

# Enrolled Senate Bill 347

Sponsored by Senator PROZANSKI (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to test instruments; amending ORS 135.815, 135.855, 136.567 and 419C.270; and declaring an emergency.

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

**SECTION 1.** ORS 135.815 is amended to read:

135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall disclose to a represented defendant the following material and information within the possession or control of the district attorney:

(a) The names and addresses of persons whom the district attorney intends to call as witnesses at any stage of the trial, together with their relevant written or recorded statements or memoranda of any oral statements of such persons.

(b) Any written or recorded statements or memoranda of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one.

(c) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons which the district attorney intends to offer in evidence at the trial.

(d) Any books, papers, documents, photographs or tangible objects:

(A) Which the district attorney intends to offer in evidence at the trial; or

(B) Which were obtained from or belong to the defendant.

(e) If actually known to the district attorney, any record of prior criminal convictions of persons whom the district attorney intends to call as witnesses at the trial; and the district attorney shall make a good faith effort to determine if such convictions have occurred.

(f) All prior convictions of the defendant known to the state that would affect the determination of the defendant's criminal history for sentencing under rules of the Oregon Criminal Justice Commission.

**(2) Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation of ORS 813.010 in which an instrument was used to test a person's breath, blood or urine to determine the alcoholic content of the person's blood the district attorney shall disclose to a represented defendant at least the following material and information within the possession or control of the district attorney:**

**(a) Any report prepared by a police officer relating to field tests, interviews, observations and other information relating to the charged offense;**

**(b) Any report relating to the test results;**

**(c) A copy of the form provided to the defendant under ORS 813.100 (3)(b); and**

**(d) Any checklist prepared by the operator of the instrument for the test.**

[2)(a)] **(3)(a)** If a defendant is not represented by a lawyer, the district attorney shall disclose to the defendant all of the information described in [subsection (1)] **subsections (1) and (2)** of this section except for the personal identifiers of the victim and any witnesses.

(b) Notwithstanding paragraph (a) of this subsection, the district attorney shall disclose the personal identifiers of the victim and any witnesses if the trial court orders the disclosure. A trial court shall order the district attorney to disclose the personal identifiers of the victim and any witnesses if the trial court finds that:

(A) The defendant has requested the information; and

(B)(i) The victim or witness is a business or institution and disclosure of the information would not represent a risk of harm to the victim or witness; or

(ii) The need for the information cannot reasonably be met by other means.

[3)(a)] **(4)(a)** Unless authorized by the trial court to disclose the information, a lawyer representing a defendant, or a representative of the lawyer, may not disclose to the defendant personal identifiers of a victim or witness obtained under [subsection (1)] **subsections (1) and (2)** of this section.

(b) The trial court shall order the lawyer, or representative of the lawyer, to disclose to the defendant the personal identifiers of a victim or witness if the court finds that:

(A) The defendant's lawyer has requested the district attorney to disclose the information to the defendant;

(B) The district attorney has refused to disclose the information to the defendant; and

(C) The need for the information cannot reasonably be met by other means.

[4)] **(5)** As used in this section:

(a) "Personal identifiers" means a person's address, telephone number, Social Security number and date of birth and the identifying number of a person's depository account at a financial institution, as defined in ORS 706.008, or credit card account.

(b) "Representative of the lawyer" has the meaning given that term in ORS 40.225.

(c) "Represented defendant" means a defendant who is represented by a lawyer in a criminal action.

**SECTION 2.** ORS 135.855 is amended to read:

135.855. (1) The following material and information shall not be subject to discovery under ORS 135.805 to 135.873:

(a) Work product, legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the attorneys, peace officers or their agents in connection with the investigation, prosecution or defense of a criminal action.

(b) The identity of a confidential informant where the identity of the informant is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the defendant. Except as provided in ORS 135.873, disclosure shall not be denied hereunder of the identity of witnesses to be produced at trial.

(c) Transcripts, recordings or memoranda of testimony of witnesses before the grand jury, except transcripts or recordings of statements made by the defendant.

**(d) Schematics, source codes or software of an instrument that was used to test a person's breath, blood or urine to determine the alcoholic content of the person's blood that are not in the actual possession or control of the state.**

(2) When some parts of certain material are discoverable under ORS 135.805 to 135.873 or 135.970, and other parts not discoverable, as much of the material shall be disclosed as is consistent with the provisions thereof.

**SECTION 3.** ORS 136.567 is amended to read:

136.567. (1) A defendant in a criminal action is entitled, at the expense of the state or city, to have subpoenas issued for not to exceed 10 witnesses within the state. A defendant is entitled, at the expense of the defendant, to have subpoenas issued for any number of additional witnesses without an order of the court. The defendant is responsible for the costs of serving the subpoenas

and for the costs, as provided in ORS 136.602, of witness per diem and mileage and for expenses allowed under ORS 136.603.

(2) Any subpoena that a defendant in a criminal action is entitled to have issued shall be issued:

(a) Upon application of the defendant, by the clerk of the court in which the criminal action is pending for trial, and in blank, under the seal of the court and subscribed by the clerk; or

(b) By an attorney of record of the defendant, and subscribed by the attorney.

**(3) A prosecution for violation of ORS 813.010 may not be dismissed based solely on the unavailability of a witness who was subpoenaed by the defendant to provide testimony with respect to an instrument that was used to test a person's breath, blood or urine to determine the alcoholic content of the person's blood. This subsection does not apply to the subpoena of an officer or employee of a public body, as defined in ORS 174.109.**

**SECTION 4.** ORS 419C.270 is amended to read:

419C.270. In all proceedings brought under ORS 419C.005, the following rules of criminal procedure apply:

(1) ORS 133.673, 133.693 and 133.703;

(2) ORS 135.455, 135.465 and 135.470;

(3) ORS 135.610, 135.630 (3) to (6), 135.640 and 135.670;

(4) ORS 135.711, 135.713, 135.715, 135.717, 135.720, 135.725, 135.727, 135.730, 135.733, 135.735, 135.737, 135.740 and 135.743;

(5) ORS 135.805 and 135.815 (1)(a) to (e) **and (2)**;

(6) ORS 135.825, 135.835, 135.845 and 135.855 to 135.873;

(7) ORS 135.970; and

(8) ORS 136.432, 147.417, 147.419 and 147.421.

**SECTION 5. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.**

Passed by Senate May 10, 2007

Received by Governor:

Repassed by Senate June 13, 2007

.....M.,....., 2007

Approved:

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Secretary of Senate

.....M.,....., 2007

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President of Senate

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Governor

Passed by House June 8, 2007

Filed in Office of Secretary of State:

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Speaker of House

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Secretary of State