

House Bill 3048

Sponsored by Representatives OLSON, GELSER; Representative KRIEGER

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 material involving minor remain in control of law enforcement agency or court throughout criminal or juvenile proceeding, provided that material is made reasonably available to defendant.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to sexually explicit material; creating new provisions; amending ORS 135.815 and 135.825;
3 and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 135.855 to**
6 **135.873.**

7 **SECTION 2. (1) When a criminal or juvenile proceeding involves property or material**
8 **that constitutes or contains a visual depiction or audio recording involving a child in a state**
9 **of nudity or engaged in sexually explicit conduct, the property or material shall remain in**
10 **the care, custody and control of, and may be used for criminal justice purposes by, a law**
11 **enforcement agency or the court.**

12 **(2)(a) The state shall make all property or material described in subsection (1) of this**
13 **section that is related to the prosecution reasonably available to the defendant.**

14 **(b) A court shall deny a request by a defendant in a criminal proceeding to copy, photo-**
15 **graph, duplicate or otherwise reproduce property or material described in subsection (1) of**
16 **this section.**

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

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

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

20 **(c) "Nudity" has the meaning given that term in ORS 163.700.**

21 **(d) "Reasonably available" means that the state has provided the defendant, the**
22 **defendant's attorney and any individual the defendant may seek to qualify to furnish expert**
23 **testimony at trial, ample opportunity to inspect, view and examine the property or material**
24 **at a government facility.**

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

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

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

28 **135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873 and section 2 of this 2013**
29 **Act, the district attorney shall disclose to a represented defendant the following material and in-**
30 **formation within the possession or control of the district attorney:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (5) As used in this section:

4 (a) "Personal identifiers" means a person's address, telephone number, Social Security number
5 and date of birth and the identifying number of a person's depository account at a financial insti-
6 tution, as defined in ORS 706.008, or credit card account.

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

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

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

11 135.825. Except as otherwise provided in ORS 135.855 and 135.873 **and section 2 of this 2013**
12 **Act**, the district attorney shall disclose to the defense:

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

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

17 **SECTION 5. This 2013 Act being necessary for the immediate preservation of the public**
18 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
19 **on its passage.**

20