

Juvenile Code Revision:
Confidentiality of Juvenile Court Records

SB 231

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From
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STATEMENT OF THE PROBLEM

ORS 419A.255 governs the confidentiality of information in the juvenile court's *legal file* ("the petition and all other papers in the nature of pleadings, motions and orders * * * and other papers filed with court") and in the court's *social history file* ("[r]eports and other material relating to the child, ward, youth or youth offender's history and prognosis"). The text of ORS 419A.255 is set out in the Appendix to this report.

The core provisions of ORS 419A.255 – subsections (1) and (2) -- apply to both dependency and delinquency proceedings and have remained substantially unchanged since they were enacted as part of the 1959 juvenile code.¹ See Or Laws 1959, ch 432, §

¹ Subsections (1) and (2) of the 1959 juvenile code are set out below:

(1) The clerk of the court shall keep a record of each case, including therein the summons and other process, the petition and all other papers in the nature of pleadings, motions, orders of the court and other papers filed with the court, but excluding reports and other materials relating to the child's history and prognosis. The record of the case shall be withheld from public inspection but shall be open to inspection by the child, his parent or guardian or other persons having a proper interest in the case, and their attorneys, or by any person authorized by the court to inspect the record.

(2) Reports and other material relating to the child's history and prognosis are privileged and, except with the consent of the court, shall not be

46. At that time, distinctions between “delinquent” and “dependent” children were thought to serve no useful purpose and the juvenile department was part of the juvenile court. *See Report of the Legislative Interim Committee on Judicial Administration, Part II – Juvenile Law, January 1, 1959, at 11-12.* Since then, the statute has been amended piecemeal in an effort to reflect changes elsewhere in the code, but the problems discussed below remain. *See, e.g., Or Laws 1993, ch 33, § 49; Or Laws 1993, ch 234, § 3; Or Laws 1995, ch 422, § 68.* A comprehensive amendment of ORS 419A.255 is long overdue. For example:

- Some “parties” to juvenile court proceedings who have a right, under ORS 419B.875 and 419C.285, to obtain *copies* of confidential juvenile court records are not expressly authorized by ORS 419A.255 to inspect or have access to these same materials. Those parties include the district attorney, DHS (the Department of Human Services), and OYA (the Oregon Youth Authority). The statute also is silent on the question of whether the district attorney, the juvenile department, OYA, and DHS may disclose to each other information obtained from the juvenile court’s legal file and social history files, notwithstanding that such disclosures are a practical necessity – and occur daily throughout the state – in both delinquency and dependency cases.
- When subsection (2) of what is now ORS 419A.255 was enacted in 1959, the juvenile department was, in effect, part of the juvenile court and was responsible for maintaining the social history file. *See Report of the Legislative Interim Committee on Judicial Administration, Part II – Juvenile Law, January 1, 1959, at 26.* However, notwithstanding that the juvenile department no longer is part of the juvenile court and the juvenile court is part of the Judicial Department, subsection (2) has *not* been amended to specify whether the juvenile court or the juvenile department is responsible for maintaining the social history file.² The social history file includes, among other things, reports submitted to the court by DHS and OYA, as required by other provisions of the juvenile code, and the court relies (at least in part) on these reports in certain disposition proceedings. There is continuing uncertainty about the responsibility for maintaining these materials and what is or is not deemed to be included in the “record on appeal” from juvenile court orders in such proceedings. *See generally, e.g., State ex rel DHS v. Nancy Marie Lewis, 193 Or App 264, 89 P 3d 1219 (2004) (record on appeal from order issued following permanency hearing).*

disclosed directly or indirectly to anyone other than the judge of the juvenile court and those acting under his direction.

See 1959 Or Laws, ch 432, § 46.

² Last year, an informal survey of the state’s juvenile courts revealed that, currently, there is no uniform procedure for keeping these records and that, in some counties, the records are not kept on file at all.

- ORS 419A.255(1) does not identify adequately what is included in the “record of the case.” For example, subsection (1) does not state whether transcripts of juvenile court proceedings are part of the record of the case, and, in March 2003, a newspaper reporter who requested a transcript found it necessary to seek a Public Records Order from the Attorney General to resolve that question. The Attorney General concluded that transcripts *are* part of the “record of the case,” under ORS 419A.255(1), and, for that reason, are confidential. *See* Public Records Order, March 5, 2003. A copy of that order is attached as part of the Appendix to this report.
- ORS 419A.255 does not make clear whether materials maintained by DHS and OYA, which are copies of or are the bases for the “reports and other material” in the juvenile court’s social history file, as described in ORS 419A.255(2), also are confidential.
- The confidentiality of court records in delinquency proceedings (ORS ch 419C) and dependency proceedings (ORS ch 419B) should be governed by separate statutes.

