

## SENATE AMENDMENTS TO SENATE BILL 408

By COMMITTEE ON JUDICIARY

April 29

1 On page 1 of the printed bill, line 4, delete “section 13” and insert “sections 13 and 17”.

2 Delete lines 7 through 29 and delete pages 2 through 6 and insert:

3 **“SECTION 1. (1) Unless the juvenile court enters an order under ORS 181.823 or 181.826**  
4 **relieving a person of the obligation to report as a sex offender, subsections (2) to (4) of this**  
5 **section apply to a person:**

6 **“(a) Who has been found to be within the jurisdiction of the juvenile court under ORS**  
7 **419C.005, or found by the juvenile court to be responsible except for insanity under ORS**  
8 **419C.411, for having committed an act that if committed by an adult would constitute a fel-**  
9 **ony sex crime; or**

10 **“(b) Who has been found in a juvenile adjudication in another United States court to have**  
11 **committed an act while the person was under 18 years of age that would constitute a felony**  
12 **sex crime if committed in this state by an adult.**

13 **“(2) A person described in subsection (1) of this section who resides in this state shall**  
14 **make an initial report, in person, to the Department of State Police, a city police department**  
15 **or a county sheriff’s office as follows:**

16 **“(a) If, as a result of the juvenile adjudication for a felony sex crime, the person is dis-**  
17 **charged, released or placed on probation or any other form of supervised or conditional re-**  
18 **lease by the juvenile court, the person shall make the initial report no later than 10 days**  
19 **after the date the person is discharged, released or placed on probation or other form of**  
20 **supervised or conditional release;**

21 **“(b) If, as a result of the juvenile adjudication for a felony sex crime, the person is con-**  
22 **finned in a correctional facility by the juvenile court, the person shall make the initial report**  
23 **no later than 10 days after the date the person is discharged or otherwise released from the**  
24 **facility; or**

25 **“(c) If the person is adjudicated for the act giving rise to the obligation to report in an-**  
26 **other United States court and the person is found to have committed an act that if com-**  
27 **mitted by an adult in this state would constitute:**

28 **“(A) A Class A or Class B felony sex crime:**

29 **“(i) If the person is not a resident of this state at the time of the adjudication, the person**  
30 **shall make the initial report no later than 10 days after the date the person moves into this**  
31 **state; or**

32 **“(ii) If the person is a resident of this state at the time of the adjudication, the person**  
33 **shall make the initial report no later than 10 days after the date the person is discharged,**  
34 **released or placed on probation or any other form of supervised or conditional release by the**  
35 **other United States court or, if the person is confined in a correctional facility by the other**

1 United States court, no later than 10 days after the date the person is discharged or other-  
2 wise released from the facility.

3 **“(B) A Class C felony sex crime:**

4 **“(i) If the person is not a resident of this state at the time of the adjudication, the person**  
5 **shall make the initial report no later than six months after the date the person moves into**  
6 **this state; or**

7 **“(ii) If the person is a resident of this state at the time of the adjudication, the person**  
8 **shall make the initial report no later than 10 days after the date the person is discharged,**  
9 **released or placed on probation or any other form of supervised or conditional release by the**  
10 **other United States court or, if the person is confined in a correctional facility by the other**  
11 **United States court, no later than 10 days after the date the person is discharged or other-**  
12 **wise released from the facility.**

13 **“(3) After making the initial report described in subsection (2) of this section, the person**  
14 **shall report, in person, to the Department of State Police, a city police department or a**  
15 **county sheriff’s office:**

16 **“(a) Within 10 days of a change of residence;**

17 **“(b) Once each year within 10 days of the person’s birth date, regardless of whether the**  
18 **person changed residence;**

19 **“(c) Within 10 days of the first day the person works at, carries on a vocation at or at-**  
20 **tends an institution of higher education; and**

21 **“(d) Within 10 days of a change in work, vocation or attendance status at an institution**  
22 **of higher education.**

