

D R A F T

SUMMARY

Modifies procedure for expunction of certain juvenile records. Directs juvenile department to initiate statutory expunction process for juvenile records relating to contact that did not result in referral to juvenile court. Directs juvenile department to apply for expunction of juvenile records if juvenile had contact with juvenile department but was never found to be under jurisdiction of juvenile court.

Modifies process for access to counsel for persons seeking to file application for expunction of juvenile records.

Directs Oregon Youth Authority, in collaboration with county juvenile departments and Judicial Department, to submit report and recommendations for legislation regarding juvenile expunction process to interim committees of Legislative Assembly relating to juveniles.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to juvenile records; creating new provisions; amending ORS 419A.250, 419A.260, 419A.262, 419A.265, 419C.370, 659A.030 and 670.290; and declaring an emergency.

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

EXPUNCTION OF JUVENILE RECORDS

SECTION 1. (1) Sections 2 to 4 of this 2020 Act are added to and made a part of ORS chapter 419A.

(2) ORS 419A.260 and 419A.262 are added to and made a part of sections 2 to 4 of this 2020 Act.

SECTION 2. Notice of statutory expunction. (1) A juvenile depart-

1 **ment shall issue a notice of statutory expunction of a subject person's**
2 **records if the subject person:**

3 **(a) Has had contact with the juvenile department and the contact**
4 **could have resulted in a juvenile court's assumption of jurisdiction**
5 **under ORS 419C.005;**

6 **(b) Has never been the subject of a petition filed in the juvenile**
7 **court; and**

8 **(c) Has never been found to be within the jurisdiction of the juve-**
9 **nile court.**

10 **(2) The juvenile department shall issue the notice described in sub-**
11 **section (1) of this section no later than 90 days following:**

12 **(a) The date the subject person attains 18 years of age; or**

13 **(b) If the subject person was 18 years of age or older on the effective**
14 **date of this 2020 Act, the date the juvenile department receives a re-**
15 **quest for expunction from the subject person.**

16 **(3) The juvenile department shall send the notice described in sub-**
17 **section (1) of this section to each agency that the juvenile department**
18 **determines, after a reasonable search of the juvenile department's**
19 **files, may be in possession of records relating to the subject person.**
20 **The notice must notify the recipient agency that the agency has 60**
21 **days from the date of receipt to expunge the subject person's records.**

22 **(4)(a) Upon receipt of a notice of statutory expunction, an agency**
23 **shall comply and, within 60 days of the date of receipt, return a copy**
24 **of the notice to the juvenile department with an indorsement indicat-**
25 **ing compliance.**

26 **(b) The juvenile department may, upon an agency's written request,**
27 **provide an extension of time of no more than 30 days to comply with**
28 **paragraph (a) of this subsection.**

29 **(c) If an agency fails to comply with the requirements of paragraph**
30 **(a) of this subsection, the juvenile department shall petition the juve-**
31 **nile court for an order compelling the agency to comply.**

1 (5) When all agencies subject to the notice of statutory expunction
2 have indicated their compliance or in any event no later than 90 days
3 following the date the notice was delivered as required by subsection
4 (3) of this section, the juvenile department shall provide the subject
5 person with a copy of the notice of statutory expunction, a list of
6 complying and noncomplying agencies, and a written notice of rights
7 and effects of expunction. The juvenile department then shall expunge
8 forthwith all records in its possession that are subject to the notice
9 of statutory expunction, except that the original notice of statutory
10 expunction and the list of complying and noncomplying agencies which
11 must be preserved under seal.

12 (6) The Oregon Youth Authority, in consultation with county juve-
13 nile departments, shall develop statewide model forms to implement
14 the provisions of this section.

15 SECTION 3. Effect of expunction; confidentiality; penalties. (1)
16 Upon issuance of a notice of statutory expunction under section 2 of
17 this 2020 Act or entry of an expunction judgment under ORS 419A.262,
18 the contact that is the subject of the expunged record shall not be
19 disclosed by any agency. An agency that is subject to a notice of
20 statutory expunction or an expunction judgment shall respond to any
21 inquiry about the contact by indicating that no record or reference
22 concerning the contact exists.

23 (2) A person who is the subject of a record that has been expunged
24 under ORS 419A.262 or section 2 of this 2020 Act may assert that the
25 record never existed and that the contact that was the subject of the
26 record never occurred without incurring a penalty for perjury or false
27 swearing under the laws of this state.

28 (3) Juvenile courts, by court rule or by order related to a particular
29 matter, may direct that records concerning a subject person be de-
30 stroyed. No records shall be destroyed until at least three years have
31 elapsed after the date of the subject's most recent termination. In the

1 event the record has been expunged, the expunction judgment and list
2 of complying and noncomplying agencies may not be destroyed, but
3 shall be preserved under seal. The destruction of records under this
4 subsection does not constitute expunction.

