

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 1550**

1 On page 1 of the printed bill, line 3, after the second semicolon delete the
2 rest of the line and delete line 4 and insert “and prescribing an effective
3 date.”.

4 Delete lines 6 through 25 and delete pages 2 through 20 and insert:

5 **“SECTION 1. (1)(a) The presiding judge of a judicial district with a
6 population between 150,000 and 300,000 or over 700,000 shall ensure that
7 proceedings before the grand jury are recorded in the manner de-
8 scribed in this section and section 2 of this 2016 Act.**

9 **“(b) The court shall provide and maintain suitable audio electronic
10 recording devices to record grand jury proceedings.**

11 **“(c) The Chief Justice of the Supreme Court shall designate the
12 types of audio electronic recording devices that are suitable for re-
13 cording grand jury proceedings and may establish policies and proce-
14 dures by rule or order to carry out the provisions of this section and
15 sections 2 and 3 of this 2016 Act.**

16 **“(d) The prosecuting attorney shall provide the court access to the
17 premises in which the grand jury fulfills its obligations and the re-
18 cording equipment used to carry out the provisions of this section and
19 section 2 of this 2016 Act. The presiding judge of each judicial district
20 may enter into an agreement with the prosecuting attorney that
21 identifies the conditions and terms of access.**

1 “(2)(a) A clerk of the court shall be permitted to attend all pro-
2 ceedings of the grand jury for the purpose of electronically recording
3 the proceedings described in section 2 of this 2016 Act.

4 “(b) Notwithstanding paragraph (a) of this subsection, the court
5 may, upon request of the prosecuting attorney or defense attorney,
6 appoint a certified shorthand reporter as defined in ORS 8.415 or a
7 shorthand reporter certified by a national certification association,
8 who shall be permitted to attend all proceedings of the grand jury for
9 the purpose of taking accurate notes. The shorthand reporter’s ser-
10 vices shall be paid for by the party requesting the shorthand reporter.
11 The shorthand reporter shall be sworn to correctly report the pro-
12 ceedings of the grand jury described in section 2 of this 2016 Act and
13 to keep secret any information concerning the grand jury proceedings.

14 “(c) A clerk of the court or shorthand reporter is not subject to
15 subpoena, and may not disclose any information, concerning the grand
16 jury proceedings without prior court order.

17 “(3)(a) A failure of an audio electronic recording device to accu-
18 rately record all or part of a grand jury proceeding does not affect the
19 validity of any prosecution or indictment.

20 “(b) A failure of a clerk of the court to operate an audio electronic
21 recording device in a manner that accurately records all or part of a
22 grand jury proceeding, as required, does not affect the validity of any
23 prosecution or indictment.

24 “(c) A failure of a shorthand reporter to prepare accurate notes or
25 an accurate report of all or part of a grand jury proceeding, as re-
26 quired, does not affect the validity of any prosecution or indictment.

27 “(4) This section and section 2 of this 2016 Act do not apply to grand
28 jury proceedings under ORS 132.440 that inquire into the condition and
29 management of correctional facilities and youth correction facilities.

30 “SECTION 2. (1) Except as provided in subsection (2) of this section,

1 the clerk of the court described in section 1 (2)(a) of this 2016 Act, or
2 the shorthand reporter described in section 1 (2)(b) of this 2016 Act,
3 who is recording grand jury proceedings in a judicial district with a
4 population between 150,000 and 300,000 or over 700,000 shall record all
5 matters that come before the grand jury, including:

6 “(a) The case name and number;

7 “(b) The names of witnesses appearing before the grand jury;

8 “(c) Each statement made or question asked by the prosecuting
9 attorney; and

10 “(d) Each question asked of, and each response given by, a witness
11 who appears before the grand jury.

12 “(2) The clerk of the court operating the audio electronic recording
13 device or the shorthand reporter reporting the grand jury proceedings
14 may not record or report:

15 “(a) The deliberations or voting of the grand jury.

16 “(b) A presentment made pursuant to ORS 132.370.

17 “(c) Any statements made by a grand juror who is examined as a
18 witness as provided in ORS 132.350.

19 “(d) A procedure related to the production of records, or the un-
20 sealing of records, subpoenaed pursuant to ORS 136.583 and to be pre-
21 sented before the grand jury.

22 “(3) The clerk of the court or the shorthand reporter shall file with
23 the court the audio recordings or the notes or reports of the shorthand
24 reporter.

25 **“SECTION 3. (1) Audio recordings and shorthand reporter notes and**
26 **reports produced pursuant to sections 1 and 2 of this 2016 Act in a ju-**
27 **dicial district with a population between 150,000 and 300,000 or over**
28 **700,000 are confidential and may not be released except as described in**
29 **this section.**

30 “(2) When an indictment resulting from grand jury proceedings is

1 indorsed ‘a true bill,’ the audio recording of the grand jury proceedings
2 or the notes or report of a shorthand reporter may be released only
3 in the following manner:

4 “(a) The prosecuting attorney may obtain a copy of the audio re-
5 cording, notes or report at any time after the defendant’s arraignment
6 on the indictment.

7 “(b) When the defendant has been arraigned on the indictment, the
8 defense attorney may obtain a copy of the audio recording, notes or
9 report:

10 “(A) After 10 days have passed since the defendant’s arraignment
11 on the indictment and no motion described in subsection (3) of this
12 section has been filed; or

13 “(B) In accordance with the court’s ruling on the motion described
14 in subsection (3) of this section, if a motion has been filed.

15 “(c) Unless the court orders otherwise for good cause shown, the
16 prosecuting attorney and the defense attorney may not copy, dissem-
17 inate or republish the audio recording, notes or report, or a transcript
18 prepared from the audio recording, notes or report released pursuant
19 to this subsection, except to provide a copy to an agent of the prose-
20 cuting attorney or defense attorney for the limited purpose of case
21 preparation. Unless a court orders otherwise for good cause shown, in
22 consulting with the defendant the defense attorney may not disclose:

23 “(A) The address, telephone number, date of birth, driver license
24 or vehicle registration information of a victim, witness or grand juror,
25 obtained from a recording, notes, report or transcript; or

26 “(B) Any portion of a recording, notes, report or transcript that
27 contains the address, telephone number, date of birth, driver license
28 or vehicle registration information of a victim, witness or grand juror.

29 “(d) The defense attorney may not provide a copy of the audio re-
30 cording, notes or report, or a transcript prepared from the audio re-

1 **ording, notes or report, to the defendant.**

2 **“(e) When the defendant has been arraigned but is not represented**
3 **by an attorney, the defendant may request by motion that the court**
4 **issue an order allowing the defendant access to review the contents**
5 **of the audio recording, notes or report. A copy of the motion must be**
6 **provided to the prosecuting attorney. The prosecuting attorney may**
7 **request a hearing on the motion within 10 days after receiving a copy.**
8 **At the hearing, or in response to receiving the motion, the court may**
9 **appoint counsel for the defendant for the limited purpose of reviewing**
10 **the audio records, notes or report and may set reasonable conditions**
11 **on the review of the audio recording, notes or report.**

12 **“(3)(a) The prosecuting attorney may file a motion for a protective**
13 **order within 10 days after the defendant’s arraignment on the**
14 **indictment. The motion may be filed on behalf of a victim or a wit-**
15 **ness. The prosecuting attorney may also file a motion for a protective**
16 **order within 10 days after receiving a motion described in subsection**
17 **(2)(e) of this section.**

18 **“(b) If the motion for a protective order requests that a portion of**
19 **the audio recording, notes or report be redacted, the motion must be**
20 **accompanied by a specific description, including the date and time, of**
21 **the portion of the audio recording, notes or report to be redacted.**

22 **“(c) In response to a motion filed under this subsection, the court**
23 **may order that the defense attorney’s or defendant’s access to a copy**
24 **of the audio recording, notes or report be denied, restricted or de-**
25 **ferred, or may make any other order, upon a finding of substantial and**
26 **compelling circumstances. In deciding whether to grant the motion**
27 **and enter a protective order under this paragraph, the court may**
28 **consider the following:**

29 **“(A) Protection of witnesses and others from physical harm, threats**
30 **of harm, bribes, economic interference, reprisal and other forms of**

1 **intimidation;**

2 **“(B) Maintenance of secrecy regarding informants, as required for**
3 **effective investigation of criminal activity;**

