

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO  
SENATE BILL 1001**

1 In line 2 of the printed bill, after “records” insert “; amending ORS  
2 132.250, 132.260, 132.270 and 137.225”.

3 Delete lines 4 through 6 and insert:

4 **“SECTION 1.** ORS 132.250 is amended to read:

5 “132.250. (1)(a) The district attorney of a county comprising a judicial  
6 district with a population between 150,000 and 300,000 or over 700,000 shall  
7 ensure that proceedings before the grand jury are recorded in the manner  
8 described in this section and ORS 132.260.

9 “(b) The Chief Justice of the Supreme Court shall designate the types of  
10 audio electronic recording devices suitable for recording grand jury pro-  
11 ceedings and may establish policies and procedures by rule or order to carry  
12 out the provisions of this section and ORS 132.260 and 132.270.

13 “(c) The district attorney shall use to record the grand jury proceedings  
14 audio electronic recording devices designated, provided and maintained by  
15 the Judicial Department.

16 **“(d) The presiding judge of each judicial district shall enter into an  
17 agreement with each district attorney in the district that identifies the  
18 conditions and terms of access to the audio electronic recording de-  
19 vices for the transfer of the recording from the district attorney to the  
20 court for storage.**

21 “(2)(a) The district attorney shall delegate the recording of grand jury

1 proceedings to a grand juror. [and] **The court** shall provide instruction to  
2 the grand juror concerning the audio electronic recording equipment and  
3 requirements of the recording.

4 “(b) Notwithstanding paragraph (a) of this subsection, the court may,  
5 upon request of the prosecuting attorney, appoint a certified shorthand re-  
6 porter as defined in ORS 8.415 or a shorthand reporter certified by a national  
7 certification association, who shall be permitted to attend all proceedings  
8 of the grand jury for the purpose of taking accurate notes. The shorthand  
9 reporter’s services shall be paid for by the prosecuting attorney. The short-  
10 hand reporter shall be sworn to correctly report the proceedings of the grand  
11 jury described in ORS 132.260 and to keep secret any information concerning  
12 the grand jury proceedings.

13 “(c) The grand juror or shorthand reporter recording the proceedings is  
14 not subject to subpoena, and may not disclose any information, concerning  
15 the grand jury proceedings without prior court order.

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

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

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

26 “(4) This section and ORS 132.260 do not apply to grand jury proceedings  
27 under ORS 132.440 that inquire into the condition and management of  
28 correctional facilities and youth correction facilities.

29 **“SECTION 2.** ORS 132.250, as amended by section 9, chapter 650, Oregon  
30 Laws 2017, is amended to read:

1 “132.250. (1)(a) The district attorney of a county shall ensure that pro-  
2 ceedings before the grand jury are recorded in the manner described in this  
3 section and ORS 132.260.

4 “(b) The Chief Justice of the Supreme Court shall designate the types of  
5 audio electronic recording devices suitable for recording grand jury pro-  
6 ceedings and may establish policies and procedures by rule or order to carry  
7 out the provisions of this section and ORS 132.260 and 132.270.

8 “(c) The district attorney shall use to record the grand jury proceedings  
9 audio electronic recording devices designated, provided and maintained by  
10 the Judicial Department.

11 “(d) **The presiding judge of each judicial district shall enter into an**  
12 **agreement with each district attorney in the district that identifies the**  
13 **conditions and terms of access to the audio electronic recording de-**  
14 **vices for the transfer of the recording from the district attorney to the**  
15 **court for storage.**

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

20 “(b) Notwithstanding paragraph (a) of this subsection, the court may,  
21 upon request of the prosecuting attorney, appoint a certified shorthand re-  
22 porter as defined in ORS 8.415 or a shorthand reporter certified by a national  
23 certification association, who shall be permitted to attend all proceedings  
24 of the grand jury for the purpose of taking accurate notes. The shorthand  
25 reporter’s services shall be paid for by the prosecuting attorney. The short-  
26 hand reporter shall be sworn to correctly report the proceedings of the grand  
27 jury described in ORS 132.260 and to keep secret any information concerning  
28 the grand jury proceedings.

