



The comprehensive resource on domestic violence

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MEMORANDUM

To: The Ohio Constitutional Modernization Commission
From: Nancy Neylon, Ohio Domestic Violence Network
Date: June 5, 2017
Re: Grand Jury Issues

The Ohio Domestic Violence Network, Ohio's federally recognized statewide domestic violence coalition, serves as a critical resource for professional training, resources, public education and advocacy for Ohio's domestic violence agencies and other allied organizations. We are writing to express our serious concerns regarding the right of the accused to have a record of the grand jury testimony of any witness who is called to testify at trial which the Judicial Branch and Administration of Justice voted to support at its meeting on March 9, 2017. The Ohio Domestic Violence Network (ODVN) does not believe that any potential changes to the grand jury process should be mandated via a constitutional amendment; rather the Ohio General Assembly would be the more appropriate venue to consider the need for the changes and is better situated to balance the concerns of both victims and the accused. While ODVN recognizes that these are important issues that need to be addressed, it is far easier and less costly to navigate related challenges through the use of the legislative construct rather than a constitutional amendment.

More importantly, ODVN strongly believes that this reform would have a chilling effect on victims of domestic violence, sexual assault and stalking who choose to come forward to testify in felony cases. Making a recording of grand jury proceedings and then making them immediately available to the defense would potentially make it less likely for victims or witnesses to come forward. The closed nature of the grand jury process is meant to encourage the participation of witnesses who might be otherwise unwilling to provide meaningful testimony for grand juries to consider when deciding a possible indictment. Such testimony, when needed, would be much harder to come by if potential victims or witnesses could be scrutinized for each word spoken to a jury. This could be especially true in cases of child sexual abuse or in domestic violence cases where the fear factor is particularly acute. It also has the potential for not only enhanced witness intimidation but further assaults and even homicide.

Victims of domestic violence are frequently intimidated during the course of a criminal trial as are their children, family and friends. In a study conducted in Duluth Minnesota specifically on intimidation in domestic violence cases, one critical gap found in victim/witness safety was that the alleged offender intimidated witnesses at the point in the justice system when their role as a witness was recognized or exposed.

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Finally, there are privacy concerns among some who fear that recorded testimony may end up in the public domain. The privacy of the grand jury is to protect witnesses and the value of the privacy of the grand jury has long been upheld by the US Supreme Court. The US Supreme Court identified several reasons for this. First, without the assurance of confidentiality many witnesses would hesitate to come forward willingly, knowing that the people against whom they were testifying would find out about it. Second, those that did come forward would be less likely to testify "fully and frankly" because they could be vulnerable to retribution. Third, the alleged offender might flee or try to intimidate the individual grand jury members, and fourth, that the process protected those accused but not indicted.

Thank you for your careful and considered review of the concern of the Ohio Domestic Violence Network. If there should be additional questions I can be reached at 614-781-9651, Ext. 227 or by email at nancyn@odvn.org.