

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 496**

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

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

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

15 **“(d) The prosecuting attorney shall provide the court access to the
16 premises in which the grand jury fulfills its obligations and the re-
17 cording equipment used to carry out the provisions of this section and
18 section 2 of this 2017 Act. The presiding judge of each judicial district
19 may enter into an agreement with the prosecuting attorney that
20 identifies the conditions and terms of access.**

21 **“(2)(a) A clerk of the court shall be permitted to attend all pro-**

1 proceedings of the grand jury for the purpose of electronically recording
2 the proceedings described in section 2 of this 2017 Act.

3 “(b) Notwithstanding paragraph (a) of this subsection, the court
4 may:

5 “(A) Delegate the recording to a grand juror, after providing in-
6 struction to the grand juror concerning the recording equipment and
7 recording requirements; or

8 “(B) Upon request of the prosecuting attorney or defense attorney,
9 appoint a certified shorthand reporter as defined in ORS 8.415 or a
10 shorthand reporter certified by a national certification association,
11 who shall be permitted to attend all proceedings of the grand jury for
12 the purpose of taking accurate notes. The shorthand reporter’s ser-
13 vices shall be paid for by the party requesting the shorthand reporter.
14 The shorthand reporter shall be sworn to correctly report the pro-
15 ceedings of the grand jury described in section 2 of this 2017 Act and
16 to keep secret any information concerning the grand jury proceedings.

17 “(c) A clerk of the court, a grand juror or shorthand reporter is not
18 subject to subpoena, and may not disclose any information, concerning
19 the grand jury proceedings without prior court order.

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

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

27 “(c) A failure of a shorthand reporter to prepare accurate notes or
28 an accurate report of all or part of a grand jury proceeding, as re-
29 quired, does not affect the validity of any prosecution or indictment.

30 “(4) This section and section 2 of this 2017 Act do not apply to grand

1 jury proceedings under ORS 132.440 that inquire into the condition and
2 management of correctional facilities and youth correction facilities.

3 **“SECTION 2. (1) Except as provided in subsection (2) of this section,**
4 **the clerk of the court described in section 1 (2)(a) of this 2017 Act, or**
5 **the grand juror or shorthand reporter described in section 1 (2)(b) of**
6 **this 2017 Act, who is recording grand jury proceedings in a judicial**
7 **district with a population between 150,000 and 300,000 or over 700,000**
8 **shall record all matters that come before the grand jury, including:**

9 **“(a) The case name and number;**

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

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

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

15 **“(2) The clerk of the court or grand juror operating the audio elec-**
16 **tronic recording device or the shorthand reporter reporting the grand**
17 **jury proceedings may not record or report:**

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

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

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

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

25 **“(3) The clerk of the court or the shorthand reporter shall file with**
26 **the court the audio recordings or the notes or reports of the shorthand**
27 **reporter.**

28 **“SECTION 3. (1) Audio recordings and shorthand reporter notes and**
29 **reports produced pursuant to sections 1 and 2 of this 2017 Act in a ju-**
30 **dicial district with a population between 150,000 and 300,000 or over**

1 700,000 are confidential and may not be released except as described in
2 this section.

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

7 “(a) The prosecuting attorney may obtain a copy of the audio re-
8 cording, notes or report at any time after the defendant’s arraignment
9 on the indictment.

10 “(b) When the defendant has been arraigned on the indictment, the
11 defense attorney may obtain a copy of the audio recording, notes or
12 report:

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

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

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

26 “(A) The address, telephone number, date of birth, driver license
27 or vehicle registration information of a victim, witness or grand juror,
28 obtained from the audio recording, notes, report or transcript; or

29 “(B) Any portion of the audio recording, notes, report or transcript
30 that contains the address, telephone number, date of birth, driver li-

1 cense or vehicle registration information of a victim, witness or grand
2 juror.

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

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

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

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

29 “(B) A member of the public may file a motion requesting a court
30 order for production and release of a transcript of the proceedings. A

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

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

13 **“(A) The release of the address, telephone number, date of birth,**
14 **driver license or vehicle registration information of a victim or wit-**
15 **ness; or**

16 **“(B) The release of the name, address, telephone number, date of**
17 **birth, driver license or vehicle registration information of a grand ju-**
18 **ror.**

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

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

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

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

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

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

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

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

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

25 “(D) Any other relevant considerations.