29 “(c) The grand juror or shorthand reporter recording the proceedings is  
30 not subject to subpoena, and may not disclose any information, concerning

1 the grand jury proceedings without prior court order.

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

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

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

12 “(4) This section and ORS 132.260 do not apply to grand jury proceedings  
13 under ORS 132.440 that inquire into the condition and management of  
14 correctional facilities and youth correction facilities.

15 **“SECTION 3.** ORS 132.260 is amended to read:

16 “132.260. (1) Except as provided in subsection (2) of this section, the grand  
17 juror described in ORS 132.250 (2)(a), or the shorthand reporter described in  
18 ORS 132.250 (2)(b), who is recording grand jury proceedings in a judicial  
19 district with a population between 150,000 and 300,000 or over 700,000 shall  
20 record all testimony given before the grand jury, including:

21 “(a) The case name and number;

22 “(b) The name of each witness appearing before the grand jury; and

23 “(c) Each question asked of, and each response provided by, a witness  
24 appearing before the grand jury.

25 “(2) The grand juror operating the audio electronic recording device or  
26 the shorthand reporter may not record:

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

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

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

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

4 “(3) The district attorney shall [*maintain*] **transfer** the audio recordings,  
5 or report of the shorthand reporter, produced pursuant to this section and  
6 ORS 132.250, **to the court. The court shall maintain the recordings or**  
7 **report.**

8 “**SECTION 4.** ORS 132.260, as amended by section 10, chapter 650, Oregon  
9 Laws 2017, is amended to read:

10 “132.260. (1) Except as provided in subsection (2) of this section, the grand  
11 juror described in ORS 132.250 (2)(a), or the shorthand reporter described in  
12 ORS 132.250 (2)(b), who is recording grand jury proceedings shall record all  
13 testimony given before the grand jury, including:

14 “(a) The case name and number;

15 “(b) The name of each witness appearing before the grand jury; and

16 “(c) Each question asked of, and each response provided by, a witness  
17 appearing before the grand jury.

18 “(2) The grand juror operating the audio electronic recording device or  
19 the shorthand reporter may not record:

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

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

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

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

27 “(3) The district attorney shall [*maintain*] **transfer** the audio recordings,  
28 or report of the shorthand reporter, produced pursuant to this section and  
29 ORS 132.250, **to the court. The court shall maintain the recordings or**  
30 **report.**

1       **“SECTION 5.** ORS 132.270 is amended to read:

2       “132.270. (1) Audio recordings and the notes or report of a shorthand re-  
3       porter produced pursuant to ORS 132.250 and 132.260 in a judicial district  
4       with a population between 150,000 and 300,000 or over 700,000 are confiden-  
5       tial 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 or the notes or report of a short-  
8       hand reporter of the grand jury proceedings may be released only in the  
9       following manner:

10       “(a) The prosecuting attorney may [*access*] **obtain from the court** a copy  
11       of the audio recording or the notes or report of a shorthand reporter at any  
12       time **after the defendant’s arraignment on the indictment.**

13       “(b) When the defendant has been arraigned on the indictment and is re-  
14       presented by an attorney, the [*district attorney shall*] **defense attorney may**  
15       **obtain from the court a copy of the audio recordings or the notes or**  
16       **report of a shorthand reporter:**

17       “(A) [*Provide a copy to the defense attorney of all audio recordings, or the*  
18       *notes or report of a shorthand reporter, related to an indictment*] After 10 days  
19       have passed since the defendant’s arraignment on the indictment and no  
20       motion described in subsection (4) of this section has been filed; or

21       “(B) [*Provide a copy of the audio recordings, or the notes or report of a*  
22       *shorthand reporter, to the defense attorney*] In accordance with the court’s  
23       ruling on the motion described in subsection (4) of this section, if a motion  
24       has been filed.

