

SENATE AMENDMENTS TO SENATE BILL 496

By COMMITTEE ON JUDICIARY

April 24

1 On page 1 of the printed bill, line 3, after “132.080;” delete the rest of the line and delete line
2 4 and insert “and prescribing an effective date.”.

3 Delete lines 6 through 24 and delete pages 2 through 22 and insert:

4 **“SECTION 1. (1)(a) The presiding judge of a judicial district with a population between**
5 **150,000 and 300,000 or over 700,000 shall ensure that proceedings before the grand jury are**
6 **recorded in the manner described in this section and section 2 of this 2017 Act.**

7 **“(b) The court shall provide and maintain suitable audio electronic recording devices to**
8 **record grand jury proceedings.**

9 **“(c) The Chief Justice of the Supreme Court shall designate the types of audio electronic**
10 **recording devices that are suitable for recording grand jury proceedings and may establish**
11 **policies and procedures by rule or order to carry out the provisions of this section and**
12 **sections 2 and 3 of this 2017 Act.**

13 **“(d) The prosecuting attorney shall provide the court access to the premises in which the**
14 **grand jury fulfills its obligations and the recording equipment used to carry out the pro-**
15 **visions of this section and section 2 of this 2017 Act. The presiding judge of each judicial**
16 **district may enter into an agreement with the prosecuting attorney that identifies the con-**
17 **ditions and terms of access.**

18 **“(2)(a) The court shall delegate the electronic recording of the proceedings described in**
19 **section 2 of this 2017 Act to a grand juror, after providing instruction to the grand juror**
20 **concerning the recording equipment and recording requirements.**

21 **“(b) A grand juror recording proceedings under this section is not subject to subpoena,**
22 **and may not disclose any information, concerning the grand jury proceedings without prior**
23 **court order.**

24 **“(3)(a) A failure of an audio electronic recording device to accurately record all or part**
25 **of a grand jury proceeding does not affect the validity of any prosecution or indictment.**

26 **“(b) A failure of a grand juror to operate an audio electronic recording device in a man-**
27 **ner that accurately records all or part of a grand jury proceeding, as required, does not af-**
28 **fect the validity of any prosecution or indictment.**

29 **“(4) This section and section 2 of this 2017 Act do not apply to grand jury proceedings**
30 **under ORS 132.440 that inquire into the condition and management of correctional facilities**
31 **and youth correction facilities.**

32 **“SECTION 2. (1) Except as provided in subsection (2) of this section, the grand juror de-**
33 **scribed in section 1 (2) of this 2017 Act who is recording grand jury proceedings in a judicial**
34 **district with a population between 150,000 and 300,000 or over 700,000 shall record all matters**
35 **that come before the grand jury, including:**

1 “(a) The case name and number;
2 “(b) The names of witnesses appearing before the grand jury;
3 “(c) Each statement made or question asked by the prosecuting attorney; and
4 “(d) Each question asked of, and each response given by, a witness who appears before
5 the grand jury.
6 “(2) The grand juror operating the audio electronic recording device may not record or
7 report:
8 “(a) The deliberations or voting of the grand jury.
9 “(b) A presentment made pursuant to ORS 132.370.
10 “(c) Any statements made by a grand juror who is examined as a witness as provided in
11 ORS 132.350.
12 “(d) A procedure related to the production of records, or the unsealing of records,
13 subpoenaed pursuant to ORS 136.583 and to be presented before the grand jury.
14 “(3) The clerk of the court shall file with the court the audio recordings.
15 “SECTION 3. (1) Audio recordings produced pursuant to sections 1 and 2 of this 2017 Act
16 in a judicial district with a population between 150,000 and 300,000 or over 700,000 are confi-
17 dential and may not be released except as described in this section.
18 “(2) When an indictment resulting from grand jury proceedings is indorsed ‘a true bill,’
19 the audio recording of the grand jury proceedings may be released only in the following
20 manner:
21 “(a) The prosecuting attorney may obtain a copy of the audio recording at any time after
22 the defendant’s arraignment on the indictment.
23 “(b) When the defendant has been arraigned on the indictment, the defense attorney may
24 obtain a copy of the audio recording:
25 “(A) After 10 days have passed since the defendant’s arraignment on the indictment and
26 no motion described in subsection (4) of this section has been filed; or
27 “(B) In accordance with the court’s ruling on the motion described in subsection (4) of
28 this section, if a motion has been filed.
29 “(c) Unless the court orders otherwise for good cause shown, the prosecuting attorney
30 and the defense attorney may not copy, disseminate or republish the audio recording, or a
31 transcript prepared from the audio recording, released pursuant to this subsection, except
32 to provide a copy to an agent of the prosecuting attorney or defense attorney for the limited
33 purpose of case preparation. Unless a court orders otherwise for good cause shown, in con-
34 sulting with the defendant the defense attorney may not disclose:
35 “(A) The address, telephone number, date of birth, driver license or vehicle registration
36 information of a victim, witness or grand juror, obtained from the audio recording or tran-
37 script; or
38 “(B) Any portion of the audio recording transcript that contains the address, telephone
39 number, date of birth, driver license or vehicle registration information of a victim, witness
40 or grand juror.
41 “(d) The defense attorney may not provide a copy of the audio recording, or a transcript
42 prepared from the audio recording, to the defendant.
43 “(e) When the defendant has been arraigned but is not represented by an attorney, the
44 defendant may request by motion that the court issue an order allowing the defendant access
45 to review the contents of the audio recording. A copy of the motion must be provided to the

1 prosecuting attorney. The prosecuting attorney may request a hearing on the motion within
2 10 days after receiving a copy. At the hearing, or in response to receiving the motion, the
3 court shall appoint counsel for the defendant for the limited purpose of reviewing the audio
4 recording and may set reasonable conditions on the review of the audio recording.

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

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

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

24 “(b) The release of any audio recording or transcript under this section may not include:

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

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

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

31 “(A) The prosecuting attorney may file a motion for a protective order within 10 days
32 after the defendant’s arraignment on the indictment. The motion may be filed on behalf of
33 a victim or a witness. The prosecuting attorney shall inform the victim of the ability to seek
34 a protective order and shall file a motion for a protective order upon request from the vic-
35 tim.

