

## SENATE AMENDMENTS TO SENATE BILL 505

By COMMITTEE ON JUDICIARY

April 21

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 district attorney of a county comprising a judicial district with  
5 a population between 150,000 and 300,000 or over 700,000 shall ensure that proceedings before  
6 the grand jury are recorded in the manner described in this section and section 2 of this 2017  
7 Act.**

8 **“(b) The district attorney shall designate the types of audio electronic recording devices  
9 that are suitable for recording grand jury proceedings and shall provide and maintain the  
10 suitable audio electronic recording devices to record grand jury proceedings.**

11 **“(c) The district attorney and the presiding judge of the judicial district may enter into  
12 an agreement concerning access to recording equipment and the premises in which the grand  
13 jury fulfills its obligations in order to carry out the provisions of this section and section 2  
14 of this 2017 Act. The agreement may identify the conditions and terms of access.**

15 **“(2)(a) The district attorney shall delegate the recording of grand jury proceedings to a  
16 grand juror and shall provide instruction to the grand juror concerning the audio electronic  
17 recording equipment and requirements of the recording.**

18 **“(b) The grand juror recording the proceedings is not subject to subpoena, and may not  
19 disclose any information, concerning the grand jury proceedings without prior court order.**

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

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

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

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

32 **“(a) The case name and number;**

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

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

35 **“(d) Each question asked of, and each response given by, a witness who appears before**

1 the grand jury.

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

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

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

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

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

9 “(3) The district attorney shall file with the court the audio recordings.

10 **“SECTION 3.** (1) Audio recordings produced pursuant to sections 1 and 2 of this 2017 Act  
11 in a judicial district with a population between 150,000 and 300,000 or over 700,000 are confi-  
12 dential and may not be released except as described in this section.

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

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

18 “(b) When the defendant has been arraigned on the indictment, the defense attorney may  
19 obtain a copy of the audio recording:

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

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

24 “(c) Unless the court orders otherwise for good cause shown, the prosecuting attorney  
25 and the defense attorney may not copy, disseminate or republish the audio recording, or a  
26 transcript prepared from the audio recording, released pursuant to this subsection, except  
27 to provide a copy to an agent of the prosecuting attorney or defense attorney for the limited  
28 purpose of case preparation. Unless a court orders otherwise for good cause shown, in con-  
29 sulting with the defendant the defense attorney may not disclose:

30 “(A) The address, telephone number, date of birth, driver license or vehicle registration  
31 information of a victim, witness or grand juror, obtained from the audio recording or tran-  
32 script; or

33 “(B) Any portion of the audio recording or transcript that contains the address, tele-  
34 phone number, date of birth, driver license or vehicle registration information of a victim,  
35 witness or grand juror.

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

38 “(e) When the defendant has been arraigned but is not represented by an attorney, the  
39 defendant may request by motion that the court issue an order allowing the defendant access  
40 to review the contents of the audio recording. A copy of the motion must be provided to the  
41 prosecuting attorney. The prosecuting attorney may request a hearing on the motion within  
42 10 days after receiving a copy. At the hearing, or in response to receiving the motion, the  
43 court may appoint counsel for the defendant for the limited purpose of reviewing the audio  
44 recording and may set reasonable conditions on the review of the audio recording.

45 “(3)(a) When a grand jury inquires into the conduct of a public servant as defined in ORS

1 162.005 for acts occurring in the performance of the public servant's duties, and an  
2 indictment resulting from the grand jury proceedings is indorsed 'not a true bill':

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

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

19 "(b) The release of any audio recording or transcript under this subsection may not in-  
20 clude:

21 "(A) The release of the address, telephone number, date of birth, driver license or vehicle  
22 registration information of a victim or witness; or

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

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

27 "(A) The prosecuting attorney may file a motion for a protective order within 10 days  
28 after the defendant's arraignment on the indictment. The motion may be filed on behalf of  
29 a victim or a witness. The prosecuting attorney shall inform the victim of the ability to seek  
30 a protective order and shall file a motion for a protective order upon request from the vic-  
31 tim.

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

34 "(C) A prosecuting attorney, the public servant who is the subject of an indictment  
35 indorsed 'not a true bill' or the public servant's attorney may file a motion for a protective  
36 order within 10 days of receiving a motion described in subsection (3)(a) of this section.

