

Senator Thatcher,

Thank you for your inquiries at the hearing on SB 822 & 825. I told you I would get back to you with some answers and they are provided below.

- 1) **SB 825 Question:** Can we put security in place easily to take care of safety concerns that I raised with regards to allowing a defendant to testify at grand jury.

Answer: Yes, security can be put in place in a manner that could alleviate my concerns. I would be very happy to see that. You have asked a great follow-up question that helps to refine the point I was probably clumsily making at the hearing. All too often, bills are passed and the bill contains no provision as to who will fund execution of the bill. Defendant grand jury appearances would occur within the courthouse and within the confines of my office. That presents a security risk. Security officers being available for these numerous appearances will cost money. The Linn County Courthouse right now doesn't have funding to have folks go through a metal detector before entering the courthouse. Nor is there funding to have a bailiff present in each courtroom when court is in session. I have been spat upon by folks in the courthouse. Some of my female DDA's have been physically and verbally intimidated and harassed by defendants in the courthouse. When I see the lack of funding for courthouse security already, my inclination is to insist that we take care of funding courthouse security before we add more risk to our already dangerous jobs by bringing defendants into the D.A.'s office for grand jury appearances.

- 2) **Question:** Isn't a recording more accurate than handwritten notes.

Answer: Yes a recording is more accurate. However, what the current version of HB 822 does is two things: first it insists on a recording, which makes the record of what happened more accurate. In addition to that, it turns over to the defense attorney the record of what was said. Whenever that happens, inevitable litigation will follow. That costs money. I believe the costs of that will be substantial. So, as Doug Harcelroad mentioned, if the legislature believes we should record grand jury, then do it right by requiring the court to create the record, and properly fund that substantial new expense.

- 3) **Question:** How do we currently connect grand jury records that involve 1) the issuance of a subpoena for records when no suspect has yet been identified, 2) a return on that subpoena, again with no suspect yet identified, with 3) the later completed investigation that is presented to the grand jury on a particular identified defendant?

Answer: Right now, there is no necessity for such a connection to be made in every case. The State provides a police report explaining that a grand jury subpoena issued for business records, the records were received and that led to a particular defendant. If a challenge is made that such a subpoena did not go out or the process was inappropriate, then we would look at the clerk notes to see the date the subpoena issues and records were returned. In my nearly 14 years of prosecution I have never received such a challenge. And so the grand jury record has never had to be connected and retrieved.

SB 822 requires that such a connection and retrieval of the record be made in every case. This will be necessary in order to certify that the entire grand jury record was released to the litigating parties. I believe this will be difficult and time consuming for the clerk that is in charge producing the records. It is much more labor intensive than simply pushing the record button as was described by proponents of SB 822.

I hope I have answered the questions you presented. Thank you for your inquiries, they help to reveal the issues of the bills presented. If I can be of further assistance, please do not hesitate to contact me further.

Doug Marteeny
Linn County D.A.