23 **“(4) When a person described in subsection (1) of this section attends school or works in**  
24 **this state, resides in another state and is not otherwise required to report as a sex offender**  
25 **under this section or ORS 181.595, 181.596 or 181.597, the person shall report, in person, to**  
26 **the Department of State Police, a city police department or a county sheriff’s office no later**  
27 **than 10 days after:**

28 **“(a) The first day of school attendance or the 14th day of employment in this state; and**

29 **“(b) A change in school enrollment or employment.**

30 **“(5) The agency to which a person reports under this section shall complete a sex**  
31 **offender registration form concerning the person when the person reports under this section.**

32 **“(6) As part of the registration and reporting requirements of this section:**

33 **“(a) The person required to report shall:**

34 **“(A) Provide the information necessary to complete the sex offender registration form**  
35 **and sign the form as required; and**

36 **“(B) Submit to the requirements described in paragraph (b) of this subsection.**

37 **“(b) The Department of State Police, the city police department or the county sheriff’s**  
38 **office:**

39 **“(A) Shall photograph the person when the person initially reports under this section and**  
40 **each time the person reports annually under this section;**

41 **“(B) May photograph the person or any identifying scars, marks or tattoos located on the**  
42 **person when the person reports under any of the circumstances described in this section;**  
43 **and**

44 **“(C) Shall fingerprint the person if the person’s fingerprints are not included in the re-**  
45 **cord file of the Department of State Police.**

1       “(7) The obligation to report under this section is terminated if the adjudication that gave  
2 rise to the obligation is reversed or vacated.

3       “(8) The court shall ensure that a person described in subsection (1)(a) of this section  
4 completes a form that documents the person’s obligation to report under this section. No  
5 later than three working days after the person completes the form required by this sub-  
6 section, the court shall ensure that the form is sent to the Department of State Police.

7       “**SECTION 2.** No later than January 1, 2013, the Department of State Police shall remove  
8 from the Law Enforcement Data System the sex offender information obtained from sex  
9 offender registration forms submitted under ORS 181.595, 181.596 or 181.597 for any person  
10 who has reported as a sex offender solely as the result of a juvenile adjudication for an act  
11 that if committed by an adult in this state would constitute a misdemeanor.

12       “**SECTION 3.** ORS 181.823 is amended to read:

13       “181.823. [(1)(a)] (1) [No sooner than two years, but no later than five years, after the termination  
14 of juvenile court jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Se-  
15 curity Review Board under ORS 419C.529, board jurisdiction over a person required to report under  
16 ORS 181.595, 181.596 or 181.597, the person may file a petition for relief from the duty to report. The  
17 person must file the petition] **A person required to report as a sex offender under section 1 (1)(a)**  
18 **of this 2011 Act may file a petition for an order relieving the person of the duty to report.**  
19 **If the person resides:**

20       “(a) **In this state and is required to report under section 1 (2) or (3) of this 2011 Act, the**  
21 **petition must be filed** in the juvenile court in which the person was adjudicated for the act that  
22 requires reporting.

23       “(b) **In another state and is required to report under section 1 (4) of this 2011 Act, the**  
24 **petition must be filed in the juvenile court in the county in which the person attends school**  
25 **or works.**

26       “(2) **If the act giving rise to the obligation to report would constitute:**

27       “(a) **A Class A or Class B felony sex crime if committed by an adult, the petition may**  
28 **be filed no sooner than two years after the termination of juvenile court jurisdiction over the**  
29 **person or, if the person is placed under the jurisdiction of the Psychiatric Security Review**  
30 **Board, no sooner than two years after the person is discharged from the jurisdiction of the**  
31 **board.**

32       “(b) **A Class C felony sex crime if committed by an adult, the petition may be filed no**  
33 **sooner than 30 days before the termination of juvenile court jurisdiction over the person or,**  
34 **if the person is placed under the jurisdiction of the Psychiatric Security Review Board, no**  
35 **sooner than 30 days before the person is discharged from the jurisdiction of the board.**

36       “[(b)] (3)(a) The juvenile court in which a petition under this section is filed may transfer the  
37 matter to the juvenile court of the county that last supervised the person if the court determines  
38 that the convenience of the parties, the victim and witnesses require the transfer.

