

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO  
SENATE BILL 505**

1 On page 1 of the printed bill, line 3, after “132.080;” delete the rest of the  
2 line and delete line 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  
5 judicial district with a population between 150,000 and 300,000 or over  
6 700,000 shall ensure that proceedings before the grand jury are re-  
7 corded in the manner described in this section and section 2 of this  
8 2017 Act.**

9 **“(b) The district attorney shall designate the types of audio elec-  
10 tronic recording devices that are suitable for recording grand jury  
11 proceedings and shall provide and maintain the suitable audio elec-  
12 tronic recording devices to record grand jury proceedings, unless the  
13 district attorney delegates the recording to a shorthand reporter as  
14 described in subsection (2) of this section.**

15 **“(c) The district attorney and the presiding judge of the judicial  
16 district may enter into an agreement concerning access to recording  
17 equipment and the premises in which the grand jury fulfills its obli-  
18 gations in order to carry out the provisions of this section and section  
19 2 of this 2017 Act. The agreement may identify the conditions and  
20 terms of access.**

21 **“(2)(a) A person or persons designated by the district attorney shall**

1 be permitted to attend all proceedings of the grand jury for the pur-  
2 pose of electronically recording the proceedings described in section 2  
3 of this 2017 Act. The person or persons shall be compensated from  
4 funds specifically appropriated for that purpose by the Legislative As-  
5 sembly.

6 “(b) Notwithstanding paragraph (a) of this subsection, the district  
7 attorney may delegate the recording to:

8 “(A) A grand juror, after providing instruction to the grand juror  
9 concerning the recording equipment and requirements; or

10 “(B) A certified shorthand reporter as defined in ORS 8.415 or a  
11 shorthand reporter certified by a national certification association,  
12 who shall be permitted to attend all proceedings of the grand jury for  
13 the purpose of taking accurate notes. The certified shorthand reporter  
14 shall be compensated from funds specifically appropriated for that  
15 purpose by the Legislative Assembly. The shorthand reporter shall be  
16 sworn to correctly report the proceedings of the grand jury described  
17 in section 2 of this 2017 Act and to keep secret any information con-  
18 cerning the grand jury proceedings.

19 “(c) A person or persons recording the proceedings, including a  
20 grand juror or a shorthand reporter, is not subject to subpoena, and  
21 may not disclose any information, concerning the grand jury pro-  
22 ceedings without prior court order.

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

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

30 “(c) A failure of a shorthand reporter to prepare accurate notes or

1 an accurate report of all or part of a grand jury proceeding, as re-  
2 quired, does not affect the validity of any prosecution or indictment.

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

6 **“SECTION 2. (1) Except as provided in subsection (2) of this section,**  
7 **the person or persons designated by the district attorney described in**  
8 **section 1 (2)(a) of this 2017 Act, or the grand juror or shorthand re-**  
9 **porter described in section 1 (2)(b) of this 2017 Act, who is recording**  
10 **grand jury proceedings in a judicial district with a population between**  
11 **150,000 and 300,000 or over 700,000 shall record all matters that come**  
12 **before the grand jury, including:**

13 “(a) The case name and number;

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

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

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

19 “(2) The person operating the audio electronic recording device or  
20 the shorthand reporter reporting the grand jury proceedings may not  
21 record or report:

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

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

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

26 “(d) A procedure related to the production of records, or the un-  
27 sealing of records, subpoenaed pursuant to ORS 136.583 and to be pre-  
28 sented before the grand jury.

29 “(3) The district attorney or the shorthand reporter shall file with  
30 the court the audio recordings or the notes or reports of the shorthand

1 reporter.

2 **“SECTION 3. (1) Audio recordings and shorthand reporter notes and**  
3 **reports produced pursuant to sections 1 and 2 of this 2017 Act in a ju-**  
4 **dicial district with a population between 150,000 and 300,000 or over**  
5 **700,000 are confidential and may not be released except as described in**  
6 **this section.**

7 **“(2) When an indictment resulting from grand jury proceedings is**  
8 **indorsed ‘a true bill,’ the audio recording of the grand jury proceedings**  
9 **or the notes or report of a shorthand reporter may be released only**  
10 **in the following manner:**

11 **“(a) The prosecuting attorney may obtain a copy of the audio re-**  
12 **ording, notes or report at any time after the defendant’s arraignment**  
13 **on the indictment.**

14 **“(b) When the defendant has been arraigned on the indictment, the**  
15 **defense attorney may obtain a copy of the audio recording, notes or**  
16 **report:**

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

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

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

30 **“(A) The address, telephone number, date of birth, driver license**

1 or vehicle registration information of a victim, witness or grand juror,  
2 obtained from the audio recording, notes, report or transcript; or

3 “(B) Any portion of the audio recording, notes, report or transcript  
4 that contains the address, telephone number, date of birth, driver li-  
5 cense or vehicle registration information of a victim, witness or grand  
6 juror.

7 “(d) The defense attorney may not provide a copy of the audio re-  
8 cording, notes or report, or a transcript prepared from the audio re-  
9 cording, notes or report, to the defendant.