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

1 preparation. Unless a court orders otherwise for good cause shown, in con-  
2 sulting with the defendant the defense attorney may not disclose to the de-  
3 fendant:

4 “(A) Any personal identifiers of a victim, witness or grand juror obtained  
5 from the audio recording, report, notes or transcript; or

6 “(B) Any portion of the audio recording, report, notes or transcript that  
7 contains any personal identifiers of a victim, witness or grand juror.

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

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

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

25 “(A) The public servant or the prosecuting attorney may file a motion  
26 requesting a court order [*releasing*] **for the production and release of** all  
27 or a portion of a transcript of the grand jury proceedings. A copy of the  
28 motion must be served on the opposing party. **The prosecuting attorney**  
29 **shall obtain from the court a copy of the audio recording for the pur-**  
30 **pose of preparing the transcript.** In deciding whether to issue such an

1 order, the court shall determine whether the public interest in disclosure  
2 outweighs the interest in maintaining the secrecy of the grand jury pro-  
3 ceedings. If the court orders disclosure, the court may set reasonable condi-  
4 tions on copying, disseminating or republishing the transcript.

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

17 “(b) The release of any transcript under this subsection may not include:

18 “(A) The release of any personal identifiers of a victim or witness; or

19 “(B) The release of the name or any personal identifiers of a grand juror.

20 “(4)(a) A motion for a protective order concerning an audio recording, the  
21 notes or report of a shorthand reporter or a transcript of grand jury pro-  
22 ceedings may be filed as follows:

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

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

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



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

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

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

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

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

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

21 “(D) Any other relevant considerations.

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

26 “(5)(a) Except as provided in paragraph (b) **or** (c) of this subsection, when  
27 grand jury proceedings do not result in an indictment indorsed as either ‘a  
28 true bill’ or ‘not a true bill,’ the audio recording or notes or report of the  
29 shorthand reporter produced pursuant to ORS 132.250 and 132.260 may not  
30 be disclosed or released.

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

11 **“(c) After presenting a case to the grand jury, if the prosecuting**  
12 **attorney elects to proceed by way of information instead of**  
13 **indictment, the recording of the grand jury proceeding shall be re-**  
14 **leased in accordance with subsection (2) of this section as if the de-**  
15 **fendant had been arraigned on the indictment.**

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

18 “(6) The [~~district attorney of each county~~] **Chief Justice of the Supreme**  
19 **Court** may establish a fee for the cost of providing a copy of any audio re-  
20 cording, [~~or~~] the notes or report of a shorthand reporter **or a transcript**, of  
21 a grand jury proceeding to a person requesting a copy under this section.

22 “(7) An audio recording, the notes or report of a shorthand reporter or a  
23 transcript of a grand jury proceeding obtained pursuant to this section and  
24 ORS 132.250 and 132.260:

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

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

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

1 jury proceeding or during trial.

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

5 “(e) May be submitted to the court and used as evidence for a hearing  
6 on a protective order described in subsection (4) of this section.

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

10 “(9) As used in this section:

11 “(a) ‘Personal identifiers’ means:

12 “(A) In relation to a witness or a grand juror, the person’s address, tele-  
13 phone number, driver license, vehicle registration information, Social Secu-  
14 rity number, date of birth and the identifying number of the person’s  
15 depository account at a financial institution, as defined in ORS 706.008, or  
16 credit card account.

17 “(B) In relation to a victim, the victim’s address, electronic mail address,  
18 telephone number, driver license, vehicle registration information, Social  
19 Security number, date of birth, any user names or other identifying infor-  
20 mation associated with the victim’s social media accounts and the identifying  
21 number of the victim’s depository account at a financial institution, as de-  
22 fined in ORS 706.008, or credit card account.

23 “(b) ‘Social media’ has the meaning given that term in ORS 659A.330.