HISTORY OF THE PROJECT

In May 2004, the Oregon Law Commission’s Juvenile Code Revision Work Group proposed and the Oregon Law Commission approved the drafting of amendments to ORS 419A.255 to correct the problems and deficiencies outlined above. During the summer and fall of 2004, the Juvenile Code Revision Work Group’s Confidentiality Sub-Work Group, which had developed the proposal, began the task of drafting the proposed legislation.³ During the course of their work, the sub-group members discovered that, given the current structure of ORS 419A.255, it was not feasible to accomplish the goals of the proposal by using that statute as a framework for the required changes in the law. Rather, it would be necessary to draft a series of new statutes to replace ORS 419A.255, a task that could not be completed in time for the bill to be considered by the 2005 Legislature. At the same time, the sub-group members agreed that three of the problems the proposal was intended to resolve can and should be addressed immediately in the form of a “stand-alone” bill. Those problems are:

³ **Confidentiality Sub-Group Members:** Honorable Terry Leggert, Marion County Circuit Court Judge; Amy Holmes Hehn -- DDA, Multnomah County District Attorney’s Office; Karen Andall -- Oregon Youth Authority; Tim Loewen -- Yamhill County Juvenile Department; Michael Livingston (Chair) -- AAG, Oregon Department of Justice; Linda Guss -- AAG, Oregon Department of Justice; Kathie Berger, Attorney, Angela Sherbo, Attorney, Juvenile Rights Project; Harry Gilmore, DHS; Timothy Travis, Judicial Department; Nancy Miller, Judicial Department; and Bradd Swank, Judicial Department.

(1) The lack of express authority for district attorneys, assistant attorneys general, juvenile departments, OYA and DHS to have access to confidential juvenile court materials described in ORS 419A.255 (1) and (2) and to share with each other the information contained therein in connection with their official duties in a juvenile court proceeding;

(2) The lack of any requirement or procedure to insure that social history materials upon which the juvenile court relies in certain disposition hearings are identified and will be available as part of the record, if a party to the proceeding decides to appeal; and

(3) The need to clarify whether transcripts of juvenile court proceedings are confidential.

PROPOSED SOLUTION

In order to correct the three problems identified above, the Juvenile Code Revision Work Group has drafted legislation to be recommended in the 2005 Legislative Session. SECTION 2 of the proposed legislation establishes requirements for identifying and preserving for appeal the social history file materials upon which the juvenile court relies in making its disposition orders; SECTION 3 provides that the transcripts of juvenile court proceedings are confidential; and SECTION 4 authorizes district attorneys, assistant attorneys general, juvenile departments, OYA and DHS to have access to confidential juvenile court materials described in ORS 419A.255 (1) and (2) and to share with each other the information contained therein in connection with their official duties in a juvenile court proceeding. Sections 1, 2, and 3 were presession filed and compose the text of SB 231. Section 4 was completed later and is found in the SB 231-1 amendments to the bill.

CONCLUSION

Although the proposed legislation (SB 231 with SB 231-1 amendments) does not solve all of the current problems with ORS 419A.255, it does address three of the more troublesome ones and, at the same time, provides an important first step toward re-writing and re-codifying the provisions that govern the confidentiality of juvenile court records.

AMENDMENT NOTE

This bill was amended in the Senate and the House. Section 4 was added to the bill in the house as –1 amendments. This amendment was anticipated and was covered in the report above. Section 4 makes it clear that the DA, AAG, DHS, and OYA have

access to juvenile records. It also provides for the sharing of juvenile records between these persons or agencies.

Amendments made in the House were to Section 2 and Section 5 was also added. The Section 2 amendments were to clarify how materials are made part of the evidentiary record in juvenile proceedings. That is, the judge must receive the offered material as an exhibit, take judicial notice of the material, or the material must be testified to. See State exrel Department of Human Services v. Lewis, 193 or App 264 (2004). The court shall cause a list to be made that reasonably identifies information judicially noticed. Section 5 of the bill adds an emergency clause to the bill and thus the Act takes effect on its passage.