



June 29, 2017

**TO: Co-Chair Jackie Winters
Co-Chair Duane Stark
Members of Joint Committee on Ways and Means Public Safety Sub-Committee**

**FR: Scott Dillon, President OCPA
Amanda Dalton, Lobbyist OCPA
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RE: SB 505 – Grand Jury Recordation

On behalf of the Oregon Council of Police Associations (OCPA) and our 60 Oregon-based public safety labor organizations, including line enforcement officers, corrections officers, parole and probation officers, dispatchers, and other public safety support personnel, we urge your NO vote on SB 505A, specifically the provision providing for the release of audio recordings for Not True Bill's for public servants/police officers.

This legislation would undermine the longstanding purpose of the grand jury: a democratic process, where community members serve a vital role as a check on the criminal justice system—on prosecutors who hold immense power over our most essential liberties. To protect these liberties, we require them to present evidence to a cross section of the community and we entrust those citizens to determine whether or not there is sufficient evidence to put a person's liberty—even their life—at stake.

The grand jury, in returning a Not True Bill in the case of an officer-involved incident, has found either that the prosecutor could not provide the necessary evidence or that the officer acted in self-defense. Either way, the prosecutor has failed to make the showing that we demand before the State can subject a person to the control of the criminal justice system. Under the bill as proposed, we would remove this fundamental check on prosecutorial discretion— but only for public servants and police officers. Even when an officer's peers from across the community find no evidence of wrongdoing, this bill would put an officer or a public servant on a public trial. We do not, and would not, do this to any other accused.

Another concern with the bill is that grand jury proceedings depend on a degree of frankness that is perhaps not always invited in the courtroom. We cannot ignore the reality that witnesses who step up to testify on either side of an officer-involved incident potentially risk far more than the loss of a few hours. They risk the exposure, public scrutiny, and even media scrutiny, of their personal information, statements, and even past actions completely unrelated to the case. This bill would

inevitably cause a chilling effect on willingness of witnesses—on all sides—to come forward in investigations of wrongdoing.

We are also concerned that the release of a grand jury recording could expose an officer to civil liability, exposing the officer/public servant to an exposure we place on no others, and all without the benefit of counsel in the grand jury room. The bill as drafted contains no sideboards on the use of these publically released transcripts.

We ask that you adopt the -11 amendments which provide crucial missing components to the current release of records for public servants.

The -11's do 2 things:

1. Limit the release to a transcript of the proceedings, instead of an audio or visual recording, as each of us respond differently to a traumatic experience and instantaneous emotional reactions should not be at the center public scrutiny;
2. Include language which limits the use of the transcript providing protection to the officer in anticipation of a civil suits and arbitration:

(e) Transcripts released under this section are not admissible as evidence in any civil or administrative proceeding as a result of the public servant's actions.

Requested by Representative BARKER

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 505**

1 On page 2 of the printed A-engrossed bill, line 31, after “700,000” insert
2 “, and transcripts of the audio recordings,”.

3 On page 3, delete lines 20 through 44 and insert:

4 “(3)(a) When a grand jury inquires into the conduct of a public servant
5 as defined in ORS 162.005 for acts occurring in the performance of the public
6 servant’s duties, and an indictment resulting from the grand jury proceedings
7 is indorsed ‘not a true bill’:

8 “(A) The public servant or the prosecuting attorney may file a motion
9 requesting a court order releasing all or a portion of a transcript of the au-
10 dio recording. A copy of the motion must be served on the opposing party.
11 In deciding whether to issue such an order, the court shall determine
12 whether the public interest in disclosure outweighs the interest in main-
13 taining the secrecy of the grand jury proceedings. If the court orders dis-
14 closure, the court may set reasonable conditions on copying, disseminating
15 or republishing the transcript.

16 “(B) A member of the public may file a motion requesting a court order
17 for production and release of a transcript of the audio recording. A copy of
18 the motion must be served on the prosecuting attorney and the public
19 servant’s attorney, or the public servant if the public servant is not repres-
20 ented by an attorney. The person filing the motion is responsible for the cost
21 of producing the transcript and a court order for production and release of

1 the transcript must be conditioned on receipt of payment. In deciding
2 whether to issue such an order, the court shall determine whether the public
3 interest in disclosure outweighs the interest in maintaining the secrecy of
4 the grand jury proceedings. If the court orders disclosure, the court may set
5 reasonable conditions on copying, disseminating or republishing the tran-
6 script.

