

SB 496 A STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Action Date: 04/18/17

Action: Do pass with amendments. Refer to Ways and Means by prior reference. (Printed A-Eng).

Vote: 4-1-0-0

Yeas: 4 - Dembrow, Linthicum, Manning Jr, Prozanski

Nays: 1 - Thatcher

Fiscal: Fiscal impact issued

Revenue: No revenue impact

Prepared By: Whitney Perez, Counsel

WHAT THE MEASURE DOES:

Requires presiding judges of judicial districts to ensure grand jury proceedings are recorded. Requires grand juror to record the proceeding. Provides for phase-in of recording process based on population of judicial district. Authorizes Chief Justice of Supreme Court to establish policies and procedures to carry out recording requirement. Specifies what matters may and may not be recorded. Creates procedures for release of these recordings. Allows certain people to request protective orders to redact certain information or deny, restrict or defer access to a recording. Specifies when recording may be used in court. Permits peace officer to present certain hearsay statements as evidence at grand jury proceeding. Prohibits release of grand jury recordings as public record. Makes conforming changes.

ISSUES DISCUSSED:

- Impact on victim rights
- Other states use of hearsay at grand jury
- Disclosure of grand jury records when not a true bill concerning a public servant

EFFECT OF AMENDMENT:

Replaces measure.

BACKGROUND:

Senate Bill 496-A directs presiding judges to ensure that grand jury proceedings are recorded. It requires the court to delegate the actual recording to a grand juror and provide instruction to the grand juror on how to record the proceeding. It phases-in the recording requirement based on the judicial district's population. Judicial districts with a population between 150,000 and 300,000 or over 700,000 must begin recording January 1, 2018. The remaining districts must begin recording July 1, 2018. The Chief Justice of the Supreme Court is authorized to establish policies and procedures to carry out the recording requirement. The person recording the grand jury proceeding is not subject to subpoena and cannot disclose information regarding the proceeding without a court order.

SB 496-A specifies what matters before the grand jury must be recorded, such as statements made or questions asked by the prosecuting attorney. It specifies what matters must not be recorded, such as grand jury deliberations. SB 496-A also specifies the procedures for release of these recordings to the defense and prosecution, and generally limits further disclosure. SB 496-A allows the prosecuting attorney, on behalf of a victim or witness, and certain others to file a motion for a protective order. It requires the prosecuting attorney to make this motion if the victim requests it. If only a specific portion of the recording is the subject of the protective order, the motion for

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the protective order must specify the portion of the recording to be redacted. SB 496-A specifies when these recordings may be used in subsequent court proceedings, such as for perjury prosecutions. It further allows a peace officer to present the hearsay statements of certain people, such as a minor victim. Finally, SB 496-A prohibits the release of these recordings as public records.