

**PROPOSED AMENDMENTS TO
SENATE BILL 822**

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest
2 of the line and delete line 3 and insert “amending ORS 132.090 and 132.430;
3 repealing ORS 132.080; and declaring an emergency.”.

4 Delete lines 5 through 29 and delete page 2.

5 On page 3, delete lines 1 through 17 and insert:

6 **“SECTION 1. (1)(a) The judge charging the grand jury pursuant to**
7 **ORS 132.070 shall instruct the grand jury to record its proceedings in**
8 **the manner described in subsection (2) of this section. For purposes**
9 **of this section, the proceedings of the grand jury do not include grand**
10 **jury deliberations or voting.**

11 **“(b) The court shall provide and maintain suitable audio electronic**
12 **recording devices for the grand jury to use to record its proceedings**
13 **as described in subsection (2) of this section.**

14 **“(c) The Chief Justice of the Supreme Court shall determine the**
15 **types of audio electronic recording devices that are suitable for re-**
16 **ording grand jury proceedings and shall establish policies and proce-**
17 **dures to carry out the provisions of this section and sections 2 and 3**
18 **of this 2015 Act.**

19 **“(d) The prosecuting attorney shall provide the court access to the**
20 **premises in which the grand jury fulfills its obligations and the re-**
21 **ording equipment used to carry out the provisions of this section and**
22 **section 2 of this 2015 Act. The presiding judge of each judicial district**

1 may enter into an agreement with prosecuting attorneys that identi-
2 fies the conditions and terms of access.

3 “(2)(a) The court shall select a member of the grand jury as the
4 grand jury clerk, who shall electronically record all proceedings de-
5 scribed in section 2 of this 2015 Act with the suitable audio electronic
6 recording device the court provides for that purpose.

7 “(b) Notwithstanding paragraph (a) of this subsection, the court
8 may appoint a certified shorthand reporter as defined in ORS 8.415
9 from funds appropriated for that purpose, who shall be permitted to
10 attend all proceedings of the grand jury for the purpose of taking ac-
11 curate notes by shorthand or by means of a mechanical or electronic
12 typing device. The certified shorthand reporter shall be sworn to cor-
13 rectly report all proceedings of the grand jury described in section 2
14 of this 2015 Act and to keep secret any information concerning the
15 grand jury proceedings, except as ordered by the court.

16 “(3)(a) An inadvertent failure of an audio electronic recording de-
17 vice to accurately record all or part of a grand jury proceeding does
18 not affect the validity of any prosecution or indictment.

19 “(b) An inadvertent failure of a grand jury clerk to correctly oper-
20 ate an audio electronic recording device in a manner that accurately
21 records all or part of a grand jury proceeding does not affect the va-
22 lidity of any prosecution or indictment.

23 “(c) An inadvertent failure of a certified shorthand reporter to ac-
24 curately record all or part of a grand jury proceeding does not affect
25 the validity of any prosecution or indictment.

26 “(4) This section and section 2 of this 2015 do not apply to grand
27 jury proceedings under ORS 132.440 that inquire into conditions in
28 correctional facilities and youth correction facilities.

29 **“SECTION 2. (1) Except as provided in subsection (2) of this section,**
30 **the grand jury clerk operating the audio electronic recording device**

1 as described in section 1 (2)(a) of this 2015 Act, or the certified short-
2 hand reporter described in section 1 (2)(b) of this 2015 Act, shall record
3 all matters that come before the grand jury, including:

4 “(a) The case name and number;

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

6 “(c) Each statement made or question asked by the district attor-
7 ney;

8 “(d) Each question asked of, and each response given by, a witness
9 who appears before the grand jury; and

10 “(e) Any statements made by a grand juror as provided in ORS
11 132.350 during the proceeding.

12 “(2) The grand jury clerk operating the audio electronic recording
13 device or the certified shorthand reporter reporting the grand jury
14 proceedings may not record or report the deliberations or voting of the
15 grand jury.

16 “(3) At the conclusion of grand jury proceedings:

17 “(a) The grand jury clerk operating the audio electronic recording
18 device shall certify that the entire proceeding was accurately recorded
19 to the best of the clerk’s knowledge; or

20 “(b) The certified shorthand reporter reporting the grand jury pro-
21 ceedings shall certify that the report is a true and accurate report of
22 the proceeding.

