

PRELIMINARY STAFF MEASURE SUMMARY**CARRIER:**

Senate Committee on Judiciary

REVENUE: No revenue impact**FISCAL: May have fiscal impact, statement not yet issued****SUBSEQUENT REFERRAL TO:****Action:****Vote:****Yeas:****Nays:****Exc.:****Prepared By:** Eric Deitrick, Counsel**Meeting Dates:** 3/31, 4/16

WHAT THE MEASURE DOES: Requires presiding judge of each judicial district to ensure all grand jury proceedings are recorded verbatim. Establishes procedures for recording and exceptions. Establishes procedures for disclosure to defendant and public.

ISSUES DISCUSSED:

- Experiences of people who have served as grand jurors
- Number of states that rely upon hand-written grand juror notes
- Logistical issues with grand jury recordation
- Practical benefits to grand jury recordation
- Fiscal concerns on implementation

EFFECT OF COMMITTEE AMENDMENT: Proposed (-1) amendment limits the requirement of recordation to offenses that, at the time of the grand jury proceeding, the prosecutor reasonably believes is a crime relating to Aggravated Murder or Measure 11. Provides clarifying language. Requires district attorney or defense attorney make showing of particularized need before obtaining recording. Defines “particularized need.” Prohibits disclosure of recordation if defendant or a potential codefendant is the subject of an ongoing investigation. Establishes timeline to request recording. Authorizes Chief Justice of Oregon Supreme Court to enact rules. Prohibits recording from being used as evidence to challenge the sufficiency of the indictment. Authorizes grand jury to receive evidence from child witness or special witness by means of audio recording, visual recording, or statement from another.

Proposed (-2) amendment clarifies role of court and judiciary in recordation process. Authorizes Chief Justice to determine types of audio recording devices suitable for use. Prohibits use of grand jury recordation to collaterally attack sufficiency of indictment.

BACKGROUND: A felony criminal case can originate in two ways. First, a grand jury can authorize an indictment. Grand juries are legal bodies that have authority to investigate criminal allegations, receive testimony and evidence, and authorize indictments. Grand juries are not open to the public and are not legally required to be recorded. Second, a district attorney can elect to file a formal complaint – called an “information” – with the court. The court then holds a preliminary hearing in order to determine if the information is supported by probable cause. The preliminary hearing is open to the public and is legally required to be recorded. District attorneys can elect either procedure to prosecute felony criminal cases.

Senate Bill 822 changes existing law and requires grand jury proceedings be electronically recorded, except for deliberation and voting. The court can elect to use a certified shorthand reporter in lieu of an electronic recording. The

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This summary has not been adopted or officially endorsed by action of the committee.

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court must designate a member of the grand jury to ensure the proceedings are recorded. Unintentional failures to accurately record the proceedings do not affect the validity of the indictment.

Senate Bill 822 requires the court to preserve the recordings or transcriptions. When a defendant is indicted and represented by counsel, the court may make the recording or transcription available to defense counsel and the district attorney. If the defendant is indicted and not represented by counsel, the court may make the recording or transcription available to the defendant, subject to limitations. The court may not disclose the recording or transcription to a non-party until all legal proceedings are concluded. If the grand jury returns a “not a true bill,” the court may not release the recordings or transcriptions, except in cases involving the conduct of public servants. In addition, the bill requires the district attorney to notify the defendant if a different grand jury received evidence about the same criminal episode.