

Enrolled
House Bill 3077

Sponsored by Representatives RESCHKE, WILLIAMSON; Representatives BARKER, OLSON, POST,
Senators DEVLIN, GIROD, HANSELL, KNOPP, LINTHICUM, OLSEN, ROBLAN, THATCHER,
THOMSEN

CHAPTER

AN ACT

Relating to crime victims; amending ORS 135.815 and 147.417.

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.

(g) Any material or information that tends to:

(A) Exculpate the defendant;

(B) Negate or mitigate the defendant's guilt or punishment; or

(C) Impeach a person the district attorney intends to call as a witness at the trial.

(2)(a) The disclosure required by subsection (1)(g) of this section shall occur without delay 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 upon discovery without regard to whether the represented defendant has entered or agreed to enter a guilty plea.

(b) Nothing in subsection (1)(g) of this section:

(A) Expands any obligation under a statutory provision or the Oregon or United States Constitution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement officers.

(B) Imposes any obligation on the district attorney to provide material or information beyond the obligation imposed by the Oregon and United States Constitutions.

(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:

(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.

(4)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the defendant all of the information described in subsections (1) and (3) 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.

(5)(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 subsections (1) and (3) 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.

(6) As used in this section:

(a) "Personal identifiers" means:

(A) **In relation to a witness, [a person's] the witness's address, telephone number, Social Security number and date of birth and the identifying number of [a person's] the witness's depository account at a financial institution, as defined in ORS 706.008, or credit card account.**

(B) **In relation to a victim, the victim's address, electronic mail address, telephone number, Social Security number, date of birth, any user names or other identifying information associated with the victim's social media accounts and the identifying number of the victim'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.

(d) **"Social media" has the meaning given that term in ORS 659A.330.**

SECTION 2. ORS 147.417 is amended to read:

147.417. (1) As soon as is reasonably practicable in a criminal action in which there is a victim, a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense of the person's rights under section 42, Article I of the Oregon Constitution. The notice may be oral or written **and written notice may be provided electronically**. If exercise of any of the rights depends upon the victim making a request, the law enforcement agency shall include in the notice the time period in which the victim is required to make the request. A law enforcement agency satisfies the requirements of this section if the law enforcement agency:

(a) Provides notice to the victim named in the accusatory instrument, the victim's guardian or, in a homicide case, the victim's next of kin; and

(b) Presents, if written notice is given, the notice directly to the victim, [or] sends the notice to the last address given to the law enforcement agency by the victim **or sends the notice electronically to the cellular phone number or electronic mail address given to the law enforcement agency by the victim**.

(2) Failure by a law enforcement agency to properly notify the victim as required by this section:

(a) Is not grounds for setting aside a conviction.

(b) Does not affect the validity of a plea, except as provided by section 42 or 43, Article I of the Oregon Constitution.

(3) Nothing in subsection (2) of this section justifies a failure to properly notify the victim.

(4)(a) As used in this section, "law enforcement agency" means the police agency that initially responds in the case, the police agency that investigates the case or the district attorney who prosecutes the case.

(b) The district attorney shall determine if the notice required by this section has been given and, if not, shall provide the notice.

Passed by House April 27, 2017

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate May 18, 2017

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

.....
Dennis Richardson, Secretary of State