39       “[(c)] (b) The juvenile court has exclusive original jurisdiction in any proceeding under this  
40 section.

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

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

44       “[(a) No later than three years after the termination of juvenile court jurisdiction or, if the person  
45 was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529,

1 *board jurisdiction, the state has the burden of proving by clear and convincing evidence that the person*  
2 *is not rehabilitated and continues to pose a threat to the safety of the public.]*

3 *“(b) More than three years, but no later than five years, after the termination of juvenile court*  
4 *jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review*  
5 *Board under ORS 419C.529, board jurisdiction,]*

6 **“(4) The person filing the petition** has the burden of proving by clear and convincing evidence  
7 that the person is rehabilitated and does not pose a threat to the safety of the public.

8 *“(3) In determining whether [the state or] the person has met the burden of proof [established*  
9 *in subsection (2) of this section], the juvenile court may consider but need not be limited to consid-*  
10 *ering:*

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

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

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

14 *“(d) Whether the act was premeditated;*

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

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

19 *“(g) The vulnerability of the victim;*

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

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

24 *“(j) The person’s willingness to accept personal responsibility for the act and personal account-*  
25 *ability for the consequences of the act;*

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

28 *“(L) Whether the person has participated in and satisfactorily completed a sex offender treat-*  
29 *ment program or any other intervention, and if so the juvenile court may also consider:*

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

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

32 *“(C) The person’s compliance with court, board or supervision requirements regarding treat-*  
33 *ment; and*

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

35 *“(m) The person’s academic and employment history;*

36 *“(n) The person’s use of drugs or alcohol before and after the adjudication;*

37 *“(o) The person’s history of public or private indecency;*

38 *“(p) The person’s compliance with and success in completing the terms of supervision;*

39 *“(q) The results of psychological examinations of the person;*

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

41 *“(s) Any other relevant factors.*

42 *“(4) (5) In a hearing under this section, the juvenile court may receive testimony, reports and*  
43 *other evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and*  
44 *40.310 to 40.585 if the evidence is relevant to the determination and findings required under this*  
45 *section. As used in this subsection, ‘relevant evidence’ has the meaning given that term in ORS*

1 40.150.

2 “[5] (6) When a petition is filed under this section, the state has the right to have a  
3 psychosexual evaluation of the person conducted. The state shall file notice with the juvenile court  
4 of its intention to have the person evaluated. If the person objects to the evaluator chosen by the  
5 state, the juvenile court for good cause shown may direct the state to select a different evaluator.

6 “[6] (7) As soon as practicable after a petition has been filed under this section, the district  
7 attorney or juvenile department shall make a reasonable effort to notify the victim of the crime that  
8 the person has filed a petition seeking relief under this section and, if the victim has requested, to  
9 inform the victim of the date, time and place of a hearing on the petition in advance of the hearing.

10 “[7(a)] (8)(a) *[When a petition has been filed under this section and the petition was]* **When a**  
11 **petition filed under this section is** filed:

12 “(A) *[No later than three years after the termination of juvenile court jurisdiction or, if the person*  
13 *was placed under the jurisdiction of the Psychiatric Security Review Board under ORS 419C.529,*  
14 *board jurisdiction,]* **While the person is under the jurisdiction of the juvenile court or the**  
15 **Psychiatric Security Review Board or less than three years after the date the jurisdiction is**  
16 **terminated,** the court shall hold a hearing *[on the petition]* no sooner than 60 days and no later than  
17 120 days after the date of filing.