10 “(e) When the defendant has been arraigned but is not represented  
11 by an attorney, the defendant may request by motion that the court  
12 issue an order allowing the defendant access to review the contents  
13 of the audio recording, notes or report. A copy of the motion must be  
14 provided to the prosecuting attorney. The prosecuting attorney may  
15 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  
17 appoint counsel for the defendant for the limited purpose of reviewing  
18 the audio recording, notes or report and may set reasonable conditions  
19 on the review of the audio recording, notes or report.

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

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

1 on copying, disseminating or republishing the audio recording, notes  
2 or report.

3 “(B) A member of the public may file a motion requesting a court  
4 order for production and release of a transcript of the proceedings. A  
5 copy of the motion must be served on the prosecuting attorney and  
6 the public servant’s attorney, or the public servant if the public serv-  
7 ant is not represented by an attorney. The person filing the motion is  
8 responsible for the cost of producing the transcript and a court order  
9 for production and release of the transcript must be conditioned on  
10 receipt of payment. In deciding whether to issue such an order, the  
11 court shall determine whether the public interest in disclosure out-  
12 weighs the interest in maintaining the secrecy of the grand jury pro-  
13 ceedings. If the court orders disclosure, the court may set reasonable  
14 conditions on copying, disseminating or republishing the transcript.

15 “(b) The release of any audio recording, notes, report or transcript  
16 under this subsection may not include:

17 “(A) The release of the address, telephone number, date of birth,  
18 driver license or vehicle registration information of a victim or wit-  
19 ness; or

20 “(B) The release of the name, address, telephone number, date of  
21 birth, driver license or vehicle registration information of a grand ju-  
22 ror.

23 “(4)(a) A motion for a protective order concerning an audio re-  
24 cording, notes, report or transcript of grand jury proceedings may be  
25 filed as follows:

26 “(A) The prosecuting attorney may file a motion for a protective  
27 order within 10 days after the defendant’s arraignment on the  
28 indictment. The motion may be filed on behalf of a victim or a wit-  
29 ness. The prosecuting attorney shall inform the victim of the ability  
30 to seek a protective order and shall file a motion for a protective order

1 upon request from the victim.

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

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

9 “(b) If the motion for a protective order requests that a portion of  
10 the audio recording, notes or report be redacted, the motion must be  
11 accompanied by a specific description, including the date and time, of  
12 the portion of the audio recording, notes or report to be redacted.

13 “(c) In response to a motion filed under this subsection, the court  
14 may order that the access of the person requesting release to a copy  
15 of the audio recording, notes or report be denied, restricted or de-  
16 ferred, or may make any other order, upon a finding of substantial and  
17 compelling circumstances. In deciding whether to grant the motion  
18 and enter a protective order under this paragraph, the court may  
19 consider the following:

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

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

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

29 “(D) Any other relevant considerations.

30 “(d) The court may permit the evidence of substantial and compel-

1 **ling circumstances described in paragraph (c) of this subsection to be**  
2 **made in the form of a written statement to be inspected by the court**  
3 **only or by oral testimony given on the record.**

4 **“(5)(a) Except as provided in paragraph (b) of this subsection, when**  
5 **grand jury proceedings do not result in an indictment indorsed as ei-**  
6 **ther ‘a true bill’ or ‘not a true bill,’ the audio recording or the notes**  
7 **or report of a shorthand reporter, or a transcript prepared from the**  
8 **audio recording, notes or report, produced pursuant to sections 1 and**  
9 **2 of this 2017 Act may not be disclosed or released.**

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

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

22 **“(6) The Chief Justice of the Supreme Court may establish a fee for**  
23 **the cost of providing a copy of any audio recording or shorthand re-**  
24 **porter notes or report of a grand jury proceeding to a person request-**  
25 **ing a copy under this section.**

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

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

30 **“(b) May not be used to challenge the indorsement of an indictment**



1 **‘a true bill’ or the proceedings that led to the indorsement.**

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

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

8 **“(8) The release of audio recordings, notes or reports of grand jury**  
9 **proceedings under this section does not affect discovery obligations**  
10 **under ORS 135.805 to 135.873.**

11 **“SECTION 4. ORS 132.090 is amended to read:**

12 **“132.090. (1) Except as provided in subsections (2) and (3) of this section**  
13 **and sections 1 and 2 of this 2017 Act,** no person other than the district  
14 attorney or a witness actually under examination shall be present during the  
15 sittings of the grand jury.

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

27 **“(3) The district attorney may designate an interpreter who is certified**  
28 **under ORS 45.291 to interpret the testimony of witnesses appearing before**  
29 **the grand jury. The district attorney may designate a qualified interpreter,**  
30 **as defined in ORS 45.288, if the circuit court determines that a certified in-**

1 terpreter is not available and that the person designated by the district at-  
2 torney is a qualified interpreter as defined in ORS 45.288. An interpreter  
3 designated under this subsection may be present in the grand jury room and  
4 attend the sittings of the grand jury.

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

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

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

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

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

15 “132.320. (1) Except as provided in subsections (2) to [(12)] **(13)** of this  
16 section, in the investigation of a charge for the purpose of indictment, the  
17 grand jury shall receive no other evidence than such as might be given on  
18 the trial of the person charged with the crime in question.

