

# Enrolled House Bill 2127

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Attorney General's Crime Victims' Juvenile Code Workgroup)

CHAPTER .....

AN ACT

Relating to victims of juvenile crime; creating new provisions; and amending ORS 135.953, 181.607, 419A.004, 419A.256, 419A.262, 419C.097, 419C.100, 419C.106, 419C.142, 419C.145, 419C.153, 419C.173, 419C.176, 419C.230, 419C.255, 419C.261, 419C.270, 419C.450, 419C.653 and 420A.122.

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

**SECTION 1. Sections 2 and 3 of this 2007 Act are added to and made a part of ORS chapter 419C.**

**SECTION 2. (1)(a) The victim of any act alleged in a petition filed under this chapter may be present at and, upon request, must be informed in advance of critical stages of the proceedings held in open court when the youth or youth offender will be present.**

**(b) The victim must be informed of any constitutional rights of the victim. Except as provided in ORS 147.417, the district attorney or juvenile department must ensure that victims are informed of their constitutional rights. If a victim requests, the district attorney or juvenile department must support the victim in exercising the victim's constitutional rights.**

**(2)(a) The victim has the right, upon request, to be notified in advance of or to be heard at:**

- (A) A detention or shelter hearing;**
- (B) A hearing to review the placement of the youth or youth offender; or**
- (C) A dispositional hearing.**
- (b) For a release hearing, the victim has the right:**
  - (A) Upon request, to be notified in advance of the hearing;**
  - (B) To appear personally at the hearing; and**
  - (C) If present, to reasonably express any views relevant to the issues before the court.**
- (c) Failure to notify the victim of a hearing under this subsection or failure of the victim to appear at the hearing does not affect the validity of the proceeding.**

**(3) If the victim is not present at a critical stage of the proceeding, the court shall ask the district attorney or juvenile department whether the victim requested to be notified of critical stages of the proceedings. If the victim requested to be notified, the court shall ask the district attorney or juvenile department whether the victim was notified of the date, time and place of the hearing. The validity of the proceeding is not affected by the failure to notify the victim of a hearing or failure of the victim to appear at a hearing that is a critical stage**

of the proceeding, including but not limited to hearings under ORS 135.953, 181.607, 419A.262, 419C.097, 419C.142, 419C.173, 419C.450, 419C.261 or 419C.653.

(4) As used in this section:

(a) "Critical stage of the proceeding" means a hearing that:

(A) Affects the legal interests of the youth or youth offender;

(B) Is held in open court; and

(C) Is conducted in the presence of the youth or youth offender.

(b) "Critical stage of the proceeding" includes, but is not limited to:

(A) Detention and shelter hearings;

(B) Hearings to review placements;

(C) Hearings to set or change conditions of release;

(D) Hearings to transfer proceedings or to transfer parts of proceedings;

(E) Waiver hearings;

(F) Adjudication and plea hearings;

(G) Dispositional hearings, including but not limited to restitution hearings;

(H) Review or dispositional review hearings;

(I) Hearings on motions to amend, dismiss or set aside petitions, orders or judgments;

(J) Probation violation hearings, including probation revocation hearings, when the basis for the alleged violation directly implicates a victim's rights or well-being;

(K) Hearings for relief from the duty to report under ORS 181.607; and

(L) Expunction hearings.

(5) Nothing in this section creates a cause of action for compensation or damages. This section may not be used to invalidate an accusatory instrument, ruling of the court or otherwise suspend or terminate any proceeding at any point after the case is commenced or on appeal.

**SECTION 3.** (1) If a victim or witness requests, the court shall order that the address and telephone number of the victim or witness not be given to the youth or youth offender unless good cause is shown to the court.

(2) If contacted by the attorney of the youth or youth offender, an agent of the youth or youth offender, or an agent of the attorney of the youth or youth offender, a victim must be clearly informed by the attorney or agent, either in person or in writing:

(a) Of the identity and capacity of the person contacting the victim;

(b) That the victim does not have to talk to the attorney or agent, or provide other discovery unless the victim wishes; and

(c) That the victim may have a representative of the state present during any interview.

(3) Unless the victim consents after receiving a full advice of rights as provided in subsection (2) of this section, a victim may not be required to be interviewed or deposed by or give discovery to the youth or youth offender or the attorney for the youth or youth offender, or an agent of the attorney or youth or youth offender. This subsection does not prohibit the youth or youth offender from:

(a) Subpoenaing or examining the victim in a proceeding when the purpose is other than for discovery; or

(b) Subpoenaing books, papers or documents as provided in ORS 136.580.

(4) Any preadjudication release order must prohibit any contact with the victim, either directly or indirectly, unless specifically authorized by the court. This subsection does not limit contact by the attorney for the youth or youth offender, or an agent of the attorney, other than the youth or youth offender, in the manner set forth in subsection (2) of this section.

(5)(a) If a victim notifies the district attorney or juvenile department that the youth or youth offender, by direct or indirect contact, threatened or intimidated the victim, the district attorney or juvenile department shall notify the court and the attorney for the youth or youth offender. If the youth or youth offender is not in custody and the court finds there

is probable cause to believe the victim has been threatened or intimidated by the youth or youth offender, by direct or indirect contact, the court shall immediately issue an order to show cause why the release status should not be revoked.

(b) After conducting a hearing as the court deems appropriate, if the court finds that the victim has been threatened or intimidated by the youth or youth offender, by direct or indirect contact, the release status shall be revoked and the youth or youth offender shall be held in detention until conditions of release sufficient to ensure the safety of the victim and the community can be implemented.

(c) In any hearing convened under this subsection, the victim has the right to be notified in advance of the hearing, to appear personally at the hearing and, if present, to express any views relevant to the issues before the court.

(6) For purposes of subsections (4) and (5) of this section, "contact" has the meaning given that term in ORS 163.730.

**SECTION 4.** ORS 135.953 is amended to read:

135.953. (1) A defendant may participate in mediation as part of a diversion agreement under ORS 135.881 to 135.901.

(2) A court, including, but not limited to, a justice court, may:

(a) Authorize, in a pretrial release order, contact between a defendant and a victim as part of mediation between the defendant and the victim;

(b) Consider mediation as the basis of a compromise of crimes under ORS 135.703; or

(c) Include participation in mediation as a condition of probation under ORS 137.540.