18 “(B) *[More than three years, but no later than five years, after the termination of juvenile court*  
19 *jurisdiction or, if the person was placed under the jurisdiction of the Psychiatric Security Review*  
20 *Board under ORS 419C.529, board jurisdiction,]* **Three years or more after the date the juvenile**  
21 **court or board jurisdiction is terminated,** the court shall hold a hearing no sooner than 90 days  
22 and no later than 150 days after the date of filing.

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

25 “[8] (9)(a) *[When the state has the burden of proof under subsection (2) of this section and proves*  
26 *by clear and convincing evidence that the person is not rehabilitated and continues to pose a threat to*  
27 *the safety of the public, the court shall deny the petition. When the person has the burden of proof*  
28 *under subsection (2) of this section and]* **When the person** proves by clear and convincing evidence  
29 that the person is rehabilitated and does not pose a threat to the safety of the public, the court shall  
30 grant the petition.

31 “(b) **Notwithstanding paragraph (a) of this subsection, the court may not grant a petition**  
32 **filed under this section before the date the juvenile court or board jurisdiction over the**  
33 **person is terminated.**

34 “[9] (10) When a juvenile court enters an order relieving a person of the requirement to report  
35 under *[ORS 181.595, 181.596 or 181.597]* **section 1 of this 2011 Act,** the person shall send a certified  
36 copy of the juvenile court order to the Department of State Police.

37 “[10] (11) If a person commits an act that could be charged as a sex crime listed in ORS  
38 137.707 and the person is 15, 16 or 17 years of age at the time the act is committed, the state and  
39 the person may stipulate that the person may not petition for relief under this section as part of an  
40 agreement that the person be subject to the jurisdiction of the juvenile court rather than being  
41 prosecuted as an adult under ORS 137.707.

42 “(12) **When a petition is filed under subsection (2)(b) of this section before the termi-**  
43 **nation of juvenile court or board jurisdiction, if the person, or the parent or guardian of the**  
44 **person if the person is less than 18 years of age, requests counsel and is without sufficient**  
45 **financial means to employ suitable counsel to represent the person, for purposes of the pe-**

1 **tition described in this section, the court shall appoint suitable counsel to represent the**  
2 **person. Appointment of counsel under this subsection is subject to ORS 419C.200, 419C.203,**  
3 **419C.206 and 419C.209.**

4 **“SECTION 4.** ORS 181.826 is amended to read:

5 **“181.826. (1) Except as provided in subsection [(6)] (7) of this section, [when a person is required**  
6 **to report under ORS 181.595, 181.596 or 181.597 as a result of having been found in a juvenile adju-**  
7 **dicatation in another United States court to have committed an act while the person was under 18 years**  
8 **of age that would constitute a sex crime if committed in this state by an adult, the person may file a**  
9 **petition in the circuit court of the county in which the person resides for] a person required to report**  
10 **under section 1 (1)(b) of this 2011 Act may file a petition in the juvenile court for an order**  
11 **relieving the person of the duty to report [if:]. If the person resides:**

12 **“(a) [The person has been registered as a sex offender in this state for at least two years;] In this**  
13 **state and is required to report under section 1 (2) or (3) of this 2011 Act, the petition must**  
14 **be filed in the juvenile court of the county in which the person resides.**

15 **“(b) [At least two years, but not more than five years, have elapsed since the termination of**  
16 **supervision on probation or parole; and] In another state and is required to report under section**  
17 **1 (4) of this 2011 Act, the petition must be filed in the juvenile court of the county in which**  
18 **the person attends school or works.**

19 **“(2) If the act giving rise to the obligation to report would constitute:**

20 **“(a) A Class A or Class B felony sex crime if committed in this state by an adult, the**  
21 **petition may be filed no sooner than two years after the termination of the other United**  
22 **States court’s jurisdiction over the person.**

23 **“(b) A Class C felony sex crime if committed in this state by an adult, the petition may**  
24 **be filed no sooner than 30 days before the termination of the other United States court’s**  
25 **jurisdiction over the person.**

