

# Senate Bill 365

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs presiding judge of each judicial district to ensure all grand jury proceedings except for deliberations and voting are recorded verbatim. Authorizes recording by court reporter or electronic device operated by grand juror.

Allows grand jury recording or notes to be provided to district attorney and to defendant and defense counsel except in certain circumstances.

## A BILL FOR AN ACT

1  
2 Relating to the verbatim recording of grand jury proceedings; creating new provisions; and amending  
3 ORS 132.090.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) The presiding judge of each judicial district shall ensure that all pro-**  
6 **ceedings before the grand jury are recorded verbatim in the manner described in subsection**  
7 **(2) of this section, except when the grand jury is deliberating or voting.**

8 **(2)(a) The court shall designate a member of the grand jury to electronically record all**  
9 **proceedings described in section 2 of this 2015 Act with a suitable electronic recording device.**

10 **(b) Notwithstanding paragraph (a) of this subsection, the court may instead appoint a**  
11 **court reporter who shall be permitted to attend all sessions of the grand jury except delib-**  
12 **erations and voting. The reporter shall be sworn to correctly report all proceedings of the**  
13 **grand jury described in section 2 of this 2015 Act and to keep secret any information con-**  
14 **cerning the grand jury proceedings, except as ordered by the court.**

15 **(3) An unintentional failure of a recording device to record all or part of a grand jury**  
16 **proceeding as required in subsection (1) of this section does not affect the validity of any**  
17 **prosecution or indictment.**

18 **SECTION 2. (1) Except as provided in subsection (2) of this section, the operator of the**  
19 **recording device or the court reporter described in section 1 of this 2015 Act shall record all**  
20 **matters that come before the grand jury including:**

21 **(a) The charge by the impaneling judge;**

22 **(b) Any instructions given by or statements made by the court;**

23 **(c) Each statement or question made by the district attorney;**

24 **(d) Each question asked of and response given by a witness who appears before the grand**  
25 **jury; and**

26 **(e) Any statements made by a grand juror during the proceeding.**

27 **(2) The operator of the recording device or the court reporter may not include in the**  
28 **record the deliberations and voting of the grand jury.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1       **(3) The operator of the recording device or the court reporter shall certify and file with**  
 2 **the clerk of the court the recordings or notes made.**

3       **SECTION 3. (1) The recordings or notes made pursuant to sections 1 and 2 of this 2015**  
 4 **Act shall be preserved, sealed and filed with the court. Except as described in subsection (2)**  
 5 **of this section, the recordings or notes shall not be released or destroyed without prior court**  
 6 **approval.**

7       **(2) Upon payment of a reasonable fee to cover the actual costs of reproduction, the re-**  
 8 **cordings or notes shall be made available to the district attorney, a person charged in an**  
 9 **indictment or information resulting from the proceedings or an attorney for a person**  
 10 **charged in an indictment or information resulting from the proceedings.**

11       **(3) Upon a showing of extraordinary and compelling circumstances, and for reasons**  
 12 **stated on the record, the court may deny the disclosure of the recordings or notes, or a**  
 13 **portion thereof, to a person charged in an indictment or information resulting from the**  
 14 **proceedings or an attorney for a person charged in an indictment or information resulting**  
 15 **from the proceedings.**

16       **(4) The court may place reasonable conditions and limitations upon the use, distribution**  
 17 **or publication of the recordings or notes, and any violation of the conditions or limitations**  
 18 **set by the court shall constitute contempt.**

19       **(5) The recordings or notes are exempt from disclosure under ORS 192.502.**

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 **and sections 1 and 2**  
 22 **of this 2015 Act**, no person other than the district attorney or a witness actually under examination  
 23 shall be present during the sittings of the grand jury.

24       (2) Upon a motion filed by the district attorney in the circuit court, the circuit judge may ap-  
 25 point [*a reporter who shall attend the sittings of the grand jury to take and report the testimony in any*  
 26 *matters pending before the grand jury, and may appoint] a parent, guardian or other appropriate*  
 27 *person 18 years of age or older to accompany any child 12 years of age or younger, or any person*  
 28 *with an intellectual disability, during an appearance before the grand jury. The circuit judge, upon*  
 29 *the district attorney's showing to the court that it is necessary for the proper examination of a*  
 30 *witness appearing before the grand jury, may appoint a guard, medical or other special attendant*  
 31 *or nurse, who shall be present in the grand jury room and shall attend such sittings.*

32       (3) The district attorney may designate an interpreter who is certified under ORS 45.291 to in-  
 33 terpret the testimony of witnesses appearing before the grand jury. The district attorney may des-  
 34 ignate a qualified interpreter, as defined in ORS 45.288, if the circuit court determines that a  
 35 certified interpreter is not available and that the person designated by the district attorney is a  
 36 qualified interpreter as defined in ORS 45.288. An interpreter designated under this subsection may  
 37 be present in the grand jury room and attend the sittings of the grand jury.

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

40       (5) As used in this section, "intellectual disability" has the meaning given that term in ORS  
 41 427.005. Intellectual disability may be shown by attaching to the motion of the district attorney:

42       (a) Documentary evidence of intellectual functioning; or

43       (b) The affidavit of a qualified person familiar with the person with an intellectual disability.  
 44 "Qualified person" includes, but is not limited to, a teacher, therapist or physician.