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

38 “(C) A prosecuting attorney, the public servant who is the subject of an indictment
39 indorsed ‘not a true bill’ or the public servant’s attorney may file a motion for a protective
40 order within 10 days of receiving a motion described in subsection (3)(a) of this section.

41 “(b) If the motion for a protective order requests that a portion of the audio recording
42 or transcript be redacted, the motion must be accompanied by a specific description, in-
43 cluding the date and time, of the portion of the audio recording or transcript to be redacted.

44 “(c) In response to a motion filed under this subsection, the court may order that the
45 access of the person requesting release to a copy of the audio recording or transcript be

1 denied, restricted or deferred, or may make any other order, upon a finding of substantial
2 and compelling circumstances. In deciding whether to grant the motion and enter a protec-
3 tive order under this paragraph, the court may consider the following:

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

6 “(B) Maintenance of secrecy regarding informants, as required for effective investigation
7 of criminal activity;

8 “(C) Confidential information recognized under law, including the protection of confiden-
9 tial relationships and privileges and the contents of confidential records unrelated to a crime
10 alleged in the indictment; and

11 “(D) Any other relevant considerations.

12 “(d) The court may permit the evidence of substantial and compelling circumstances de-
13 scribed in paragraph (c) of this subsection to be made in the form of a written statement to
14 be inspected by the court only or by oral testimony given on the record.

15 “(5)(a) Except as provided in paragraph (b) of this subsection, when grand jury pro-
16 ceedings do not result in an indictment indorsed as either ‘a true bill’ or ‘not a true bill,’ the
17 audio recording produced pursuant to sections 1 and 2 of this 2017 Act may not be disclosed
18 or released.

19 “(b) When subsequent grand jury proceedings occur inquiring into the same criminal
20 episode as the grand jury proceedings described in paragraph (a) of this subsection, and the
21 subsequent proceedings result in an indictment indorsed as ‘a true bill,’ the prosecuting at-
22 torney shall provide notice to the person charged in the indictment of the occurrence of the
23 earlier grand jury proceedings. After the person is arraigned on the indictment and the time
24 period described in subsection (2)(b) of this section has passed, the audio recording produced
25 during the earlier grand jury proceedings may be obtained in the manner set forth in sub-
26 section (2) of this section.

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

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

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

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

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

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

40 “(d) May be used as evidence in a proceeding for contempt of court against a person al-
41 leged to have violated the terms of a court order concerning the audio recording or tran-
42 script.

43 “(8) The release of audio recordings of grand jury proceedings under this section does
44 not affect discovery obligations under ORS 135.805 to 135.873.

45 “SECTION 4. ORS 132.090 is amended to read:

1 “132.090. (1) Except as provided in subsections (2) and (3) of this section **and sections 1 and 2**
2 **of this 2017 Act**, no person other than the district attorney or a witness actually under examination
3 shall be present during the sittings of the grand jury.

4 “(2) Upon a motion filed by the district attorney in the circuit court, the circuit judge may ap-
5 point a reporter who shall attend the sittings of the grand jury to take and report the testimony in
6 any matters pending before the grand jury, and may appoint a parent, guardian or other appropriate
7 person 18 years of age or older to accompany any child 12 years of age or younger, or any person
8 with an intellectual disability, during an appearance before the grand jury. The circuit judge, upon
9 the district attorney’s showing to the court that it is necessary for the proper examination of a
10 witness appearing before the grand jury, may appoint a guard, medical or other special attendant
11 or nurse, who shall be present in the grand jury room and shall attend such sittings.

12 “(3) The district attorney may designate an interpreter who is certified under ORS 45.291 to
13 interpret the testimony of witnesses appearing before the grand jury. The district attorney may
14 designate a qualified interpreter, as defined in ORS 45.288, if the circuit court determines that a
15 certified interpreter is not available and that the person designated by the district attorney is a
16 qualified interpreter as defined in ORS 45.288. An interpreter designated under this subsection may
17 be present in the grand jury room and attend the sittings of the grand jury.

18 “(4) No person other than members of the grand jury shall be present when the grand jury is
19 deliberating or voting upon a matter before it.

20 “(5) As used in this section, ‘intellectual disability’ has the meaning given that term in ORS
21 427.005. Intellectual disability may be shown by attaching to the motion of the district attorney:

22 “(a) Documentary evidence of intellectual functioning; or

23 “(b) The affidavit of a qualified person familiar with the person with an intellectual disability.
24 ‘Qualified person’ includes, but is not limited to, a teacher, therapist or physician.

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

26 “132.320. (1) Except as provided in subsections (2) to [(12)] (13) of this section, in the investi-
27 gation of a charge for the purpose of indictment, the grand jury shall receive no other evidence than
28 such as might be given on the trial of the person charged with the crime in question.

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

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

41 “(4) A grand jury that is investigating a charge of criminal driving while suspended or revoked
42 under ORS 811.182 may receive in evidence an affidavit of a peace officer with a report or copy of
43 a report of the peace officer concerning the peace officer’s investigation of the violation of ORS
44 811.182 by the defendant.

45 “(5) A grand jury may receive testimony of a witness by means of simultaneous television

1 transmission allowing the grand jury and district attorney to observe and communicate with the
2 witness and the witness to observe and communicate with the grand jury and the district attorney.

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

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

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

21 “(8) A grand jury that is investigating a charge of failure to report as a sex offender under ORS
22 163A.040 may receive in evidence certified copies of the form required by ORS 163A.050 (2) and sex
23 offender registration forms and an affidavit of a representative of the Oregon State Police, as
24 keepers of the state’s sex offender registration records, certifying that the certified copies of the
25 forms constitute the complete record for the defendant.

26 “(9) The grand jury shall weigh all the evidence submitted to it; and when it believes that other
27 evidence within its reach will explain away the charge, it should order such evidence to be
28 produced, and for that purpose may require the district attorney to issue process for the witnesses.

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

32 “(a) Whether the defendant was driving.

33 “(b) Whether the defendant took or refused to take tests under any provision of ORS chapter
34 813.