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

30 “(5)(a) Except as provided in paragraph (b) of this subsection, when

1 grand jury proceedings do not result in an indictment indorsed as ei-
2 ther ‘a true bill’ or ‘not a true bill,’ the audio recording or the notes
3 or report of a shorthand reporter, or a transcript prepared from the
4 audio recording, notes or report, produced pursuant to sections 1 and
5 2 of this 2017 Act may not be disclosed or released.

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

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

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

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

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

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

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

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

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

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

8 “132.090. (1) Except as provided in subsections (2) and (3) of this section
9 and sections 1 and 2 of this 2017 Act, no person other than the district
10 attorney or a witness actually under examination shall be present during the
11 sittings of the grand jury.

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

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

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

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

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

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

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

11 “132.320. (1) Except as provided in subsections (2) to [(12)] **(13)** of this
12 section, in the investigation of a charge for the purpose of indictment, the
13 grand jury shall receive no other evidence than such as might be given on
14 the trial of the person charged with the crime in question.

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

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

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

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

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

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

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

1 officer or the agency that employs or utilizes the peace officer.

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

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

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

15 “(a) Whether the defendant was driving.

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

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

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

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

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

29 “(12)(a) A defendant who has been arraigned on an information alleging
30 a felony charge that is the subject of a grand jury proceeding and who is

1 represented by an attorney has a right to appear before the grand jury as a
2 witness if, prior to the filing of an indictment, the defense attorney serves
3 upon the district attorney written notice requesting the appearance. The
4 notice shall include an electronic mail address at which the defense attorney
5 may be contacted.

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

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

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

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

30 **“(a) A person who cannot readily understand the proceedings, or**

1 **who cannot communicate in the proceedings, because of a physical**
2 **disability or developmental disability; or**

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

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

5 “132.430. (1) When a person has been held to answer a criminal charge
6 and the indictment in relation thereto is not found ‘a true bill,’ *[it]* **the**
7 **indictment** must be indorsed ‘not a true bill,’ which indorsement must be
8 signed by the foreman and filed with the clerk of the court, in whose office
9 it shall remain a public record. In the case of an indictment not found ‘a true
10 bill’ against a person *[not so held, the same, together with the minutes of the*
11 *evidence in relation thereto,]* **who has not been held to answer a criminal**
12 **charge, the indictment** must be destroyed by the grand jury.

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

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

18 “132.550. The indictment shall contain substantially the following:

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

20 “(2) The title of the action;

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

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

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

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

30 “(7) A statement of the acts constituting the offense in ordinary and

1 concise language, without repetition, and in such manner as to enable a
2 person of common understanding to know what is intended;

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

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

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

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

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

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

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

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

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

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

30 “(4) Similarly situated defendants should be afforded equal plea agreement

1 opportunities.

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

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

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

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

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

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

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

22 “(b) The court shall provide and maintain suitable audio electronic re-
23 cording devices to record grand jury proceedings.

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

28 “(d) The prosecuting attorney shall provide the court access to the prem-
29 ises in which the grand jury fulfills its obligations and the recording equip-
30 ment used to carry out the provisions of this section and section 2 of this

1 2017 Act. The presiding judge of each judicial district may enter into an
2 agreement with the prosecuting attorney that identifies the conditions and
3 terms of access.

4 “(2)(a) A clerk of the court shall be permitted to attend all proceedings
5 of the grand jury for the purpose of electronically recording the proceedings
6 described in section 2 of this 2017 Act.

7 “(b) Notwithstanding paragraph (a) of this subsection, the court may:

8 “(A) Delegate the recording to a grand juror, after providing instruction
9 to the grand juror concerning the recording equipment and recording re-
10 quirements; or

11 “(B) Upon request of the prosecuting attorney or defense attorney, ap-
12 point a certified shorthand reporter as defined in ORS 8.415 or a shorthand
13 reporter certified by a national certification association, who shall be per-
14 mitted to attend all proceedings of the grand jury for the purpose of taking
15 accurate notes. The shorthand reporter’s services shall be paid for by the
16 party requesting the shorthand reporter. The shorthand reporter shall be
17 sworn to correctly report the proceedings of the grand jury described in
18 section 2 of this 2017 Act and to keep secret any information concerning the
19 grand jury proceedings.

20 “(c) A clerk of the court, a grand juror or shorthand reporter is not sub-
21 ject to subpoena, and may not disclose any information, concerning the grand
22 jury proceedings without prior court order.

