

A-Engrossed
House Bill 3077

Ordered by the House April 24
Including House Amendments dated April 24

Sponsored by Representatives RESCHKE, WILLIAMSON; Representatives BARKER, OLSON, POST, Senators HANSELL, LINTHICUM, ROBLAN, THATCHER

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 court, upon request of crime victim, to order that] **Prohibits defense attorney, or district attorney if defendant is not represented by attorney, from disclosing to defendant** victim's electronic mail address and social media account identifying information *[not be given to defendant unless good cause is shown]* **unless court authorizes or orders disclosure.**

Authorizes law enforcement agency to notify victim of victim's rights electronically.

A BILL FOR AN ACT

1
2 Relating to crime victims; amending ORS 135.815 and 147.417.

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:

26 (A) Exculpate the defendant;

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

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

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

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

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

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

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

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

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

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

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

24 (4)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the
25 defendant all of the information described in subsections (1) and (3) of this section except for the
26 personal identifiers of the victim and any witnesses.

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

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

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

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

35 (5)(a) Unless authorized by the trial court to disclose the information, a lawyer representing a
36 defendant, or a representative of the lawyer, may not disclose to the defendant personal identifiers
37 of a victim or witness obtained under subsections (1) and (3) of this section.

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

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

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

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

44 (6) As used in this section:

45 (a) "Personal identifiers" means:

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

4 **(B) In relation to a victim, the victim's address, electronic mail address, telephone**
5 **number, Social Security number, date of birth, any user names or other identifying infor-**
6 **mation associated with the victim's social media accounts and the identifying number of the**
7 **victim's depository account at a financial institution, as defined in ORS 706.008, or credit**
8 **card account.**

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

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

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

13 **SECTION 2.** ORS 147.417 is amended to read:

14 147.417. (1) As soon as is reasonably practicable in a criminal action in which there is a victim,
15 a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense
16 of the person's rights under section 42, Article I of the Oregon Constitution. The notice may be oral
17 or written **and written notice may be provided electronically.** If exercise of any of the rights
18 depends upon the victim making a request, the law enforcement agency shall include in the notice
19 the time period in which the victim is required to make the request. A law enforcement agency
20 satisfies the requirements of this section if the law enforcement agency:

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

23 (b) Presents, if written notice is given, the notice directly to the victim, [or] sends the notice
24 to the last address given to the law enforcement agency by the victim **or sends the notice elec-**
25 **tronically to the cellular phone number or electronic mail address given to the law enforce-**
26 **ment agency by the victim.**

27 (2) Failure by a law enforcement agency to properly notify the victim as required by this sec-
28 tion:

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

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

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

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

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

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