Chapter 132

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Grand Jury, Indictments and Other Accusatory Instruments

ORGANIZATION OF GRAND JURY

132.010 Composition

132.020 Selection of grand juries; law applicable to additional jury; when inquiry void

132.030 Challenge of juror prohibited; when juror may be excused

132.050 Foreman; alternate

132.060 Oath or affirmation of jurors

132.070 Charge of court

132.080 Clerk

132.090 Presence of persons at sittings or deliberations of jury; interpreters

132.100 Oath to witness before grand jury

132.110 When juror discharged; replacement; proceeding with lesser number

132.120 Jury service term; continuation

GRAND JUROR IN LATER PROCEEDINGS

132.210 Immunity of jurors as to official conduct

132.220 Disclosure by juror of testimony of witness examined by jury

GRAND JURY PROCEDURES

132.310 Inquiry into crimes; presentation to court

132.320 Consideration of evidence

132.330 Submission of indictment by district attorney

132.340 Duties of district attorney for jury

132.350 Juror's knowledge of an offense; action thereon

132.360 Number of jurors required to concur

132.370 Presentment of facts to court for instruction as to law

132.380 Whom the grand jury may indict

132.390 When the grand jury may indict

132.400 Indorsement of indictment as "a true bill"

132.410 Finding of indictment; filing; inspection

132.420 Disclosure relative to indictment not subject to inspection

132.430 Finding against indictment; indorsement "not a true bill"

132.440 Inquiry into conditions in correctional and youth correction facilities

SUFFICIENCY OF INDICTMENT

132.510 Forms and sufficiency of pleadings

132.540 Matters indictment must import; previous conviction not to be alleged; exception; use of statutory language

132.550 Content

132.557 Indictment must contain subcategory facts under certain circumstances

132.560 Joinder of counts and charges; consolidation of charging instruments

132.580 Names of grand jury witnesses on indictment; effect of failure to include; procedure to remedy failure

ACCUSATORY INSTRUMENTS

132.586 Pleading domestic violence in accusatory instrument

PENALTIES

132.990 Premature inspection or disclosure of contents of indictment

ORGANIZATION OF GRAND JURY

132.010 Composition. A grand jury is a body of seven persons drawn from the jurors in attendance upon the circuit court at a particular jury service term, having the qualifications prescribed by ORS 10.030 and sworn to inquire of crimes committed or triable within the county from which they are selected. [Amended by 1985 c.703 §22]

132.020 Selection of grand juries; law applicable to additional jury; when inquiry void. (1) Under the direction of the court, the clerk shall draw names at random from the names of jurors in attendance upon the court until the names of seven jurors are drawn and accepted by the court. The seven persons thus chosen shall constitute the grand jury.

(2) When the court, in its discretion, considers that one or more additional grand juries is needed for the administration of justice, one or more additional grand juries shall be selected in the manner provided in subsection (1) of this section.

(3) Any law applicable to the grand jury is equally applicable to any additional grand jury selected under subsection (2) of this section, except that whenever any duties or functions are imposed upon the grand jury, it shall be sufficient if such duties or functions are performed by one of the grand juries selected under this section.

(4) Any inquiry or investigation required by law to be made by a grand jury shall be void, unless such inquiry or investigation was made entirely by the same grand jury. [Amended by 1959 c.59 §1; 1985 c.703 §23]

132.030 Challenge of juror prohibited; when juror may be excused. Neither the grand jury panel nor any individual juror may be challenged. A judge of the court or clerk of court, as defined in ORS 10.010, may at any time after a juror is drawn and before the juror is sworn excuse the juror from jury service for any reason prescribed in ORS 10.050. [Amended by 1973 c.836 §36; 1979 c.728 §5; 1985 c.703 §24; 1999 c.1085 §2]

132.040 [Repealed by 1973 c.836 §358]

132.050 Foreman; alternate. The court shall appoint a foreman and an alternate foreman of the grand jury from the persons chosen to constitute that body. The alternate foreman shall have the duties and powers of the foreman in the absence of the foreman. [Amended by 1973 c.836 §37]