24 “**SECTION 6.** ORS 132.270, as amended by section 11, chapter 650, Oregon  
25 Laws 2017, is amended to read:

26 “132.270. (1) Audio recordings and the notes or report of a shorthand re-  
27 porter produced pursuant to ORS 132.250 and 132.260 are confidential and  
28 may not be released except as described in this section.

29 “(2) When an indictment resulting from grand jury proceedings is  
30 indorsed ‘a true bill,’ the audio recording or the notes or report of a short-

1 hand reporter of the grand jury proceedings may be released only in the  
2 following manner:

3 “(a) The prosecuting attorney may [*access*] **obtain from the court** a copy  
4 of the audio recording or the notes or report of a shorthand reporter at any  
5 time **after the defendant’s arraignment on the indictment.**

6 “(b) When the defendant has been arraigned on the indictment and is re-  
7 presented by an attorney, the [*district attorney shall*] **defense attorney may**  
8 **obtain from the court a copy of the audio recordings or the notes or**  
9 **report of a shorthand reporter:**

10 “(A) [*Provide a copy to the defense attorney of all audio recordings, or the*  
11 *notes or report of a shorthand reporter, related to an indictment*] After 10 days  
12 have passed since the defendant’s arraignment on the indictment and no  
13 motion described in subsection (4) of this section has been filed; or

14 “(B) [*Provide a copy of the audio recordings, or the notes or report of a*  
15 *shorthand reporter, to the defense attorney*] In accordance with the court’s  
16 ruling on the motion described in subsection (4) of this section, if a motion  
17 has been filed.

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

27 “(A) Any personal identifiers of a victim, witness or grand juror obtained  
28 from the audio recording, report, notes or transcript; or

29 “(B) Any portion of the audio recording, report, notes or transcript that  
30 contains any personal identifiers of a victim, witness or grand juror.

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

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

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

18 “(A) The public servant or the prosecuting attorney may file a motion  
19 requesting a court order [*releasing*] **for the production and release of all**  
20 **or a portion of a transcript of the grand jury proceedings.** A copy of the  
21 motion must be served on the opposing party. **The prosecuting attorney**  
22 **shall obtain from the court a copy of the audio recording for the pur-**  
23 **pose of preparing the transcript.** In deciding whether to issue such an  
24 order, the court shall determine whether the public interest in disclosure  
25 outweighs the interest in maintaining the secrecy of the grand jury pro-  
26 ceedings. If the court orders disclosure, the court may set reasonable condi-  
27 tions on copying, disseminating or republishing the transcript.

28 “(B) A member of the public may file a motion requesting a court order  
29 for production and release of a transcript of the grand jury proceedings. A  
30 copy of the motion must be served on the prosecuting attorney and the public

1 servant's attorney, or the public servant if the public servant is not repres-  
2 ented by an attorney. The person filing the motion is responsible for the cost  
3 of producing the transcript and a court order for production and release of  
4 the transcript must be conditioned on receipt of payment. 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 tran-  
9 script.

10 “(b) The release of any transcript under this subsection may not include:

11 “(A) The release of any personal identifiers of a victim or witness; or

12 “(B) The release of the name or any personal identifiers of a grand juror.

13 “(4)(a) A motion for a protective order concerning an audio recording, the  
14 notes or report of a shorthand reporter or a transcript of grand jury pro-  
15 ceedings may be filed as follows:

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

20 “(B) The prosecuting attorney may file a motion for a protective order  
21 within 10 days after receiving a motion described in subsection (2)(e) of this  
22 section.

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

27 “(b) If the motion for a protective order requests that a portion of the  
28 audio recording, notes, report or transcript be redacted, the motion must be  
29 accompanied by a specific description, including the date and time, of the  
30 portion of the audio recording, notes, report or transcript to be redacted.

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

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

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

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

14 “(D) Any other relevant considerations.

