

B-Engrossed
Senate Bill 825

Ordered by the House June 1
Including Senate Amendments dated April 15 and House Amendments
dated June 1

Sponsored by Senator THATCHER

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.

Provides that defendant has right to appear as witness before grand jury in certain circumstances. Requires defendant to file notice to exercise right. **Provides for process to extend time limit for holding preliminary hearing for purposes of allowing defendant to testify at grand jury.**

A BILL FOR AN ACT

1
2 Relating to grand jury proceedings; creating new provisions; and amending ORS 132.320.

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

4 **SECTION 1.** ORS 132.320 is amended to read:

5 132.320. (1) Except as provided in subsections (2) to [(11)] **(12)** of this section, in the investi-
6 gation of a charge for the purpose of indictment, the grand jury shall receive no other evidence than
7 such as might be given on the trial of the person charged with the crime in question.

8 (2) A report or a copy of a report made by a physicist, chemist, medical examiner, physician,
9 firearms identification expert, examiner of questioned documents, fingerprint technician, or an ex-
10 pert or technician in some comparable scientific or professional field, concerning the results of an
11 examination, comparison or test performed by such person in connection with a case which is the
12 subject of a grand jury proceeding, shall, when certified by such person as a report made by such
13 person or as a true copy thereof, be received in evidence in the grand jury proceeding.

14 (3) An affidavit of a witness who is unable to appear before the grand jury shall be received in
15 evidence in the grand jury proceeding if, upon application by the district attorney, the presiding
16 judge for the judicial district in which the grand jury is sitting authorizes the receipt after good
17 cause has been shown for the witness' inability to appear. An affidavit taken in another state or
18 territory of the United States, the District of Columbia or in a foreign country must be
19 authenticated as provided in ORS chapter 194 before it can be used in this state.

20 (4) A grand jury that is investigating a charge of criminal driving while suspended or revoked
21 under ORS 811.182 may receive in evidence an affidavit of a peace officer with a report or copy of
22 a report of the peace officer concerning the peace officer's investigation of the violation of ORS
23 811.182 by the defendant.

24 (5) A grand jury may receive testimony of a witness by means of simultaneous television trans-
25 mission allowing the grand jury and district attorney to observe and communicate with the witness
26 and the witness to observe and communicate with the grand jury and the district attorney.

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 (6) A grand jury that is investigating a charge of failure to appear under ORS 133.076, 153.992,
2 162.195 or 162.205 may receive in evidence an affidavit of a court employee certifying that the de-
3 fendant failed to appear as required by law and setting forth facts sufficient to support that con-
4 clusion.

5 (7)(a) Except as otherwise provided in this subsection, a grand jury may receive in evidence
6 through the testimony of one peace officer involved in the criminal investigation under grand jury
7 inquiry information from an official report of another peace officer involved in the same criminal
8 investigation concerning the other peace officer's investigation of the matter before the grand jury.
9 The statement of a person suspected of committing an offense or inadmissible hearsay of persons
10 other than the peace officer who compiled the official report may not be presented to a grand jury
11 under this paragraph.

12 (b) If the official report contains evidence other than chain of custody, venue or the name of the
13 person suspected of committing an offense, the grand jurors must be notified that the evidence is
14 being submitted by report and that the peace officer who compiled the report will be made available
15 for testimony at the request of the grand jury. When a grand jury requests the testimony of a peace
16 officer under this paragraph, the peace officer may present sworn testimony by telephone if requir-
17 ing the peace officer's presence before the grand jury would constitute an undue hardship on the
18 peace officer or the agency that employs or utilizes the peace officer.

19 (8) A grand jury that is investigating a charge of failure to report as a sex offender under ORS
20 181.812 may receive in evidence certified copies of the form required by ORS 181.815 (2) and sex
21 offender registration forms and an affidavit of a representative of the Oregon State Police, as
22 keepers of the state's sex offender registration records, certifying that the certified copies of the
23 forms constitute the complete record for the defendant.

24 (9) The grand jury [*is not bound to hear evidence for the defendant, but it*] shall weigh all the
25 evidence submitted to it; and when it believes that other evidence within its reach will explain away
26 the charge, it should order such evidence to be produced, and for that purpose may require the
27 district attorney to issue process for the witnesses.

28 (10) A grand jury that is investigating a charge of driving while under the influence of
29 intoxicants in violation of ORS 813.010 may receive in evidence an affidavit of a peace officer re-
30 garding any or all of the following:

31 (a) Whether the defendant was driving.

32 (b) Whether the defendant took or refused to take tests under any provision of ORS chapter 813.

33 (c) The administration of tests under any provision of ORS chapter 813 and the results of such
34 tests.

35 (d) The officer's observations of physical or mental impairment of the defendant.

36 (11)(a) A grand jury may receive in evidence an affidavit of a representative of a financial in-
37 stitution for the purpose of authenticating records of the financial institution.

38 (b) As used in this subsection, "financial institution" means a financial institution as defined in
39 ORS 706.008, an entity that regularly issues, processes or services credit cards or any other com-
40 parable entity that regularly produces financial records.

41 **(12)(a) A defendant who has been arraigned on an information alleging a felony charge**
42 **that is the subject of a grand jury proceeding and who is represented by an attorney has a**
43 **right to appear before the grand jury as a witness if, prior to the filing of an indictment, the**
44 **defense attorney serves upon the district attorney written notice requesting the appearance.**
45 **The notice shall include an electronic mail address at which the defense attorney may be**

1 **contacted.**

2 **(b) A district attorney is not obligated to inform a defendant that a grand jury proceeding**
3 **investigating charges against the defendant is pending, in progress or about to occur.**

4 **(c) Upon receipt of the written notice described in paragraph (a) of this subsection, the**
5 **district attorney shall provide in writing the date, time and location of the defendant's ap-**
6 **pearance before the grand jury to the defense attorney at the indicated electronic mail ad-**
7 **dress. In the event of a scheduling conflict, the district attorney shall reasonably**
8 **accommodate the schedules of the defendant and the defense attorney if the accommodation**
9 **does not delay the grand jury proceeding beyond the time limit for holding a preliminary**
10 **hearing described in ORS 135.070 (2).**

11 **(d) Notwithstanding ORS 135.070 and paragraph (c) of this subsection, in order to ac-**
12 **commodate a scheduling conflict, upon the request of the defendant the time limit for hold-**
13 **ing a preliminary hearing described in ORS 135.070 (2) may be extended by a maximum of an**
14 **additional five judicial days and the district attorney and the defendant may stipulate to an**
15 **extension of greater duration. During a period of delay caused by a scheduling conflict under**
16 **this subsection, ORS 135.230 to 135.290 shall continue to apply concerning the custody status**
17 **of the defendant.**

18 **SECTION 2. The amendments to ORS 132.320 by section 1 of this 2015 Act apply to**
19 **criminal offenses committed on or after the effective date of this 2015 Act.**

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