

**A-Engrossed**  
**Senate Bill 822**

Ordered by the Senate April 27  
Including Senate Amendments dated April 27

Sponsored by Senator KRUSE, Representative WILLIAMSON, Senators BOQUIST, GELSER; Representative KRIEGER

**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.

Directs presiding judge of each judicial district to [*ensure all*] **instruct grand jury to record proceedings except for deliberations and voting [*are recorded verbatim*]**. Authorizes recording by certified shorthand reporter or suitable **audio** electronic recording device operated by [*designated grand juror*] **grand jury clerk. Directs court to provide and maintain recording devices for recording of grand jury proceedings.**

Creates procedures for, and specifies limitations on, obtaining recordings or transcripts of grand jury proceedings.

**Declares emergency, effective on passage.**

**A BILL FOR AN ACT**

1  
2 Relating to the verbatim recording of grand jury proceedings; creating new provisions; amending  
3 ORS 132.090 and 132.430; repealing ORS 132.080; and declaring an emergency.

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

5 **SECTION 1. (1)(a) The judge charging the grand jury pursuant to ORS 132.070 shall in-**  
6 **struct the grand jury to record its proceedings in the manner described in subsection (2) of**  
7 **this section. For purposes of this section, the proceedings of the grand jury do not include**  
8 **grand jury deliberations or voting.**

9 **(b) The court shall provide and maintain suitable audio electronic recording devices for**  
10 **the grand jury to use to record its proceedings as described in subsection (2) of this section.**

11 **(c) The Chief Justice of the Supreme Court shall determine the types of audio electronic**  
12 **recording devices that are suitable for recording grand jury proceedings and shall establish**  
13 **policies and procedures to carry out the provisions of this section and sections 2 and 3 of this**  
14 **2015 Act.**

15 **(d) The prosecuting attorney shall provide the court access to the premises in which the**  
16 **grand jury fulfills its obligations and the recording equipment used to carry out the pro-**  
17 **visions of this section and section 2 of this 2015 Act. The presiding judge of each judicial**  
18 **district may enter into an agreement with prosecuting attorneys that identifies the condi-**  
19 **tions and terms of access.**

20 **(2)(a) The court shall select a member of the grand jury as the grand jury clerk, who**  
21 **shall electronically record all proceedings described in section 2 of this 2015 Act with the**  
22 **suitable audio electronic recording device the court provides for that purpose.**

23 **(b) Notwithstanding paragraph (a) of this subsection, the court may appoint a certified**  
24 **shorthand reporter as defined in ORS 8.415 from funds appropriated for that purpose, who**

**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 shall be permitted to attend all proceedings of the grand jury for the purpose of taking ac-  
2 curate notes by shorthand or by means of a mechanical or electronic typing device. The  
3 certified shorthand reporter shall be sworn to correctly report all proceedings of the grand  
4 jury described in section 2 of this 2015 Act and to keep secret any information concerning  
5 the grand jury proceedings, except as ordered by the court.

6 (3)(a) An inadvertent failure of an audio electronic recording device to accurately record  
7 all or part of a grand jury proceeding does not affect the validity of any prosecution or  
8 indictment.

9 (b) An inadvertent failure of a grand jury clerk to correctly operate an audio electronic  
10 recording device in a manner that accurately records all or part of a grand jury proceeding  
11 does not affect the validity of any prosecution or indictment.

12 (c) An inadvertent failure of a certified shorthand reporter to accurately record all or  
13 part of a grand jury proceeding does not affect the validity of any prosecution or indictment.

14 (4) This section and section 2 of this 2015 do not apply to grand jury proceedings under  
15 ORS 132.440 that inquire into conditions in correctional facilities and youth correction facil-  
16 ities.

17 **SECTION 2.** (1) Except as provided in subsection (2) of this section, the grand jury clerk  
18 operating the audio electronic recording device as described in section 1 (2)(a) of this 2015  
19 Act, or the certified shorthand reporter described in section 1 (2)(b) of this 2015 Act, shall  
20 record all matters that come before the grand jury, including:

21 (a) The case name and number;

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

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

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

26 (e) Any statements made by a grand juror as provided in ORS 132.350 during the pro-  
27 ceeding.

28 (2) The grand jury clerk operating the audio electronic recording device or the certified  
29 shorthand reporter reporting the grand jury proceedings may not record or report the de-  
30 liberations or voting of the grand jury.

31 (3) At the conclusion of grand jury proceedings:

32 (a) The grand jury clerk operating the audio electronic recording device shall certify that  
33 the entire proceeding was accurately recorded to the best of the clerk's knowledge; or

34 (b) The certified shorthand reporter reporting the grand jury proceedings shall certify  
35 that the report is a true and accurate report of the proceeding.