4 **“(C) Confidential information recognized under law, including the**
5 **protection of confidential relationships and privileges and the contents**
6 **of confidential records unrelated to a crime alleged in the indictment;**
7 **and**

8 **“(D) Any other relevant considerations.**

9 **“(d) The court may permit the evidence of substantial and compel-**
10 **ling circumstances described in paragraph (c) of this subsection to be**
11 **made in the form of a written statement to be inspected by the court**
12 **only or by oral testimony given on the record.**

13 **“(4)(a) Except as provided in paragraph (b) of this subsection, when**
14 **grand jury proceedings do not result in an indictment indorsed as ei-**
15 **ther ‘a true bill’ or ‘not a true bill,’ the audio recording or the notes**
16 **or report of a shorthand reporter, or a transcript prepared from the**
17 **audio recording, notes or report, produced pursuant to sections 1 and**
18 **2 of this 2016 Act may not be disclosed or released.**

19 **“(b) When subsequent grand jury proceedings occur inquiring into**
20 **the same criminal episode as the grand jury proceedings described in**
21 **paragraph (a) of this subsection, and the subsequent proceedings re-**
22 **sult in an indictment indorsed as ‘a true bill,’ the prosecuting attorney**
23 **shall provide notice to the person charged in the indictment of the**
24 **occurrence of the earlier grand jury proceedings. After the person is**
25 **arraigned on the indictment and the time period described in sub-**
26 **section (2)(b) of this section has passed, the audio recording, notes or**
27 **report produced during the earlier grand jury proceedings may be ob-**
28 **tained in the manner set forth in subsection (2) of this section.**

29 **“(c) As used in this subsection, ‘criminal episode’ has the meaning**
30 **given that term in ORS 131.505.**

1 “(5) The Chief Justice of the Supreme Court may establish a fee for
2 the cost of providing a copy of any audio recording or shorthand re-
3 porter notes or report of a grand jury proceeding to a person request-
4 ing a copy under this section.

5 “(6) An audio recording, notes, report or transcript of a grand jury
6 proceeding obtained pursuant to sections 1 and 2 of this 2016 Act:

7 “(a) May not be used as evidence in any subsequent proceeding,
8 except as permitted under ORS 40.375, 40.380, 40.450, 40.460 or 40.465.

9 “(b) May not be used to challenge the indorsement of an indictment
10 ‘a true bill’ or the proceedings that led to the indorsement.

11 “(c) May be used as evidence in a prosecution for perjury or false
12 swearing committed by a witness while giving testimony during the
13 grand jury proceeding or during trial.

14 “(d) May be used as evidence in a proceeding for contempt of court
15 against a person alleged to have violated the terms of a court order
16 concerning the audio recording, notes, report or transcript.

17 “(7) The release of audio recordings, notes or reports of grand jury
18 proceedings under this section does not affect discovery obligations
19 under ORS 135.805 to 135.873.

20 “SECTION 4. ORS 132.090 is amended to read:

21 “132.090. (1) Except as provided in subsections (2) and (3) of this section
22 and sections 1 and 2 of this 2016 Act, no person other than the district
23 attorney or a witness actually under examination shall be present during the
24 sittings of the grand jury.

25 “(2) Upon a motion filed by the district attorney in the circuit court, the
26 circuit judge may appoint a reporter who shall attend the sittings of the
27 grand jury to take and report the testimony in any matters pending before
28 the grand jury, and may appoint a parent, guardian or other appropriate
29 person 18 years of age or older to accompany any child 12 years of age or
30 younger, or any person with an intellectual disability, during an appearance

1 before the grand jury. The circuit judge, upon the district attorney's showing
2 to the court that it is necessary for the proper examination of a witness
3 appearing before the grand jury, may appoint a guard, medical or other spe-
4 cial attendant or nurse, who shall be present in the grand jury room and
5 shall attend such sittings.

6 “(3) The district attorney may designate an interpreter who is certified
7 under ORS 45.291 to interpret the testimony of witnesses appearing before
8 the grand jury. The district attorney may designate a qualified interpreter,
9 as defined in ORS 45.288, if the circuit court determines that a certified in-
10 terpreter is not available and that the person designated by the district at-
11 torney is a qualified interpreter as defined in ORS 45.288. An interpreter
12 designated under this subsection may be present in the grand jury room and
13 attend the sittings of the grand jury.

14 “(4) No person other than members of the grand jury shall be present
15 when the grand jury is deliberating or voting upon a matter before it.

16 “(5) As used in this section, ‘intellectual disability’ has the meaning given
17 that term in ORS 427.005. Intellectual disability may be shown by attaching
18 to the motion of the district attorney:

19 “(a) Documentary evidence of intellectual functioning; or

20 “(b) The affidavit of a qualified person familiar with the person with an
21 intellectual disability. ‘Qualified person’ includes, but is not limited to, a
22 teacher, therapist or physician.

23 **“SECTION 5.** ORS 132.320 is amended to read:

24 “132.320. (1) Except as provided in subsections (2) to [(12)] **(13)** of this
25 section, in the investigation of a charge for the purpose of indictment, the
26 grand jury shall receive no other evidence than such as might be given on
27 the trial of the person charged with the crime in question.

28 “(2) A report or a copy of a report made by a physicist, chemist, medical
29 examiner, physician, firearms identification expert, examiner of questioned
30 documents, fingerprint technician, or an expert or technician in some com-

1 parable scientific or professional field, concerning the results of an exam-
2 ination, comparison or test performed by such person in connection with a
3 case which is the subject of a grand jury proceeding, shall, when certified
4 by such person as a report made by such person or as a true copy thereof,
5 be received in evidence in the grand jury proceeding.

6 “(3) An affidavit of a witness who is unable to appear before the grand
7 jury shall be received in evidence in the grand jury proceeding if, upon ap-
8 plication by the district attorney, the presiding judge for the judicial district
9 in which the grand jury is sitting authorizes the receipt after good cause has
10 been shown for the witness’ inability to appear. An affidavit taken in an-
11 other state or territory of the United States, the District of Columbia or in
12 a foreign country must be authenticated as provided in ORS chapter 194 be-
13 fore it can be used in this state.

14 “(4) A grand jury that is investigating a charge of criminal driving while
15 suspended or revoked under ORS 811.182 may receive in evidence an affidavit
16 of a peace officer with a report or copy of a report of the peace officer con-
17 cerning the peace officer’s investigation of the violation of ORS 811.182 by
18 the defendant.

19 “(5) A grand jury may receive testimony of a witness by means of simul-
20 taneous television transmission allowing the grand jury and district attorney
21 to observe and communicate with the witness and the witness to observe and
22 communicate with the grand jury and the district attorney.

23 “(6) A grand jury that is investigating a charge of failure to appear under
24 ORS 133.076, 153.992, 162.195 or 162.205 may receive in evidence an affidavit
25 of a court employee certifying that the defendant failed to appear as required
26 by law and setting forth facts sufficient to support that conclusion.

27 “(7)(a) Except as otherwise provided in this subsection, a grand jury may
28 receive in evidence through the testimony of one peace officer involved in
29 the criminal investigation under grand jury inquiry information from an of-
30 ficial report of another peace officer involved in the same criminal investi-

1 gation concerning the other peace officer’s investigation of the matter before
2 the grand jury. The statement of a person suspected of committing an offense
3 or inadmissible hearsay of persons other than the peace officer who compiled
4 the official report may not be presented to a grand jury under this para-
5 graph.

6 “(b) If the official report contains evidence other than chain of custody,
7 venue or the name of the person suspected of committing an offense, the
8 grand jurors must be notified that the evidence is being submitted by report
9 and that the peace officer who compiled the report will be made available
10 for testimony at the request of the grand jury. When a grand jury requests
11 the testimony of a peace officer under this paragraph, the peace officer may
12 present sworn testimony by telephone if requiring the peace officer’s pres-
13 ence before the grand jury would constitute an undue hardship on the peace
14 officer or the agency that employs or utilizes the peace officer.

15 “(8) A grand jury that is investigating a charge of failure to report as a
16 sex offender under ORS 163A.040 may receive in evidence certified copies of
17 the form required by ORS 163A.050 (2) and sex offender registration forms
18 and an affidavit of a representative of the Oregon State Police, as keepers
19 of the state’s sex offender registration records, certifying that the certified
20 copies of the forms constitute the complete record for the defendant.

