

Senate Bill 177

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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 **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes rules for when and how information is provided to the defense in a criminal case. (Flesch Readability Score: 61.6).

Modifies discovery procedures. Establishes timing requirements for discovery provided to the defense, including jail calls and evidence supporting a request to hold a defendant in custody pre-trial. Requires the court to hold a colloquy before trial or plea to ensure that all exculpatory material has been provided to the defense. Establishes procedures by which a deposition of a law enforcement officer may occur.

A BILL FOR AN ACT

1
2 Relating to discovery; creating new provisions; and amending ORS 135.240 and 135.845.

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

4 **SECTION 1.** ORS 135.845 is amended to read:

5 135.845. (1) The obligations to disclose shall be performed as soon as practicable [*following the*
6 *filing of an indictment or information in the circuit court or the filing of a complaint or information*
7 *charging a misdemeanor or violation of a city ordinance*] **and as provided in this section.** The court
8 may supervise the exercise of discovery to the extent necessary to insure that it proceeds properly
9 and expeditiously.

10 **(2) The disclosures required by ORS 135.805 to 135.873 shall occur as follows, except as**
11 **otherwise agreed upon by both parties or ordered by the court:**

12 **(a) The district attorney shall provide a copy of all material and information subject to**
13 **disclosure under ORS 135.815 and 135.825 that is in the possession, custody or control of the**
14 **state no later than the first appearance after any charging instrument is filed in the case.**

15 **(b) Material or information that enters into the state's possession, custody or control**
16 **after the first appearance must be disclosed within 10 days after the materials enter into the**
17 **state's possession, custody or control.**

18 **(c) Additional material and information subject to disclosure under ORS 135.805 to 135.873**
19 **must be disclosed within 14 days of the request by either party, or alternatively, if the ma-**
20 **terial or information is not within the opposing party's possession within the 14 days, the**
21 **opposing party shall provide the requesting party with a reasonable timeline for disclosure.**
22 **Both parties shall make a good faith effort to disclose the material or information within the**
23 **14-day time period.**

24 **(d) If the material required to be disclosed under ORS 135.815 consists of a recording of**
25 **the defendant's telephone call while in custody, the district attorney shall provide the de-**
26 **fendant with the recording no later than 30 days before trial, unless good cause is shown,**
27 **and shall identify the portion of the recording the district attorney intends to use at trial.**

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 As used in this paragraph, “good cause” includes delay due to the fact that the district at-
2 torney did not possess the recording until less than 30 days prior to trial, so long as the
3 district attorney provides the recordings and the information promptly and without delay.
4 “Good cause” does not include any delay caused by the district attorney’s deliberation or
5 decision-making process to determine whether to use the recording or any other reason re-
6 lated to trial strategy decision-making.

7 [(2)] (3) If, after complying with the provisions of ORS 135.805 to 135.873 and 135.970, a party
8 finds, either before or during trial, additional material or information which is subject to or covered
9 by these provisions, the party must promptly notify the other party of the additional material or
10 information.

11 **SECTION 2.** Sections 3 and 4 of this 2025 Act are added to and made a part of ORS 135.805
12 to 135.873.

13 **SECTION 3.** (1) No later than seven days prior to the entry of a guilty or no contest plea
14 or a trial in a felony or misdemeanor case, the district attorney shall file with the court and
15 serve upon the defendant a form that indicates whether the district attorney:

16 (a) Made good faith and reasonable efforts to review the case file, including the notes and
17 file of any other prosecutor who handled or was assigned to the case, to determine if the
18 notes or file contain information that is required to be disclosed under ORS 135.815 or
19 135.825.

20 (b) Made good faith and reasonable efforts to request and review the material and infor-
21 mation possessed by other agencies or entities acting on the state’s behalf in the evaluation,
22 investigation or prosecution of the case, including information that may not have been re-
23 duced to a formal written report, to determine if there is material or information required
24 to be disclosed by ORS 135.815 or 135.825.

25 (c) Subpoenaed all witnesses and the alleged victim to trial.

26 (d) Identified any information that is favorable to the defense, but elected not to disclose
27 the information because the district attorney believes that the defense is already aware of
28 the information or that the information is not material to the case.

29 (e) Is aware of the requirement in the rules of professional conduct adopted under ORS
30 9.490 that requires prosecutors to disclose all known information that tends to negate the
31 guilt of the defendant or mitigate the offense, regardless of whether the information is ma-
32 terial or is required to be disclosed under the Oregon or United States Constitution.

