

## Analysis

### Item 33: District Attorneys and Their Deputies

#### Grand Jury Recordation

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**Analyst:** John Borden

**Request:** Allocate \$882,932 from the special purpose appropriation made to the Emergency Board for District Attorneys and Their Deputies for costs related to grand jury recordation.

**Analysis:** The Legislature in 2017 enacted SB 505, relating to recording of grand jury proceedings (Chapter 650, 2017 Laws). The measure was effective on passage but included various operative dates. The measure requires county district attorneys to electronically record all grand jury proceedings, and to store and maintain copies of the audio recording. Three counties [District Attorney Offices or DAs], Multnomah, Deschutes, and Jackson, were required to begin recording grand jury proceedings on March 1, 2018, with all other counties beginning on July 1, 2019.

The Public Defense Services Commission (PDSC), the Oregon Judicial Department (OJD), and each county that begins the recording of grand jury proceedings by March 1, 2018, are to submit a preliminary report to the Legislature by December 1, 2018 (see Emergency Board Items #3 and #4). A second report is to be submitted on the implementation of the recording requirements to the Joint Committee on Ways and Means and the Legislative Assembly committees related to judiciary by February 1, 2019. The reports are to include an initial assessment of the implementation in the early-implementing counties; relevant information and data regarding the grand jury recording process; the preliminary hearing process; protective order process and data; information related to transcription; changes to policies or processes; and any legal issues or challenges arising from this measure.

#### Initial Budget Impact

OJD was provided funding to purchase, and maintain, the recording equipment for DAs as well as 15 positions (9.79 FTE) to assist with processing protective orders and conducting preliminary hearings. While PDSC, DAs, or counties received no initial appropriation of funds, the Legislature make a \$7.9 million special purpose appropriation to the Emergency Board for additional expenses, if necessary, to implement SB 505. The special purpose appropriation will expire in December 2018, but funding will still be available through the legislative appropriation process.

#### District Attorneys and Their Deputies Budgeting

DAs are state employees and, by statute, the state is responsible for providing their salaries. There is a two tier, annual compensation plan for DAs, based on population. In addition, the state funds other payroll expenses and charges that primarily cover tort liability and other insurance for DAs. This is the extent of direct state funding for DAs.

Apart from state funding, some 26 counties have elected to provide supplemental compensation for their elected DA. Counties are also responsible for providing funding for: approximately 350 deputy district attorney positions; administrative support; facility space; and services and supplies. Counties also fund: expert and other witness fees for grand jury proceedings; trials; probation violation hearings; pre-trial hearings; and other court actions; as well as, stenographic assistance. The state

budget has not contributed to the cost of the deputy district attorneys since the 2007-09 biennium nor witness fees for trials and grand jury hearings in criminal proceedings since the 1999-2001 biennium.

State funding for DAs flows through the state agency District Attorneys and Their Deputies budget (SB 5515; Chapter 535, 2017 Laws) and is distributed by the Department of Justice to each county.

### County Budgeting

For any possible state allocation of funding for county government, two issues are of note. County government budgets on a fiscal year basis, as opposed to the state's budgeting on a biennial basis. Second, as opposed to state agencies, neither the Emergency Board nor the Legislature has the direct ability to independently verify costs and cost estimates provided by county governments or the Oregon District Attorneys Association, on behalf of the District Attorneys and Their Deputies.

### State Budgeting

The Emergency Board request for December is comprised of a single request from the Oregon District Attorneys Association (ODAA), on behalf of the District Attorneys and Their Deputies (\$882,932) for the three early implementing counties. This is for costs from March 1, 2017 to June 30, 2019 or the end of the biennium (16 months), including some limited pre-implementation planning costs. No new position establishments or full-time equivalents (FTE) were requested. No request was made for the 33 remaining counties or other affected public safety entities; however, ODAA anticipates making a budget request early in the next legislative session for the remaining 33 counties, which would require implementation funding prior to July 1, 2019. For the 2019-21 biennium, the DA's estimate the cost of grand jury recordation at \$5 million General Fund and the cost of preliminary hearings at an additional \$1.8 million General Fund.

