

House Bill 2469

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon Criminal Defense Lawyers Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes some rules for criminal cases. (Flesch Readability Score: 71.8).

Establishes a time limit on when a district attorney may submit an indictment to the grand jury on a pending case when a trial date has been scheduled.

Authorizes the use of grand jury recordings to challenge the indorsement of an indictment "a true bill."

Requires the district attorney to file a motion for admission of evidence seized pursuant to a warrantless search.

Authorizes the court to modify the release decision after ordering preventative pretrial detention if circumstances have changed.

Authorizes the court to enter a judgment for a Class A violation when a person is convicted of a misdemeanor.

A BILL FOR AN ACT

Relating to criminal procedure; creating new provisions; and amending ORS 132.270, 132.330, 133.673, 133.693, 135.240 and 153.008.

Be It Enacted by the People of the State of Oregon:

INDICTMENT AND USE OF GRAND JURY RECORDINGS

SECTION 1. ORS 132.330 is amended to read:

132.330. (1) The district attorney may submit an indictment to the grand jury in any case when the district attorney has good reason to believe that a crime has been committed which is triable within the county.

(2) Notwithstanding subsection (1) of this section, when the defendant has been arraigned on a charging instrument and a trial date has been scheduled, the district attorney may not submit an indictment to the grand jury concerning the pending case unless the submission occurs at least 10 days before the trial date.

SECTION 2. ORS 132.270 is amended to read:

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

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

(a) The prosecuting attorney may access a copy of the audio recording or the notes or report of a shorthand reporter at any time.

(b) When the defendant has been arraigned on the indictment and is represented by an attorney,

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 the district attorney shall:

2 (A) Provide a copy to the defense attorney of all audio recordings, or the notes or report of a
 3 shorthand reporter, related to an indictment after 10 days have passed since the defendant's
 4 arraignment on the indictment and no motion described in subsection (4) of this section has been
 5 filed; or

6 (B) Provide a copy of the audio recordings, or the notes or report of a shorthand reporter, to
 7 the defense attorney in accordance with the court's ruling on the motion described in subsection (4)
 8 of this section, if a motion has been filed.

9 (c) Unless the court orders otherwise for good cause shown, the prosecuting attorney and the
 10 defense attorney may not copy, disseminate or republish the audio recording, the notes or report
 11 of a shorthand reporter, or a transcript prepared from the audio recording, notes or report, released
 12 pursuant to this subsection, except to provide a copy to an agent of the prosecuting attorney or
 13 defense attorney for the limited purpose of case preparation. Unless a court orders otherwise for
 14 good cause shown, in consulting with the defendant the defense attorney may not disclose to the
 15 defendant:

16 (A) Any personal identifiers of a victim, witness or grand juror obtained from the audio re-
 17 cording, report, notes or transcript; or

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

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

22 (e) When the defendant has been arraigned but is not represented by an attorney, the defendant
 23 may request by motion that the court issue an order allowing the defendant access to review the
 24 contents of the audio recording or the notes or report of the shorthand reporter. A copy of the
 25 motion must be provided to the prosecuting attorney. The prosecuting attorney may request a
 26 hearing on the motion within 10 days after receiving a copy. At the hearing, or in response to re-
 27 ceiving the motion, the court shall appoint counsel for the defendant for the limited purpose of re-
 28 viewing the audio recording, notes or report and may set reasonable conditions on the review of the
 29 audio recording, notes or report.

30 (3)(a) When a grand jury inquires into the conduct of a public servant as defined in ORS 162.005
 31 for acts occurring in the performance of the public servant's duties, and an indictment resulting
 32 from the grand jury proceedings is indorsed "not a true bill":

33 (A) The public servant or the prosecuting attorney may file a motion requesting a court order
 34 releasing all or a portion of a transcript of the grand jury proceedings. A copy of the motion must
 35 be served on the opposing party. In deciding whether to issue such an order, the court shall deter-
 36 mine whether the public interest in disclosure outweighs the interest in maintaining the secrecy of
 37 the grand jury proceedings. If the court orders disclosure, the court may set reasonable conditions
 38 on copying, disseminating or republishing the transcript.