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

27 “(3) An affidavit of a witness who is unable to appear before the grand  
28 jury shall be received in evidence in the grand jury proceeding if, upon ap-  
29 plication by the district attorney, the presiding judge for the judicial district  
30 in which the grand jury is sitting authorizes the receipt after good cause has

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

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

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

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

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

27 “(b) If the official report contains evidence other than chain of custody,  
28 venue or the name of the person suspected of committing an offense, the  
29 grand jurors must be notified that the evidence is being submitted by report  
30 and that the peace officer who compiled the report will be made available

1 for testimony at the request of the grand jury. When a grand jury requests  
2 the testimony of a peace officer under this paragraph, the peace officer may  
3 present sworn testimony by telephone if requiring the peace officer's pres-  
4 ence before the grand jury would constitute an undue hardship on the peace  
5 officer or the agency that employs or utilizes the peace officer.

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

12 “(9) The grand jury shall weigh all the evidence submitted to it; and when  
13 it believes that other evidence within its reach will explain away the charge,  
14 it should order such evidence to be produced, and for that purpose may re-  
15 quire the district attorney to issue process for the witnesses.

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

19 “(a) Whether the defendant was driving.

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

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

24 “(d) The officer's observations of physical or mental impairment of the  
25 defendant.

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

29 “(b) As used in this subsection, ‘financial institution’ means a financial  
30 institution as defined in ORS 706.008, an entity that regularly issues, pro-

1 cesses or services credit cards or any other comparable entity that regularly  
2 produces financial records.

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

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

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

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

29 “(13) **A grand jury in a judicial district with a population between**  
30 **150,000 and 300,000 or over 700,000, the proceedings of which are re-**

1 corded pursuant to sections 1 and 2 of this 2017 Act, may receive in  
2 evidence, through the testimony of a peace officer involved in the  
3 criminal investigation under grand jury inquiry, the statement of:

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

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

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

9 “132.430. (1) When a person has been held to answer a criminal charge  
10 and the indictment in relation thereto is not found ‘a true bill,’ *[it]* **the**  
11 **indictment** must be indorsed ‘not a true bill,’ which indorsement must be  
12 signed by the foreman and filed with the clerk of the court, in whose office  
13 it shall remain a public record. In the case of an indictment not found ‘a true  
14 bill’ against a person *[not so held, the same, together with the minutes of the*  
15 *evidence in relation thereto,]* **who has not been held to answer a criminal**  
16 **charge, the indictment** must be destroyed by the grand jury.

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

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

22 “132.550. The indictment shall contain substantially the following:

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

24 “(2) The title of the action;

25 “(3) A statement that the grand jury accuses the defendant or defendants  
26 of the designated offense or offenses;

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

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

1 “(6) A statement in each count that the offense charged therein was  
2 committed on, or on or about, a designated date, or during a designated pe-  
3 riod of time;

4 “(7) A statement of the acts constituting the offense in ordinary and  
5 concise language, without repetition, and in such manner as to enable a  
6 person of common understanding to know what is intended;

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

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

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

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

12 “135.405. (1) In cases in which it appears that the interest of the public  
13 in the effective administration of criminal justice would thereby be served,  
14 and in accordance with the criteria set forth in ORS 135.415, the district  
15 attorney may engage in plea discussions for the purpose of reaching a plea  
16 agreement.

17 “(2) The district attorney shall engage in plea discussions or reach a plea  
18 agreement with the defendant only through defense counsel, except when, as  
19 a matter of record, the defendant has effectively waived the right of the de-  
20 fendant to counsel or, if the defendant is not eligible for appointed counsel,  
21 has not retained counsel.

22 “(3) The district attorney in reaching a plea agreement may agree to, but  
23 is not limited to, one or more of the following, as required by the circum-  
24 stances of the individual case:

25 “(a) To make or not to oppose favorable recommendations as to the sen-  
26 tence which should be imposed if the defendant enters a plea of guilty or no  
27 contest to the offense charged;

28 “(b) To seek or not to oppose dismissal of the offense charged if the de-  
29 fendant enters a plea of guilty or no contest to another offense reasonably  
30 related to the defendant’s conduct; or

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

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

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

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

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

12 “(6)(a) A district attorney may provide a plea offer and agreed disposition  
13 recommendation to the defendant at the time of arraignment or first ap-  
14 pearance of the defendant for a crime in open court under an early disposi-  
15 tion program established under ORS 135.941.

16 “(b) Unless extended by the court, a plea offer and agreed disposition  
17 recommendation made under paragraph (a) of this subsection expire upon  
18 completion of the arraignment. Except for good cause, a court may not ex-  
19 tend a plea offer and agreed disposition recommendation under this para-  
20 graph for more than seven days for a misdemeanor or 21 days for a felony.

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

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

26 “(b) The district attorney shall designate the types of audio electronic  
27 recording devices that are suitable for recording grand jury proceedings and  
28 shall provide and maintain the suitable audio electronic recording devices  
29 to record grand jury proceedings, unless the district attorney delegates the  
30 recording to a shorthand reporter as described in subsection (2) of this sec-



1 tion.

2 “(c) The district attorney and the presiding judge of each judicial district  
3 may enter into an agreement concerning access to recording equipment and  
4 the premises in which the grand jury fulfills its obligations in order to carry  
5 out the provisions of this section and section 2 of this 2017 Act. The agree-  
6 ment may identify the conditions and terms of access.