21 “(9) The grand jury shall weigh all the evidence submitted to it; and when
22 it believes that other evidence within its reach will explain away the charge,
23 it should order such evidence to be produced, and for that purpose may re-
24 quire the district attorney to issue process for the witnesses.

25 “(10) A grand jury that is investigating a charge of driving while under
26 the influence of intoxicants in violation of ORS 813.010 may receive in evi-
27 dence an affidavit of a peace officer regarding any or all of the following:

28 “(a) Whether the defendant was driving.

29 “(b) Whether the defendant took or refused to take tests under any pro-
30 vision of ORS chapter 813.

1 “(c) The administration of tests under any provision of ORS chapter 813
2 and the results of such tests.

3 “(d) The officer’s observations of physical or mental impairment of the
4 defendant.

5 “(11)(a) A grand jury may receive in evidence an affidavit of a represen-
6 tative of a financial institution for the purpose of authenticating records of
7 the financial institution.

8 “(b) As used in this subsection, ‘financial institution’ means a financial
9 institution as defined in ORS 706.008, an entity that regularly issues, pro-
10 cesses or services credit cards or any other comparable entity that regularly
11 produces financial records.

12 “(12)(a) A defendant who has been arraigned on an information alleging
13 a felony charge that is the subject of a grand jury proceeding and who is
14 represented by an attorney has a right to appear before the grand jury as a
15 witness if, prior to the filing of an indictment, the defense attorney serves
16 upon the district attorney written notice requesting the appearance. The
17 notice shall include an electronic mail address at which the defense attorney
18 may be contacted.

19 “(b) A district attorney is not obligated to inform a defendant that a
20 grand jury proceeding investigating charges against the defendant is pend-
21 ing, in progress or about to occur.

22 “(c) Upon receipt of the written notice described in paragraph (a) of this
23 subsection, the district attorney shall provide in writing the date, time and
24 location of the defendant’s appearance before the grand jury to the defense
25 attorney at the indicated electronic mail address. In the event of a schedul-
26 ing conflict, the district attorney shall reasonably accommodate the sched-
27 ules of the defendant and the defense attorney if the accommodation does
28 not delay the grand jury proceeding beyond the time limit for holding a
29 preliminary hearing described in ORS 135.070 (2).

30 “(d) Notwithstanding ORS 135.070 and paragraph (c) of this subsection,

1 in order to accommodate a scheduling conflict, upon the request of the de-
2 fendant the time limit for holding a preliminary hearing described in ORS
3 135.070 (2) may be extended by a maximum of an additional five judicial days
4 and the district attorney and the defendant may stipulate to an extension
5 of greater duration. During a period of delay caused by a scheduling conflict
6 under this subsection, ORS 135.230 to 135.290 shall continue to apply con-
7 cerning the custody status of the defendant.

8 **“(13) A grand jury in a judicial district with a population between**
9 **150,000 and 300,000 or over 700,000, the proceedings of which are re-**
10 **corded pursuant to sections 1 and 2 of this 2016 Act, may receive in**
11 **evidence, through the testimony of a peace officer involved in the**
12 **criminal investigation under grand jury inquiry, the statement of:**

13 **“(a) A person who cannot readily understand the proceedings, or**
14 **who cannot communicate in the proceedings, because of a physical**
15 **disability or developmental disability;**

16 **“(b) A victim under 18 years of age at the time of the proceedings;**
17 **or**

18 **“(c) A person whose statement would, if offered at trial, be admis-**
19 **sible under ORS 40.460.**

20 **“SECTION 6.** ORS 132.430 is amended to read:

21 “132.430. (1) When a person has been held to answer a criminal charge
22 and the indictment in relation thereto is not found ‘a true bill,’ [it] **the**
23 **indictment** must be indorsed ‘not a true bill,’ which indorsement must be
24 signed by the foreman and filed with the clerk of the court, in whose office
25 it shall remain a public record. In the case of an indictment not found ‘a true
26 bill’ against a person not so held, the [*same, together with the minutes of the*
27 *evidence in relation thereto,*] **indictment** must be destroyed by the grand
28 jury.

29 **“(2) When an indictment indorsed ‘not a true bill’ has been filed with the**
30 **clerk of the court, the effect thereof is to dismiss the charge; and the same**

1 cannot be again submitted to or inquired of by the grand jury unless the
2 court so orders.

3 **SECTION 7.** ORS 132.550 is amended to read:

4 “132.550. The indictment shall contain substantially the following:

5 “(1) The name of the circuit court in which it is filed;

6 “(2) The title of the action;

7 “(3) A statement that the grand jury accuses the defendant or defendants
8 of the designated offense or offenses;

9 “(4) A separate accusation or count addressed to each offense charged, if
10 there be more than one;

11 “(5) A statement in each count that the offense charged therein was
12 committed in a designated county;

13 “(6) A statement in each count that the offense charged therein was
14 committed on, or on or about, a designated date, or during a designated pe-
15 riod of time;

16 “(7) A statement of the acts constituting the offense in ordinary and
17 concise language, without repetition, and in such manner as to enable a
18 person of common understanding to know what is intended;

19 **“(8) The dates of all grand jury proceedings related to the offense
20 or offenses charged;**

21 “[8] (9) The signatures of the foreman and of the district attorney; and

22 “[9] (10) The date the indictment is filed with the clerk of the court.

23 **SECTION 8.** ORS 135.405 is amended to read:

24 “135.405. (1) In cases in which it appears that the interest of the public
25 in the effective administration of criminal justice would thereby be served,
26 and in accordance with the criteria set forth in ORS 135.415, the district
27 attorney may engage in plea discussions for the purpose of reaching a plea
28 agreement.

29 “(2) The district attorney shall engage in plea discussions or reach a plea
30 agreement with the defendant only through defense counsel, except when, as

1 a matter of record, the defendant has effectively waived the right of the de-
2 fendant to counsel or, if the defendant is not eligible for appointed counsel,
3 has not retained counsel.

4 “(3) The district attorney in reaching a plea agreement may agree to, but
5 is not limited to, one or more of the following, as required by the circum-
6 stances of the individual case:

7 “(a) To make or not to oppose favorable recommendations as to the sen-
8 tence which should be imposed if the defendant enters a plea of guilty or no
9 contest to the offense charged;

10 “(b) To seek or not to oppose dismissal of the offense charged if the de-
11 fendant enters a plea of guilty or no contest to another offense reasonably
12 related to the defendant’s conduct; or

13 “(c) To seek or not to oppose dismissal of other charges or to refrain from
14 bringing potential charges if the defendant enters a plea of guilty or no
15 contest to the offense charged.

16 “(4) Similarly situated defendants should be afforded equal plea agreement
17 opportunities.

18 “(5) The district attorney may not condition a plea offer on a requirement
19 that the defendant waive:

20 “(a) The disclosure obligation of ORS 135.815 (1)(g)[.]; or

21 “(b) **The ability to receive the audio recording or notes or report**
22 **of grand jury proceedings as permitted under section 3 of this 2016 Act,**
23 **if the indictment has been indorsed ‘a true bill.’**

24 “(6)(a) A district attorney may provide a plea offer and agreed disposition
25 recommendation to the defendant at the time of arraignment or first ap-
26 pearance of the defendant for a crime in open court under an early disposi-
27 tion program established under ORS 135.941.

28 “(b) Unless extended by the court, a plea offer and agreed disposition
29 recommendation made under paragraph (a) of this subsection expire upon
30 completion of the arraignment. Except for good cause, a court may not ex-

1 tend a plea offer and agreed disposition recommendation under this para-
2 graph for more than seven days for a misdemeanor or 21 days for a felony.

3 **“SECTION 9.** Section 1 of this 2016 Act is amended to read:

4 **“Sec. 1.** (1)(a) The presiding judge of a judicial district [*with a population*
5 *between 150,000 and 300,000 or over 700,000*] shall ensure that proceedings
6 before the grand jury are recorded in the manner described in this section
7 and section 2 of this 2016 Act.

8 “(b) The court shall provide and maintain suitable audio electronic re-
9 cording devices to record grand jury proceedings.

10 “(c) The Chief Justice of the Supreme Court shall designate the types of
11 audio electronic recording devices that are suitable for recording grand jury
12 proceedings and may establish policies and procedures by rule or order to
13 carry out the provisions of this section and sections 2 and 3 of this 2016 Act.