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

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

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

1 accurate report of all or part of a grand jury proceeding, as required, does
2 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 jury
4 proceedings under ORS 132.440 that inquire into the condition and manage-
5 ment of correctional facilities and youth correction facilities.

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

7 **“Sec. 2.** (1) Except as provided in subsection (2) of this section, the clerk
8 of the court described in section 1 (2)(a) of this 2017 Act, or the grand juror
9 or shorthand reporter described in section 1 (2)(b) of this 2017 Act, who is
10 recording grand jury proceedings [*in a judicial district with a population be-*
11 *tween 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 attorney;
16 and

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

19 “(2) The clerk of the court or grand juror operating the audio electronic
20 recording device or the shorthand reporter reporting the grand jury pro-
21 ceedings may not 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 witness
25 as provided in ORS 132.350.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 “(B) A member of the public may file a motion requesting a court order
30 for production and release of a transcript of the proceedings. A copy of the

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

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

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

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

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

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

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

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

30 “(b) If the motion for a protective order requests that a portion of the

1 audio recording, notes or report be redacted, the motion must be accompa-
2 nied by a specific description, including the date and time, of the portion of
3 the audio recording, notes or report to be redacted.

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

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

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

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

17 “(D) Any other relevant considerations.

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

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

28 “(b) When subsequent grand jury proceedings occur inquiring into the
29 same criminal episode as the grand jury proceedings described in paragraph
30 (a) of this subsection, and the subsequent proceedings result in an indictment

1 indorsed as ‘a true bill,’ the prosecuting attorney shall provide notice to the
2 person charged in the indictment of the occurrence of the earlier grand jury
3 proceedings. After the person is arraigned on the indictment and the time
4 period described in subsection (2)(b) of this section has passed, the audio
5 recording, notes or report produced during the earlier grand jury proceedings
6 may be obtained in the manner set forth in subsection (2) of this section.

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

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

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

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

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

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

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

25 “(8) The release of audio recordings, notes or reports of grand jury pro-
26 ceedings under this section does not affect discovery obligations under ORS
27 135.805 to 135.873.

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

30 “132.090. (1) Except as provided in subsections (2) and (3) of this section

1 and sections 1 and 2 of this 2017 Act, no person other than the district at-
2 torney or a witness actually under examination shall be present during the
3 sittings of the grand jury.

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

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

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

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

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

29 “(b) The affidavit of a qualified person familiar with the person with an
30 intellectual disability. ‘Qualified person’ includes, but is not limited to, a

1 teacher, therapist or physician.

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

4 “132.320. (1) Except as provided in subsections (2) to (13) of this section,
5 in the investigation of a charge for the purpose of indictment, the grand jury
6 shall receive no other evidence than such as might be given on the trial of
7 the person charged with the crime in question.

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

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

24 “(4) A grand jury that is investigating a charge of criminal driving while
25 suspended or revoked under ORS 811.182 may receive in evidence an affidavit
26 of a peace officer with a report or copy of a report of the peace officer con-
27 cerning the peace officer’s investigation of the violation of ORS 811.182 by
28 the defendant.

29 “(5) A grand jury may receive testimony of a witness by means of simul-
30 taneous television transmission allowing the grand jury and district attorney

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

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

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

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

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

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

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

8 “(a) Whether the defendant was driving.

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

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

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

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

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

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

29 “(b) A district attorney is not obligated to inform a defendant that a
30 grand jury proceeding investigating charges against the defendant is pend-

1 ing, in progress or about to occur.

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

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

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

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

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

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

28 “192.502. The following public records are exempt from disclosure under
29 ORS 192.410 to 192.505:

30 “(1) Communications within a public body or between public bodies of an

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

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

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

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

25 “(b) Does not apply to employees or volunteers to the extent that the
26 party seeking disclosure shows by clear and convincing evidence that the
27 public interest requires disclosure in a particular instance pursuant to ORS
28 192.437;

29 “(c) Does not apply to a substitute teacher as defined in ORS 342.815
30 when requested by a professional education association of which the substi-

1 tute teacher may be a member; and

2 “(d) Does not relieve a public employer of any duty under ORS 243.650 to
3 243.782.

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

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

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

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

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

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

26 “(b) Subject to ORS 192.423, paragraph (a) of this subsection does not
27 apply to factual information compiled in a public record when:

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

29 “(B) The factual information is not prohibited from disclosure under any
30 applicable state or federal law, regulation or court order and is not other-

1 wise exempt from disclosure under ORS 192.410 to 192.505;

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

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

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

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

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

20 “(12) Employee and retiree address, telephone number and other nonfi-
21 nancial membership records and employee financial records maintained by
22 the Public Employees Retirement System pursuant to ORS chapters 238 and
23 238A.

