

**Testimony on SB 1536 (Amended)
Before the House Judiciary Committee
February 20, 2014**

**Presented by: The Honorable Pamela L. Abernethy (Ret.), and Lisa J. Norris-Lampe
Oregon Judicial Department**

The Oregon Judicial Department (OJD) requested this bill as a follow-up to chapter 417, Oregon Laws 2013 (Senate Bill 622 (2013)), an Oregon Law Commission bill. In 2011, OJD had referred a Juvenile Code inquiry to the Oregon Law Commission, in light of OJD's then-impending transition to an electronic court environment. The Oregon Law Commission accepted OJD's referral and in 2012 formed a juvenile records work group, on which OJD participated, that worked on the initial drafts of SB 622 (2013). The Oregon Law Commission finalized the draft, approved it, and recommended it during the 2013 legislative session. As ultimately enacted and effective on January 1, 2014, that legislation updated several Juvenile Code provisions concerning disclosure of juvenile court records, as well as other provisions. (Chapter 417, Oregon Laws 2013)

Upon further review since enactment, OJD determined that the key application provisions of SB 622 (2013) inadvertently created two sets of rules governing access to court records, depending on the date that a proceeding commenced, which may cause confusion for court staff and result in an unintended increased workload. OJD therefore began an effort to draft this bill, primarily to address that issue but also to address other post-enactment questions from juvenile court judges.

SB 622 (2013) had represented a collaborative effort among juvenile court stakeholders, and OJD sought to obtain input from the same stakeholders in drafting this bill. OJD worked with the Oregon Law Commission to hold two meetings on this bill, as well as additional conversations with members of the juvenile records work group, and the bill includes provisions and wording offered by members of that group. Work group members include representatives from the Oregon Law Commission, OJD (judges and staff), county juvenile departments, the Oregon Youth Authority, the Department of Human Services, the Office of Public Defense Services, the Department of Justice, district attorney offices, and private practitioners who represent parties in juvenile cases. OJD greatly appreciates the stakeholders' collaborative effort in working to resolve outstanding concerns.

OJD now proposes this bill in order to clarify and streamline the application provisions from SB 622 (2013). Additionally, this bill clarifies some additional provisions of SB 622 (2013), respecting OJD's authority to grant access to court records and information. The changes proposed in this bill, to clarify the Juvenile Code court records and access provisions, will not only allow trial courts to more efficiently manage court records but also will improve consistency among the trial courts.

The key aspects of the bill are as follows (and a full summary is attached):

- *Sections 2 and 3, New ORS 419A.255 (10)*: This is a new provision that grants OJD the authority to permit county or statewide access to juvenile court records or information by the following juvenile court participants: county juvenile departments, Department

of Human Services, Oregon Youth Authority, district attorney offices, Office of the Attorney General, Office of Public Defense Services, prospective appellate attorneys, and public defense providers. Under other provisions of ORS 419A.255, the attorneys are limited to reviewing records or information in only the particular cases in which they serve as a lawyer of record. In practical application, however, lawyers designated by the Office of Public Defense Services to potentially represent a juvenile must run ethical conflicts checks before securing appointment -- that is, before officially becoming the lawyer of record. Further, the identified persons frequently represent clients in one case but need to coordinate representation on a related case across counties -- for example, if Lawyer A represents a juvenile in a dependency case in Polk County, but then the same juvenile is subject to a delinquency petition two years later in Benton County. In that example, Lawyer A may require access to the delinquency case -- in which Lawyer A is not the lawyer of record -- to adequately represent the juvenile in the dependency case. The agency personnel also listed in this section have similar needs, respecting the ability to access county or statewide information to perform their duties on multiple cases.

OJD worked closely with the Department of Justice and the Office of Public Defense Services provision to draft this provision, which is intended to ensure OJD's authority to grant broader access to the identified persons as needed, but subject to limitations as to the scope of that access. The provision specifically requires the execution of a scope and use agreement with OJD and an obligation to preserve the confidentiality of the records as required under ORS 419A.255. The provision further requires OJD to prescribe standards and procedures to implement the new provision.