7 “(2)(a) A person or persons designated by the district attorney shall be  
8 permitted to attend all proceedings of the grand jury for the purpose of  
9 electronically recording the proceedings described in section 2 of this 2017  
10 Act. The person or persons shall be compensated from funds specifically ap-  
11 propriated for that purpose by the Legislative Assembly.

12 “(b) Notwithstanding paragraph (a) of this subsection, the district attor-  
13 ney may delegate the recording to:

14 “(A) A grand juror, after providing instruction to the grand juror con-  
15 cerning the recording equipment and requirements; or

16 “(B) A certified shorthand reporter as defined in ORS 8.415 or a shorthand  
17 reporter certified by a national certification association, who shall be per-  
18 mitted to attend all proceedings of the grand jury for the purpose of taking  
19 accurate notes. The certified shorthand reporter shall be compensated from  
20 funds specifically appropriated for that purpose by the Legislative Assembly.  
21 The shorthand reporter shall be sworn to correctly report the proceedings  
22 of the grand jury described in section 2 of this 2017 Act and to keep secret  
23 any information concerning the grand jury proceedings.

24 “(c) A person or persons recording the proceedings, including a grand  
25 juror or a shorthand reporter, is not subject to subpoena, and may not dis-  
26 close any information, concerning the grand jury proceedings without prior  
27 court order.

28 “(3)(a) A failure of an audio electronic recording device to accurately re-  
29 cord all or part of a grand jury proceeding does not affect the validity of any  
30 prosecution or indictment.

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

4 “(c) A failure of a shorthand reporter to prepare accurate notes or an  
5 accurate report of all or part of a grand jury proceeding, as required, does  
6 not affect the validity of any prosecution or indictment.

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

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

11 **“Sec. 2.** (1) Except as provided in subsection (2) of this section, the per-  
12 son or persons designated by the district attorney described in section 1  
13 (2)(a) of this 2017 Act, or the grand juror or shorthand reporter described in  
14 section 1 (2)(b) of this 2017 Act, who is recording grand jury proceedings [*in*  
15 *a judicial district with a population between 150,000 and 300,000 or over*  
16 *700,000*] shall record all matters that come before the 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;  
20 and

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

23 “(2) The person operating the audio electronic recording device or the  
24 shorthand reporter reporting the grand jury proceedings may not record or  
25 report:

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

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

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

30 “(d) A procedure related to the production of records, or the unsealing

1 of records, subpoenaed pursuant to ORS 136.583 and to be presented before  
2 the grand jury.

3 “(3) The district attorney or the shorthand reporter shall file with the  
4 court the audio recordings or the notes or reports of the shorthand reporter.

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

6 **“Sec. 3.** (1) Audio recordings and shorthand reporter notes and reports  
7 produced pursuant to sections 1 and 2 of this 2017 Act [*in a judicial district*  
8 *with a population between 150,000 and 300,000 or over 700,000*] are confidential  
9 and may not be released except as described in this section.

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

14 “(a) The prosecuting attorney may obtain a copy of the audio recording,  
15 notes or report at any time after the defendant’s arraignment on the  
16 indictment.

17 “(b) When the defendant has been arraigned on the indictment, the de-  
18 fense attorney may obtain a copy of the audio recording, notes or report:

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

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

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

1 attorney may not disclose:

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

5 “(B) Any portion of the audio recording, notes, report or transcript that  
6 contains the address, telephone number, date of birth, driver license or ve-  
7 hicle registration information of a victim, witness or grand juror.

8 “(d) The defense attorney may not provide a copy of the audio recording,  
9 notes or report, or a transcript prepared from the audio recording, notes or  
10 report, to the defendant.

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

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

25 “(A) The public servant or the prosecuting attorney may file a motion  
26 requesting a court order releasing all or a portion of the audio recording,  
27 notes or report. A copy of the motion must be served on the opposing party.  
28 In deciding whether to issue such an order, the court shall determine  
29 whether the public interest in disclosure outweighs the interest in main-  
30 taining the secrecy of the grand jury proceedings. If the court orders dis-

1 closure, the court may set reasonable conditions on copying, disseminating  
2 or republishing the audio recording, notes or report.

3 “(B) A member of the public may file a motion requesting a court order  
4 for production and release of a transcript of the proceedings. A copy of the  
5 motion must be served on the prosecuting attorney and the public servant’s  
6 attorney, or the public servant if the public servant is not represented by  
7 an attorney. The person filing the motion is responsible for the cost of  
8 producing the transcript and a court order for production and release of the  
9 transcript must be conditioned on receipt of payment. In deciding whether  
10 to issue such an order, the court shall determine whether the public interest  
11 in disclosure outweighs the interest in maintaining the secrecy of the grand  
12 jury proceedings. If the court orders disclosure, the court may set reasonable  
13 conditions on copying, disseminating or republishing the transcript.

14 “(b) The release of any audio recording, notes, report or transcript under  
15 this subsection may not include:

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

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

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

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

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

30 “(C) A prosecuting attorney, the public servant who is the subject of an

1 indictment indorsed ‘not a true bill’ or the public servant’s attorney may file  
2 a motion for a protective order within 10 days of receiving a motion de-  
3 scribed in subsection (3)(a) of this section.