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

19 “(5)(a) Except as provided in paragraph (b) **or (c)** of this subsection, when  
20 grand jury proceedings do not result in an indictment indorsed as either ‘a  
21 true bill’ or ‘not a true bill,’ the audio recording or notes or report of the  
22 shorthand reporter produced pursuant to ORS 132.250 and 132.260 may not  
23 be disclosed or released.

24 “(b) When subsequent grand jury proceedings occur inquiring into the  
25 same criminal episode as the grand jury proceedings described in paragraph  
26 (a) of this subsection, and the subsequent proceedings result in an indictment  
27 indorsed as ‘a true bill,’ the prosecuting attorney shall provide notice to the  
28 person charged in the indictment of the occurrence of the earlier grand jury  
29 proceedings. After the person is arraigned on the indictment and the time  
30 period described in subsection (2)(b) of this section has passed, the audio

1 recording or the notes or report of the shorthand reporter produced during  
2 the earlier grand jury proceedings may be obtained in the manner set forth  
3 in subsection (2) of this section.

4 **“(c) After presenting a case to the grand jury, if the prosecuting**  
5 **attorney elects to proceed by way of information instead of**  
6 **indictment, the recording of the grand jury proceeding shall be re-**  
7 **leased in accordance with subsection (2) of this section as if the de-**  
8 **fendant had been arraigned on the indictment.**

9 “[*c*] (d) As used in this subsection, ‘criminal episode’ has the meaning  
10 given that term in ORS 131.505.

11 **“(6) The [*district attorney of each county*] Chief Justice of the Supreme**  
12 **Court may establish a fee for the cost of providing a copy of any audio re-**  
13 **cording, [*or*] the notes or report of a shorthand reporter or a transcript, of**  
14 **a grand jury proceeding to a person requesting a copy under this section.**

15 **“(7) An audio recording, the notes or report of a shorthand reporter or a**  
16 **transcript of a grand jury proceeding obtained pursuant to this section and**  
17 **ORS 132.250 and 132.260:**

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

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

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

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

28 **“(e) May be submitted to the court and used as evidence for a hearing**  
29 **on a protective order described in subsection (4) of this section.**

30 **“(8) The release of audio recordings, shorthand reporter notes or reports**



1 or transcripts of grand jury proceedings under this section does not affect  
2 discovery obligations under ORS 135.805 to 135.873.

3 “(9) As used in this section:

4 “(a) ‘Personal identifiers’ means:

5 “(A) In relation to a witness or a grand juror, the person’s address, tele-  
6 phone number, driver license, vehicle registration information, Social Secu-  
7 rity number, date of birth and the identifying number of the person’s  
8 depository account at a financial institution, as defined in ORS 706.008, or  
9 credit card account.

10 “(B) In relation to a victim, the victim’s address, electronic mail address,  
11 telephone number, driver license, vehicle registration information, Social  
12 Security number, date of birth, any user names or other identifying infor-  
13 mation associated with the victim’s social media accounts and the identifying  
14 number of the victim’s depository account at a financial institution, as de-  
15 fined in ORS 706.008, or credit card account.

16 “(b) ‘Social media’ has the meaning given that term in ORS 659A.330.

17 **“SECTION 7.** ORS 137.225, as amended by section 12, chapter 120, Oregon  
18 Laws 2018, is amended to read:

19 “137.225. (1)(a) Except as provided in paragraph (c) of this subsection, at  
20 any time after the lapse of three years from the date of pronouncement of  
21 judgment, any defendant who has fully complied with and performed the  
22 sentence of the court and whose conviction is described in subsection (5) of  
23 this section by motion may apply to the court where the conviction was en-  
24 tered for entry of an order setting aside the conviction. A person who is still  
25 under supervision, or who is still incarcerated, as part of the sentence for  
26 the offense that is the subject of the motion has not fully complied with or  
27 performed the sentence of the court.

