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Amendments to the Juvenile Court Records Statutes

Report of the Juvenile Court Records Work Group on House Bill 4074A (2016)

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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. Introductory Summary

The Oregon Law Commission (“OLC” and “Commission”) previously undertook a comprehensive review of Oregon law pertaining to juvenile court records at the request of the Oregon Judicial Department’s (“OJD”) Law and Policy Work Group created as part of OJD’s eCourt Program. The OLC’s Juvenile Court Records Work Group (“Work Group”) developed legislative proposals to make juvenile court records amenable to the eCourt process. These proposals were approved by the OLC Commissioners, submitted to the Legislative Assembly, and enacted into law via 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 current law, the two types of files containing juvenile court records must be separately maintained by juvenile courts. Current law also details who is entitled to inspect and who is entitled to receive copies of the two types of files. Senate Bill 622 (2013) continued the long-standing state policy that juvenile case records are to be treated differently than other civil and criminal case records. 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, an individual must be included in the list of persons entitled to 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, Senate Bill 622 (2013) included a catch-all provision authorizing juvenile courts to allow access to “any other person allowed by the court.” These provisions were added by the 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 was being considered by the Commission, litigation - including a mandamus petition seeking to have a trial judge involved in a pending proceeding ordered to provide records to the press - had been filed. Several members of the OLC and the Work Group were involved in the litigation and therefore recused themselves from any discussion of the catch-all provisions. This eliminated any opportunity for a full and meaningful discussion of those provisions in Work Group meetings or before the Commissioners. Consequently, a delayed operative date was sought. Senate Bill 622 (2013) passed with a delayed operative date of July 1, 2014, with respect to the catch-all “any other person allowed by the court” provisions.

During 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 a second time 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).

Senate Bill 405 (2015) delayed the “any other person allowed by the court” language a third time, this time until September 2016, in order to allow the Work Group ample time to formulate a sound solution. Senate Bill 405 (2015) additionally made other minor changes to address unattended consequences of past bills, such as allowing the Oregon Youth Authority to disclose information that is not confidential and not exempt from disclosure.

II. History of the current project

The Oregon Law Commission submits House Bill 4074 to the 2016 Legislative Assembly to address the “any other person allowed by the court” provision and make other minor changes. The Work Group has met three times and has put in many additional hours to draft the language addressing “any other person allowed by the court,” as well as make other needed changes brought to the Work Group’s attention by various stakeholders.

The Juvenile Court Records Work Group voting members are: Julie McFarlane, Chair of the Work Group, OLC Commissioner and Attorney; Laura Handzel, Deputy Director of the OLC; BeaLisa Sydlik, Deputy Legislative Counsel; Susan Amesbury, Department of Justice Government Services & Education Section; Amanda Austin, Department of Justice Civil Enforcement Child Advocacy; Brad Berry, Yamhill County District Attorney's Office; Office of Public Defense Services; Carmen Brady-Wright, Nancy Cozine, Office of Public Defense Services; Greg Engebretson, Juvenile Director in Clatsop County; Prof. Leslie Harris, Dorothy Kliks Fones Professor of Law at the University of Oregon; Megan Hassen, Oregon Judicial Department; Judge Norman Hill, Polk County; Neal Japport, Deputy Trial Court Administrator for Oregon Judicial Department; Christine Kirk, Oregon Youth Authority; Leola Mckenzie, Oregon Judicial Department; Judge Maureen Mcknight, Multnomah County Circuit Court; Tahra Sinks, Attorney; Shannon Storey, Department of Justice; and Jason Walling, Department of Human Services.

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

The Work Group was tasked with determining the standard for “any other person allowed by the court.” Juvenile court judges requested that there be guidelines and standards given in the statute for them to follow when asked by individuals or entities not explicitly listed for access to juvenile records. Other Work Group members proposed different language and standards. After much deliberation of the different options, the Work Group agreed to the standard presented in section 9 of the bill. The goal in reaching a standard was to balance the best interest of juveniles with the constitutional requirement for open courts while also giving juvenile court judges sufficient guidance when considering requests for access to juvenile records.

