

March 8, 2017

The Honorable Floyd Prozanski, Chair  
The Honorable Kim Thatcher, Vice-Chair  
Senate Judiciary Committee Members

RE: Senate Bill 496

Dear Chair Prozanski and Members,

On behalf of the Oregon Justice Resource Center, I respectfully request your support for SB 496. SB 496 will bring greater fairness, transparency, and accountability to Oregon's criminal justice system. Moreover, SB 496 will make Oregon consistent with national norms and best practices.

The Oregon Justice Resource Center is a public interest law firm that represents currently and formerly incarcerated Oregonians and advocates for criminal justice reform. We operate and administer several distinct projects that provide direct representation to Oregonians on a range of issues – barrier reduction to wrongful convictions -- who otherwise would not have access to legal services.

**Fairness:** Our current criminal justice system and laws favor the state over the defense in terms of access to critical facts that reveal the strength or weakness of the state's case. The American Bar Association and National Association of Criminal Defense Lawyers use the term "information disparity" where the government is singularly possessed with knowledge of critical facts, leaving the defense to guess and to wonder.

Fairness is critical not only at the trial phase but, just as importantly, at the plea-bargaining stage. 95% of all cases result in a plea. In negotiations, knowledge is power. In this instance, the government has both. Recordation would help to equalize the scales of justice when the parties are negotiating what should be a fair and just outcome to the case.

**Transparency:** From our work, we know how critical it is that the state rigorously adhere to its duty to inform the defense of information that is exculpatory, which means anything that is "helpful" to the defense. This includes impeachment testimony – i.e., that a witness said something to the grand jury that is different from what was recorded in the police reports, and/or at trial.

Importantly, secrecy in our criminal justice proceedings undermines confidence and credibility in our justice system. Over the past few years, what has become very clear in Oregon and in the United States is that the public is growing more suspicious of our justice system and its stakeholders, believing that it is rigged against those on the margins or who are without access to resources or wealth. Whether these perceptions are rooted in truth does not matter; a justice system that has the perception of being rigged and wealth-sensitive undermines overall credibility and legitimacy. Oregon's current grand jury process only reinforces the perception of

a rigged and biased system. SB 496 brings much needed transparency to the grand jury process, which will help to restore confidence in our justice system.

**Accountability:** Legal ethics scholars continue to call for increased accountability for prosecutors. It is well understood that district attorneys are the most powerful figures in our criminal justice system. Prosecutors enjoy and exercise significant discretion and their decisions and processes are not always subject to review. Prosecutors impact how to investigate a case, what charges to seek, how many different offenses to charge, whether crimes were part of the same or different criminal episodes, and what plea bargains to offer. These decisions profoundly impact the defendant, victims, their families, and the public. SB 496 will greatly improve accountability by making it easier to understand and review the decisions of the prosecutors.

**Best-Practices:** A recent *Slate* article “Red Justice in a Blue State”<sup>1</sup> highlighted aspects of Oregon’s criminal justice system that are contrary to national norms and best practices, and are comparable to practices that we normally associate with states that are very bad with regards to their over-reliance on incarceration. Some of the policies and practices the article mentions include that Oregon and Louisiana are the only two states that allow non-unanimous jury verdicts, Oregon and Texas are the only two states that require a finding of “future dangerousness” in sentencing people to death, Oregon had the second highest rate of youth transferred to adult court after Florida, and that Oregon incarcerates its black residents at a rate twice that of Mississippi and Georgia. If we include that Oregon is one of a minority of states that do not require grand jury recordation, what emerges is a picture of Oregon’s criminal justice system that needs updating and reform. Oregon’s justice system should simply work off models that reflect best practice, are evidence-based, and are consistent with current science. The reliance on a grand juror to take handwritten notes simply is not the best way to record the “substance of the evidence” given before the grand jury (ORS 132.080). What a witness says before the grand jury under oath is important, has consequences, and should be preserved with exactitude. Thirty-six states have laws requiring a verbatim recording of grand jury proceedings. SB 496 will put Oregon more in line with best practices and national norms.

Yours sincerely,

Bobbin Singh  
Executive Director  
Oregon Justice Resource Center

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<sup>1</sup> *Slate*: “Oregon has one of the worst criminal justice systems in the country. These prosecutors are largely to blame” 1/13/17  
[http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2017/01/oregon\\_has\\_one\\_of\\_the\\_worst\\_criminal\\_justice\\_systems\\_in\\_the\\_u\\_s.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2017/01/oregon_has_one_of_the_worst_criminal_justice_systems_in_the_u_s.html)