

# House Bill 2468

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Association of Oregon Counties)

## 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 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 Relating to discovery; amending ORS 135.805 and 135.815.

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

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

4 135.805. (1) The provisions of ORS 135.805 to 135.873 are applicable to all criminal prosecutions  
5 in which the charging instrument has been brought in a court of record.

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

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

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

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

14 (3) **The meaning of "disclose" described in** subsection (2)(a) of this section does not apply to  
15 any material that contains depictions of sexually explicit conduct involving a child, as those terms  
16 are defined in ORS 163.665.

17 (4) **As used in ORS 135.805 to 135.873, "district attorney" includes a district attorney, a  
18 deputy district attorney, a municipal prosecutor, the Attorney General and an assistant at-  
19 torney general acting in the role of a prosecutor at the trial court level.**

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

21 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall  
22 disclose **or otherwise make available** to a represented defendant the following material and infor-  
23 mation within the possession or control of the district attorney:

24 (a) The names, addresses and telephone numbers of persons whom the district attorney intends  
25 to call as witnesses at any stage of the trial, together with their relevant written or recorded  
26 statements or memoranda of any oral statements of such persons.

27 (b) Any written or recorded statements or memoranda of any oral statements made by the de-  
28 fendant, or made by a codefendant if the trial is to be a joint one.  
29

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

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

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

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

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

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

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

14 (A) Exculpate the defendant;

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (4)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose **or oth-**  
 40 **erwise make available** to the defendant all of the information described in subsections (1) and (3)  
 41 of this section except for the personal identifiers of the victim and any witnesses.

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

- 1 (A) The defendant has requested the information; and
- 2 (B)(i) The victim or witness is a business or institution and disclosure of the information would
- 3 not represent a risk of harm to the victim or witness; or
- 4 (ii) The need for the information cannot reasonably be met by other means.
- 5 (5)(a) Unless authorized by the trial court to disclose the information, a lawyer representing a
- 6 defendant, or a representative of the lawyer, may not disclose to the defendant personal identifiers
- 7 of a victim or witness obtained under subsections (1) and (3) of this section.
- 8 (b) The trial court shall order the lawyer, or representative of the lawyer, to disclose to the
- 9 defendant the personal identifiers of a victim or witness if the court finds that:
- 10 (A) The defendant's lawyer has requested the district attorney to disclose the information to the
- 11 defendant;
- 12 (B) The district attorney has refused to disclose the information to the defendant; and
- 13 (C) The need for the information cannot reasonably be met by other means.
- 14 **(6) The district attorney may charge a fee reasonably calculated to reimburse costs be-**
- 15 **fore disclosing or otherwise providing the material or information described in this section**
- 16 **to the defendant or the defendant's lawyer. Costs that may be taken into account when cal-**
- 17 **culating the fee include but are not limited to:**
- 18 (a) **Time spent by district attorney employees reviewing, redacting, compiling, formatting**
- 19 **or otherwise preparing discovery materials.**
- 20 (b) **Physical discovery materials including paper documents, reports and photographs,**
- 21 **audio recordings, video recordings and storage media for electronically stored information**
- 22 **including compact discs, flash drives, hard drives and similar items.**
- 23 (c) **Overhead costs including wear and tear on equipment used to prepare discovery ma-**
- 24 **terials and building maintenance.**
- 25 [(6)] (7) As used in this section:
- 26 (a) "Personal identifiers" means:
- 27 (A) In relation to a witness, the witness's address, telephone number, Social Security number
- 28 and date of birth and the identifying number of the witness's depository account at a financial in-
- 29 stitution, as defined in ORS 706.008, or credit card account.
- 30 (B) In relation to a victim, the victim's address, electronic mail address, telephone number, So-
- 31 cial Security number, date of birth, any user names or other identifying information associated with
- 32 the victim's social media accounts and the identifying number of the victim's depository account at
- 33 a financial institution, as defined in ORS 706.008, or credit card account.
- 34 (b) "Representative of the lawyer" has the meaning given that term in ORS 40.225.
- 35 (c) "Represented defendant" means a defendant who is represented by a lawyer in a criminal
- 36 action.
- 37 (d) "Social media" has the meaning given that term in ORS 659A.330.
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