

House Bill 2311

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

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**.

Adds electronic mail address and cellular telephone number to list of personal identifiers of victim or witness subject to restricted discovery in criminal case.

Allows law enforcement agency to notify victim in matters relating to victim's rights via electronic mail or cellular telephone text message with written consent of victim.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1 Relating to crime; amending ORS 135.815, 147.417 and 419C.276; and declaring an emergency.

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

3 **SECTION 1.** ORS 135.815 is amended to read:

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

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

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

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

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

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

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

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

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

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

26 (A) Exculpate the defendant;

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

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

29 (2)(a) The disclosure required by subsection (1)(g) of this section shall occur without delay after

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 arraignment and prior to the entry of any guilty plea pursuant to an agreement with the state. If
 2 the existence of the material or information is not known at that time, the disclosure shall be made
 3 upon discovery without regard to whether the represented defendant has entered or agreed to enter
 4 a guilty plea.

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

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

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

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

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

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

19 (c) A copy of the form provided to the defendant under ORS 813.100 (3)(b); and

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

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

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

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

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

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

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

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

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

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

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

41 (6) As used in this section:

42 (a) "Personal identifiers" means a person's address, **electronic mail address**, telephone number,
 43 **cellular telephone number**, Social Security number and date of birth and the identifying number
 44 of a person's depository account at a financial institution, as defined in ORS 706.008, or credit card
 45 account.

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

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

4 **SECTION 2.** ORS 419C.276 is amended to read:

5 419C.276. (1)(a) Unless authorized by the court to disclose the information, the attorney of a
6 youth or youth offender, or an agent of the attorney, may not disclose to the youth or youth offender
7 personal identifiers of a victim or witness.

8 (b) The court shall order the attorney, or agent of the attorney, to disclose to the youth or youth
9 offender the personal identifiers of a victim or witness if the court finds that:

10 (A) The attorney of the youth or youth offender has requested the district attorney or the ju-
11 venile department to disclose the information to the youth or youth offender;

12 (B) The district attorney or the juvenile department has refused to disclose the information to
13 the youth or youth offender; and

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

15 (2) If contacted by the attorney of the youth or youth offender, an agent of the youth or youth
16 offender, or an agent of the attorney of the youth or youth offender, a victim must be clearly in-
17 formed by the attorney or agent, either in person or in writing:

18 (a) Of the identity and capacity of the person contacting the victim;

19 (b) That the victim does not have to talk to the attorney or agent, or provide other discovery
20 unless the victim wishes; and

21 (c) That the victim may have a representative of the state present during any interview.

22 (3) Unless the victim consents after receiving a full advice of rights as provided in subsection
23 (2) of this section, a victim may not be required to be interviewed or deposed by or give discovery
24 to the youth or youth offender or the attorney for the youth or youth offender, or an agent of the
25 attorney or youth or youth offender. This subsection does not prohibit the youth or youth offender
26 from:

27 (a) Subpoenaing or examining the victim in a proceeding when the purpose is other than for
28 discovery; or

29 (b) Subpoenaing books, papers or documents as provided in ORS 136.580.

30 (4) Any preadjudication release order must prohibit any contact with the victim, either directly
31 or indirectly, unless specifically authorized by the court. This subsection does not limit contact by
32 the attorney for the youth or youth offender, or an agent of the attorney, other than the youth or
33 youth offender, in the manner set forth in subsection (2) of this section.

34 (5)(a) If a victim notifies the district attorney or juvenile department that the youth or youth
35 offender, by direct or indirect contact, threatened or intimidated the victim, the district attorney
36 or juvenile department shall notify the court and the attorney for the youth or youth offender. If the
37 youth or youth offender is not in custody and the court finds there is probable cause to believe the
38 victim has been threatened or intimidated by the youth or youth offender, by direct or indirect
39 contact, the court shall immediately issue an order to show cause why the release status should not
40 be revoked.

41 (b) After conducting a hearing as the court deems appropriate, if the court finds that the victim
42 has been threatened or intimidated by the youth or youth offender, by direct or indirect contact, the
43 release status shall be revoked and the youth or youth offender shall be held in detention until
44 conditions of release sufficient to ensure the safety of the victim and the community can be imple-
45 mented.

1 (c) In any hearing convened under this subsection, the victim has the right to be notified in
2 advance of the hearing, to appear personally at the hearing and, if present, to express any views
3 relevant to the issues before the court.

4 (6)(a) For purposes of subsections (4) and (5) of this section, “contact” has the meaning given
5 that term in ORS 163.730.

6 (b) For the purposes of subsection (1) of this section, “personal identifiers” means a person’s
7 address, **electronic mail address**, telephone number, **cellular telephone number**, Social Security
8 number and date of birth and the identifying number of a person’s depository account at a financial
9 institution, as defined in ORS 706.008, or credit card account.

10 **SECTION 3.** ORS 147.417 is amended to read:

11 147.417. (1) As soon as is reasonably practicable in a criminal action in which there is a victim,
12 a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense
13 of the person’s rights under section 42, Article I of the Oregon Constitution. The notice may be oral
14 or written. If exercise of any of the rights depends upon the victim making a request, the law
15 enforcement agency shall include in the notice the time period in which the victim is required to
16 make the request. A law enforcement agency satisfies the requirements of this section if the law
17 enforcement agency:

18 (a) Provides notice to the victim named in the accusatory instrument, the victim’s guardian or,
19 in a homicide case, the victim’s next of kin; and

20 (b) [*Presents,*] If written notice is given, **presents** the notice directly to the victim, [*or*] sends
21 the notice to the last address given to the law enforcement agency by the victim **or, with the prior**
22 **written consent of the victim, sends the notice via electronic mail or cellular telephone text**
23 **message.**

24 (2) Failure by a law enforcement agency to properly notify the victim as required by this sec-
25 tion:

26 (a) Is not grounds for setting aside a conviction.

27 (b) Does not affect the validity of a plea, except as provided by section 42 or 43, Article I of the
28 Oregon Constitution.

29 (3) Nothing in subsection (2) of this section justifies a failure to properly notify the victim.

30 (4)(a) As used in this section, “law enforcement agency” means the police agency that initially
31 responds in the case, the police agency that investigates the case or the district attorney who
32 prosecutes the case.

33 (b) The district attorney shall determine if the notice required by this section has been given
34 and, if not, shall provide the notice.

35 **SECTION 4. This 2015 Act being necessary for the immediate preservation of the public**
36 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
37 **on its passage.**