



April 13, 2015

Senate Committee On Judiciary
Oregon Legislative Assembly
900 Court Street NE
Salem, OR 97301

Re: SB 822 and SB 365

Dear Chair Prozanski and Members of the Senate Committee on Judiciary:

On behalf of the Oregon Network of Child Abuse Intervention Centers, I am writing to express our concerns regarding SB 822 and SB 365, which would mandate the recording of grand jury proceedings.

Child Abuse Intervention Centers (CAICs) throughout Oregon help coordinate the community multidisciplinary team response when there are concerns of child abuse, and provide intervention and follow-up services and referrals to children and their families. CAICs take great care in providing expert forensic interviews for children. Interviews are conducted by trained professionals using evidence-based practices to gather more accurate information and minimize the traumatic impact on children, and are recorded for use in prosecution. In addition, some centers also host grand jury proceedings at the center. CAICs in Oregon serve over 6,200 children each year.

CAICs were created to ensure that children who are the subject of child abuse investigations are not traumatized by the system designed to protect them. Testifying during any legal proceeding is an intimidating and potentially traumatic experience for child victims. However, our current, unrecorded grand jury system offers the benefit of being less formal and a chance for the child to become more comfortable with the court process and being questioned in front of a jury. In order to minimize trauma and reduce the likelihood of inaccurate testimony caused by repeated interviewing, the child is questioned just enough to satisfy legal threshold requirements, unlike in the full trial in which the child will be examined and cross-examined by the parties to establish a complete, detailed account.

Recording grand jury testimony of children would inevitably lead to the child being questioned extensively by the prosecutors in order to create a comprehensive record of what occurred. The child will then be examined and cross-examined exhaustively again at the trial itself. Repeated, suggestive interviewing of child witnesses about abuse is not only traumatic, requiring the child to relive painful experiences, it may also negatively impact the quality of the child's testimony, which undermines the goal of an effective justice system.

We strongly encourage you to consider the implications that these bills may have on child victims throughout the state and to consider alternatives that would meet the underlying concerns of these bills while still protecting our most vulnerable victims. Our hope is that this issue will lead to a larger conversation about how we can minimize trauma for child witnesses during the legal process.

We are happy to answer questions about these concerns, or respond to requests for additional information. Please direct these requests to Patty Terzian, pattyt@childabuseintervention.org or 971-506-2555.

Sincerely,

A handwritten signature in black ink, appearing to read "Patty Terzian". The signature is fluid and cursive, with a prominent initial "P" and a long, sweeping underline.

Patty Terzian
Statewide Manager
Oregon Network of Child Abuse Intervention Centers

CRIME VICTIMS UNITED

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To: All Oregon State Senators and Representatives
From: Steve Doell
Subject: Senate Bill 822
Date: May 4, 2015

As many of you may know, I have been a member of Crime Victims United for twenty-one years, sixteen years as president, and have appeared repeatedly over those years to represent the interests of crime victims in the legislature. I wish to address my deep concerns over SB 822, now being considered in the Joint Committee on Ways and Means, which mandates the recording of grand jury testimony in many serious violent offenses. In its current form it would amount to an assault on the interests of vulnerable victims, many of them children, usually only days after suffering grievous injuries or psychological trauma at the hands of criminal offenders.

While the recording of grand juries is a feasible, although expensive, procedure that has been accomplished in many states across the nation, if this state decides to embark on that procedure, care must be taken to protect the interests of victims and witnesses, as is done elsewhere in the nation. The process proposed in SB 822, however, is little more than a mechanism designed and drafted by defense attorneys whose purpose has nothing to do with procedural transparency, as claimed, but is simply an instrument to obtain additional discovery, and which will, by design or practice, intimidate victims and witnesses.

As SB 822 currently stands, child victims, victims of sexual assaults, domestic violence, kidnapping, those injured in assaults or attempted murders, and at times family members of murder victims will be required to appear in what will amount to a public hearing just days after the crimes occurred. The type of caution and care that is currently afforded to these traumatized individuals will disappear, as SB 822 turns the grand jury process into what amounts to an adversarial deposition procedure.

SB 822, in its current form, makes no attempt to protect the interests of these victims, or of witnesses. Paradoxically, Oregon's law on criminal preliminary hearings, the alternative procedure to grand juries, has for 35 years provided relief for vulnerable victims and witnesses where testimony constitutes a hardship. SB 822 fails to provide even the same limited level of victim protection that the Oregon legislature felt appropriate for preliminary hearings back in 1981, well before the advent of victims rights laws. This is a telling sign that this bill is simply an attempt to transform grand jury procedures into a defense attorney discovery process, while trampling on the legitimate interests of injured and traumatized victims of serious violent crimes, including children of all ages. Please see the attached bullet points that provide a more detailed breakdown of the issues concerning victims and grand jury recordation.

Other jurisdictions, including the federal government and the state of California, have made serious efforts to record grand juries while introducing evidentiary protections for witnesses and victims. SB 822 does none of that.

We urge you to oppose SB 822 until adequate measures can be drafted to protect those among us, especially vulnerable victims, who criminal laws are designed to protect. We believe that the vast majority of Oregonians, once apprised of the origins and goals of SB 822, would agree with that position.

