

Senate Bill 395

Sponsored by Senator SHIELDS (at the request of Jeff Snyder) (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 material involving minor remain in control of law enforcement agency or court throughout criminal or juvenile proceeding, provided that material is made reasonably available.

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 of sexually explicit conduct**
9 **involving a child, the property or material shall remain in the care, custody and control of,**
10 **and may be 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 described in subsection (1) of this section if the**
13 **state makes the property or material reasonably available.**

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

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

16 **(b) "Law enforcement agency" means:**

17 **(A) A law enforcement agency as defined in ORS 131.550; and**

18 **(B) The supervisory authority as defined in ORS 144.087.**

19 **(c) "Reasonably available" means that the defendant's attorney and any qualified expert**
20 **that the defendant may seek to have testify at trial are provided ample opportunity to in-**
21 **spect, 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 2013**
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.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (5) As used in this section:

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

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

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

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

8 135.825. Except as otherwise provided in ORS 135.855 and 135.873 **and section 2 of this 2013**
9 **Act**, the district attorney shall disclose to the defense:

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

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

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

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