

A-Engrossed
House Bill 2473

Ordered by the House April 16
Including House Amendments dated April 16

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon District Attorneys 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. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes some rules for criminal cases. The Act takes effect when the Governor signs it. (Flesch Readability Score: 78.7).

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

Modifies the requirements for providing **[a declaration]** **verification** for the purposes of authenticating records in response to criminal process.

[Authorizes a law enforcement agency to use forensic imaging to obtain information from a portable electronic device belonging to a deceased user if the death is the subject of a law enforcement investigation.]

[Provides that a warrant authorizing the installation or tracking of a mobile tracking device may be issued when an individual has committed a crime.]

Authorizes a prosecuting attorney to turn over grand jury recordings to the defense attorney as soon as a decision not to file a motion for a protective order has been made.

[Provides that a person released pretrial on a violent felony who violates a condition of release may be held in custody if the violation constitutes a new criminal offense.]

[Takes effect on the 91st day following adjournment sine die.]

Repeals a manner of committing the crime of harassment.

Authorizes a phlebotomist to withdraw blood for a blood alcohol analysis to be used as evidence of driving while under the influence of intoxicants.

Declares an emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to criminal procedures; creating new provisions; amending ORS 132.270, 136.583, 166.065
3 and 813.160; and declaring an emergency.

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

5 **SECTION 1.** ORS 136.583 is amended to read:

6 136.583. (1) Notwithstanding ORS 136.557, 136.563, 136.565 or 136.567 and subject to ORS 136.580
7 (2), criminal process authorizing or commanding the seizure or production of papers, documents,
8 records or other things may be issued to a recipient, regardless of whether the recipient or the pa-
9 pers, documents, records or things are located within this state, if:

10 (a) The criminal matter is triable in Oregon under ORS 131.205 to 131.235; and

11 (b) The exercise of jurisdiction over the recipient is not inconsistent with the Constitution of
12 this state or the Constitution of the United States.

13 (2) Criminal process that authorizes or commands the seizure or production of papers, docu-
14 ments, records or other things from a recipient may be served by:

15 (a) Delivering a copy to the recipient personally; or

16 (b) Sending a copy by:

17 (A) Certified or registered mail, return receipt requested;

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 (B) Express mail; or

2 (C) Facsimile or electronic transmission, if the copy is sent in a manner that provides proof of
3 delivery.

4 (3) When criminal process is served under subsection (2) of this section, the recipient shall
5 provide the applicant, or if the process is described in ORS 136.447 or 136.580 (2), the court, with
6 all of the papers, documents, records or other things described in the criminal process within 20
7 business days from the date the criminal process is received, unless:

8 (a) The court, for good cause shown, includes in the process a requirement for production within
9 a period of time that is less than 20 business days;

10 (b) The court, for good cause shown, extends the time for production to a period of time that is
11 more than 20 business days; or

12 (c) The applicant consents to a request from the recipient for additional time to comply with the
13 process.

14 (4) A recipient who seeks to quash or otherwise challenge the criminal process must seek relief
15 from the court that issued the process within the time required for production. The court shall hear
16 and decide the issue as soon as practicable. The consent of the applicant to additional time to
17 comply with the process under subsection (3)(c) of this section does not extend the date by which
18 a recipient must seek relief under this subsection.

19 (5) Criminal process issued under this section must contain a notice on the first page of the
20 document that indicates:

21 (a) That the process was issued under this section;

22 (b) The date before which the recipient must respond to the process; and

23 (c) That the deadline for seeking relief is not altered by the applicant's consent to additional
24 time to respond to the process.

25 (6) Upon order of the court or the written request of the applicant, the recipient of the process
26 shall verify the authenticity of the papers, documents, records or other things that the recipient
27 produces in response to the criminal process by providing an affidavit, **statement of authenticity**
28 or declaration that [*includes contact information for*] **identifies** the custodian or other qualified per-
29 son completing the document and attests to the nature of the papers, documents, records or other
30 things. An affidavit, **statement of authenticity** or declaration that complies with this subsection
31 [*may fulfill*] **fulfills** the requirements of ORS 40.460 (6), 40.505 and 132.320.