26 **“[(c)] (3) The person [submits] filing the petition must submit with the petition all releases**  
27 **and waivers necessary to allow the district attorney for the county in which the petition is filed to**  
28 **obtain the following documents from the jurisdiction in which the person was adjudicated for the**  
29 **act for which reporting is required:**

30 **“[(A)] (a) The juvenile court petition;**

31 **“[(B)] (b) The dispositional report to the court;**

32 **“[(C)] (c) The order of adjudication or jurisdiction;**

33 **“[(D)] (d) Any other relevant court documents;**

34 **“[(E)] (e) The police report relating to the act for which reporting is required;**

35 **“[(F)] (f) The order terminating jurisdiction for the act for which reporting is required; and**

36 **“[(G)] (g) The evaluation and treatment records or reports of the person that are related to the**  
37 **act for which reporting is required.**

38 **“[(2)] (4) A person filing a petition under this section has the burden of proving by clear and**  
39 **convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the**  
40 **public.**

41 **“[(3)] (5) Unless the court finds good cause for a continuance, the court shall hold a hearing on**  
42 **the petition no sooner than 90 days and no later than 150 days after the date the petition is filed.**

43 **“[(4) Notwithstanding subsection (1)(b) of this section, if a person has not been registered as a sex**  
44 **offender in this state for two years until more than five years have elapsed since the termination of**  
45 **supervision on probation or parole, the person may file a petition seeking relief under this section if the**

1 *person files the petition no later than 90 days after the date on which the person has been registered*  
2 *as a sex offender in this state for two years.]*

3 “[5] (6) If a person who files a petition under this section is required to report as a sex  
4 offender for having committed an act that if committed in this state could have subjected the person  
5 to prosecution as an adult under ORS 137.707, the court may not grant the petition notwithstanding  
6 the fact that the person has met the burden of proof established in subsection [(2)] (4) of this section  
7 unless the court determines that to do so is in the interest of public safety.

8 “[6] (7) This section does not apply to a person who is required to register as a sex offender  
9 for life in the jurisdiction in which the offense occurred.

10 “[7] (8) In a hearing under this section, the court may receive testimony, reports and other  
11 evidence without regard to whether the evidence is admissible under ORS 40.010 to 40.210 and  
12 40.310 to 40.585 if the evidence is relevant to the determination and findings required under this  
13 section. As used in this subsection, ‘relevant evidence’ has the meaning given that term in ORS  
14 40.150.

15 “[8] (9) If the court is satisfied by clear and convincing evidence that the person is rehabili-  
16 tated and that the person does not pose a threat to the safety of the public, the court shall enter  
17 an order relieving the person of the duty to report. When the court enters an order under this  
18 subsection, the person shall send a certified copy of the court order to the Department of State  
19 Police.”.

20 On page 7, delete lines 1 through 10.

21 In line 11, delete “6” and insert “5”.

22 On page 9, line 29, delete “7” and insert “6”.

23 On page 10, line 39, delete “8” and insert “7”.

24 In line 45, delete “Class A or Class B”.

25 On page 11, line 15, delete “9” and insert “8”.

26 In line 24, delete “10” and insert “9”.

27 On page 13, line 10, delete “11” and insert “10”.

28 In line 29, before the period insert “or responsible except for insanity under ORS 419C.411”.

29 On page 14, delete line 22 and insert:

30 “(d) Is described in section 1 (1) of this 2011 Act.”.

