

D R A F T

SUMMARY

Digest: The Act lets the DA charge a fee before providing discovery. (Flesch Readability Score: 64.9).

Provides that a district attorney may require the payment of a fee reasonably calculated to reimburse costs before providing discovery to a defendant.

A BILL FOR AN ACT

1
2 Relating to discovery; 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
6 criminal prosecutions in which the charging instrument has been brought in
7 a court of record.

8 (2) Except as otherwise provided in **subsection (3) of this section**, a
9 protective order entered under ORS 135.873, or any other provision of law
10 prohibiting or restricting the disclosure of specific material or information,
11 as used in ORS 135.805 to 135.873, “disclose” means to provide:

12 (a) A copy of the material, including but not limited to any document,
13 photograph, report, audio recording, video recording or electronically stored
14 information;

15 (b) The opportunity to inspect and photograph tangible physical evidence;
16 and

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

19 (3) **The meaning of “disclose” described in** subsection (2)(a) of this

1 section does not apply to any material that contains depictions of sexually
2 explicit conduct involving a child, as those terms are defined in ORS 163.665.

3 **(4) As used in ORS 135.805 to 135.873, “district attorney” includes a**
4 **district attorney, a deputy district attorney, a municipal prosecutor,**
5 **the Attorney General and an assistant attorney general acting in the**
6 **role of a prosecutor at the trial court level.**

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

8 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the
9 district attorney shall disclose **or otherwise make available** to a repres-
10 ented defendant the following material and information within the possession
11 or control of the district attorney:

12 (a) The names, addresses and telephone numbers of persons whom the
13 district attorney intends to call as witnesses at any stage of the trial, to-
14 gether with their relevant written or recorded statements or memoranda of
15 any oral statements of such persons.

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

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

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

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

25 or

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

27 (e) If actually known to the district attorney, any record of prior criminal
28 convictions of persons whom the district attorney intends to call as wit-
29 nesses at the trial; and the district attorney shall make a good faith effort
30 to determine if such convictions have occurred.

31 (f) All prior convictions of the defendant known to the state that would

1 affect the determination of the defendant's criminal history for sentencing
2 under rules of the Oregon Criminal Justice Commission.

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

4 (A) Exculpate the defendant;

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

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

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

9 (A) Shall occur regardless of whether the material or information is re-
10 corded or in writing.

11 (B) Shall occur without delay in accordance with ORS 135.845 and prior
12 to the entry of any guilty plea pursuant to an agreement with the state. If
13 the existence of the material or information is not known at that time, the
14 disclosure shall be made upon discovery without regard to whether the re-
15 presented defendant has entered or agreed to enter a guilty plea.

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

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

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

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

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

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

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

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

4 (4)(a) If a defendant is not represented by a lawyer, the district attorney
5 shall disclose **or otherwise make available** to the defendant all of the in-
6 formation described in subsections (1) and (3) of this section except for the
7 personal identifiers of the victim and any witnesses.

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

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

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

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

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

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

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

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

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

1 **(6) The district attorney may charge a fee reasonably calculated to**
2 **reimburse costs before disclosing or otherwise providing the material**
3 **or information described in this section to the defendant or the**
4 **defendant’s lawyer. Costs that may be taken into account when cal-**
5 **culating the fee include but are not limited to:**

6 **(a) Time spent by district attorney employees reviewing, redacting,**
7 **compiling, formatting or otherwise preparing discovery materials.**

8 **(b) Physical discovery materials including paper documents, reports**
9 **and photographs, audio recordings, video recordings and storage media**
10 **for electronically stored information including compact discs, flash**
11 **drives, hard drives and similar items.**

12 **(c) Overhead costs including wear and tear on equipment used to**
13 **prepare discovery materials and building maintenance.**

14 [(6)] (7) As used in this section:

15 (a) “Personal identifiers” means:

16 (A) In relation to a witness, the witness’s address, telephone number, So-
17 cial Security number and date of birth and the identifying number of the
18 witness’s depository account at a financial institution, as defined in ORS
19 706.008, or credit card account.

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

25 (b) “Representative of the lawyer” has the meaning given that term in
26 ORS 40.225.

27 (c) “Represented defendant” means a defendant who is represented by a
28 lawyer in a criminal action.

29 (d) “Social media” has the meaning given that term in ORS 659A.330.