7 “(b) The release of a transcript under this subsection may not include:

8 “(A) The release of the address, telephone number, date of birth, driver
9 license or vehicle registration information of a victim or witness; or

10 “(B) The release of the name, address, telephone number, date of birth,
11 driver license or vehicle registration information of a grand juror.

12 “(c) Notwithstanding subsection (7) of this section, a transcript released
13 under this subsection is not admissible as evidence in any civil or adminis-
14 trative proceeding concerning the actions of the public servant that were the
15 subject of the grand jury proceedings.”.

16 On page 10, delete lines 3 through 45 and delete page 11 and insert:

17 “**SECTION 11.** Section 3 of this 2017 Act is amended to read:

18 “**Sec. 3.** (1) Audio recordings produced pursuant to sections 1 and 2 of
19 this 2017 Act [*in a judicial district with a population between 150,000 and*
20 *300,000 or over 700,000*], and transcripts of the audio recordings, are confi-
21 dential and may not be released except as described in this section.

22 “(2) When an indictment resulting from grand jury proceedings is
23 indorsed ‘a true bill,’ the audio recording of the grand jury proceedings may
24 be released only in the following manner:

25 “(a) The prosecuting attorney may obtain a copy of the audio recording
26 at any time after the defendant’s arraignment on the indictment.

27 “(b) When the defendant has been arraigned on the indictment, the de-
28 fense attorney may obtain a copy of the audio recording:

29 “(A) After 10 days have passed since the defendant’s arraignment on the
30 indictment and no motion described in subsection (4) of this section has been

1 filed; or

2 “(B) In accordance with the court’s ruling on the motion described in
3 subsection (4) of this section, if a motion has been filed.

4 “(c) Unless the court orders otherwise for good cause shown, the prose-
5 cuting attorney and the defense attorney may not copy, disseminate or re-
6 publish the audio recording, or a transcript prepared from the audio
7 recording, released pursuant to this subsection, except to provide a copy to
8 an agent of the prosecuting attorney or defense attorney for the limited
9 purpose of case preparation. Unless a court orders otherwise for good cause
10 shown, in consulting with the defendant the defense attorney may not dis-
11 close:

12 “(A) The address, telephone number, date of birth, driver license or vehi-
13 cle registration information of a victim, witness or grand juror, obtained
14 from the audio recording or transcript; or

15 “(B) Any portion of the audio recording or transcript that contains the
16 address, telephone number, date of birth, driver license or vehicle registra-
17 tion information of a victim, witness or grand juror.

18 “(d) The defense attorney may not provide a copy of the audio recording,
19 or a transcript prepared from the audio recording, to the defendant.

20 “(e) When the defendant has been arraigned but is not represented by an
21 attorney, the defendant may request by motion that the court issue an order
22 allowing the defendant access to review the contents of the audio recording.
23 A copy of the motion must be provided to the prosecuting attorney. The
24 prosecuting attorney may request a hearing on the motion within 10 days
25 after receiving a copy. At the hearing, or in response to receiving the mo-
26 tion, the court may appoint counsel for the defendant for the limited purpose
27 of reviewing the audio recording and may set reasonable conditions on the
28 review of the audio recording.

29 “(3)(a) When a grand jury inquires into the conduct of a public servant
30 as defined in ORS 162.005 for acts occurring in the performance of the public

1 servant's duties, and an indictment resulting from the grand jury proceedings
2 is indorsed 'not a true bill':

3 “(A) The public servant or the prosecuting attorney may file a motion
4 requesting a court order releasing all or a portion of a transcript of the au-
5 dio recording. A copy of the motion must be served on the opposing party.
6 In deciding whether to issue such an order, the court shall determine
7 whether the public interest in disclosure outweighs the interest in main-
8 taining the secrecy of the grand jury proceedings. If the court orders dis-
9 closure, the court may set reasonable conditions on copying, disseminating
10 or republishing the transcript.

11 “(B) A member of the public may file a motion requesting a court order
12 for production and release of a transcript of the audio recording. A copy of
13 the motion must be served on the prosecuting attorney and the public
14 servant's attorney, or the public servant if the public servant is not repres-
15 ented by an attorney. The person filing the motion is responsible for the cost
16 of producing the transcript and a court order for production and release of
17 the transcript must be conditioned on receipt of payment. In deciding
18 whether to issue such an order, the court shall determine whether the public
19 interest in disclosure outweighs the interest in maintaining the secrecy of
20 the grand jury proceedings. If the court orders disclosure, the court may set
21 reasonable conditions on copying, disseminating or republishing the tran-
22 script.

