hiring freeze.

The -1 amendment charges DOJ with conducting a study to establish a statewide uniform fee schedule for discovery costs and to find the public entity best suited to receive appropriations and reimburse local costs.

The workgroup members did not have consensus on DAs charging for discovery, but I think it is safe to say that we did have consensus on the need to prevent counties from taking a fiscal hit by simply stopping cost recovery without identifying an alternative source of revenue.

While we would prefer the base bill and have concerns about the loss of local control that a statewide schedule would impose, we support the -1 amendment as a first step towards finding a solution that meets the needs of all participants in the process and want to put on the record that we would want such a study to include the costs associated with privately retained counsel, not just public defenders.

Thank you for your time.