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

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

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

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

43 “(12)(a) A defendant who has been arraigned on an information alleging a felony charge that is
44 the subject of a grand jury proceeding and who is represented by an attorney has a right to appear
45 before the grand jury as a witness if, prior to the filing of an indictment, the defense attorney serves

1 upon the district attorney written notice requesting the appearance. The notice shall include an
2 electronic mail address at which the defense attorney may be contacted.

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

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

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

17 “(13) **A grand jury in a judicial district with a population between 150,000 and 300,000 or**
18 **over 700,000, the proceedings of which are recorded pursuant to sections 1 and 2 of this 2017**
19 **Act, may receive in evidence, through the testimony of a peace officer involved in the crim-**
20 **inal investigation under grand jury inquiry, the statement of:**

21 “(a) **A person who cannot readily understand the proceedings, or who cannot communi-**
22 **cate in the proceedings, because of a physical disability or developmental disability; or**

23 “(b) **A victim under 18 years of age at the time of the proceedings.**

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

25 “132.430. (1) When a person has been held to answer a criminal charge and the indictment in
26 relation thereto is not found ‘a true bill,’ [it] **the indictment** must be indorsed ‘not a true bill,’
27 which indorsement must be signed by the foreman and filed with the clerk of the court, in whose
28 office it shall remain a public record. In the case of an indictment not found ‘a true bill’ against a
29 person [*not so held, the same, together with the minutes of the evidence in relation thereto,*] **who has**
30 **not been held to answer a criminal charge, the indictment** must be destroyed by the grand jury.

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

34 “**SECTION 7.** ORS 132.550 is amended to read:

35 “132.550. The indictment shall contain substantially the following:

36 “(1) The name of the circuit court in which it is filed;

37 “(2) The title of the action;

38 “(3) A statement that the grand jury accuses the defendant or defendants of the designated of-
39 fense or offenses;

40 “(4) A separate accusation or count addressed to each offense charged, if there be more than
41 one;

42 “(5) A statement in each count that the offense charged therein was committed in a designated
43 county;

44 “(6) A statement in each count that the offense charged therein was committed on, or on or
45 about, a designated date, or during a designated period of time;

1 “(7) A statement of the acts constituting the offense in ordinary and concise language, without
2 repetition, and in such manner as to enable a person of common understanding to know what is in-
3 tended;

4 “(8) **The dates of all grand jury proceedings related to the offense or offenses charged;**

5 “[8] (9) The signatures of the foreman and of the district attorney; and

6 “[9] (10) The date the indictment is filed with the clerk of the court.

7 “**SECTION 8.** ORS 135.405 is amended to read:

8 “135.405. (1) In cases in which it appears that the interest of the public in the effective admin-
9 istration of criminal justice would thereby be served, and in accordance with the criteria set forth
10 in ORS 135.415, the district attorney may engage in plea discussions for the purpose of reaching a
11 plea agreement.

12 “(2) The district attorney shall engage in plea discussions or reach a plea agreement with the
13 defendant only through defense counsel, except when, as a matter of record, the defendant has ef-
14 fectively waived the right of the defendant to counsel or, if the defendant is not eligible for ap-
15 pointed counsel, has not retained counsel.

16 “(3) The district attorney in reaching a plea agreement may agree to, but is not limited to, one
17 or more of the following, as required by the circumstances of the individual case:

18 “(a) To make or not to oppose favorable recommendations as to the sentence which should be
19 imposed if the defendant enters a plea of guilty or no contest to the offense charged;

20 “(b) To seek or not to oppose dismissal of the offense charged if the defendant enters a plea of
21 guilty or no contest to another offense reasonably related to the defendant’s conduct; or

22 “(c) To seek or not to oppose dismissal of other charges or to refrain from bringing potential
23 charges if the defendant enters a plea of guilty or no contest to the offense charged.

24 “(4) Similarly situated defendants should be afforded equal plea agreement opportunities.

25 “(5) The district attorney may not condition a plea offer on a requirement that the defendant
26 waive:

27 “(a) The disclosure obligation of ORS 135.815 (1)(g)[.]; or

28 “(b) **The ability to receive the audio recording of grand jury proceedings as permitted**
29 **under section 3 of this 2017 Act, if the indictment has been indorsed ‘a true bill.’**

30 “(6)(a) A district attorney may provide a plea offer and agreed disposition recommendation to
31 the defendant at the time of arraignment or first appearance of the defendant for a crime in open
32 court under an early disposition program established under ORS 135.941.

33 “(b) Unless extended by the court, a plea offer and agreed disposition recommendation made
34 under paragraph (a) of this subsection expire upon completion of the arraignment. Except for good
35 cause, a court may not extend a plea offer and agreed disposition recommendation under this para-
36 graph for more than seven days for a misdemeanor or 21 days for a felony.

37 “**SECTION 9.** Section 1 of this 2017 Act is amended to read:

38 “**Sec. 1.** (1)(a) The presiding judge of a judicial district [*with a population between 150,000 and*
39 *300,000 or over 700,000*] shall ensure that proceedings before the grand jury are recorded in the
40 manner described in this section and section 2 of this 2017 Act.

41 “(b) The court shall provide and maintain suitable audio electronic recording devices to record
42 grand jury proceedings.

43 “(c) The Chief Justice of the Supreme Court shall designate the types of audio electronic re-
44 cording devices that are suitable for recording grand jury proceedings and may establish policies
45 and procedures by rule or order to carry out the provisions of this section and sections 2 and 3 of

1 this 2017 Act.

2 “(d) The prosecuting attorney shall provide the court access to the premises in which the grand
3 jury fulfills its obligations and the recording equipment used to carry out the provisions of this
4 section and section 2 of this 2017 Act. The presiding judge of each judicial district may enter into
5 an agreement with the prosecuting attorney that identifies the conditions and terms of access.

6 “(2)(a) The court shall delegate the electronic recording of the proceedings described in section
7 2 of this 2017 Act to a grand juror, after providing instruction to the grand juror concerning the
8 recording equipment and recording requirements.

9 “(b) A grand juror recording proceedings under this section is not subject to subpoena, and may
10 not disclose any information, concerning the grand jury proceedings without prior court order.

11 “(3)(a) A failure of an audio electronic recording device to accurately record all or part of a
12 grand jury proceeding does not affect the validity of any prosecution or indictment.