### Special Purpose Appropriation - Preliminary Hearings

Article VII, section 5, of the Oregon Constitution provides three ways by which the state may commence with a felony prosecution, which include: 1) by way of grand jury indictment; 2) upon information of the District Attorney after a preliminary hearing before a judge; or 3) if the defendant waives the right for the case to be reviewed by either a grand jury or a judge.

While county district attorneys may pursue any of these options, the policy direction of SB 505, and therefore the fiscal and budgetary impact, as well as the intent of the special purpose appropriation, is presumably limited to recordation of the grand jury indictment process.

During the 2017 legislative session, SB 505 was referred to the Joint Committee on Ways and Means where a budget report was produced, as is practice for measures passed out of the joint committee, in lieu of a formal fiscal impact statement. A preliminary fiscal impact was, however, produced by ODAA. Due to the recordation of grand jury proceedings, that impact predicted a substantial shift from grand juries to preliminary hearings. For the three early implementing counties, such a shift has failed to materialize, at this time. Multnomah County was the only early implementing county that has employed limited use of preliminary hearings and well below what had been predicted for the county in the ODAA preliminary fiscal impact. The Multnomah County DA then discontinued using preliminary hearings and moved to exclusive use of the grand jury process. The request letter does note that the Jackson County DA may consider the use of preliminary hearings at a later time. The Deschutes County DA has chosen to continue using the grand jury process.

This Emergency Board request includes no explicitly requested funding for preliminary hearings.

### Grand Jury Recordation

For the three implementing counties, there are direct costs that are attributable to the implementation of grand jury recordation. These costs are: (1) protective orders, which only apply to grand jury process (\$13,297); (2) non-attorney staff to manage recording equipment and train grand jurors on the use of equipment (\$106,338); (3) non-attorney staff to review and redact grand jury recordings (e.g., recordings of grand jury deliberation and voting)(\$37,900); (4) production of transcripts (\$125,010); (5) non-attorney staff to review transcripts (\$27,227); (6) information technology costs for the day-to-day upkeep of recording devices and the storage or archiving of recordings (\$40,054); and (7) one-time setup/startup costs (\$49,578). These one-time startup costs include: updates to policies and procedures; case management system programming; data systems; and training. Of note, is that these costs vary between counties, sometimes significantly. There is no funding request to move from the grand jury indictment process to preliminary hearings nor was there a request from any of the three county Sheriff's Offices.

Non-attorney staff to manage recording equipment, to train grand jurors on the use of equipment, and to review and redact grand jury recordings appears to be legitimate SB 505-related expenses, but expenses that should not be budgeted by the state as personal services costs due to the discrepancies between state and local classifications and compensation plans. Instead, these costs should be budgeted as payments to counties.

The more complicated aspect of the implementation of grand jury recordation is additional deputy district attorney time to: (a) prepare and present grand jury cases (\$108,557); (b) review grand jury recordings (\$374,971); and (c) produce protective orders (\$13,297). Any deputy district attorney time should, as is current state policy, remain the funding responsibility of each county.

### Future Budget Requests

The Legislative Fiscal Office (LFO) recommends that work should be completed to develop a more standardized budget request format as the grand jury recordation requirement approaches statewide rollout. Included in this work would be guidance based on the Emergency Board's actions, absent other legislative direction, from ODAA to the counties with respect to which expenses related to implementation of SB 505 are eligible for state reimbursement and which are not eligible. This would be valuable for future requests so that there is a single set of expense reimbursement criteria instead of relying on each county to develop its own expectations.

### Reimbursement

As part of this request, and in an effort to provide increased accountability for state funds, LFO is recommending that the three counties be required to submit invoices, with supporting documentation, to the Department of Justice for reimbursement of eligible grand jury recordation expenses that are based on the funding approved by the Emergency Board. DOJ has a General Funded ODAA Coordinator position and administrative staff to accommodate this additional workload this biennium.

**Legislative Fiscal Office Recommendation:** Allocate \$386,107 from the special purpose appropriation made to the Emergency Board for the District Attorneys and Their Deputies for current costs related to grand jury recordation and direct the Department of Justice to reimbursement counties for eligible grand jury recordation expenses, as approved by the Emergency Board.