39 (B) A member of the public may file a motion requesting a court order for production and re-
 40 lease of a transcript of the grand jury proceedings. A copy of the motion must be served on the
 41 prosecuting attorney and the public servant's attorney, or the public servant if the public servant
 42 is not represented by an attorney. The person filing the motion is responsible for the cost of
 43 producing the transcript and a court order for production and release of the transcript must be
 44 conditioned on receipt of payment. In deciding whether to issue such an order, the court shall de-
 45 termine whether the public interest in disclosure outweighs the interest in maintaining the secrecy

1 of the grand jury proceedings. If the court orders disclosure, the court may set reasonable conditions
 2 on copying, disseminating or republishing the transcript.

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

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

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

6 (4)(a) A motion for a protective order concerning an audio recording, the notes or report of a
 7 shorthand reporter or a transcript of grand jury proceedings may be filed as follows:

8 (A) The prosecuting attorney may file a motion for a protective order within 10 days after the
 9 defendant's arraignment on the indictment. The motion may be filed on behalf of a victim or a wit-
 10 ness. The prosecuting attorney shall inform the victim of the ability to seek a protective order.

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

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

16 (b) If the motion for a protective order requests that a portion of the audio recording, notes,
 17 report or transcript be redacted, the motion must be accompanied by a specific description, includ-
 18 ing the date and time, of the portion of the audio recording, notes, report or transcript to be
 19 redacted.

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

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

27 (B) Maintenance of secrecy regarding informants, as required for effective investigation of
 28 criminal activity;

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

32 (D) Any other relevant considerations.

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

36 (5)(a) Except as provided in paragraph (b) of this subsection, when grand jury proceedings do
 37 not result in an indictment indorsed as either "a true bill" or "not a true bill," the audio recording
 38 or notes or report of the shorthand reporter produced pursuant to ORS 132.250 and 132.260 may not
 39 be disclosed or released.

40 (b) When subsequent grand jury proceedings occur inquiring into the same criminal episode as
 41 the grand jury proceedings described in paragraph (a) of this subsection, and the subsequent pro-
 42 ceedings result in an indictment indorsed as "a true bill," the prosecuting attorney shall provide
 43 notice to the person charged in the indictment of the occurrence of the earlier grand jury pro-
 44 ceedings. After the person is arraigned on the indictment and the time period described in sub-
 45 section (2)(b) of this section has passed, the audio recording or the notes or report of the shorthand

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

3 (c) As used in this subsection, “criminal episode” has the meaning given that term in ORS
 4 131.505.

5 (6) The district attorney of each county may establish a fee for the cost of providing a copy of
 6 any audio recording, or the notes or report of a shorthand reporter, of a grand jury proceeding to
 7 a person requesting a copy under this section.

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

10 (a) May not be used as evidence in any subsequent proceeding, except as permitted under ORS
 11 40.375, 40.380, 40.450, 40.460 or 40.465.

12 [(b) *May not be used to challenge the indorsement of an indictment “a true bill” or the proceedings*
 13 *that led to the indorsement.*]

14 [(c)] (b) May be used as evidence in a prosecution for perjury or false swearing committed by
 15 a witness while giving testimony during the grand jury proceeding or during trial.

16 [(d)] (c) May be used as evidence in a proceeding for contempt of court against a person alleged
 17 to have violated the terms of a court order concerning the audio recording, notes, report or tran-
 18 script.

19 [(e)] (d) May be submitted to the court and used as evidence for a hearing on a protective order
 20 described in subsection (4) of this section.

21 (8) The release of audio recordings, shorthand reporter notes or reports or transcripts of grand
 22 jury proceedings under this section does not affect discovery obligations under ORS 135.805 to
 23 135.873.

24 (9) As used in this section:

25 (a) “Personal identifiers” means:

26 (A) In relation to a witness or a grand juror, the person’s address, telephone number, driver li-
 27 cense, vehicle registration information, Social Security number, date of birth and the identifying
 28 number of the person’s depository account at a financial institution, as defined in ORS 706.008, or
 29 credit card account.

30 (B) In relation to a victim, the victim’s address, electronic mail address, telephone number,
 31 driver license, vehicle registration information, Social Security number, date of birth, any user
 32 names or other identifying information associated with the victim’s social media accounts and the
 33 identifying number of the victim’s depository account at a financial institution, as defined in ORS
 34 706.008, or credit card account.