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

40 "(c) In response to a motion filed under this subsection, the court may order that the  
41 access of the person requesting release to a copy of the audio recording or transcript be  
42 denied, restricted or deferred, or may make any other order, upon a finding of substantial  
43 and compelling circumstances. In deciding whether to grant the motion and enter a protec-  
44 tive order under this paragraph, the court may consider the following:

45 "(A) Protection of witnesses and others from physical harm, threats of harm, bribes,

1 economic interference, reprisal and other forms of intimidation;

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

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

7 “(D) Any other relevant considerations.

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

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

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

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

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

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

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

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

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

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

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

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

42 “132.090. (1) Except as provided in subsections (2) and (3) of this section **and sections 1 and 2**  
43 **of this 2017 Act**, no person other than the district attorney or a witness actually under examination  
44 shall be present during the sittings of the grand jury.

45 “(2) Upon a motion filed by the district attorney in the circuit court, the circuit judge may ap-

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

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

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

16 “(5) As used in this section, ‘intellectual disability’ has the meaning given that term in ORS  
17 427.005. Intellectual disability may be shown by attaching to the motion of the district attorney:

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

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

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

22 “132.320. (1) Except as provided in subsections (2) to [(12)] (13) of this section, in the investi-  
23 gation of a charge for the purpose of indictment, the grand jury shall receive no other evidence than  
24 such as might be given on the trial of the person charged with the crime in question.

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

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

37 “(4) A grand jury that is investigating a charge of criminal driving while suspended or revoked  
38 under ORS 811.182 may receive in evidence an affidavit of a peace officer with a report or copy of  
39 a report of the peace officer concerning the peace officer’s investigation of the violation of ORS  
40 811.182 by the defendant.

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

44 “(6) A grand jury that is investigating a charge of failure to appear under ORS 133.076, 153.992,  
45 162.195 or 162.205 may receive in evidence an affidavit of a court employee certifying that the de-

1 defendant failed to appear as required by law and setting forth facts sufficient to support that con-  
2 clusion.

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

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

17 “(8) A grand jury that is investigating a charge of failure to report as a sex offender under ORS  
18 163A.040 may receive in evidence certified copies of the form required by ORS 163A.050 (2) and sex  
19 offender registration forms and an affidavit of a representative of the Oregon State Police, as  
20 keepers of the state’s sex offender registration records, certifying that the certified copies of the  
21 forms constitute the complete record for the defendant.

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

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

28 “(a) Whether the defendant was driving.

29 “(b) Whether the defendant took or refused to take tests under any provision of ORS chapter  
30 813.

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

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

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

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

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

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

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

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

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

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

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

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

21 “132.430. (1) When a person has been held to answer a criminal charge and the indictment in  
22 relation thereto is not found ‘a true bill,’ [it] **the indictment** must be indorsed ‘not a true bill,’  
23 which indorsement must be signed by the foreman and filed with the clerk of the court, in whose  
24 office it shall remain a public record. In the case of an indictment not found ‘a true bill’ against a  
25 person [*not so held, the same, together with the minutes of the evidence in relation thereto,*] **who has**  
26 **not been held to answer a criminal charge, the indictment** must be destroyed by the grand jury.

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

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

31 “132.550. The indictment shall contain substantially the following:

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

33 “(2) The title of the action;

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

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

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

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

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

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

1 “[8] (9) The signatures of the foreman and of the district attorney; and

2 “[9] (10) The date the indictment is filed with the clerk of the court.

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

4 “135.405. (1) In cases in which it appears that the interest of the public in the effective admin-  
5 istration of criminal justice would thereby be served, and in accordance with the criteria set forth  
6 in ORS 135.415, the district attorney may engage in plea discussions for the purpose of reaching a  
7 plea agreement.

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

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

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

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

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

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

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

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

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

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

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

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

34 “**Sec. 1.** (1)(a) The district attorney of a county *[comprising a judicial district with a population*  
35 *between 150,000 and 300,000 or over 700,000]* shall ensure that proceedings before the grand jury are  
36 recorded in the manner described in this section and section 2 of this 2017 Act.