13 “(b) A failure of a grand juror to operate an audio electronic recording device in a manner that
14 accurately records all or part of a grand jury proceeding, as required, does not affect the validity
15 of any prosecution or indictment.

16 “(4) This section and section 2 of this 2017 Act do not apply to grand jury proceedings under
17 ORS 132.440 that inquire into the condition and management of correctional facilities and youth
18 correction facilities.

19 “**SECTION 10.** Section 2 of this 2017 Act is amended to read:

20 “**Sec. 2.** (1) Except as provided in subsection (2) of this section, the grand juror described in
21 section 1 (2) of this 2017 Act who is recording grand jury proceedings [*in a judicial district with a*
22 *population between 150,000 and 300,000 or over 700,000*] shall record all matters that come before the
23 grand jury, including:

24 “(a) The case name and number;

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

26 “(c) Each statement made or question asked by the prosecuting attorney; and

27 “(d) Each question asked of, and each response given by, a witness who appears before the
28 grand jury.

29 “(2) The grand juror operating the audio electronic recording device may not record or report:

30 “(a) The deliberations or voting of the grand jury.

31 “(b) A presentment made pursuant to ORS 132.370.

32 “(c) Any statements made by a grand juror who is examined as a witness as provided in ORS
33 132.350.

34 “(d) A procedure related to the production of records, or the unsealing of records, subpoenaed
35 pursuant to ORS 136.583 and to be presented before the grand jury.

36 “(3) The clerk of the court shall file with the court the audio recordings.

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

38 “**Sec. 3.** (1) Audio recordings produced pursuant to sections 1 and 2 of this 2017 Act [*in a ju-*
39 *dicial district with a population between 150,000 and 300,000 or over 700,000*] are confidential and
40 may not be released except as described in this section.

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

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

45 “(b) When the defendant has been arraigned on the indictment, the defense attorney may obtain

1 a copy of the audio recording:

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

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

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

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

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

16 “(d) The defense attorney may not provide a copy of the audio recording, or a transcript pre-
17 pared from the audio recording, to the defendant.

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

25 “(3)(a) When a grand jury inquires into the conduct of a public servant as defined in ORS
26 162.005 for acts occurring in the performance of the public servant’s duties, and an indictment re-
27 sulting from the grand jury proceedings is indorsed ‘not a true bill’:

28 “(A) The public servant or the prosecuting attorney may file a motion requesting a court order
29 releasing all or a portion of the audio recording. A copy of the motion must be served on the op-
30 posing party. In deciding whether to issue such an order, the court shall determine whether the
31 public interest in disclosure outweighs the interest in maintaining the secrecy of the grand jury
32 proceedings. If the court orders disclosure, the court may set reasonable conditions on copying,
33 disseminating or republishing the audio recording.

34 “(B) A member of the public may file a motion requesting a court order for production and re-
35 lease of a transcript of the audio recording. A copy of the motion must be served on the prosecuting
36 attorney and the public servant’s attorney, or the public servant if the public servant is not re-
37 presented by an attorney. The person filing the motion is responsible for the cost of producing the
38 transcript and a court order for production and release of the transcript must be conditioned on
39 receipt of payment. In deciding whether to issue such an order, the court shall determine whether
40 the public interest in disclosure outweighs the interest in maintaining the secrecy of the grand jury
41 proceedings. If the court orders disclosure, the court may set reasonable conditions on copying,
42 disseminating or republishing the transcript.

43 “(b) The release of any audio recording or transcript under this section may not include:

44 “(A) The release of the address, telephone number, date of birth, driver license or vehicle reg-
45 istration information of a victim or witness; or

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

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

5 “(A) The prosecuting attorney may file a motion for a protective order within 10 days after the
6 defendant’s arraignment on the indictment. The motion may be filed on behalf of a victim or a wit-
7 ness. The prosecuting attorney 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 within 10 days after re-
10 ceiving a motion described in subsection (2)(e) of this section.

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

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

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

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

24 “(B) Maintenance of secrecy regarding informants, as required for effective investigation of
25 criminal activity;

26 “(C) Confidential information recognized under law, including the protection of confidential re-
27 lationships and privileges and the contents of confidential records unrelated to a crime alleged in
28 the indictment; and

29 “(D) Any other relevant considerations.

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

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

36 “(b) When subsequent grand jury proceedings occur inquiring into the same criminal episode as
37 the grand jury proceedings described in paragraph (a) of this subsection, and the subsequent pro-
38 ceedings result in an indictment indorsed as ‘a true bill,’ the prosecuting attorney shall provide no-
39 tice to the person charged in the indictment of the occurrence of the earlier grand jury proceedings.
40 After the person is arraigned on the indictment and the time period described in subsection (2)(b)
41 of this section has passed, the audio recording produced during the earlier grand jury proceedings
42 may be obtained in the manner set forth in subsection (2) of this section.

43 “(c) As used in this subsection, ‘criminal episode’ has the meaning given that term in ORS
44 131.505.

45 “(6) The Chief Justice of the Supreme Court may establish a fee for the cost of providing a copy

1 of any audio recording of a grand jury proceeding to a person requesting a copy under this section.

2 “(7) An audio recording or transcript of a grand jury proceeding obtained pursuant to sections
3 1 and 2 of this 2017 Act and this section:

4 “(a) May not be used as evidence in any subsequent proceeding, except as permitted under ORS
5 40.375, 40.380, 40.450, 40.460 or 40.465.

6 “(b) May not be used to challenge the indorsement of an indictment ‘a true bill’ or the pro-
7 ceedings that led to the indorsement.

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

10 “(d) May be used as evidence in a proceeding for contempt of court against a person alleged to
11 have violated the terms of a court order concerning the audio recording or transcript.

12 “(8) The release of audio recordings of grand jury proceedings under this section does not affect
13 discovery obligations under ORS 135.805 to 135.873.

14 “**SECTION 12.** ORS 132.090, as amended by section 4 of this 2017 Act, is amended to read:

15 “132.090. (1) Except as provided in subsections (2) and (3) of this section and sections 1 and 2
16 of this 2017 Act, no person other than the district attorney or a witness actually under examination
17 shall be present during the sittings of the grand jury.