- *Sections 2 and 3, New ORS 419A.255(14):* This is also a new provision, granting the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, or a presiding judge the authority to permit access to juvenile court records by researchers or evaluators for the purposes of developing statistics and performing analysis or audits on the effectiveness, costs and other areas of public interest regarding juvenile court programs and activities, as described. Such access to juvenile records by researchers and evaluators will assist OJD in improving juvenile courts statewide. The provision requires the Chief Justice to adopt a rule or order that will establish standards and guidelines for release of information to ensure confidentiality and promote consistent statewide application. The researchers and evaluators will be prohibited from releasing statistics and analysis containing any identifying information.
- *Sections 4 and 5, Amendment to Current ORS 419A.256, Adding new (4):* This amendment adds a new provision to 419A.256, which pertains to transcripts, audio recordings, and video recordings. The new subsection grants the courts authority, upon a finding of good cause, to provide access to an audio or video recording from a juvenile court proceeding to a judge or court staff, a court appointed special advocate (CASA) or representative of CASA Volunteer Program, attorneys for individual parties, the district

attorney or assistant attorney general, the juvenile department, the Department of Human Services, and the Oregon Youth Authority. Juvenile court judges requested this provision because the listed persons sometimes need access to an audio or video recording in a particular case to prepare for a hearing or for other purposes. The provision is intended to preserve the court's discretion to impose any condition on the grant of access that the court finds appropriate -- such as, for example, arranging for return or destruction depending on the circumstances.

- *Section 8, Amendment to Section 12, Chapter 417, Oregon Laws 2013, Operative Date Provision for "Any Other Person" Provisions of SB 622 (2013):* Section 11 of Senate Bill 622 (2013) permitted "any other person allowed by the court" to inspect or copy materials in the record of the case or the supplemental confidential file. Section 12 of that same bill delayed the operative date for those "any other person" provisions to July 1, 2014. The delayed date was selected (1) in light of the significant change resulting from the new provisions; (2) because participants anticipated that additional supporting legislation (such as a prescription for statewide standards and procedures) may be needed in 2014; and (3) because several key OJD and Oregon Law Commission participants were conflicted from discussing the new provisions in light of pending litigation on the same topic. The conflicts for OJD and Oregon Law Commission work group participants have continued to occur, and the Oregon Law Commission work group decided against initiating any legislative effort on the Juvenile Code during the short 2014 session. As a result, this bill proposes delaying the operative date for the "any other person" provisions in SB 622 (2013) to September 30, 2015, which post-dates the *sine die* and sign-by dates for the 2015 legislative session.
- *Section 9, Amendments to Section 13, Chapter 417, Oregon Laws 2013, Applicability Provisions for All Other Parts of SB 622 (2013):* Section 13 of Senate Bill 622 (2013) stated that all other substantive provisions of that bill (except the "any other person" provisions) applied to juvenile court proceedings commenced on or after January 1, 2014. SB 622 (2013) contained a standard, prospective-only application clause for the now-updated disclosure, inspection, and copying provisions of ORS 419A.255 and other parts of the Code as amended by SB 622 (2013). Upon further review after passage, OJD determined that a prospective-only approach would create confusion in the courts, because different disclosure rules would apply to cases depending on whether they were filed before or after January 1, 2014. (For example, under the pre-2013 version of ORS 419A.255, it is unclear whether a parent in a dependency case is permitted to inspect materials that now are treated as "supplemental confidential file" materials. SB 622 (2013) clarified that such inspection is permitted.) From OJD's perspective, the general access provisions of the Juvenile Code will be more easily understood, by both court staff and juvenile case participants, if the same rules apply to all cases regardless of when the case was filed.