## Recommendation Addendum

	Expense Category	LFO Recommendation				
		MCDA	DCDA	JCDA	Total	
1	Increased Deputy District Attys. Grand Jury Time	\$ -	\$ -	\$ -	\$ -	Not recommended
2	Protective Orders	\$ -	\$ -	\$ -	\$ -	Not recommended
3	Staff to Manage Recording Equipment	\$ 8,124	\$ 3,634	\$ 94,580	\$ 106,338	Fully funded
4	Deputy DA review of grand jury recordings	\$ -	\$ -	\$ -	\$ -	Not recommended
5	Staff to Review Recordings	\$ 17,900	\$ 20,000	\$ -	\$ 37,900	Fully funded
6	Transcripts	\$ 82,280	\$ 16,450	\$ 26,280	\$ 125,010	Fully funded
7	Non-Legal staff Review of Transcriptions	\$ 20,466	\$ 6,761	\$ -	\$ 27,227	Fully funded
8	Preliminary Hearings	\$ -	\$ -	\$ -	\$ -	Not recommended
9	Review of Preliminary Hearing Recordings	\$ -	\$ -	\$ -	\$ -	Not recommended
10	Information Technology Costs	\$ 25,509	\$ 11,200	\$ 3,345	\$ 40,054	Fully funded
11	Other One-Time Costs	\$ 31,959	\$ 12,797	\$ 4,822	\$ 49,578	Fully funded
		\$ 186,238	\$ 70,842	\$ 129,027	\$ 386,107	

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**Request:** Allocate \$882,932 from the Special Purpose Appropriation made to the Emergency Board for the District Attorneys' costs to implement Senate Bill 505 for the recordation of grand jury proceedings in Multnomah, Deschutes and Jackson counties.

**Recommendation:** Approve the request.

**Discussion:** The Oregon District Attorney's Association, Inc. (ODAA) request funding for the outlined expenses associated with implementing Senate Bill 505, the recording of grand jury testimonies and the costs associated with conducting preliminary hearings in lieu of grand jury proceedings for the Phase I counties (Multnomah, Deschutes and Jackson). ODAA is a voluntary association of the 36 County District Attorneys, Deputy District Attorneys, Oregon Assistant Attorney General, District Attorney office managers and the U.S. Attorneys serving in Oregon.

Senate Bill 505 outlined a phased approach for all 36 counties. Multnomah, Deschutes and Jackson counties began enacting Senate Bill 505 grand jury recording effective March 1, 2018. All other counties are expected to record grand jury proceedings no later than July 1, 2019.

The Oregon Judicial Department is responsible for the purchase and installation of the recording equipment for the counties. The direct maintenance of the equipment is expected to be handled through a service agreement. The counties are responsible for preparing the site location to receive the new recording equipment, the day-to-day operations of the equipment and the resources needed to perform all functions as outlined in Senate Bill 505. Senate Bill 505 established an \$8,500,000 Special Purpose Appropriation in the Emergency Fund for additional expenses necessary to implement the requirements of the bill.

This request includes projected costs based on actual costs experienced thus far with the implementation of Senate Bill 505. The following table provides an outline of the requested expenses. The needs of the three counties are focused on staffing, resources, county existing infrastructures or changes the counties need to make, depending on how they prosecute cases. The following table includes increased time Deputy District Attorneys spend presenting to grand juries and preparing protective orders, recording equipment maintenance, additional staff and increased IT costs transcription costs and various one-time start-up costs. Each county's District Attorney's office priced each component based on implementation experience of its District Attorney's office, as implementation has been different across the three counties.