14 “(d) The prosecuting attorney shall provide the court access to the prem-
15 ises in which the grand jury fulfills its obligations and the recording equip-
16 ment used to carry out the provisions of this section and section 2 of this
17 2016 Act. The presiding judge of each judicial district may enter into an
18 agreement with the prosecuting attorney that identifies the conditions and
19 terms of access.

20 “(2)(a) A clerk of the court shall be permitted to attend all proceedings
21 of the grand jury for the purpose of electronically recording the proceedings
22 described in section 2 of this 2016 Act.

23 “(b) Notwithstanding paragraph (a) of this subsection, the court may,
24 upon request of the prosecuting attorney or defense attorney, appoint a cer-
25 tified shorthand reporter as defined in ORS 8.415 or a shorthand reporter
26 certified by a national certification association, who shall be permitted to
27 attend all proceedings of the grand jury for the purpose of taking accurate
28 notes. The shorthand reporter’s services shall be paid for by the party re-
29 questing the shorthand reporter. The shorthand reporter shall be sworn to
30 correctly report the proceedings of the grand jury described in section 2 of

1 this 2016 Act and to keep secret any information concerning the grand jury
2 proceedings.

3 “(c) A clerk of the court or shorthand reporter is not subject to subpoena,
4 and may not disclose any information, concerning the grand jury proceedings
5 without prior court order.

6 “(3)(a) A failure of an audio electronic recording device to accurately re-
7 cord all or part of a grand jury proceeding does not affect the validity of any
8 prosecution or indictment.

9 “(b) A failure of a clerk of the court to operate an audio electronic re-
10 cording device in a manner that accurately records all or part of a grand
11 jury proceeding, as required, does not affect the validity of any prosecution
12 or indictment.

13 “(c) A failure of a shorthand reporter to prepare accurate notes or an
14 accurate report of all or part of a grand jury proceeding, as required, does
15 not affect the validity of any prosecution or indictment.

16 “(4) This section and section 2 of this 2016 Act do not apply to grand jury
17 proceedings under ORS 132.440 that inquire into the condition and manage-
18 ment of correctional facilities and youth correction facilities.

19 **“SECTION 10.** Section 2 of this 2016 Act is amended to read:

20 **“Sec. 2.** (1) Except as provided in subsection (2) of this section, the clerk
21 of the court described in section 1 (2)(a) of this 2016 Act, or the shorthand
22 reporter described in section 1 (2)(b) of this 2016 Act, who is recording grand
23 jury proceedings [*in a judicial district with a population between 150,000 and*
24 *300,000 or over 700,000*] shall record all matters that come before the grand
25 jury, including:

26 “(a) The case name and number;

27 “(b) The names of witnesses appearing before the grand jury;

28 “(c) Each statement made or question asked by the prosecuting attorney;
29 and

30 “(d) Each question asked of, and each response given by, a witness who

1 appears before the grand jury.

2 “(2) The clerk of the court operating the audio electronic recording device
3 or the shorthand reporter reporting the grand jury proceedings may not re-
4 cord or report:

5 “(a) The deliberations or voting of the grand jury.

6 “(b) A presentment made pursuant to ORS 132.370.

7 “(c) Any statements made by a grand juror who is examined as a witness
8 as provided in ORS 132.350.

9 “(d) A procedure related to the production of records, or the unsealing
10 of records, subpoenaed pursuant to ORS 136.583 and to be presented before
11 the grand jury.

12 “(3) The clerk of the court or the shorthand reporter shall file with the
13 court the audio recordings or the notes or reports of the shorthand reporter.

14 **“SECTION 11.** Section 3 of this 2016 Act is amended to read:

15 **“Sec. 3.** (1) Audio recordings and shorthand reporter notes and reports
16 produced pursuant to sections 1 and 2 of this 2016 Act [*in a judicial district*
17 *with a population between 150,000 and 300,000 or over 700,000*] are confidential
18 and may not be released except as described in this section.

19 “(2) When an indictment resulting from grand jury proceedings is
20 indorsed ‘a true bill,’ the audio recording of the grand jury proceedings or
21 the notes or report of a shorthand reporter may be released only in the fol-
22 lowing manner:

23 “(a) The prosecuting attorney may obtain a copy of the audio recording,
24 notes or report at any time after the defendant’s arraignment on the
25 indictment.

26 “(b) When the defendant has been arraigned on the indictment, the de-
27 fense attorney may obtain a copy of the audio recording, notes or report:

28 “(A) After 10 days have passed since the defendant’s arraignment on the
29 indictment and no motion described in subsection (3) of this section has been
30 filed; or

1 “(B) In accordance with the court’s ruling on the motion described in
2 subsection (3) of this section, if a motion has been filed.

3 “(c) Unless the court orders otherwise for good cause shown, the prose-
4 cuting attorney and the defense attorney may not copy, disseminate or re-
5 publish the audio recording, notes or report, or a transcript prepared from
6 the audio recording, notes or report released pursuant to this subsection,
7 except to provide a copy to an agent of the prosecuting attorney or defense
8 attorney for the limited purpose of case preparation. Unless a court orders
9 otherwise for good cause shown, in consulting with the defendant the defense
10 attorney may not disclose:

11 “(A) The address, telephone number, date of birth, driver license or vehi-
12 cle registration information of a victim, witness or grand juror, obtained
13 from a recording, notes, report or transcript; or

14 “(B) Any portion of a recording, notes, report or transcript that contains
15 the address, telephone number, date of birth, driver license or vehicle regis-
16 tration information of a victim, witness or grand juror.

17 “(d) The defense attorney may not provide a copy of the audio recording,
18 notes or report, or a transcript prepared from the audio recording, notes or
19 report, to the defendant.

20 “(e) When the defendant has been arraigned but is not represented by an
21 attorney, the defendant may request by motion that the court issue an order
22 allowing the defendant access to review the contents of the audio recording,
23 notes or report. A copy of the motion must be provided to the prosecuting
24 attorney. The prosecuting attorney may request a hearing on the motion
25 within 10 days after receiving a copy. At the hearing, or in response to re-
26 ceiving the motion, the court may appoint counsel for the defendant for the
27 limited purpose of reviewing the audio records, notes or report and may set
28 reasonable conditions on the review of the audio recording, notes or report.

29 “(3)(a) The prosecuting attorney may file a motion for a protective order
30 within 10 days after the defendant’s arraignment on the indictment. The

1 motion may be filed on behalf of a victim or a witness. The prosecuting at-
2 torney may also file a motion for a protective order within 10 days after re-
3 ceiving a motion described in subsection (2)(e) of this section.

4 “(b) If the motion for a protective order requests that a portion of the
5 audio recording, notes or report be redacted, the motion must be accompa-
6 nied by a specific description, including the date and time, of the portion of
7 the audio recording, notes or report to be redacted.

8 “(c) In response to a motion filed under this subsection, the court may
9 order that the defense attorney’s or defendant’s access to a copy of the audio
10 recording, notes or report be denied, restricted or deferred, or may make any
11 other order, upon a finding of substantial and compelling circumstances. In
12 deciding whether to grant the motion and enter a protective order under this
13 paragraph, the court may consider the following:

14 “(A) Protection of witnesses and others from physical harm, threats of
15 harm, bribes, economic interference, reprisal and other forms of intimidation;

16 “(B) Maintenance of secrecy regarding informants, as required for effec-
17 tive investigation of criminal activity;

18 “(C) Confidential information recognized under law, including the pro-
19 tection of confidential relationships and privileges and the contents of con-
20 fidential records unrelated to a crime alleged in the indictment; and

21 “(D) Any other relevant considerations.

22 “(d) The court may permit the evidence of substantial and compelling
23 circumstances described in paragraph (c) of this subsection to be made in the
24 form of a written statement to be inspected by the court only or by oral
25 testimony given on the record.

26 “(4)(a) Except as provided in paragraph (b) of this subsection, when grand
27 jury proceedings do not result in an indictment indorsed as either ‘a true
28 bill’ or ‘not a true bill,’ the audio recording or the notes or report of a
29 shorthand reporter, or a transcript prepared from the audio recording, notes
30 or report, produced pursuant to sections 1 and 2 of this 2016 Act may not

1 be disclosed or released.