4 “(b) If the motion for a protective order requests that a portion of the  
5 audio recording, notes or report be redacted, the motion must be accompa-  
6 nied by a specific description, including the date and time, of the portion of  
7 the audio recording, notes or report to be redacted.

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

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

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

18 “(C) Confidential information recognized under law, including the pro-  
19 tection of confidential relationships and privileges and the contents of con-  
20 fidential records unrelated to a crime alleged in the indictment; and

21 “(D) Any other relevant considerations.

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

26 “(5)(a) Except as provided in paragraph (b) of this subsection, when grand  
27 jury proceedings do not result in an indictment indorsed as either ‘a true  
28 bill’ or ‘not a true bill,’ the audio recording or the notes or report of a  
29 shorthand reporter, or a transcript prepared from the audio recording, notes  
30 or report, produced pursuant to sections 1 and 2 of this 2017 Act may not

1 be disclosed or released.

2 “(b) When subsequent grand jury proceedings occur inquiring into the  
3 same criminal episode as the grand jury proceedings described in paragraph  
4 (a) of this subsection, and the subsequent proceedings result in an indictment  
5 indorsed as ‘a true bill,’ the prosecuting attorney shall provide notice to the  
6 person charged in the indictment of the occurrence of the earlier grand jury  
7 proceedings. After the person is arraigned on the indictment and the time  
8 period described in subsection (2)(b) of this section has passed, the audio  
9 recording, notes or report produced during the earlier grand jury proceedings  
10 may be obtained in the manner set forth in subsection (2) of this section.

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

13 “(6) The Chief Justice of the Supreme Court may establish a fee for the  
14 cost of providing a copy of any audio recording or shorthand reporter notes  
15 or report of a grand jury proceeding to a person requesting a copy under this  
16 section.

17 “(7) An audio recording, notes, report or transcript of a grand jury pro-  
18 ceeding obtained pursuant to sections 1 and 2 of this 2017 Act:

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

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

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

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

29 “(8) The release of audio recordings, notes or reports of grand jury pro-  
30 ceedings under this section does not affect discovery obligations under ORS

1 135.805 to 135.873.

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

4 “132.090. (1) Except as provided in subsections (2) and (3) of this section  
5 and sections 1 and 2 of this 2017 Act, no person other than the district at-  
6 torney or a witness actually under examination shall be present during the  
7 sittings of the grand jury.

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

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

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

29 “(5) As used in this section, ‘intellectual disability’ has the meaning given  
30 that term in ORS 427.005. Intellectual disability may be shown by attaching



1 to the motion of the district attorney:

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

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

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

8 “132.320. (1) Except as provided in subsections (2) to (13) of this section,  
9 in the investigation of a charge for the purpose of indictment, the grand jury  
10 shall receive no other evidence than such as might be given on the trial of  
11 the person charged with the crime in question.

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

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

28 “(4) A grand jury that is investigating a charge of criminal driving while  
29 suspended or revoked under ORS 811.182 may receive in evidence an affidavit  
30 of a peace officer with a report or copy of a report of the peace officer con-

1 cerning the peace officer's investigation of the violation of ORS 811.182 by  
2 the defendant.

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

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

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

20 “(b) If the official report contains evidence other than chain of custody,  
21 venue or the name of the person suspected of committing an offense, the  
22 grand jurors must be notified that the evidence is being submitted by report  
23 and that the peace officer who compiled the report will be made available  
24 for testimony at the request of the grand jury. When a grand jury requests  
25 the testimony of a peace officer under this paragraph, the peace officer may  
26 present sworn testimony by telephone if requiring the peace officer's pres-  
27 ence before the grand jury would constitute an undue hardship on the peace  
28 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  
30 sex offender under ORS 163A.040 may receive in evidence certified copies of

1 the form required by ORS 163A.050 (2) and sex offender registration forms  
2 and an affidavit of a representative of the Oregon State Police, as keepers  
3 of the state’s sex offender registration records, certifying that the certified  
4 copies of the forms constitute the complete record for the defendant.

5 “(9) The grand jury shall weigh all the evidence submitted to it; and when  
6 it believes that other evidence within its reach will explain away the charge,  
7 it should order such evidence to be produced, and for that purpose may re-  
8 quire the district attorney to issue process for the witnesses.

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

12 “(a) Whether the defendant was driving.

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

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

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

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

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

26 “(12)(a) A defendant who has been arraigned on an information alleging  
27 a felony charge that is the subject of a grand jury proceeding and who is  
28 represented by an attorney has a right to appear before the grand jury as a  
29 witness if, prior to the filing of an indictment, the defense attorney serves  
30 upon the district attorney written notice requesting the appearance. The

1 notice shall include an electronic mail address at which the defense attorney  
2 may be contacted.

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

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

14 “(d) Notwithstanding ORS 135.070 and paragraph (c) of this subsection,  
15 in order to accommodate a scheduling conflict, upon the request of the de-  
16 fendant the time limit for holding a preliminary hearing described in ORS  
17 135.070 (2) may be extended by a maximum of an additional five judicial days  
18 and the district attorney and the defendant may stipulate to an extension  
19 of greater duration. During a period of delay caused by a scheduling conflict  
20 under this subsection, ORS 135.230 to 135.290 shall continue to apply con-  
21 cerning the custody status of the defendant.