IV. The proposal

Section 7:

This section amends ORS 419A.255.

It adds “or entity” to the “any other person allowed by the court” language (“any other person or entity allowed by the court”) and specifies application of section 9 of the Act in order to make determinations required in subsections (1)(b)(Q); (1)(c)(E); (2)(b)(O); and (2)(c)(J).

The Work Group recognizes the important public service functions certain organizations play that require access to juvenile court records. As such, subsection (16) contains a juvenile court record access provision for the Office of Public Defense Services for the purposes of performing their statutory duties to audit attorney appointments and investigate representation of parties in a juvenile court proceeding. Subsection (17) contains a record of the case access provision for the Oregon State Bar for the purpose of performing their statutory duties to investigate attorney representation of a party in a juvenile court proceeding. The Oregon State Bar has agreed that an agreement between OSB and OJD regarding access to juvenile court records will include language that the OSB will not access exhibits that are part of the record of the case. A small sub-sect of the larger Work Group came together to craft these two provisions carefully to ensure compliance with confidentiality requirements imposed by Title IV-E of the Social Security Act. The language for both subsections (16) and (17) was approved as meeting that threshold by Region X.

Subsection (18)(a) clarifies that a child, ward, youth or youth offender or a parent or guardian of such who is entitled to inspect or copy the record of the case pursuant to subsections (1)(b) and (c) continues to enjoy inspection or copy rights after jurisdiction is terminated and after the child, ward, youth or youth offender reaches the age of majority. *Please see infra* on page 6 for additional discussion regarding the term “parties” used in this section.

Subsection (18)(b) states that parents who have had their parental rights terminated maintain the inspection or copy rights that existed up until the time their rights were terminated by entry of judgment. It also allows parents to obtain a copy of the judgment terminating their parental rights.

Subsection (19) clarifies that there is no requirement to redact names of or information about siblings or other persons contained in the record of the case or the supplemental confidential file. This is current practice, but there was some question as to whether redaction was required. This subsection clarifies that indeed it is not required.

Section 8:

States section 9 is added to and part of ORS Chapter 419A.

Section 9:

Details the requirements and considers what factors juvenile court judges must balance when a person or entity motions the courts for access to juvenile records under the “any other person or entity” provision. The Work Group considered many approaches before deciding on that contained in the bill. The Work Group agreed to the process as outlined to provide an approach that balances adequate guidance for juvenile court judges while still providing them with meaningful discretion. At the same time, the process aims to provide a clear mechanism to allow persons or entities to petition the Court for access to juvenile court records. The Work Group felt that this standard would withstand any constitutional challenges regarding open courts because it strikes the appropriate balance between open courts and protecting juvenile interests.

The process requires any person or entity not included in ORS 419A.255 as a person or entity entitled to inspect or copy the record of the case or the supplemental confidential file to motion the court to inspect or copy the record of the case or the supplemental confidential file. The motion must include a sworn affidavit or declaration under penalty of perjury that includes: 1) A statement detailing the reasons why the person or entity would like to inspect or copy the record; 2) Any relevancy of the inspection or copying to the juvenile proceeding; and 3) How the inspection or copying will serve the balancing of the interests in subsection (6) of this bill. The Work Group did not want to require relevancy but wanted to make sure it was included in the motion if the person or entity

had reason for requesting inspection or copy of the record that was relevant to the juvenile proceeding. If the person or entity does not have any relevant reason, they should simply state that.

Subsection (2)(a) outlines the notice requirements. It states that the person or entity filing the motion must serve all parties to the juvenile court proceeding with a copy of the motion and affidavit or declaration no later than 14 days before the court considers the motion. ORS 174.120 and ORS 419B.854 (addressing dependency cases) contain details regarding the computation of time. This section also requires that the person or entity filing the motion must provide all parties and the attorney of record to the juvenile court proceeding with written notice that the party or attorney of record has until 14 days after the date of service to file a response or objection to the motion, unless the court provides an alternative timeline pursuant to subsection (2)(c).

