

SENATE AMENDMENTS TO SENATE BILL 822

By COMMITTEE ON JUDICIARY

April 27

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest of the line and delete line
2 3 and insert “amending ORS 132.090 and 132.430; repealing ORS 132.080; and declaring an emer-
3 gency.”.

4 Delete lines 5 through 29 and delete page 2.

5 On page 3, delete lines 1 through 17 and insert:

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

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

12 **“(c) The Chief Justice of the Supreme Court shall determine the types of audio electronic**
13 **recording devices that are suitable for recording grand jury proceedings and shall establish**
14 **policies and procedures to carry out the provisions of this section and sections 2 and 3 of this**
15 **2015 Act.**

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

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

24 **“(b) Notwithstanding paragraph (a) of this subsection, the court may appoint a certified**
25 **shorthand reporter as defined in ORS 8.415 from funds appropriated for that purpose, who**
26 **shall be permitted to attend all proceedings of the grand jury for the purpose of taking ac-**
27 **curate notes by shorthand or by means of a mechanical or electronic typing device. The**
28 **certified shorthand reporter shall be sworn to correctly report all proceedings of the grand**
29 **jury described in section 2 of this 2015 Act and to keep secret any information concerning**
30 **the grand jury proceedings, except as ordered by the court.**

31 **“(3)(a) An inadvertent failure of an audio electronic recording device to accurately record**
32 **all or part of a grand jury proceeding does not affect the validity of any prosecution or**
33 **indictment.**

34 **“(b) An inadvertent failure of a grand jury clerk to correctly operate an audio electronic**
35 **recording device in a manner that accurately records all or part of a grand jury proceeding**

1 does not affect the validity of any prosecution or indictment.

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

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

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

11 “(a) The case name and number;

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

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

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

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

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

21 “(3) At the conclusion of grand jury proceedings:

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

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

26 “(4) The grand jury clerk or the certified shorthand reporter shall file with the clerk of
27 the court the audio recordings or the transcripts or reports of the certified shorthand re-
28 porter.

29 “SECTION 3. (1) Audio recordings, transcripts and reports produced pursuant to sections
30 1 and 2 of this 2015 Act may not be released except as described in this section.

31 “(2) When an indictment resulting from grand jury proceedings is indorsed ‘a true bill,’
32 an audio recording or a transcript of the grand jury proceedings prepared from the report
33 of a certified shorthand reporter may be released only in the following manner:

34 “(a) When the defendant has been arraigned on the indictment, the prosecuting attorney
35 and the defense attorney may obtain a copy of the audio recording or transcript. Unless the
36 court orders otherwise, the prosecuting attorney and the defense attorney may not copy,
37 disseminate or republish the recording or transcript of the grand jury proceedings released
38 pursuant to this subsection except to provide a copy to an agent of the prosecuting attorney
39 or defense attorney for the limited purpose of case preparation.

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

44 “(3) When a grand jury inquires into the conduct of a public servant as defined in ORS
45 162.005 for acts occurring in the performance of the public servant’s duties, and an

1 indictment resulting from the grand jury proceedings is indorsed ‘not a true bill,’ a person
2 may request a court order releasing all or a portion of the recording or transcript. In de-
3 ciding whether to issue such an order, the court shall determine whether the public interest
4 in disclosure outweighs the interest in maintaining the secrecy of the grand jury pro-
5 ceedings. If the court orders disclosure, the court may place reasonable conditions upon
6 copying, disseminating or republishing the recording or transcript.

7 “(4)(a) Except as provided in paragraph (b) of this subsection, when grand jury pro-
8 ceedings do not result in an indictment indorsed as either ‘a true bill’ or ‘not a true bill,’ the
9 audio recording, the report or the transcript prepared from the report of a certified short-
10 hand reporter produced pursuant to sections 1 and 2 of this 2015 Act may not be disclosed
11 or released.

12 “(b) When subsequent grand jury proceedings occur inquiring into the same criminal
13 episode as the grand jury proceedings described in paragraph (a) of this subsection, and the
14 subsequent proceedings result in an indictment indorsed as ‘a true bill,’ the prosecuting at-
15 torney shall provide notice to the person charged in the indictment of the occurrence of the
16 earlier grand jury proceedings. After the person is arraigned on the indictment, the record-
17 ing or transcript produced during the earlier grand jury proceedings may be obtained in the
18 manner set forth in subsection (2) of this section.

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

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

24 “(6) The recordings or transcripts described in this section are exempt from disclosure
25 under ORS 192.502.

26 “(7) A recording or transcript of a grand jury proceeding produced pursuant to sections
27 1 and 2 of this 2015 Act:

28 “(a) May not be used as evidence in any subsequent proceeding, except as permitted un-
29 der ORS 40.375, 40.380, 40.450, 40.460 or 40.465.

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

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

34 After line 42, insert:

35 “**SECTION 5. ORS 132.080 is repealed.**

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

37 “132.430. (1) When a person has been held to answer a criminal charge and the indictment in
38 relation thereto is not found ‘a true bill,’ it must be indorsed ‘not a true bill,’ which indorsement
39 must be signed by the foreman and filed with the clerk of the court, in whose office it shall remain
40 a public record. In the case of an indictment not found ‘a true bill’ against a person not so held, the
41 same[, *together with the minutes of the evidence in relation thereto,*] must be destroyed by the grand
42 jury.

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

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

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

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