Chapter 132

1959 REPLACEMENT PART
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Grand Jury and Indictments

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ORGANIZATION OF GRAND JURY

132.010 Composition. A grand jury is a body of seven persons drawn by lot from the jurors in attendance upon the court at the particular 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.

132.020 Selection of one or more juries; law applicable to additional jury; when inquiry void. (1) Under the direction of the court, the clerk shall write upon a separate ballot the name of each juror in attendance upon the court, place the ballots in the trial jury box and draw ballots therefrom one by one until the names of seven of such 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]

132.030 Qualification; acceptance; excuse from service. Before accepting a person drawn as a grand juror, the court must be satisfied that such person is qualified to act as a juror; but when drawn and found qualified, the person shall be accepted, unless the court, on the application of the juror and before he is sworn, excuses him from service for any of the reasons prescribed in ORS 10.040 and 10.050.

132.040 Challenge to panel or individual juror. No challenge shall be made or allowed to the panel from which the grand jury is drawn, nor to an individual grand juror, other than by the court for want of qualification, as prescribed in ORS 132.030.

132.050 Foreman. The court shall appoint a foreman of the grand jury from the persons chosen to constitute that body.

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:

"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."

(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, he 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."

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. (1) No person other than the district attorney or a witness actually under examination shall be present during the sittings of the grand jury; provided, however, that 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 such grand jury

and take and report the testimony in any matters pending before the grand jury; and provided further, that the circuit judge, upon the district attorney's showing to the court that it is necessary for the proper interrogation of a witness appearing before the grand jury, may appoint an interpreter, a woman, a medical attendant or a nurse, who shall be present in the grand jury room and shall attend such sittings.

(2) No district attorney, witness, reporter, interpreter, woman, medical attendant or nurse shall be present when the grand jury is deliberating or voting upon a matter before it.

132.100 Oath to witness before grand jury. The foreman of the grand jury or, in his absence, the clerk may administer an oath to any witness appearing before the grand jury.

132.110 Absence, disqualification or inability of juror. After the formation of the grand jury and before it is discharged, the court may discharge a grand juror and order that another person be drawn and sworn from the jurors then in attendance upon the court, or if no other jurors are there in attendance, from the jury list of the county, to take the place of the discharged juror on the grand jury if the grand juror:

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

(2) 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

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

132.120 Duration of session. When the business of the grand jury is completed it must be discharged by the court; but the judge may, by an order made either in open court or at chambers anywhere in his district and entered in the journal, 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]

132.130 Commission of crime after discharge of jury. If a crime is committed during the sitting of the court and after the discharge of the grand jury, the court may, in its discretion, order that the sheriff resummon the grand jury to inquire thereof or that another grand jury be drawn and formed for that purpose from the jurors then in attendance upon the court.

132.140 to 132.200 [Reserved for expansion]

GRAND JUROR IN LATER PROCEEDINGS

132.210 Immunity of jurors as to official conduct. A grand juror cannot be questioned for anything he says or any vote he gives, while acting as such, relative to any matter legally pending before the grand jury, except for a perjury of which he may have been guilty in giving testimony before such jury.

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 upon his trial therefor.

132.230 to 132.300 [Reserved for expansion]

GRAND JURY PROCEDURES

132.310 Inquiry into crimes; presentation to court. The grand jury shall retire into a private room, inquire into all 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.

132.320 Consideration of evidence. (1) 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) 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.

132.330 Submission of indictment by district attorney. (1) The district attorney shall submit an indictment to the grand jury and cause the evidence in support thereof to be brought before it in the case of every person held to answer a criminal charge in the court wherein such jury is formed.

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

132.340 Duties of district attorney to 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, he shall disclose the same to his fellow jurors, who shall thereupon investigate the same.

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

132.360 Number of jurors required to concur. A grand jury may indict or present a person, or present facts to the court for instruction as provided in ORS 132.370, with the concurrence of five of its members, and not otherwise.

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 or present. The grand jury may indict or present a person for a crime when it believes him guilty thereof, whether such person has been held to answer for such crime or not.

132.390 When the grand jury should indict. The grand jury ought to 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.

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 Presentation of indictment to court; filing; inspection. An indictment, when found and indorsed, as provided in ORS 132.400 and 132.580, shall be presented to the court by the foreman in the presence of the grand jury and filed with the clerk, in whose office it shall remain as a public record. But if the defendant has not been held to answer the charge, neither the indictment nor any order or process in relation thereto shall be inspected by any person other than the judge of the court or an officer thereof in the discharge of a duty concerning the same until after the arrest of the defendant.

132.420 Disclosure by juror, reporter or officer relative to indictment not subject to inspection. No grand juror, reporter or officer of the court shall disclose any fact concerning any indictment while it is not subject to public inspection.

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 presented to the court and filed with the clerk,

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 presented in court and filed, 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.

132.440 Powers and duties other than inquiry into crime. (1) The grand jury shall inquire into the condition and management of every public prison in the county and of the offices pertaining to the courts of justice therein.

(2) It is entitled to free access at all reasonable times to such prisons and offices and, without charge, to all public records in the county.

132.450 to 132.500 [Reserved for expansion]

SUFFICIENCY OF INDICTMENT GENERALLY

132.510 Forms and sufficiency of pleadings. All the forms of pleading in criminal actions heretofore existing are abolished; and hereafter 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.

132.520 First pleading of state is indictment; contents. The indictment, which is the first pleading on the part of the state, shall contain:

(1) The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties.

