

Senate Bill 409

Sponsored by Senator SHIELDS (Presession 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 district attorney to move court for protective order when material that depicts victim engaged in sexually explicit conduct is subject to discovery.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to sexually explicit material; amending ORS 135.873; and declaring an emergency.

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

4 **SECTION 1.** ORS 135.873 is amended to read:

5 135.873. (1) As used in this section:

6 (a) "Local government" has the meaning given that term in ORS 174.116.

7 **(b) "Nudity" has the meaning given that term in ORS 163.700.**

8 [(b)] **(c) "Sexual offense" includes but is not limited to a sex crime as defined in ORS 181.594.**

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

10 [(c)] **(e) "State government" has the meaning given that term in ORS 174.111.**

11 [(d)] **(f) "Victim" has the meaning given that term in ORS 131.007.**

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

13 (2) Upon a showing of good cause, the court may at any time order that specified disclosures
14 be denied, restricted or deferred, or make such other order as is appropriate.

15 (3) Upon request of any party, the court may permit a showing of good cause for denial or reg-
16 ulation of disclosures, or portion of such showing, to be made in camera. A record shall be made
17 of such proceedings.

18 (4) If the court enters an order granting relief following a showing in camera, the entire record
19 of the showing shall be sealed and preserved in the records of the court, to be made available to the
20 appellate court in the event of an appeal. Except for information or materials subject to an order
21 that has been entered under subsection (5), [or] (6) **or (8)** of this section, the trial court, in its dis-
22 cretion, may, after the case has been concluded, unseal matters previously sealed.

23 (5) Upon the request of a district attorney or the victim, the court shall enter a protective order
24 prohibiting any party to or attorney in, or the agent of a party to or attorney in, [*criminal pro-*
25 *ceedings involving a sexual offense, an offense involving the visual or audio recording of sexual con-*
26 *duct by a child or invasion of personal privacy under ORS 163.700*] **a criminal proceeding** from
27 copying or disseminating any information of a sexually explicit nature, including[, *but not limited to,*
28 *photographs depicting a person in a state of nudity, photographs of human genitalia,*] any information
29 of the prior sexual history of the victim [*and any visual or audio recording of the sexual*
30 *victimization*].

31 (6) Upon the request of a district attorney or the victim, unless the court finds good cause to

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 do otherwise, the court shall enter a protective order prohibiting any party to or attorney in, or the
 2 agent of a party to or attorney in, criminal proceedings involving a sexual offense, an offense in-
 3 volving the visual or audio recording of [sexual] **sexually explicit** conduct by a child or invasion
 4 of personal privacy under ORS 163.700 from copying or disseminating a visual or audio recording
 5 of the victim describing the victim's sexual victimization.

6 (7) Notwithstanding a protective order entered under subsection (5) or (6) of this section, infor-
 7 mation or materials described in subsections (5) and (6) may be copied or disseminated for the pur-
 8 pose of:

9 (a) Providing discovery;

10 (b) Submitting evidence to a grand jury, a court, an agency of state government, a local gov-
 11 ernment or a federal agency for use in judicial or administrative proceedings;

12 (c) Having the information or materials examined by an expert witness for the court, the state
 13 or any party;

14 (d) Providing copies of the information or materials to the parties' attorneys or agents; or

15 (e) Sharing the information or materials with an agency of state government for use in carrying
 16 out duties imposed on the agency by statute.

17 **(8) When property or material that constitutes or contains a visual depiction or audio**
 18 **recording of a victim in a state of nudity or engaged in sexually explicit conduct is copied**
 19 **or disseminated by the state for purposes of discovery, the district attorney shall request a**
 20 **protective order described in this subsection. If the court determines that the property or**
 21 **material constitutes or contains a visual depiction or audio recording of a person in a state**
 22 **of nudity or engaged in sexual activity, the court shall enter a protective order that:**

23 **(a) Prohibits the use of the property or material for any purpose unrelated to the crim-**
 24 **inal trial;**

25 **(b) Requires that the property or material be kept secure against theft and inadvertent**
 26 **disclosure and in a manner that deters copying or dissemination;**

27 **(c) Prohibits disclosure of the property or material to a person other than the**
 28 **defendant's attorney, the district attorney or any individual the state or the defendant may**
 29 **seek to qualify to furnish expert testimony at trial or retain in preparation for the criminal**
 30 **trial;**

31 **(d) Requires that the district attorney and the defendant's attorney serve a copy of the**
 32 **court's order on any person described in paragraph (c) of this subsection who receives the**
 33 **property or material;**

34 **(e) Requires that the district attorney and the defendant's attorney ensure that any**
 35 **person described in paragraph (c) of this subsection who receives the property or material**
 36 **sign an agreement to comply with the provisions of the order;**

37 **(f) Prohibits the defendant from viewing or possessing the property or material outside**
 38 **the presence of the defendant's attorney;**

39 **(g) Requires any person who views the property or material to certify in writing, at the**
 40 **conclusion of the criminal trial, that the person has not knowingly retained any of the**
 41 **property or material; and**

42 **(h) Requires that the district attorney and the defendant's attorney return, at the con-**
 43 **clusion of the criminal trial, all of the property or material and the executed copies of the**
 44 **agreement described in paragraph (e) of this subsection.**

45 [(8)] (9) Upon the request of the victim, the court may order that the victim be provided with

1 a copy of information or materials described in subsections (5), [and] (6) **and (8)** of this section.

2 **SECTION 2. This 2013 Act being necessary for the immediate preservation of the public**
3 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
4 **on its passage.**

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