37 “(b) The district attorney shall designate the types of audio electronic recording devices that  
38 are suitable for recording grand jury proceedings and shall provide and maintain the suitable audio  
39 electronic recording devices to record grand jury proceedings.

40 “(c) The district attorney and the presiding judge of the judicial district may enter into an  
41 agreement concerning access to recording equipment and the premises in which the grand jury ful-  
42 fills its obligations in order to carry out the provisions of this section and section 2 of this 2017  
43 Act. The agreement may identify the conditions and terms of access.

44 “(2)(a) The district attorney shall delegate the recording of grand jury proceedings to a grand  
45 juror and shall provide instruction to the grand juror concerning the audio electronic recording



1 equipment and requirements of the recording.

2 “(b) The grand juror recording the proceedings is not subject to subpoena, and may not disclose  
3 any information, concerning the grand jury proceedings without prior court order.

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

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

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

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

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

17 “(a) The case name and number;

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

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

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

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

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

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

25 “(c) Any statements made by a grand juror who is examined as a witness as provided in ORS  
26 132.350.

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

29 “(3) The district attorney shall file with the court the audio recordings.

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

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

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

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

38 “(b) When the defendant has been arraigned on the indictment, the defense attorney may obtain  
39 a copy of the audio recording:

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

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

44 “(c) Unless the court orders otherwise for good cause shown, the prosecuting attorney and the  
45 defense attorney may not copy, disseminate or republish the audio recording, or a transcript pre-

1   pared from the audio recording, released pursuant to this subsection, except to provide a copy to  
2   an agent of the prosecuting attorney or defense attorney for the limited purpose of case preparation.  
3   Unless a court orders otherwise for good cause shown, in consulting with the defendant the defense  
4   attorney may not disclose:

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

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

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

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

19       “(3)(a) When a grand jury inquires into the conduct of a public servant as defined in ORS  
20   162.005 for acts occurring in the performance of the public servant’s duties, and an indictment re-  
21   sulting from the grand jury proceedings is indorsed ‘not a true bill’:

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

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

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

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

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

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

44       “(A) The prosecuting attorney may file a motion for a protective order within 10 days after the  
45   defendant’s arraignment on the indictment. The motion may be filed on behalf of a victim or a wit-

1 ness. The prosecuting attorney shall inform the victim of the ability to seek a protective order and  
2 shall file a motion for a protective order upon request from the victim.

3 “(B) A prosecuting attorney may file a motion for a protective order within 10 days after re-  
4 ceiving a motion described in subsection (2)(e) of this section.

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

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

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

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

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

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

23 “(D) Any other relevant considerations.

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

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

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

37 “(c) As used in this subsection, ‘criminal episode’ has the meaning given that term in ORS  
38 131.505.

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

41 “(7) An audio recording or transcript of a grand jury proceeding obtained pursuant to sections  
42 1 and 2 of this 2017 Act and this section:

43 “(a) May not be used as evidence in any subsequent proceeding, except as permitted under ORS  
44 40.375, 40.380, 40.450, 40.460 or 40.465.

45 “(b) May not be used to challenge the indorsement of an indictment ‘a true bill’ or the pro-

1 ceedings that led to the indorsement.

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

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

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

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

9 “132.090. (1) Except as provided in subsections (2) and (3) of this section and sections 1 and 2  
10 of this 2017 Act, no person other than the district attorney or a witness actually under examination  
11 shall be present during the sittings of the grand jury.

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

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

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

28 “(5) As used in this section, ‘intellectual disability’ has the meaning given that term in ORS  
29 427.005. Intellectual disability may be shown by attaching to the motion of the district attorney:

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

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

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

34 “132.320. (1) Except as provided in subsections (2) to (13) of this section, in the investigation of  
35 a charge for the purpose of indictment, the grand jury shall receive no other evidence than such  
36 as might be given on the trial of the person charged with the crime in question.

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

43 “(3) An affidavit of a witness who is unable to appear before the grand jury shall be received  
44 in evidence in the grand jury proceeding if, upon application by the district attorney, the presiding  
45 judge for the judicial district in which the grand jury is sitting authorizes the receipt after good

1 cause has been shown for the witness' inability to appear. An affidavit taken in another state or  
2 territory of the United States, the District of Columbia or in a foreign country must be  
3 authenticated as provided in ORS chapter 194 before it can be used in this state.