2 “(b) When subsequent grand jury proceedings occur inquiring into the
3 same criminal episode as the grand jury proceedings described in paragraph
4 (a) of this subsection, and the subsequent proceedings result in an indictment
5 indorsed as ‘a true bill,’ the prosecuting attorney shall provide notice to the
6 person charged in the indictment of the occurrence of the earlier grand jury
7 proceedings. After the person is arraigned on the indictment and the time
8 period described in subsection (2)(b) of this section has passed, the audio
9 recording, notes or report produced during the earlier grand jury proceedings
10 may be obtained in the manner set forth in subsection (2) of this section.

11 “(c) As used in this subsection, ‘criminal episode’ has the meaning given
12 that term in ORS 131.505.

13 “(5) The Chief Justice of the Supreme Court may establish a fee for the
14 cost of providing a copy of any audio recording or shorthand reporter notes
15 or report of a grand jury proceeding to a person requesting a copy under this
16 section.

17 “(6) An audio recording, notes, report or transcript of a grand jury pro-
18 ceeding obtained pursuant to sections 1 and 2 of this 2016 Act:

19 “(a) May not be used as evidence in any subsequent proceeding, except
20 as permitted under ORS 40.375, 40.380, 40.450, 40.460 or 40.465.

21 “(b) May not be used to challenge the indorsement of an indictment ‘a
22 true bill’ or the proceedings that led to the indorsement.

23 “(c) May be used as evidence in a prosecution for perjury or false
24 swearing committed by a witness while giving testimony during the grand
25 jury proceeding or during trial.

26 “(d) May be used as evidence in a proceeding for contempt of court
27 against a person alleged to have violated the terms of a court order con-
28 cerning the audio recording, notes, report or transcript.

29 “(7) The release of audio recordings, notes or reports of grand jury pro-
30 ceedings under this section does not affect discovery obligations under ORS

1 135.805 to 135.873.

2 **“SECTION 12.** ORS 132.090, as amended by section 4 of this 2016 Act, is
3 amended to read:

4 “132.090. (1) Except as provided in subsections (2) and (3) of this section
5 and sections 1 and 2 of this 2016 Act, no person other than the district at-
6 torney or a witness actually under examination shall be present during the
7 sittings of the grand jury.

8 “(2) Upon a motion filed by the district attorney in the circuit court, the
9 circuit judge may appoint [*a reporter who shall attend the sittings of the*
10 *grand jury to take and report the testimony in any matters pending before the*
11 *grand jury, and may appoint*] a parent, guardian or other appropriate person
12 18 years of age or older to accompany any child 12 years of age or younger,
13 or any person with an intellectual disability, during an appearance before
14 the grand jury. The circuit judge, upon the district attorney’s showing to the
15 court that it is necessary for the proper examination of a witness appearing
16 before the grand jury, may appoint a guard, medical or other special at-
17 tendant or nurse, who shall be present in the grand jury room and shall at-
18 tend such sittings.

19 “(3) The district attorney may designate an interpreter who is certified
20 under ORS 45.291 to interpret the testimony of witnesses appearing before
21 the grand jury. The district attorney may designate a qualified interpreter,
22 as defined in ORS 45.288, if the circuit court determines that a certified in-
23 terpreter is not available and that the person designated by the district at-
24 torney is a qualified interpreter as defined in ORS 45.288. An interpreter
25 designated under this subsection may be present in the grand jury room and
26 attend the sittings of the grand jury.

27 “(4) No person other than members of the grand jury shall be present
28 when the grand jury is deliberating or voting upon a matter before it.

29 “(5) As used in this section, ‘intellectual disability’ has the meaning given
30 that term in ORS 427.005. Intellectual disability may be shown by attaching

1 to the motion of the district attorney:

2 “(a) Documentary evidence of intellectual functioning; or

3 “(b) The affidavit of a qualified person familiar with the person with an
4 intellectual disability. ‘Qualified person’ includes, but is not limited to, a
5 teacher, therapist or physician.

6 **“SECTION 13.** ORS 132.320, as amended by section 5 of this 2016 Act, is
7 amended to read:

8 “132.320. (1) Except as provided in subsections (2) to (13) of this section,
9 in the investigation of a charge for the purpose of indictment, the grand jury
10 shall receive no other evidence than such as might be given on the trial of
11 the person charged with the crime in question.

12 “(2) A report or a copy of a report made by a physicist, chemist, medical
13 examiner, physician, firearms identification expert, examiner of questioned
14 documents, fingerprint technician, or an expert or technician in some com-
15 parable scientific or professional field, concerning the results of an exam-
16 ination, comparison or test performed by such person in connection with a
17 case which is the subject of a grand jury proceeding, shall, when certified
18 by such person as a report made by such person or as a true copy thereof,
19 be received in evidence in the grand jury proceeding.

20 “(3) An affidavit of a witness who is unable to appear before the grand
21 jury shall be received in evidence in the grand jury proceeding if, upon ap-
22 plication by the district attorney, the presiding judge for the judicial district
23 in which the grand jury is sitting authorizes the receipt after good cause has
24 been shown for the witness’ inability to appear. An affidavit taken in an-
25 other state or territory of the United States, the District of Columbia or in
26 a foreign country must be authenticated as provided in ORS chapter 194 be-
27 fore it can be used in this state.

28 “(4) A grand jury that is investigating a charge of criminal driving while
29 suspended or revoked under ORS 811.182 may receive in evidence an affidavit
30 of a peace officer with a report or copy of a report of the peace officer con-

1 cerning the peace officer's investigation of the violation of ORS 811.182 by
2 the defendant.

3 “(5) A grand jury may receive testimony of a witness by means of simul-
4 taneous television transmission allowing the grand jury and district attorney
5 to observe and communicate with the witness and the witness to observe and
6 communicate with the grand jury and the district attorney.

7 “(6) A grand jury that is investigating a charge of failure to appear under
8 ORS 133.076, 153.992, 162.195 or 162.205 may receive in evidence an affidavit
9 of a court employee certifying that the defendant failed to appear as required
10 by law and setting forth facts sufficient to support that conclusion.

11 “(7)(a) Except as otherwise provided in this subsection, a grand jury may
12 receive in evidence through the testimony of one peace officer involved in
13 the criminal investigation under grand jury inquiry information from an of-
14 ficial report of another peace officer involved in the same criminal investi-
15 gation concerning the other peace officer's investigation of the matter before
16 the grand jury. The statement of a person suspected of committing an offense
17 or inadmissible hearsay of persons other than the peace officer who compiled
18 the official report may not be presented to a grand jury under this para-
19 graph.

20 “(b) If the official report contains evidence other than chain of custody,
21 venue or the name of the person suspected of committing an offense, the
22 grand jurors must be notified that the evidence is being submitted by report
23 and that the peace officer who compiled the report will be made available
24 for testimony at the request of the grand jury. When a grand jury requests
25 the testimony of a peace officer under this paragraph, the peace officer may
26 present sworn testimony by telephone if requiring the peace officer's pres-
27 ence before the grand jury would constitute an undue hardship on the peace
28 officer or the agency that employs or utilizes the peace officer.

29 “(8) A grand jury that is investigating a charge of failure to report as a
30 sex offender under ORS 163A.040 may receive in evidence certified copies of

1 the form required by ORS 163A.050 (2) and sex offender registration forms
2 and an affidavit of a representative of the Oregon State Police, as keepers
3 of the state’s sex offender registration records, certifying that the certified
4 copies of the forms constitute the complete record for the defendant.

5 “(9) The grand jury shall weigh all the evidence submitted to it; and when
6 it believes that other evidence within its reach will explain away the charge,
7 it should order such evidence to be produced, and for that purpose may re-
8 quire the district attorney to issue process for the witnesses.

9 “(10) A grand jury that is investigating a charge of driving while under
10 the influence of intoxicants in violation of ORS 813.010 may receive in evi-
11 dence an affidavit of a peace officer regarding any or all of the following:

12 “(a) Whether the defendant was driving.

13 “(b) Whether the defendant took or refused to take tests under any pro-
14 vision of ORS chapter 813.

15 “(c) The administration of tests under any provision of ORS chapter 813
16 and the results of such tests.

17 “(d) The officer’s observations of physical or mental impairment of the
18 defendant.