Costs as described in ODAA report and addendums				
Items and Description	Counties			Totals
	Multnomah	Deschutes	Jackson	
<b>March 1, 2018 thru June 30, 2019</b>				
Additional case time costs for a Deputy District Attorney (County hours are converted to dollars)				
<b>Multnomah:</b> Projecting 2485 Hours annually	59,738			<b>59,738</b>
<b>Deschutes:</b> averaging 1200- 1500 hours annually		34,493		<b>34,493</b>
<b>Jackson:</b> averaging 1000 hours annually			14,326	<b>14,326</b>
Protective Orders	645	7,044	5,608	<b>13,297</b>
Managing recording equipment and training the jury	8,124	3,634	94,580	<b>106,338</b>
Transcription of grand jury recordings	102,746	23,211	26,280	<b>152,237</b>
Staff for reviewing grand jury recordings	258,659	149,248	4,964	<b>412,871</b>
Information Technology cost	25,509	11,200	3,345	<b>40,054</b>
One-time costs to attend training on the use the new recording equipment	31,959	12,797	4,822	<b>49,578</b>
<b>Total</b>	<b>487,380</b>	<b>241,627</b>	<b>153,925</b>	<b>882,932</b>

The recommendation is to approve the request as one-time funding per information provided in the Senate Bill 505 Budget Report.

**Legislative Reference:** Allocation of \$882,932 from the Special Purpose Appropriation made to the Emergency Board by chapter 650, section 17(1), Oregon Laws 2017, to supplement the appropriation made by chapter 535, section 1, Oregon laws 2017, for the District Attorneys, for the 2017-19 biennium.



# Oregon District Attorneys Association, Inc.

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October 29, 2018

The Honorable Senator Peter Courtney, Co-Chair  
The Honorable Representative Nancy Nathanson, Co-Chair  
State Emergency Board  
900 Court Street NE  
H-178 State Capitol Salem, OR 97301-4048

Dear Co-Chairpersons:

### **Nature of the Request**

The 2017 Legislature passed the most significant procedural change to District Attorney's operations in decades with Senate Bill 505 (SB 505) which mandated three counties to begin recording all grand jury proceedings by March 1, 2018. By July 1, 2019, all 36 district attorney's offices in Oregon must record, and comply, with all provisions of SB 505. Deschutes County District Attorney's Office (DCDA), Jackson County District Attorney's Office (JCDA) and Multnomah County District Attorney's Office (MCDA) are the three counties that began recording March 1, 2018. ODAA seeks initial funding from the State Emergency Board for DCDA, JCDA and MCDA for implementation costs totaling \$882,932 from the Special Purpose Appropriation outlined in Section 17 of the bill allocating \$8,500,000.

### **Agency Action**

As MCDA, DCDA and JCDA have implemented SB 505 several steps have been taken to ensure verbatim recording is handled professionally, effectively and efficiently, that grand jury protocols are fair and in place and that adequate protections for victims and witnesses are established. To that end, you will see each county has executed implementation of recordation based on its particular needs and evaluation of the above considerations. ODDA requests funding for costs incurred with grand jury recordation that include, but not limited to, increased Deputy District Attorney (DDA) time, recording equipment maintenance, staffing and IT costs, transcription costs, protective order costs, costs associated with preliminary hearings and various one-time start-up costs.

## 1. Increased DDA Time – Present to Grand Jury

Prior to SB 505, MCDA, DCDA and JCDA presented all felony cases to the grand jury. The length of time required to present each case to grand jury varies significantly. A drug possession or delivery case can take as little as 10 to 15 minutes while an aggravated murder or complex financial embezzlement case can require 30 to 40 hours or more to present. DCDA averages 1,200 to 1,500 hours of grand jury time annually, JCDA averages 1,000 hours and MCDA projects 2,485<sup>1</sup> hours for the current biennium. SB 505 requires recordation of all testimony to the grand jury. Due to the change to recording grand jury testimony, there is now a need for witnesses to respond verbally rather than with gestures, and the need to clarify physical responses for the record. As a result, there has been an increase in the time to prepare and present cases to the grand jury.

### **Increased DDA Time – Grand Jury: March 1, 2018 – June 30, 2019**

MCDA	\$59,738 <sup>2</sup>
DCDA	\$34,493 <sup>3</sup>
JCDA	\$14,326 <sup>4</sup>

## 2. Protective Order Expenses

Under SB 505 a district attorney may file a motion for a protective order concerning an audio recording of a grand jury proceeding. This motion is filed on behalf of a victim or a witness that has testified at the recorded grand jury proceeding and the district attorney is obligated by SB 505 to inform the victim of the ability to seek a protective order. There are strict timelines which the district attorney must follow. If granted by a judge, the protective order allows for the redaction of audio recordings, notes, reports, and transcripts. The order may also deny, restrict, or defer access to the recording. The protective order only applies to cases that have been heard by a grand jury. Cases that proceed to a preliminary hearing are not contemplated by this provision.

