

Senate Bill 822

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 **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 certified shorthand reporter or suitable electronic recording device operated by designated grand juror.

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

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 **certified shorthand reporter as defined in ORS 8.415 who shall be permitted to attend all**
12 **sessions of the grand jury except deliberations and voting. The certified shorthand reporter**
13 **shall be sworn to correctly report all proceedings of the grand jury described in section 2 of**
14 **this 2015 Act and to keep secret any information concerning the grand jury proceedings,**
15 **except as ordered by the court.**

16 **(3)(a) An unintentional failure of an electronic recording device to accurately record all**
17 **or part of a grand jury proceeding does not affect the validity of any prosecution or**
18 **indictment.**

19 **(b) An unintentional failure of a grand juror to correctly operate an electronic recording**
20 **device to accurately record all or part of a grand jury proceeding does not affect the validity**
21 **of any prosecution or indictment.**

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

24 **(4) This section does not apply to grand jury proceedings under ORS 132.440 inquiring into**
25 **conditions in correctional facilities and youth correction facilities.**

26 **SECTION 2. (1) Except as provided in subsection (2) of this section, the grand juror op-**
27 **erating the electronic recording device or the certified shorthand reporter described in sec-**
28 **tion 1 of this 2015 Act shall record all matters that come before the grand jury including:**

29 **(a) The charge before the court;**

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

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

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

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

6 (2) The grand juror operating the electronic recording device or the certified shorthand
7 reporter may not include in the record the deliberations and voting of the grand jury.

8 (3) The grand juror operating the electronic recording device or the certified shorthand
9 reporter shall certify and file with the clerk of the court the recordings or transcripts made.

10 **SECTION 3.** (1) Recordings or transcripts of grand jury proceedings produced pursuant
11 to sections 1 and 2 of this 2015 Act shall be preserved and deposited with the court. Except
12 as described in subsection (2) of this section, the recordings or transcripts may not be re-
13 leased or destroyed without prior court approval.

14 (2) When an indictment resulting from grand jury proceedings is indorsed “a true bill,”
15 the recordings or transcripts produced pursuant to sections 1 and 2 of this 2015 Act may be
16 released in the following manner:

17 (a) When the person charged in the indictment has been arraigned on the indictment and
18 the person is represented by an attorney, the district attorney and the defense attorney may
19 obtain a copy of the recordings or transcripts upon payment of a reasonable fee to the clerk
20 of the court to cover the costs of reproduction. Unless the court orders otherwise, the dis-
21 trict attorney and the defense attorney may not copy, disseminate or republish the re-
22 cordings or transcripts except to provide a copy to an agent of the district attorney or
23 defense attorney for the limited purpose of case preparation.

24 (b) When the person charged in the indictment has been arraigned on the indictment but
25 is not represented by an attorney, the person may request the court for an order allowing
26 the person to obtain a copy of the recordings or transcripts. The court may set conditions
27 on the release of the recordings or transcripts that the court deems appropriate.

28 (c) A person who is not a party in the indictment resulting from the grand jury pro-
29 ceedings may not obtain the recordings or transcripts until the conclusion of all legal pro-
30 ceedings resulting from the indictment, including appeals and post-conviction relief.

31 (3)(a) When an indictment resulting from grand jury proceedings is indorsed “not a true
32 bill,” the recordings or transcripts produced pursuant to sections 1 and 2 of this 2015 Act
33 may not be released and shall remain sealed and preserved with the court.

34 (b) Notwithstanding paragraph (a) of this subsection, when a grand jury inquires into the
35 conduct of a public servant as defined in ORS 162.005 for acts occurring in the performance
36 of the public servant’s duties, and an indictment resulting from the grand jury proceedings
37 is indorsed “not a true bill,” a person may request a court order releasing all or a portion
38 of the recordings or transcripts. In deciding whether to issue such an order, the court shall
39 determine whether the public interest in disclosure outweighs the interest in maintaining the
40 secrecy of the grand jury proceedings.

41 (4)(a) Except as provided in paragraph (b) of this subsection, when grand jury proceedings
42 do not result in an indictment indorsed as either “a true bill” or “not a true bill,” the re-
43 cordings or transcripts produced pursuant to sections 1 and 2 of this 2015 Act shall be pre-
44 served and deposited with the court, and a person may not request or receive a copy of the
45 recordings or transcripts.

1 **(b) When subsequent grand jury proceedings occur inquiring into the same criminal epi-**
2 **sode and involving the same person and same alleged victim, if any, as the grand jury pro-**
3 **ceedings described in paragraph (a) of this subsection, and the subsequent proceedings result**
4 **in an indictment indorsed as “a true bill,” the district attorney shall provide notice to the**
5 **person charged in the indictment of the occurrence of the earlier grand jury proceedings.**
6 **After the person is arraigned on the indictment, the recordings or transcripts produced**
7 **during the earlier grand jury proceedings may be obtained by the district attorney and the**
8 **defense attorney or defendant without an attorney in the manner set forth in subsection**
9 **(2)(a) and (b) of this section.**

10 **(c) As used in this subsection, “criminal episode” has the meaning given that term in**
11 **ORS 131.505.**

12 **(5) The court may place reasonable conditions and limitations upon the use, distribution**
13 **or publication of the recordings or transcripts produced pursuant to sections 1 and 2 of this**
14 **2015 Act, and any violation of the conditions or limitations set by the court shall constitute**
15 **contempt.**

16 **(6) The recordings or transcripts described in this section are exempt from disclosure**
17 **under ORS 192.502.**

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

19 132.090. (1) Except as provided in subsections (2) and (3) of this section **and sections 1 and 2**
20 **of this 2015 Act**, no person other than the district attorney or a witness actually under examination
21 shall be present during the sittings of the grand jury.

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

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

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

38 (5) As used in this section, “intellectual disability” has the meaning given that term in ORS
39 427.005. Intellectual disability may be shown by attaching to the motion of the district attorney:

40 (a) Documentary evidence of intellectual functioning; or

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