

A-Engrossed
House Bill 4146

Ordered by the House February 14
Including House Amendments dated February 14

Sponsored by Representative J SMITH; Representatives BREWER, GELSER, HARKER, KENY-GUYER, MATTHEWS, TOMEI, WEIDNER (at the request of Oregon Center for Christian Voices) (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.

Requires expungement of juvenile records for contact involving prostitution when subject was under 18 years of age at time of offense without waiting period and, if no objection is filed, without hearing.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to expungement; creating new provisions; amending ORS 419A.262; and declaring an emer-
3 gency.

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

5 **SECTION 1.** ORS 419A.262 is amended to read:

6 419A.262. (1) An expunction proceeding shall be commenced in the county where the subject
7 person resided at the time of the most recent termination.

8 (2) Upon application of either a person who is the subject of a record or a juvenile department,
9 or upon its own motion, the juvenile court shall order expunction if, after a hearing when the matter
10 is contested, it finds that:

11 (a) At least five years have elapsed since the date of the person's most recent termination;

12 (b) Since the date of the most recent termination, the person has not been convicted of a felony
13 or a Class A misdemeanor;

14 (c) No proceedings seeking a criminal conviction or an adjudication in a juvenile court are
15 pending against the person;

16 (d) The person is not within the jurisdiction of any juvenile court on the basis of a petition al-
17 leging an act or behavior as defined in ORS 419B.100 (1)(a) to (c) and (f) or 419C.005; and

18 (e) The juvenile department is not aware of any pending investigation of the conduct of the
19 person by any law enforcement agency.

20 **(3)(a) Notwithstanding subsection (2) of this section, upon application of a person who is**
21 **the subject of a record kept by a juvenile court or juvenile department, upon application of**
22 **the juvenile department, or upon its own motion, the juvenile court, after a hearing when**
23 **the matter is contested under subsection (12) of this section, shall order expunction if it finds**
24 **that:**

25 **(A) The application requests expunction of only that part of the person's record that in-**
26 **volves a charge, allegation or adjudication based on conduct that if done by an adult would**

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 **constitute the crime of prostitution under ORS 167.007; and**

2 **(B) The person was under 18 years of age at the time of the conduct.**

3 **(b) Except as provided in subsections (12) and (13) of this section, there is no waiting**
4 **period required before the juvenile court orders expunction under this subsection.**

5 [(3)] (4) In the case of an application by the juvenile department or of the court acting upon its
6 own motion, expunction shall not be ordered if actual notice of expunction has not been given to
7 the person in accordance with subsection [(10)] (11) of this section unless the person has reached
8 21 years of age.

9 [(4)] (5) When a person who is the subject of a record kept by a juvenile court or juvenile de-
10 partment reaches 18 years of age, the juvenile court, after a hearing when the matter is contested,
11 shall order expunction if:

12 (a) The person never has been found to be within the jurisdiction of the court; or

13 (b) The conditions of subsection (2) **or** (3) of this section have been met.

14 [(5)] (6) Expunction shall not be ordered under this section if actual notice of expunction has
15 not been given to the person in accordance with subsection [(10)] (11) of this section unless the
16 person has reached 21 years of age.

17 [(6)] (7) Subsections [(4) and (5)] (5) **and** (6) of this section apply only to cases resulting in ter-
18 mination after September 13, 1975.

19 [(7)] (8) Notwithstanding subsections (2), (3) and [(4) to (6)] (5) **to** (7) of this section, upon ap-
20 plication of a person who is the subject of a record kept by a juvenile court or juvenile department,
21 upon application of the juvenile department, or upon its own motion, the juvenile court, after a
22 hearing when the matter is contested, may order expunction of all or any part of the person's record
23 if it finds that to do so would be in the best interests of the person and the public. In the case of
24 an application by the juvenile department or of the court acting upon its own motion, expunction
25 shall not be ordered if actual notice of expunction has not been given to the person in accordance
26 with subsection [(10)] (11) of this section unless the person has reached 21 years of age.

27 [(8)] (9) When an expunction proceeding is commenced by application of the person whose re-
28 cords are to be expunged, the person shall set forth as part of the application the names of the ju-
29 venile courts, juvenile departments, institutions and law enforcement and other agencies that the
30 person has reason to believe possess an expungible record of the person. The juvenile department
31 shall provide the names and addresses of the juvenile courts, juvenile departments, institutions and
32 law enforcement and other agencies that a reasonable search of department files indicates have
33 expungible records.

34 [(9)] (10) When an expunction proceeding is commenced by application of the juvenile depart-
35 ment or upon the court's own motion, the application or motion shall set forth the names and ad-
36 dresses of the juvenile courts, juvenile departments, institutions and law enforcement and other
37 agencies that a reasonable search of department files indicates have expungible records and those
38 provided by the subject person.

39 [(10)(a)] (11)(a) Notice and a copy of an application for expunction under subsections (2) to
40 [(7)] (8) of this section shall be given to:

41 (A) The district attorney of the county in which the expunction proceeding is commenced and
42 the district attorney of each county in which the record sought to be expunged is kept; and

43 (B) The person who is the subject of the record if the person has not initiated the expunction
44 proceeding.

45 (b) A district attorney who receives notice under this subsection shall notify the victim of the

1 acts that resulted in the disposition that is the subject of the application for expunction and shall
2 mail a copy of the application for expunction to the victim's last known address.

3 [(11)] **(12)(a)** Within 30 days of receiving the notice of application for expunction under sub-
4 section [(10)] **(11)** of this section, a district attorney shall give written notice of any objection and
5 the grounds therefor to the person whose records are to be expunged and to the juvenile court.