(3) A district attorney or city attorney:

(a) May suspend prosecution of a case referred to mediation and dismiss the charges in the referred case if the defendant successfully completes the terms of the agreement resulting from the mediation; or

(b) May include, with a defendant, mediation between the defendant and the victim as part of a plea agreement entered into under ORS 135.405.

(4) A county juvenile department may include mediation between a child and a victim as one of the terms of [*an informal disposition*] **a formal accountability** agreement under ORS 419C.230 **or an authorized diversion program under ORS 419C.225.**

(5) The Department of Corrections may use mediation for the purposes of rehabilitation and treatment.

(6) Mediation may be used in any other appropriate manner in resolving disputes involving criminal matters.

**SECTION 5.** ORS 181.607 is amended to read:

181.607. (1)(a) No sooner than two years, but no later than five years, after the termination of juvenile court jurisdiction over a person required to report under ORS 181.595, 181.596 or 181.597, the person may file a petition for relief from the duty to report. The person must file the petition in the juvenile court in which the person was adjudicated for the act that requires reporting.

(b) The juvenile court in which a petition under this section is filed may transfer the matter to the juvenile court of the county that last supervised the person if the court determines that the convenience of the parties, the victim and witnesses require the transfer.

(c) The juvenile court has exclusive original jurisdiction in any proceeding under this section.

(d) The person, the district attorney and the juvenile department are parties to a hearing on a petition filed under this section.

(2) When a person files a petition under this section and the petition was filed:

(a) No later than three years after the termination of juvenile court jurisdiction, the state has the burden of proving by clear and convincing evidence that the person is not rehabilitated and continues to pose a threat to the safety of the public.

(b) More than three years, but no later than five years, after the termination of juvenile court jurisdiction, the person has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public.

(3) In determining whether the state or the person has met the burden of proof established in subsection (2) of this section, the juvenile court may consider but need not be limited to considering:

- (a) The extent and impact of any physical or emotional injury to the victim;
- (b) The nature of the act that subjected the person to the duty of reporting as a sex offender;
- (c) Whether the person used or threatened to use force in committing the act;
- (d) Whether the act was premeditated;
- (e) Whether the person took advantage of a position of authority or trust in committing the act;
- (f) The age of any victim at the time of the act, the age difference between any victim and the person and the number of victims;
- (g) The vulnerability of the victim;
- (h) Other acts committed by the person that would be crimes if committed by an adult and criminal activities engaged in by the person before and after the adjudication;
- (i) Statements, documents and recommendations by or on behalf of the victim or the parents of the victim;
- (j) The person's willingness to accept personal responsibility for the act and personal accountability for the consequences of the act;
- (k) The person's ability and efforts to pay the victim's expenses for counseling and other trauma-related expenses or other efforts to mitigate the effects of the act;
- (L) Whether the person has participated in and satisfactorily completed a sex offender treatment program or any other intervention, and if so the juvenile court may also consider:
  - (A) The availability, duration and extent of the treatment activities;
  - (B) Reports and recommendations from the providers of the treatment;
  - (C) The person's compliance with court or supervision requirements regarding treatment; and
  - (D) The quality and thoroughness of the treatment program;
- (m) The person's academic and employment history;
- (n) The person's use of drugs or alcohol before and after the adjudication;
- (o) The person's history of public or private indecency;
- (p) The person's compliance with and success in completing the terms of supervision;
- (q) The results of psychological examinations of the person;
- (r) The protection afforded the public by the continued existence of the records; and
- (s) Any other relevant factors.

(4) In a hearing under this section, the juvenile court may receive testimony, reports and other evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this section. As used in this subsection, "relevant evidence" has the meaning given that term in ORS 40.150.

(5) When a petition is filed under this section, the state has the right to have a psychosexual evaluation of the person conducted. The state shall file notice with the juvenile court of its intention to have the person evaluated. If the person objects to the evaluator chosen by the state, the juvenile court for good cause shown may direct the state to select a different evaluator.

(6) As soon as practicable after a petition has been filed under this section, the district attorney **or juvenile department** shall make a reasonable effort to notify the victim of the crime that the person has filed a petition seeking relief under this section **and, if the victim has requested, to inform the victim of the date, time and place of a hearing on the petition in advance of the hearing.**

(7)(a) When a petition has been filed under this section and the petition was filed:

(A) No later than three years after the termination of juvenile court jurisdiction, the court shall hold a hearing on the petition no sooner than 60 days and no later than 120 days after the date of filing.

(B) More than three years, but no later than five years, after the termination of juvenile court jurisdiction, the court shall hold a hearing no sooner than 90 days and no later than 150 days after the date of filing.

(b) Notwithstanding paragraph (a) of this subsection, upon a showing of good cause, the court may extend the period of time in which a hearing on the petition must be held.

(8) When the state has the burden of proof under subsection (2) of this section and proves by clear and convincing evidence that the person is not rehabilitated and continues to pose a threat to the safety of the public, the court shall deny the petition. When the person has the burden of proof under subsection (2) of this section and proves by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public, the court shall grant the petition.

(9) When a juvenile court enters an order relieving a person of the requirement to report under ORS 181.595, 181.596 or 181.597, the person shall send a certified copy of the juvenile court order to the Department of State Police.

(10) If a person commits an act that could be charged as a sex crime listed in ORS 137.707 and the person is 15, 16 or 17 years of age at the time the act is committed, the state and the person may stipulate that the person may not petition for relief under this section as part of an agreement that the person be subject to the jurisdiction of the juvenile court rather than being prosecuted as an adult under ORS 137.707.

**SECTION 6.** ORS 181.607, as amended by section 30, chapter 843, Oregon Laws 2005, is amended to read:

181.607. (1)(a) No sooner than two years, but no later than five years, after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction over a person required to report under ORS 181.595, 181.596 or 181.597, the person may file a petition for relief from the duty to report. The person must file the petition in the juvenile court in which the person was adjudicated for the act that requires reporting.

(b) The juvenile court in which a petition under this section is filed may transfer the matter to the juvenile court of the county that last supervised the person if the court determines that the convenience of the parties, the victim and witnesses require the transfer.

(c) The juvenile court has exclusive original jurisdiction in any proceeding under this section.

(d) The person, the district attorney and the juvenile department are parties to a hearing on a petition filed under this section.

(2) When a person files a petition under this section and the petition was filed:

(a) No later than three years after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction, the state has the burden of proving by clear and convincing evidence that the person is not rehabilitated and continues to pose a threat to the safety of the public.

