

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) The court shall delegate the electronic recording of the pro-**

1 proceedings described in section 2 of this 2017 Act to a grand juror, after  
2 providing instruction to the grand juror concerning the recording  
3 equipment and recording requirements.

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

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

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

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

17 **“SECTION 2. (1) Except as provided in subsection (2) of this section,**  
18 **the grand juror described in section 1 (2) of this 2017 Act who is re-**  
19 **ording grand jury proceedings in a judicial district with a population**  
20 **between 150,000 and 300,000 or over 700,000 shall record all matters that**  
21 **come before the grand jury, including:**

22 “(a) The case name and number;

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

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

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

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

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

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

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

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

7       **“(3) The clerk of the court shall file with the court the audio re-**  
8 **cordings.**

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

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

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

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

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

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

26       **“(c) Unless the court orders otherwise for good cause shown, the**  
27 **prosecuting attorney and the defense attorney may not copy, dissem-**  
28 **inate or republish the audio recording, or a transcript prepared from**  
29 **the audio recording, released pursuant to this subsection, except to**  
30 **provide a copy to an agent of the prosecuting attorney or defense at-**

1 **torney for the limited purpose of case preparation. Unless a court or-**  
2 **ders otherwise for good cause shown, in consulting with the defendant**  
3 **the defense attorney may not disclose:**

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

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

10 **“(d) The defense attorney may not provide a copy of the audio re-**  
11 **ording, or a transcript prepared from the audio recording, to the de-**  
12 **fendant.**

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

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

27 **“(A) The public servant or the prosecuting attorney may file a mo-**  
28 **tion requesting a court order releasing all or a portion of the audio**  
29 **recording. A copy of the motion must be served on the opposing party.**  
30 **In deciding whether to issue such an order, the court shall determine**

1 whether the public interest in disclosure outweighs the interest in  
2 maintaining the secrecy of the grand jury proceedings. If the court  
3 orders disclosure, the court may set reasonable conditions on copying,  
4 disseminating or republishing the audio recording.

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

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

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

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

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

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

1 to seek a protective order and shall file a motion for a protective order  
2 upon request from the victim.

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

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

10 “(b) If the motion for a protective order requests that a portion of  
11 the audio recording or transcript be redacted, the motion must be ac-  
12 companied by a specific description, including the date and time, of  
13 the portion of the audio recording or transcript to be redacted.

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

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

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

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

30 “(D) Any other relevant considerations.

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

5       “(5)(a) Except as provided in paragraph (b) of this subsection, when  
6       grand jury proceedings do not result in an indictment indorsed as ei-  
7       ther ‘a true bill’ or ‘not a true bill,’ the audio recording produced  
8       pursuant to sections 1 and 2 of this 2017 Act may not be disclosed or  
9       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 produced  
18       during the earlier grand jury proceedings may be obtained in the  
19       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 of a grand jury  
24       proceeding to a person requesting a copy under this section.

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

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

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

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

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

7       “(8) The release of audio recordings of grand jury proceedings under  
8       this section does not affect discovery obligations under ORS 135.805 to  
9       135.873.

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

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

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

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

1 torney is a qualified interpreter as defined in ORS 45.288. An interpreter  
2 designated under this subsection may be present in the grand jury room and  
3 attend the sittings of the grand jury.

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

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

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

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

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

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

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

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

1 other state or territory of the United States, the District of Columbia or in  
2 a foreign country must be authenticated as provided in ORS chapter 194 be-  
3 fore it can be used in this state.

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

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

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

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

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

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

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

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

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

18 “(a) Whether the defendant was driving.

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

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

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

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

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

1 produces financial records.

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

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

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

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

28 **“(13) A grand jury in a judicial district with a population between**  
29 **150,000 and 300,000 or over 700,000, the proceedings of which are re-**  
30 **corded pursuant to sections 1 and 2 of this 2017 Act, may receive in**

1 evidence, through the testimony of a peace officer involved in the  
2 criminal investigation under grand jury inquiry, the statement of:

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

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

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

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

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

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

21 “132.550. The indictment shall contain substantially the following:

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

23 “(2) The title of the action;

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

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

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

30 “(6) A statement in each count that the offense charged therein was

1 committed on, or on or about, a designated date, or during a designated pe-  
2 riod of time;

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

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

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

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

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

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

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

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

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

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

30 “(c) To seek or not to oppose dismissal of other charges or to refrain from

1 bringing potential charges if the defendant enters a plea of guilty or no  
2 contest to the offense charged.

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

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

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

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

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

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

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

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

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

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

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

7 “(2)(a) The court shall delegate the electronic recording of the pro-  
8 ceedings described in section 2 of this 2017 Act to a grand juror, after pro-  
9 viding instruction to the grand juror concerning the recording equipment  
10 and recording requirements.