The number of protective orders will vary by county based on the number of cases sent to grand jury versus preliminary hearings, preferences of victims and types of cases. The expenses incurred due to the protective order statute include preparation and dissemination of materials

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<sup>1</sup> MCDA's projected 2,485 hours (149,112 minutes) for the current biennium for cases presented to a grand jury does not include time for cases that are presented at a preliminary hearing. Preliminary hearing cases are addressed in the "Preliminary Hearing Costs" section. The projected increase in grand jury time due to recordation is 741 hours for the current biennium.

<sup>2</sup> MCDA's average amount of time for the same type of case to be heard by a grand jury has increased from 40 minutes to 57 minutes since recordation began on March 1, 2018. A significant portion of cases that would have taken 30 minutes or less are now being presented at a preliminary hearing and are not a part of the increased time calculation for grand jury. The increased cost of grand jury is calculated by using the increase of grand jury time multiplied by the FTE salary of an entry level Deputy District Attorney III. See MCDA's appendix, Note 1 and Note 2.

<sup>3</sup> DCDA reflects 15-minute increase per case for DDA (\$80.78) and Grand Jury staff (\$45.43) to prepare and present 100 cases per month.

<sup>4</sup> Reflects 20% increase in time for DDA to present and prepare.

to victims, training of victim advocates, attorney review of recordings, and preparation and filing of protective orders.

**Increased DDA Time – Protective Orders: March 1, 2018 – June 30, 2019**

MCDA	\$645 <sup>5</sup>
DCDA	\$7,044 <sup>6</sup>
JCDA	\$5,608 <sup>7</sup>

3. Recording Equipment, Staff and DDA Time Expenses

The Oregon Judicial Department (OJD) provided the recording equipment to the three early counties in February 2018. Upon delivery, MCDA, JCDA and DCDA installed the equipment in the grand jury rooms. Additional support staff time is necessary to prepare the recording equipment each day and to train new grand jurors on the proper use of the equipment. The level of need varies by county, as some counties currently have grand jury clerks while other counties do not have clerks or have insufficient personnel. Although the equipment that is being supplied by OJD is less complex than the equipment used in court, there are a number of identifying markers that the grand jury will need to insert<sup>8</sup> at the precise moment of testimony of each witness in order to produce an accurate and searchable recording. Case information is pre-loaded into the FTR by staff.

Staff will also be trained to review recordings, identify portions which may need to be redacted, archive recordings, and produce recordings for the purpose of transmitting the recordings to deputy district attorneys and defense attorneys. In addition, only the case name and number, name of each witness and questions asked are recorded – the deliberations or vote are not allowed. Thus, staff will be required to review and delete if necessary, these recordings.

A DDA will also need to review grand jury recordings as part of case management and trial preparation. If a grand jury hearing results in an indictment of a defendant, then the case proceeds towards resolution, through plea, trial, or dismissal. In order to evaluate the strengths and weaknesses, each case is continually evaluated. A deputy district attorney must review all the evidence, which will now include reviewing the audio recordings of the grand jury proceeding. In many cases, the assigned deputy district attorney is unable to personally present the case to the grand jury and will have to thoroughly review the recording.

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<sup>5</sup> MCDA estimates that 0.3% of cases presented to a grand jury may require a protective order (See Appendix A, Note 3) as there has been little use of this provision at this time.

<sup>6</sup> DCDA calculation based on six protective orders per year with DDA (\$80.78) prep and argument at 6 hours GJ staff (\$45.43) at 2 hours, VAP (\$35.00) at 3 hours and IT (\$50.00) at 4 hours.

<sup>7</sup> Based on reviewing 4 per month, filing 1 per month and 30 minutes per week for victim services.

<sup>8</sup> MCDA has discontinued the practice of having grand jurors input witness names in to the log sheet as it has proven too time consuming and complex for the grand jurors.

