

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3048**

1 On page 1 of the printed bill, line 2, after the first semicolon delete the  
2 rest of the line and insert “amending ORS 135.873;”.

3 Delete lines 5 through 30 and delete pages 2 and 3 and insert:

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  
9 defined in ORS 181.594.

10 **“(d) ‘Sexually explicit conduct’ has the meaning given that term in**  
11 **ORS 163.665.**

12 “[*c*] (e) ‘State government’ has the meaning given that term in ORS  
13 174.111.

14 “[*d*] (f) ‘Victim’ has the meaning given that term in ORS 131.007.

15 **“(g) ‘Visual depiction’ has the meaning given that term in ORS**  
16 **163.665.**

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

20 “(3) Upon request of any party, the court may permit a showing of good  
21 cause for denial or regulation of disclosures, or portion of such showing, to  
22 be made in camera. A record shall be made of such proceedings.

1 “(4) If the court enters an order granting relief following a showing in  
2 camera, the entire record of the showing shall be sealed and preserved in the  
3 records of the court, to be made available to the appellate court in the event  
4 of an appeal. Except for information or materials subject to an order that  
5 has been entered under subsection (5), [or] (6) **or (8)** of this section, the trial  
6 court, in its discretion, may, after the case has been concluded, unseal mat-  
7 ters previously sealed.

8 “(5) Upon the request of a district attorney or the victim, the court shall  
9 enter a protective order prohibiting any party to or attorney in, or the agent  
10 of a party to or attorney in, [*criminal proceedings involving a sexual offense,*  
11 *an offense involving the visual or audio recording of sexual conduct by a child*  
12 *or invasion of personal privacy under ORS 163.700]* **a criminal proceeding**  
13 from copying or disseminating any information of a sexually explicit  
14 nature, including[, *but not limited to, photographs depicting a person in a*  
15 *state of nudity, photographs of human genitalia,*] any information of the prior  
16 sexual history of the victim [*and any visual or audio recording of the sexual*  
17 *victimization*].

18 “(6) Upon the request of a district attorney or the victim, unless the court  
19 finds good cause to do otherwise, the court shall enter a protective order  
20 prohibiting any party to or attorney in, or the agent of a party to or attorney  
21 in, criminal proceedings involving a sexual offense, an offense involving the  
22 visual or audio recording of [*sexual*] **sexually explicit** conduct by a child  
23 or invasion of personal privacy under ORS 163.700 from copying or dissem-  
24 inating a visual or audio recording of the victim describing the victim’s  
25 sexual victimization.

26 “(7) Notwithstanding a protective order entered under subsection (5) or  
27 (6) of this section, information or materials described in subsections (5) and  
28 (6) may be copied or disseminated for the purpose of:

29 “(a) Providing discovery;

30 “(b) Submitting evidence to a grand jury, a court, an agency of state

1 government, a local government or a federal agency for use in judicial or  
2 administrative proceedings;

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

5 “(d) Providing copies of the information or materials to the parties’ at-  
6 torneys or agents; or

7 “(e) Sharing the information or materials with an agency of state gov-  
8 ernment for use in carrying out duties imposed on the agency by statute.

9 **“(8) When property or material that constitutes or contains a visual  
10 depiction or audio recording of a victim in a state of nudity or engaged  
11 in sexually explicit conduct is copied or disseminated by the state for  
12 purposes of discovery, the district attorney shall request a protective  
13 order described in this subsection. If the court determines that the  
14 property or material constitutes or contains a visual depiction or audio  
15 recording of a person in a state of nudity or engaged in sexual activity,  
16 the court shall enter a protective order that:**

17 **“(a) Prohibits the use of the property or material for any purpose  
18 unrelated to the criminal trial;**

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

22 **“(c) Prohibits disclosure of the property or material to a person  
23 other than the defendant’s attorney, the district attorney or any in-  
24 dividual the state or the defendant may seek to qualify to furnish ex-  
25 pert testimony at trial or retain in preparation for the criminal trial;**

26 **“(d) Requires that the district attorney and the defendant’s attor-  
27 ney serve a copy of the court’s order on any person described in par-  
28 agraph (c) of this subsection who receives the property or material;**

29 **“(e) Requires that the district attorney and the defendant’s attorney  
30 ensure that any person described in paragraph (c) of this subsection**

1 **who receives the property or material sign an agreement to comply**  
2 **with the provisions of the order;**

3 **“(f) Prohibits the defendant from viewing or possessing the property**  
4 **or material outside the presence of the defendant’s attorney;**

5 **“(g) Requires any person who views the property or material to**  
6 **certify in writing, at the conclusion of the criminal trial, that the**  
7 **person has not knowingly retained any of the property or material;**  
8 **and**

9 **“(h) Requires that the district attorney and the defendant’s attor-**  
10 **ney return, at the conclusion of the criminal trial, all of the property**  
11 **or material and the executed copies of the agreement described in**  
12 **paragraph (e) of this subsection.**

13 **“[(8)] (9) Upon the request of the victim, the court may order that the**  
14 **victim be provided with a copy of information or materials described in**  
15 **subsections (5), [and] (6) and (8) of this section.**

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

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