23 “(4) The grand jury clerk or the certified shorthand reporter shall
24 file with the clerk of the court the audio recordings or the transcripts
25 or reports of the certified shorthand reporter.

26 **“SECTION 3. (1) Audio recordings, transcripts and reports produced**
27 **pursuant to sections 1 and 2 of this 2015 Act may not be released ex-**
28 **cept as described in this section.**

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

1 jury proceedings prepared from the report of a certified shorthand re-
2 porter may be released only in the following manner:

3 “(a) When the defendant has been arraigned on the indictment, the
4 prosecuting attorney and the defense attorney may obtain a copy of
5 the audio recording or transcript. Unless the court orders otherwise,
6 the prosecuting attorney and the defense attorney may not copy, dis-
7 seminate or republish the recording or transcript of the grand jury
8 proceedings released pursuant to this subsection except to provide a
9 copy to an agent of the prosecuting attorney or defense attorney for
10 the limited purpose of case preparation.

11 “(b) When the defendant has been arraigned but is not represented
12 by an attorney, the person may request that the court issue an order
13 allowing the person to obtain a copy of the recording or transcript.
14 The court may set conditions on the release of the recording or tran-
15 script.

16 “(3) When a grand jury inquires into the conduct of a public servant
17 as defined in ORS 162.005 for acts occurring in the performance of the
18 public servant’s duties, and an indictment resulting from the grand
19 jury proceedings is indorsed ‘not a true bill,’ a person may request a
20 court order releasing all or a portion of the recording or transcript.
21 In deciding whether to issue such an order, the court shall determine
22 whether the public interest in disclosure outweighs the interest in
23 maintaining the secrecy of the grand jury proceedings. If the court
24 orders disclosure, the court may place reasonable conditions upon
25 copying, disseminating or republishing the recording or transcript.

26 “(4)(a) Except as provided in paragraph (b) of this subsection, when
27 grand jury proceedings do not result in an indictment indorsed as ei-
28 ther ‘a true bill’ or ‘not a true bill,’ the audio recording, the report
29 or the transcript prepared from the report of a certified shorthand
30 reporter produced pursuant to sections 1 and 2 of this 2015 Act may

1 not be disclosed or released.

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

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

13 “(5) The Chief Justice of the Supreme Court may establish a fee for
14 the cost of providing a copy of any recording or transcript of a grand
15 jury proceeding to a person requesting a copy under this section.

16 “(6) The recordings or transcripts described in this section are ex-
17 empt from disclosure under ORS 192.502.

18 “(7) A recording or transcript of a grand jury proceeding produced
19 pursuant to sections 1 and 2 of this 2015 Act:

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

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

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

27 After line 42, insert:

28 “SECTION 5. ORS 132.080 is repealed.

29 “SECTION 6. ORS 132.430 is amended to read:

30 “132.430. (1) When a person has been held to answer a criminal charge

1 and the indictment in relation thereto is not found 'a true bill,' it must be
2 indorsed 'not a true bill,' which indorsement must be signed by the foreman
3 and filed with the clerk of the court, in whose office it shall remain a public
4 record. In the case of an indictment not found 'a true bill' against a person
5 not so held, the same[, *together with the minutes of the evidence in relation*
6 *thereto,*] must be destroyed by the grand jury.

7 "(2) When an indictment indorsed 'not a true bill' has been filed with the
8 clerk of the court, the effect thereof is to dismiss the charge; and the same
9 cannot be again submitted to or inquired of by the grand jury unless the
10 court so orders.

11 **"SECTION 7. Sections 1, 2 and 3 of this 2015 Act, the amendments**
12 **to ORS 132.090 and 132.430 by sections 4 and 6 of this 2015 Act and the**
13 **repeal of ORS 132.080 by section 5 of this 2015 Act become operative**
14 **October 1, 2016.**

15 **"SECTION 8. This 2015 Act being necessary for the immediate**
16 **preservation of the public peace, health and safety, an emergency is**
17 **declared to exist, and this 2015 Act takes effect on its passage."**

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