(2) 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.

132.530 Certainty required. The indictment must be direct and certain as to the party charged, the crime charged and the particular circumstances of the crime charged when such circumstances are necessary to constitute a complete crime.

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

(a) It is entitled in a court having authority to receive it, though the name of the court is not accurately stated.

(b) It was found by a grand jury of the county in which the court was held.

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

(d) 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.

(e) 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.

(f) The act or omission charged as the crime is clearly and distinctly set forth in ordinary and concise language, without repetition, in such a manner as to enable a person of common understanding to know what is intended and with such a degree of certainty as to enable the court to pronounce judgment, upon a conviction, according to the right of the case; provided, that the indictment shall not contain allegations that the defendant has previously been convicted of the violation of any statute which may subject him to enhanced penalties.

(2) 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]

132.550 Form. The indictment may be substantially in the following form:

The State of Oregon vs. A———— B————	Circuit Court for the County of ....., State of Oregon

A.B. is accused by the grand jury of the County of ———, by this indictment, of the crime of ———— (here insert the name of the crime, if it has one, such as treason, murder, arson, manslaughter, or the like; or if it is a crime having no general name, such as libel, assault, and battery, and the like, insert a brief description of it as given by law), committed as follows:

A.B., on the ——— day of ———, 19——, in the county aforesaid (here set forth the act charged as a crime).

Dated at ———, in the county aforesaid, the ——— day of ———, A.D. 19——.

(Signed): C.D., District Attorney.

(Indorsed): "A true bill."

(Signed) E.F., Foreman of the Grand Jury.

132.560 Joinder of counts and charges; consolidation of indictments. The indictment must charge but one crime, and in one form only, except that:

(1) Where the crime may be committed by the use of different means, the indictment may allege the means in the alternative.

(2) When there are several charges against any person or persons for the same act or transaction, instead of having several indictments, the whole may be joined in one indictment in several counts; and if two or more indictments are found in such cases, the court may order them to be consolidated.

132.570 Necessity of stating presumptions of law and matters judicially noticed. Neither presumptions of law nor matters of which judicial notice is taken need be stated in an indictment.

132.580 Indorsement on indictment of name of witness before grand jury. When an indictment is found, the names of the witnesses examined before the grand jury must be inserted at the foot of the indictment, or indorsed thereon, before it is presented to the court.

132.585 [Repealed by 1959 c.426 §1]

132.590 Effect of nonprejudicial defects in form of indictment. No indictment is insufficient, nor can the trial, judgment or other proceedings thereon be affected, by reason of a defect or imperfection in a matter of form which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

132.600 [Reserved for expansion]

SUFFICIENCY OF SPECIFIC ALLEGATIONS

132.610 Time of crime. The precise time at which the crime was committed need not be stated in the indictment, but it may be alleged to have been committed at any time before the finding thereof and within the time in which an action may be commenced therefor, except where the time is a material ingredient in the crime.

132.620 Place of crime in certain cases. In an indictment for a crime committed as described in ORS 131.320 to 131.380, it is sufficient to allege that the crime was committed within the county where the indictment is found.

132.630 Person injured or intended to be injured. When a crime involves the commission of or an attempt to commit a private injury and is described with sufficient certainty in other respects to identify the act, an erroneous allegation as to the person injured or intended to be injured is not material.

132.640 Description of animal. When a crime involves the taking of or injury to an animal, the indictment is sufficiently certain in that respect if it describes the animal by the common name of its class.

132.650 Private statute. In pleading a private statute or right derived therefrom in an indictment, it is sufficient to refer to the statute by its title and the day of its passage.

132.660 Judgments; facts conferring jurisdiction. In pleading in an indictment a judgment or other determination of or proceeding before a court or officer of special jurisdiction, it is not necessary to state the facts conferring jurisdiction; but the judgment, determination or proceeding may be stated to have been duly given or made. The facts conferring jurisdiction, however, must be established on the trial.

132.670 Libel; application of defamatory publication. An indictment for libel need not set forth any extrinsic facts for the purpose of showing the application to the party libeled of the defamatory matter on which the indictment is founded; but it is sufficient to state generally that the same was published concerning him; and the fact that it was so published must be established on the trial.

132.680 Forgery; misdescription of forged instrument. When an instrument which is the subject of an indictment for forgery has been destroyed or withheld by

the act or procurement of the defendant and the fact of the destruction or withholding is alleged in the indictment and established on the trial, the misdescription of the instrument is immaterial.

132.690 Perjury or subornation of perjury. In an indictment for perjury or subornation of perjury it is sufficient to set forth the substance of the controversy or matter in respect to which the crime was committed, in what court or before whom the oath alleged to be false was taken and that the court or person before whom it was taken had authority to administer it, with proper allegations of the falsity of the matter on which the perjury is assigned; but the indictment need set forth neither the pleadings, record or proceedings with which the oath is connected nor the commission or authority of the court or person before whom the perjury was committed.

132.700 [Reserved for expansion]

MISCELLANEOUS

132.710 Construction of words and phrases used in indictment. The words used in an indictment must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

132.720 Fictitious or erroneous name; insertion of true name. When a defendant is indicted by a fictitious or erroneous name and in any stage of the proceedings his true name is discovered, it may be inserted in the subsequent proceedings, referring to the fact of his being indicted by the name mentioned in the indictment.

132.730 to 132.980 [Reserved for expansion]

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.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 1, 1959.

Sam R. Haley
Legislative Counsel