132.060 Oath or affirmation of jurors. (1) Before the members of the grand jury enter upon the discharge of their duties, the following oath must be administered to them by or under the direction of the court:

You, as grand jurors for the County of _____, do solemnly swear that you will diligently inquire into, and true presentment or indictment make of, all crimes against this state committed or triable within this county that shall come to your knowledge; that you will keep secret the proceedings before you, the counsel of the state, your own counsel and that of your fellows; that you will indict no person through envy, hatred or malice nor leave any person not indicted through fear, favor, affection or hope of reward; but that you will indict upon the evidence before you according to the truth and the laws of this state, so help you God.

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(2) In administering this oath, the blank therein must be filled with the name of the county in which the court is sitting; and if any juror prefers, the juror must be allowed to affirm thereto, in which case, instead of the final phrase thereof there must be added, "and this you promise under the pains and penalties of perjury." [Amended by 1973 c.836 §38]

132.070 Charge of court. When the grand jury is formed, the court shall charge it and give it such information as the court deems proper concerning the nature of its powers and duties, or charges for crime returned to the court or likely to come before the grand jury.

132.080 Clerk. The members of the grand jury shall appoint one of their number as clerk. The clerk shall keep minutes of their proceedings (except the votes of the individual jurors) and of the substance of the evidence given before them.

132.090 Presence of persons at sittings or deliberations of jury; interpreters. (1) Except as provided in subsections (2) and (3) of this section, no person other than the district attorney or a witness actually under examination shall be present during the sittings of the grand jury.

(2) Upon a motion filed by the district attorney in the circuit court, the circuit judge may appoint a reporter who shall attend the sittings of the grand jury to take and report the testimony in any matters pending before the grand jury, and may appoint a parent, guardian or other appropriate person 18 years of age or older to accompany any child 12 years of age or younger, or any person with mental retardation, during an appearance before the grand jury. The circuit judge, upon the district attorney's showing to the court that it is necessary for the proper examination of a witness appearing before the grand jury, may appoint a guard,

medical or other special attendant or nurse, who shall be present in the grand jury room and shall attend such sittings.

(3) The district attorney may designate an interpreter who is certified under ORS 45.291 to interpret the testimony of witnesses appearing before the grand jury. The district attorney may designate a qualified interpreter, as defined in ORS 45.288, if the circuit court determines that a certified interpreter is not available and that the person designated by the district attorney is a qualified interpreter as defined in ORS 45.288. An interpreter designated under this subsection may be present in the grand jury room and attend the sittings of the grand jury.

(4) No person other than members of the grand jury shall be present when the grand jury is deliberating or voting upon a matter before it.

(5) As used in this section, "mental retardation" has the meaning given that term in ORS 427.005. Mental retardation may be shown by attaching to the motion of the district attorney:

(a) Documentary evidence of intellectual functioning; or

(b) The affidavit of a qualified person familiar with the person with mental retardation. "Qualified person" includes, but is not limited to, a teacher, therapist or physician. [Amended by 1973 c.836 §39; 1983 c.375 §1; 1991 c.406 §1; 2001 c.243 §1]

132.100 Oath to witness before grand jury. The foreman of the grand jury or, in the absence of the foreman, any other grand juror shall administer an oath to any witness appearing before the grand jury. [Amended by 1973 c.836 §40]

132.110 When juror discharged; replacement; proceeding with lesser number. After the formation of the grand jury and before it is discharged, the court may:

(1) Discharge a grand juror who:

(a) Becomes sick, is out of the county or fails to appear when the grand jury is summoned to reconvene;

(b) Is related, by affinity or consanguinity within the third degree, to the accused who is under investigation by the grand jury, or held for the commission of a crime; or

(c) Is unable to continue in the discharge of duties.

(2) Order that another person be drawn at random and sworn from the jurors then in attendance upon the court, or if no other jurors are there in attendance, from the master jury list of the county, to take the place of a discharged juror.