(b) More than three years, but no later than five years, after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction, the person has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public.

(3) In determining whether the state or the person has met the burden of proof established in subsection (2) of this section, the juvenile court may consider but need not be limited to considering:

(a) The extent and impact of any physical or emotional injury to the victim;

(b) The nature of the act that subjected the person to the duty of reporting as a sex offender;

(c) Whether the person used or threatened to use force in committing the act;

(d) Whether the act was premeditated;

(e) Whether the person took advantage of a position of authority or trust in committing the act;

(f) The age of any victim at the time of the act, the age difference between any victim and the person and the number of victims;

(g) The vulnerability of the victim;

(h) Other acts committed by the person that would be crimes if committed by an adult and criminal activities engaged in by the person before and after the adjudication;

(i) Statements, documents and recommendations by or on behalf of the victim or the parents of the victim;

(j) The person's willingness to accept personal responsibility for the act and personal accountability for the consequences of the act;

(k) The person's ability and efforts to pay the victim's expenses for counseling and other trauma-related expenses or other efforts to mitigate the effects of the act;

(L) Whether the person has participated in and satisfactorily completed a sex offender treatment program or any other intervention, and if so the juvenile court may also consider:

(A) The availability, duration and extent of the treatment activities;

(B) Reports and recommendations from the providers of the treatment;

(C) The person's compliance with court, board or supervision requirements regarding treatment; and

(D) The quality and thoroughness of the treatment program;

(m) The person's academic and employment history;

(n) The person's use of drugs or alcohol before and after the adjudication;

(o) The person's history of public or private indecency;

(p) The person's compliance with and success in completing the terms of supervision;

(q) The results of psychological examinations of the person;

(r) The protection afforded the public by the continued existence of the records; and

(s) Any other relevant factors.

(4) In a hearing under this section, the juvenile court may receive testimony, reports and other evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this section. As used in this subsection, "relevant evidence" has the meaning given that term in ORS 40.150.

(5) When a petition is filed under this section, the state has the right to have a psychosexual evaluation of the person conducted. The state shall file notice with the juvenile court of its intention to have the person evaluated. If the person objects to the evaluator chosen by the state, the juvenile court for good cause shown may direct the state to select a different evaluator.

(6) As soon as practicable after a petition has been filed under this section, the district attorney **or juvenile department** shall make a reasonable effort to notify the victim of the crime that the person has filed a petition seeking relief under this section **and, if the victim has requested, to inform the victim of the date, time and place of a hearing on the petition in advance of the hearing.**

(7)(a) When a petition has been filed under this section and the petition was filed:

(A) No later than three years after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction, the court shall hold a hearing on the petition no sooner than 60 days and no later than 120 days after the date of filing.

(B) More than three years, but no later than five years, after the termination of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529, board jurisdiction, the court shall hold a hearing no sooner than 90 days and no later than 150 days after the date of filing.

(b) Notwithstanding paragraph (a) of this subsection, upon a showing of good cause, the court may extend the period of time in which a hearing on the petition must be held.

(8) When the state has the burden of proof under subsection (2) of this section and proves by clear and convincing evidence that the person is not rehabilitated and continues to pose a threat to the safety of the public, the court shall deny the petition. When the person has the burden of proof under subsection (2) of this section and proves by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public, the court shall grant the petition.

(9) When a juvenile court enters an order relieving a person of the requirement to report under ORS 181.595, 181.596 or 181.597, the person shall send a certified copy of the juvenile court order to the Department of State Police.

(10) If a person commits an act that could be charged as a sex crime listed in ORS 137.707 and the person is 15, 16 or 17 years of age at the time the act is committed, the state and the person may stipulate that the person may not petition for relief under this section as part of an agreement that the person be subject to the jurisdiction of the juvenile court rather than being prosecuted as an adult under ORS 137.707.

**SECTION 7.** ORS 419A.004 is amended to read:

419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires otherwise:

(1) "CASA Volunteer Program" means a program approved or sanctioned by the juvenile court to recruit, train and supervise volunteer persons to serve as court appointed special advocates.

(2) "Child care center" means a residential facility for wards or youth offenders that is licensed under the provisions of ORS 418.240.

(3) "Community service" has the meaning given that term in ORS 137.126.

(4) "Conflict of interest" means a person appointed to a local citizen review board who has a personal or pecuniary interest in a case being reviewed by that board.

(5) "Counselor" means a juvenile department counselor or a county juvenile probation officer.

(6) "Court" means the juvenile court.

(7) "Court appointed special advocate" or "CASA" means a person appointed by the court pursuant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.

(8) "Court facility" has the meaning given that term in ORS 166.360.

(9) "Department" means the Department of Human Services.

(10) "Detention" or "detention facility" means a facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders pursuant to a judicial commitment or order.

(11) "Director" means the director of a juvenile department established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063.

(12) "Guardian" means guardian of the person and not guardian of the estate.

(13) "Indian child" means any unmarried person less than 18 years of age who is:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(14) "Juvenile court" means the court having jurisdiction of juvenile matters in the several counties of this state.

(15) "Local citizen review board" means the board specified by ORS 419A.090 and 419A.092.

(16) "Parent" means the biological or adoptive mother and the legal father of the child, ward, youth or youth offender. As used in this subsection, "legal father" means:

(a) A man who has adopted the child, ward, youth or youth offender or whose paternity has been established or declared under ORS 109.070 or 416.400 to 416.465 or by a juvenile court; and

(b) In cases in which the Indian Child Welfare Act applies, a man who is a father under applicable tribal law.

(17) "Permanent foster care" means an out-of-home placement in which there is a long-term contractual foster care agreement between the foster parents and the department that is approved by the juvenile court and in which the foster parents commit to raise a ward in substitute care or youth offender until the age of majority.

(18) "Planned permanent living arrangement" means an out-of-home placement other than by adoption, placement with a relative or placement with a legal guardian that is consistent with the case plan and in the best interests of the ward.

(19) "Public building" has the meaning given that term in ORS 166.360.

(20) “Reasonable time” means a period of time that is reasonable given a child or ward’s emotional and developmental needs and ability to form and maintain lasting attachments.

(21) “Records” means any information in written form, pictures, photographs, charts, graphs, recordings or documents pertaining to a case.