18 “(2) Upon a motion filed by the district attorney in the circuit court, the circuit judge may ap-
19 point [*a reporter who shall attend the sittings of the grand jury to take and report the testimony in any*
20 *matters pending before the grand jury, and may appoint*] a parent, guardian or other appropriate
21 person 18 years of age or older to accompany any child 12 years of age or younger, or any person
22 with an intellectual disability, during an appearance before the grand jury. The circuit judge, upon
23 the district attorney’s showing to the court that it is necessary for the proper examination of a
24 witness appearing before the grand jury, may appoint a guard, medical or other special attendant
25 or nurse, who shall be present in the grand jury room and shall attend such sittings.

26 “(3) The district attorney may designate an interpreter who is certified under ORS 45.291 to
27 interpret the testimony of witnesses appearing before the grand jury. The district attorney may
28 designate a qualified interpreter, as defined in ORS 45.288, if the circuit court determines that a
29 certified interpreter is not available and that the person designated by the district attorney is a
30 qualified interpreter as defined in ORS 45.288. An interpreter designated under this subsection may
31 be present in the grand jury room and attend the sittings of the grand jury.

32 “(4) No person other than members of the grand jury shall be present when the grand jury is
33 deliberating or voting upon a matter before it.

34 “(5) As used in this section, ‘intellectual disability’ has the meaning given that term in ORS
35 427.005. Intellectual disability may be shown by attaching to the motion of the district attorney:

36 “(a) Documentary evidence of intellectual functioning; or

37 “(b) The affidavit of a qualified person familiar with the person with an intellectual disability.
38 ‘Qualified person’ includes, but is not limited to, a teacher, therapist or physician.

39 “**SECTION 13.** ORS 132.320, as amended by section 5 of this 2017 Act, is amended to read:

40 “132.320. (1) Except as provided in subsections (2) to (13) of this section, in the investigation of
41 a charge for the purpose of indictment, the grand jury shall receive no other evidence than such
42 as might be given on the trial of the person charged with the crime in question.

43 “(2) A report or a copy of a report made by a physicist, chemist, medical examiner, physician,
44 firearms identification expert, examiner of questioned documents, fingerprint technician, or an ex-
45 pert or technician in some comparable scientific or professional field, concerning the results of an

1 examination, comparison or test performed by such person in connection with a case which is the
2 subject of a grand jury proceeding, shall, when certified by such person as a report made by such
3 person or as a true copy thereof, be received in evidence in the grand jury proceeding.

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

10 “(4) A grand jury that is investigating a charge of criminal driving while suspended or revoked
11 under ORS 811.182 may receive in evidence an affidavit of a peace officer with a report or copy of
12 a report of the peace officer concerning the peace officer’s investigation of the violation of ORS
13 811.182 by the defendant.

14 “(5) A grand jury may receive testimony of a witness by means of simultaneous television
15 transmission allowing the grand jury and district attorney to observe and communicate with the
16 witness and the witness to observe and communicate with the grand jury and the district attorney.

17 “(6) A grand jury that is investigating a charge of failure to appear under ORS 133.076, 153.992,
18 162.195 or 162.205 may receive in evidence an affidavit of a court employee certifying that the de-
19 fendant failed to appear as required by law and setting forth facts sufficient to support that con-
20 clusion.

21 “(7)(a) Except as otherwise provided in this subsection, a grand jury may receive in evidence
22 through the testimony of one peace officer involved in the criminal investigation under grand jury
23 inquiry information from an official report of another peace officer involved in the same criminal
24 investigation concerning the other peace officer’s investigation of the matter before the grand jury.
25 The statement of a person suspected of committing an offense or inadmissible hearsay of persons
26 other than the peace officer who compiled the official report may not be presented to a grand jury
27 under this paragraph.

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

35 “(8) A grand jury that is investigating a charge of failure to report as a sex offender under ORS
36 163A.040 may receive in evidence certified copies of the form required by ORS 163A.050 (2) and sex
37 offender registration forms and an affidavit of a representative of the Oregon State Police, as
38 keepers of the state’s sex offender registration records, certifying that the certified copies of the
39 forms constitute the complete record for the defendant.

40 “(9) The grand jury shall weigh all the evidence submitted to it; and when it believes that other
41 evidence within its reach will explain away the charge, it should order such evidence to be
42 produced, and for that purpose may require the district attorney to issue process for the witnesses.

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

1 “(a) Whether the defendant was driving.

2 “(b) Whether the defendant took or refused to take tests under any provision of ORS chapter
3 813.

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

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

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

9 “(b) As used in this subsection, ‘financial institution’ means a financial institution as defined in
10 ORS 706.008, an entity that regularly issues, processes or services credit cards or any other com-
11 parable entity that regularly produces financial records.

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

17 “(b) A district attorney is not obligated to inform a defendant that a grand jury proceeding in-
18 vestigating charges against the defendant is pending, in progress or about to occur.

19 “(c) Upon receipt of the written notice described in paragraph (a) of this subsection, the district
20 attorney shall provide in writing the date, time and location of the defendant’s appearance before
21 the grand jury to the defense attorney at the indicated electronic mail address. In the event of a
22 scheduling conflict, the district attorney shall reasonably accommodate the schedules of the de-
23 fendant and the defense attorney if the accommodation does not delay the grand jury proceeding
24 beyond the time limit for holding a preliminary hearing described in ORS 135.070 (2).

25 “(d) Notwithstanding ORS 135.070 and paragraph (c) of this subsection, in order to accommodate
26 a scheduling conflict, upon the request of the defendant the time limit for holding a preliminary
27 hearing described in ORS 135.070 (2) may be extended by a maximum of an additional five judicial
28 days and the district attorney and the defendant may stipulate to an extension of greater duration.
29 During a period of delay caused by a scheduling conflict under this subsection, ORS 135.230 to
30 135.290 shall continue to apply concerning the custody status of the defendant.

31 “(13) A grand jury [*in a judicial district with a population between 150,000 and 300,000 or over*
32 *700,000*], the proceedings of which are recorded pursuant to sections 1 and 2 of this 2017 Act, may
33 receive in evidence, through the testimony of a peace officer involved in the criminal investigation
34 under grand jury inquiry, the statement of:

35 “(a) A person who cannot readily understand the proceedings, or who cannot communicate in
36 the proceedings, because of a physical disability or developmental disability; or

37 “(b) A victim under 18 years of age at the time of the proceedings.

