

A-Engrossed
Senate Bill 492

Ordered by the Senate April 29
Including Senate Amendments dated April 29

Sponsored by COMMITTEE ON JUDICIARY

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.

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

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, 135.815 and 419C.270.

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 the district attorney intends to call as witnesses
9 at any stage of the trial, together with their relevant written or recorded statements or memoranda
10 of any oral statements of such persons.

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

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

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

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

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

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

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

25 (g) **Any material or information that tends to exculpate the defendant, negate or mitigate**
26 **the defendant's guilt or punishment or impeach a witness.**

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 **(2)(a) The disclosure required by subsection (1)(g) of this section shall occur without de-**
2 **lay immediately after arraignment and prior to the entry of any guilty plea pursuant to an**
3 **agreement with the state. If the existence of the material or information is not known at**
4 **that time, the disclosure shall be made immediately upon discovery without regard to**
5 **whether the represented defendant has entered or agreed to enter a guilty plea.**

6 **(b) Nothing in subsection (1)(g) of this section expands any obligation or right under**
7 **statutory or constitutional provisions to disclose personnel or internal affairs files of law**
8 **enforcement officers.**

9 [(2)] **(3)** Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation
10 of ORS 813.010 in which an instrument was used to test a person's breath, blood or urine to deter-
11 mine the alcoholic content of the person's blood the district attorney shall disclose to a represented
12 defendant at least the following material and information within the possession or control of the
13 district attorney:

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

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

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

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

19 [(3)(a)] **(4)(a)** If a defendant is not represented by a lawyer, the district attorney shall disclose
20 to the defendant all of the information described in subsections (1) and [(2)] **(3)** of this section except
21 for the personal identifiers of the victim and any witnesses.

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

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

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

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

30 [(4)(a)] **(5)(a)** Unless authorized by the trial court to disclose the information, a lawyer repre-
31 senting a defendant, or a representative of the lawyer, may not disclose to the defendant personal
32 identifiers of a victim or witness obtained under subsections (1) and [(2)] **(3)** of this section.

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

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

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

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

39 [(5)] **(6)** As used in this section:

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

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

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

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

2 135.405. (1) In cases in which it appears that the interest of the public in the effective adminis-
3 tration of criminal justice would thereby be served, and in accordance with the criteria set forth in
4 ORS 135.415, the district attorney may engage in plea discussions for the purpose of reaching a plea
5 agreement.

6 (2) The district attorney shall engage in plea discussions or reach a plea agreement with the
7 defendant only through defense counsel, except when, as a matter of record, the defendant has ef-
8 fectively waived the right of the defendant to counsel or, if the defendant is not eligible for ap-
9 pointed counsel, has not retained counsel.

10 (3) The district attorney in reaching a plea agreement may agree to, but is not limited to, one
11 or more of the following, as required by the circumstances of the individual case:

12 (a) To make or not to oppose favorable recommendations as to the sentence which should be
13 imposed if the defendant enters a plea of guilty or no contest to the offense charged;

14 (b) To seek or not to oppose dismissal of the offense charged if the defendant enters a plea of
15 guilty or no contest to another offense reasonably related to the defendant's conduct; or

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

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

19 **(5) The district attorney may not condition a plea offer on a requirement that the de-**
20 **fendant waive the disclosure obligation of ORS 135.815 (1)(g).**

21 [~~(5)(a)~~] **(6)(a)** A district attorney may provide a plea offer and agreed disposition recommen-
22 dation to the defendant at the time of arraignment or first appearance of the defendant for a crime
23 in open court under an early disposition program established under ORS 135.941.

24 (b) Unless extended by the court, a plea offer and agreed disposition recommendation made un-
25 der paragraph (a) of this subsection expire upon completion of the arraignment. Except for good
26 cause, a court may not extend a plea offer and agreed disposition recommendation under this para-
27 graph for more than seven days for a misdemeanor or 21 days for a felony.

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

29 419C.270. In all proceedings brought under ORS 419C.005, the following rules of criminal pro-
30 cedure apply:

31 (1) ORS 133.673, 133.693 and 133.703;

32 (2) ORS 135.455, 135.465 and 135.470;

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

34 (4) ORS 135.711, 135.713, 135.715, 135.717, 135.720, 135.725, 135.727, 135.730, 135.733, 135.735,
35 135.737, 135.740 and 135.743;

36 (5) ORS 135.805 and 135.815 (1)(a) to (e) and [(2)] **(g) and (3)**;

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

38 (7) ORS 136.432.

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