35 (b) “Social media” has the meaning given that term in ORS 659A.330.

36
 37 **USE OF EVIDENCE SEIZED DURING A WARRANTLESS SEARCH**

38
 39 **SECTION 3.** ORS 133.673 is amended to read:

40 133.673. (1)(a) Objections to use in evidence of things seized in violation of any of the provisions
 41 of ORS 133.525 to 133.703 shall be made by a motion to suppress which shall be heard and deter-
 42 mined by any department of the trial court in advance of trial.

43 **(b) Notwithstanding paragraph (a) of this subsection, if the district attorney intends to**
 44 **rely at trial on evidence seized as the result of a warrantless search, the district attorney**
 45 **shall file a motion requesting the admission of the evidence. The motion shall be heard by**

1 **any department of the trial court in advance of trial, and at the hearing, the prosecution has**
 2 **the burden of proving by a preponderance of the evidence the validity of the search.**

3 (2) A motion to suppress which has been denied may be renewed, in the discretion of the court,
 4 on the ground of newly discovered evidence, or as the interests of justice require.

5 **SECTION 4.** ORS 133.693 is amended to read:

6 133.693. (1) Subject to the provisions of subsection (2) of this section, in any proceeding on a
 7 motion to suppress evidence the moving party shall be entitled to contest, by cross-examination or
 8 offering evidence, the good faith, accuracy and truthfulness of the affiant with respect to the evi-
 9 dence presented to establish probable cause for search or seizure.

10 (2) If the evidence sought to be suppressed was seized by authority of a search warrant, the
 11 moving party shall be allowed to contest the good faith, accuracy and truthfulness of the affiant as
 12 to the evidence presented before the issuing authority only upon supplementary motion, supported
 13 by affidavit, setting forth substantial basis for questioning such good faith, accuracy and
 14 truthfulness.

15 (3) In any proceeding under subsection (2) of this section, the moving party shall have the bur-
 16 den of proving by a preponderance of the evidence that the evidence presented before the issuing
 17 authority was not offered in good faith, was not accurate and was not truthful.

18 *[(4) Where the motion to suppress challenges evidence seized as the result of a warrantless search,*
 19 *the burden of proving by a preponderance of the evidence the validity of the search is on the prose-*
 20 *cution.]*

21 *[(5)]* (4) The court shall determine whether, under applicable law, any inaccuracy, untruthfulness
 22 or lack of good faith requires suppression.

23
 24 **PREVENTATIVE PRETRIAL DETENTION**

25
 26 **SECTION 5.** ORS 135.240 is amended to read:

27 135.240. (1) Except as provided in subsections (2) and (4) of this section, a defendant shall be
 28 released in accordance with ORS 135.230 to 135.290.

29 (2)(a) When the defendant is charged with murder, aggravated murder or treason, release shall
 30 be denied when the proof is evident or the presumption strong that the person is guilty.

31 (b) When the defendant is charged with murder or aggravated murder and the proof is not evi-
 32 dent nor the presumption strong that the defendant is guilty, the court shall determine the issue of
 33 release as provided in subsection (4) of this section. In determining the issue of release under sub-
 34 section (4) of this section, the court may consider any evidence used in making the determination
 35 required by this subsection.

36 (3) The magistrate may conduct such hearing as the magistrate considers necessary to determine
 37 whether, under subsection (2) of this section, the proof is evident or the presumption strong that the
 38 person is guilty.

39 (4)(a) When the defendant is charged with a violent felony, release shall be denied if the court
 40 finds:

41 (A) Except when the defendant is charged by indictment, that there is probable cause to believe
 42 that the defendant committed the crime; and

43 (B) By clear and convincing evidence, that there is a danger of physical injury or sexual
 44 victimization to the victim or members of the public by the defendant while on release.

45 (b) If the defendant wants to have a hearing on the issue of release, the defendant must request

1 the hearing at the time of arraignment in circuit court. If the defendant requests a release hearing,
 2 the court must hold the hearing within five days of the request.

3 (c) At the release hearing, unless the state stipulates to the setting of security or release, the
 4 court shall make the inquiry set forth in paragraph (a) of this subsection. The state has the burden
 5 of producing evidence at the release hearing subject to ORS 40.015 (4).

