

**PROPOSED AMENDMENTS TO
SENATE BILL 492**

1 On page 1 of the printed bill, line 2, after the first semicolon insert
2 “and” and after “419C.270” insert a period and delete the rest of the line and
3 line 3.

4 Delete lines 5 through 29 and delete pages 2 and 3 and insert:

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

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

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

1 or

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

3 “(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.

7 “(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.

10 “(g) **Any material or information that tends to exculpate the defendant, negate or mitigate the defendant’s guilt or punishment or impeach a witness the state intends to call at trial.**

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

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

23 “[2] (3) 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:

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

1 “(b) Any report relating to the test results;

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

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

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

9 “(b) Notwithstanding paragraph (a) of this subsection, the district attor-
10 ney shall disclose the personal identifiers of the victim and any witnesses if
11 the trial court orders the disclosure. A trial court shall order the district
12 attorney to disclose the personal identifiers of the victim and any witnesses
13 if the trial court finds that:

14 “(A) The defendant has requested the information; and

15 “(B)(i) The victim or witness is a business or institution and disclosure
16 of the information would not represent a risk of harm to the victim or wit-
17 ness; or

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

20 “[4)(a)] **(5)(a)** Unless authorized by the trial court to disclose the infor-
21 mation, a lawyer representing a defendant, or a representative of the lawyer,
22 may not disclose to the defendant personal identifiers of a victim or witness
23 obtained under subsections (1) and [(2)] **(3)** of this section.

24 “(b) The trial court shall order the lawyer, or representative of the law-
25 yer, to disclose to the defendant the personal identifiers of a victim or wit-
26 ness if the court finds that:

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

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

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

3 “[5] (6) As used in this section:

4 “(a) ‘Personal identifiers’ means a person’s address, telephone number,
5 Social Security number and date of birth and the identifying number of a
6 person’s depository account at a financial institution, as defined in ORS
7 706.008, or credit card account.

8 “(b) ‘Representative of the lawyer’ has the meaning given that term in
9 ORS 40.225.

10 “(c) ‘Represented defendant’ means a defendant who is represented by a
11 lawyer in a criminal action.

12 **“SECTION 2.** ORS 135.405 is amended to read:

13 “135.405. (1) In cases in which it appears that the interest of the public
14 in the effective administration of criminal justice would thereby be served,
15 and in accordance with the criteria set forth in ORS 135.415, the district
16 attorney may engage in plea discussions for the purpose of reaching a plea
17 agreement.

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

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

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

29 “(b) To seek or not to oppose dismissal of the offense charged if the de-
30 fendant enters a plea of guilty or no contest to another offense reasonably

1 related to the defendant's conduct; or

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

5 “(4) Similarly situated defendants should be afforded equal plea agreement
6 opportunities.

7 “**(5) The district attorney may not condition a plea offer on a re-**
8 **quirement that the defendant waive the disclosure obligation of ORS**
9 **135.815 (1)(g).**

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

14 “(b) Unless extended by the court, a plea offer and agreed disposition
15 recommendation made under paragraph (a) of this subsection expire upon
16 completion of the arraignment. Except for good cause, a court may not ex-
17 tend a plea offer and agreed disposition recommendation under this para-
18 graph for more than seven days for a misdemeanor or 21 days for a felony.

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

20 “419C.270. In all proceedings brought under ORS 419C.005, the following
21 rules of criminal procedure apply:

22 “(1) ORS 133.673, 133.693 and 133.703;

23 “(2) ORS 135.455, 135.465 and 135.470;

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

25 “(4) ORS 135.711, 135.713, 135.715, 135.717, 135.720, 135.725, 135.727, 135.730,
26 135.733, 135.735, 135.737, 135.740 and 135.743;

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

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

29 “(7) ORS 136.432.”

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