**Increased Staff Time –Non-DDA Managing Recording Equipment: March 1, 2018 – June 30, 2019**

MCDA	\$8,124 <sup>9</sup>
DCDA	\$3,634 <sup>10</sup>
JCDA	\$94,580 <sup>11</sup>

**Increased Staff Time – DDA Reviewing Recordings: March 1, 2018 – June 30, 2019**

MCDA	\$240,759 <sup>12</sup>
DCDA	\$129,248 <sup>13</sup>
JCDA	\$4,964 <sup>14</sup>

**Increased Staff Time – Non-DDA Reviewing Recordings: March 1, 2018 – June 30, 2019**

MCDA	\$17,900
DCDA	\$20,000
JCDA	\$0

Prior to the passage of SB 505, the only recordings of testimony that existed in most criminal cases in Oregon were from court room matters, including release hearings and trials. Grand jury recordation is a major system change to criminal law practice. It is anticipated that grand jury recordings will also be transcribed for the purpose of use during trial, by both the prosecution and the defense. Defense counsel will likely cross-examine witnesses during trial with the prior recorded grand jury testimony. Deputy district attorneys will likely use the grand jury recordings to refresh the recollection of witnesses and victims during trial. The best practice (and most practical compared to audio) is to use a transcription of the recording. MCDA, DCDA, and JCDA have each submitted estimates as what percentage of cases will require transcription, for the purpose of trial preparation.

In addition, if the court so orders, District Attorneys are obligated to provide a transcript to a requesting member of the public for any case in which a grand jury finds “not a true bill” for

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<sup>9</sup> MCDA’s expected cost is based upon the projected 86 hours over the course of the current biennium that it will take non-attorney staff to initially train grand jurors to use the recording device. There are a total of 72 grand jury panels every two years, as MCDA utilizes three grand jury panels each day. Additionally, non-attorney staff will spend 20 minutes each day (110 hours over two years) to prepare the three recording devices for use. This would be equivalent to 0.04 FTE for an Office Assistant Senior (See Appendix A, Note 5).

<sup>10</sup> DCDA accounts for Grand Jury at 2 hours of Orientation and 3 additional hours of case data entry per month.

<sup>11</sup> Includes full time legal assistant to set up and manage equipment, provide discovery copies to defense, trouble shoot equipment problems and enter recording into case management system.

<sup>12</sup> MCDA estimates it may take MCDA non-attorney staff approximately 435 hours to verify 2,485 hours of grand jury recordings, for a cost of \$17,900 in the current biennium (See Appendix A, Note 6). Staff samples the beginning of the recording, a portion of the middle, and the end to ensure the entire case was recorded by the grand jury and that the case number has been included. The cost of a Deputy District Attorney III to review grand jury recordings in anticipation for trial is \$200,299 based on every hour of recording taking one hour to review. Review of the recorded testimony is critical and a best practice.

<sup>13</sup> DCDA estimates 100 cases per month with DDA (\$80.78) charged at 1 hour, GJ Staff (\$45.43) at 20 hours, and TAs (\$36.38) at 21 hours as time spent reviewing recordings/ discovery.

<sup>14</sup> JCDA will review all audio or transcriptions on an as-needed-basis. Above based on 50 hours per year x average DA salary at \$44.05 per hour.

acts by a public servant while in the performance of the public servant's duties. The person filing the motion for the release of the transcript is responsible for the cost of the production.

**Staff Review of Recording to Transcript – Non-DDA: March 1, 2018 – June 30, 2019**

MCDA	\$20,466
DCDA	\$6,761
JCDA	\$0

**Transcription Costs: March 1, 2018 – June 30, 2019**

MCDA	\$82,280 <sup>15</sup>
DCDA	\$16,450 <sup>16</sup>
JCDA	\$26,280

**4. Preliminary Hearing Expenses**

As implementation of recordation takes place, some offices have also chosen to take certain cases to preliminary hearings, in lieu of grand jury<sup>17</sup>. Unlike grand juries, preliminary hearings are held in open court, include cross-examination by defense counsel, and are presided over by a circuit court judge. While these costs are not mandated by SB 505, they are a direct result of the procedural changes reflected in SB 505 and are reflective of various strategic and community-based reasons for an elected to choose to utilize preliminary hearings in lieu of grand jury including responsible transparency where the public and a judge are engaged on the charging decision, legal considerations, practical and logistical issues, and the concern for protecting vulnerable victims and witnesses. While SB 505 does not mandate the use of preliminary hearings, its fundamental change to Oregon's criminal procedural does require each elected to evaluate the method by which they present cases in their county.

