



**TESTIMONY ON SB 178**  
**SENATE COMMITTEE ON JUDICIARY**  
**APRIL 9, 2025**

Chair Prozanski, Vice Chair Thatcher, and Members of the Committee:

My name is Mae Lee Browning, Legislative Director of the Oregon Criminal Defense Lawyers Association.<sup>1</sup> **OCDLA opposes SB 178.**

For decades, Oregon has allowed the practice of District Attorney (“DA”) offices charging the defense for discovery, even though this practice is not authorized by statute nor rule. Oregon has also allowed the perverse practice of requiring the state’s public defense agency (Oregon Public Defense Commission, “OPDC”) to pay DA offices for discovery. DA offices direct bill OPDC for discovery costs. For the 2023-25 biennium, the state earmarked \$6 million within OPDC’s budget for discovery.

First . . . **Discovery should not be paid for by the state’s public defense agency.** It is simply not appropriate, especially since the legislature wants transparency from OPDC. OPDC has no oversight ability of this part of their budget. They receive a bill from DA offices and they pay it. They are not funded or staffed to check with attorneys to see if they received the discovery they are being charged for. The pass-through of state funds to DA offices should be through another agency that is not OPDC.

Second . . . The constitutional obligation of the prosecution to provide the defense discovery is just that - the constitutional obligation - regardless of whether the person is appointed an attorney or has retained one. **It is OCDLA’s position that privately retained attorneys should not be charged for discovery.** This position is supported by a national survey on discovery charging practices.

In OLIS, please see the National Association of Criminal Defense Lawyers (NACDL) research on national discovery charging practices as well as a national discovery cost spreadsheet. I received this research on November 30, 2021. It is research I asked the NACDL to conduct.

The report concluded: **“Oregon is an outlier when it comes to discovery charging practices across the country.** The majority of states do not charge for discovery. At times, in many states the defense does provide CDs/DVDs/flash drives, paper, etc. Of the states that do charge for discovery, it is a minimal fee and only covers the actual cost of the item used to provide discovery.”

Third . . . In determining what local DA offices should charge the state of Oregon for discovery, it would be a shame if the study just defaulted to the highest discovery fees. **Please look at the testimony filed in OLIS titled “2024 Discovery costs by county.”** You’ll see wide variation, for example, in the charge for a 128GB thumb drive. Benton Co charges \$150, Clatsop charges \$80, Deschutes charges \$35, and Lane charges \$12-18.

Fourth . . . The -1 amendment requires DOJ to conduct a study on the establishment of a statewide uniform fee schedule for discovery costs charged by District Attorney office. The amendment states: “The department shall conduct the study in consultation with the Oregon District Attorneys Association and any other public or private entity the department determines to have relevant or helpful information on the subject.” **We request that OCDLA be formally listed in the language of the measure.** Giving DOJ the discretion to consult with us does not ensure that they will consult with us. We have helpful information to provide that should be taken into consideration. For example, the format in which we receive FTRs, video and audio results in a ton of work by defense counsel to access. **We request that audio and video be produced in an industry standard format playable on all/most platforms.**

Fifth . . . **We request DOJ to consult with the National Association of Criminal Defense Lawyers (NACDL),** who conducted the national discovery charging practices research, and for that matter, any national prosecutor organization, though we are not requesting that this be in the language of the measure. DOJ should not just look inward at what Oregon prosecutor offices do. DOJ should look outward at what other states do. How are other states’ DA offices able to absorb discovery costs as part of their operational costs and not pass it on to the defense, but not Oregon?

Sixth . . . The Association of Counties stated that DA offices do not withhold discovery until payment is received. **DA offices most certainly do withhold discovery until payment is received.** The following DA offices withhold discovery: Baker, Lane, Linn, Malheur, Marion, Yamhill, Salem Muni Court, and Lake Oswego Muni Court. There may be others. In fact, **we know DA offices withhold discovery pending payment because that was the basis for Attorney Zack Stern’s mandamus in *State v. Douglas Wright*, S070878.** In OLIS, see the Oregon Supreme Court’s Order directing the Honorable Thomas A. McHill of the Linn County Circuit Court to “enter an order compelling the Linn County District Attorney’s Office to provide [the defense] discovery at no charge.”

Lastly . . . Just because it has been the practice for DA offices to charge for discovery does not mean that Oregon must continue the practice. Oregon has had a practice of doing many things wrong. For example, Oregon allowed nonunanimous convictions for

decades until the practice was deemed unconstitutional by the United States Supreme Court.

The Oregon Legislature has the power and the duty to correct the practice of charging widely varying exorbitant fees for discovery and requiring the state public defense agency to pay for it.

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<sup>1</sup> OCDLA's 1,200 members statewide include public defense providers, private bar attorneys, investigators, experts, and law students. Our attorneys represent Oregon's children and parents in juvenile dependency proceedings, youth in juvenile delinquency proceedings, adults in criminal proceedings at the trial and the appellate level, as well as civil commitment proceedings throughout the state of Oregon. Our mission is championing justice, promoting individual rights, and supporting the legal defense community through education and advocacy.