28 “(b) At any time after the lapse of one year from the date of any arrest,  
29 issuance of a criminal citation or criminal charge, if no accusatory instru-  
30 ment was filed, or at any time after an acquittal or a dismissal of the charge,

1 the arrested, cited or charged person may apply to the court that would have  
2 jurisdiction over the crime for which the person was arrested, cited or  
3 charged, for entry of an order setting aside the record of the arrest, citation  
4 or charge. For the purpose of computing the one-year period, time during  
5 which the person has secreted himself or herself within or without this state  
6 is not included.

7 “(c) A person whose sentence of probation was revoked may not apply to  
8 the court for entry of an order setting aside the conviction for which the  
9 person was sentenced to probation for a period of 10 years from the date of  
10 revocation.

11 “(2)(a) A copy of the motion and a full set of the defendant’s fingerprints  
12 shall be served upon the office of the prosecuting attorney who prosecuted  
13 the crime or violation, or who had authority to prosecute the charge if there  
14 was no accusatory instrument filed, and opportunity shall be given to contest  
15 the motion. The fingerprint card with the notation ‘motion for setting aside  
16 conviction,’ or ‘motion for setting aside arrest, citation or charge record’ as  
17 the case may be, shall be forwarded to the Department of State Police. In-  
18 formation resulting from the fingerprint search along with the fingerprint  
19 card shall be returned to the prosecuting attorney.

20 “(b) When a prosecuting attorney is served with a copy of a motion to set  
21 aside a conviction under this section, the prosecuting attorney shall provide  
22 a copy of the motion and notice of the hearing date to the victim, if any, of  
23 the crime by mailing a copy of the motion and notice to the victim’s last-  
24 known address.

25 “(c) When a person makes a motion under subsection (1)(a) of this section,  
26 the person must pay a fee of \$80 to the Department of State Police. The  
27 person shall attach a certified check payable to the Department of State  
28 Police in the amount of \$80 to the fingerprint card that is served upon the  
29 prosecuting attorney. The office of the prosecuting attorney shall forward  
30 the check with the fingerprint card to the Department of State Police.

1 “(d) In addition to the fee established under paragraph (c) of this sub-  
2 section, when a person makes a motion under subsection (1)(a) of this section  
3 the person must pay the filing fee established under ORS 21.135.

4 “(e) The prosecuting attorney may not charge the defendant a fee for  
5 performing the requirements described in this section.

6 “(3) Upon hearing the motion, the court may require the filing of such  
7 affidavits and may require the taking of such proofs as the court deems  
8 proper. The court shall allow the victim to make a statement at the hearing.  
9 Except as otherwise provided in subsection (12) of this section, if the court  
10 determines that the circumstances and behavior of the applicant from the  
11 date of conviction, or from the date of arrest, citation or charge as the case  
12 may be, to the date of the hearing on the motion warrant setting aside the  
13 conviction, or the arrest, citation or charge record as the case may be, the  
14 court shall enter an appropriate order that shall state the original arrest or  
15 citation charge and the conviction charge, if any and if different from the  
16 original, date of charge, submitting agency and disposition. The order shall  
17 further state that positive identification has been established by the De-  
18 partment of State Police and further identified as to Department of State  
19 Police number or submitting agency number. Upon the entry of the order,  
20 the applicant for purposes of the law shall be deemed not to have been pre-  
21 viously convicted, or arrested, cited or charged as the case may be, and the  
22 court shall issue an order sealing the record of conviction and other official  
23 records in the case, including the records of arrest, citation or charge  
24 whether or not the arrest, citation or charge resulted in a further criminal  
25 proceeding.

26 “(4) The clerk of the court shall forward a certified copy of the order to  
27 such agencies as directed by the court. A certified copy must be sent to the  
28 Department of Corrections when the person has been in the custody of the  
29 Department of Corrections. Upon entry of the order, the conviction, arrest,  
30 citation, charge or other proceeding shall be deemed not to have occurred,

1 and the applicant may answer accordingly any questions relating to its oc-  
2 currence.

