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March 31, 2015

To: Chair Prozanski and Members of the Senate Judiciary committee

From: Doug Marteeny, Linn county District Attorney Representing the
Oregon District Attorneys Association

TESTIMONY ENCOURAGING A GRAND JURY RECORDING WORK GROUP SB 822 NEEDS DETAILED ANALYSIS

GRAND JURY LAWS, PROTOCOLS AND PRACTICES

Appropriate Oregon grand jury laws, protocols and practices will assist the public in continuing to have confidence in their public safety system. The Oregon District Attorney's Association looks forward to participating in a meaningful effort to continue to maintain that confidence by having responsible Oregon laws in this area. Oregon's grand jury laws, protocols and practices must, among other things, continue to respect and protect crime victims, especially the most vulnerable among them, other witnesses and our communities while also being fiscally responsible and realistic.

REQUEST FOR A ROBUST WORK GROUP

While we appreciate having had the opportunity to meet with and discuss this important Bill with Senator Kruse and co-sponsor Representative Williamson we believe that further, more robust and expansive, dialogue and participation is essential. We believe that in addition to participation from OCDLA, the Courts and ODAA that other systems partners are critical.

We believe that Oregon State and even National crime victims advocacy groups should be invited to participate in meaningful workgroup efforts to look at Oregon's grand jury laws. We believe that participation from particularly vulnerable and/or special victims groups such as advocates and other professionals in the areas of child and elder abuse is essential. Participation is also needed from domestic violence, human trafficking and gang involved advocates, professionals and experts.

We feel that participation from the Association of Counties, state indigent defense, Sheriffs and Chiefs of Police associations should be strongly encouraged and pursued.

We believe that in all areas of grand jury practice detail and accuracy are not just encouraged but essential. We feel that the courts continued participation in the grand jury process is critical and that if Oregon adopts a recordation system in some form or fashion then the creator and keeper of those records should remain a court function much like the court's role in the recordation of open court practices such as arraignments, motions litigation, trials and sentencing.

FUNDING ANALYSIS OF GRAND JURY RECORDING IS CRITICAL

Critical to a responsible Oregon grand jury law, protocol and practice conversation is engaging in the proper funding analysis for all parties and participants.

With an understanding that Oregon must continue to maintain citizen confidence in their public safety system we must analyze, and properly fund, a system that will continue to earn and maintain the people's trust.

We know that the costs of any grand jury recordation system will be spread out over a number of entities and agencies such as the courts, counties, state agencies such as indigent defense, law enforcement and citizens. One analysis that covers only one-time-only costs (set up costs), recordation staffing, transcription service, discovery costs, additional case review costs and administrative costs put the annual operating expenditure at around

10 million dollars per year just to the courts, counties and indigent defense. This estimate does not include such things as anticipated increased motion practice, the law enforcement resource impact such as longer grand jury and court proceedings, increased litigation duration and the impact to victims and witnesses in time away from jobs and family.

GRAND JURY RECORDING NATIONALLY--CAREFUL INDEPENDENT ANALYSIS NEEDED

Nationally we see an incredibly diverse practice in the area of grand jury laws, procedures and protocols. Some states do not use a grand jury system but may have a system where direct filing is the norm. Some states, like Oregon, do not have a grand jury audio recordation system while other states do. Among the states that do have a form of grand jury audio recordation there are states that consistently engage in that practice and states that rarely engage in the practice. We have been looking at the national practices in this area and would invite a more dedicated conversation to occur, in an environment such as a serious and deep diving workgroup, to find out what others are doing as we work to perfect Oregon's laws in this area.

RIGHT AND RESPONSIBILITIES OF GRAND JURORS

Grand Juries are composed of seven members chosen from the normal jury pool by the court. They are sworn as follows:

"You, as grand jurors for the County of _____, do solemnly swear that you will diligently inquire into, and true presentment or indictment make of, all crimes against this state committed or triable within this county that shall come to your knowledge; that you will keep secret the proceedings before you, the counsel of the state, your own counsel and that of your fellows; that you will indict no person through envy, hatred or malice nor leave any person not indicted through fear, favor, affection or hope of reward; but that you will indict upon the evidence before you according to the truth and the laws of this state, so help you God.

(2) In administering this oath, the blank therein must be filled with the name of the county in which the court is sitting; and if any juror prefers, the juror must be allowed to affirm thereto, in which case, instead of the final phrase thereof there must be added, “and this you promise under the pains and penalties of perjury.” [Amended by 1973 c.836 §38]

The oath makes it clear that the proceedings of the grand jury are secret and that indictments shall be based upon evidence.