33 (2) Before accepting a guilty or no contest plea or commencing a trial, the court shall
34 ask the district attorney whether any prosecutor assigned to the case made a good faith ef-
35 fort to comply with the obligations described in ORS 135.815 and 135.825 and filed the written
36 form described in subsection (1) of this section. If the district attorney has not filed the form
37 described in subsection (1) of this section, the court shall inquire whether the district at-
38 torney has performed the actions described in subsection (1)(a) to (d) of this section.

39 (3) At trial, after the close of the state’s case in chief, but before the defense offers any
40 evidence, the court shall inquire on the record whether the district attorney made a good
41 faith and reasonable effort to review the case file after hearing the defendant’s cross-
42 examination of the state’s witnesses to determine if additional information must be disclosed
43 to the defendant under ORS 135.815 or 135.825 or any other law.

44 (4) If the district attorney discovers that information provided to the court under this
45 section is no longer accurate, the district attorney shall provide written notice to the de-

1 **pendant and the court within seven days after the discovery.**

2 **(5) Information provided to the court under this section may be based on information**
3 **obtained from a law enforcement agency, a member of the district attorney's staff, the dis-**
4 **trict attorney's file or an electronic data system or other record-keeping system regularly**
5 **maintained by the office of the district attorney.**

6 **(6) Nothing in this section is intended to affect the timing requirements for disclosure**
7 **described in ORS 135.845.**

8 **(7) The State Court Administrator shall develop a form that may be used for the filing**
9 **described in subsection (1) of this section, and shall ensure that copies of the form are pro-**
10 **vided to the clerk of each circuit court. The clerk shall ensure that the forms are made**
11 **available to the public.**

12 **SECTION 4. (1)(a) In a felony case, either party may request, in writing, an interview**
13 **with a peace officer who is a material and necessary witness in the criminal case.**

14 **(b) The written request for an interview must be delivered to the physical address of the**
15 **law enforcement agency or department, or an electronic mail or other address designated**
16 **by the law enforcement agency or department, that employs the peace officer. The request**
17 **may be made at any time after arraignment on the criminal case, and the peace officer shall**
18 **reply to the request within 15 days of receipt of the request.**

19 **(2)(a) If a peace officer refuses or fails to respond to a request for an interview made**
20 **under subsection (1) of this section, the court may, pursuant to a motion filed by either**
21 **party, order a deposition of the peace officer if the court finds that:**

22 **(A) The officer is a material and necessary witness to the case; and**

23 **(B) The officer has refused to discuss the case with the party requesting the deposition**
24 **after a written request for an interview was made under subsection (1) of this section.**

25 **(b) If the court orders a deposition under this section, the court may also order that the**
26 **peace officer produce any designated books, papers, documents or a tangible object that is**
27 **not privileged or subject to a protective order at the time and place of the deposition.**

28 **(3) The peace officer who is the subject of a deposition under this section, or another**
29 **party, may seek a protective order under ORS 135.873 or any other applicable law.**

30 **(4)(a) Except as otherwise provided in this section, the deposition shall be taken in the**
31 **manner provided in civil actions.**

32 **(b) The deposition shall be taken in the building in which the trial on the proceeding is**
33 **scheduled to be held, unless the parties agree on an alternate location or the court orders**
34 **or approves a stipulation that the deposition occur by remote means.**

35 **(c) The party requesting a deposition under this section shall bear the costs of the de-**
36 **position.**

37 **(5) A defendant has the right to be present at a deposition described in this section. If**
38 **the defendant is in custody, the party requesting the deposition shall notify the court at the**
39 **time of filing the motion for the deposition, and if the court orders the deposition, the court**
40 **shall additionally order the appearance of the defendant at the deposition.**

41 **(6) A deposition described in this section may be recorded by a person other than a cer-**
42 **tified reporter. If a person other than a certified reporter records the deposition, the party**
43 **that requested the deposition shall provide all other parties with a copy of the recording no**
44 **later than 14 days after the deposition, or no later than 10 days before trial, whichever oc-**
45 **currs earlier.**

1 (7) In any case, notwithstanding the fact that the case has multiple defendants or in-
 2 volves consolidated charges, a person may not be deposed more than once under this section
 3 except upon the consent of all parties.

