

**PROPOSED AMENDMENTS TO  
SENATE BILL 822**

1 On page 1 of the printed bill, line 3, after “132.090” insert “, 132.320 and  
2 132.580”.

3 In line 5, after “(1)” insert “(a)”.

4 In line 6, after “jury” insert “described in paragraph (b) of this  
5 subsection”.

6 After line 7, insert:

7 “(b) The proceedings that shall be recorded under paragraph (a) of this  
8 subsection are all grand jury proceedings in which it is reasonably believed  
9 by the district attorney conducting the proceeding, at the time the proceed-  
10 ing commences, that the proceeding relates to the crime of aggravated mur-  
11 der as described in ORS 163.095 or a crime listed in ORS 137.700 or  
12 137.707.”.

13 In line 8, delete “member of the grand jury” and insert “clerk of the  
14 court”.

15 In line 16, delete “An unintentional” and insert “A”.

16 In line 17, after “validity of” insert “the proceeding or”.

17 In line 19, delete “An unintentional failure of a grand juror” and insert  
18 “A failure of the clerk of the court”.

19 In line 21, after “of” insert “the proceeding or”.

20 in line 22, delete “An unintentional” and insert “A”.

21 In line 23, after “validity of” insert “the proceeding or”.

22 In line 26, delete “grand juror” and insert “clerk of the court”.

1 On page 2, line 2, after “attorney” delete the semicolon and insert “during  
2 a proceeding on a particular case; and”.

3 Delete line 4 and insert “grand jury during a proceeding on a particular  
4 case.”.

5 Delete line 5.

6 In line 6, delete “grand juror” and insert “clerk of the court”.

7 In line 7, after “jury” insert “or a proceeding that solely aids in the pro-  
8 duction of subpoenaed documents or other materials”.

9 In line 8, delete “grand juror” and insert “clerk of the court”.

10 Delete lines 14 through 30 and insert:

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

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

24 “(B) The court may set any additional conditions on the release of the  
25 recordings or transcripts that the court deems appropriate.

26 “(C) The court shall release only that portion or portions of the re-  
27 cordings or transcripts required in the furtherance of justice.

28 “(D) The district attorney and the defense attorney shall have equal ac-  
29 cess to any portion of the recordings or transcripts released by the court.

30 “(E) The court shall issue protective orders as required under ORS 135.873

1 and may delay the release of the recordings or transcripts when necessary  
2 to prevent a threat of harm to a witness by the disclosure of any portion of  
3 the proceedings before the grand jury.

4 “(F) The court shall not release any portion of a grand jury recording or  
5 transcript if additional charges are being considered against the defendant  
6 or a potential codefendant who has not yet been indicted and who is the  
7 subject of an ongoing criminal investigation.

8 “(b)(A) When the defendant charged in the indictment has been arraigned  
9 on the indictment but is not represented by an attorney, the district attorney  
10 or the defendant may petition the court for an order allowing the district  
11 attorney or the defendant to obtain a copy of, or be allowed to review a  
12 portion or portions of, the recordings or transcripts upon a showing of a  
13 particularized need and payment of a reasonable fee to the clerk of the court  
14 to cover the costs of reproduction. Unless the court orders otherwise, the  
15 district attorney and the defendant may not copy, disseminate or republish  
16 the recordings or transcripts except to provide a copy to an agent of the  
17 district attorney or the defendant for the limited purpose of case preparation.

18 “(B) The court may set any additional conditions on the release or review  
19 of the recordings or transcripts that the court deems appropriate.

20 “(C) The court shall release only that portion or portions of the re-  
21 cordings or transcripts required in the furtherance of justice.

22 “(D) The district attorney and the defense attorney shall have equal ac-  
23 cess to any portion of the recordings or transcripts released by the court.

24 “(E) The court shall issue protective orders as required under ORS 135.873  
25 and delay the release of the recordings or transcripts when necessary to  
26 prevent a threat of harm to a witness by the disclosure of any portion of the  
27 proceedings before the grand jury.

28 “(F) The court shall not release or allow for review any portion of a  
29 grand jury recording or transcript if additional charges are being considered  
30 against the defendant or a potential codefendant who has not yet been in-

1 dicted and who is the subject of an ongoing criminal investigation.

