

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 1550**

1 On page 4 of the printed bill, delete lines 5 through 14.

2 In line 15, delete “(4)(a)” and insert “(3)(a)”.

3 In line 30, delete “(5)” and insert “(4)”.

4 In line 33, delete “(6)” and insert “(5)”.

5 In line 44, delete “(7)” and insert “(6)”.

6 On page 10, delete lines 9 through 45 and delete page 11.

7 On page 12, delete lines 1 through 8 and insert:

8 “**Sec. 3.** (1) Audio recordings and shorthand reporter notes and reports
9 produced pursuant to sections 1 and 2 of this 2016 Act [*in a judicial district*
10 *with a population between 150,000 and 300,000 or over 700,000*] are confidential
11 and may not be released by the court except as described in this section.

12 “(2) When an indictment resulting from grand jury proceedings is
13 indorsed ‘a true bill,’ the audio recording of the grand jury proceedings or
14 the notes or report of a shorthand reporter may be released only in the fol-
15 lowing manner:

16 “(a) When the defendant has been arraigned on the indictment, the pros-
17 ecuting attorney and the defense attorney may obtain a copy of the audio
18 recording, notes or report:

19 “(A) After 10 days have passed since the defendant’s arraignment on the
20 indictment and no motion described in paragraph (e) of this subsection has
21 been filed; or

1 “(B) In accordance with the court’s ruling on the motion described in
2 paragraph (e) of this subsection, if a motion has been filed.

3 “(b) Unless the court orders otherwise, the prosecuting attorney and the
4 defense attorney may not copy, disseminate or republish the audio recording,
5 notes or report, or a transcript prepared from the audio recording, notes or
6 report released pursuant to this subsection, except to provide a copy to an
7 agent of the prosecuting attorney or defense attorney for the limited purpose
8 of case preparation. Unless a court orders otherwise for good cause shown,
9 in consulting with the defendant the defense attorney may not disclose:

10 “(A) The address, telephone number, date of birth, driver license or vehi-
11 cle registration information of a victim, witness or grand juror, obtained
12 from a recording, notes, report or transcript; or

13 “(B) Any portion of a recording, notes, report or transcript that contains
14 the address, telephone number, date of birth, driver license or vehicle regis-
15 tration information of a victim, witness or grand juror.

16 “(c) The defense attorney may not provide a copy of the audio recording,
17 notes or report, or a transcript prepared from the audio recording, notes or
18 report, to the defendant.

19 “(d) When the defendant has been arraigned but is not represented by an
20 attorney, the defendant may request by motion that the court issue an order
21 allowing the defendant access to review the contents of the audio recording,
22 notes or report. A copy of the motion must be provided to the prosecuting
23 attorney. The prosecuting attorney may request a hearing on the motion
24 within seven days of receiving a copy. At the hearing, or in response to re-
25 ceiving the motion, the court may set reasonable conditions on the review
26 of the audio recording, notes or report.

27 “(e) The prosecuting attorney, the victim or a witness may file a motion
28 for a protective order no later than 10 days after the arraignment on the
29 indictment. The prosecuting attorney may also file a motion for a protective
30 order within 10 days of receiving a motion described in paragraph (d) of this

1 subsection. The court may order that the defense attorney’s or defendant’s
2 access to a copy of the audio recording, notes or report be denied, restricted
3 or deferred or may make any other order upon a finding of substantial and
4 compelling reasons for the order. In deciding whether to grant the motion
5 and enter a protective order under this paragraph, the court may consider
6 the following:

7 “(A) Protection of witnesses and others from physical harm, threats of
8 harm, bribes, economic interference, reprisal and other forms of intimidation;

9 “(B) Maintenance of secrecy regarding informants, as required for effec-
10 tive investigation of criminal activity;

11 “(C) Confidential information recognized under law, including the pro-
12 tection of confidential relationships and privileges; and

13 “(D) Any other relevant considerations.

14 “(f) The court may permit the evidence of substantial and compelling
15 circumstances described in paragraph (e) of this subsection to be made in the
16 form of a written statement to be inspected by the court only or by oral
17 testimony given on the record.

18 “(3)(a) Except as provided in paragraph (b) of this subsection, when grand
19 jury proceedings do not result in an indictment indorsed as either ‘a true
20 bill’ or ‘not a true bill,’ the audio recording or the notes or report of a
21 shorthand reporter, or a transcript prepared from the audio recording, notes
22 or report, produced pursuant to sections 1 and 2 of this 2016 Act may not
23 be disclosed or released.

24 “(b) When subsequent grand jury proceedings occur inquiring into the
25 same criminal episode as the grand jury proceedings described in paragraph
26 (a) of this subsection, and the subsequent proceedings result in an indictment
27 indorsed as ‘a true bill,’ the prosecuting attorney shall provide notice to the
28 person charged in the indictment of the occurrence of the earlier grand jury
29 proceedings. After the person is arraigned on the indictment and the time
30 period described in subsection (2)(a) of this section has passed, the audio

1 recording, notes or report produced during the earlier grand jury proceedings
2 may be obtained in the manner set forth in subsection (2) of this section.

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

5 “(4) The Chief Justice of the Supreme Court may establish a fee under
6 ORS 21.345 for the cost of providing a copy of any audio recording or
7 shorthand reporter notes or report of a grand jury proceeding to a person
8 requesting a copy under this section.

9 “(5) An audio recording, notes, report or transcript of a grand jury pro-
10 ceeding obtained pursuant to sections 1 and 2 of this 2016 Act:

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

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

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

18 “(d) May be used as evidence in a proceeding for contempt of court
19 against a person alleged to have violated the terms of a court order con-
20 cerning the audio recording, notes, report or transcript.

21 “(6) The release of audio recordings, notes or reports of grand jury pro-
22 ceedings under this section does not affect discovery obligations under ORS
23 135.805 to 135.873.”

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