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

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

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

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

2       “192.502. The following public records are exempt from disclosure under  
3 ORS 192.410 to 192.505:

4       “(1) Communications within a public body or between public bodies of an  
5 advisory nature to the extent that they cover other than purely factual ma-  
6 terials and are preliminary to any final agency determination of policy or  
7 action. This exemption shall not apply unless the public body shows that in  
8 the particular instance the public interest in encouraging frank communi-  
9 cation between officials and employees of public bodies clearly outweighs the  
10 public interest in disclosure.

11       “(2) Information of a personal nature such as but not limited to that kept  
12 in a personal, medical or similar file, if public disclosure would constitute  
13 an unreasonable invasion of privacy, unless the public interest by clear and  
14 convincing evidence requires disclosure in the particular instance. The party  
15 seeking disclosure shall have the burden of showing that public disclosure  
16 would not constitute an unreasonable invasion of privacy.

17       “(3) Upon compliance with ORS 192.437, public body employee or volun-  
18 teer residential addresses, residential telephone numbers, personal cellular  
19 telephone numbers, personal electronic mail addresses, driver license num-  
20 bers, employer-issued identification card numbers, emergency contact infor-  
21 mation, Social Security numbers, dates of birth and other telephone numbers  
22 contained in personnel records maintained by the public body that is the  
23 employer or the recipient of volunteer services. This exemption:

24       “(a) Does not apply to the addresses, dates of birth and telephone numbers  
25 of employees or volunteers who are elected officials, except that a judge or  
26 district attorney subject to election may seek to exempt the judge’s or dis-  
27 trict attorney’s address or telephone number, or both, under the terms of  
28 ORS 192.445;

29       “(b) Does not apply to employees or volunteers to the extent that the  
30 party seeking disclosure shows by clear and convincing evidence that the

1 public interest requires disclosure in a particular instance pursuant to ORS  
2 192.437;

3 “(c) Does not apply to a substitute teacher as defined in ORS 342.815  
4 when requested by a professional education association of which the substi-  
5 tute teacher may be a member; and

6 “(d) Does not relieve a public employer of any duty under ORS 243.650 to  
7 243.782.

8 “(4) Information submitted to a public body in confidence and not other-  
9 wise required by law to be submitted, where such information should rea-  
10 sonably be considered confidential, the public body has obliged itself in good  
11 faith not to disclose the information, and when the public interest would  
12 suffer by the disclosure.

13 “(5) Information or records of the Department of Corrections, including  
14 the State Board of Parole and Post-Prison Supervision, to the extent that  
15 disclosure would interfere with the rehabilitation of a person in custody of  
16 the department or substantially prejudice or prevent the carrying out of the  
17 functions of the department, if the public interest in confidentiality clearly  
18 outweighs the public interest in disclosure.

19 “(6) Records, reports and other information received or compiled by the  
20 Director of the Department of Consumer and Business Services in the ad-  
21 ministration of ORS chapters 723 and 725 not otherwise required by law to  
22 be made public, to the extent that the interests of lending institutions, their  
23 officers, employees and customers in preserving the confidentiality of such  
24 information outweighs the public interest in disclosure.

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

26 “(8) Any public records or information the disclosure of which is prohib-  
27 ited by federal law or regulations.

28 “(9)(a) Public records or information the disclosure of which is prohibited  
29 or restricted or otherwise made confidential or privileged under Oregon law.

30 “(b) Subject to ORS 192.423, paragraph (a) of this subsection does not

1 apply to factual information compiled in a public record when:

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

3 “(B) The factual information is not prohibited from disclosure under any  
4 applicable state or federal law, regulation or court order and is not other-  
5 wise exempt from disclosure under ORS 192.410 to 192.505;

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

9 “(D) The factual information was not compiled in preparation for liti-  
10 gation, arbitration or an administrative proceeding that was reasonably  
11 likely to be initiated or that has been initiated by or against the public body;  
12 and

13 “(E) The holder of the privilege under ORS 40.225 has made or authorized  
14 a public statement characterizing or partially disclosing the factual infor-  
15 mation compiled by or at the attorney’s direction.

16 “(10) Public records or information described in this section, furnished  
17 by the public body originally compiling, preparing or receiving them to any  
18 other public officer or public body in connection with performance of the  
19 duties of the recipient, if the considerations originally giving rise to the  
20 confidential or exempt nature of the public records or information remain  
21 applicable.

22 “(11) Records of the Energy Facility Siting Council concerning the review  
23 or approval of security programs pursuant to ORS 469.530.

24 “(12) Employee and retiree address, telephone number and other nonfi-  
25 nancial membership records and employee financial records maintained by  
26 the Public Employees Retirement System pursuant to ORS chapters 238 and  
27 238A.

28 “(13) Records of or submitted to the State Treasurer, the Oregon Invest-  
29 ment Council or the agents of the treasurer or the council relating to active  
30 or proposed publicly traded investments under ORS chapter 293, including

1 but not limited to records regarding the acquisition, exchange or liquidation  
2 of the investments. For the purposes of this subsection:

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

4 “(A) Information in investment records solely related to the amount paid  
5 directly into an investment by, or returned from the investment directly to,  
6 the treasurer or council; or

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

9 “(b) An investment in a publicly traded investment is no longer active  
10 when acquisition, exchange or liquidation of the investment has been con-  
11 cluded.