6 **(b) Except as provided in subsection (13)(c) of this section,** if no objection is filed the court
7 may decide the issue of expunction either without a hearing or after full hearing [pursuant to] **under**
8 subsections [(12) to (15)] **(13) to (16)** of this section.

9 [(12)] **(13)** When an expunction is pending [pursuant to] **under** subsections (2) to [(7)] **(8)** of this
10 section, the court may proceed with or without a hearing, except that:

11 (a) The court may not enter an expunction judgment without a hearing if a timely objection to
12 expunction has been filed [pursuant to] **under** subsection [(11)] **(12)** of this section; [and]

13 (b) The court may not deny an expunction without a hearing if the proceeding is based on an
14 application of the subject; **and**

15 **(c) The court shall proceed without a hearing if:**

16 **(A) No objection is filed under subsection (12) of this section;**

17 **(B) The application requests expunction of only that part of the person's record that in-**
18 **volves a charge, allegation or adjudication based on conduct that if done by an adult would**
19 **constitute the crime of prostitution under ORS 167.007; and**

20 **(C) The person was under 18 years of age at the time of the conduct.**

21 [(13)(a)] **(14)(a)** Notice of a hearing on a pending expunction shall be served on the subject and
22 any district attorney filing a timely objection [pursuant to] **under** subsection [(11)] **(12)** of this sec-
23 tion.

24 (b) When a district attorney receives notice of a hearing for expunction of a record concerning
25 a youth or youth offender proceeding under ORS chapter 419C, if the victim of the acts that resulted
26 in the disposition that is the subject of the application for expunction requests, the district attorney
27 shall mail notice of the hearing to the victim's last-known address.

28 [(14)] **(15)** The court shall conduct a hearing on a pending expunction in accord with the pro-
29 visions of ORS 419B.195, 419B.198, 419B.201, 419B.205, 419B.208, 419B.310, 419B.812 to 419B.839 and
30 419B.908. Rules of evidence shall be as in a hearing to establish juvenile court jurisdiction and as
31 defined in ORS 419B.310 (3) and 419C.400 (2). The burden of proof shall be with the party contesting
32 expunction.

33 [(15)] **(16)** At the conclusion of a hearing on a pending expunction, the court shall issue judg-
34 ment granting or denying expunction.

35 [(16)] **(17)** The juvenile court or juvenile department shall send a copy of an expunction judg-
36 ment to each agency subject to the judgment. Upon receipt of a copy of the judgment, the agency
37 shall comply and, within 21 days of the date of receipt, return the copy to the juvenile court or ju-
38 venile department with an indorsement indicating compliance.

39 [(17)] **(18)** When all agencies subject to an expunction judgment have indicated their compliance
40 or in any event no later than six weeks following the date the judgment was delivered as required
41 by subsection [(16)] **(17)** of this section, the juvenile court shall provide the person who is the sub-
42 ject of the record with a copy of the expunction judgment, a list of complying and noncomplying
43 agencies, and a written notice of rights and effects of expunction. The juvenile court and juvenile
44 department then shall expunge forthwith all records which they possess and which are subject to
45 the judgment, except the original expunction judgment and the list of complying and noncomplying

1 agencies which must be preserved under seal.

2 [(18)] (19) In addition to those agencies identified in ORS 419A.260 (1)(d), the juvenile, circuit,
3 municipal and justice courts, and the district and city attorneys of this state, are bound by an
4 expunction judgment of any juvenile court of appropriate jurisdiction in this state issuing an
5 expunction judgment.

6 [(19)] (20) Upon entry of an expunction judgment, the contact that is the subject of the expunged
7 record shall not be disclosed by any agency. An agency that is subject to an expunction judgment
8 shall respond to any inquiry about the contact by indicating that no record or reference concerning
9 the contact exists.

10 [(20)] (21) A person who is the subject of a record that has been expunged under this section
11 may assert that the record never existed and that the contact, which was the subject of the record,
12 never occurred without incurring a penalty for perjury or false swearing under the laws of this
13 state.

14 [(21)] (22) Juvenile courts, by court rule or by order related to a particular matter, may direct
15 that records concerning a subject person be destroyed. No [such] records shall be destroyed until
16 at least three years have elapsed after the date of the subject's most recent termination. In the
17 event the record has been expunged, the expunction judgment and list of complying and noncom-
18 plying agencies may not be destroyed, but shall be preserved under seal. The destruction of records
19 under this subsection does not constitute expunction.

20 [(22)] (23) An expunction judgment and list of complying and noncomplying agencies shall be
21 released from confidentiality only on order of the court originating the expunction judgment, based
22 on a finding that review of a particular case furthers compliance with the expunction provisions of
23 this chapter.

24 [(23)] (24) A subject has a right of action against any person who intentionally violates the
25 confidentiality provisions of this section. In [any such] the proceeding, punitive damages up to an
26 amount of \$1,000 may be sought in addition to any actual damages. The prevailing party shall be
27 entitled to costs and reasonable attorney fees.

28 [(24)] (25) Intentional violation of the confidentiality provisions of this section by a public em-
29 ployee is cause for dismissal.

30 [(25)] (26) A person who intentionally releases all or part of an expunged record commits a Class
31 C misdemeanor.

32 **SECTION 2. The amendments to ORS 419A.262 by section 1 of this 2012 Act apply to ap-
33 plications for expunction made on or after the effective date of this 2012 Act that involve
34 terminations that occurred before, on or after the effective date of this 2012 Act.**

35 **SECTION 3. This 2012 Act being necessary for the immediate preservation of the public
36 peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect
37 on its passage.**

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