

A-Engrossed Senate Bill 751

Ordered by the Senate April 19
Including Senate Amendments dated April 19

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of Oregon Criminal Defense Lawyers Association)

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 party in criminal case to provide hard copy or electronic copy of discovery material to adverse party unless copy cannot reasonably be provided.]

[Requires district attorney to disclose prior conviction record of all persons associated with investigation. Expands statutory obligation of district attorney to disclose exculpatory evidence and impeachment evidence. Modifies timing of disclosures.]

[Provides that remedy for violation of discovery obligation may be dismissal of charges, or dismissal of charges with prejudice if violation concerned exculpatory evidence or impeachment evidence.]

[Establishes procedures for taking of depositions in criminal cases.]

Modifies definition of "disclose" for purposes of discovery requirements in criminal cases. Requires provision of copy of, or opportunity to conduct testing on, certain material or information subject to disclosure.

Provides that exculpatory material or information must be disclosed to defendant regardless of whether material or information is recorded or in writing.

A BILL FOR AN ACT

1
2 Relating to pretrial discovery; creating new provisions; and amending ORS 135.805 and 135.815.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 135.805 is amended to read:

5 135.805. (1) The provisions of ORS 135.805 to 135.873 are applicable to all criminal prosecutions
6 in which the charging instrument has been brought in a court of record.

7 (2) **Except as otherwise provided in a protective order entered under ORS 135.873, or any**
8 **other provision of law prohibiting or restricting the disclosure of specific material or infor-**
9 **mation**, as used in ORS 135.805 to 135.873, "disclose" means *[to afford the adverse party an oppor-*
10 *tunity to inspect or copy the material.]* **to provide:**

11 (a) **A copy of the material, including but not limited to any document, photograph, re-**
12 **port, audio recording, video recording or electronically stored information;**

13 (b) **The opportunity to inspect and photograph tangible physical evidence; and**

14 (c) **The opportunity to conduct independent testing of tangible physical evidence, provided**
15 **that the testing does not destroy the evidence.**

16 (3) **Subsection (2)(a) of this section does not apply to any material that contains de-**
17 **pictions of sexually explicit conduct involving a child, as those terms are defined in ORS**
18 **163.665.**

19 **SECTION 2.** ORS 135.815 is amended to read:

20 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall

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 disclose to a represented defendant the following material and information within the possession or
2 control of the district attorney:

3 (a) The names, [and] addresses **and telephone numbers** of persons whom the district attorney
4 intends to call as witnesses at any stage of the trial, together with their relevant written or re-
5 corded statements or memoranda of any oral statements of such persons.

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

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

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

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

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

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

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

20 (g) Any material or information that tends to:

21 (A) Exculpate the defendant;

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

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

24 (2)(a) The disclosure required by subsection (1)(g) of this section:

25 (A) **Shall occur regardless of whether the material or information is recorded or in**
26 **writing.**

27 (B) Shall occur without delay [after arraignment] **in accordance with ORS 135.845** and prior
28 to the entry of any guilty plea pursuant to an agreement with the state. If the existence of the ma-
29 terial or information is not known at that time, the disclosure shall be made upon discovery without
30 regard to whether the represented defendant has entered or agreed to enter a guilty plea.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (6) As used in this section:

23 (a) "Personal identifiers" means:

24 (A) In relation to a witness, the witness's address, telephone number, Social Security number
25 and date of birth and the identifying number of the witness's depository account at a financial in-
26 stitution, as defined in ORS 706.008, or credit card account.

27 (B) In relation to a victim, the victim's address, electronic mail address, telephone number, So-
28 cial Security number, date of birth, any user names or other identifying information associated with
29 the victim's social media accounts and the identifying number of the victim's depository account at
30 a financial institution, as defined in ORS 706.008, or credit card account.

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

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

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

35 **SECTION 3. The amendments to ORS 135.805 and 135.815 by sections 1 and 2 of this 2021**
36 **Act apply to offenses alleged to have occurred on or after the effective date of this 2021 Act.**

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