19 “(11)(a) A grand jury may receive in evidence an affidavit of a represen-
20 tative of a financial institution for the purpose of authenticating records of
21 the financial institution.

22 “(b) As used in this subsection, ‘financial institution’ means a financial
23 institution as defined in ORS 706.008, an entity that regularly issues, pro-
24 cesses or services credit cards or any other comparable entity that regularly
25 produces financial records.

26 “(12)(a) A defendant who has been arraigned on an information alleging
27 a felony charge that is the subject of a grand jury proceeding and who is
28 represented by an attorney has a right to appear before the grand jury as a
29 witness if, prior to the filing of an indictment, the defense attorney serves
30 upon the district attorney written notice requesting the appearance. The

1 notice shall include an electronic mail address at which the defense attorney
2 may be contacted.

3 “(b) A district attorney is not obligated to inform a defendant that a
4 grand jury proceeding investigating charges against the defendant is pend-
5 ing, in progress or about to occur.

6 “(c) Upon receipt of the written notice described in paragraph (a) of this
7 subsection, the district attorney shall provide in writing the date, time and
8 location of the defendant’s appearance before the grand jury to the defense
9 attorney at the indicated electronic mail address. In the event of a schedul-
10 ing conflict, the district attorney shall reasonably accommodate the sched-
11 ules of the defendant and the defense attorney if the accommodation does
12 not delay the grand jury proceeding beyond the time limit for holding a
13 preliminary hearing described in ORS 135.070 (2).

14 “(d) Notwithstanding ORS 135.070 and paragraph (c) of this subsection,
15 in order to accommodate a scheduling conflict, upon the request of the de-
16 fendant the time limit for holding a preliminary hearing described in ORS
17 135.070 (2) may be extended by a maximum of an additional five judicial days
18 and the district attorney and the defendant may stipulate to an extension
19 of greater duration. During a period of delay caused by a scheduling conflict
20 under this subsection, ORS 135.230 to 135.290 shall continue to apply con-
21 cerning the custody status of the defendant.

22 “(13) A grand jury [*in a judicial district with a population between 150,000*
23 *and 300,000 or over 700,000*], the proceedings of which are recorded pursuant
24 to sections 1 and 2 of this 2016 Act, may receive in evidence, through the
25 testimony of a peace officer involved in the criminal investigation under
26 grand jury inquiry, the statement of:

27 “(a) A person who cannot readily understand the proceedings, or who
28 cannot communicate in the proceedings, because of a physical disability or
29 developmental disability;

30 “(b) A victim under 18 years of age at the time of the proceedings; or

1 “(c) A person whose statement would, if offered at trial, be admissible
2 under ORS 40.460.

3 **SECTION 14.** ORS 192.502 is amended to read:

4 “192.502. The following public records are exempt from disclosure under
5 ORS 192.410 to 192.505:

6 “(1) Communications within a public body or between public bodies of an
7 advisory nature to the extent that they cover other than purely factual ma-
8 terials and are preliminary to any final agency determination of policy or
9 action. This exemption shall not apply unless the public body shows that in
10 the particular instance the public interest in encouraging frank communi-
11 cation between officials and employees of public bodies clearly outweighs the
12 public interest in disclosure.

13 “(2) Information of a personal nature such as but not limited to that kept
14 in a personal, medical or similar file, if public disclosure would constitute
15 an unreasonable invasion of privacy, unless the public interest by clear and
16 convincing evidence requires disclosure in the particular instance. The party
17 seeking disclosure shall have the burden of showing that public disclosure
18 would not constitute an unreasonable invasion of privacy.

19 “(3) Upon compliance with ORS 192.437, public body employee or volun-
20 teer residential addresses, residential telephone numbers, personal cellular
21 telephone numbers, personal electronic mail addresses, driver license num-
22 bers, employer-issued identification card numbers, emergency contact infor-
23 mation, Social Security numbers, dates of birth and other telephone numbers
24 contained in personnel records maintained by the public body that is the
25 employer or the recipient of volunteer services. This exemption:

26 “(a) Does not apply to the addresses, dates of birth and telephone numbers
27 of employees or volunteers who are elected officials, except that a judge or
28 district attorney subject to election may seek to exempt the judge’s or dis-
29 trict attorney’s address or telephone number, or both, under the terms of
30 ORS 192.445;

1 “(b) Does not apply to employees or volunteers to the extent that the
2 party seeking disclosure shows by clear and convincing evidence that the
3 public interest requires disclosure in a particular instance pursuant to ORS
4 192.437;

5 “(c) Does not apply to a substitute teacher as defined in ORS 342.815
6 when requested by a professional education association of which the substi-
7 tute teacher may be a member; and

8 “(d) Does not relieve a public employer of any duty under ORS 243.650 to
9 243.782.

10 “(4) Information submitted to a public body in confidence and not other-
11 wise required by law to be submitted, where such information should rea-
12 sonably be considered confidential, the public body has obliged itself in good
13 faith not to disclose the information, and when the public interest would
14 suffer by the disclosure.

15 “(5) Information or records of the Department of Corrections, including
16 the State Board of Parole and Post-Prison Supervision, to the extent that
17 disclosure would interfere with the rehabilitation of a person in custody of
18 the department or substantially prejudice or prevent the carrying out of the
19 functions of the department, if the public interest in confidentiality clearly
20 outweighs the public interest in disclosure.

21 “(6) Records, reports and other information received or compiled by the
22 Director of the Department of Consumer and Business Services in the ad-
23 ministration of ORS chapters 723 and 725 not otherwise required by law to
24 be made public, to the extent that the interests of lending institutions, their
25 officers, employees and customers in preserving the confidentiality of such
26 information outweighs the public interest in disclosure.

27 “(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

28 “(8) Any public records or information the disclosure of which is prohib-
29 ited by federal law or regulations.

30 “(9)(a) Public records or information the disclosure of which is prohibited

1 or restricted or otherwise made confidential or privileged under Oregon law.

2 “(b) Subject to ORS 192.423, paragraph (a) of this subsection does not
3 apply to factual information compiled in a public record when:

4 “(A) The basis for the claim of exemption is ORS 40.225;

5 “(B) The factual information is not prohibited from disclosure under any
6 applicable state or federal law, regulation or court order and is not other-
7 wise exempt from disclosure under ORS 192.410 to 192.505;

8 “(C) The factual information was compiled by or at the direction of an
9 attorney as part of an investigation on behalf of the public body in response
10 to information of possible wrongdoing by the public body;

11 “(D) The factual information was not compiled in preparation for liti-
12 gation, arbitration or an administrative proceeding that was reasonably
13 likely to be initiated or that has been initiated by or against the public body;
14 and

15 “(E) The holder of the privilege under ORS 40.225 has made or authorized
16 a public statement characterizing or partially disclosing the factual infor-
17 mation compiled by or at the attorney’s direction.

18 “(10) Public records or information described in this section, furnished
19 by the public body originally compiling, preparing or receiving them to any
20 other public officer or public body in connection with performance of the
21 duties of the recipient, if the considerations originally giving rise to the
22 confidential or exempt nature of the public records or information remain
23 applicable.

24 “(11) Records of the Energy Facility Siting Council concerning the review
25 or approval of security programs pursuant to ORS 469.530.

26 “(12) Employee and retiree address, telephone number and other nonfi-
27 nancial membership records and employee financial records maintained by
28 the Public Employees Retirement System pursuant to ORS chapters 238 and
29 238A.

30 “(13) Records of or submitted to the State Treasurer, the Oregon Invest-

1 ment Council or the agents of the treasurer or the council relating to active
2 or proposed publicly traded investments under ORS chapter 293, including
3 but not limited to records regarding the acquisition, exchange or liquidation
4 of the investments. For the purposes of this subsection:

5 “(a) The exemption does not apply to:

6 “(A) Information in investment records solely related to the amount paid
7 directly into an investment by, or returned from the investment directly to,
8 the treasurer or council; or

9 “(B) The identity of the entity to which the amount was paid directly or
10 from which the amount was received directly.

11 “(b) An investment in a publicly traded investment is no longer active
12 when acquisition, exchange or liquidation of the investment has been con-
13 cluded.