(22) “Resides” or “residence,” when used in reference to the residence of a child, ward, youth or youth offender, means the place where the child, ward, youth or youth offender is actually living or the jurisdiction in which wardship or jurisdiction has been established.

(23) “Restitution” has the meaning given that term in ORS 137.103.

(24) “Serious physical injury” means:

(a) A serious physical injury as defined in ORS 161.015; or

(b) A physical injury that:

(A) Has a permanent or protracted significant effect on a child’s daily activities;

(B) Results in substantial and recurring pain; or

(C) In the case of a child under 10 years of age, is a broken bone.

(25) “Shelter care” means a home or other facility suitable for the safekeeping of a child, ward, youth or youth offender who is taken into temporary custody pending investigation and disposition.

(26) “Short-term detention facility” means a facility established under ORS 419A.050 (3) for holding children, youths and youth offenders pending further placement.

(27) “Substitute care” means an out-of-home placement directly supervised by the department or other agency, including placement in a foster family home, group home or other child caring institution or facility. “Substitute care” does not include care in:

(a) A detention facility, forestry camp or youth correction facility;

(b) A family home that the court has approved as a ward’s permanent placement, when a private child caring agency has been appointed guardian of the ward and when the ward’s care is entirely privately financed; or

(c) In-home placement subject to conditions or limitations.

(28) “Surrogate” means a person appointed by the court to protect the right of the child, ward, youth or youth offender to receive procedural safeguards with respect to the provision of free appropriate public education.

(29) “Tribal court” means a court with jurisdiction over child custody proceedings and that is either a Court of Indian Offenses, a court established and operated under the code of custom of an Indian tribe or any other administrative body of a tribe that is vested with authority over child custody proceedings.

**(30) “Victim” means any person determined by the district attorney or juvenile department to have suffered direct financial, psychological or physical harm as a result of an act that has brought the youth or youth offender before the juvenile court. When the victim is a minor, “victim” includes the legal guardian of the minor. The youth or youth offender may not be considered the victim. When the victim of the crime cannot be determined, the people of Oregon, as represented by the district attorney, are considered the victims.**

**(31) “Violent felony” means any offense that, if committed by an adult, would constitute a felony and:**

**(a) Involves actual or threatened serious physical injury to a victim; or**

**(b) Is a sexual offense. As used in this paragraph, “sexual offense” has the meaning given the term “sex crime” in ORS 181.594.**

[30] **(32) “Ward” means a person within the jurisdiction of the juvenile court under ORS 419B.100.**

[31] **(33) “Youth” means a person under 18 years of age who is alleged to have committed an act that is a violation, or, if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city.**

[32] **(34) “Youth care center” has the meaning given that term in ORS 420.855.**



[(33)] (35) “Youth offender” means a person who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

**SECTION 8.** ORS 419A.004, as amended by section 1, chapter 843, Oregon Laws 2005, is amended to read:

419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires otherwise:

(1) “CASA Volunteer Program” means a program approved or sanctioned by the juvenile court to recruit, train and supervise volunteer persons to serve as court appointed special advocates.

(2) “Child care center” means a residential facility for wards or youth offenders that is licensed under the provisions of ORS 418.240.

(3) “Community service” has the meaning given that term in ORS 137.126.

(4) “Conflict of interest” means a person appointed to a local citizen review board who has a personal or pecuniary interest in a case being reviewed by that board.

(5) “Counselor” means a juvenile department counselor or a county juvenile probation officer.

(6) “Court” means the juvenile court.

(7) “Court appointed special advocate” or “CASA” means a person appointed by the court pursuant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.

(8) “Court facility” has the meaning given that term in ORS 166.360.

(9) “Department” means the Department of Human Services.

(10) “Detention” or “detention facility” means a facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders pursuant to a judicial commitment or order.

(11) “Director” means the director of a juvenile department established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063.

(12) “Guardian” means guardian of the person and not guardian of the estate.

(13) “Indian child” means any unmarried person less than 18 years of age who is:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(14) “Juvenile court” means the court having jurisdiction of juvenile matters in the several counties of this state.

(15) “Local citizen review board” means the board specified by ORS 419A.090 and 419A.092.

(16) “Parent” means the biological or adoptive mother and the legal father of the child, ward, youth or youth offender. As used in this subsection, “legal father” means:

(a) A man who has adopted the child, ward, youth or youth offender or whose paternity has been established or declared under ORS 109.070 or 416.400 to 416.465 or by a juvenile court; and

(b) In cases in which the Indian Child Welfare Act applies, a man who is a father under applicable tribal law.

(17) “Permanent foster care” means an out-of-home placement in which there is a long-term contractual foster care agreement between the foster parents and the department that is approved by the juvenile court and in which the foster parents commit to raise a ward in substitute care or youth offender until the age of majority.

(18) “Planned permanent living arrangement” means an out-of-home placement other than by adoption, placement with a relative or placement with a legal guardian that is consistent with the case plan and in the best interests of the ward.

(19) “Public building” has the meaning given that term in ORS 166.360.

(20) “Reasonable time” means a period of time that is reasonable given a child or ward’s emotional and developmental needs and ability to form and maintain lasting attachments.

(21) “Records” means any information in written form, pictures, photographs, charts, graphs, recordings or documents pertaining to a case.

(22) “Resides” or “residence,” when used in reference to the residence of a child, ward, youth or youth offender, means the place where the child, ward, youth or youth offender is actually living or the jurisdiction in which wardship or jurisdiction has been established.

(23) “Restitution” has the meaning given that term in ORS 137.103.

(24) “Serious physical injury” means:

(a) A serious physical injury as defined in ORS 161.015; or

(b) A physical injury that:

(A) Has a permanent or protracted significant effect on a child’s daily activities;

(B) Results in substantial and recurring pain; or

(C) In the case of a child under 10 years of age, is a broken bone.

(25) “Shelter care” means a home or other facility suitable for the safekeeping of a child, ward, youth or youth offender who is taken into temporary custody pending investigation and disposition.

(26) “Short-term detention facility” means a facility established under ORS 419A.050 (3) for holding children, youths and youth offenders pending further placement.

(27) “Substitute care” means an out-of-home placement directly supervised by the department or other agency, including placement in a foster family home, group home or other child caring institution or facility. “Substitute care” does not include care in:

(a) A detention facility, forestry camp or youth correction facility;

(b) A family home that the court has approved as a ward’s permanent placement, when a private child caring agency has been appointed guardian of the ward and when the ward’s care is entirely privately financed; or

(c) In-home placement subject to conditions or limitations.

