

Senate Bill 294

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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**.

Modifies information that district attorney must disclose to criminal defendant.
Requires law enforcement agency to provide certain material to district attorney and to notify defendant before destroying material.

A BILL FOR AN ACT

1
2 Relating to discovery; creating new provisions; and amending ORS 135.805 and 135.815.

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

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

5 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall
6 disclose to a represented defendant the following material and information within the possession or
7 control of the district attorney:

8 (a) The [*names and addresses of persons whom*] **name and address of any person** the district
9 attorney intends to call as [*witnesses*] **a witness** at any stage of the trial **and of any person**
10 **questioned or interviewed by a law enforcement agency in relation to the crime with which**
11 **the defendant is charged**, together with their relevant written or recorded statements or memo-
12 randa of any oral statements of such persons.

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

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

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

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

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

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

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

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

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 trict attorney:

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

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

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

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

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

11 (b) Notwithstanding paragraph (a) of this subsection, the district attorney shall disclose the
12 personal identifiers of the victim and any witnesses **or other persons described in subsection**
13 **(1)(a) of this section** if the trial court orders the disclosure. A trial court shall order the district
14 attorney to disclose the personal identifiers of the victim and any witnesses **or other persons de-**
15 **scribed in subsection (1)(a) of this section** if the trial court finds that:

16 (A) The defendant has requested the information; and

17 (B)(i) The victim, [or] witness **or other person** is a business or institution and disclosure of the
18 information would not represent a risk of harm to the victim, [or] witness **or person**; or

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

20 (4)(a) Unless authorized by the trial court to disclose the information, a lawyer representing a
21 defendant, or a representative of the lawyer, may not disclose to the defendant personal
22 identifiers, of a victim or a witness **or other person described in subsection (1)(a) of this sec-**
23 **tion**, obtained under subsections (1) and (2) of this section.

24 (b) The trial court shall order the lawyer, or representative of the lawyer, to disclose to the
25 defendant the personal identifiers, of a victim or a witness **or other person described in sub-**
26 **section (1)(a) of this section**, if the court finds that:

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

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

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

31 (5) As used in this section:

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

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

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

38 **SECTION 2. Section 3 of this 2009 Act is added to and made a part of ORS 135.805 to**
39 **135.873.**

40 **SECTION 3. (1) A law enforcement agency that possesses the material and information**
41 **described in ORS 135.815 (1)(a) shall provide the material and information to the district at-**
42 **torney as soon as practicable.**

43 **(2) If the defendant is convicted of the crime to which the material and information in**
44 **ORS 135.815 (1)(a) are related, a law enforcement agency may not destroy the material**
45 **without first providing notice to the defendant and the defendant's attorney.**

1 **SECTION 4.** ORS 135.805 is amended to read:

2 135.805. (1) The provisions of ORS 135.805 to 135.873 are applicable to all criminal prosecutions
3 in which the charging instrument has been brought in a court of record.

4 (2) As used in ORS 135.805 to 135.873[,]:

5 (a) “Disclose” means to afford the adverse party an opportunity to inspect or copy the material.

6 (b) “Law enforcement agency” has the meaning given that term in ORS 131.550.

7 **SECTION 5.** Section 3 of this 2009 Act and the amendments to ORS 135.805 and 135.815
8 by sections 1 and 4 of this 2009 Act apply to prosecutions commenced on or after the effec-
9 tive date of this 2009 Act.

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