

March 8, 2017

To: Honorable Floyd Prozanski, Chair  
Senate Judiciary Committee Members

From: Rosemary Brewer, Executive Director, Oregon Crime Victims Law Center

Re: SB 496 and SB 505 – Grand Jury Recordation

Members of the Committee:

The Oregon Crime Victims Law Center is a nonprofit organization that provides free legal representation to crime victims. Our organization has represented victims throughout Oregon on issues ranging from privacy rights to the right to protection and the right to be heard. As attorneys and advocates for victims OCVLC supports grand jury recordation so long as adequate protections for victims are included.

Prior to moving to Oregon I was a prosecutor in two states that do record grand jury proceedings. In both of those states a hearsay exception applied to grand jury testimony – as is true in the majority of states that record grand juries. Most felony cases were presented to the grand jury by case agents, generally either the responding officer or a detective. It's a simple, efficient, and effective method of presenting cases that not only gives the grand jury the necessary information but it also protects the victims in the case from additional trauma and from potential retaliation by the defendant.

The Bill as its written now contains inadequate protections for victims. While there is a protective order provision, the burden is on the victim to seek that order. This burden should not be on the already traumatized and likely unrepresented victim. Asking the victim, who has likely been through the most harrowing experience of his or her life, to prove why they don't want their testimony turned over to the defense just re-victimizes that person and puts one more hurdle up in the quest for justice. The fact is that not all victims will get notice that they can ask for a protective order, or know how to proceed if they do, or know how to find an attorney who will help them file for a protective order.

But the fact remains that even if a victim is successful in getting a protective order, those orders do not always prevent a defendant from getting protected information. My office had a case recently in which the court imposed a protective order on the child victim's interview with CARES NW. Despite that order the defense attorney gave the defendant a copy of the child's interview, and the defendant then sent the transcript out to his family members. Protective orders cannot sufficiently protect a victim's privacy.

The hearsay exception in this bill for children younger than 15 and those with an intellectual disability does not go far enough. There are many vulnerable victims, regardless of age or disability, who need the protection afforded by a hearsay exception for all victims. Victims of sexual assault, elder abuse, domestic violence, and gang violence are susceptible to intimidation and harassment by offenders, and as a society we should strive to protect this vulnerable

population. Amendment 1 provides for full case agent testimony in grand jury, which would serve to protect all victims of every crime. Oregon should follow the example of 45 other states as well as the federal government and allow case agents to testify on behalf of victims and witnesses.