6 (d) The defendant may be represented by counsel and may present evidence on any relevant is-
 7 sue. However, the hearing may not be used for purposes of discovery.

8 (e) If the court determines that the defendant is eligible for release in accordance with this
 9 subsection, the court shall set security or other appropriate conditions of release.

10 (f) When a defendant who has been released violates a condition of release and the violation:

11 (A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into
 12 custody and shall order the defendant held pending trial without release.

13 (B) Does not constitute a new criminal offense, the court may order the defendant to be taken
 14 back into custody and may order the defendant held pending trial or may make a new release de-
 15 cision.

16 **(g) If circumstances concerning the defendant’s release change at any time after the**
 17 **court makes the finding described in paragraph (a) of this subsection, the court, upon re-**
 18 **quest by the district attorney or the defendant, may modify the release decision.**

19 (5) For purposes of this section, “violent felony” means a felony offense in which there was an
 20 actual or threatened serious physical injury to the victim, or a felony sexual offense.

21
 22 **MISDEMEANOR REDUCTION TO VIOLATION**

23
 24 **SECTION 6. Section 7 of this 2025 Act is added to and made a part of ORS 161.705 to**
 25 **161.737.**

26 **SECTION 7. (1) Notwithstanding ORS 161.545, and except as provided in subsection (3)**
 27 **of this section, the court may enter judgment of conviction for a Class A violation and make**
 28 **disposition accordingly when:**

29 **(a) A person is convicted of any misdemeanor; and**

30 **(b) The court, considering the nature and circumstances of the offense and the history**
 31 **and character of the defendant, believes that a violation conviction is appropriate.**

32 **(2) The entry of judgment of conviction for a Class A violation under this section may**
 33 **be made at the time of conviction, and the court shall clearly denominate the offense as a**
 34 **Class A violation in the judgment.**

35 **(3) A court may not treat misdemeanors created under ORS 811.540 or 813.010 as vio-**
 36 **lations under the provisions of this section.**

37 **SECTION 8. ORS 153.008 is amended to read:**

38 153.008. (1) Except as provided in subsection (2) of this section, an offense is a violation if any
 39 of the following apply:

40 (a) The offense is designated as a violation in the statute defining the offense.

41 (b) The statute prescribing the penalty for the offense provides that the offense is punishable
 42 by a fine but does not provide that the offense is punishable by a term of imprisonment. The statute
 43 may provide for punishment in addition to a fine as long as the punishment does not include a term
 44 of imprisonment.

45 (c) The offense is created by an ordinance of a county, city, district or other political subdivision

1 of this state with authority to create offenses, and the ordinance provides that violation of the or-
2 dinance is punishable by a fine but does not provide that the offense is punishable by a term of
3 imprisonment. The ordinance may provide for punishment in addition to a fine as long as the pun-
4 ishment does not include a term of imprisonment.

5 (d) The prosecuting attorney has elected to treat the offense as a violation for purposes of a
6 particular case in the manner provided by ORS 161.566.

7 (e) The court has elected to treat the offense as a violation for purposes of a particular case in
8 the manner provided by ORS 161.568.

9 **(f) The court has entered a judgment for a violation under section 7 of this 2025 Act.**

10 (2) Conviction of a violation does not give rise to any disability or legal disadvantage based on
11 conviction of a crime.

12
13 **APPLICABILITY**

14
15 **SECTION 9. (1) Section 7 of this 2025 Act and the amendments to ORS 132.270, 132.330,**
16 **133.673, 133.693 and 153.008 by sections 1 to 4 and 8 of this 2025 Act apply to criminal pro-**
17 **ceedings initiated on or after the effective date of this 2025 Act.**

18 **(2) The amendments to ORS 135.240 by section 5 of this 2025 Act apply to criminal pro-**
19 **ceedings initiated before, on or after the effective date of this 2025 Act.**

20
21 **CAPTIONS**

22
23 **SECTION 10. The unit and section captions used in this 2025 Act are provided only for**
24 **the convenience of the reader and do not become part of the statutory law of this state or**
25 **express any legislative intent in the enactment of this 2025 Act.**