

Enrolled House Bill 4146

Sponsored by Representative J SMITH; Representatives BREWER, BUCKLEY, CONGER, FREDERICK, GELSER, HARKER, KENY-GUYER, MATTHEWS, READ, TOMEI, WEIDNER, Senator WINTERS (at the request of Oregon Center for Christian Voices) (Presession filed.)

CHAPTER

AN ACT

Relating to expungement; creating new provisions; amending ORS 419A.262; and declaring an emergency.

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

SECTION 1. 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)(a) Notwithstanding subsection (2) 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 under subsection (12) of this section, shall order expunction if it finds that:

(A) The application requests expunction of only that part of the person’s record that involves a charge, allegation or adjudication based on conduct that if done by an adult would constitute the crime of prostitution under ORS 167.007; and

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

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

[3] (4) 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)] (11) of this section unless the person has reached 21 years of age.

[(4)] (5) 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) **or** (3) of this section have been met.

[(5)] (6) 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)] (11) of this section unless the person has reached 21 years of age.

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

[(7)] (8) Notwithstanding subsections (2), (3) and [(4) to (6)] (5) **to** (7) 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)] (11) of this section unless the person has reached 21 years of age.

[(8)] (9) 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 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 that a reasonable search of department files indicates have expungible records.

[(9)] (10) 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 that a reasonable search of department files indicates have expungible records and those provided by the subject person.

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

- (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) 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)] (12)(a) Within 30 days of receiving the notice of application for expunction under subsection [(10)] (11) 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.

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

[(12)] (13) When an expunction is pending [*pursuant to*] **under** subsections (2) to [(7)] (8) 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*] **under** subsection [(11)] (12) 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; **and**

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

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

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

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

[(13)(a)] **(14)(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] **under** subsection [(11)] **(12)** 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)] **(15)** 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)] **(16)** At the conclusion of a hearing on a pending expunction, the court shall issue judgment granting or denying expunction.

[(16)] **(17)** 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, the agency 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)] **(18)** 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)] **(17)** 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, except the original expunction judgment and the list of complying and noncomplying agencies which must be preserved under seal.

[(18)] **(19)** 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)] **(20)** Upon entry of an expunction judgment, the contact 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)] **(21)** A person who is the subject of a record 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)] **(22)** 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 may not be destroyed, but shall be preserved under seal. The destruction of records under this subsection does not constitute expunction.

[(22)] (23) 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)] (24) A subject has a right of action against any person who intentionally violates the confidentiality provisions of this section. In [any such] the 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)] (25) Intentional violation of the confidentiality provisions of this section by a public employee is cause for dismissal.

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

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

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

Passed by House February 16, 2012

.....
Ramona Kenady Line, Chief Clerk of House

.....
Bruce Hanna, Speaker of House

.....
Arnie Roblan, Speaker of House

Passed by Senate February 23, 2012

.....
Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2012

Approved:

.....M,....., 2012

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2012

.....
Kate Brown, Secretary of State