

VERSION 3
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LC 73

2016 Regular Session

1/4/16 (BLS/ps)

SUMMARY

Modifies law regarding inspection or copying of record of case or supplemental confidential file in juvenile court proceeding. Provides procedure for certain persons or entities not authorized to inspect or copy record or file to obtain court order allowing inspection or copying.

Applies to juvenile court proceedings pending or commenced before, on or after September 30, 2016.

Takes effect September 30, 2016.

A BILL FOR AN ACT

Relating to juveniles; creating new provisions; amending ORS 419A.255; and prescribing an effective date.

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

SECTION 1. ORS 419A.255, as amended by section 11, chapter 417, Oregon Laws 2013, section 8, chapter 439, Oregon Laws 2013, section 3, chapter 71, Oregon Laws 2014, and section 2, chapter 293, Oregon Laws 2015, is amended to read:

419A.255. (1)(a) The clerk of the court shall maintain a record of each case and a supplemental confidential file for each case, except as otherwise provided in ORS 7.120.

(b) The record of the case shall be withheld from public inspection but is open to inspection by the following:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) The child;

(C) The ward;

(D) The youth;

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.

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(E) The youth offender;

(F) The parent or guardian of the child, ward, youth or youth offender;

(G) The guardian ad litem for the parent;

(H) A person allowed to intervene in a proceeding involving the child, ward, youth or youth offender;

(I) The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in ORS 458.580, when reasonably necessary for the appointment or supervision of court appointed special advocates;

(J) The attorneys or prospective appellate attorneys for any of the persons listed in subparagraphs (B) to (I) of this paragraph;

(K) The surrogate;

(L) Service providers in the case;

(M) The district attorney or assistant attorney general representing a party in the case;

(N) The juvenile department;

(O) The Department of Human Services;

(P) The Oregon Youth Authority; and

(Q) Any other person **or entity** allowed by the court **pursuant to section 3 of this 2016 Act.**

(c) The following are entitled to copies of the record of the case:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) A party to the extent permitted under ORS 419B.875 (2) or 419C.285 (2);

(C) A guardian ad litem for a parent to the same extent the parent is permitted to copies under ORS 419B.875 (2) or 419C.285 (2);

(D) Persons listed in paragraph (b)(J) to (P) of this subsection; and

(E) Any other person **or entity** allowed by the court **pursuant to section 3 of this 2016 Act.**

(2)(a) Reports and other material relating to the child, ward, youth or youth offender's history and prognosis in the record of the case or the sup-

plemental confidential file are privileged and, except at the request of the child, ward, youth or youth offender, shall be withheld from public inspection except that inspection is permitted as set forth in subsection (1)(b) of this section and paragraph (b) of this subsection. The offer or admission of reports and other material in the record of the case or the supplemental confidential file as exhibits in a hearing or trial does not waive or otherwise change the privileged status of the reports and other material, except for purposes of the hearing or trial in which the reports and other material are offered or admitted. Once offered as an exhibit, reports and other material relating to the child, ward, youth or youth offender's history and prognosis that were maintained in the supplemental confidential file become part of the record of the case but are subject to paragraph (e) of this subsection.

(b) A supplemental confidential file is open to inspection by the following:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) The parent or guardian of the child or ward in a dependency case;

(C) The guardian ad litem for the parent of a child or ward in a dependency case;

(D) The parent or guardian of the youth or youth offender in a delinquency case if the youth or youth offender consents to, or the court authorizes, inspection;

(E) The guardian ad litem for the parent of a youth or youth offender in a delinquency case if the youth or youth offender consents to, or the court authorizes, inspection;

(F) A person allowed to intervene in a proceeding involving the child, ward, youth or youth offender;

(G) The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in ORS 458.580, when reasonably necessary for the appointment or supervision of court appointed special advocates;

(H) The surrogate;

(I) Service providers in the case;

(J) The attorneys or prospective appellate attorneys for:

(i) The child;

(ii) The ward;

(iii) The youth;

(iv) The youth offender;

(v) The parent or guardian of the child, ward, youth or youth offender;

(vi) The guardian ad litem for the parent;

(vii) A person allowed to intervene in a proceeding involving the child or ward in a dependency case; or

(viii) The court appointed special advocate and a representative of a CASA Volunteer Program as defined in ORS 458.580;

(K) The district attorney or assistant attorney general representing a party in the case;

(L) The juvenile department;

(M) The Department of Human Services;

(N) The Oregon Youth Authority; and

(O) Any other person **or entity** allowed by the court **pursuant to section 3 of this 2016 Act.**

(c) The supplemental confidential file in cases under ORS 419C.005 may be disclosed to the superintendent of the school district in which the youth offender resides or the superintendent's designee.