At this time, MCDA estimates<sup>18</sup> that a significant number of their felony cases will be presented at a preliminary hearing, and that the balance of the felony cases will continue to be presented

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<sup>15</sup> MCDA anticipates that 20% of cases that are presented to the grand jury will be transcribed by SpeakWrite, a transcription company based in Texas. Transcription services for multi-speaker recordings are two cents per word. Transcriptions can be prepared, in most cases, within twenty-four hours. Based upon the transcripts already completed by SpeakWrite, MCDA estimates that it costs \$3.34 to transcribe one minute of grand jury testimony (This is based upon 11 transcripts, which totaled 671 minutes of recorded grand jury time and 112,196 words. At two cents per word, the rate equals \$3.34 per minute). The estimated cost of grand jury transcription is \$74,705 (See Appendix A, Note 7). The Office Assistant Senior will then verify each transcript, at an estimated cost of \$21,094 (See Appendix A, Note 12), against the recording prior to the case DDA approving the transcription for release to defense counsel. The total cost is \$95,799.

<sup>16</sup> DCDA estimates it will only transcribe cases that are going to trial. The above figure estimates 25 pages x \$7 a page x 94 trials. Discussions are on-going with defense counsel specific to clarify if a public defender uses state funds to create a transcript of a grand jury recording, will they provide a copy to the state?

<sup>17</sup> Article VII (Amended), section 5, of the Oregon Constitution provides only three ways by which the state may commence with a felony prosecution, which include; 1) By way of grand jury indictment, 2) upon an information of the District Attorney after a preliminary hearing before a judge, or 3) if the defendant waives the right for the case to be reviewed by either a grand jury or a judge.

<sup>18</sup> Based upon current projections, 1,680 felony cases will be presented at a preliminary hearing, which is 39% of all felony cases. MCDA set an initial projection of 70% of felony cases to be presented at a preliminary hearing. This projection did not take in to account cases that are initially set for a preliminary hearing, but are then set for grand

to a grand jury. DCDA estimates that 100% of cases will be presented to the grand jury and JCDA estimates that 85% of their cases will be presented to grand jury and 15% of their cases will go to preliminary hearings. While there will be additional costs associated with preliminary hearings, there are also potential cost-savings. Cases may resolve more quickly, as the defendant will have had an opportunity to view and test the state's evidence in open court shortly after arrest.

**Preliminary Hearing Costs: March 1, 2018 – June 30, 2019**

MCDA	\$0 <sup>19</sup>
DCDA	\$0 <sup>20</sup>
JCDA	\$0 <sup>21</sup>

Preliminary hearings are recorded court proceedings. Much like the recording of grand jury cases, each deputy district attorney will need to review preliminary hearing transcripts and recordings in preparation of case resolution through plea, trial, or dismissal.

**Review of Preliminary Hearing Recording Costs: March 1, 2018 – June 30, 2019**

MCDA	\$0
DCDA	\$0
JCDA	\$0

Preliminary hearings are recorded by the court. In anticipation of trial, the deputy district attorney will need a transcript of the preliminary hearing. It is not yet clear what impact preliminary hearings will have upon the average lifespan of a case and whether preliminary hearing cases will resolve more quickly than cases that proceeded to a grand jury. More data should be available in December of 2018.

5. IT Expenses

While SB 505 requires OJD to purchase equipment and retain a service agreement, day-to-day maintenance and upkeep of recording equipment and troubleshooting will be the responsibility of the district attorney. The capabilities of district attorneys' offices vary dramatically from county to county. In counties with limited or no IT maintenance capacity, there will need to be

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jury because the defendant or critical witnesses failed to appear for the preliminary hearing. It also did not account for Direct Present cases which cannot be presented at a preliminary hearing.