31 In line 26, delete “12” and insert “11”.

32 On page 15, line 37, delete “13” and insert “12”.

33 On page 16, line 42, delete “14” and insert “13”.

34 On page 18, line 15, delete “15” and insert “14”.

35 In line 35, delete “16” and insert “15”.

36 On page 19, line 13, delete “17” and insert “16”.

37 In line 22, delete “18” and insert “17”.

38 In line 28, delete “19” and insert “18”.

39 In line 34, delete “20” and insert “19”.

40 On page 20, delete lines 24 through 45.

41 On page 21, delete lines 1 through 8 and insert:

42 “**SECTION 20.** ORS 181.830 is amended to read:

43 “181.830. A person otherwise required to report under **section 1 of this 2011 Act** or ORS  
44 181.595, 181.596 or 181.597 is not required to report, and if currently reporting is no longer required  
45 to report, if:

1 “(1)(a) The person has been convicted of:  
2 “(A) Rape in the third degree as defined in ORS 163.355;  
3 “(B) Sodomy in the third degree as defined in ORS 163.385;  
4 “(C) Sexual abuse in the third degree as defined in ORS 163.415;  
5 “(D) Contributing to the sexual delinquency of a minor as defined in ORS 163.435;  
6 “(E) Sexual misconduct as defined in ORS 163.445; or  
7 “(F) An attempt to commit an offense listed in subparagraphs (A) to (E) of this paragraph;  
8 “(b) The person has been found guilty except for insanity of an offense listed in paragraph (a)  
9 of this subsection;  
10 “(c) The person has been found to be within the jurisdiction of the juvenile court for having  
11 committed an act that if committed by an adult would constitute an offense listed in paragraph  
12 (a)(A) or (B) of this subsection; or  
13 “(d) The person is paroled to this state under ORS 144.610 after being convicted in another  
14 United States court of a crime that would constitute an offense listed in paragraph (a) of this sub-  
15 section;  
16 “(2)(a) The person is less than five years older than the victim;  
17 “(b) The victim’s lack of consent was due solely to incapacity to consent by reason of being less  
18 than a specified age;  
19 “(c) The victim was at least 14 years of age at the time of the offense or act;  
20 “(d) Except for the convictions or findings described in subsection (1) of this section, the person  
21 has not been convicted of, found guilty except for insanity of, or found to be within the jurisdiction  
22 of the juvenile court based on, a sex crime or an offense, in another United States court, for conduct  
23 that if committed in this state would constitute a sex crime; and  
24 “(e) Each conviction or finding described in subsection (1) of this section involved the same  
25 victim; and  
26 “(3) The court enters an order relieving the person of the requirement to report under ORS  
27 181.832 or 181.833.”.

28 In line 9, delete “22” and insert “21”.

29 In line 25, delete “23” and insert “22”.

30 In line 39, delete “24” and insert “23”.

31 In line 42, restore the bracketed material and delete the boldfaced material.

32 In line 44, restore the bracketed material and delete the boldfaced material.

33 On page 22, line 4, delete “25” and insert “24”.

34 In line 9, delete “26” and insert “25”.

35 In line 25, delete the first “27” and insert “26”.

36 In line 26, delete “26” and insert “25”.

37 Delete lines 41 through 45 and delete page 23 and insert:

38 “**SECTION 27. (1) Sections 1 and 2 of this 2011 Act and the amendments to ORS 93.275,**  
39 **181.589, 181.590, 181.592, 181.594, 181.595, 181.596, 181.597, 181.598, 181.599, 181.602, 181.604,**  
40 **181.606, 181.820, 181.823, 181.826, 181.830, 181.875, 417.042 and 696.880 by sections 3, 4 and 7 to**  
41 **24 of this 2011 Act become operative on January 1, 2012.**

42 “**(2) Sections 1 and 2 of this 2011 Act and the amendments to ORS 21.110, 93.275, 181.589,**  
43 **181.590, 181.592, 181.594, 181.595, 181.596, 181.597, 181.598, 181.599, 181.602, 181.604, 181.606,**  
44 **181.820, 181.823, 181.826, 181.830, 181.875, 417.042 and 696.880 by sections 3 to 24 of this 2011**  
45 **Act apply to persons adjudicated before, on or after the effective date of this 2011 Act.**