Subsection (2)(b) requires the court to mail notice of the time to respond or object to a party or the attorney of record at their last known address and also note the date the notice was mailed if the person or entity filing the motion states that they do not know the identity or address of the party or attorney of record, which could very well be the case. This subsection further requires the court to mail the notice at least 14 days before the court considers the motion, unless otherwise specified pursuant to subsection (2)(c).

Subsection (2)(c) allows the court to reduce or extend the time for service on its own motion or upon application of the person or entity filing the motion for good cause shown.

Subsection (3) allows the court to summarily deny the motion if the requirements contained in subsections (1) and (2) are not met.

Subsection (4) permits the court to set a hearing to consider the motion but requires them to send notice of the time and place to all parties.

Subsection (5) requires the court to conduct an *in camera* review, taking into account any responses or objections made by a party.

The list of four factors the court must weigh in determining whether to allow inspection or copying of the record of the case or supplemental confidential file are found in subsection (6). The Work Group spent several hours deliberating these factors before deciding on the following four. They are: 1) The privacy interest of the child, ward, youth, or youth offender or his or her family members; 2) The interests of the other parties of the proceeding or the victims in the proceeding; 3) The interests of the person or entity filing the motion; and 4) The interests of the public. The Work Group wanted the courts to consider the privacy interests of the juveniles and their family members that are a part of these proceedings because the records often contain information that is extremely

private and would serve little purpose outside of the proceeding. The Work Group felt it necessary for the courts to include in its balancing of factors the interests of all parties of the proceedings as well as any victims involved in the proceedings.

“Parties” when referenced in the bill refers to persons conferred party status by ORS 419B.875 in dependency cases and ORS 419C.285 in delinquency cases. Once a person or entity has attained party status, that status continues, even after the case is closed. This is important to note because access to inspect and copy the record of the case and/or the supplemental confidential file is sometimes dependent on party status. It should be noted that a child, ward, youth, or youth offender maintains inspection and copy rights after reaching the age of majority and after jurisdiction is terminated. Some practitioners and courts use the term “former youth,” to reference the status of the child, ward, youth, or youth offender after they have reached the age of majority or after jurisdiction is terminated. The Work Group considered using this term in the statute, but decided against it because “youth offender” is clearly defined at ORS 419A.004 (37) to include individuals even after they reach the age of majority.

Subsection (7) outlines court requirements should they grant a motion made under section 9. This includes the requirements that they allow inspection or copying only as necessary and that they make protective orders governing the use of the materials inspected or copied. Additionally, subsection (7) allows the court to limit inspection or copying to particular parts of the record of the case or the supplemental confidential file. It also states that the court may specify the timing and procedure for allowing inspection or copying.

Section 11:

Subsection (1) states application of section 9, and the amendments to ORS 419A.255 by section 7, to juvenile court proceedings pending or commenced on or after September 30, 2016. Subsection (2) declares an operative date of September 30, 2016 to sections 8 and 9 as well as the amendments to ORS 419A.255 by section 7. The Work Group decided the date of September 30, 2016, would result in the least amount of confusion when individuals requesting access to records need to determine whether they fall under the new or old law.

V. Conclusion

Thank you to the House Interim Committee on Judiciary, specifically Chair Jeff Barker, for graciously introducing this bill on behalf of the Oregon Law Commission and its Juvenile Court Records Work Group.

The Work Group's end product is contained in a single bill along with another juvenile law fix needed to correct unintended consequences from House Bill 2320 (2015), a bill unrelated to the Commission. Neither the Work Group nor the OLC is addressing House Bill 2320 (2015). Similarly, neither the Work Group nor the OLC take any position on the contents of House Bill 4074 (2016) falling outside the scope of the Juvenile Court Records Work Group's breadth. The work of the Commission's Juvenile Court Records Work Group is contained at section 7, 8, 9, 11 and 12.