

Grand-jury bill provides reasonable compromise for protecting witnesses, promoting trust: Editorial

grandjury.jpg

Washington County District Attorney Bob Hermann, president of the Oregon District Attorneys Association, said prosecutors have "serious concerns" about Senate Bill 822. He accused lawmakers of failing to consider safeguards for victims. Behind Hermann from left to right: Benton County DA John Haroldson, former Clatsop County grand juror Doug Sauvageau, Angela Foster and Steve Doell, president of Crime Victims United. (*Maxine Bernstein/The Oregonian*)

The Oregonian Editorial Board By **The Oregonian Editorial Board**

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on May 26, 2015 at 4:51 PM

If anything has become clear from the national outrage over police use-of-force incidents from Missouri to Maryland, it is this: The public is no longer willing to accept "trust us" assurances from police and prosecutors.

Now, it's "show me."

Senate Bill 822, sponsored by Rep. Jennifer Williamson, D-Portland, and Sen. Jeff Kruse, R-Roseburg, is one of the crop of bills designed to shore up the public's fragile faith in the criminal justice system. The bill would require that testimony to a grand jury be recorded and shared with defense attorneys if an indictment is issued, a common practice in many other states, Williamson said. The recording would replace the current practice of appointing a juror to take handwritten notes as he or she sees fit. Those notes are generally kept confidential unless there's reason to believe that a witness' testimony at grand jury differed significantly from a witness' testimony at trial. Needless to say, the decipherability and accuracy of handwritten notes are highly variable.

Williamson's bill aims to shed some light on a grand-jury process that largely operates in secret under the guidance of each county's district attorney's office. The seven-member panels hear testimony from witnesses and determine whether prosecutors have sufficient evidence to bring criminal charges against suspects. Grand juries rarely decline cases brought by prosecutors, said Clackamas County District Attorney John Foote.

While Foote and other district attorneys don't object to the basic idea of recording the testimony, they believe Williamson's current bill is harmful to victims. They have proposed instead that **a police officer or investigator give testimony on behalf of witnesses**, according to The Oregonian/OregonLive's Maxine Bernstein. A grand jury can still insist on hearing a witness if it wants, Foote said, and a prosecutor might want the grand jury to hear directly from the victim or witness anyway. But the idea of an intermediary summarizing other witnesses' accounts would provide protection to both those who fear retaliation and victims, such as children, who are vulnerable.

Oregonian editorials

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Foote raises a valid point. Some victims or witnesses have genuine safety issues that should be considered. But the district attorneys' solution is, as Williamson notes, a sledgehammer approach to a problem best solved with a scalpel. Williamson is proposing an amendment that allows prosecutors or victims to seek a protective order from a court that blocks release of their testimony. While this is also not an ideal solution, it does provide a narrower path for addressing prosecutors' concerns.

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The bill is more than window-dressing. Former grand jurors, some of whom are lawyers, told legislators at a **March public hearing** of incidents in which they felt prosecutors took shortcuts or slyly introduced inadmissible evidence into grand-jury proceedings.

And there have been circumstances in which prosecutors have misused the grand-jury process. In 2001, a circuit judge found that prosecutors in Josephine County had for years **improperly allowed detectives and family therapists to give "special orientations"** to grand jurors. In child sex-abuse cases in particular, the judge found that the counselors, whose talks with the grand jurors were not disclosed to the defense, sought to "change the bias or viewpoints" of jurors.

Is anything like that still happening? "We don't know what's going on in there," said Gail Meyer, with the Oregon Criminal Defense Lawyers Association. But she compared the issue to allowing police to wear body cameras, another legislative initiative. "The minute you turn the camera on, everyone behaves better."

Prosecutors wield considerable power, from the witnesses they choose to present to the charges they recommend to grand juries. Considering that the vast majority of criminal cases end in pleas, shining a light on the secretive process where such charges begin is a reasonable step for transparency.

Foote raises questions about the potential cost, which is yet to be determined. He also fears that leaving a decision over a protective order to a judge is "a crap shoot." Judges will err on the side of making the testimony available, he said, opening up victims and witnesses to aggressive cross-examination by defense attorneys seeking to exploit any contradiction in statements to attack their credibility.

But just as citizens have to place their faith in prosecutors and investigators, district attorneys need to place their faith in judges to make the right call. They should focus their efforts on making Williamson's bill as effective as possible.

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