24 “(13) Records of or submitted to the State Treasurer, the Oregon Invest-
25 ment Council or the agents of the treasurer or the council relating to active
26 or proposed publicly traded investments under ORS chapter 293, including
27 but not limited to records regarding the acquisition, exchange or liquidation
28 of the investments. For the purposes of this subsection:

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

30 “(A) Information in investment records solely related to the amount paid

1 directly into an investment by, or returned from the investment directly to,
2 the treasurer or council; or

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

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

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

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

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

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

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

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

26 “(F) Investment agreements and related documents.

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

28 “(A) The name, address and vintage year of each privately placed invest-
29 ment fund.

30 “(B) The dollar amount of the commitment made to each privately placed

1 investment fund since inception of the fund.

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

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

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

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

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

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

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

20 “(15) The monthly reports prepared and submitted under ORS 293.761 and
21 293.766 concerning the Public Employees Retirement Fund and the Industrial
22 Accident Fund may be uniformly treated as exempt from disclosure for a
23 period of up to 90 days after the end of the calendar quarter.

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

26 “(17)(a) The following records, communications and information submitted
27 to the Oregon Business Development Commission, the Oregon Business De-
28 velopment Department, the State Department of Agriculture, the Oregon
29 Growth Board, the Port of Portland or other ports as defined in ORS 777.005,
30 or a county or city governing body and any board, department, commission,

1 council or agency thereof, by applicants for investment funds, grants, loans,
2 services or economic development moneys, support or assistance including,
3 but not limited to, those described in ORS 285A.224:

4 “(A) Personal financial statements.

5 “(B) Financial statements of applicants.

6 “(C) Customer lists.

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

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

15 “(F) Marketing strategy information that relates to applicant’s plan to
16 address specific markets and applicant’s strategy regarding specific compet-
17 itors.

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

21 “(A) Personal financial statements.

22 “(B) Financial statements of applicants.

23 “(C) Customer lists.

24 “(D) Information of an applicant pertaining to litigation to which the
25 applicant is a party if the complaint has been filed, or if the complaint has
26 not been filed, if the applicant shows that such litigation is reasonably likely
27 to occur; this exemption does not apply to litigation which has been con-
28 cluded, and nothing in this subparagraph shall limit any right or opportunity
29 granted by discovery or deposition statutes to a party to litigation or po-
30 tential litigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 “(b) Credit reports.

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

30 “(d) Market studies and analyses.

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

3 “(f) Commitment letters.

4 “(g) Project pro forma statements.

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

6 “(i) Audits.

7 “(j) Project tenant correspondence.

8 “(k) Personal information about a tenant.

9 “(L) Housing assistance payments.

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

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

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

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

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

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

25 “(31) Documents, materials or other information submitted to the Director
26 of the Department of Consumer and Business Services in confidence by a
27 state, federal, foreign or international regulatory or law enforcement agency
28 or by the National Association of Insurance Commissioners, its affiliates or
29 subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to
30 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723,

1 725 or 726, the Bank Act or the Insurance Code when:

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

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

8 “(32) A county elections security plan developed and filed under ORS
9 254.074.

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

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

13 “(A) Electricity;

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

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

16 “(D) Petroleum products;

17 “(E) Sewage; or

18 “(F) Water.

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

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

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

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

27 “(b) As used in this subsection, ‘employer account records’ means all re-
28 cords maintained in any form that are specifically related to the account of
29 any employer insured, previously insured or under consideration to be in-
30 sured by the State Accident Insurance Fund Corporation and any informa-

1 tion obtained or developed by the corporation in connection with providing,
2 offering to provide or declining to provide insurance to a specific employer.
3 ‘Employer account records’ includes, but is not limited to, an employer’s
4 payroll records, premium payment history, payroll classifications, employee
5 names and identification information, experience modification factors, loss
6 experience and dividend payment history.

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

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

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

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

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

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

29 “(39) Information reported to the Oregon Health Authority under ORS
30 431A.860, except as provided in ORS 431A.860 (2)(b) information disclosed by

1 the authority under ORS 431A.865 and any information related to disclosures
2 made by the authority under ORS 431A.865, including information identifying
3 the recipient of the information.

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

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

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

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

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

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

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

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

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

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

20