3 “(5) The provisions of subsection (1)(a) of this section apply to a con-  
4 viction for:

5 “(a) A Class B felony, except for a violation of ORS 166.429 or any crime  
6 classified as a person felony as that term is defined in the rules of the  
7 Oregon Criminal Justice Commission, only if:

8 “(A)(i) Twenty years or more have elapsed from the date of the conviction  
9 sought to be set aside or of the release of the person from imprisonment for  
10 the conviction sought to be set aside, whichever is later; and

11 “(ii) The person has not been convicted of, arrested or criminally cited for  
12 or charged with any other offense, excluding motor vehicle violations, after  
13 the date the person was convicted of the offense sought to be set aside.  
14 Notwithstanding subsection (1) of this section, a conviction, arrest, citation  
15 or charge that has been set aside under this section shall be considered for  
16 the purpose of determining whether this subparagraph is applicable; or

17 “(B) The Class B felony is described in paragraphs (b) to (d) of this sub-  
18 section.

19 “(b) Any misdemeanor, Class C felony or felony punishable as a  
20 misdemeanor pursuant to ORS 161.705.

21 “(c) An offense constituting a violation under state law or local ordi-  
22 nance.

23 “(d) An offense committed before January 1, 1972, that, if committed after  
24 that date, would qualify for an order under this section.

25 “(6) Notwithstanding subsection (5) of this section, the provisions of sub-  
26 section (1)(a) of this section do not apply to a conviction for:

27 “(a) Criminal mistreatment in the second degree under ORS 163.200 if the  
28 victim at the time of the crime was 65 years of age or older.

29 “(b) Criminal mistreatment in the first degree under ORS 163.205 if the  
30 victim at the time of the crime was 65 years of age or older, or when the

1 offense constitutes child abuse as defined in ORS 419B.005.

2 “(c) Endangering the welfare of a minor under ORS 163.575 (1)(a), when  
3 the offense constitutes child abuse as defined in ORS 419B.005.

4 “(d) Criminally negligent homicide under ORS 163.145, when that offense  
5 was punishable as a Class C felony.

6 “(e) Assault in the third degree under ORS 163.165 (1)(h).

7 “(f) Any sex crime, unless:

8 “(A) The sex crime is listed in ORS 163A.140 (1)(a) and:

9 “(i) The person has been relieved of the obligation to report as a sex  
10 offender pursuant to a court order entered under ORS 163A.145 or 163A.150;  
11 and

12 “(ii) The person has not been convicted of, found guilty except for insan-  
13 ity of or found to be within the jurisdiction of the juvenile court based on  
14 a crime for which the court is prohibited from setting aside the conviction  
15 under this section; or

16 “(B) The sex crime constitutes a Class C felony and:

17 “(i) The person was under 16 years of age at the time of the offense;

18 “(ii) The person is:

19 “(I) Less than two years and 180 days older than the victim; or

20 “(II) At least two years and 180 days older, but less than three years and  
21 180 days older, than the victim and the court finds that setting aside the  
22 conviction is in the interests of justice and of benefit to the person and the  
23 community;

24 “(iii) The victim’s lack of consent was due solely to incapacity to consent  
25 by reason of being less than a specified age;

26 “(iv) The victim was at least 12 years of age at the time of the offense;

27 “(v) The person has not been convicted of, found guilty except for insanity  
28 of or found to be within the jurisdiction of the juvenile court based on a  
29 crime for which the court is prohibited from setting aside the conviction  
30 under this section; and

1       “(vi) Each conviction or finding described in this subparagraph involved  
2 the same victim.

3       “(7) Notwithstanding subsection (5) of this section, the provisions of sub-  
4 section (1) of this section do not apply to:

5       “(a) A conviction for a state or municipal traffic offense.

