

SB 751 A STAFF MEASURE SUMMARY

Carrier: Rep. Wilde

House Committee On Judiciary

Action Date: 05/25/21

Action: Do Pass the A-Eng bill.

Vote: 10-0-0-0

Yeas: 10 - Bynum, Dexter, Helm, Kropf, Lewis, Morgan, Noble, Power, Wallan, Wilde

Fiscal: Has minimal fiscal impact

Revenue: No revenue impact

Prepared By: Gillian Fischer, Counsel

Meeting Dates: 5/18, 5/25

WHAT THE MEASURE DOES:

Modifies definition of "disclose" for purposes of providing discovery in criminal cases. Specifies that copies of required materials shall be provided to a defendant by the district attorney unless a copy cannot reasonably be provided. Requires defendant be provided an opportunity to inspect, photograph, and conduct independent testing of tangible physical evidence. Requires exculpatory evidence be provided to defendant by the district attorney, regardless of whether the information is recorded or in writing.

ISSUES DISCUSSED:

- Inconsistent discovery procedures county-to-county
- Prejudicial impact on defendant when discovery delayed or incomplete
- District attorney obligations to provide exculpatory evidence under Oregon case law and as required by the Oregon Bar Association rules of professional conduct

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Pretrial discovery in criminal matters is governed by statute and subject to constitutional requirements. Oregon statute provides that the district attorney shall disclose 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 statement of such persons, as well as expert reports and any evidence the state intends to offer at trial or which belongs to the defendant. This disclosure shall occur without delay after arraignment and prior to the entry of any guilty plea pursuant to an agreement with the state or as soon as practicable after discovery if not known to the district attorney at the time of arraignment.

Additionally, certain exculpatory evidence, at the request of the defense and regardless of intent to admit at trial, must be disclosed by the prosecution at such time as will allow the defendant to use it effectively in his own defense. That includes any material that tends to exculpate the defendant; negate or mitigate the defendant's guilt or punishment; or evidence that tends to impeach a person the district attorney intends to call as a witness at the trial. In the event that the prosecution and the defense cannot agree as to the time, the trial court has the inherent power and duty to decide the time of disclosure.

Senate Bill 751 A modifies the definition of "disclose" for purposes of providing discovery and requires exculpatory evidence be provided to defendant by the district attorney, regardless of whether the information is recorded or in writing.