38 “**SECTION 14.** ORS 192.502 is amended to read:

39 “192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

40 “(1) Communications within a public body or between public bodies of an advisory nature to the
41 extent that they cover other than purely factual materials and are preliminary to any final agency
42 determination of policy or action. This exemption shall not apply unless the public body shows that
43 in the particular instance the public interest in encouraging frank communication between officials
44 and employees of public bodies clearly outweighs the public interest in disclosure.

45 “(2) Information of a personal nature such as but not limited to that kept in a personal, medical

1 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the
2 public interest by clear and convincing evidence requires disclosure in the particular instance. The
3 party seeking disclosure shall have the burden of showing that public disclosure would not consti-
4 tute an unreasonable invasion of privacy.

5 “(3) Upon compliance with ORS 192.437, public body employee or volunteer residential ad-
6 dresses, residential telephone numbers, personal cellular telephone numbers, personal electronic
7 mail addresses, driver license numbers, employer-issued identification card numbers, emergency
8 contact information, Social Security numbers, dates of birth and other telephone numbers contained
9 in personnel records maintained by the public body that is the employer or the recipient of volunteer
10 services. This exemption:

11 “(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or
12 volunteers who are elected officials, except that a judge or district attorney subject to election may
13 seek to exempt the judge’s or district attorney’s address or telephone number, or both, under the
14 terms of ORS 192.445;

15 “(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure
16 shows by clear and convincing evidence that the public interest requires disclosure in a particular
17 instance pursuant to ORS 192.437;

18 “(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a
19 professional education association of which the substitute teacher may be a member; and

20 “(d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

21 “(4) Information submitted to a public body in confidence and not otherwise required by law to
22 be submitted, where such information should reasonably be considered confidential, the public body
23 has obliged itself in good faith not to disclose the information, and when the public interest would
24 suffer by the disclosure.

25 “(5) Information or records of the Department of Corrections, including the State Board of
26 Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabili-
27 tation of a person in custody of the department or substantially prejudice or prevent the carrying
28 out of the functions of the department, if the public interest in confidentiality clearly outweighs the
29 public interest in disclosure.

30 “(6) Records, reports and other information received or compiled by the Director of the De-
31 partment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
32 otherwise required by law to be made public, to the extent that the interests of lending institutions,
33 their officers, employees and customers in preserving the confidentiality of such information out-
34 weighs the public interest in disclosure.

35 “(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

36 “(8) Any public records or information the disclosure of which is prohibited by federal law or
37 regulations.

38 “(9)(a) Public records or information the disclosure of which is prohibited or restricted or oth-
39 erwise made confidential or privileged under Oregon law.

40 “(b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual informa-
41 tion compiled in a public record when:

42 “(A) The basis for the claim of exemption is ORS 40.225;

43 “(B) The factual information is not prohibited from disclosure under any applicable state or
44 federal law, regulation or court order and is not otherwise exempt from disclosure under ORS
45 192.410 to 192.505;

1 “(C) The factual information was compiled by or at the direction of an attorney as part of an
2 investigation on behalf of the public body in response to information of possible wrongdoing by the
3 public body;

4 “(D) The factual information was not compiled in preparation for litigation, arbitration or an
5 administrative proceeding that was reasonably likely to be initiated or that has been initiated by
6 or against the public body; and

7 “(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement
8 characterizing or partially disclosing the factual information compiled by or at the attorney’s di-
9 rection.

10 “(10) Public records or information described in this section, furnished by the public body ori-
11 ginally compiling, preparing or receiving them to any other public officer or public body in con-
12 nection with performance of the duties of the recipient, if the considerations originally giving rise
13 to the confidential or exempt nature of the public records or information remain applicable.

14 “(11) Records of the Energy Facility Siting Council concerning the review or approval of secu-
15 rity programs pursuant to ORS 469.530.

16 “(12) Employee and retiree address, telephone number and other nonfinancial membership re-
17 cords and employee financial records maintained by the Public Employees Retirement System pur-
18 suant to ORS chapters 238 and 238A.

19 “(13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the
20 agents of the treasurer or the council relating to active or proposed publicly traded investments
21 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or
22 liquidation of the investments. For the purposes of this subsection:

23 “(a) The exemption does not apply to:

24 “(A) Information in investment records solely related to the amount paid directly into an in-
25 vestment by, or returned from the investment directly to, the treasurer or council; or

26 “(B) The identity of the entity to which the amount was paid directly or from which the amount
27 was received directly.

28 “(b) An investment in a publicly traded investment is no longer active when acquisition, ex-
29 change or liquidation of the investment has been concluded.

30 “(14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the
31 Oregon Growth Board or the agents of the treasurer, council or board relating to actual or proposed
32 investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset
33 including but not limited to records regarding the solicitation, acquisition, deployment, exchange or
34 liquidation of the investments including but not limited to:

35 “(A) Due diligence materials that are proprietary to an investment fund, to an asset ownership
36 or to their respective investment vehicles.

37 “(B) Financial statements of an investment fund, an asset ownership or their respective invest-
38 ment vehicles.

39 “(C) Meeting materials of an investment fund, an asset ownership or their respective investment
40 vehicles.

41 “(D) Records containing information regarding the portfolio positions in which an investment
42 fund, an asset ownership or their respective investment vehicles invest.

43 “(E) Capital call and distribution notices of an investment fund, an asset ownership or their
44 respective investment vehicles.

45 “(F) Investment agreements and related documents.

1 “(b) The exemption under this subsection does not apply to:

2 “(A) The name, address and vintage year of each privately placed investment fund.

3 “(B) The dollar amount of the commitment made to each privately placed investment fund since

4 inception of the fund.

5 “(C) The dollar amount of cash contributions made to each privately placed investment fund

6 since inception of the fund.

7 “(D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State

8 Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer,

9 council or board from each privately placed investment fund.