2 “(c) A person who is not a party in the indictment resulting from the  
3 grand jury proceedings may not obtain the recordings or transcripts until the  
4 conclusion of all legal proceedings resulting from the indictment, including  
5 appeals and post-conviction relief, and subject to any constitutional or stat-  
6 utory protections or requirements.

7 “(d) Any review by the court of requested recordings or transcripts under  
8 this subsection shall occur in camera.

9 “(e) A petition to request grand jury recordings or transcripts under this  
10 subsection shall be filed no later than 14 calendar days before the first  
11 scheduled trial date unless good cause is shown by the petitioning party for  
12 the delay in filing the petition.

13 “(f) As used in this subsection:

14 “(A) ‘Agent’ does not include the defendant.

15 “(B) ‘Particularized need’ means:

16 “(i) The recordings or transcripts are needed to avoid a manifest injustice,  
17 the need for the disclosure is substantially greater than the need for secrecy  
18 of the grand jury proceedings and the request for the recordings or tran-  
19 scripts is limited only to those portions of the recordings or transcripts  
20 necessary to avoid the manifest injustice; or

21 “(ii) The disclosure of the recordings or transcripts is required by a con-  
22 stitutional or statutory provision of law.”.

23 On page 3, after line 15, insert:

24 “(6) The Chief Justice of the Supreme Court may establish by rule re-  
25 tention periods for grand jury recordings or transcripts produced pursuant  
26 to sections 1 and 2 of this 2015 Act.”.

27 In line 16, delete “(6)” and insert “(7)”.

28 After line 17, insert:

29 “(8) A recording or transcript of a grand jury proceeding produced pur-  
30 suant to sections 1 and 2 of this 2015 Act:

1       “(a) Shall not be used as evidence in any subsequent proceeding except  
2 as permitted under ORS 40.375, 40.380, 40.450, 40.460 or 40.465.

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

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

8       After line 42, insert:

9       “**SECTION 5.** ORS 132.320 is amended to read:

10       “132.320. (1) Except as provided in subsections (2) to [(11)] (12) of this  
11 section, in the investigation of a charge for the purpose of indictment, the  
12 grand jury shall receive no other evidence than such as might be given on  
13 the trial of the person charged with the crime in question.

14       “(2) A report or a copy of a report made by a physicist, chemist, medical  
15 examiner, physician, firearms identification expert, examiner of questioned  
16 documents, fingerprint technician, or an expert or technician in some com-  
17 parable scientific or professional field, concerning the results of an exam-  
18 ination, comparison or test performed by such person in connection with a  
19 case which is the subject of a grand jury proceeding, shall, when certified  
20 by such person as a report made by such person or as a true copy thereof,  
21 be received in evidence in the grand jury proceeding.

22       “(3) An affidavit of a witness who is unable to appear before the grand  
23 jury shall be received in evidence in the grand jury proceeding if, upon ap-  
24 plication by the district attorney, the presiding judge for the judicial district  
25 in which the grand jury is sitting authorizes the receipt after good cause has  
26 been shown for the witness’ inability to appear. An affidavit taken in an-  
27 other state or territory of the United States, the District of Columbia or in  
28 a foreign country must be authenticated as provided in ORS chapter 194 be-  
29 fore it can be used in this state.

30       “(4) A grand jury that is investigating a charge of criminal driving while

1 suspended or revoked under ORS 811.182 may receive in evidence an affidavit  
2 of a peace officer with a report or copy of a report of the peace officer con-  
3 cerning the peace officer's investigation of the violation of ORS 811.182 by  
4 the defendant.

5 “(5) A grand jury may receive testimony of a witness by means of simul-  
6 taneous television transmission allowing the grand jury and district attorney  
7 to observe and communicate with the witness and the witness to observe and  
8 communicate with the grand jury and the district attorney.

9 “(6) A grand jury that is investigating a charge of failure to appear under  
10 ORS 133.076, 153.992, 162.195 or 162.205 may receive in evidence an affidavit  
11 of a court employee certifying that the defendant failed to appear as required  
12 by law and setting forth facts sufficient to support that conclusion.