36 (4) The grand jury clerk or the certified shorthand reporter shall file with the clerk of  
37 the court the audio recordings or the transcripts or reports of the certified shorthand re-  
38 porter.

39 **SECTION 3.** (1) Audio recordings, transcripts and reports produced pursuant to sections  
40 1 and 2 of this 2015 Act may not be released except as described in this section.

41 (2) When an indictment resulting from grand jury proceedings is indorsed "a true bill,"  
42 an audio recording or a transcript of the grand jury proceedings prepared from the report  
43 of a certified shorthand reporter may be released only in the following manner:

44 (a) When the defendant has been arraigned on the indictment, the prosecuting attorney  
45 and the defense attorney may obtain a copy of the audio recording or transcript. Unless the

1 court orders otherwise, the prosecuting attorney and the defense attorney may not copy,  
2 disseminate or republish the recording or transcript of the grand jury proceedings released  
3 pursuant to this subsection except to provide a copy to an agent of the prosecuting attorney  
4 or defense attorney for the limited purpose of case preparation.

5 (b) When the defendant has been arraigned but is not represented by an attorney, the  
6 person may request that the court issue an order allowing the person to obtain a copy of the  
7 recording or transcript. The court may set conditions on the release of the recording or  
8 transcript.

9 (3) When a grand jury inquires into the conduct of a public servant as defined in ORS  
10 162.005 for acts occurring in the performance of the public servant's duties, and an  
11 indictment resulting from the grand jury proceedings is indorsed "not a true bill," a person  
12 may request a court order releasing all or a portion of the recording or transcript. In de-  
13 ciding whether to issue such an order, the court shall determine whether the public interest  
14 in disclosure outweighs the interest in maintaining the secrecy of the grand jury pro-  
15 ceedings. If the court orders disclosure, the court may place reasonable conditions upon  
16 copying, disseminating or republishing the recording or transcript.

17 (4)(a) Except as provided in paragraph (b) of this subsection, when grand jury proceedings  
18 do not result in an indictment indorsed as either "a true bill" or "not a true bill," the audio  
19 recording, the report or the transcript prepared from the report of a certified shorthand  
20 reporter produced pursuant to sections 1 and 2 of this 2015 Act may not be disclosed or re-  
21 leased.

22 (b) When subsequent grand jury proceedings occur inquiring into the same criminal epi-  
23 sode as the grand jury proceedings described in paragraph (a) of this subsection, and the  
24 subsequent proceedings result in an indictment indorsed as "a true bill," the prosecuting  
25 attorney shall provide notice to the person charged in the indictment of the occurrence of  
26 the earlier grand jury proceedings. After the person is arraigned on the indictment, the re-  
27 cording or transcript produced during the earlier grand jury proceedings may be obtained in  
28 the manner set forth in subsection (2) of this section.

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

31 (5) The Chief Justice of the Supreme Court may establish a fee for the cost of providing  
32 a copy of any recording or transcript of a grand jury proceeding to a person requesting a  
33 copy under this section.

34 (6) The recordings or transcripts described in this section are exempt from disclosure  
35 under ORS 192.502.

36 (7) A recording or transcript of a grand jury proceeding produced pursuant to sections  
37 1 and 2 of this 2015 Act:

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

40 (b) May not be used to challenge the indorsement of an indictment "a true bill" or the  
41 proceedings that led to the indorsement.

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

44 **SECTION 4.** ORS 132.090 is amended to read:

45 132.090. (1) Except as provided in subsections (2) and (3) of this section and sections 1 and 2

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

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

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

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

19 (5) As used in this section, "intellectual disability" has the meaning given that term in ORS  
20 427.005. Intellectual disability may be shown by attaching to the motion of the district attorney:

21 (a) Documentary evidence of intellectual functioning; or

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

24 **SECTION 5. ORS 132.080 is repealed.**

25 **SECTION 6.** ORS 132.430 is amended to read:

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

32 (2) When an indictment indorsed "not a true bill" has been filed with the clerk of the court, the  
33 effect thereof is to dismiss the charge; and the same cannot be again submitted to or inquired of by  
34 the grand jury unless the court so orders.

35 **SECTION 7.** Sections 1, 2 and 3 of this 2015 Act, the amendments to ORS 132.090 and  
36 132.430 by sections 4 and 6 of this 2015 Act and the repeal of ORS 132.080 by section 5 of this  
37 2015 Act become operative October 1, 2016.

38 **SECTION 8.** This 2015 Act being necessary for the immediate preservation of the public  
39 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect  
40 on its passage.