(d) The following are entitled to copies of material maintained in the supplemental confidential file:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) Service providers in the case;

(C) School superintendents and their designees in cases under ORS 419C.005;

(D) Attorneys designated under subsection (2)(b)(J) of this section;

(E) The district attorney or assistant attorney general representing a party in the case;

1 (F) The juvenile department;

2 (G) The Department of Human Services;

3 (H) The Oregon Youth Authority;

4 (I) The court appointed special advocate, and a representative of a CASA
5 Volunteer Program as defined in ORS 458.580, when reasonably necessary for
6 the appointment or supervision of court appointed special advocates; and

7 (J) Any other person **or entity** allowed by the court **pursuant to section**
8 **3 of this 2016 Act.**

9 (e) A person that obtains copies of material in the supplemental confi-
10 dential file pursuant to paragraph (d) of this subsection is responsible for
11 preserving the confidentiality of the material in the supplemental confiden-
12 tial file. A service provider, school superintendent or superintendent's
13 designee who obtains copies of such material shall destroy the copies upon
14 the conclusion of involvement in the case.

15 (3) Except as otherwise provided in subsection (5) of this section, no in-
16 formation appearing in the record of the case or in the supplemental confi-
17 dential file may be disclosed to any person not described in subsections (1)(b)
18 and (2)(b) of this section, respectively, without the consent of the court, ex-
19 cept for purposes of evaluating the child, ward, youth or youth offender's
20 eligibility for special education as provided in ORS chapter 343, and no such
21 information may be used in evidence in any proceeding to establish criminal
22 or civil liability against the child, ward, youth or youth offender, whether
23 such proceeding occurs after the child, ward, youth or youth offender has
24 reached 18 years of age or otherwise, except for the following purposes:

25 (a) In connection with a presentence investigation after guilt has been
26 admitted or established in a criminal court.

27 (b) In connection with a proceeding in another juvenile court concerning
28 the child, ward, youth or youth offender or an appeal from the juvenile court.

29 (4)(a) When a person described in subsection (1)(b)(M), (N), (O) or (P) of
30 this section inspects or obtains copies of reports, materials or documents
31 under this subsection or under subsection (1) or (2) of this section, the person

1 may not use or disclose the reports, materials or documents, except:

2 (A) As provided in this subsection or under subsection (1) or (2) of this
3 section;

4 (B) In the juvenile court proceeding for which the reports, materials or
5 documents were sought or disclosed;

6 (C) With the consent of the court; or

7 (D) As provided in ORS 419A.253.

8 (b) Nothing in this section prohibits the district attorney or assistant
9 attorney general representing a party in a juvenile court proceeding, the
10 juvenile department, the Department of Human Services, the Oregon Youth
11 Authority or other parties in the proceeding or their attorneys from dis-
12 closing to each other reports, materials or documents described in sub-
13 sections (1) and (2) of this section if the disclosure is reasonably necessary
14 to perform official duties related to the involvement of the child, ward, youth
15 or youth offender with the juvenile court or the juvenile department. A
16 person to whom reports, materials or documents are disclosed under this
17 subsection is subject to subsection (3) of this section.

18 (5)(a) Information contained in the supplemental confidential file that, in
19 the professional judgment of the juvenile counselor, caseworker, school su-
20 perintendent or superintendent's designee, teacher or detention worker to
21 whom the information in the supplemental confidential file has been pro-
22 vided, indicates a clear and immediate danger to another person or to society
23 shall be disclosed to the appropriate authority and the person who is in
24 danger from the child, ward, youth or youth offender.

25 (b) A person that discloses information under paragraph (a) of this sub-
26 section has immunity from any liability, civil or criminal, that might other-
27 wise be incurred or imposed for making the disclosure.

28 (c) Nothing in this subsection affects the provisions of ORS 146.750,
29 146.760, 419B.035, 419B.040 and 419B.045. The disclosure of information under
30 this subsection does not make the information admissible in any court or
31 administrative proceeding if it is not otherwise admissible.

(6) Notwithstanding any other provision of law, and subject to subsection (8) of this section, the following are not confidential and not exempt from disclosure:

(a) The name and date of birth of the youth or youth offender;

(b) The basis for the juvenile court's jurisdiction over the youth or youth offender;

(c) The date, time and place of any juvenile court proceeding in which the youth or youth offender is involved;

(d) The act alleged in the petition that if committed by an adult would constitute a crime if jurisdiction is based on ORS 419C.005;

(e) That portion of the juvenile court order providing for the legal disposition of the youth or youth offender when jurisdiction is based on ORS 419C.005;

(f) The names and addresses of the youth or youth offender's parents or guardians; and

(g) The register described in ORS 7.020 when jurisdiction is based on ORS 419C.005.

