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JUVENILE RECORDS WORK GROUP REPORT SB 405-2 (2015)

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*The Oregon Law Commission
is housed at the Willamette
University College of Law,
which also provides executive,
administrative and research
support for the Commission.*

I. Introduction

The Oregon Law Commission previously undertook a comprehensive review of Oregon law pertaining to juvenile court records at the request of the Oregon Judicial Department's Law and Policy Work Group created as part of OJD's eCourt Program. The Law Commission's Juvenile Records work group developed legislative proposals to make juvenile court records amenable to the eCourt process that were approved by the Commission, submitted to the Legislative Assembly and enacted into law through Senate Bill 622 (2013). In brief summary, the bill defined two types of juvenile court files: the record of the case and the supplemental confidential file. Under now current law, the two types of files containing juvenile court records are to be separately maintained by the juvenile court. Current law also details who is entitled to inspect and who is entitled to copy the two types of files. SB 622 (2013) continued the long-standing state policy that juvenile case records are to be treated differently than other civil and criminal case records and consequently both types of juvenile court records, the record of the case and the supplemental confidential file, are generally confidential.

To be entitled to inspect or copy the record of the case or the supplemental confidential file, a person must be included in the list of persons entitled to that access in the statute. There are four such lists set out in the statutes related to inspection of the record of the case, copying of the record of the case, inspection of the supplemental confidential file, and copying of the supplemental confidential file. At the end of each statutory provision setting out the list of persons entitled to access the records, SB 622 (2013) included a catch-all provision that would authorize the juvenile court to allow access to "any other person allowed by the court." These provisions were added by the Law Commission just before it gave final approval of the bill and sent it to the Legislative Assembly. These catch-all provisions were intended to explicitly grant the court authority and discretion to allow inspection and/or copying of those records by other non-listed persons on a case-by-case basis. At the time this addition to the bill was being considered by the Law Commission, litigation, including a mandamus petition seeking to have the trial judge involved in a pending proceeding be ordered to provide records to the press, had been filed. Several members of the Law Commission and the work group were involved in the litigation and had to recuse themselves from discussion of the catch-all provisions. This eliminated any opportunity for a full discussion of those provisions in the work group or before the Law Commission. Consequently, a delayed operative date was sought and SB 622 (2013) passed with a delayed operative date of July 1, 2014, for those catch-all provisions.

In the 2014 legislative session, additional modifications were made to the juvenile records laws primarily at the request of the Oregon Judicial Department. Those changes were made through Senate Bill 1536 (2014). During the 2014 legislative session, the operative date for the "any other person allowed by the court" provisions was pushed back until September 30, 2015. This delay was requested due to the fact that the pending litigation had not yet been resolved. That litigation concluded in December 2014 with denial of the mandamus petition, but without any written opinion issued by the Oregon Supreme Court (Or. Sup. Ct. Case No. S062069).

II. History of the current project

The Oregon Law Commission submitted SB 405 (2015) to the 2015 Legislative Assembly as a placeholder bill to allow for consideration of whether the operative date of the "any other person

allowed by the court” provisions should be further delayed and to allow for consideration of whether experience had shown that any further revisions to the juvenile records laws were needed. After the litigation noted above was concluded, the Law Commission contacted the members of the Juvenile Records Work Group¹ asking them to address those two questions.

The Commission received responses indicating that modifications were needed to address issues concerning disclosures by the Oregon Youth Authority, disclosures to the Child Support Program, and disclosures under the “any other person allowed by the court” provisions. The Commission reconvened the Juvenile Records Work Group to address these issues. The work group met on February 20, 2015, to address these concerns.

III. Statement of the problem areas and objectives of the proposal

The Oregon Youth Authority work group members explained that they thought there was an inadvertent and unintended consequence that had resulted from the enactment of SB 622 (2013). The Oregon Department of Justice has advised the OYA that the amendments to the juvenile records law contained in SB 622 do not allow the OYA to: acknowledge they are supervising an offender; provide a mailing address for an offender in custody; or assist an out-of-state sex offender registrant by responding to a subpoena for records. Consequently, the OYA proposed amendments to ORS 419A.255 that would include the OYA as a disclosing entity, along with a juvenile court or a county juvenile department, to allow the OYA to disclose records under ORS 419A.255 (6) and (7) that pertain to a youth who was adjudicated and in OYA custody. The work group discussed this proposal and determined that it promotes public safety and serves the interests of the youth and communities served by the OYA for the agency to be more transparent and to be able to disclose the same type of records that juvenile courts and county juvenile departments can disclose for juveniles who have been within their jurisdiction.

