

Chair Prozanski, Vice-Chair Thatcher, and Members of the Senate Judiciary Committee, my name is Jeff Jorgensen. I am a criminal defense attorney based in Salem/ Marion County, but I take cases throughout the Willamette Valley to the coast, and I testify today in opposition to Senate Bill 178.

Senate Bill 178 is a tax on the innocent.

When someone is charged with a crime, under the U.S. and Oregon Constitutions, they are presumed innocent until the State proves their guilt beyond a reasonable doubt. The relevant sections of the U.S. and Oregon Constitutions with regard to criminal prosecutions and criminal trials are written to protect the rights of the accused against the overreach of the government.

The proposed bill requires that legally innocent people foot the bill for the privilege of being prosecuted and does so in a way that amounts to a ransom – requiring the accused or their lawyer to pay the fee *before* the prosecutor’s office gives them any information about the allegations.

According to a study done by the National Association of Criminal Defense Lawyers, a majority of states do not charge for discovery and then of the states that do charge a fee, the fee is minimal and only cover the actual cost of the item used to provide discovery.

Senate Bill 178 would permit the prosecutor’s office to formulate a fee that captures the cost of the physical discovery plus the prosecutor’s overhead, wear and tear on their equipment, and building costs. These costs are the simple cost of doing business for any office and should not be turned into assessments on the innocent.

I have had prosecutor’s offices upload documents into their online portal system, charge my office \$25 to download a document of unknown description, only for me to discover the document I paid for was something that was publicly accessible from the court record such as a probable cause statement or an amended charging document. After learning of this, the process to get a refund was mired in bureaucracy such that getting the \$25 refund was not worth the time I would have my office staff spend to attempt to get it. This experience alone happened numerous times with various offices.

There are prosecutor’s offices that have charged me a fee for access to police body worn camera video—under the assumption of it being a standard fee for their having to maintain the video—where it is clear that the law enforcement office is the one maintaining the video as the discovery link sends me to that law enforcement website.

Prosecutors’ offices regularly provide discovery in a format that contains proprietary software that only law enforcement can use. This causes my office to spend an inordinate amount of time loading and accessing the data—time that I cannot bill for and have to absorb as a cost of doing business.

Based on my own experience, I have little faith that the proposed language in Senate Bill 178 will make anything streamlined or predictable for the accused. Ultimately, accused persons should never be required to pay for their prosecutions—that is a cost that we the public bear as part of our belief in and support of our system of justice.

Prosecutor’s offices should not charge Oregonians a fee for doing their job. That is why I am asking you to vote no on Senate Bill 178.