(3) Allow at least five grand jurors to proceed upon good cause shown. [Amended by 1973 c.836 §41; 1985 c.703 §25]

132.120 Jury service term; continuation. When the jury service term is completed the grand jury must be discharged by the court; but the judge may, by an order made either in open court or at chambers anywhere in the judicial district and entered of record, stating the reasons, continue the grand jury in session for such period of time as the judge deems advisable. [Amended by 1959 c.638 §13; 1973 c.836 §42; 1985 c.540 §30; 1985 c.703 §26]

132.130 [Repealed by 1973 c.836 §358]

GRAND JUROR IN LATER PROCEEDINGS

132.210 Immunity of jurors as to official conduct. A grand juror cannot be questioned for anything the grand juror says or any vote the grand juror gives, while acting as such, relative to any matter legally pending before the grand jury, except for a perjury or false swearing of which the grand juror may have been guilty in giving testimony before such jury. [Amended by 1973 c.836 §43]

132.220 Disclosure by juror of testimony of witness examined by jury. A member of a grand jury may be required by any court to disclose:

(1) The testimony of a witness examined before the grand jury, for the purpose of ascertaining whether it is consistent with that given by the witness before the court.

(2) The testimony given before such grand jury by any person, upon a charge against such person for perjury or false swearing or upon trial therefor. [Amended by 1973 c.836 §44]

GRAND JURY PROCEDURES

132.310 Inquiry into crimes; presentation to court. The grand jury shall retire into a private room and may inquire into crimes committed or triable in the county and present them to the court, either by presentment or indictment, as provided in ORS 132.310 to 132.390. [Amended by 1973 c.836 §45]

132.320 Consideration of evidence. (1) Except as provided in subsections (2) to (7) of this section, in the investigation of a charge for the purpose of indictment, the grand jury shall receive no other evidence than such as might be given on the trial of the person charged with the crime in question.

(2) A report or a copy of a report made by a physicist, chemist, medical examiner, physician, firearms identification expert, examiner of questioned documents, fingerprint

technician, or an expert or technician in some comparable scientific or professional field, concerning the results of an examination, comparison or test performed by such person in connection with a case which is the subject of a grand jury proceeding, shall, when certified by such person as a report made by such person or as a true copy thereof, be received in evidence in the grand jury proceeding.

(3) An affidavit of a witness who is unable to appear before the grand jury shall be received in evidence in the grand jury proceeding if, upon application by the district attorney, the presiding judge for the judicial district in which the grand jury is sitting authorizes such receipt after good cause has been shown for the witness' inability to appear. An affidavit taken in another state or territory of the United States, the District of Columbia or in a foreign country must be authenticated as provided in ORS 194.505 to 194.575 before it can be used in this state.

(4) A grand jury that is investigating a charge of criminal driving while suspended or revoked under ORS 811.182 may receive in evidence an affidavit of a peace officer with a report or copy of a report of the peace officer concerning the peace officer's investigation of the violation of ORS 811.182 by the defendant.

(5) A grand jury may receive testimony of a witness by means of simultaneous television transmission allowing the grand jury and district attorney to observe and communicate with the witness and the witness to observe and communicate with the grand jury and the district attorney.

(6) A grand jury that is investigating a charge of failure to appear under ORS 133.076, 153.992, 162.195 or 162.205 may receive in evidence an affidavit of a court employee certifying that the defendant failed to appear as required by law and setting forth facts sufficient to support that conclusion.

(7)(a) Except as otherwise provided in this subsection, a grand jury may receive in evidence through the testimony of one peace officer involved in the criminal investigation under grand jury inquiry information from an official report of another peace officer involved in the same criminal investigation concerning the other peace officer's investigation of the matter before the grand jury. The statement of a person suspected of committing an offense or inadmissible hearsay of persons other than the peace officer who compiled the official report may not be presented to a grand jury under this paragraph.