(28) “Surrogate” means a person appointed by the court to protect the right of the child, ward, youth or youth offender to receive procedural safeguards with respect to the provision of free appropriate public education.

(29) “Tribal court” means a court with jurisdiction over child custody proceedings and that is either a Court of Indian Offenses, a court established and operated under the code of custom of an Indian tribe or any other administrative body of a tribe that is vested with authority over child custody proceedings.

**(30) “Victim” means any person determined by the district attorney or juvenile department to have suffered direct financial, psychological or physical harm as a result of an act that has brought the youth or youth offender before the juvenile court. When the victim is a minor, “victim” includes the legal guardian of the minor. The youth or youth offender may not be considered the victim. When the victim of the crime cannot be determined, the people of Oregon, as represented by the district attorney, are considered the victims.**

**(31) “Violent felony” means any offense that, if committed by an adult, would constitute a felony and:**

**(a) Involves actual or threatened serious physical injury to a victim; or**

**(b) Is a sexual offense. As used in this paragraph, “sexual offense” has the meaning given the term “sex crime” in ORS 181.594.**

[30] (32) “Ward” means a person within the jurisdiction of the juvenile court under ORS 419B.100.

[31] (33) “Young person” means a person who has been found responsible except for insanity under ORS 419C.411 and placed under the jurisdiction of the Psychiatric Security Review Board.

[32] (34) “Youth” means a person under 18 years of age who is alleged to have committed an act that is a violation, or, if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city.

[33] (35) “Youth care center” has the meaning given that term in ORS 420.855.

[34] (36) “Youth offender” means a person who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

**SECTION 9.** ORS 419A.256 is amended to read:

419A.256. (1)(a) Once prepared and filed with the court, a transcript of a juvenile court proceeding is part of the record of the case maintained by the clerk of the court under ORS 419A.255 (1) and is subject to the provisions of ORS 419A.255 (1) and (3) governing access and disclosure.

**(b) Notwithstanding ORS 419A.255, if a transcript, audiotape or videotape has been prepared in any proceeding under ORS chapter 419C, the victim may obtain a copy by paying the actual cost of preparation.**

(2) The official audio, video or other recording of a juvenile court proceeding shall be withheld from public inspection but is open to inspection by the child, ward, youth, youth offender, parent, guardian, court appointed special advocate, surrogate or a person allowed to intervene in a proceeding involving the child, ward, youth or youth offender, and their attorneys.

**SECTION 10.** ORS 419A.262 is amended to read:

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

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

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

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

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

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

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

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

(4) When a person who is the subject of a record kept by a juvenile court or juvenile department reaches 18 years of age, the juvenile court, after a hearing when the matter is contested, shall order expunction if:

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

(b) The conditions of subsection (2) of this section have been met.

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

(6) Subsections (4) and (5) of this section [*shall*] apply only to cases [*which result*] **resulting** in termination after September 13, 1975.

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

(8) When an expunction proceeding is commenced by application of the person whose records are to be expunged, the person shall set forth as part of the application the names of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies [*which*] **that** the person has reason to believe possess an expungible record of the person. The juvenile department shall provide the names and addresses of the juvenile courts, juvenile departments, institutions and

law enforcement and other agencies [which] **that** a reasonable search of department files indicates have expungible records.

(9) When an expunction proceeding is commenced by application of the juvenile department or upon the court's own motion, the application or motion shall set forth the names and addresses of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies [which] **that** a reasonable search of department files indicates have expungible records and those provided by the subject person.

(10)(a) Notice **and a copy** of an application for expunction under subsections (2) to (7) of this section shall be given to:

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

[(b)] **(B)** The person who is the subject of the record if the person has not initiated the expunction proceeding.

**(b) A district attorney who receives notice under this subsection shall notify the victim of the acts that resulted in the disposition that is the subject of the application for expunction and shall mail a copy of the application for expunction to the victim's last known address.**

(11) Within 30 days of receiving the notice of application for expunction under subsection (10) of this section, a district attorney shall give written notice of any objection and the grounds therefor to the person whose records are to be expunged and to the juvenile court. If no objection is filed the court may decide the issue of expunction either without a hearing or after full hearing pursuant to subsections (12) to (15) of this section.

(12) When an expunction is pending pursuant to subsections (2) to (7) of this section, the court may proceed with or without a hearing, except that:

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

(b) The court may not deny an expunction without a hearing if the proceeding is based on an application of the subject.

(13)(a) Notice of a hearing on a pending expunction shall be served on the subject and any district attorney filing a timely objection pursuant to subsection (11) of this section.

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

(14) The court shall conduct a hearing on a pending expunction in accord with the provisions of ORS 419B.195, 419B.198, 419B.201, 419B.205, 419B.208, 419B.310, 419B.812 to 419B.839 and 419B.908. Rules of evidence shall be as in a hearing to establish juvenile court jurisdiction and as defined in ORS 419B.310 (3) and 419C.400 (2). The burden of proof shall be with the party contesting expunction.

(15) At the conclusion of a hearing on a pending expunction, the court shall issue judgment granting or denying expunction.

(16) The juvenile court or juvenile department shall send a copy of an expunction judgment to each agency subject to the judgment. Upon receipt of a copy of the judgment, [an] **the** agency [subject thereto] shall comply and, within 21 days of the date of receipt, return the copy to the juvenile court or juvenile department with an indorsement indicating compliance.

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

cept the original expunction judgment and the list of complying and noncomplying agencies which [shall] **must** be preserved under seal.

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

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

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

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

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

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

(24) Intentional violation of the confidentiality provisions of this section by a public employee is cause for dismissal.

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

**SECTION 11.** ORS 419C.097 is amended to read:

419C.097. (1) As soon as practicable after the youth is taken into custody under ORS 419C.080 and 419C.088, the person taking the youth into custody shall notify the youth's parent, guardian or other person responsible for the youth. The notice shall inform the parent, guardian or other person of the action taken and the time and place of the hearing.

**(2) If the victim requests, the district attorney or juvenile department shall notify the victim of the time and place of the hearing.**

**SECTION 12.** ORS 419C.100 is amended to read:

419C.100. The person taking the youth into custody under ORS 419C.080 and 419C.088 shall release the youth to the custody of the youth's parent, guardian or other responsible person in this state, except in the following cases:

(1) When the court has issued a warrant of arrest against the youth.

