

Senate Bill 487

Sponsored by Senator PROZANSKI (at the request of Dave Amesbury)

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 minor 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 sexually explicit material; creating new provisions; and amending ORS 135.815 and
3 135.825.

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 of sexually explicit conduct involving**
9 **a child shall remain in the care, custody and control of, and may be used for criminal justice**
10 **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 of sexually explicit conduct involving a child if the law enforcement agency**
14 **having control over the property or material makes the property or material reasonably**
15 **available to the defendant.**

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

17 **(a) "Child" has the meaning given that term in ORS 163.665.**

18 **(b) "Law enforcement agency" has the meaning given that term in ORS 131.550.**

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

22 **(d) "Sexually explicit conduct" has the meaning given that term in ORS 163.665.**

23 **(e) "Visual depiction" has the meaning given that term in ORS 163.665.**

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

25 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873 **and section 2 of this 2009**
26 **Act**, the district attorney shall disclose to a represented defendant the following material and in-
27 formation within the possession or control of the district attorney:

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

31 (b) Any written or recorded statements or memoranda of any oral statements made by the de-

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 fendant, or made by a codefendant if the trial is to be a joint one.

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

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

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

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

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

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

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

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

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

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

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

24 (3)(a) If a defendant is not represented by a lawyer, the district attorney shall disclose to the
25 defendant all of the information described in subsections (1) and (2) of this section except for the
26 personal identifiers of the victim and any witnesses.

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

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

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

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

35 (4)(a) Unless authorized by the trial court to disclose the information, a lawyer representing a
36 defendant, or a representative of the lawyer, may not disclose to the defendant personal identifiers
37 of a victim or witness obtained under subsections (1) and (2) of this section.

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

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

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

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

44 (5) As used in this section:

45 (a) "Personal identifiers" means a person's address, telephone number, Social Security number

1 and date of birth and the identifying number of a person's depository account at a financial insti-
2 tution, as defined in ORS 706.008, or credit card account.

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

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

6 **SECTION 4.** ORS 135.825 is amended to read:

7 135.825. Except as otherwise provided in ORS 135.855 and 135.873 **and section 2 of this 2009**
8 **Act**, the district attorney shall disclose to the defense:

9 (1) The occurrence of a search or seizure; and

10 (2) Upon written request by the defense, any relevant material or information obtained thereby,
11 the circumstances of the search or seizure, and the circumstances of the acquisition of any specified
12 statements from the defendant.

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