This section amends the application clause for SB 622 (2013) to clarify that most provisions of that enactment apply both prospectively and retroactively to juvenile court proceedings commenced before, on, or after January 1, 2014. This includes provisions from SB 622 (2013) respecting reports and other materials relating to a child, ward, youth, or youth offender's history and prognosis that are created or maintained by or on behalf of the Oregon Youth Authority or a juvenile department as a result of a juvenile proceeding having been commenced at any time, under ORS 419A.257, as amended by section 5, chapter 417, Oregon Laws 2013. This change will permit the courts, as well as the Oregon Youth Authority or a juvenile department, to apply the same, updated disclosure provisions to juvenile records and materials regardless of when a case was filed.

The only exception to this updated application date is that it applies to neither (1) the "any other person" provisions of SB 622 (2013) (which have their own, separate section on operative date and application); nor (2) the amendment in SB 622 (2013) that requires the court to maintain a record of the case and a supplemental confidential file (now ORS 419A.255(1)(a)). Regarding the latter exception, SB 622 (2013) was not intended to require OJD to maintain a separate "supplemental confidential file" in each case for proceedings commenced before the effective date of that bill, and this section continues that approach.

- *Section 10, Application Clause for This Bill:* This section sets out the application clause for provisions of this 2014 bill, except the "any other person" provision amendments set out in sections 3 and 5 of this bill (which have their own, separate section on operative date and application). Like Section 8, this section ensures that the amendments to chapter 417, Oregon Laws 2013 (SB 622 (2013)) set out in this bill apply both prospectively and retroactively to juvenile court proceedings commenced before, on, or after January 1, 2014, except that the section further provides that the amendment in this bill to ORS 419A.255(1)(a) (court maintenance of the record of the case and supplemental confidential file) applies prospectively to only juvenile court proceedings commenced on or after the effective date of this act. As to that latter provision, the application date in this section effectively continues the current date-forward approach for that same provision (which presently applies to proceedings commenced on or after January 1, 2014).

This change will permit the courts to apply the same, updated disclosure provisions to juvenile records and materials regardless of when a case is filed.

We note that the A-Engrossed version of the bill includes a new Section 7, which was an amendment that the Oregon Law Commission offered before the Senate Judiciary Committee and that the Senate approved. New Section 7 clarifies some disclosure provisions that were contained in an adoption court records bill enacted by the 2013 Legislative Assembly (Senate Bill 623 (2013)), now set out in ORS 109.319.

Finally, in response to concerns expressed to the Senate Judiciary Committee by the Oregon Newspaper Publishers Association, OJD is offering an amendment to this Committee that strikes the bill's proposal to change the current statutory wording "date of birth" to "age," regarding information that may be disclosed about a youth or youth offender (Page 6, line 2, and again on Page 11, line 12, of the A-Engrossed bill). The effect of the amendment would be to retain the current wording, "date of birth."

Thank you for the opportunity to provide background information on this bill. We are happy to address any questions you may have.

ATTACHMENT -- SB 1536, BY-SECTION SUMMARY

Section 1:

Section 1 proposes the following amendments to ORS 419A.252 (definitions, created in SB 622 (2013), chapter 417, Oregon Laws 2013):

- Adds a definition for "public defense provider," to facilitate a new provision clarifying access that is being added to ORS 419A.255. (New subsection (3))
- Clarifies that the "record of the case" and the "supplemental confidential file," whether maintained in paper or electronic form, include documents filed in juvenile court proceedings commenced before the effective date of SB 622 (2013), chapter 417, Oregon Laws 2013 (January 1, 2014), to facilitate updated application clause in this bill (Amends current subsections (3) and (4), now (4) and (5)).
- Renumbers paragraphs of renumbered subsections (4) and (5), in light of moving "electronic form" phrase from separate subsections to the key definitional provisions.