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

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

17 “(b) A failure of a grand juror to operate an audio electronic recording  
18 device in a manner that accurately records all or part of a grand jury pro-  
19 ceeding, as required, does not affect the validity of any prosecution or  
20 indictment.

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

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

25 “**Sec. 2.** (1) Except as provided in subsection (2) of this section, the grand  
26 juror described in section 1 (2) of this 2017 Act who is recording grand jury  
27 proceedings [*in a judicial district with a population between 150,000 and*  
28 *300,000 or over 700,000*] shall record all matters that come before the grand  
29 jury, including:

30 “(a) The case name and number;

1 “(b) The names of witnesses appearing before the grand jury;  
2 “(c) Each statement made or question asked by the prosecuting attorney;  
3 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28       “(3)(a) When a grand jury inquires into the conduct of a public servant  
29 as defined in ORS 162.005 for acts occurring in the performance of the public  
30 servant’s duties, and an indictment resulting from the grand jury proceedings

1 is indorsed ‘not a true bill’:

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

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

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

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

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

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

30 “(A) The prosecuting attorney may file a motion for a protective order

1 within 10 days after the defendant's arraignment on the indictment. The  
2 motion may be filed on behalf of a victim or a witness. The prosecuting at-  
3 torney shall inform the victim of the ability to seek a protective order and  
4 shall file a motion for a protective order upon request from the victim.

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

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

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

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

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

24 "(B) Maintenance of secrecy regarding informants, as required for effec-  
25 tive investigation of criminal activity;

26 "(C) Confidential information recognized under law, including the pro-  
27 tection of confidential relationships and privileges and the contents of con-  
28 fidential records unrelated to a crime alleged in the indictment; and

29 "(D) Any other relevant considerations.

30 "(d) The court may permit the evidence of substantial and compelling

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

4 “(5)(a) Except as provided in paragraph (b) of this subsection, when grand  
5 jury proceedings do not result in an indictment indorsed as either ‘a true  
6 bill’ or ‘not a true bill,’ the audio recording produced pursuant to sections  
7 1 and 2 of this 2017 Act may not be disclosed or released.

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

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

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

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

24 “(a) May not be used as evidence in any subsequent proceeding, except  
25 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 ‘a  
27 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 grand  
30 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 con-  
3 cerning the audio recording or transcript.

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

6 **“SECTION 12.** ORS 132.090, as amended by section 4 of this 2017 Act, is  
7 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 at-  
10 torney 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 the*  
15 *grand jury, and may appoint*] a parent, guardian or other appropriate person  
16 18 years of age or older to accompany any child 12 years of age or younger,  
17 or any person with an intellectual disability, during an appearance before  
18 the grand jury. The circuit judge, upon the district attorney’s showing to the  
19 court that it is necessary for the proper examination of a witness appearing  
20 before the grand jury, may appoint a guard, medical or other special at-  
21 tendant or nurse, who shall be present in the grand jury room and shall at-  
22 tend 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 13.** ORS 132.320, as amended by section 5 of this 2017 Act, is  
11 amended to read:

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

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

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

1 fore it can be used in this state.

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

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

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

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

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

1   ence before the grand jury would constitute an undue hardship on the peace  
2   officer or the agency that employs or utilizes the peace officer.

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

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

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

16       “(a) Whether the defendant was driving.

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

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

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

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

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

30       “(12)(a) A defendant who has been arraigned on an information alleging

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

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

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

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

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

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

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

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

6       “192.502. The following public records are exempt from disclosure under  
7 ORS 192.410 to 192.505:

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

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

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

28       “(a) Does not apply to the addresses, dates of birth and telephone numbers  
29 of employees or volunteers who are elected officials, except that a judge or  
30 district attorney subject to election may seek to exempt the judge’s or dis-

1 trict attorney's address or telephone number, or both, under the terms of  
2 ORS 192.445;

3 “(b) Does not apply to employees or volunteers to the extent that the  
4 party seeking disclosure shows by clear and convincing evidence that the  
5 public interest requires disclosure in a particular instance pursuant to ORS  
6 192.437;

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

10 “(d) Does not relieve a public employer of any duty under ORS 243.650 to  
11 243.782.

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

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

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

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

30 “(8) Any public records or information the disclosure of which is prohib-

1 ited by federal law or regulations.

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

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

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

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

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

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

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

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

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

28 “(12) Employee and retiree address, telephone number and other nonfi-  
29 nancial membership records and employee financial records maintained by  
30 the Public Employees Retirement System pursuant to ORS chapters 238 and

1 238A.