4 "(4) A grand jury that is investigating a charge of criminal driving while suspended or revoked  
5 under ORS 811.182 may receive in evidence an affidavit of a peace officer with a report or copy of  
6 a report of the peace officer concerning the peace officer's investigation of the violation of ORS  
7 811.182 by the defendant.

8 "(5) A grand jury may receive testimony of a witness by means of simultaneous television  
9 transmission allowing the grand jury and district attorney to observe and communicate with the  
10 witness and the witness to observe and communicate with the grand jury and the district attorney.

11 "(6) A grand jury that is investigating a charge of failure to appear under ORS 133.076, 153.992,  
12 162.195 or 162.205 may receive in evidence an affidavit of a court employee certifying that the de-  
13 fendant failed to appear as required by law and setting forth facts sufficient to support that con-  
14 clusion.

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

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

29 "(8) A grand jury that is investigating a charge of failure to report as a sex offender under ORS  
30 163A.040 may receive in evidence certified copies of the form required by ORS 163A.050 (2) and sex  
31 offender registration forms and an affidavit of a representative of the Oregon State Police, as  
32 keepers of the state's sex offender registration records, certifying that the certified copies of the  
33 forms constitute the complete record for the defendant.

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

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

40 "(a) Whether the defendant was driving.

41 "(b) Whether the defendant took or refused to take tests under any provision of ORS chapter  
42 813.

43 "(c) The administration of tests under any provision of ORS chapter 813 and the results of such  
44 tests.

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

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

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

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

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

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

19 “(d) Notwithstanding ORS 135.070 and paragraph (c) of this subsection, in order to accommodate  
20 a scheduling conflict, upon the request of the defendant the time limit for holding a preliminary  
21 hearing described in ORS 135.070 (2) may be extended by a maximum of an additional five judicial  
22 days and the district attorney and the defendant may stipulate to an extension of greater duration.  
23 During a period of delay caused by a scheduling conflict under this subsection, ORS 135.230 to  
24 135.290 shall continue to apply concerning the custody status of the defendant.

25 “(13) A grand jury [*in a judicial district with a population between 150,000 and 300,000 or over*  
26 *700,000*], the proceedings of which are recorded pursuant to sections 1 and 2 of this 2017 Act, may  
27 receive in evidence, through the testimony of a peace officer involved in the criminal investigation  
28 under grand jury inquiry, the statement of:

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

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

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

33 “192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

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

39 “(2) Information of a personal nature such as but not limited to that kept in a personal, medical  
40 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the  
41 public interest by clear and convincing evidence requires disclosure in the particular instance. The  
42 party seeking disclosure shall have the burden of showing that public disclosure would not consti-  
43 tute an unreasonable invasion of privacy.

44 “(3) Upon compliance with ORS 192.437, public body employee or volunteer residential ad-  
45 dresses, residential telephone numbers, personal cellular telephone numbers, personal electronic

1 mail addresses, driver license numbers, employer-issued identification card numbers, emergency  
2 contact information, Social Security numbers, dates of birth and other telephone numbers contained  
3 in personnel records maintained by the public body that is the employer or the recipient of volunteer  
4 services. This exemption:

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

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

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

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

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

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

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

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

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

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

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

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

37 “(B) The factual information is not prohibited from disclosure under any applicable state or  
38 federal law, regulation or court order and is not otherwise exempt from disclosure under ORS  
39 192.410 to 192.505;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 “(F) Investment agreements and related documents.

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

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

42 “(B) The dollar amount of the commitment made to each privately placed investment fund since  
43 inception of the fund.

44 “(C) The dollar amount of cash contributions made to each privately placed investment fund  
45 since inception of the fund.



1 “(D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State  
2 Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer,  
3 council or board from each privately placed investment fund.

4 “(E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately  
5 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment  
6 Council, the Oregon Growth Board or the agents of the treasurer, council or board.

7 “(F) The net internal rate of return of each privately placed investment fund since inception of  
8 the fund.

9 “(G) The investment multiple of each privately placed investment fund since inception of the  
10 fund.

11 “(H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end  
12 basis to each privately placed investment fund.