Section 2:

Section 2 proposes the following amendments to ORS 419A.255 (record of the case, supplemental confidential file, inspection, disclosure, etc.):

- Updates wording of current record of the case and supplemental confidential file maintenance provisions, for consistency with rest of SB 622 (2013), chapter 417, Oregon Laws 2013. (ORS 419A.255(1)(a))
- Re-orders and renumbers the list of persons entitled to inspect the record of the case and the supplemental confidential file, to (1) set out by category -- parties, lawyers for individual parties, surrogates and service providers, district attorney or assistant attorney general, juvenile department, Department of Human Services, and Oregon Youth Authority; (2) clarify that educational surrogates and service providers in the case are entitled to inspect; and (3) clarify that lawyers for parties may inspect, but parties do not include surrogates or service providers. (ORS 419A.255(1)(b)(H)-(L))
- Clarifies existing "privilege" provision as follows: (1) privileged materials are subject to inspection provisions of this section; (2) offer or admission of privileged materials does not waive their privileged status, except for purposes of the proceeding at which offered or admitted; and (3) privileged materials initially may be maintained in the supplemental confidential file but, once offered, become part of the record of the case. (ORS 419A.255(2)(a))

- Re-orders and renumbers the list of persons entitled to inspect the supplemental confidential file, consistently with re-ordering and renumbering of list for the record of the case. (ORS 419A.255(2)(b)(F)-(J))
- Updates cross-reference to attorney provision (ORS 419A.255(2)(b)(J)), in part to correct and in light of renumbering. (ORS 419A.255(2)(d)(D))
- In provision limiting disclosure generally, corrects cross-reference to both record of the case and supplemental confidential file provisions, for clarity. (ORS 419A.255(3))
- In provision permitting disclosure of certain information about a youth or youth offender, changes "date of birth" to "age," so now consistent with companion provision (in subsection (7)) permitting disclosure of certain information -- including age -- about a youth taken into custody. (ORS 419A.255(6)(a)) **NOTE:** In response to concerns expressed to the Senate Judiciary Committee by the Oregon Newspaper Publishers Association, OJD is offering an amendment to SB 1536, before the House Judiciary Committee, that strikes this proposed change and retains the current statutory wording, "date of birth."
- New provision, granting OJD authority to permit county or statewide access to juvenile court records or information by identified juvenile court participants (county juvenile departments, Department of Human Services, Oregon Youth Authority, district attorney offices, office of the Attorney General, Office of Public Defense Services, prospective appellate attorneys, and public defense providers), subject to restrictions that include executing a scope and use agreement with OJD, preservation of confidentiality, and the prescription of OJD standards and procedures. (NEW ORS 419A.255(10))
- Renumbers old subsections (10) through (12) to new (11) through (13).
- New provision, granting the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, or a presiding judge authority to permit access to juvenile court records by researchers or evaluators for the purposes of developing statistics and performing analysis or audits on the effectiveness, costs and other areas of public interest regarding juvenile court programs and activities, as described. Requires the adoption of Chief Justice rule or order to establish standards and guidelines for release of information to ensure confidentiality and promote consistent statewide application. Prohibits statistics and analysis released by researchers and evaluators from containing any identifying information. (NEW ORS 419A.255(14))

Section 3:

Section 3 duplicates Section 2, except that it includes additional inspection provisions not included in Section 2, regarding inspection of the record of the case or the supplemental confidential file by any other person allowed by the court. (Section 3 has a different operative date and effective date than Section 2.) The amendments in this bill to Section 3 are the same as the amendments in Section 2.

