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March 8, 2017

TO: Senator Floyd Prozanski, Chair
Members of the Senate Judiciary Committee

FROM: Walt Beglau, Marion County District Attorney

RE: Senate Bill 496 and Senate Bill 505

The Oregon District Attorneys Association supports fully funded, equitable grand jury recordation that includes adequate protections for victims and witnesses, appropriate methods for verbatim recording, and protocols that do not disadvantage prosecutors. As drafted, SB 496 and SB 505 do not meet these basic standards.

1. Grand jury recordation must provide adequate protections for victims and witnesses.

The criminal justice system offers extensive protections to those accused of a crime. They receive representation, they receive trial by jury, and they can access a robust appeals process. The law is designed to guarantee them protection at every step. Victims, on the other hand, receive no such protections. In the immediate aftermath of a crime they are asked to recount the often-horrifying events to a police officer. Within a week they are again asked to provide their story to a prosecutor. They are then ushered before a panel of strangers to, for the third time, provide extensive details related to their victimization. All too often this testimony is provided despite the imminent threat from the accused. Finally, should the case go to trial, the accused has the right to confront them in open court, frequently attacking their character and questioning their conduct.

It is impossible to fully comprehend the trauma our system places on these victims. All the while, they are asked to take time off work, take time away from their families, and delay the healing process. If that is not enough, in the most violent crimes, they are often asked to return time and again for appeals or parole hearings.

It is not surprising that in exit interviews, virtually every victim, regardless of the severity of the crime, reports that if confronted with another similar situation they would not report the crime and would not be willing to testify.

SB 496 and SB 505 do not offer adequate protections to victims and witnesses.

2. Verbatim recording must be handled professionally.

Most states either require recordation by the courts or use of a certified court reporter. Oregon's district attorneys have neither the equipment nor the expertise to operate recording equipment and store recordings. Like the recording of court proceedings, the use of a qualified, trained clerk or a certified court reporter will help to ensure the accuracy of the archiving of the proceeding. Court reporters offer the added benefit of being present at the event and free and able to ask clarifying questions if there are comments that cannot be understood.

Regardless of the recordation method, the costs associated with recording grand jury, storing grand jury records, transcribing recordings and reviewing testimony will be onerous and any such mandate must be adequately funded.

3. Grand jury protocols that do not disadvantage the state.

For centuries, grand juries have been convened to provide citizens with a check against the power of the government. Today, as was the case centuries ago, they are not forums in which guilt or innocence is decided. For that, every defendant is entitled to a jury trial at which they will have the right to confront witnesses and victims.

The members of the grand jury can issue an indictment if they believe that the evidence presented by the prosecutor, if uncontradicted, is sufficient to find the person guilty beyond a reasonable doubt at a jury trial. It is a high standard that requires the prosecutor to essentially present the key elements of the case. SB 494 and SB 505 would require that testimony to be provided, with limited impediments, to the defense. While the defense can use the statements to impeach the witnesses at trial, the same testimony is unavailable to the prosecutor should the witness become unavailable or unwilling to testify.

To maintain equity and balance, many prosecutors may shift to using preliminary hearings to secure indictments. Unlike grand juries, in which the defense cannot cross examine witnesses, preliminary hearings are courtroom proceedings in which a judge, after hearing the evidence, makes a determination as to whether there is probable cause that the individual would be found guilty at trial. It is a far lower standard than at grand jury and, because the defendant exercised his or her right to confrontation, any statements made at a preliminary hearing can be used as evidence at trial if the witness is unavailable or unwilling to testify.

The ODAA requested amendments that address each of these concerns. They are posted on OLIS as the -1 amendment.

Absent the adoption of the amendment, the ODAA believes SB 494 and SB 505 will create a grand jury system that damages victims, undermines the criminal justice process and will result in time consuming and costly motion practice.

Thank you.