(b) If the official report contains evidence other than chain of custody, venue or the name of the person suspected of committing an offense, the grand jurors must be notified that the evidence is being submitted by report and that the peace officer who compiled the report will be made available for testimony at the request of the grand jury. When a grand jury requests the testimony of a peace officer under this paragraph, the peace officer may present sworn testimony by telephone if requiring the peace officer's presence before the grand jury would constitute an undue hardship on the peace officer or the agency that employs or utilizes the peace officer.

(8) The grand jury is not bound to hear evidence for the defendant, but it shall weigh all the evidence submitted to it; and when it believes that other evidence within its reach will explain away the charge, it should order such evidence to be produced, and for that purpose may require the district attorney to issue process for the witnesses.

(9) A grand jury that is investigating a charge of driving while under the influence of intoxicants in violation of ORS 813.010 may receive in evidence an affidavit of a peace officer regarding any or all of the following:

(a) Whether the defendant was driving.

(b) Whether the defendant took or refused to take tests under any provision of ORS chapter 813.

(c) The administration of tests under any provision of ORS chapter 813 and the results of such tests.

(d) The officer's observations of physical or mental impairment of the defendant. [Amended by 1973 c.836 §46; 1975 c.576 §1; 1983 c.393 §25; 1995 c.126 §1; 1995 c.781 §38; 1997 c.249 §43; 1999 c.1049 §6; 2001 c.19 §1; 2003 c.645 §3]

132.330 Submission of indictment by district attorney. 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. [Amended by 1973 c.836 §47]

132.340 Duties of district attorney for jury. The district attorney, when required by the grand jury, must prepare indictments or presentments for it and attend its sittings to advise it in relation to its duties or to examine witnesses in its presence.

132.350 Juror's knowledge of an offense; action thereon. (1) If a grand juror knows or has reason to believe that a crime which is triable in the county has been committed, the grand juror shall disclose the same to the fellow jurors, who may thereupon investigate the same.

(2) An indictment or presentment must not be found upon the statement of a grand juror unless the grand juror is sworn and examined as a witness.

(3) A grand juror testifying as provided in subsection (2) of this section shall not vote on the indictment nor be present during deliberations thereon. [Amended by 1973 c.836 §48]

132.360 Number of jurors required to concur. A grand jury may indict or present facts to the court for instruction as provided in ORS 132.370, with the concurrence of five of its members, if at least five jurors voting for indictment or presentment heard all the testimony relating to the person indicted or facts presented. [Amended by 1973 c.836 §49]

132.370 Presentment of facts to court for instruction as to law. (1) When the grand jury is in doubt whether the facts, as shown by the evidence before it, constitute a crime in law or whether the same has ceased to be punishable by reason of lapse of time or a former acquittal or conviction, it may make a presentment of the facts to the court, without mentioning the names of individuals, and ask the court for instructions concerning the law arising thereon.

(2) A presentment cannot be found and made to the court except as provided in subsection (1) of this section, and, when so found and presented, the court shall give such instructions to the grand jury concerning the law of the case as it thinks proper and necessary.

(3) A presentment is made to the court by the foreman in the presence of the grand jury. But being a mere formal statement of facts for the purpose of obtaining the advice of the court as to the law arising thereon, it is not to be filed in court or preserved beyond the sitting of the grand jury.

132.380 Whom the grand jury may indict. The grand jury may indict a person for a crime when it believes the person guilty thereof, whether such person has been held to answer for such crime or not. [Amended by 1973 c.836 §50]

132.390 When the grand jury may indict. The grand jury may find an indictment when all the evidence before it, taken together, is such as in its judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury. [Amended by 1973 c.836 §51]

132.400 Indorsement of indictment as "a true bill." An indictment, when found, shall be indorsed "a true bill," and such indorsement signed by the foreman of the jury.