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

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

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

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

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

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

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

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

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

29 “(D) Records containing information regarding the portfolio positions in  
30 which an investment fund, an asset ownership or their respective investment

1 vehicles invest.

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

4 “(F) Investment agreements and related documents.

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

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

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

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

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

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

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

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

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

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

28 “(15) The monthly reports prepared and submitted under ORS 293.761 and  
29 293.766 concerning the Public Employees Retirement Fund and the Industrial  
30 Accident Fund may be uniformly treated as exempt from disclosure for a

1 period of up to 90 days after the end of the calendar quarter.

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

4 “(17)(a) The following records, communications and information submitted  
5 to the Oregon Business Development Commission, the Oregon Business De-  
6 velopment Department, the State Department of Agriculture, the Oregon  
7 Growth Board, the Port of Portland or other ports as defined in ORS 777.005,  
8 or a county or city governing body and any board, department, commission,  
9 council or agency thereof, by applicants for investment funds, grants, loans,  
10 services or economic development moneys, support or assistance including,  
11 but not limited to, those described in ORS 285A.224:

12 “(A) Personal financial statements.

13 “(B) Financial statements of applicants.

14 “(C) Customer lists.

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

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

23 “(F) Marketing strategy information that relates to applicant’s plan to  
24 address specific markets and applicant’s strategy regarding specific compet-  
25 itors.

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

29 “(A) Personal financial statements.

30 “(B) Financial statements of applicants.

1 “(C) Customer lists.

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

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

10 “(F) Marketing strategy information that relates to applicant’s plan to  
11 address specific markets and applicant’s strategy regarding specific compet-  
12 itors.

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

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

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

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

29 “(19) All information supplied by a person under ORS 151.485 for the  
30 purpose of requesting appointed counsel, and all information supplied to the

1 court from whatever source for the purpose of verifying the financial eligi-  
2 bility of a person pursuant to ORS 151.485.

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

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

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

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

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

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

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

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

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

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

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

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

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

3       “(b) Credit reports.

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

8       “(d) Market studies and analyses.

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

11       “(f) Commitment letters.

12       “(g) Project pro forma statements.

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

14       “(i) Audits.

15       “(j) Project tenant correspondence.

16       “(k) Personal information about a tenant.

17       “(L) Housing assistance payments.

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

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

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

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

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

30       “(30) Sensitive business records, capital development plans or financial

1 or commercial information of Oregon Corrections Enterprises that is not  
2 customarily provided to business competitors.

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

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

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

16 “(32) A county elections security plan developed and filed under ORS  
17 254.074.

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

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

21 “(A) Electricity;

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

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

24 “(D) Petroleum products;

25 “(E) Sewage; or

26 “(F) Water.

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

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

30 “(34) The information specified in ORS 25.020 (8) if the Chief Justice of

1 the Supreme Court designates the information as confidential by rule under  
2 ORS 1.002.

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

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

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

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

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

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

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

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

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

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

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

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

25 “(42) Personally identifiable information and contact information of vet-  
26 erans as defined in ORS 408.225 and of persons serving on active duty or as  
27 reserve members with the Armed Forces of the United States, National  
28 Guard or other reserve component that was obtained by the Department of  
29 Veterans’ Affairs in the course of performing its duties and functions, in-  
30 cluding but not limited to names, residential and employment addresses,

1 dates of birth, driver license numbers, telephone numbers, electronic mail  
2 addresses, Social Security numbers, marital status, dependents, the character  
3 of discharge from military service, military rating or rank, that the person  
4 is a veteran or has provided military service, information relating to an ap-  
5 plication for or receipt of federal or state benefits, information relating to  
6 the basis for receipt or denial of federal or state benefits and information  
7 relating to a home loan or grant application, including but not limited to  
8 financial information provided in connection with the application.

9 **“(43) Audio recordings of grand jury proceedings, or transcripts**  
10 **prepared from the recordings, described in section 3 of this 2017 Act.**

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

12 **“SECTION 16. (1) Sections 1, 2 and 3 of this 2017 Act and the**  
13 **amendments to ORS 132.090, 132.320, 132.550, 135.405 and 192.502 by**  
14 **sections 4, 5, 7, 8 and 14 of this 2017 Act become operative January 1,**  
15 **2018.**

16 **“(2) The amendments to sections 1, 2 and 3 of this 2017 Act and ORS**  
17 **132.090, 132.320 and 132.430 by sections 6, 9, 10, 11, 12 and 13 of this 2017**  
18 **Act and the repeal of ORS 132.080 by section 15 of this 2017 Act become**  
19 **operative July 1, 2018.**

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

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

27