32 (7) A party that intends to offer a paper, document, record or other thing into evidence under
33 this section must file written notice of that intention with the court and must disclose the
34 affidavit, **statement of authenticity** or declaration sufficiently in advance of offering the paper,
35 document, record or other thing into evidence to provide the adverse party with an opportunity to
36 challenge the affidavit, **statement of authenticity** or declaration and to have that challenge de-
37 termined without prejudice to the ability of the moving party to produce the custodian or other
38 qualified person at trial. **The written notice must include the contact information for the**
39 **custodian or other qualified person who signed the document.** A motion opposing admission of
40 the paper, document, record or other thing into evidence must be filed and determined by the court
41 before trial and with sufficient time to allow the party offering the paper, document, record or other
42 thing, if the motion is granted, to produce the custodian of the record or other qualified person at
43 trial, without creating a hardship on the party or the custodian or other qualified person.

44 (8) Failure by a party that receives notice under subsection (7) of this section to timely file a
45 motion opposing admission of the paper, document, record or other thing constitutes a waiver of

1 objection to the admission of the evidence on the basis of the insufficiency of the affidavit, **state-**
2 **ment of authenticity** or declaration unless the court finds good cause to grant relief from the
3 waiver. If the court grants relief from the waiver, the court shall order the trial continued upon the
4 request of the proponent of the evidence and allow the proponent sufficient time to arrange for the
5 necessary witness to appear.

6 (9) A recipient of criminal process under this section or any individual that responds to the
7 process is immune from civil and criminal liability for complying with the process and for any failure
8 to provide notice of any disclosure to a person who is the subject of, or identified in, the disclosure.

9 (10) Nothing in this section limits the authority of a court to issue criminal process under any
10 other provision of law or prohibits a party from calling the custodian of the evidence or other
11 qualified person to testify regarding the evidence.

12 (11) As used in this section:

13 (a) "Applicant" means:

14 (A) A police officer or district attorney who applies for a search warrant or other court order
15 or seeks to issue a subpoena under this section; or

16 (B) A defense attorney who applies for a court order or seeks to issue a subpoena under this
17 section.

18 **(b) "Contact information" means a mailing address, email address or phone number.**

19 [(b)] **(c) "Criminal process" means a subpoena, search warrant or other court order.**

20 [(c)] **(d) "Declaration" means a declaration [under penalty of perjury under ORCP 1 E or an**
21 **unsworn declaration under ORS 194.800 to 194.835, if the declarant is physically outside the bounda-**
22 **ries of the United States] under ORCP 1 E.**

23 [(d)] **(e) "Defense attorney" means an attorney of record for a person charged with a crime who**
24 **is seeking the issuance of criminal process for the defense of the criminal case.**

25 [(e)] **(f) "Recipient" means a business entity or nonprofit entity that has conducted business or**
26 **engaged in transactions occurring at least in part in this state.**

27 **(g) "Statement of authenticity" means a statement that attests to the authenticity,**
28 **truthfulness or correctness of specific papers, documents, records or other things, that is**
29 **signed by the custodian or other qualified person.**

30 **SECTION 2.** ORS 132.270 is amended to read:

31 132.270. (1) Audio recordings and the notes or report of a shorthand reporter produced pursuant
32 to ORS 132.250 and 132.260 are confidential and may not be released except as described in this
33 section.

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

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

39 (b) When the defendant has been arraigned on the indictment and is represented by an attorney,
40 the [district] **prosecuting** attorney shall **make an expedited determination on whether to file a**
41 **motion for a protective order under subsection (4)(a)(A) of this section, including whether**
42 **to file an order on behalf of a victim or witness. If the prosecuting attorney decides not to**
43 **file a motion for a protective order and the decision is made within 10 days after the**
44 **arraignment on the indictment, the prosecuting attorney shall file a certification of the de-**
45 **cision with the court and shall immediately provide a copy of the audio recordings, or the**

1 **notes or report of a shorthand reporter, to the defense attorney. If the prosecuting attorney**
2 **has not filed a certification under this paragraph within 10 days after the arraignment, or**
3 **decides to file a motion for a protective order, the prosecuting attorney shall:**

4 (A) Provide a copy to the defense attorney of all audio recordings, or the notes or report of a
5 shorthand reporter, related to an indictment after 10 days have passed since the defendant's
6 arraignment on the indictment, **if a** [and no] motion described in subsection (4) of this section has
7 **not** been filed; or

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

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

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

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

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

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

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

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

41 (B) A member of the public may file a motion requesting a court order for production and re-
42 lease of a transcript of the grand jury proceedings. A copy of the motion must be served on the
43 prosecuting attorney and the public servant's attorney, or the public servant if the public servant
44 is not represented by an attorney. The person filing the motion is responsible for the cost of
45 producing the transcript and a court order for production and release of the transcript must be

1 conditioned on receipt of payment. In deciding whether to issue such an order, the court shall de-
2 termine whether the public interest in disclosure outweighs the interest in maintaining the secrecy
3 of the grand jury proceedings. If the court orders disclosure, the court may set reasonable conditions
4 on copying, disseminating or republishing the transcript.

