

## SENATE AMENDMENTS TO SENATE BILL 763

By COMMITTEE ON JUDICIARY

May 3

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating new provisions; and”  
2 and delete “, 181.592 and 419A.260” and insert “and 419A.262”.

3 On page 3, line 13, after “(7)” insert “(a)”.

4 In line 15, delete “(a)” and insert “(A)”.

5 Delete lines 17 through 19 and insert:

6 “(B) Apply to a conviction for a sex crime listed in ORS 181.830 (1)(a) if:

7 “(i) The person has not been convicted of, found guilty except for insanity of or found to be  
8 within the jurisdiction of the juvenile court based on, any crime other than the conviction that is  
9 the subject of the motion; and

10 “(ii) The person has been relieved of the obligation to report as a sex offender pursuant to a  
11 court order entered under ORS 181.832 or 181.833.

12 “(b) Notwithstanding any other provision of law, for purposes of paragraph (a)(B) of this sub-  
13 section a conviction that has been set aside under this section or an adjudication that has been  
14 expunged under ORS 419A.262 shall be considered for determining whether paragraph (a)(B) of this  
15 subsection is applicable.”.

16 On page 4, delete lines 12 through 45 and delete pages 5 through 7 and insert:

17 “**SECTION 2.** ORS 419A.262 is amended to read:

18 “419A.262. (1) An expunction proceeding shall be commenced in the county where the subject  
19 person resided at the time of the most recent termination.

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

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

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

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

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

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

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

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

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

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

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

9 “(6) Subsections (4) and (5) of this section apply only to cases resulting in termination after  
10 September 13, 1975.

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

19 “(8)(a) **Notwithstanding ORS 419A.260 (1)(d)(J)(x), (xiii) or (xviii), a person who has been**  
20 **found to be within the jurisdiction of the juvenile court based on an act that if committed**  
21 **by an adult would constitute rape in the third degree under ORS 163.355, sodomy in the third**  
22 **degree under ORS 163.385 or sexual abuse in the third degree under ORS 163.415, or an at-**  
23 **tempt to commit those crimes, may apply for an order of expunction under this section. The**  
24 **court shall order expunction of the records in the case if, after a hearing when the matter**  
25 **is contested, the court finds:**

26 “(A) **That the person meets the requirements of subsection (2) of this section;**

27 “(B) **The person has not been convicted of, found guilty except for insanity of or found**  
28 **to be within the jurisdiction of the juvenile court based on, any crime other than the adju-**  
29 **dicatation that is the subject of the motion; and**

30 “(C) **The person has been relieved of the obligation to report as a sex offender pursuant**  
31 **to a court order entered under ORS 181.832 or 181.833.**

32 “(b) **Notwithstanding any other provision of law, for purposes of this subsection a con-**  
33 **viction that has been set aside under ORS 137.225 or an adjudication that has been expunged**  
34 **under this section shall be considered for determining whether this subsection is applicable.**

35 “[8] (9) When an expunction proceeding is commenced by application of the person whose re-  
36 cords are to be expunged, the person shall set forth as part of the application the names of the ju-  
37 venile courts, juvenile departments, institutions and law enforcement and other agencies that the  
38 person has reason to believe possess an expungible record of the person. The juvenile department  
39 shall provide the names and addresses of the juvenile courts, juvenile departments, institutions and  
40 law enforcement and other agencies that a reasonable search of department files indicates have  
41 expungible records.

42 “[9] (10) When an expunction proceeding is commenced by application of the juvenile depart-  
43 ment or upon the court’s own motion, the application or motion shall set forth the names and ad-  
44 dresses of the juvenile courts, juvenile departments, institutions and law enforcement and other  
45 agencies that a reasonable search of department files indicates have expungible records and those

1 provided by the subject person.

2 “[~~(10)(a)~~] **(11)(a)** Notice and a copy of an application for expunction under subsections (2) to  
3 [~~(7)~~] **(8)** of this section shall be given to:

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

6 “(B) The person who is the subject of the record if the person has not initiated the expunction  
7 proceeding.

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

11 “[~~(11)~~] **(12)** Within 30 days of receiving the notice of application for expunction under subsection  
12 [~~(10)~~] **(11)** of this section, a district attorney shall give written notice of any objection and the  
13 grounds therefor to the person whose records are to be expunged and to the juvenile court. If no  
14 objection is filed the court may decide the issue of expunction either without a hearing or after full  
15 hearing pursuant to subsections [~~(12) to (15)~~] **(13) to (16)** of this section.

16 “[~~(12)~~] **(13)** When an expunction is pending pursuant to subsections (2) to [~~(7)~~] **(8)** of this section,  
17 the court may proceed with or without a hearing, except that:

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

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

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

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

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

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

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

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

1 agencies which must be preserved under seal.

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

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

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

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

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

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

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

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

32 “**SECTION 3. The amendments to ORS 137.225 and 419A.262 by sections 1 and 2 of this**  
33 **2011 Act apply to motions filed on or after the effective date of this 2011 Act involving a**  
34 **conviction or adjudication that occurred before, on or after the effective date of this 2011**  
35 **Act.”.**