

SB 751-2  
(LC 2951)  
4/6/21 (JLM/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO  
SENATE BILL 751**

1 On page 1 of the printed bill, line 2, after “135.805” delete the rest of the  
2 line and delete line 3 and insert “and 135.815.”.

3 Delete lines 5 through 27 and delete pages 2 through 4 and insert:

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  
6 all criminal prosecutions in which the charging instrument has been brought  
7 in a court of record.

8 **“(2) Except as otherwise provided in a protective order entered un-**  
9 **der ORS 135.873, or any other provision of law prohibiting or restrict-**  
10 **ing the disclosure of specific material or information,** as used in ORS  
11 135.805 to 135.873, ‘disclose’ means [*to afford the adverse party an opportunity*  
12 *to inspect or copy the material.*] **to provide:**

13 **“(a) A copy of the material, including but not limited to any docu-**  
14 **ment, photograph, report, audio recording, video recording or elec-**  
15 **tronically stored information;**

16 **“(b) The opportunity to inspect and photograph tangible physical**  
17 **evidence; and**

18 **“(c) The opportunity to conduct independent testing of tangible**  
19 **physical evidence, provided that the testing does not destroy the evi-**  
20 **dence.**

21 **“(3) Subsection (2)(a) of this section does not apply to any material**

1 **that contains depictions of sexually explicit conduct involving a child,**  
2 **as those terms are defined in ORS 163.665.**

3 **“SECTION 2.** ORS 135.815 is amended to read:

4 “135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the  
5 district attorney shall disclose to a represented defendant the following ma-  
6 terial and information within the possession or control of the district attor-  
7 ney:

8 “(a) The names, [*and*] addresses **and telephone numbers** of persons  
9 whom the district attorney intends to call as witnesses at any stage of the  
10 trial, together with their relevant written or recorded statements or memo-  
11 randa of any oral statements of such persons.

12 “(b) Any written or recorded statements or memoranda of any oral state-  
13 ments made by the defendant, or made by a codefendant if the trial is to be  
14 a joint one.

15 “(c) Any reports or statements of experts, made in connection with the  
16 particular case, including results of physical or mental examinations and of  
17 scientific tests, experiments or comparisons which the district attorney in-  
18 tends to offer in evidence at the trial.

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

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

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

23 “(e) If actually known to the district attorney, any record of prior crimi-  
24 nal convictions of persons whom the district attorney intends to call as  
25 witnesses at the trial; and the district attorney shall make a good faith effort  
26 to determine if such convictions have occurred.

27 “(f) All prior convictions of the defendant known to the state that would  
28 affect the determination of the defendant’s criminal history for sentencing  
29 under rules of the Oregon Criminal Justice Commission.

30 “(g) Any material or information that tends to:

1       “(A) Exculpate the defendant;  
2       “(B) Negate or mitigate the defendant’s guilt or punishment; or  
3       “(C) Impeach a person the district attorney intends to call as a witness  
4 at the trial.

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

6       **“(A) Shall occur regardless of whether the material or information  
7 is recorded or in writing.**

8       **“(B) Shall occur without delay [after arraignment] in accordance with  
9 ORS 135.845** and prior to the entry of any guilty plea pursuant to an  
10 agreement with the state. If the existence of the material or information is  
11 not known at that time, the disclosure shall be made upon discovery without  
12 regard to whether the represented defendant has entered or agreed to enter  
13 a guilty plea.

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

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

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

21       “(3) Except as otherwise provided in ORS 135.855 and 135.873, in prose-  
22 cutions for violation of ORS 813.010 in which an instrument was used to test  
23 a person’s breath, blood or urine to determine the alcoholic content of the  
24 person’s blood the district attorney shall disclose to a represented defendant  
25 at least the following material and information within the possession or  
26 control of the district attorney:

27       “(a) Any report prepared by a police officer relating to field tests, inter-  
28 views, observations and other information relating to the charged offense;

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

30       “(c) A copy of the form provided to the defendant under ORS 813.100

1 (2)(b); and

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

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

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

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

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

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

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

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

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

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

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

1 “(6) As used in this section:

2 “(a) ‘Personal identifiers’ means:

3 “(A) In relation to a witness, the witness’s address, telephone number,  
4 Social Security number and date of birth and the identifying number of the  
5 witness’s depository account at a financial institution, as defined in ORS  
6 706.008, or credit card account.

7 “(B) In relation to a victim, the victim’s address, electronic mail address,  
8 telephone number, Social Security number, date of birth, any user names or  
9 other identifying information associated with the victim’s social media ac-  
10 counts and the identifying number of the victim’s depository account at a  
11 financial institution, as defined in ORS 706.008, or credit card account.

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

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

16 “(d) ‘Social media’ has the meaning given that term in ORS 659A.330.

17 **“SECTION 3. The amendments to ORS 135.805 and 135.815 by**  
18 **sections 1 and 2 of this 2021 Act apply to offenses alleged to have oc-**  
19 **curred on or after the effective date of this 2021 Act.”.**

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