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

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

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

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

10 (A) **Except when the prosecuting attorney has filed a certification of the decision to not**
11 **file a motion for a protective order under subsection (2)(b) of this section**, the prosecuting
12 attorney may file a motion for a protective order within 10 days after the defendant's arraignment
13 on the indictment. The motion may be filed on behalf of a victim or a witness. The prosecuting at-
14 torney shall inform the victim of the ability to seek a protective order.

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

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

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

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

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

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

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

36 (D) Any other relevant considerations.

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

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

44 (b) When subsequent grand jury proceedings occur inquiring into the same criminal episode as
45 the grand jury proceedings described in paragraph (a) of this subsection, and the subsequent pro-

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

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

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

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

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

16 (b) May not be used to challenge the indorsement of an indictment “a true bill” or the pro-
17 ceedings that led to the indorsement.

18 (c) May be used as evidence in a prosecution for perjury or false swearing committed by a wit-
19 ness while giving testimony during the grand jury proceeding or during trial.

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

22 (e) May be submitted to the court and used as evidence for a hearing on a protective order de-
23 scribed in subsection (4) of this section.

24 (8) The release of audio recordings, shorthand reporter notes or reports or transcripts of grand
25 jury proceedings under this section does not affect discovery obligations under ORS 135.805 to
26 135.873.

27 (9) As used in this section:

28 (a) “Personal identifiers” means:

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

33 (B) In relation to a victim, the victim’s address, electronic mail address, telephone number,
34 driver license, vehicle registration information, Social Security number, date of birth, any user
35 names or other identifying information associated with the victim’s social media accounts and the
36 identifying number of the victim’s depository account at a financial institution, as defined in ORS
37 706.008, or credit card account.

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

39 **SECTION 3.** ORS 166.065 is amended to read:

40 166.065. (1) A person commits the crime of harassment if the person intentionally:

41 (a) Harasses or annoys another person by[:]

42 [(A)] subjecting such other person to offensive physical contact; [or]

43 [(B) *Publicly insulting such other person by abusive words or gestures in a manner intended and*
44 *likely to provoke a violent response;*]

45 (b) Subjects another to alarm by conveying a false report, known by the conveyor to be false,

1 concerning death or serious physical injury to a person, which report reasonably would be expected
2 to cause alarm; or

3 (c) Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict
4 serious physical injury on that person or to commit a felony involving the person or property of that
5 person or any member of that person's family, which threat reasonably would be expected to cause
6 alarm.

7 (2)(a) A person is criminally liable for harassment if the person knowingly permits any telephone
8 or electronic device under the person's control to be used in violation of subsection (1) of this sec-
9 tion.

10 (b) Harassment that is committed under the circumstances described in subsection (1)(c) of this
11 section is committed in either the county in which the communication originated or the county in
12 which the communication was received.

13 (3) Harassment is a Class B misdemeanor.

14 (4) Notwithstanding subsection (3) of this section, harassment is a Class A misdemeanor if a
15 person violates:

16 (a) Subsection [(1)(a)(A)] (1)(a) of this section by subjecting another person to offensive physical
17 contact and:

18 (A) The offensive physical contact consists of touching the sexual or other intimate parts of the
19 other person; or

20 (B)(i) The victim of the offense is a family or household member of the person; and

21 (ii) The offense is committed in the immediate presence of, or is witnessed by, the person's or
22 the victim's minor child or stepchild or a minor child residing within the household of the person
23 or victim; or

24 (b) Subsection (1)(c) of this section and:

25 (A) The person has a previous conviction under subsection (1)(c) of this section and the victim
26 of the current offense was the victim or a member of the family of the victim of the previous offense;

27 (B) At the time the offense was committed, the victim was protected by a stalking protective
28 order, a restraining order as defined in ORS 24.190 or any other court order prohibiting the person
29 from contacting the victim;

30 (C) At the time the offense was committed, the person reasonably believed the victim to be un-
31 der 18 years of age and more than three years younger than the person; or

32 (D)(i) The person conveyed a threat to kill the other person or any member of the family of the
33 other person;

34 (ii) The person expressed the intent to carry out the threat; and

35 (iii) A reasonable person would believe that the threat was likely to be followed by action.

36 (c) Subsection [(1)(a)(A)] (1)(a), (b) or (c) of this section by committing the crime of harassment
37 against:

38 (A) An election worker who is performing the election worker's official duties at the time the
39 harassment occurs; or

40 (B) An election worker because of an action taken or decision made by the election worker
41 during the performance of the election worker's official duties.