132.410 Finding of indictment; filing; inspection. An indictment, when found and indorsed, as provided in ORS 132.400 and 132.580, shall be filed with the clerk of the court, in whose office it shall remain as a public record. Upon being designated by the district attorney as confidential and until after the arrest of a defendant who has not been held to answer the charge, the indictment or any order or process in relation thereto shall not be inspected by any person other than the judge, the clerk of the court, the district attorney or a peace officer in the discharge of a duty concerning the indictment, order or process. [Amended by 1973 c.836 §52; 1999 c.967 §2]

132.420 Disclosure relative to indictment not subject to inspection. No grand juror, reporter or other person except the district attorney or a peace officer in the exercise of duties in effecting an arrest shall disclose any fact concerning any indictment while it is not subject to public inspection. [Amended by 1973 c.836 §53]

132.430 Finding against indictment; indorsement "not a true bill." (1) When a person has been held to answer a criminal charge and the indictment in relation thereto is not found "a true bill," it must be indorsed "not a true bill," which indorsement must be signed by the foreman and filed with the clerk of the court, in whose office it shall remain a public record. In the case of an indictment not found "a true bill" against a person not so held, the same, together with the minutes of the evidence in relation thereto, must be destroyed by the grand jury.

(2) When an indictment indorsed "not a true bill" has been filed with the clerk of the court, the effect thereof is to dismiss the charge; and the same cannot be again submitted to or inquired of by the grand jury unless the court so orders. [Amended by 1973 c.836 §54]

132.440 Inquiry into conditions in correctional and youth correction facilities. (1) At least once yearly, a grand jury shall inquire into the condition and management of every correctional facility and youth correction facility as defined in ORS 162.135 in the county.

(2) The grand jury is entitled to free access at all reasonable times to such correctional facilities and juvenile facilities, and, without charge, to all public records in the county pertaining thereto.

(3) Other than indictments presented under ORS 132.310 or presentments presented under ORS 132.370, the grand jury shall issue no report other than a report of an inquiry made under this section. [Amended by 1973 c.836 §55; 1985 c.565 §11; 1997 c.249 §44]

SUFFICIENCY OF INDICTMENT

132.510 Forms and sufficiency of pleadings. The forms of pleading, and the rules by which the sufficiency of pleadings is to be determined, are those prescribed by the statutes relating to criminal procedure. [Amended by 1973 c.836 §56]

132.520 [Repealed by 1973 c.836 §358]

132.530 [Repealed by 1973 c.836 §358]

132.540 Matters indictment must import; previous conviction not to be alleged; exception; use of statutory language. (1) The indictment is sufficient if it can be understood therefrom that:

(a) The defendant is named, or if the name of the defendant cannot be discovered, that the defendant is described by a fictitious name, with the statement that the real name of the defendant is to the jury unknown.

(b) The crime was committed within the jurisdiction of the court, except where, as provided by law, the act, though done without the county in which the court is held, is triable therein.

(c) The crime was committed at some time prior to the finding of the indictment and within the time limited by law for the commencement of an action therefor.

(2) The indictment shall not contain allegations that the defendant has previously been convicted of the violation of any statute which may subject the defendant to enhanced penalties, except where the conviction constitutes a material element of the crime charged.

(3) Words used in a statute to define a crime need not be strictly pursued in the indictment, but other words conveying the same meaning may be used. [Amended by 1957 c.657 §1; 1973 c.836 §57]

132.550 Content. The indictment shall contain substantially the following:

(1) The name of the circuit court in which it is filed; and

(2) The title of the action; and

(3) A statement that the grand jury accuses the defendant or defendants of the designated offense or offenses; and

(4) A separate accusation or count addressed to each offense charged, if there be more than one; and

(5) A statement in each count that the offense charged therein was committed in a designated county; and

(6) A statement in each count that the offense charged therein was committed on, or on or about, a designated date, or during a designated period of time; and

(7) A statement of the acts constituting the offense in ordinary and concise language, without repetition, and in such manner as to enable a person of common understanding to know what is intended; and

(8) The signatures of the foreman and of the district attorney; and

(9) The date the indictment is filed with the clerk of the court. [Amended by 1973 c.836 §58]

132.557 Indictment must contain subcategory facts under certain circumstances. (1) When a person is charged with a crime committed on or after November 1, 1989, that includes subcategories under the rules of the Oregon Criminal Justice Commission, the state is required to plead specially in the indictment, in addition to the elements of the crime, any subcategory fact on which the state intends to rely to enhance the crime for sentencing purposes. The state shall plead the elements and subcategory facts in a single count. Nothing in this subsection precludes the pleading of alternative theories.