Enclosure: (1)

"To promote a balanced criminal justice system through public awareness and legislative action"

- SB 822 fails to provide any protection whatsoever to grand jury witnesses and victims. Victims, including young children, will be required to testify within days of the crime, while being recorded under oath for tactical use by defense attorneys who will seek to use that testimony against the victim.
- Other states that have established recording procedures for grand juries have done so with adequate protections for witnesses and victims. In California, for instance, the statements of grand jury witnesses may be presented by police officers who took their statements in the criminal investigation.
- In Oregon, paradoxically, there are greater victim protections provided for witnesses in preliminary hearings than exist in SB 822. See ORS 135.173. These protections were provided by the legislature in 1981, well before the advent of victims rights legislation. SB 822 makes no attempt to even provide the same modest protections for victims and witnesses as the legislature thought necessary in a much earlier era.
- In Oregon, under SB 822, paradoxically, more protections would be afforded to police officers in testifying in grand jury proceedings than are afforded victims and witnesses. Oregon law allows police officers to submit their police reports to grand juries through another officer without testifying or being recorded themselves. SB 822 would deny victims and civilian witnesses the same protections and courtesies that the law provides for sworn officers.
- Under SB 822, personal identification information, such as addresses, dates of birth, and medical information will become part of the record, and will expose witnesses to potential identity theft and fraud.
- Under SB 822 the identity of grand jurors, all personal conversation between grand jurors, and the particular questions asked by individual grand jurors will not be protected, and will be the subject of a public record.
- SB 822 provides no clear protection for the privacy of grand jury recordings in cases where no indictment is returned. The bill indicates that grand jury records are “exempt from disclosure under ORS 192.502.” However, such exemptions are not unconditional unless specified. “A public body is ordinarily free to disclose a record or information even if an exemption applies to that record or information” (Oregon Attorney General, Public Records and Meeting Manual). Public agencies in possession of grand jury records may choose, at their discretion, to waive exemptions to disclosure and release such records.
- Large segments of grand jury records are protected under federal law, such as medical records, consumer information, and personal identification information. Unless those records are exculpatory to an accused defendant under federal constitutional law, they remain protected from disclosure. SB 822 makes no provision for the protection of these records, and thus will result in the violation of federal privacy statutes, and will expose the state to litigation for those whose records might be released.



Oregon District Attorneys Association, Inc.

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May 14, 2015

Dear Members of the Oregon Legislature:

The members of the Oregon District Attorneys Association (ODAA) have recently been apprised of the response of the Oregon Criminal Defense Lawyers Association (OCDLA) to a letter generated by Steve Doell of Crime Victims' United regarding SB 822-A. That response, authored by Gail Meyer, is inaccurate in many of its assertions. It seeks blanket support of a bill, SB 822-A, which was drafted by defense attorneys, and which is simply designed to further defense tactics in criminal cases. The assertion that the bill is designed to buttress the grand jury as a "bulwark against false prosecution" is a façade. SB 822-A is a mechanism to do no more than add to the procedural tool chest of criminal defense attorneys in defending those charged with criminal offenses, often at the expense of the privacy and dignity of crime victims.

The members of the ODAA fully recognize the benefits of grand jury transparency, and have introduced a grand jury recording bill, SB 822-A3, which fully complies with the needs of the public to understand the functioning of the grand jury. It resembles the Federal and California grand jury statutes.

The OCDLA objects to the California recordation procedures, however, because they protect the privacy of victims by allowing their statements to be presented in hearsay form by another person before the grand jury. Instead, the defense attorney coalition that has written SB 822-A has demanded sworn recorded statements of witnesses before the grand jury, statements that can in some limited cases be released to the press under the terms of the current bill. This is little more than an assault on the privacy of vulnerable victims and witnesses, and will result, in many cases, in the intimidation of these individuals.

In its response to Mr. Doell's letter, oddly, the OCDLA undertakes to praise the federal grand jury statutes as a model of government transparency, and we agree. What the OCDLA letter fails to mention, however, is that the federal grand jury statutes that they praise, like the California statutes, also protect victims and witnesses by allowing their statements to be presented in hearsay form by another person.

It is also difficult to understand the OCDLA position that the use of hearsay in the grand jury is a "step backwards," and that grand juries cannot perform their functions using hearsay testimony. Current Oregon law allows the use of hearsay testimony in the grand jury for all police officers' statements, which probably constitute 75% of all grand jury testimony. Since the drive for grand jury recordation is largely a result of controversies arising over police conduct in places like Ferguson, Missouri, on its face it is difficult to understand why the OCDLA has drafted a piece of legislation that affords police officers protection from direct

testimony in the grand jury, but not civilian crime victims. The reason, of course, is because SB 822-A is simply designed by defense attorneys to obtain sworn statements from vulnerable victims and witnesses that can be used to undercut them in later proceedings.

Also missing from the OCDLA response is any mention of the federal privacy law implications of SB 822-A. In its current form, this bill violates federal privacy laws, such as HIPAA and financial records privacy provisions, because it mandates the release of information that is deemed private under federal law. As such, the state can expect litigation from those whose privacy has been violated by such releases, including victims and third parties.

Our organization has presented an amendment to SB 822-A which covers all the bases of grand jury transparency, by adopting recordation of all cases before the grand jury and widespread release of grand jury transcripts. In addition, however, and unlike SB 822-A, our amendments protect victims and witnesses in the same manner as federal and California statutes, and comply with federal privacy mandates. In short, we have heard the call for a more open grand jury process.

To achieve that we have designed a process that follows procedures the federal government and the state of California have been using for many years. Our proposal would place Oregon in the mainstream, rather than being an outlier. We believe it is far superior to the measures crafted in SB 822-A, measures that will needlessly harass and re-victimize crime victims. We urge you to examine and support our proposed legislation.

Sincerely,



Bob Hermann
President, Oregon District Attorneys Association
Washington County District Attorney