(7) Notwithstanding any other provision of law, and subject to subsection (8) of this section, when a youth has been taken into custody under ORS 419C.080, the following information shall be disclosed unless, and only for so long as, there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim:

(a) The youth's name and age and whether the youth is employed or in school;

(b) The youth offense for which the youth was taken into custody;

(c) The name and age of the adult complaining party and the adult victim, unless the disclosure of such information is otherwise prohibited or restricted;

(d) The identity of the investigating and arresting agency; and

(e) The time and place that the youth was taken into custody and whether

1 there was resistance, pursuit or a weapon used in taking the youth into
2 custody.

3 (8) Except as provided in ORS 419A.300 and unless otherwise directed by
4 the court, only the juvenile court, the county juvenile department and the
5 Oregon Youth Authority may disclose the information under subsections (6)
6 and (7) of this section if the information is subject to disclosure. The youth
7 authority may disclose only information relating to youth offenders commit-
8 ted to the youth authority by order of the juvenile court if the information
9 is subject to disclosure under subsection (6) or (7) of this section.

10 (9) Nothing in this section limits access to any juvenile court records by
11 an appellate court reviewing a juvenile court order or judgment. Appellate
12 court rules may establish procedures for appellate court access to juvenile
13 records.

14 (10) Nothing in this section prohibits the court from providing to the
15 administrator as defined in ORS 25.010 the date of entry of a judgment ter-
16 minating parental rights or the date of entry of a judgment terminating
17 wardship following entry of a judgment of adoption together with the names
18 and dates of birth of the parents and children subject to the judgment.

19 (11) In addition to any other provision in this section, the Judicial De-
20 partment may permit county or statewide access to juvenile court records
21 or information, **including audio and video recordings**, by county juvenile
22 departments, the Department of Human Services, the Oregon Youth Author-
23 ity, district attorney offices, the office of the Attorney General, the office
24 of public defense services, prospective appellate attorneys or public defense
25 providers subject to the following restrictions:

26 (a) A prospective appellate attorney or public defense provider granted
27 access under this subsection must agree, pursuant to a written agreement
28 with the Judicial Department, to access:

29 (A) Party information only for purposes of conflicts screening procedures;
30 and

31 (B) Other records or information about a client only as reasonably nec-

1 essary for the representation of that client in any juvenile case in which the
2 client is a party, subject to applicable state and federal confidentiality laws.

3 (b) Any other person or entity granted access under this subsection must
4 agree, pursuant to a written agreement with the department, to access re-
5 cords or information only as authorized and allowed by this section, subject
6 to applicable state and federal confidentiality laws.

7 (c) The State Court Administrator shall prescribe standards and proce-
8 dures to implement the provisions of this subsection.

9 (d) Any person or entity granted access to juvenile court records or in-
10 formation under this subsection must preserve the confidentiality of that
11 information as required under this section.

12 (12) A petition filed under ORS 419B.851 alleging that a child who is a
13 foreign national is within the jurisdiction of the court, or a motion request-
14 ing an implementation plan other than return of a ward to the ward's parent,
15 is subject to disclosure to the consulate for the child or ward's country as
16 provided under ORS 419B.851 (3).

17 (13) Nothing in this section prohibits a guardian appointed under ORS
18 419B.365 or 419B.366 from disclosing or providing copies of letters of
19 guardianship when so required to fulfill the duties of a guardian.

20 (14) The court shall cooperate in the sharing of information with a court
21 in another state to facilitate an interstate placement of a child or ward.

22 (15) Nothing in this section prohibits the Chief Justice of the Supreme
23 Court, the Chief Judge of the Court of Appeals or a presiding judge from
24 permitting access to juvenile court records, including the record of the case
25 and the supplemental confidential file in a juvenile court proceeding, or au-
26 dio or video recordings of a juvenile court proceeding, by researchers or
27 evaluators for the purposes of developing statistics and performing analyses
28 or audits on the effectiveness, cost and other areas of public interest re-
29 garding juvenile court programs and activities in accordance with child
30 welfare and juvenile justice state plans and programs related to Title IV-B
31 and IV-E of the Social Security Act and to the Child Abuse Prevention and

1 Treatment Act (42 U.S.C. 5101 et seq). The Chief Justice shall, by rule or
 2 order, establish standards and guidelines for the release of juvenile court
 3 information for research and evaluation purposes to ensure confidentiality
 4 consistent with state and federal law and to promote consistent statewide
 5 application of this subsection. Statistics and analyses released by research-
 6 ers and evaluators under this subsection may not contain any information
 7 that identifies any individual person involved in a juvenile court proceeding.

