

D R A F T

SUMMARY

Requires district attorney to disclose to defendant data, documents, tangible objects or information that reasonably appears to be favorable to defendant with respect to determination of guilt, preliminary matter or sentence to be imposed.

Provides that district attorney may not condition plea offer on defendant's waiver of disclosure obligation.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to disclosure in criminal prosecutions; amending ORS 135.405,
3 135.815 and 419C.270; and declaring an emergency.

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

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

6 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the
7 district attorney shall disclose to a represented defendant the following ma-
8 terial and information within the possession or control of the district attor-
9 ney:

10 (a) The names and addresses of persons whom the district attorney in-
11 tends to call as witnesses at any stage of the trial, together with their rele-
12 vant written or recorded statements or memoranda of any oral statements
13 of such persons.

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

17 (c) Any reports or statements of experts, made in connection with the
18 particular case, including results of physical or mental examinations and of

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 scientific tests, experiments or comparisons which the district attorney in-
2 tends to offer in evidence at the trial.

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

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

5 or

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

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

11 **(f) Any data, documents, tangible objects or information that rea-**
12 **sonably appears to be favorable to the defendant with respect to the**
13 **determination of guilt, a preliminary matter or the sentence to be**
14 **imposed.**

15 [(f)] (g) All prior convictions of the defendant known to the state that
16 would affect the determination of the defendant's criminal history for sen-
17 tencing under rules of the Oregon Criminal Justice Commission.

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

24 (a) Any report prepared by a police officer relating to field tests, inter-
25 views, observations and other information relating to the charged offense;

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

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

28 and

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

30 (3)(a) If a defendant is not represented by a lawyer, the district attorney
31 shall disclose to the defendant all of the information described in subsections

1 (1) and (2) of this section except for the personal identifiers of the victim and
2 any witnesses.

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

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

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

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

14 (4)(a) Unless authorized by the trial court to disclose the information, a
15 lawyer representing a defendant, or a representative of the lawyer, may not
16 disclose to the defendant personal identifiers of a victim or witness obtained
17 under subsections (1) and (2) of this section.

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

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

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

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

27 (5) As used in this section:

28 (a) "Personal identifiers" means a person's address, telephone number,
29 Social Security number and date of birth and the identifying number of a
30 person's depository account at a financial institution, as defined in ORS
31 706.008, or credit card account.

1 (b) “Representative of the lawyer” has the meaning given that term in
2 ORS 40.225.

3 (c) “Represented defendant” means a defendant who is represented by a
4 lawyer in a criminal action.

5 **SECTION 2.** ORS 135.405 is amended to read:

6 135.405. (1) In cases in which it appears that the interest of the public in
7 the effective administration of criminal justice would thereby be served, and
8 in accordance with the criteria set forth in ORS 135.415, the district attorney
9 may engage in plea discussions for the purpose of reaching a plea agreement.

10 (2) The district attorney shall engage in plea discussions or reach a plea
11 agreement with the defendant only through defense counsel, except when, as
12 a matter of record, the defendant has effectively waived the right of the de-
13 fendant to counsel or, if the defendant is not eligible for appointed counsel,
14 has not retained counsel.

15 (3) The district attorney in reaching a plea agreement may agree to, but
16 is not limited to, one or more of the following, as required by the circum-
17 stances of the individual case:

18 (a) To make or not to oppose favorable recommendations as to the sen-
19 tence which should be imposed if the defendant enters a plea of guilty or no
20 contest to the offense charged;

21 (b) To seek or not to oppose dismissal of the offense charged if the de-
22 fendant enters a plea of guilty or no contest to another offense reasonably
23 related to the defendant’s conduct; or

24 (c) To seek or not to oppose dismissal of other charges or to refrain from
25 bringing potential charges if the defendant enters a plea of guilty or no
26 contest to the offense charged.

27 (4) Similarly situated defendants should be afforded equal plea agreement
28 opportunities.

29 **(5) The district attorney may not condition a plea offer on a re-**
30 **quirement that the defendant waive the disclosure obligation of ORS**
31 **135.815 (1)(f).**

1 [(5)(a)] **(6)(a)** A district attorney may provide a plea offer and agreed
2 disposition recommendation to the defendant at the time of arraignment or
3 first appearance of the defendant for a crime in open court under an early
4 disposition program established under ORS 135.941.

5 (b) Unless extended by the court, a plea offer and agreed disposition rec-
6 ommendation made under paragraph (a) of this subsection expire upon com-
7 pletion of the arraignment. Except for good cause, a court may not extend
8 a plea offer and agreed disposition recommendation under this paragraph for
9 more than seven days for a misdemeanor or 21 days for a felony.

10 **SECTION 3.** ORS 419C.270 is amended to read:

11 419C.270. In all proceedings brought under ORS 419C.005, the following
12 rules of criminal procedure apply:

- 13 (1) ORS 133.673, 133.693 and 133.703;
14 (2) ORS 135.455, 135.465 and 135.470;
15 (3) ORS 135.610, 135.630 (3) to (6), 135.640 and 135.670;
16 (4) ORS 135.711, 135.713, 135.715, 135.717, 135.720, 135.725, 135.727, 135.730,
17 135.733, 135.735, 135.737, 135.740 and 135.743;
18 (5) ORS 135.805 and 135.815 (1)(a) to [(e)] **(f)** and (2);
19 (6) ORS 135.825, 135.835, 135.845 and 135.855 to 135.873; and
20 (7) ORS 136.432.

21 **SECTION 4.** **This 2013 Act being necessary for the immediate pres-**
22 **ervation of the public peace, health and safety, an emergency is de-**
23 **clared to exist, and this 2013 Act takes effect on its passage.**

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