(2) The state must prove each subcategory fact beyond a reasonable doubt and the jury shall return a special verdict of "yes" or "no" on each subcategory fact submitted. [1995 c.520 §6]

Note: 132.557 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 132 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

132.560 Joinder of counts and charges; consolidation of charging instruments. (1) A charging instrument must charge but one offense, and in one form only, except that:

(a) Where the offense may be committed by the use of different means, the charging instrument may allege the means in the alternative.

(b) Two or more offenses may be charged in the same charging instrument in a separate count for each offense if the offenses charged are alleged to have been committed by the same person or persons and are:

(A) Of the same or similar character;

(B) Based on the same act or transaction; or

(C) Based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(2) If two or more charging instruments are found in circumstances described in subsection (1)(b) of this section, the court may order them to be consolidated.

(3) If it appears, upon motion, that the state or defendant is substantially prejudiced by a joinder of offenses under subsection (1) or (2) of this section, the court may order an election or separate trials of counts or provide whatever other relief justice requires.

(4) As used in this section, "charging instrument" means any written instrument sufficient under the law to charge a person with an offense, and shall include, but not be limited to, grand jury indictments, informations, complaints and uniform traffic, game or boating complaints. [Amended by 1989 c.842 §1; 1993 c.278 §1; 1999 c.1040 §17]

132.570 [Renumbered 135.713]

132.580 Names of grand jury witnesses on indictment; effect of failure to include; procedure to remedy failure. (1) When an indictment is found, the names of the witnesses examined before the grand jury that returned the indictment, either by testimony in the presence of the grand jury, by affidavit, by means of simultaneous television transmission under ORS 132.320 (5) or by telephone under ORS 132.320 (7), and the names of those whose reports were received by such grand jury pursuant to ORS 132.320 (2) must be inserted at the foot of the indictment, or indorsed thereon, before it is filed. The indorsement shall show whether the witness gave testimony before the grand jury in person, by affidavit, by means of simultaneous television transmission or by telephone or filed a report.

(2) A witness examined before the grand jury whose name is not indorsed on the indictment shall not be permitted to testify at trial without the consent of the defendant, unless the court finds that:

(a) The name of the witness was omitted from the indictment by inadvertence;

(b) The name of the witness was furnished to the defendant by the state at least 10 days before trial; and

(c) The defendant will not be prejudiced by the omission. [Amended by 1973 c.836 §59; 1995 c.126 §2; 2003 c.645 §8]

132.585 [Repealed by 1959 c.426 §1]

ACCUSATORY INSTRUMENTS

132.586 Pleading domestic violence in accusatory instrument. (1) As used in this section, "domestic violence" has the meaning given that term in ORS 135.230.

(2) When a crime involves domestic violence, the accusatory instrument may plead, and the prosecution may prove at trial, domestic violence as an element of the crime. When a crime is so pleaded, the words "constituting domestic violence" may be added to the title of the crime. [2003 c.319 §1]

132.590 [Renumbered 135.715]

132.610 [Renumbered 135.717]

132.620 [Renumbered 135.720]

132.630 [Renumbered 135.725]

132.640 [Renumbered 135.727]

132.650 [Repealed by 1973 c.836 §358]

132.660 [Renumbered 135.730]

132.670 [Amended by 1971 c.743 §319; renumbered 135.733]

132.680 [Renumbered 135.735]

132.690 [Amended by 1971 c.743 §320; renumbered 135.737]

132.710 [Renumbered 135.740]

132.720 [Renumbered 135.743]

PENALTIES

132.990 Premature inspection or disclosure of contents of indictment. Violation of ORS 132.420 or the prohibitions of ORS 132.410 is punishable as contempt.