The work group also addressed a concern raised by the Oregon Judicial Department and the Oregon Department of Justice that SB 622 (2013) does not allow a juvenile court to notify the relevant Child Support Program Administrator when a judgment terminating parental rights has been entered or a judgment terminating wardship has been entered following entry of a judgment of adoption. The inability of the courts to provide such notice can result in child support obligations continuing to be enforced beyond the appropriate termination date. The work group discussed this problem and

¹ The original voting work group members include Julie McFarlane, OLC Commissioner and Chair; Susan Amesbury, Oregon Dept. of Justice; Brad Berry, Yamhill Co. DA's Office; Tom Cleary, Multnomah Co. DA's Office; Nancy Cozine, Office of Public Defense Services; Linda Guss, Oregon Dept. of Justice; Prof. Leslie Harris, Dorothy Kliks Fones Professor at the University of Oregon School of Law; Cherie Lingelbach, Oregon Youth Authority; Michael Livingston, Oregon Judicial Dept.; Tim Loewen, Yamhill Juvenile Dept.; Judge Maureen McKnight, Multnomah Co. Circuit Court; Sarah Morris, Dept. of Justice; Rem Nivens, Oregon Youth Authority; Lisa Norris-Lampe, Oregon Supreme Court; Becky Osborne, Oregon Judicial Dept.; Wendy Peterson, Washington Co. Juvenile Dept.; Mickey Serice, Oregon Dept. of Human Services; Tahra Sinks, Attorney at Law; Shannon Storey, Office of Public Defense Services. Work Group advisors included Caroline Burnell, Oregon Dept. of Human Services; Presiding Judge John Collins, Yamhill County Circuit Court; Richard Condon, Attorney at Law; Maurita Johnson, Oregon Dept. of Human Services; Tom Vlahos, Oregon Dept. of Human Services.

determined that a provision should be added to ORS 419A.255 to clarify that nothing in the juvenile record statute prohibits the court from providing the date of entry of such judgments and the names and dates of birth of the parents and children subject to those judgments to the appropriate Child Support Program Administrator.

Finally, the Oregon Judicial Department proposed to the work group amendments to the “any other person allowed by the court” provisions to provide guidance to juvenile courts so that these provisions would be applied consistently throughout the state. The amendments proposed by the Oregon Judicial Department would focus the determination about whether to allow disclosure on whether the disclosure would be in the best interests of the juvenile involved. The discussion in the work group addressed whether different standards should apply during the pendency of a proceeding than would apply after the proceeding had concluded, how the interests of other parties to the proceeding should be evaluated and considered, whether there should be other compelling reasons that should be considered, and what procedures should be followed by a person who wishes to obtain access to the records. The work group determined that these important and significant issues required substantial attention and that they could not be and should not be resolved without the opportunity for broader outreach and discussion than was available in the short period of time between resolution of the litigation in December 2014 and the advent of the 2015 legislative session. The work group determined, therefore, that it was appropriate to recommend that the operative date of the “any other person allowed by the court” provisions be extended for one year – *i.e.*, until September 30, 2016 – to allow the work group time to give focused attention to developing amendments for presentation to the 2016 Legislative Assembly.

IV. The proposal

Section 1.

Subsection (8) amends ORS 419A.255, as amended by section 2, chapter 71, Oregon Laws 2014, to allow the Oregon Youth Authority to disclose information that is not confidential and not exempt from disclosure. OYA believes this is in the best interest of public safety, the youth, and communities and allows for better transparency. The work group agreed that this was an unintended consequence of SB 622 (2013) that is remedied by the change to Section 1.

Subsection (10) was added to address a concern that the courts did not have the authority to provide the information listed to the relevant child support program administrator. The work group wanted to explicitly give the courts this authority so there was no confusion.

Section 2.

Amends ORS 419A.255, as amended by section 3, chapter 71, Oregon Laws 2014, making the same change listed in Section 1 to subsections (8) and (10).

Section 3.

Changes the phrase “of this 2014 Act” to “chapter 71, Oregon Laws 2014.”

Changes effective date of the “any other person allowed by the court” provisions to September 2016.

Section 4.

Declares this bill an emergency and effective on its passage.

V. Conclusion

The comprehensive revisions to juvenile records laws that have been enacted recently have left remaining a few issues that still need to be addressed. This proposal resolves concerns that have arisen in implementing the juvenile records laws regarding disclosures that can be made by the Oregon Youth Authority and disclosures that can be made to the Child Support Program. This proposal also provides for the time necessary for the development of criteria and policies to guide the juvenile courts in exercising their discretion to provide access to juvenile court records to other persons.