13 “(I) The dollar amount of cash profit received from each privately placed investment fund on a  
14 fiscal year-end basis.

15 “(15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning  
16 the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated  
17 as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

18 “(16) Reports of unclaimed property filed by the holders of such property to the extent permitted  
19 by ORS 98.352.

20 “(17)(a) The following records, communications and information submitted to the Oregon Busi-  
21 ness Development Commission, the Oregon Business Development Department, the State Department  
22 of Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS  
23 777.005, or a county or city governing body and any board, department, commission, council or  
24 agency thereof, by applicants for investment funds, grants, loans, services or economic development  
25 moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

26 “(A) Personal financial statements.

27 “(B) Financial statements of applicants.

28 “(C) Customer lists.

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

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

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

37 “(b) The following records, communications and information submitted to the State Department  
38 of Energy by applicants for tax credits or for grants awarded under ORS 469B.256:

39 “(A) Personal financial statements.

40 “(B) Financial statements of applicants.

41 “(C) Customer lists.

42 “(D) Information of an applicant pertaining to litigation to which the applicant is a party if the  
43 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such  
44 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been  
45 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 “(b) Credit reports.

45 “(c) Project appraisals, excluding appraisals obtained in the course of transactions involving an

1 interest in real estate that is acquired, leased, rented, exchanged, transferred or otherwise disposed  
2 of as part of the project, but only after the transactions have closed and are concluded.

3 “(d) Market studies and analyses.

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

5 “(f) Commitment letters.

6 “(g) Project pro forma statements.

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

8 “(i) Audits.

9 “(j) Project tenant correspondence.

10 “(k) Personal information about a tenant.

11 “(L) Housing assistance payments.

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

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

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

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

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

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

1 “(31) Documents, materials or other information submitted to the Director of the Department  
2 of Consumer and Business Services in confidence by a state, federal, foreign or international regu-  
3 latory or law enforcement agency or by the National Association of Insurance Commissioners, its  
4 affiliates or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842,  
5 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the  
6 Insurance Code when:

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

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

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

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

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

15 “(A) Electricity;

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

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

18 “(D) Petroleum products;

19 “(E) Sewage; or

20 “(F) Water.

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

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

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

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

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

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

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

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

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

44 “(38) Records of or submitted to a domestic violence service or resource center that relate to  
45 the name or personal information of an individual who visits a center for service, including the date

1 of service, the type of service received, referrals or contact information or personal information of  
2 a family member of the individual. As used in this subsection, ‘domestic violence service or resource  
3 center’ means an entity, the primary purpose of which is to assist persons affected by domestic or  
4 sexual violence by providing referrals, resource information or other assistance specifically of ben-  
5 efit to domestic or sexual violence victims.

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

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

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

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

20 “(42) Personally identifiable information and contact information of veterans as defined in ORS  
21 408.225 and of persons serving on active duty or as reserve members with the Armed Forces of the  
22 United States, National Guard or other reserve component that was obtained by the Department of  
23 Veterans’ Affairs in the course of performing its duties and functions, including but not limited to  
24 names, residential and employment addresses, dates of birth, driver license numbers, telephone  
25 numbers, electronic mail addresses, Social Security numbers, marital status, dependents, the char-  
26 acter of discharge from military service, military rating or rank, that the person is a veteran or has  
27 provided military service, information relating to an application for or receipt of federal or state  
28 benefits, information relating to the basis for receipt or denial of federal or state benefits and in-  
29 formation relating to a home loan or grant application, including but not limited to financial infor-  
30 mation provided in connection with the application.

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

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

34 **“SECTION 16. (1) Sections 1, 2 and 3 of this 2017 Act and the amendments to ORS 132.090,**  
35 **132.320, 132.550, 135.405 and 192.502 by sections 4, 5, 7, 8 and 14 of this 2017 Act become op-**  
36 **erative January 1, 2018.**

37 **“(2) The amendments to sections 1, 2 and 3 of this 2017 Act and ORS 132.090, 132.320 and**  
38 **132.430 by sections 6, 9, 10, 11, 12 and 13 of this 2017 Act and the repeal of ORS 132.080 by**  
39 **section 15 of this 2017 Act become operative July 1, 2018.**

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

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