10 “(E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately

11 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment

12 Council, the Oregon Growth Board or the agents of the treasurer, council or board.

13 “(F) The net internal rate of return of each privately placed investment fund since inception of

14 the fund.

15 “(G) The investment multiple of each privately placed investment fund since inception of the

16 fund.

17 “(H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end

18 basis to each privately placed investment fund.

19 “(I) The dollar amount of cash profit received from each privately placed investment fund on a

20 fiscal year-end basis.

21 “(15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning

22 the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated

23 as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

24 “(16) Reports of unclaimed property filed by the holders of such property to the extent permitted

25 by ORS 98.352.

26 “(17)(a) The following records, communications and information submitted to the Oregon Busi-

27 ness Development Commission, the Oregon Business Development Department, the State Department

28 of Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS

29 777.005, or a county or city governing body and any board, department, commission, council or

30 agency thereof, by applicants for investment funds, grants, loans, services or economic development

31 moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

32 “(A) Personal financial statements.

33 “(B) Financial statements of applicants.

34 “(C) Customer lists.

35 “(D) Information of an applicant pertaining to litigation to which the applicant is a party if the

36 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such

37 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been

38 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-

39 ery or deposition statutes to a party to litigation or potential litigation.

40 “(E) Production, sales and cost data.

41 “(F) Marketing strategy information that relates to applicant’s plan to address specific markets

42 and applicant’s strategy regarding specific competitors.

43 “(b) The following records, communications and information submitted to the State Department

44 of Energy by applicants for tax credits or for grants awarded under ORS 469B.256:

45 “(A) Personal financial statements.

1 “(B) Financial statements of applicants.

2 “(C) Customer lists.

3 “(D) Information of an applicant pertaining to litigation to which the applicant is a party if the
4 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
5 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been
6 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-
7 ery or deposition statutes to a party to litigation or potential litigation.

8 “(E) Production, sales and cost data.

9 “(F) Marketing strategy information that relates to applicant’s plan to address specific markets
10 and applicant’s strategy regarding specific competitors.

11 “(18) Records, reports or returns submitted by private concerns or enterprises required by law
12 to be submitted to or inspected by a governmental body to allow it to determine the amount of any
13 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such
14 information is in a form which would permit identification of the individual concern or enterprise.
15 Nothing in this subsection shall limit the use which can be made of such information for regulatory
16 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-
17 payer of the delinquency immediately by certified mail. However, in the event that the payment or
18 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the
19 public body shall disclose, upon the request of any person, the following information:

20 “(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the
21 payment or delivery of the taxes.

22 “(b) The period for which the taxes are delinquent.

23 “(c) The actual, or estimated, amount of the delinquency.

24 “(19) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-
25 pointed counsel, and all information supplied to the court from whatever source for the purpose of
26 verifying the financial eligibility of a person pursuant to ORS 151.485.

27 “(20) Workers’ compensation claim records of the Department of Consumer and Business Ser-
28 vices, except in accordance with rules adopted by the Director of the Department of Consumer and
29 Business Services, in any of the following circumstances:

30 “(a) When necessary for insurers, self-insured employers and third party claim administrators to
31 process workers’ compensation claims.

32 “(b) When necessary for the director, other governmental agencies of this state or the United
33 States to carry out their duties, functions or powers.

34 “(c) When the disclosure is made in such a manner that the disclosed information cannot be used
35 to identify any worker who is the subject of a claim.

36 “(d) When a worker or the worker’s representative requests review of the worker’s claim record.

37 “(21) Sensitive business records or financial or commercial information of the Oregon Health
38 and Science University that is not customarily provided to business competitors.

39 “(22) Records of Oregon Health and Science University regarding candidates for the position of
40 president of the university.

41 “(23) The records of a library, including:

42 “(a) Circulation records, showing use of specific library material by a named person;

43 “(b) The name of a library patron together with the address or telephone number of the patron;
44 and

45 “(c) The electronic mail address of a patron.

1 “(24) The following records, communications and information obtained by the Housing and
2 Community Services Department in connection with the department’s monitoring or administration
3 of financial assistance or of housing or other developments:

4 “(a) Personal and corporate financial statements and information, including tax returns.

5 “(b) Credit reports.

6 “(c) Project appraisals, excluding appraisals obtained in the course of transactions involving an
7 interest in real estate that is acquired, leased, rented, exchanged, transferred or otherwise disposed
8 of as part of the project, but only after the transactions have closed and are concluded.

9 “(d) Market studies and analyses.

10 “(e) Articles of incorporation, partnership agreements and operating agreements.

11 “(f) Commitment letters.

12 “(g) Project pro forma statements.

13 “(h) Project cost certifications and cost data.

14 “(i) Audits.

15 “(j) Project tenant correspondence.

16 “(k) Personal information about a tenant.

17 “(L) Housing assistance payments.

18 “(25) Raster geographic information system (GIS) digital databases, provided by private
19 forestland owners or their representatives, voluntarily and in confidence to the State Forestry De-
20 partment, that is not otherwise required by law to be submitted.

21 “(26) Sensitive business, commercial or financial information furnished to or developed by a
22 public body engaged in the business of providing electricity or electricity services, if the information
23 is directly related to a transaction described in ORS 261.348, or if the information is directly related
24 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
25 disclosure of the information would cause a competitive disadvantage for the public body or its re-
26 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
27 velopment or review of generally applicable rate schedules.

28 “(27) Sensitive business, commercial or financial information furnished to or developed by the
29 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
30 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085
31 and disclosure of the information would cause a competitive disadvantage for the Klamath
32 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-
33 ment or review of generally applicable rate schedules.

34 “(28) Personally identifiable information about customers of a municipal electric utility or a
35 people’s utility district or the names, dates of birth, driver license numbers, telephone numbers,
36 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
37 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
38 lease personally identifiable information about a customer, and a public body providing water, sewer
39 or storm drain services may release the name, date of birth, driver license number, telephone num-
40 ber, electronic mail address or Social Security number of a customer, if the customer consents in
41 writing or electronically, if the disclosure is necessary for the utility, district or other public body
42 to render services to the customer, if the disclosure is required pursuant to a court order or if the
43 disclosure is otherwise required by federal or state law. The utility, district or other public body
44 may charge as appropriate for the costs of providing such information. The utility, district or other
45 public body may make customer records available to third party credit agencies on a regular basis

1 in connection with the establishment and management of customer accounts or in the event such
2 accounts are delinquent.