<sup>19</sup> MCDA implemented a phased plan with partner agencies to move to preliminary hearings. In November 2017, drug related cases became the first crime category to begin utilizing preliminary hearings. In January 2018, property crime cases began employing preliminary hearings. In March 2018, the remaining crime categories of cases began to utilize preliminary hearings. On average, the types of cases that are presented at a preliminary hearing utilize about thirty minutes of recorded court time. The same cases, in the experience of MCDA, would have taken close to thirty minutes to present to a grand jury. The cost in court time to MCDA to present these types of cases at a preliminary hearing is about the same cost as presenting these cases to a grand jury. However, MCDA is not calculating, in this zero-cost analysis, the incalculable cost of re-scheduling 29% of cases, initially set for a preliminary hearing, for grand jury due to the failure to appear of defendants, victims, and critical witnesses. There are other costs and systemic implications of preliminary hearings to MCDA, the court, defense counsel, the Sheriff, and other law enforcement partners that are not captured in the current zero-cost projection for MCDA.

<sup>20</sup> DCDA does not anticipate Preliminary Hearings.

<sup>21</sup> JCDA is not currently doing preliminary hearings but may consider them in the future.

contracts with county IT departments or additional in-house personnel. Also, OJD is purchasing servers for storage capacity, but the management of the server will be the responsibility of district attorneys' offices. Some offices do not store data locally but use cloud-based storage and discovery systems. OJD is not responsible for the purchase or monthly fees associated with such systems.

JCDA is part of a flexible IT pool facilitated by the county. JCDA uses a cloud-based storage and discovery system which charges a monthly fee based on storage requirements.

MCDA has three IT staff that has been addressing any IT issues with the four recording devices that have been connected to the MCDA network. Their assistance has been additional to their normal work duties and responsibilities. The recording system will need on-going maintenance and administration.

**IT Costs: March 1, 2018 – June 30, 2019**

MCDA	\$25,509 <sup>22</sup>
DCDA	\$11,200 <sup>23</sup>
JCDA	\$3,345 <sup>24</sup>

**5. One-Time Expenses**

In preparing for grand jury recordation and proceeding to preliminary hearings for many felony cases, there are several one-time costs. Offices will need to revise current policy manuals and/or develop new manuals. Counties use different case management systems and each system will need to be updated to accommodate new documents and storage of data recordings. Recording system set up will require IT support. Data lines may need to be installed depending on the location of the equipment.

**One-time Costs: March 1, 2018 – June 30, 2019**

MCDA	\$31,959 <sup>25</sup>
DCDA	\$12,797 <sup>26</sup>
JCDA	\$4,822

**Action Requested**

Approve the appropriation of \$882,932 from the special purpose appropriation for Oregon District Attorneys:

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<sup>22</sup> MCDA costs are for annual software maintenance and support, the addition of data lines, as well as 0.10 FTE for a systems analyst to provide on-going support (See Appendix A, Note 13).

<sup>23</sup> DCDA anticipates IT data storage management for IT (\$50.00) at 14 hours per month.

<sup>24</sup> Includes storage of 75 GB per year and IT expenses for maintenance.

<sup>25</sup> MCDA's one-time itemized costs are from October of 2017 through March of 2018, for both grand jury recording and preliminary hearings. These costs include the expenses of a Deputy District Attorney III and a Senior Legal Assistant to develop training materials, policies, and procedures, as well as time spent for travel, internal and external meetings, and trainings of attorneys and staff (See Appendix A, Note 14).

<sup>26</sup> DCDA's one time start-up costs are from October 2017 through March, 2018.

**March 1, 2018 – June 30, 2019**

MCDA \$487,380

DCDA \$241,627

JCDA \$153,925

TOTAL: \$882,932

**Legislation Affected**

Chapter 650, Oregon law 2017, to supplement the appropriation made by chapter 535, section 1, Oregon Law 2017, for the District Attorneys and Their Deputies for the 2017- 19 biennium.

Sincerely,

TIM COLAHAN  
Executive Director  
Oregon District Attorneys' Association

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