

**Enrolled**  
**Senate Bill 751**

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

CHAPTER .....

AN ACT

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

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

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

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

(2) **Except as otherwise provided in a protective order entered under ORS 135.873, or any other provision of law prohibiting or restricting the disclosure of specific material or information,** as used in ORS 135.805 to 135.873, “disclose” means [*to afford the adverse party an opportunity to inspect or copy the material.*] **to provide:**

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

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

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

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

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

135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall disclose to a represented defendant the following material and information within the possession or control of the district attorney:

(a) The names, [*and*] addresses **and telephone numbers** 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 statements of such persons.

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

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

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

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

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

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

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

(g) Any material or information that tends to:

(A) Exculpate the defendant;

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

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

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

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

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

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

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

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

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

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

(b) Any report relating to the test results;

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

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

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

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

(A) The defendant has requested the information; and

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

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

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

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

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

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

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

(6) As used in this section:

(a) "Personal identifiers" means:

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

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

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

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

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

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

**Passed by Senate April 22, 2021**

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House June 7, 2021**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2021

**Approved:**

.....M.,....., 2021

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2021

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Shemia Fagan, Secretary of State