

STAFF MEASURE SUMMARY**Senate Committee On Judiciary****Fiscal:** Fiscal impact issued**Revenue:** No Revenue Impact**Action Date:** 04/21/15**Action:** Do Pass With Amendments And Requesting Referral To Ways And Means.
(Printed A-Engrossed.)**Meeting Dates:** 03/31, 04/21**Vote:**

Yeas: 4 - Burdick, Gelser, Kruse, Prozanski

Nays: 1 - Thatcher

Prepared By: Eric Deitrick, Counsel**WHAT THE MEASURE DOES:**

Requires grand jury proceedings to be recorded verbatim. Establishes procedures for recording and exceptions. Establishes procedures for disclosure to defendant and public. Prohibits use of grand jury recording to collateral attack indictment.

ISSUES DISCUSSED:

- Experiences of people who have served as grand jurors
- Number of states that rely upon hand-written grand juror notes
- Logistical issues with grand jury recordation
- Practical benefits to grand jury recordation
- Fiscal concerns on implementation

EFFECT OF COMMITTEE AMENDMENT:

Clarifies role of court and judiciary in recordation process. Authorizes Chief Justice to determine types of audio recording devices suitable for use. Prohibits use of grand jury recording to collaterally attack indictment.

BACKGROUND:

A felony criminal case can originate in two ways. First, a grand jury can authorize an indictment. Grand juries are legal bodies that have authority to investigate criminal allegations, receive testimony and evidence, and authorize indictments. Grand juries are not open to the public and are not legally required to be recorded. Second, a district attorney can elect to file a formal complaint – called an “information” – with the court. The court then holds a preliminary hearing in order to determine if the information is supported by probable cause. The preliminary hearing is open to the public and is legally required to be recorded. District attorneys can elect either procedure to prosecute felony criminal cases.

Senate Bill 822 A changes existing law and requires grand jury proceedings to be electronically recorded, except for deliberation and voting. The court can elect to use a certified shorthand reporter in lieu of an electronic recording. The court must designate a member of the grand jury to ensure the proceedings are recorded. Unintentional failures to accurately record the proceedings do not affect the validity of the indictment.

Senate Bill 822 A requires the court to preserve the recordings or transcriptions. When a defendant is indicted and represented by counsel, the court may make the recording or transcription available to defense counsel and the district attorney. If the defendant is indicted and not represented by counsel, the court may make the recording or

transcription available to the defendant, subject to limitations. The court may not disclose the recording or transcription to a non-party until all legal proceedings are concluded. If the grand jury returns a “not a true bill,” the court may not release the recordings or transcriptions, except in cases involving the conduct of public servants. In addition, the bill requires the district attorney to notify the defendant if a different grand jury received evidence about the same criminal episode.