(2) When the person taking the youth into custody has probable cause to believe that **release of the youth may endanger** the welfare of the youth, **the victim** or others [may be endangered by the release of the youth].

(3) When the person taking the youth into custody has probable cause to believe that the youth, while in or on a public building or court facility within the last 120 days, possessed a firearm or destructive device in violation of ORS 166.250, 166.370 or 166.382.

**SECTION 13.** ORS 419C.106 is amended to read:

419C.106. (1) Except where the youth is taken into custody pursuant to an order of the court, the person taking the youth into custody under ORS 419C.080 and 419C.088 shall promptly file with the court or a counselor a brief written report stating all of the following:

- (a) The youth's name, age and address.
  - (b) The name and address of the person having legal or physical custody of the youth.
  - (c) Efforts to notify the person having legal or physical custody of the youth and the results of those efforts.
  - (d) Reasons for and circumstances under which the youth was taken into custody **and, if known, the name and contact information of any victim.**
  - (e) If the youth is not taken to court, the placement of the youth.
  - (f) If the youth was not released, the reason why the youth was not released.
  - (g) If the youth is not taken to court, why the type of placement was chosen.
- (2) The person taking the youth into custody under ORS 419C.080 and 419C.088 shall also send a copy of the report under subsection (1) of this section to the district attorney.

**SECTION 14.** ORS 419C.142 is amended to read:

419C.142. (1) Whenever a hearing concerning the detention of a youth under this chapter is held, notice of the hearing shall be given to:

- (a) The youth [*and,*];
  - (b) If any can be found, to a parent or guardian of the youth or to any other person responsible for the youth[.]; **and**
  - (c) **If the victim requests notice, the victim.**
- (2) The notice shall state the time, place and purpose of the hearing. If a parent, guardian or other person cannot be found and personally notified prior to the hearing, a written notice of the hearing shall be left at the residence, if known, of a parent, guardian or other person.

**SECTION 15.** ORS 419C.145 is amended to read:

419C.145. (1) A youth may be held or placed in detention before adjudication on the merits if one or more of the following circumstances exists:

- (a) The youth is a fugitive from another jurisdiction;
- (b) The youth is alleged to be within the jurisdiction of the court under ORS 419C.005, by having committed or attempted to commit an offense which, if committed by an adult, would be chargeable as:
  - (A) A crime involving infliction of physical injury to another person;
  - (B) A misdemeanor under ORS 166.023; or
  - (C) Any felony crime;
- (c) The youth has willfully failed to appear at one or more juvenile court proceedings by having disobeyed a proper summons, citation or subpoena;
- (d) The youth is currently on probation imposed as a consequence of the youth previously having been found to be within the jurisdiction of the court under ORS 419C.005, and there is probable cause to believe the youth has violated one or more of the conditions of that probation;
- (e) The youth is subject to conditions of release pending or following adjudication of a petition alleging that the youth is within the jurisdiction of the court pursuant to ORS 419C.005 and there is probable cause to believe the youth has violated a condition of release; [*or*]
- (f) The youth is alleged to be in possession of a firearm in violation of ORS 166.250[.]; **or**
- (g) **The youth is required to be held or placed in detention for the reasonable protection of the victim.**

(2) A youth detained under subsection (1) of this section must be released to the custody of a parent or other responsible person, released upon the youth's own recognizance or placed in shelter care unless the court or its authorized representative makes written findings that there is probable cause to believe that the youth may be detained under subsection (1) of this section, that describe why it is in the best interests of the youth to be placed in detention and that one or more of the following circumstances are present:

(a) No means less restrictive of the youth's liberty gives reasonable assurance that the youth will attend the adjudicative hearing; or

(b) The youth's behavior endangers the physical welfare of the youth, **the victim** or another person, or endangers the community.

(3) When a youth is ordered held or placed in detention, the court or its authorized representative shall state in writing the basis for its detention decision and a finding describing why it is in the best interests of the youth to be placed in detention. The youth shall have the opportunity to rebut evidence received by the court and to present evidence at the hearing.

(4) In determining whether release is appropriate under subsection (2) of this section, the court or its authorized representative shall consider the following:

(a) The nature and extent of the youth's family relationships and the youth's relationships with other responsible adults in the community;

(b) The youth's previous record of referrals to juvenile court and recent demonstrable conduct;

(c) The youth's past and present residence;

(d) The youth's education status and school attendance record;

(e) The youth's past and present employment;

(f) The youth's previous record regarding appearance in court;

(g) The nature of the charges against the youth and any mitigating or aggravating factors;

(h) The youth's mental health; [*and*]

**(i) The reasonable protection of the victim; and**

*[(i)]* **(j)** Any other facts relevant to the likelihood of the youth's appearance in court or likelihood that the youth will comply with the law and other conditions of release.

**(5) Notwithstanding subsection (2) of this section, the court may not release a youth when:**

**(a) There is probable cause to believe the youth committed an offense that, if committed by an adult, would constitute a violent felony; and**

**(b) There is clear and convincing evidence that the youth poses a danger of serious physical injury to or sexual victimization of the victim or members of the public while the youth is on release.**

**SECTION 16.** ORS 419C.153 is amended to read:

419C.153. Any youth ordered detained under ORS 419C.145, 419C.150 and 419C.156 shall have a review hearing at least every 10 days, excluding Saturdays, Sundays and judicial holidays. At the review hearing the court shall determine whether sufficient cause exists to require continued detention of the youth. In addition, the court may review and may confirm, revoke or modify any order for the detention or release of the youth under this section or ORS 419C.109, 419C.136, 419C.139, 419C.145, 419C.150 or 419C.156 and, in the event that the youth is alleged to have committed an offense which if committed by an adult would be a misdemeanor or Class C felony, may do so *ex parte*. Release of a youth may not be revoked, however, except upon a finding that the youth may be detained under this section or ORS 419C.145, 419C.150 and 419C.156, and after a hearing is held in accordance with ORS 419C.109, 419C.136 and 419C.139. **If the victim requests, the district attorney or juvenile department shall notify the victim of the review hearing.**

**SECTION 17.** ORS 419C.173 is amended to read:

419C.173. **(1)** When the youth is taken, or is about to be taken, into temporary custody pursuant to ORS 419C.080 and 419C.088 and placed in shelter care, a parent or youth shall be given the opportunity to present evidence to the court at the hearing specified in ORS 419C.170, and at any subsequent review hearing, that the youth can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication.