23 “(b) The release of a transcript under this subsection may not include:

24 “(A) The release of the address, telephone number, date of birth, driver
25 license or vehicle registration information of a victim or witness; or

26 “(B) The release of the name, address, telephone number, date of birth,
27 driver license or vehicle registration information of a grand juror.

28 “(c) Notwithstanding subsection (7) of this section, a transcript released
29 under this subsection is not admissible as evidence in any civil or adminis-
30 trative proceeding concerning the actions of the public servant that were the

1 subject of the grand jury proceedings.

2 “(4)(a) A motion for a protective order concerning an audio recording or
3 transcript of grand jury proceedings may be filed as follows:

4 “(A) The prosecuting attorney may file a motion for a protective order
5 within 10 days after the defendant’s arraignment on the indictment. The
6 motion may be filed on behalf of a victim or a witness. The prosecuting at-
7 torney shall inform the victim of the ability to seek a protective order and
8 shall file a motion for a protective order upon request from the victim.

9 “(B) A prosecuting attorney may file a motion for a protective order
10 within 10 days after receiving a motion described in subsection (2)(e) of this
11 section.

12 “(C) A prosecuting attorney, the public servant who is the subject of an
13 indictment indorsed ‘not a true bill’ or the public servant’s attorney may file
14 a motion for a protective order within 10 days of receiving a motion de-
15 scribed in subsection (3)(a) of this section.

16 “(b) If the motion for a protective order requests that a portion of the
17 audio recording or transcript be redacted, the motion must be accompanied
18 by a specific description, including the date and time, of the portion of the
19 audio recording or transcript to be redacted.

20 “(c) In response to a motion filed under this subsection, the court may
21 order that the access of the person requesting release to a copy of the audio
22 recording or transcript be denied, restricted or deferred, or may make any
23 other order, upon a finding of substantial and compelling circumstances. In
24 deciding whether to grant the motion and enter a protective order under this
25 paragraph, the court may consider the following:

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

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

30 “(C) Confidential information recognized under law, including the pro-

1 tection of confidential relationships and privileges and the contents of con-
2 fidential records unrelated to a crime alleged in the indictment; and

3 “(D) Any other relevant considerations.

4 “(d) The court may permit the evidence of substantial and compelling
5 circumstances described in paragraph (c) of this subsection to be made in the
6 form of a written statement to be inspected by the court only or by oral
7 testimony given on the record.

8 “(5)(a) Except as provided in paragraph (b) of this subsection, when grand
9 jury proceedings do not result in an indictment indorsed as either ‘a true
10 bill’ or ‘not a true bill,’ the audio recording produced pursuant to sections
11 1 and 2 of this 2017 Act may not be disclosed or released.

12 “(b) When subsequent grand jury proceedings occur inquiring into the
13 same criminal episode as the grand jury proceedings described in paragraph
14 (a) of this subsection, and the subsequent proceedings result in an indictment
15 indorsed as ‘a true bill,’ the prosecuting attorney shall provide notice to the
16 person charged in the indictment of the occurrence of the earlier grand jury
17 proceedings. After the person is arraigned on the indictment and the time
18 period described in subsection (2)(b) of this section has passed, the audio
19 recording produced during the earlier grand jury proceedings may be ob-
20 tained in the manner set forth in subsection (2) of this section.

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

23 “(6) The Chief Justice of the Supreme Court may establish a fee for the
24 cost of providing a copy of any audio recording of a grand jury proceeding
25 to a person requesting a copy under this section.

26 “(7) An audio recording or transcript of a grand jury proceeding obtained
27 pursuant to sections 1 and 2 of this 2017 Act and this section:

28 “(a) May not be used as evidence in any subsequent proceeding, except
29 as permitted under 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

1 true bill' or the proceedings that led to the indorsement.

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

5 “(d) May be used as evidence in a proceeding for contempt of court
6 against a person alleged to have violated the terms of a court order con-
7 cerning the audio recording or transcript.

8 “(8) The release of audio recordings or transcripts of grand jury pro-
9 ceedings under this section does not affect discovery obligations under ORS
10 135.805 to 135.873.”

11 On page 12, delete lines 1 through 25.

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