Section 4:

Section 4 proposes the following amendments to ORS 419A.256 (transcripts, audio recordings, video recordings):

- Updates outdated "audiotape" and "videotape" wording to "audio recording or video recording" (ORS 419A.256(1)(b))
- Adds a new subsection granting court authority to provide copy of audio or video recording to judge or court staff, court appointed special advocate (CASA) and representative of CASA Volunteer Program, attorneys for certain persons (individual parties), the district attorney or assistant attorney general, the juvenile department, the Department of Human Services, and the Oregon Youth Authority. Requires finding of good cause, and court may impose conditions that it finds appropriate. (NEW ORS 419A.256(4))

Section 5:

Section 5 duplicates Section 4, except that it includes an additional cross-reference to the "any other person" inspection provisions included in Section 3. The amendments in this bill to Section 5 are the same as the amendments in Section 4 and also include:

- Corrects cross-reference to inspection provision in ORS 419A.255(1)(b), to include new "any other person" provision (ORS 419A.256(3))

Section 6:

Section 6 proposes the following amendment to ORS 419A.200 (appeals):

- Updates outdated "audiotape" and "videotape" wording to "audio or video recording" and adds cross-reference to new ORS 419A.256(4) (conforming amendment) (ORS 419A.200(10)(d)(C))

Section 7:

Section 7 adds an amendment that the Oregon Law Commission submitted to the Senate Judiciary Committee (which the Senate approved), clarifying certain provisions of ORS 109.319,

concerning court disclosure of adoption case records. The application clauses of this bill, set out in Sections 8, 9, and 10, do not apply to Section 7.

Section 8:

Section 8 proposes the following amendment to section 12, chapter 417, Oregon Laws 2013 (SB 622 (2013)), section 12, operative and applicability provisions for "any other person" sections in that bill):

- Updates the operative date of the "any other person" inspection sections from July 1, 2014, to September 30, 2015, as amended by Sections 3 and 5 of this bill, to provide additional time, consideration, and participation respecting implementation of those provisions, through the 2015 legislative session.
- Retains the application provision for those "any other person" sections, as amended by Sections 3 and 5 of this bill, based on the operative date.

Section 9:

Section 9 proposes the following amendments to section 13, chapter 417, Oregon Laws 2013 (SB 622, section 13, applicability provisions for that bill, *except* the "any other person" sections):

- Continues the current application provision of section 13, chapter 417, Oregon Laws 2013, regarding court maintenance of the record of the case and supplemental confidential file (now contained in ORS 419A.255(1)(a)); continues to apply to juvenile court proceedings commenced on or after January 1, 2014.
- Updates the application provisions of all other parts of section 13, chapter 417, Oregon Laws 2013 to provide that all provisions of that enactment, *except* the provision requiring the courts to maintain a record of the case and a supplemental confidential file set out in ORS 419A.255(1)(a) *and except* sections 3 and 5 (the "any other person" sections), apply to juvenile court proceedings commenced before, on, or after January 1, 2014. This includes provisions respecting reports and other materials relating to a child, ward, youth, or youth offender's history and prognosis that are created or maintained by or on behalf of the Oregon Youth Authority or the juvenile department as a result of a juvenile proceeding having been commenced, under ORS 419A.257, as amended by section 5, chapter 417, Oregon Laws 2013. This change will permit the courts, as well as the juvenile departments and the Oregon Youth Authority respecting materials maintained under ORS 419A.257, to apply the same, updated disclosure provisions to juvenile records and materials regardless of when a case is filed.

Section 10:

Section 10 proposes the application clause for provisions of this 2014 bill, *except* the "any other person" section amendments set out in sections 3 and 5:

- Provision of this bill that amends ORS 419A.255(1)(a), regarding court maintenance of the record of the case and supplemental confidential file, applies to juvenile court proceedings commenced on or after the effective date of this bill. Effectively, continues the current date-forward approach clause for that provision (which presently applies to proceedings commenced on or after January 1, 2014).
- All other provisions of this bill, *except* the provision requiring the courts to maintain a record of the case and a supplemental confidential file set out in ORS 419A.255(1)(a) *and except* sections 3 and 5 (the "any other person" sections), apply to juvenile court proceedings commenced before, on, or after the effective date of this bill. This change will permit the courts to apply the same, updated disclosure provisions to juvenile records and materials regardless of when a case is filed.

Section 11:

Section 11 proposes including an Emergency Clause in the bill, to ensure seamless transition to the new application date provisions.