**(2) If the victim requests, the district attorney or juvenile department shall notify the victim of a hearing under this section.**

**(3)** At the hearing:

[(1)] (a) The court shall make a written finding as to whether reasonable efforts have been made, considering the circumstances of the youth's conduct, to prevent or eliminate the need for removal of the youth from the home;

[(2)] (b) In determining whether a youth shall be removed or continued out of the home, the court shall consider whether the provision of reasonable and available services can prevent or eliminate the need to remove the youth from the home; and

[(3)] (c) The court shall make a written finding in every order of removal that it is in the best interest of the youth and the community that the youth be removed from the home or continued in care.

**SECTION 18.** ORS 419C.176 is amended to read:

419C.176. If the court finds that release of the youth on the youth's own recognizance is unwarranted and if probable cause exists to believe that the youth may be detained under ORS 419A.063, 419C.145 or 419C.453, the court may make a conditional release of the youth subject to such conditions as will protect the safety of the youth, **the victim**, other persons and the community and insure the youth's appearance in court.

**SECTION 19.** ORS 419C.230 is amended to read:

419C.230. (1) A formal accountability agreement may be entered into when a youth has been referred to a county juvenile department, and a juvenile department counselor has probable cause to believe that the youth may be found to be within the jurisdiction of the juvenile court for one or more acts specified in ORS 419C.005.

(2) Notwithstanding subsection (1) of this section, unless authorized by the district attorney, a formal accountability agreement may not be entered into when the youth:

(a) Is alleged to have committed an act that if committed by an adult would constitute:

(A) A felony sex offense under ORS 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.425 or 163.427; or

(B) An offense involving the use or possession of a firearm, as defined in ORS 166.210, or destructive device, as described in ORS 166.382; or

(b) Is being referred to the county juvenile department for a second or subsequent time for commission of an act that if committed by an adult would constitute a felony.

**(3) The juvenile department must consult the victim before entering into a formal accountability agreement if:**

**(a) The victim has requested consultation in plea negotiations; and**

**(b) The formal accountability agreement involves an alleged act that if committed by an adult would constitute a violent felony.**

**SECTION 20.** ORS 419C.255 is amended to read:

419C.255. (1) The petition shall set forth in ordinary and concise language such of the following facts as are known and indicate any which are not known:

(a) The name, age and residence of the youth.

(b) The facts which bring the youth within the jurisdiction of the court as provided in ORS 419C.005.

(c) The name and residence of the youth's parents or, if the youth has no parents or the names and residences of both parents are unknown, then the name and address of the youth's guardian, if the youth has a guardian.

(d) The name and residence of the person having physical custody of the youth.

(2) A petition alleging jurisdiction under ORS 419C.005 shall set forth in addition the name [*and city of residence if known*] of any person who was physically injured or who suffered loss of or damage to property as a result of the conduct alleged.

**SECTION 21.** ORS 419C.270 is amended to read:

419C.270. In all proceedings brought under ORS 419C.005, the following rules of criminal procedure apply:

(1) ORS 133.673, 133.693 and 133.703;

(2) ORS 135.455, 135.465 and 135.470;



- (3) ORS 135.610, 135.630 (3) to (6), 135.640 and 135.670;
- (4) ORS 135.711, 135.713, 135.715, 135.717, 135.720, 135.725, 135.727, 135.730, 135.733, 135.735, 135.737, 135.740 and 135.743;
- (5) ORS 135.805 and 135.815 (1)(a) to (e);
- (6) ORS 135.825, 135.835, 135.845 and 135.855 to 135.873;
- [(7) *ORS 135.970*;] and
- [(8)] (7) ORS 136.432[, 147.417, 147.419 and 147.421].

**SECTION 22.** ORS 419C.450 is amended to read:

419C.450. (1)(a) It is the policy of the State of Oregon to encourage and promote the payment of restitution and other obligations by youth offenders as well as by adult offenders. In any case within the jurisdiction of the juvenile court pursuant to ORS 419C.005 in which the youth offender caused another person any physical, emotional or psychological injury or any loss of or damage to property, **the victim has the right to receive prompt restitution.** The district attorney shall investigate and present to the court, prior to or at the time of adjudication, evidence of the nature and amount of the injury, loss or damage. If the court finds from the evidence presented that a victim suffered injury, loss or damage, in addition to any other sanction it may impose, the court shall:

(A) Include in the judgment a requirement that the youth offender pay the victim restitution in a specific amount that equals the full amount of the victim's injury, loss or damage as determined by the court; or

(B) Include in the judgment a requirement that the youth offender pay the victim restitution, and that the specific amount of restitution will be established by a supplemental judgment based upon a determination made by the court within 90 days of entry of the judgment. In the supplemental judgment, the court shall establish a specific amount of restitution that equals the full amount of the victim's injury, loss or damage as determined by the court. The court may extend the time within which the determination and supplemental judgment may be completed for good cause. The lien, priority of the lien and ability to enforce a specific amount of restitution established under this subparagraph by a supplemental judgment relates back to the date of the original judgment that is supplemented.

(b) After the district attorney makes a presentation described in paragraph (a) of this subsection, if the court is unable to find from the evidence presented that a victim suffered injury, loss or damage, the court shall make a finding on the record to that effect.

(c) No finding made by the court or failure of the court to make a finding under this subsection limits or impairs the rights of a person injured to sue and recover damages in a civil action under subsection (2) of this section.

(d) The court may order restitution, including but not limited to counseling and treatment expenses, for emotional or psychological injury under this section only:

(A) When the act that brought the youth offender within the jurisdiction of the court would constitute aggravated murder, murder or a sex crime if committed by an adult; and

(B) For an injury suffered by the victim or a member of the victim's family who observed the act.

**(e) If the youth offender will be present at a hearing under this subsection and the victim requests notice, the district attorney or juvenile department shall notify the victim of the hearing.**

(2) Restitution for injury inflicted upon a person by the youth offender, for property taken, damaged or destroyed by the youth offender and for a reward offered by the victim or an organization authorized by the victim and paid for information leading to the apprehension of the youth offender, shall be required as a condition of probation. Restitution does not limit or impair the right of a victim to sue in a civil action for damages suffered, nor shall the fact of consultation by the victim be admissible in such civil action to prove consent or agreement by the victim. However, the court shall credit any restitution paid by the youth offender to a victim against any judgment in favor of the victim in such civil action. Before setting the amount of such restitution, the court shall

notify the person upon whom the injury was inflicted or the owner of the property taken, damaged or destroyed and give such person an opportunity to be heard on the issue of restitution.