6       “(b) A person convicted, within the 10-year period immediately preceding  
7 the filing of the motion pursuant to subsection (1) of this section, of any  
8 other offense, excluding motor vehicle violations, whether or not the other  
9 conviction is for conduct associated with the same criminal episode that  
10 caused the arrest, citation, charge or conviction that is sought to be set  
11 aside. A single violation, other than a motor vehicle violation, within the  
12 last 10 years is not a conviction under this subsection. Notwithstanding  
13 subsection (1) of this section, a conviction that has been set aside under this  
14 section shall be considered for the purpose of determining whether this par-  
15 agraph is applicable.

16       “(c) A person who at the time the motion authorized by subsection (1) of  
17 this section is pending before the court is under charge of commission of any  
18 crime.

19       “(8) The provisions of subsection (1)(b) of this section do not apply to:

20       “(a) A person arrested or criminally cited for or charged with an offense  
21 within the three-year period immediately preceding the filing of the motion  
22 for any offense, excluding motor vehicle violations, and excluding arrests,  
23 citations or charges for conduct associated with the same criminal episode  
24 that caused the arrest, citation or charge that is sought to be set aside. An  
25 arrest, citation or charge that has been set aside under this section may not  
26 be considered for the purpose of determining whether this paragraph is ap-  
27 plicable.

28       “(b) An arrest or citation for driving while under the influence of  
29 intoxicants if the charge is dismissed as a result of the person’s successful  
30 completion of a diversion agreement described in ORS 813.200.

1 “(9) The provisions of subsection (1) of this section apply to convictions,  
2 arrests, citations and charges that occurred before, as well as those that  
3 occurred after, September 9, 1971. There is no time limit for making an ap-  
4 plication.

5 “(10) For purposes of any civil action in which truth is an element of a  
6 claim for relief or affirmative defense, the provisions of subsection (3) of this  
7 section providing that the conviction, arrest, citation, charge or other pro-  
8 ceeding be deemed not to have occurred do not apply and a party may apply  
9 to the court for an order requiring disclosure of the official records in the  
10 case as may be necessary in the interest of justice.

11 “(11)(a) Upon motion of any prosecutor or defendant in a case involving  
12 records sealed under this section, supported by affidavit showing good cause,  
13 the court with jurisdiction may order the reopening and disclosure of any  
14 records sealed under this section for the limited purpose of assisting the in-  
15 vestigation of the movant. However, such an order has no other effect on the  
16 orders setting aside the conviction or the arrest, citation or charge record.

17 **“(b) For the limited purpose of assisting the court’s investigation**  
18 **of the movant, the Department of State Police may unseal any record**  
19 **of a prior conviction that has been set aside under this section and**  
20 **disclose the record to the prosecuting attorney.**

21 “(12) Unless the court makes written findings by clear and convincing  
22 evidence that granting the motion would not be in the best interests of jus-  
23 tice, the court shall grant the motion and enter an order as provided in  
24 subsection (3) of this section if the defendant has been convicted of one of  
25 the following crimes and is otherwise eligible for relief under this section:

26 “(a) Abandonment of a child, ORS 163.535.

27 “(b) Attempted assault in the second degree, ORS 163.175.

28 “(c) Assault in the third degree, ORS 163.165.

29 “(d) Coercion, ORS 163.275.

30 “(e) Criminal mistreatment in the first degree, ORS 163.205.

- 1       “(f) Attempted escape in the first degree, ORS 162.165.  
2       “(g) Incest, ORS 163.525, if the victim was at least 18 years of age.  
3       “(h) Intimidation in the first degree, ORS 166.165.  
4       “(i) Attempted kidnapping in the second degree, ORS 163.225.  
5       “(j) Attempted robbery in the second degree, ORS 164.405.  
6       “(k) Robbery in the third degree, ORS 164.395.  
7       “(L) Supplying contraband, ORS 162.185.  
8       “(m) Unlawful use of a weapon, ORS 166.220.  
9       “(13) As used in this section, ‘sex crime’ has the meaning given that term  
10      in ORS 163A.005.”.

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