14 “(14)(a) Records of or submitted to the State Treasurer, the Oregon In-
15 vestment Council, the Oregon Growth Board or the agents of the treasurer,
16 council or board relating to actual or proposed investments under ORS
17 chapter 293 or 348 in a privately placed investment fund or a private asset
18 including but not limited to records regarding the solicitation, acquisition,
19 deployment, exchange or liquidation of the investments including but not
20 limited to:

21 “(A) Due diligence materials that are proprietary to an investment fund,
22 to an asset ownership or to their respective investment vehicles.

23 “(B) Financial statements of an investment fund, an asset ownership or
24 their respective investment vehicles.

25 “(C) Meeting materials of an investment fund, an asset ownership or their
26 respective investment vehicles.

27 “(D) Records containing information regarding the portfolio positions in
28 which an investment fund, an asset ownership or their respective investment
29 vehicles invest.

30 “(E) Capital call and distribution notices of an investment fund, an asset

1 ownership or their respective investment vehicles.

2 “(F) Investment agreements and related documents.

3 “(b) The exemption under this subsection does not apply to:

4 “(A) The name, address and vintage year of each privately placed invest-
5 ment fund.

6 “(B) The dollar amount of the commitment made to each privately placed
7 investment fund since inception of the fund.

8 “(C) The dollar amount of cash contributions made to each privately
9 placed investment fund since inception of the fund.

10 “(D) The dollar amount, on a fiscal year-end basis, of cash distributions
11 received by the State Treasurer, the Oregon Investment Council, the Oregon
12 Growth Board or the agents of the treasurer, council or board from each
13 privately placed investment fund.

14 “(E) The dollar amount, on a fiscal year-end basis, of the remaining value
15 of assets in a privately placed investment fund attributable to an investment
16 by the State Treasurer, the Oregon Investment Council, the Oregon Growth
17 Board or the agents of the treasurer, council or board.

18 “(F) The net internal rate of return of each privately placed investment
19 fund since inception of the fund.

20 “(G) The investment multiple of each privately placed investment fund
21 since inception of the fund.

22 “(H) The dollar amount of the total management fees and costs paid on
23 an annual fiscal year-end basis to each privately placed investment fund.

24 “(I) The dollar amount of cash profit received from each privately placed
25 investment fund on a fiscal year-end basis.

26 “(15) The monthly reports prepared and submitted under ORS 293.761 and
27 293.766 concerning the Public Employees Retirement Fund and the Industrial
28 Accident Fund may be uniformly treated as exempt from disclosure for a
29 period of up to 90 days after the end of the calendar quarter.

30 “(16) Reports of unclaimed property filed by the holders of such property

1 to the extent permitted by ORS 98.352.

2 “(17)(a) The following records, communications and information submitted
3 to the Oregon Business Development Commission, the Oregon Business De-
4 velopment Department, the State Department of Agriculture, the Oregon
5 Growth Board, the Port of Portland or other ports as defined in ORS 777.005,
6 or a county or city governing body and any board, department, commission,
7 council or agency thereof, by applicants for investment funds, grants, loans,
8 services or economic development moneys, support or assistance including,
9 but not limited to, those described in ORS 285A.224:

10 “(A) Personal financial statements.

11 “(B) Financial statements of applicants.

12 “(C) Customer lists.

13 “(D) Information of an applicant pertaining to litigation to which the
14 applicant is a party if the complaint has been filed, or if the complaint has
15 not been filed, if the applicant shows that such litigation is reasonably likely
16 to occur; this exemption does not apply to litigation which has been con-
17 cluded, and nothing in this subparagraph shall limit any right or opportunity
18 granted by discovery or deposition statutes to a party to litigation or po-
19 tential litigation.

20 “(E) Production, sales and cost data.

21 “(F) Marketing strategy information that relates to applicant’s plan to
22 address specific markets and applicant’s strategy regarding specific compet-
23 itors.

24 “(b) The following records, communications and information submitted to
25 the State Department of Energy by applicants for tax credits or for grants
26 awarded under ORS 469B.256:

27 “(A) Personal financial statements.

28 “(B) Financial statements of applicants.

29 “(C) Customer lists.

30 “(D) Information of an applicant pertaining to litigation to which the

1 applicant is a party if the complaint has been filed, or if the complaint has
2 not been filed, if the applicant shows that such litigation is reasonably likely
3 to occur; this exemption does not apply to litigation which has been con-
4 cluded, and nothing in this subparagraph shall limit any right or opportunity
5 granted by discovery or deposition statutes to a party to litigation or po-
6 tential litigation.

7 “(E) Production, sales and cost data.

8 “(F) Marketing strategy information that relates to applicant’s plan to
9 address specific markets and applicant’s strategy regarding specific compet-
10 itors.

11 “(18) Records, reports or returns submitted by private concerns or enter-
12 prises required by law to be submitted to or inspected by a governmental
13 body to allow it to determine the amount of any transient lodging tax pay-
14 able and the amounts of such tax payable or paid, to the extent that such
15 information is in a form which would permit identification of the individual
16 concern or enterprise. Nothing in this subsection shall limit the use which
17 can be made of such information for regulatory purposes or its admissibility
18 in any enforcement proceedings. The public body shall notify the taxpayer
19 of the delinquency immediately by certified mail. However, in the event that
20 the payment or delivery of transient lodging taxes otherwise due to a public
21 body is delinquent by over 60 days, the public body shall disclose, upon the
22 request of any person, the following information:

23 “(a) The identity of the individual concern or enterprise that is delinquent
24 over 60 days in the payment or delivery of the taxes.

25 “(b) The period for which the taxes are delinquent.

26 “(c) The actual, or estimated, amount of the delinquency.

27 “(19) All information supplied by a person under ORS 151.485 for the
28 purpose of requesting appointed counsel, and all information supplied to the
29 court from whatever source for the purpose of verifying the financial eligi-
30 bility of a person pursuant to ORS 151.485.

1 “(20) Workers’ compensation claim records of the Department of Con-
2 sumer and Business Services, except in accordance with rules adopted by the
3 Director of the Department of Consumer and Business Services, in any of the
4 following circumstances:

5 “(a) When necessary for insurers, self-insured employers and third party
6 claim administrators to process workers’ compensation claims.

7 “(b) When necessary for the director, other governmental agencies of this
8 state or the United States to carry out their duties, functions or powers.

9 “(c) When the disclosure is made in such a manner that the disclosed in-
10 formation cannot be used to identify any worker who is the subject of a
11 claim.

12 “(d) When a worker or the worker’s representative requests review of the
13 worker’s claim record.

14 “(21) Sensitive business records or financial or commercial information
15 of the Oregon Health and Science University that is not customarily pro-
16 vided to business competitors.

17 “(22) Records of Oregon Health and Science University regarding candi-
18 dates for the position of president of the university.

19 “(23) The records of a library, including:

20 “(a) Circulation records, showing use of specific library material by a
21 named person;

22 “(b) The name of a library patron together with the address or telephone
23 number of the patron; and

24 “(c) The electronic mail address of a patron.

25 “(24) The following records, communications and information obtained by
26 the Housing and Community Services Department in connection with the
27 department’s monitoring or administration of financial assistance or of
28 housing or other developments:

29 “(a) Personal and corporate financial statements and information, in-
30 cluding tax returns.

1 “(b) Credit reports.

2 “(c) Project appraisals, excluding appraisals obtained in the course of
3 transactions involving an interest in real estate that is acquired, leased,
4 rented, exchanged, transferred or otherwise disposed of as part of the project,
5 but only after the transactions have closed and are concluded.

6 “(d) Market studies and analyses.

7 “(e) Articles of incorporation, partnership agreements and operating
8 agreements.

9 “(f) Commitment letters.

10 “(g) Project pro forma statements.

11 “(h) Project cost certifications and cost data.

12 “(i) Audits.

13 “(j) Project tenant correspondence.

14 “(k) Personal information about a tenant.

15 “(L) Housing assistance payments.

16 “(25) Raster geographic information system (GIS) digital databases, pro-
17 vided by private forestland owners or their representatives, voluntarily and
18 in confidence to the State Forestry Department, that is not otherwise re-
19 quired by law to be submitted.

20 “(26) Sensitive business, commercial or financial information furnished to
21 or developed by a public body engaged in the business of providing electricity
22 or electricity services, if the information is directly related to a transaction
23 described in ORS 261.348, or if the information is directly related to a bid,
24 proposal or negotiations for the sale or purchase of electricity or electricity
25 services, and disclosure of the information would cause a competitive disad-
26 vantage for the public body or its retail electricity customers. This sub-
27 section does not apply to cost-of-service studies used in the development or
28 review of generally applicable rate schedules.

