

House Bill 2344

Sponsored by Representative GELSER (at the request of Attorney General Hardy Myers and Attorney General's Sexual Assault Task Force) (Pre-session filed.)

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**.

Requires that sexually explicit property or material involving victim of criminal act remain in control of law enforcement agency or court throughout criminal proceeding.

A BILL FOR AN ACT

1
2 Relating to discovery of sexually explicit material; creating new provisions; and amending ORS
3 135.815 and 135.825.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS 135.855 to**
6 **135.873.**

7 **SECTION 2. (1) In any criminal or juvenile proceeding, property or material that consti-**
8 **tutes or contains a visual depiction or audio recording involving a victim in a state of nudity**
9 **or engaged in sexual activity shall remain in the care, custody and control of, and may be**
10 **used for criminal justice purposes by, a law enforcement agency or the court.**

11 **(2) A court shall deny a request by a defendant to copy, photograph, duplicate or other-**
12 **wise reproduce any property or material that constitutes or contains a visual depiction or**
13 **audio recording involving a victim in a state of nudity or engaged in sexual activity if the law**
14 **enforcement agency having control over the property or material makes the property or**
15 **material reasonably available to the defendant.**

16 **(3) As used in this section:**

17 **(a) "Law enforcement agency" means:**

18 **(A) A district attorney;**

19 **(B) The Department of Justice;**

20 **(C) The Department of State Police;**

21 **(D) A county sheriff's office; or**

22 **(E) A municipal police department.**

23 **(b) "Nudity" means the uncovered, or less than opaquely covered, human genitals, pubic**
24 **area, buttocks, anus or female breast below a point immediately above the top of the areola**
25 **or the covered human male genitals in a discernibly turgid state.**

26 **(c) "Reasonably available" means that the defendant, the defendant's attorney and any**
27 **qualified expert that the defendant may seek to have testify at trial is provided ample op-**
28 **portunity to inspect, view and examine the property or material at a government facility.**

29 **(d) "Sexual activity" means:**

30 **(A) Sexual intercourse or deviate sexual intercourse;**

31 **(B) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between per-**

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 **sons of the same or opposite sex or between humans and animals;**

2 **(C) Penetration of the vagina or rectum by any object other than as part of a medical**
 3 **diagnosis or treatment or as part of a personal hygiene practice;**

4 **(D) Masturbation;**

5 **(E) Sadistic or masochistic abuse; or**

6 **(F) Any touching of the sexual or other intimate parts of a person.**

7 **(e) "Victim" has the meaning given that term in ORS 131.007.**

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

9 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873 **and section 2 of this 2009**
 10 **Act**, the district attorney shall disclose to a represented defendant the following material and in-
 11 formation within the possession or control of the district attorney:

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

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

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

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

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

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

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

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

29 (2) 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 (3)(b); and

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

39 (3)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the
 40 defendant all of the information described in subsections (1) and (2) of this section except for the
 41 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 (4)(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 (2) 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 (5) As used in this section:
15 (a) “Personal identifiers” means a person’s address, telephone number, Social Security number
16 and date of birth and the identifying number of a person’s depository account at a financial insti-
17 tution, as defined in ORS 706.008, or credit card account.
18 (b) “Representative of the lawyer” has the meaning given that term in ORS 40.225.
19 (c) “Represented defendant” means a defendant who is represented by a lawyer in a criminal
20 action.
21 **SECTION 4.** ORS 135.825 is amended to read:
22 135.825. Except as otherwise provided in ORS 135.855 and 135.873 **and section 2 of this 2009**
23 **Act**, the district attorney shall disclose to the defense:
24 (1) The occurrence of a search or seizure; and
25 (2) Upon written request by the defense, any relevant material or information obtained thereby,
26 the circumstances of the search or seizure, and the circumstances of the acquisition of any specified
27 statements from the defendant.

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