8 **(16)(a) A child, ward, youth or youth offender, or the parent or**
 9 **guardian of a child, ward, youth or youth offender who is a party to**
 10 **the juvenile court proceeding, who is entitled to inspect or copy the**
 11 **record of the case under subsection (1)(b) and (c) of this section**
 12 **maintains the right to inspect or copy the record of the case after ju-**
 13 **risdiction of the court over the child, ward, youth or youth offender**
 14 **terminates and after the child, ward, youth or youth offender has**
 15 **reached the age of majority.**

16 **(b) Notwithstanding ORS 419B.524, a parent or guardian of a child,**
 17 **ward, youth or youth offender whose parental rights have been ter-**
 18 **minated maintains the right that existed under subsection (1)(b) and**
 19 **(c) of this section to inspect or copy the record of the case as the re-**
 20 **cord of the case existed up until the time of entry of the judgment**
 21 **terminating the parent's or guardian's parental rights.**

22 **(17) When inspection or copying of the record of the case or of the**
 23 **supplemental confidential file is allowed pursuant to this section, and**
 24 **unless otherwise required by law, the court that maintains the record**
 25 **of the case or the supplemental confidential file is not required to**
 26 **redact the names of, or information about, siblings or other persons**
 27 **contained in the record of the case or the supplemental confidential**
 28 **file.**

29 **SECTION 2. Section 3 of this 2016 Act is added to and made a part**
 30 **of ORS chapter 419A.**

31 **SECTION 3. (1) Any person or entity not included in ORS 419A.255**

as a person or entity entitled to inspection or copying of the record of the case or the supplemental confidential file may file a motion with the court to inspect or copy the record of the case or the supplemental confidential file. The person or entity filing the motion shall file a sworn affidavit or declaration under penalty of perjury that states all of the following:

(a) The reasons why the inspection or copying is sought;

(b) The relevancy, if any, of the inspection or copying to the juvenile court proceeding; and

(c) How the inspection or copying will serve to balance the interests listed in subsection (6) of this section.

(2)(a) No later than 14 days before the court considers the motion, the person or entity filing the motion shall serve all parties to the juvenile court proceeding with a copy of the motion and affidavit or declaration. Except as provided in paragraph (b) of this subsection and regardless of whether the juvenile court proceeding was commenced under ORS chapter 419B or 419C, service under this subsection must be consistent with the provisions of ORS 419B.851 and 419B.854. The person or entity filing the motion shall also provide all parties with written notice that the party has until 14 days after the date of service to file a response or objection to the motion or such other time as specified by the court under paragraph (c) of this subsection.

(b) If the affidavit or declaration of the person or entity filing the motion states that the person or entity does not know the identity or address of a party, the court shall mail notice of the time to respond or object to the party at the party's last known address and shall note in the register the date the notice was mailed. The notice must be mailed at least 14 days before the court considers the motion or such other time as specified by the court under paragraph (c) of this subsection.

(c) On its own motion or upon application of the person or entity

1 filing the motion, and for good cause shown, the court may reduce or
2 extend the time for service of the motion and affidavit or declaration.

3 (3) The court may summarily deny the motion if the requirements
4 of subsections (1) and (2) of this section have not been met.

5 (4) The court may set a hearing to consider the motion and shall
6 send notice of the time and place of the hearing to all parties.

7 (5) Upon determination by the court that the person or entity filing
8 the motion has met the requirements of subsections (1) and (2) of this
9 section, the court shall conduct an in camera review, taking into
10 consideration any response or objections made by a party.

11 (6) Following the in camera review under subsection (5) of this
12 section, in making the determination of whether to allow inspection
13 or copying of the record of the case or the supplemental confidential
14 file, in whole or in part, the court shall weigh the following interests:

15 (a) The privacy interests and particular vulnerabilities of the child,
16 ward, youth or youth offender, or of family members, that may be
17 affected by the inspection or copying of all or part of the record of the
18 case or the supplemental confidential file;

19 (b) The interests of the other parties to, or victims in, the juvenile
20 court proceeding;

21 (c) The interests of the person or entity filing the motion; and

22 (d) The interests of the public.

23 (7) In granting a motion made under this section, the court:

24 (a) Shall allow inspection or copying only as necessary to serve the
25 legitimate need of the person or entity filing the motion, as deter-
26 mined by the court;

27 (b) May limit inspection or copying to particular parts of the record
28 of the case or the supplemental confidential file;

29 (c) May specify the timing and procedure for allowing inspection
30 or copying; and

31 (d) Shall make protective orders governing use of the materials that

1 are inspected or copied.

2 SECTION 4. Section 3 of this 2016 Act and the amendments to ORS
3 419A.255 by section 1 of this 2016 Act apply to juvenile court pro-
4 ceedings pending or commenced before, on or after the effective date
5 of this 2016 Act.

6 SECTION 5. This 2016 Act takes effect on September 30, 2016.

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