42 (5) The Oregon Criminal Justice Commission shall classify harassment as described in subsection
43 (4)(a)(B) of this section as a person Class A misdemeanor under the rules of the commission.

44 (6)(a) As used in this section:

45 (A) "Election worker" has the meaning given that term in ORS 247.965.

1 (B) "Electronic threat" means a threat conveyed by electronic mail, the Internet, a telephone
2 text message or any other transmission of information by wire, radio, optical cable, cellular system,
3 electromagnetic system or other similar means.

4 (C) "Family or household member" has the meaning given that term in ORS 135.230.

5 (b) For purposes of subsection (4) of this section, an offense is witnessed if the offense is seen
6 or directly perceived in any other manner by the minor child.

7 **SECTION 4.** ORS 813.160 is amended to read:

8 813.160. (1) A chemical analysis is valid under ORS 813.300 if:

9 (a) It is an analysis of a person's blood for alcohol content and is performed in:

10 (A) A laboratory certified or accredited under 42 C.F.R. part 493 and approved for toxicology
11 testing;

12 (B) A laboratory licensed under ORS 438.110 and approved for toxicology testing; or

13 (C) A forensic laboratory established by the Department of State Police under ORS 181A.150
14 that is accredited by a national forensic accrediting organization.

15 (b) It is an analysis of a person's breath and is performed by an individual possessing a valid
16 permit to perform chemical analyses issued by the Department of State Police and is performed ac-
17 cording to methods approved by the Department of State Police. For purposes of this paragraph,
18 the Department of State Police shall do all of the following:

19 (A) Approve methods of performing chemical analyses of a person's breath.

20 (B) Prepare manuals and conduct courses throughout the state for the training of police officers
21 in chemical analyses of a person's breath, which courses shall include, but are not limited to, ap-
22 proved methods of chemical analyses, use of approved equipment and interpretation of test results
23 together with a written examination on these subjects.

24 (C) Test and certify the accuracy of equipment to be used by police officers for chemical ana-
25 lyses of a person's breath before regular use of the equipment and periodically thereafter at inter-
26 vals of not more than 90 days. Tests and certification required by this subparagraph must be
27 conducted by trained technicians. Certification under this subparagraph does not require a signed
28 document.

29 (D) Ascertain the qualifications and competence of individuals to conduct chemical analyses in
30 accordance with one or more methods approved by the department.

31 (E) Issue permits to individuals according to their qualifications. Permits may be issued to police
32 officers only upon satisfactory completion of the prescribed training course and written examination.
33 A permit must state the methods and equipment that the police officer is qualified to use. Permits
34 are subject to termination or revocation at the discretion of the Department of State Police.

35 (2) In conducting a chemical test of the blood, only a duly licensed physician, a **phlebotomist**
36 or a person acting under the direction or control of a duly licensed physician may withdraw blood
37 or pierce human tissue. A licensed physician, a **phlebotomist** or a qualified person acting under the
38 direction or control of a duly licensed physician, is not civilly liable for withdrawing any bodily
39 substance, in a medically acceptable manner, at the request of a peace officer.

40 (3) An individual who performs a chemical analysis of breath or blood under ORS 813.100 or
41 813.140 shall prepare and sign a written report of the findings of the test that must include the
42 identification of the police officer upon whose request the test was administered.

43 (4) Any individual having custody of the report mentioned in subsection (3) of this section shall,
44 upon request of the person tested, furnish that person or that person's attorney, a copy of the report.

45 (5) The expense of conducting a chemical test as provided by ORS 813.100 or 813.140 must be

1 paid by the governmental unit on whose equipment the test is conducted or by the governmental
2 unit upon whose request the test was administered if no governmental unit's equipment is used to
3 conduct the test.

4 **(6) As used in this section, "phlebotomist" means a person who has been trained in**
5 **phlebotomy by an academic or medical institution.**

6 **SECTION 5. (1) The amendments to ORS 132.270, 166.065 and 813.160 by sections 2 to 4**
7 **of this 2025 Act become operative on January 1, 2026.**

8 **(2) The amendments to ORS 132.270 by section 2 of this 2025 Act apply to criminal pro-**
9 **ceedings based on conduct occurring on or after January 1, 2026.**

10 **SECTION 6. This 2025 Act being necessary for the immediate preservation of the public**
11 **peace, health and safety, an emergency is declared to exist, and this 2025 Act takes effect**
12 **on its passage.**

13