29 “(27) Sensitive business, commercial or financial information furnished to
30 or developed by the City of Klamath Falls, acting solely in connection with

1 the ownership and operation of the Klamath Cogeneration Project, if the
2 information is directly related to a transaction described in ORS 225.085 and
3 disclosure of the information would cause a competitive disadvantage for the
4 Klamath Cogeneration Project. This subsection does not apply to cost-of-
5 service studies used in the development or review of generally applicable rate
6 schedules.

7 “(28) Personally identifiable information about customers of a municipal
8 electric utility or a people’s utility district or the names, dates of birth,
9 driver license numbers, telephone numbers, electronic mail addresses or So-
10 cial Security numbers of customers who receive water, sewer or storm drain
11 services from a public body as defined in ORS 174.109. The utility or district
12 may release personally identifiable information about a customer, and a
13 public body providing water, sewer or storm drain services may release the
14 name, date of birth, driver license number, telephone number, electronic mail
15 address or Social Security number of a customer, if the customer consents
16 in writing or electronically, if the disclosure is necessary for the utility,
17 district or other public body to render services to the customer, if the dis-
18 closure is required pursuant to a court order or if the disclosure is otherwise
19 required by federal or state law. The utility, district or other public body
20 may charge as appropriate for the costs of providing such information. The
21 utility, district or other public body may make customer records available
22 to third party credit agencies on a regular basis in connection with the es-
23 tablishment and management of customer accounts or in the event such ac-
24 counts are delinquent.

25 “(29) A record of the street and number of an employee’s address submit-
26 ted to a special district to obtain assistance in promoting an alternative to
27 single occupant motor vehicle transportation.

28 “(30) Sensitive business records, capital development plans or financial
29 or commercial information of Oregon Corrections Enterprises that is not
30 customarily provided to business competitors.

1 “(31) Documents, materials or other information submitted to the Director
2 of the Department of Consumer and Business Services in confidence by a
3 state, federal, foreign or international regulatory or law enforcement agency
4 or by the National Association of Insurance Commissioners, its affiliates or
5 subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to
6 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723,
7 725 or 726, the Bank Act or the Insurance Code when:

8 “(a) The document, material or other information is received upon notice
9 or with an understanding that it is confidential or privileged under the laws
10 of the jurisdiction that is the source of the document, material or other in-
11 formation; and

12 “(b) The director has obligated the Department of Consumer and Business
13 Services not to disclose the document, material or other information.

14 “(32) A county elections security plan developed and filed under ORS
15 254.074.

16 “(33) Information about review or approval of programs relating to the
17 security of:

18 “(a) Generation, storage or conveyance of:

19 “(A) Electricity;

20 “(B) Gas in liquefied or gaseous form;

21 “(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

22 “(D) Petroleum products;

23 “(E) Sewage; or

24 “(F) Water.

25 “(b) Telecommunication systems, including cellular, wireless or radio
26 systems.

27 “(c) Data transmissions by whatever means provided.

28 “(34) The information specified in ORS 25.020 (8) if the Chief Justice of
29 the Supreme Court designates the information as confidential by rule under
30 ORS 1.002.

1 “(35)(a) Employer account records of the State Accident Insurance Fund
2 Corporation.

3 “(b) As used in this subsection, ‘employer account records’ means all re-
4 cords maintained in any form that are specifically related to the account of
5 any employer insured, previously insured or under consideration to be in-
6 sured by the State Accident Insurance Fund Corporation and any informa-
7 tion obtained or developed by the corporation in connection with providing,
8 offering to provide or declining to provide insurance to a specific employer.
9 ‘Employer account records’ includes, but is not limited to, an employer’s
10 payroll records, premium payment history, payroll classifications, employee
11 names and identification information, experience modification factors, loss
12 experience and dividend payment history.

13 “(c) The exemption provided by this subsection may not serve as the basis
14 for opposition to the discovery documents in litigation pursuant to applicable
15 rules of civil procedure.

16 “(36)(a) Claimant files of the State Accident Insurance Fund Corporation.

17 “(b) As used in this subsection, ‘claimant files’ includes, but is not limited
18 to, all records held by the corporation pertaining to a person who has made
19 a claim, as defined in ORS 656.005, and all records pertaining to such a
20 claim.

21 “(c) The exemption provided by this subsection may not serve as the basis
22 for opposition to the discovery documents in litigation pursuant to applicable
23 rules of civil procedure.

24 “(37) Except as authorized by ORS 408.425, records that certify or verify
25 an individual’s discharge or other separation from military service.

26 “(38) Records of or submitted to a domestic violence service or resource
27 center that relate to the name or personal information of an individual who
28 visits a center for service, including the date of service, the type of service
29 received, referrals or contact information or personal information of a family
30 member of the individual. As used in this subsection, ‘domestic violence

1 service or resource center' means an entity, the primary purpose of which is
2 to assist persons affected by domestic or sexual violence by providing refer-
3 rals, resource information or other assistance specifically of benefit to do-
4 mestic or sexual violence victims.

5 “(39) Information reported to the Oregon Health Authority under ORS
6 431A.860, except as provided in ORS 431A.860 (2)(b) information disclosed by
7 the authority under ORS 431A.865 and any information related to disclosures
8 made by the authority under ORS 431A.865, including information identifying
9 the recipient of the information.

10 “(40)(a) Electronic mail addresses in the possession or custody of an
11 agency or subdivision of the executive department, as defined in ORS 174.112,
12 a local government or local service district, as defined in ORS 174.116, or a
13 special government body, as defined in ORS 174.117.

14 “(b) This subsection does not apply to electronic mail addresses assigned
15 by a public body to public employees for use by the employees in the ordi-
16 nary course of their employment.

17 “(41) Residential addresses, residential telephone numbers, personal cel-
18 lular telephone numbers, personal electronic mail addresses, driver license
19 numbers, emergency contact information, Social Security numbers, dates of
20 birth and other telephone numbers of individuals currently or previously
21 certified or licensed by the Department of Public Safety Standards and
22 Training contained in the records maintained by the department.

23 “(42) Personally identifiable information and contact information of vet-
24 erans as defined in ORS 408.225 and of persons serving on active duty or as
25 reserve members with the Armed Forces of the United States, National
26 Guard or other reserve component that was obtained by the Department of
27 Veterans' Affairs in the course of performing its duties and functions, in-
28 cluding but not limited to names, residential and employment addresses,
29 dates of birth, driver license numbers, telephone numbers, electronic mail
30 addresses, Social Security numbers, marital status, dependents, the character

1 of discharge from military service, military rating or rank, that the person
2 is a veteran or has provided military service, information relating to an ap-
3 plication for or receipt of federal or state benefits, information relating to
4 the basis for receipt or denial of federal or state benefits and information
5 relating to a home loan or grant application, including but not limited to
6 financial information provided in connection with the application.

7 **“(43) Audio recordings or shorthand reporter notes or reports of**
8 **grand jury proceedings, or transcripts prepared from the recordings,**
9 **notes or reports described in section 3 of this 2016 Act.**

10 **“SECTION 15. ORS 132.080 is repealed.**

11 **“SECTION 16. (1) Sections 1, 2 and 3 of this 2016 Act and the**
12 **amendments to ORS 132.090, 132.320, 132.550, 135.405 and 192.502 by**
13 **sections 4, 5, 7, 8 and 14 of this 2016 Act become operative October 1,**
14 **2017.**

15 **“(2) The amendments to sections 1, 2 and 3 of this 2016 Act and ORS**
16 **132.090, 132.320 and 132.430 by sections 6, 9, 10, 11, 12 and 13 of this 2016**
17 **Act and the repeal of ORS 132.080 by section 15 of this 2016 Act become**
18 **operative July 1, 2018.**

19 **“(3) The Judicial Department may take any action before the oper-**
20 **ative dates specified in subsections (1) and (2) of this section that is**
21 **necessary to enable the department to exercise the duties, functions**
22 **and powers conferred on the department by this 2016 Act.**

23 **“SECTION 17. This 2016 Act takes effect on the 91st day after the**
24 **date on which the 2016 regular session of the Seventy-eighth Legisla-**
25 **tive Assembly adjourns sine die.”.**

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