13 “(7)(a) Except as otherwise provided in this subsection, a grand jury may  
14 receive in evidence through the testimony of one peace officer involved in  
15 the criminal investigation under grand jury inquiry information from an of-  
16 ficial report of another peace officer involved in the same criminal investi-  
17 gation concerning the other peace officer's investigation of the matter before  
18 the grand jury. The statement of a person suspected of committing an offense  
19 or inadmissible hearsay of persons other than the peace officer who compiled  
20 the official report may not be presented to a grand jury under this para-  
21 graph.

22 “(b) If the official report contains evidence other than chain of custody,  
23 venue or the name of the person suspected of committing an offense, the  
24 grand jurors must be notified that the evidence is being submitted by report  
25 and that the peace officer who compiled the report will be made available  
26 for testimony at the request of the grand jury. When a grand jury requests  
27 the testimony of a peace officer under this paragraph, the peace officer may  
28 present sworn testimony by telephone if requiring the peace officer's pres-  
29 ence before the grand jury would constitute an undue hardship on the peace  
30 officer or the agency that employs or utilizes the peace officer.

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

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

12 “(10) A grand jury that is investigating a charge of driving while under  
13 the influence of intoxicants in violation of ORS 813.010 may receive in evi-  
14 dence an affidavit of a peace officer regarding any or all of the following:

15 “(a) Whether the defendant was driving.

16 “(b) Whether the defendant took or refused to take tests under any pro-  
17 vision of ORS chapter 813.

18 “(c) The administration of tests under any provision of ORS chapter 813  
19 and the results of such tests.

20 “(d) The officer’s observations of physical or mental impairment of the  
21 defendant.

22 “(11)(a) A grand jury may receive in evidence an affidavit of a represen-  
23 tative of a financial institution for the purpose of authenticating records of  
24 the financial institution.

25 “(b) As used in this subsection, ‘financial institution’ means a financial  
26 institution as defined in ORS 706.008, an entity that regularly issues, pro-  
27 cesses or services credit cards or any other comparable entity that regularly  
28 produces financial records.

29 **“(12)(a) The statement of a child witness or special witness shall be**  
30 **received in evidence in the grand jury proceeding if the statement is**

1 **audio or video recorded or provided by the testimony of another wit-**  
2 **ness to whom the statement was made. The child witness or special**  
3 **witness statement may have been made in anticipation of grand jury,**  
4 **during the investigation or at any other time. If offered, the recording**  
5 **or testimony shall be received as the substantive statement of the**  
6 **child witness or special witness whether or not the child witness or**  
7 **special witness testifies in person.**

8 **“(b) As used in this subsection:**

9 **“(A) ‘Child witness’ means a victim or witness who is under 12 years**  
10 **of age at the time the grand jury proceeding commences.**

11 **“(B) ‘Special witness’ means a victim or witness who the district**  
12 **attorney determines is either unable to testify due to temporary or**  
13 **permanent physical or mental incapacitation or who will suffer phys-**  
14 **ical, emotional or mental harm if required to testify in person before**  
15 **the grand jury.**

16 **“SECTION 6.** ORS 132.580 is amended to read:

17 **“132.580. (1) When an indictment is found, the names of the witnesses**  
18 **examined before the grand jury that returned the indictment, either by tes-**  
19 **timony in the presence of the grand jury, by affidavit, by means of simul-**  
20 **taneous television transmission under ORS 132.320 (5) or by telephone under**  
21 **ORS 132.320 (7), and the names of those whose reports were received by such**  
22 **grand jury pursuant to ORS 132.320 (2) must be inserted at the foot of the**  
23 **indictment, or indorsed thereon, before it is filed. The indorsement shall**  
24 **show whether the witness gave testimony before the grand jury in person,**  
25 **by affidavit, **by recording, by other testifying witness,** by means of si-**  
26 **multaneous television transmission or by telephone or filed a report.**

27 **“(2) A witness examined before the grand jury whose name is not indorsed**  
28 **on the indictment shall not be permitted to testify at trial without the con-**  
29 **sent of the defendant, unless the court finds that:**

30 **“(a) The name of the witness was omitted from the indictment by**



1 inadvertence;

2 “(b) The name of the witness was furnished to the defendant by the state  
3 at least 10 days before trial; and

4 “(c) The defendant will not be prejudiced by the omission.”

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