12 “(14)(a) Records of or submitted to the State Treasurer, the Oregon In-  
13 vestment Council, the Oregon Growth Board or the agents of the treasurer,  
14 council or board relating to actual or proposed investments under ORS  
15 chapter 293 or 348 in a privately placed investment fund or a private asset  
16 including but not limited to records regarding the solicitation, acquisition,  
17 deployment, exchange or liquidation of the investments including but not  
18 limited to:

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

21 “(B) Financial statements of an investment fund, an asset ownership or  
22 their respective investment vehicles.

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

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

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

30 “(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 invest-  
3 ment fund.

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

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

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

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

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

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

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

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

24 “(15) The monthly reports prepared and submitted under ORS 293.761 and  
25 293.766 concerning the Public Employees Retirement Fund and the Industrial  
26 Accident Fund may be uniformly treated as exempt from disclosure for a  
27 period of up to 90 days after the end of the calendar quarter.

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

30 “(17)(a) The following records, communications and information submitted

1 to the Oregon Business Development Commission, the Oregon Business De-  
2 velopment Department, the State Department of Agriculture, the Oregon  
3 Growth Board, the Port of Portland or other ports as defined in ORS 777.005,  
4 or a county or city governing body and any board, department, commission,  
5 council or agency thereof, by applicants for investment funds, grants, loans,  
6 services or economic development moneys, support or assistance including,  
7 but not limited to, those described in ORS 285A.224:

8 “(A) Personal financial statements.

9 “(B) Financial statements of applicants.

10 “(C) Customer lists.

11 “(D) Information of an applicant pertaining to litigation to which the  
12 applicant is a party if the complaint has been filed, or if the complaint has  
13 not been filed, if the applicant shows that such litigation is reasonably likely  
14 to occur; this exemption does not apply to litigation which has been con-  
15 cluded, and nothing in this subparagraph shall limit any right or opportunity  
16 granted by discovery or deposition statutes to a party to litigation or po-  
17 tential litigation.

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

19 “(F) Marketing strategy information that relates to applicant’s plan to  
20 address specific markets and applicant’s strategy regarding specific compet-  
21 itors.

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

25 “(A) Personal financial statements.

26 “(B) Financial statements of applicants.

27 “(C) Customer lists.

28 “(D) Information of an applicant pertaining to litigation to which the  
29 applicant is a party if the complaint has been filed, or if the complaint has  
30 not been filed, if the applicant shows that such litigation is reasonably likely

1 to occur; this exemption does not apply to litigation which has been con-  
2 cluded, and nothing in this subparagraph shall limit any right or opportunity  
3 granted by discovery or deposition statutes to a party to litigation or po-  
4 tential litigation.

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

6 “(F) Marketing strategy information that relates to applicant’s plan to  
7 address specific markets and applicant’s strategy regarding specific compet-  
8 itors.

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

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

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

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

25 “(19) All information supplied by a person under ORS 151.485 for the  
26 purpose of requesting appointed counsel, and all information supplied to the  
27 court from whatever source for the purpose of verifying the financial eligi-  
28 bility of a person pursuant to ORS 151.485.

29 “(20) Workers’ compensation claim records of the Department of Con-  
30 sumer and Business Services, except in accordance with rules adopted by the

1 Director of the Department of Consumer and Business Services, in any of the  
2 following circumstances:

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

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

7 “(c) When the disclosure is made in such a manner that the disclosed in-  
8 formation cannot be used to identify any worker who is the subject of a  
9 claim.

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

12 “(21) Sensitive business records or financial or commercial information  
13 of the Oregon Health and Science University that is not customarily pro-  
14 vided to business competitors.

15 “(22) Records of Oregon Health and Science University regarding candi-  
16 dates for the position of president of the university.

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

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

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

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

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

27 “(a) Personal and corporate financial statements and information, in-  
28 cluding tax returns.

29 “(b) Credit reports.

30 “(c) Project appraisals, excluding appraisals obtained in the course of

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

4 “(d) Market studies and analyses.

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

7 “(f) Commitment letters.

8 “(g) Project pro forma statements.

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

10 “(i) Audits.

11 “(j) Project tenant correspondence.

12 “(k) Personal information about a tenant.

13 “(L) Housing assistance payments.

14 “(25) Raster geographic information system (GIS) digital databases, pro-  
15 vided by private forestland owners or their representatives, voluntarily and  
16 in confidence to the State Forestry Department, that is not otherwise re-  
17 quired by law to be submitted.

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

27 “(27) Sensitive business, commercial or financial information furnished to  
28 or developed by the City of Klamath Falls, acting solely in connection with  
29 the ownership and operation of the Klamath Cogeneration Project, if the  
30 information is directly related to a transaction described in ORS 225.085 and

1 disclosure of the information would cause a competitive disadvantage for the  
2 Klamath Cogeneration Project. This subsection does not apply to cost-of-  
3 service studies used in the development or review of generally applicable rate  
4 schedules.

