

House Bill 2593

Sponsored by Representatives OLSON, LININGER; Representatives BARKER, ESQUIVEL, WILSON, Senator BURDICK (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 proceeding or juvenile delinquency proceeding, provided that material is made reasonably available to defendant.

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 2017 Act is added to and made a part of ORS 135.855 to**
6 **135.873.**

7 **SECTION 2. (1) In any criminal proceeding, property or material that constitutes a visual**
8 **depiction of a child engaged in sexually explicit conduct must remain in the care, custody**
9 **and control of either a law enforcement agency or the court.**

10 **(2) Notwithstanding any request by the defendant or prosecuting attorney, any property**
11 **or material that constitutes a visual depiction of a child engaged in sexually explicit conduct**
12 **may not be copied, photographed, duplicated or otherwise reproduced, so long as the property**
13 **or material is made reasonably available to the parties.**

14 **(3) The defendant may view and examine property or material that constitutes a visual**
15 **depiction of a child engaged in sexually explicit conduct only while in the presence of the**
16 **defendant's attorney. If the defendant does not have an attorney, the court shall appoint an**
17 **individual who shall be present while the defendant examines the property or material.**

18 **(4) The court may order that a forensic backup of digital evidence containing the visual**
19 **depictions be produced for use by an expert only upon a showing that an expert has been**
20 **retained and is prepared to conduct a forensic examination while the forensic backup re-**
21 **mains in the care, custody and control of a law enforcement agency or the court. Upon a**
22 **substantial showing that the expert's analysis cannot be accomplished while the forensic**
23 **backup is kept within the care, custody and control of a law enforcement agency or the**
24 **court, the court may order the release of the forensic backup to the expert for analysis for**
25 **a limited time and shall specify the time limit in the order. If the release is granted, the**
26 **court shall issue a protective order setting forth conditions that are necessary to protect the**
27 **rights of the victim, to document the chain of custody and to protect physical evidence.**

28 **(5) As used in this section:**

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

30 **(b) "Law enforcement agency" has the meaning given that term in ORS 133.741.**

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 (c) “Reasonably available” means that the state has provided the defendant, the
 2 defendant’s attorney and any individual the defendant may seek to qualify to furnish expert
 3 testimony at trial, ample opportunity to inspect, view and examine the property or material
 4 at a law enforcement facility or at a neutral facility approved by the court upon request by
 5 the defendant.

6 (d) “Sexually explicit conduct” has the meaning given that term in ORS 163.665.

7 (e) “Visual depiction” has the meaning given that term in ORS 163.665.

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

9 135.815. (1) Except as otherwise provided in ORS 135.855 and 135.873 and section 2 of this 2017
 10 Act, the district attorney shall disclose to a represented defendant the following material and in-
 11 formation within the possession or control of the district attorney:

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

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

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

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

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

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

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

26 (f) All prior convictions of the defendant known to the state that would affect the determination
 27 of the defendant’s criminal history for sentencing under rules of the Oregon Criminal Justice Com-
 28 mission.

29 (g) Any material or information that tends to:

30 (A) Exculpate the defendant;

31 (B) Negate or mitigate the defendant’s guilt or punishment; or

32 (C) Impeach a person the district attorney intends to call as a witness at the trial.

33 (2)(a) The disclosure required by subsection (1)(g) of this section shall occur without delay after
 34 arraignment and prior to the entry of any guilty plea pursuant to an agreement with the state. If
 35 the existence of the material or information is not known at that time, the disclosure shall be made
 36 upon discovery without regard to whether the represented defendant has entered or agreed to enter
 37 a guilty plea.

38 (b) Nothing in subsection (1)(g) of this section:

39 (A) Expands any obligation under a statutory provision or the Oregon or United States Consti-
 40 tution to disclose, or right to disclosure of, personnel or internal affairs files of law enforcement
 41 officers.

42 (B) Imposes any obligation on the district attorney to provide material or information beyond
 43 the obligation imposed by the Oregon and United States Constitutions.

44 (3) Except as otherwise provided in ORS 135.855 and 135.873, in prosecutions for violation of
 45 ORS 813.010 in which an instrument was used to test a person’s breath, blood or urine to determine

1 the alcoholic content of the person’s blood the district attorney shall disclose to a represented de-
 2 fendant at least the following material and information within the possession or control of the dis-
 3 trict attorney:

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

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

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

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

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

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

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

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

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

20 (5)(a) Unless authorized by the trial court to disclose the information, a lawyer representing a
 21 defendant, or a representative of the lawyer, may not disclose to the defendant personal identifiers
 22 of a victim or witness obtained under subsections (1) and (3) of this section.

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

25 (A) The defendant’s lawyer has requested the district attorney to disclose the information to the
 26 defendant;

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

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

29 (6) As used in this section:

30 (a) “Personal identifiers” means a person’s address, telephone number, Social Security number
 31 and date of birth and the identifying number of a person’s depository account at a financial insti-
 32 tution, as defined in ORS 706.008, or credit card account.

33 (b) “Representative of the lawyer” has the meaning given that term in ORS 40.225.

34 (c) “Represented defendant” means a defendant who is represented by a lawyer in a criminal
 35 action.

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

37 135.825. Except as otherwise provided in ORS 135.855 and 135.873 **and section 2 of this 2017**
 38 **Act**, the district attorney shall disclose to the defense:

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

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