4 (8) A deposition described in this section may be used by any party for the purpose of
 5 contradicting or impeaching the testimony of the deponent as a witness in the proceeding,
 6 or as substantive evidence as permitted under the Oregon Evidence Code.

7 (9) A peace officer who fails to appear for a deposition ordered by the court under this
 8 section may be held in contempt of court, and shall be excluded from being a witness in the
 9 underlying criminal case unless the court makes a finding that there was good cause for the
 10 failure to appear.

11 (10) On the stipulation of all parties and the consent of the peace officer, the statement
 12 of the peace officer may be taken by telephone in lieu of a deposition. If a statement is taken
 13 under this subsection, the peace officer need not be under oath. The statement must be re-
 14 corded and may be used for the purpose of contradicting or impeaching the testimony of the
 15 peace officer as a prior inconsistent statement.

16 (11) Except as otherwise provided by law or in matters not subject to disclosure or re-
 17 stricted by protective orders, neither party, counsel for either party, or any other person
 18 associated with the defense or prosecution, may advise a peace officer with relevant material
 19 or information to the case to refrain from discussing the case with opposing counsel or
 20 showing or providing to opposing counsel any relevant material, or otherwise impede the
 21 opposing party's investigation of the case.

22 (12) As used in this section, "peace officer" has the meaning given that term in ORS
 23 161.015.

24 **SECTION 5.** ORS 135.240 is amended to read:

25 135.240. (1) Except as provided in subsections (2) and (4) of this section, a defendant shall be
 26 released in accordance with ORS 135.230 to 135.290.

27 (2)(a) When the defendant is charged with murder, aggravated murder or treason, release shall
 28 be denied when the proof is evident or the presumption strong that the person is guilty.

29 (b) When the defendant is charged with murder or aggravated murder and the proof is not evi-
 30 dent nor the presumption strong that the defendant is guilty, the court shall determine the issue of
 31 release as provided in subsection (4) of this section. In determining the issue of release under sub-
 32 section (4) of this section, the court may consider any evidence used in making the determination
 33 required by this subsection.

34 (3) The magistrate may conduct such hearing as the magistrate considers necessary to determine
 35 whether, under subsection (2) of this section, the proof is evident or the presumption strong that the
 36 person is guilty.

37 (4)(a) When the defendant is charged with a violent felony, release shall be denied if the court
 38 finds:

39 (A) Except when the defendant is charged by indictment, that there is probable cause to believe
 40 that the defendant committed the crime; and

41 (B) By clear and convincing evidence, that there is a danger of physical injury or sexual
 42 victimization to the victim or members of the public by the defendant while on release.

43 (b) If the defendant wants to have a hearing on the issue of release, the defendant must request
 44 the hearing at the time of arraignment in circuit court. If the defendant requests a release hearing,
 45 the court must hold the hearing within five days of the request. **The state shall provide all in-**

1 **formation and material subject to disclosure under ORS 135.815 at such time before the**
2 **hearing as to allow the defendant to prepare a meaningful opportunity to contest the state's**
3 **evidence.**

4 (c) At the release hearing, unless the state stipulates to the setting of security or release, the
5 court shall make the inquiry set forth in paragraph (a) of this subsection. The state has the burden
6 of producing evidence at the release hearing subject to ORS 40.015 (4).

7 (d) The defendant may be represented by counsel and may present evidence on any relevant is-
8 sue. However, the hearing may not be used for purposes of discovery.

9 (e) If the court determines that the defendant is eligible for release in accordance with this
10 subsection, the court shall set security or other appropriate conditions of release.

11 (f) When a defendant who has been released violates a condition of release and the violation:

12 (A) Constitutes a new criminal offense, the court shall cause the defendant to be taken back into
13 custody and shall order the defendant held pending trial without release.

14 (B) Does not constitute a new criminal offense, the court may order the defendant to be taken
15 back into custody and may order the defendant held pending trial or may make a new release de-
16 cision.

17 (5) For purposes of this section, "violent felony" means a felony offense in which there was an
18 actual or threatened serious physical injury to the victim, or a felony sexual offense.

19 **SECTION 6. Sections 3 and 4 of this 2025 Act and the amendments to ORS 135.240 and**
20 **135.845 by sections 1 and 5 of this 2025 Act apply to prosecutions commenced on or after the**
21 **effective date of this 2025 Act.**

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