(3) If a judgment or supplemental judgment described in subsection (1) of this section includes restitution, a court may delay the enforcement of the monetary sanctions, including restitution, only if the youth offender alleges and establishes to the satisfaction of the court the youth offender's inability to pay the judgment in full at the time the judgment is entered. If the court finds that the youth offender is unable to pay, the court may establish or allow an appropriate supervising authority to establish a payment schedule, taking into consideration:

(a) The availability to the youth offender of paid employment during such time as the youth offender may be committed to a youth correction facility;

(b) The financial resources of the youth offender and the burden that payment of restitution will impose, with due regard to the other obligations of the youth offender;

(c) The present and future ability of the youth offender to pay restitution on an installment basis or on other conditions to be fixed by the court; and

(d) The rehabilitative effect on the youth offender of the payment of restitution and the method of payment.

(4) Notwithstanding ORS 419C.501 and 419C.504, when the court has ordered a youth offender to pay restitution, as provided in this section, the judgment shall be entered in the register or docket of the court in the manner provided by ORS chapter 18 and enforced in the manner provided by ORS 18.252 to 18.993. The judgment is in favor of the state and may be enforced only by the state. Notwithstanding ORS 419A.255, a judgment for restitution entered under this subsection is a public record. Judgments entered under this subsection are subject to ORS 18.048.

(5) A person required to pay restitution under subsection (1) of this section may file a motion supported by an affidavit for satisfaction of the judgment or supplemental judgment requiring payment of restitution in the circuit court of the county in which the original judgment was entered if:

(a) At least 50 percent of the monetary obligation is satisfied or at least 10 years have passed since the original judgment was entered;

(b) The person has substantially complied with all established payment plans;

(c) The person has not been found to be within the jurisdiction of the juvenile court under ORS 419C.005 or convicted of an offense since the date the original judgment of restitution was entered; and

(d) The person has satisfactorily completed any required period of probation or parole for the act for which the judgment of restitution was entered.

(6) When a person files a motion described in subsection (5) of this section, the district attorney for the county in which the motion was filed shall promptly notify the victim for whose benefit the judgment of restitution was entered that the person has filed the motion and that the victim may object in writing to the motion through the district attorney.

(7) If the victim does not object to the motion as provided in subsection (6) of this section, the court shall hold a hearing on the motion and may enter an order granting a full or partial satisfaction if the allegations in the affidavit supporting the motion are true and failure to grant the motion would result in an injustice. In determining whether an injustice would result, the court shall take into account:

(a) The financial resources of the defendant and the burden that continued payment of restitution will impose, with due regard to the other obligations of the defendant;

(b) The ability of the defendant to continue paying restitution on an installment basis or under other conditions to be fixed by the court; and

(c) The rehabilitative effect on the defendant of the continued payment of restitution and the method of payment.

(8) A person may file a motion under subsection (5) of this section no more than one time per year for each judgment of restitution entered against the person.

**SECTION 23.** ORS 419C.261 is amended to read:

419C.261. (1) The court, on motion of an interested party or on its own motion, may at any time direct that the petition be amended. If the amendment results in a substantial departure from the facts originally alleged, the court shall grant such continuance as the interests of justice may require. When the court directs the amendment of a petition alleging that a youth has committed an act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court shall make written findings stating the reason for directing the amendment.

(2)(a) The court may set aside or dismiss a petition filed under ORS 419C.005 in furtherance of justice after considering the circumstances of the youth and the interests of the state in the adjudication of the petition.

**(b) If the victim requests notice, the district attorney or juvenile department shall notify the victim of a hearing to amend the petition in advance of the hearing.**

(c) When the court sets aside or dismisses a petition alleging that a youth has committed an act that would constitute a sex crime, as defined in ORS 181.594, if committed by an adult, the court shall make written findings stating the reason for setting aside or dismissing the petition.

**(3) The district attorney or juvenile department must consult the victim regarding plea negotiations if:**

**(a) The victim has requested to be consulted regarding plea negotiations;**

**(b) The petition alleges the youth committed an act that would constitute a violent felony, as defined in ORS 419A.004, if committed by an adult; and**

**(c) The negotiations could lead to an amendment of the petition for purposes of obtaining an admission from the youth.**

**SECTION 24.** ORS 419C.653 is amended to read:

419C.653. (1) The court may order that the youth offender or any other person be present during a hearing under ORS 419C.626.

(2) The court shall notify the parties listed in ORS 419C.626 and any other interested parties of the hearing. The notice shall state the time and place of the hearing. Upon request of the court, the Oregon Youth Authority or other legal custodian of the youth offender shall provide the court with information concerning the whereabouts and identity of such parties. **If the victim requests notice, the district attorney or juvenile department shall notify the victim of the time and place of the hearing.**

**SECTION 25.** ORS 420A.122 is amended to read:

420A.122. (1) Prior to a youth offender's release or discharge from a youth correction facility, the Oregon Youth Authority shall notify the following of the release or discharge:

(a) Law enforcement agencies in the community in which the youth offender is going to reside; [and]

(b) The school district in which the youth offender is going to reside[.]; **and**

**(c) If requested by the victim, as defined in ORS 419A.004, the victim.**

(2) The youth authority shall include in the notification:

(a) The youth offender's name and date of release or discharge;

(b) The type of placement to which the youth offender is released;

(c) Whether school attendance is a condition of release; and

(d) If the youth offender is a sex offender, as defined in ORS 181.594, all other conditions of release.

(3) The youth authority, a law enforcement agency or anyone employed by or acting on behalf of the youth authority or law enforcement agency [who sends] **with responsibility for sending** records under this section is not liable civilly or criminally for failing to disclose the information under this section.

(4) No later than seven days after a youth offender's release or discharge from a youth correction facility, the Department of Education or its contractor shall provide the youth offender's education records to the school district in which the youth offender enrolls.

**Passed by House April 10, 2007**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 4, 2007**

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President of Senate

**Received by Governor:**

.....M,....., 2007

**Approved:**

.....M,....., 2007

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2007

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Secretary of State