5 “(28) Personally identifiable information about customers of a municipal  
6 electric utility or a people’s utility district or the names, dates of birth,  
7 driver license numbers, telephone numbers, electronic mail addresses or So-  
8 cial Security numbers of customers who receive water, sewer or storm drain  
9 services from a public body as defined in ORS 174.109. The utility or district  
10 may release personally identifiable information about a customer, and a  
11 public body providing water, sewer or storm drain services may release the  
12 name, date of birth, driver license number, telephone number, electronic mail  
13 address or Social Security number of a customer, if the customer consents  
14 in writing or electronically, if the disclosure is necessary for the utility,  
15 district or other public body to render services to the customer, if the dis-  
16 closure is required pursuant to a court order or if the disclosure is otherwise  
17 required by federal or state law. The utility, district or other public body  
18 may charge as appropriate for the costs of providing such information. The  
19 utility, district or other public body may make customer records available  
20 to third party credit agencies on a regular basis in connection with the es-  
21 tablishment and management of customer accounts or in the event such ac-  
22 counts are delinquent.

23 “(29) A record of the street and number of an employee’s address submit-  
24 ted to a special district to obtain assistance in promoting an alternative to  
25 single occupant motor vehicle transportation.

26 “(30) Sensitive business records, capital development plans or financial  
27 or commercial information of Oregon Corrections Enterprises that is not  
28 customarily provided to business competitors.

29 “(31) Documents, materials or other information submitted to the Director  
30 of the Department of Consumer and Business Services in confidence by a

1 state, federal, foreign or international regulatory or law enforcement agency  
2 or by the National Association of Insurance Commissioners, its affiliates or  
3 subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to  
4 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723,  
5 725 or 726, the Bank Act or the Insurance Code when:

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

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

12 “(32) A county elections security plan developed and filed under ORS  
13 254.074.

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

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

17 “(A) Electricity;

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

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

20 “(D) Petroleum products;

21 “(E) Sewage; or

22 “(F) Water.

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

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

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

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

1       “(b) As used in this subsection, ‘employer account records’ means all re-  
2 cords maintained in any form that are specifically related to the account of  
3 any employer insured, previously insured or under consideration to be in-  
4 sured by the State Accident Insurance Fund Corporation and any informa-  
5 tion obtained or developed by the corporation in connection with providing,  
6 offering to provide or declining to provide insurance to a specific employer.  
7 ‘Employer account records’ includes, but is not limited to, an employer’s  
8 payroll records, premium payment history, payroll classifications, employee  
9 names and identification information, experience modification factors, loss  
10 experience and dividend payment history.

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

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

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

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

22       “(37) Except as authorized by ORS 408.425, records that certify or verify  
23 an individual’s discharge or other separation from military service.

24       “(38) Records of or submitted to a domestic violence service or resource  
25 center that relate to the name or personal information of an individual who  
26 visits a center for service, including the date of service, the type of service  
27 received, referrals or contact information or personal information of a family  
28 member of the individual. As used in this subsection, ‘domestic violence  
29 service or resource center’ means an entity, the primary purpose of which is  
30 to assist persons affected by domestic or sexual violence by providing refer-



1 rals, resource information or other assistance specifically of benefit to do-  
2 mestic or sexual violence victims.

3 “(39) Information reported to the Oregon Health Authority under ORS  
4 431A.860, except as provided in ORS 431A.860 (2)(b) information disclosed by  
5 the authority under ORS 431A.865 and any information related to disclosures  
6 made by the authority under ORS 431A.865, including information identifying  
7 the recipient of the information.

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

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

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

21 “(42) Personally identifiable information and contact information of vet-  
22 erans as defined in ORS 408.225 and of persons serving on active duty or as  
23 reserve members with the Armed Forces of the United States, National  
24 Guard or other reserve component that was obtained by the Department of  
25 Veterans’ Affairs in the course of performing its duties and functions, in-  
26 cluding but not limited to names, residential and employment addresses,  
27 dates of birth, driver license numbers, telephone numbers, electronic mail  
28 addresses, Social Security numbers, marital status, dependents, the character  
29 of discharge from military service, military rating or rank, that the person  
30 is a veteran or has provided military service, information relating to an ap-

1 plication for or receipt of federal or state benefits, information relating to  
2 the basis for receipt or denial of federal or state benefits and information  
3 relating to a home loan or grant application, including but not limited to  
4 financial information provided in connection with the application.

5 **“(43) Audio recordings or shorthand reporter notes or reports of**  
6 **grand jury proceedings, or transcripts prepared from the recordings,**  
7 **notes or reports, described in section 3 of this 2017 Act.**

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

9 **“SECTION 16. (1) Sections 1, 2 and 3 of this 2017 Act and the**  
10 **amendments to ORS 132.090, 132.320, 132.550, 135.405 and 192.502 by**  
11 **sections 4, 5, 7, 8 and 14 of this 2017 Act become operative January 1,**  
12 **2018.**

13 **“(2) The amendments to sections 1, 2 and 3 of this 2017 Act and ORS**  
14 **132.090, 132.320 and 132.430 by sections 6, 9, 10, 11, 12 and 13 of this 2017**  
15 **Act and the repeal of ORS 132.080 by section 15 of this 2017 Act become**  
16 **operative July 1, 2018.**

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

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

24