



Rod Underhill, District Attorney

1021 SW Fourth Avenue, Room 600
Portland, OR 97204-1193

July 2, 2017

The Honorable Nan Waller
Multnomah County Circuit Court
1021 S.W. Fourth Avenue, Room 208
Portland, Oregon 97214

Dear Judge Waller:

It now appears that the legislature is considering passage of SB505, rather than SB496. I wanted to follow up on my June 20th letter with some additional thoughts. I have previously mentioned that I believe that "Oregon's citizens must have confidence in their criminal justice system – particularly when the state charges someone with a felony and that I also believe in responsible transparency." The current method/use of Multnomah County's grand jury has existed since the early 1980's and has been present during my entire career. Prior to that, I am told, this county engaged in a robust preliminary hearing practice. A significant part of the reason to move away from preliminary hearings to a grand jury practice was that there was a different definition, at the time, of responsible transparency. The move to use grand juries in Multnomah County, rather than preliminary hearings, was viewed as a positive effort to include a much broader degree of citizen involvement rather than one person, a judge, ruling on the charging decision. As you know our county currently has 21 citizens that make up three grand juries hearing felony cases nearly every day.

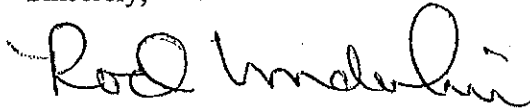
Today, I believe that responsible transparency includes a practice where citizens, if they choose, can see and hear in open court what is occurring, so that they can form their own opinions on a particular matter. We have developed a thoughtful approach - balancing the need for responsible transparency, the genuine concerns for protecting, as best we can, vulnerable victims and witnesses, legal considerations and practical and logistical issues. On June 20th I wrote:

"If SB 496 becomes law, the effective date will likely be in January, 2018. I suggest that we begin a "phase-in" of preliminary hearing practice in the fall of 2017. For example, I suggest that during first part of September all felony delivery, manufacture and possession of a controlled substance cases that historically have been submitted to a grand jury instead proceed to preliminary hearing. In November, that practice may be expanded to property cases. I recommend that in the very near future we convene a multi-disciplinary work group (judges, attorneys, IT personnel, court administrators, office operations personnel, etc.) to develop the work flow for this new system of felony charging practice. Below is a summary of the type and number of involved cases."

Regardless of whether SB505 passes or not, I would like to move a significant number of cases (basically referred to in the paragraph above) to a pilot program of preliminary hearings. While a significant number of vulnerable victim and witness involved cases, for reasons I have previously stated, will continue to be presented to the Grand Jury (we estimate approximately 700 or so per year) I would like to ask the court to work with me and my staff to develop a preliminary hearing pilot program (if the bill does not pass).

I believe that we should soon convene a local work group to establish the PH pilot program. There are numerous questions that a pilot program could help answer. Among those questions is the resource implications to the court, my office, the defense bar and local law enforcement. We would also be able to get a better understanding of whether cases resolve under the current timelines or if that timeline is shortened or increased. I believe that we would be better informed about the discovery-related costs of duplication, redaction, transcription etc., through this effort. To summarize, I believe that we could answer most questions surrounding this important criminal justice issue. Please let me know your thoughts when you get a moment.

Sincerely,

A handwritten signature in black ink that reads "Rod Underhill". The signature is written in a cursive style with a large, looped initial "R".

ROD UNDERHILL
District Attorney

C: The Honorable Edward Jones
Trial Court Administrator Barbara Marcille