3 “(29) A record of the street and number of an employee’s address submitted to a special district
4 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

5 “(30) Sensitive business records, capital development plans or financial or commercial informa-
6 tion of Oregon Corrections Enterprises that is not customarily provided to business competitors.

7 “(31) Documents, materials or other information submitted to the Director of the Department
8 of Consumer and Business Services in confidence by a state, federal, foreign or international regu-
9 latory or law enforcement agency or by the National Association of Insurance Commissioners, its
10 affiliates or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842,
11 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the
12 Insurance Code when:

13 “(a) The document, material or other information is received upon notice or with an under-
14 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of
15 the document, material or other information; and

16 “(b) The director has obligated the Department of Consumer and Business Services not to dis-
17 close the document, material or other information.

18 “(32) A county elections security plan developed and filed under ORS 254.074.

19 “(33) Information about review or approval of programs relating to the security of:

20 “(a) Generation, storage or conveyance of:

21 “(A) Electricity;

22 “(B) Gas in liquefied or gaseous form;

23 “(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

24 “(D) Petroleum products;

25 “(E) Sewage; or

26 “(F) Water.

27 “(b) Telecommunication systems, including cellular, wireless or radio systems.

28 “(c) Data transmissions by whatever means provided.

29 “(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court
30 designates the information as confidential by rule under ORS 1.002.

31 “(35)(a) Employer account records of the State Accident Insurance Fund Corporation.

32 “(b) As used in this subsection, ‘employer account records’ means all records maintained in any
33 form that are specifically related to the account of any employer insured, previously insured or un-
34 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-
35 mation obtained or developed by the corporation in connection with providing, offering to provide
36 or declining to provide insurance to a specific employer. ‘Employer account records’ includes, but
37 is not limited to, an employer’s payroll records, premium payment history, payroll classifications,
38 employee names and identification information, experience modification factors, loss experience and
39 dividend payment history.

40 “(c) The exemption provided by this subsection may not serve as the basis for opposition to the
41 discovery documents in litigation pursuant to applicable rules of civil procedure.

42 “(36)(a) Claimant files of the State Accident Insurance Fund Corporation.

43 “(b) As used in this subsection, ‘claimant files’ includes, but is not limited to, all records held
44 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all
45 records pertaining to such a claim.

1 “(c) The exemption provided by this subsection may not serve as the basis for opposition to the
2 discovery documents in litigation pursuant to applicable rules of civil procedure.

3 “(37) Except as authorized by ORS 408.425, records that certify or verify an individual’s dis-
4 charge or other separation from military service.

5 “(38) Records of or submitted to a domestic violence service or resource center that relate to
6 the name or personal information of an individual who visits a center for service, including the date
7 of service, the type of service received, referrals or contact information or personal information of
8 a family member of the individual. As used in this subsection, ‘domestic violence service or resource
9 center’ means an entity, the primary purpose of which is to assist persons affected by domestic or
10 sexual violence by providing referrals, resource information or other assistance specifically of ben-
11 efit to domestic or sexual violence victims.

12 “(39) Information reported to the Oregon Health Authority under ORS 431A.860, except as pro-
13 vided in ORS 431A.860 (2)(b) information disclosed by the authority under ORS 431A.865 and any
14 information related to disclosures made by the authority under ORS 431A.865, including information
15 identifying the recipient of the information.

16 “(40)(a) Electronic mail addresses in the possession or custody of an agency or subdivision of
17 the executive department, as defined in ORS 174.112, a local government or local service district,
18 as defined in ORS 174.116, or a special government body, as defined in ORS 174.117.

19 “(b) This subsection does not apply to electronic mail addresses assigned by a public body to
20 public employees for use by the employees in the ordinary course of their employment.

21 “(41) Residential addresses, residential telephone numbers, personal cellular telephone numbers,
22 personal electronic mail addresses, driver license numbers, emergency contact information, Social
23 Security numbers, dates of birth and other telephone numbers of individuals currently or previously
24 certified or licensed by the Department of Public Safety Standards and Training contained in the
25 records maintained by the department.

26 “(42) Personally identifiable information and contact information of veterans as defined in ORS
27 408.225 and of persons serving on active duty or as reserve members with the Armed Forces of the
28 United States, National Guard or other reserve component that was obtained by the Department of
29 Veterans’ Affairs in the course of performing its duties and functions, including but not limited to
30 names, residential and employment addresses, dates of birth, driver license numbers, telephone
31 numbers, electronic mail addresses, Social Security numbers, marital status, dependents, the char-
32 acter of discharge from military service, military rating or rank, that the person is a veteran or has
33 provided military service, information relating to an application for or receipt of federal or state
34 benefits, information relating to the basis for receipt or denial of federal or state benefits and in-
35 formation relating to a home loan or grant application, including but not limited to financial infor-
36 mation provided in connection with the application.

37 “(43) **Audio recordings of grand jury proceedings, or transcripts prepared from the re-**
38 **cordings, described in section 3 of this 2017 Act.**

39 **“SECTION 15. ORS 132.080 is repealed.**

40 **“SECTION 16. (1) Sections 1, 2 and 3 of this 2017 Act and the amendments to ORS 132.090,**
41 **132.320, 132.550, 135.405 and 192.502 by sections 4, 5, 7, 8 and 14 of this 2017 Act become op-**
42 **erative January 1, 2018.**

43 **“(2) The amendments to sections 1, 2 and 3 of this 2017 Act and ORS 132.090, 132.320 and**
44 **132.430 by sections 6, 9, 10, 11, 12 and 13 of this 2017 Act and the repeal of ORS 132.080 by**
45 **section 15 of this 2017 Act become operative July 1, 2018.**

1 **“(3) The Judicial Department may take any action before the operative dates specified in**
2 **subsections (1) and (2) of this section that is necessary to enable the department to exercise**
3 **the duties, functions and powers conferred on the department by this 2017 Act.**

4 **“SECTION 17. This 2017 Act takes effect on the 91st day after the date on which the 2017**
5 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.”.**

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