

Senate Bill 562

Sponsored by Senator GELSER BLOUIN; Senator DEMBROW (Pre-session filed.)

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**.

Creates procedure by which attorney of in-custody defendant may request prosecuting attorney to make expedited determination of whether to file motion for protective order for grand jury audio recording or notes or report of shorthand reporter and, if no motion is filed, immediately provide copy of transcript, notes or report to defense attorney.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1 Relating to grand jury records; amending ORS 132.270; and declaring an emergency.

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

3 **SECTION 1.** ORS 132.270 is amended to read:

4 132.270. (1) Audio recordings and the notes or report of a shorthand reporter produced pursuant
5 to ORS 132.250 and 132.260 are confidential and may not be released except as described in this
6 section.
7

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

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

13 (b) When the defendant has been arraigned on the indictment and is represented by an attorney,
14 the district attorney shall:

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

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

22 (c) **Notwithstanding paragraph (b) of this subsection, upon the request of a defense at-**
23 **torney representing a defendant who is in custody, the prosecuting attorney shall make an**
24 **expedited determination of whether to file a motion for a protective order under subsection**
25 **(4)(a)(A) of this section, including whether to file an order on behalf of a victim or witness.**
26 **If the prosecuting attorney decides not to file a protective order, the prosecuting attorney**
27 **shall file a certification of that decision with the court and shall immediately provide the**
28 **copy of the audio recordings, or the notes or report of a shorthand reporter, to the defense**
29 **attorney.**

30 [(c)] (d) Unless the court orders otherwise for good cause shown, the prosecuting attorney and

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 defense attorney may not copy, disseminate or republish the audio recording, the notes or report
2 of a shorthand reporter, or a transcript prepared from the audio recording, notes or report, released
3 pursuant to this subsection, except to provide a copy to an agent of the prosecuting attorney or
4 defense attorney for the limited purpose of case preparation. Unless a court orders otherwise for
5 good cause shown, in consulting with the defendant the defense attorney may not disclose to the
6 defendant:

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

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

11 [(d)] (e) The defense attorney may not provide a copy of the audio recording, notes or report,
12 or a transcript prepared from the audio recording, notes or report, to the defendant.

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

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

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

30 (B) A member of the public may file a motion requesting a court order for production and re-
31 lease of a transcript of the grand jury proceedings. A copy of the motion must be served on the
32 prosecuting attorney and the public servant's attorney, or the public servant if the public servant
33 is not represented by an attorney. The person filing the motion is responsible for the cost of
34 producing the transcript and a court order for production and release of the transcript must be
35 conditioned on receipt of payment. In deciding whether to issue such an order, the court shall de-
36 termine whether the public interest in disclosure outweighs the interest in maintaining the secrecy
37 of 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) The release of any transcript under this subsection may not include:

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

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

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

44 (A) **Except as provided in subsection (2)(c) of this section,** the prosecuting attorney may file
45 a motion for a protective order within 10 days after the defendant's arraignment on the indictment.

1 The motion may be filed on behalf of a victim or a witness. The prosecuting attorney shall inform
2 the victim of the ability to seek a protective order.

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

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

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

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

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

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

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

24 (D) Any other relevant considerations.

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

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

32 (b) When subsequent grand jury proceedings occur inquiring into the same criminal episode as
33 the grand jury proceedings described in paragraph (a) of this subsection, and the subsequent pro-
34 ceedings result in an indictment indorsed as “a true bill,” the prosecuting attorney shall provide
35 notice to the person charged in the indictment of the occurrence of the earlier grand jury pro-
36 ceedings. After the person is arraigned on the indictment [*and the time period described in subsection*
37 *(2)(b) of this section has passed*], the audio recording or the notes or report of the shorthand reporter
38 produced during the earlier grand jury proceedings may be obtained in the manner set forth in
39 subsection (2) of this section.

40 (c) As used in this subsection, “criminal episode” has the meaning given that term in ORS
41 131.505.

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

45 (7) An audio recording, the notes or report of a shorthand reporter or a transcript of a grand

1 jury proceeding obtained pursuant to this section and ORS 132.250 and 132.260:

2 (a) May not be used as evidence in any subsequent proceeding, except as permitted under ORS
3 40.375, 40.380, 40.450, 40.460 or 40.465.

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

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

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

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

12 (8) The release of audio recordings, shorthand reporter notes or reports or transcripts of grand
13 jury proceedings under this section does not affect discovery obligations under ORS 135.805 to
14 135.873.

15 (9) As used in this section:

16 (a) “Personal identifiers” means:

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

21 (B) In relation to a victim, the victim’s address, electronic mail address, telephone number,
22 driver license, vehicle registration information, Social Security number, date of birth, any user
23 names or other identifying information associated with the victim’s social media accounts and the
24 identifying number of the victim’s depository account at a financial institution, as defined in ORS
25 706.008, or credit card account.

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

27 **SECTION 2. This 2023 Act being necessary for the immediate preservation of the public**
28 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**
29 **on its passage.**

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