5 (4) A notice of statutory expunction or an expunction judgment and
6 the list of complying and noncomplying agencies shall be released from
7 confidentiality only on order of the court that would have had juris-
8 diction to compel compliance with the notice of statutory expunction
9 or that originated the expunction judgment, based on a finding that
10 review of a particular case furthers compliance with the expunction
11 provisions of sections 2 to 4 of this 2020 Act.

12 (5) A person who, in the person's official capacity with a juvenile
13 department, discloses information in a notice required under ORS
14 419A.262 or section 2 of this 2020 Act has immunity from any liability,
15 civil or criminal, that might otherwise be incurred or imposed for
16 making the disclosure.

17 (6) A subject person has a right of action against any person who
18 intentionally violates the confidentiality provisions of this section. In
19 the proceeding, punitive damages up to an amount of \$1,000 may be
20 sought in addition to any actual damages. The prevailing party shall
21 be entitled to costs and reasonable attorney fees.

22 (7) Intentional violation of the confidentiality provisions of this
23 section by a public employee is cause for dismissal.

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

26 SECTION 4. Appointment of counsel. (1) If a person who is the
27 subject of a record that is eligible for expunction under ORS 419A.262
28 (3) to (9) wishes to apply for expunction and if the person is without
29 funds to employ suitable counsel possessing skills and experience
30 commensurate with the nature and complexity of the expunction pro-
31 cess, the person may request the juvenile court having jurisdiction

1 over the expunction process under ORS 419A.262 (1) to appoint counsel
2 to represent the person in the expunction proceeding.

3 (2) The juvenile court shall inform a person requesting court-
4 appointed counsel under this section of the person's right to be re-
5 presented by suitable counsel possessing skills and experience
6 commensurate with the nature and complexity of the expunction pro-
7 cess, to consult with counsel prior to the filing of an application for
8 expunction under ORS 419A.262 (3) to (9) and prior to a hearing on the
9 matter and, if financially eligible, to have suitable counsel appointed
10 at state expense. Upon request of the person, the juvenile court shall
11 appoint counsel in accordance with the provisions of ORS 419B.195 and
12 419B.198 to aid the person in the expunction proceeding, including in
13 the completion of an application for expunction and representation in
14 any hearings on the application for expunction.

15 (3) When the juvenile court appoints counsel for a person under this
16 section and the person is determined to be entitled to, and financially
17 eligible for, appointment of counsel at state expense, the compensation
18 for counsel and reasonable fees and expenses of investigation, prepara-
19 tion and presentation paid or incurred shall be determined and paid
20 as provided in ORS 135.055.

21 SECTION 5. ORS 419A.260 is amended to read:

22 419A.260. (1) As used in [*this section and ORS 419A.262*] **sections 2 to 4**
23 **of this 2020 Act:**

24 (a) "Contact" means any instance in which a person's act or behavior, or
25 alleged act or behavior, which could result in **a referral to a juvenile de-**
26 **partment or** a juvenile court's assumption of jurisdiction under ORS
27 419B.100 (1)(a) to (c) and (f) or 419C.005 comes to the attention of an agency
28 specified in paragraph (d) of this subsection.

29 (b) "Expunction" means:

30 [*(A) The removal and destruction or sealing of a judgment or order related*
31 *to a contact and all records and references; and*]

1 **(A) The removal and destruction of all records and references as-**
2 **sociated with a subject person;**

3 **(B) The sealing of a judgment, order or other record associated with**
4 **a subject person;**

5 **(C) The redaction of a subject person's name and all references to**
6 **the subject person within a record; or**

7 [(B)] **(D) [Where] If** a record is kept by the Department of Human Ser-
8 vices [or the Oregon Youth Authority, either the sealing of such record by the
9 department or the Oregon Youth Authority or, in a multiperson file,] the
10 **department's** affixing to the front of the file[, by the department or the youth
11 authority,] **containing the record** a stamp or statement identifying the name
12 of the individual, the date of expunction and instruction that no further
13 reference shall be made to the [material] **record** that is subject to the
14 expunction order except upon an order of a court of competent jurisdiction.

15 (c) "Person" includes a person under 18 years of age.

16 (d) "Record" includes a fingerprint or photograph file, report, exhibit or
17 other material which contains information relating to a person's contact
18 with any law enforcement agency, juvenile court or juvenile department, the
19 Psychiatric Security Review Board, the Department of Human Services, **the**
20 **Oregon Youth Authority** or the Oregon Health Authority and is kept
21 manually, through the use of electronic data processing equipment, or by any
22 other means by a law enforcement or public investigative agency, a juvenile
23 court or juvenile department or an agency of the State of Oregon. "Record"
24 does not include:

25 (A) A transcript of a student's Youth Corrections Education Program
26 academic record;

27 (B) Material on file with a public agency which is necessary for obtaining
28 federal financial participation regarding financial assistance or services on
29 behalf of a person who has had a contact;

30 (C) Records kept or disseminated by the Department of Transportation,
31 State Marine Board and State Fish and Wildlife Commission pursuant to

1 juvenile or adult order or recommendation;

2 (D) Police and court records related to an order of waiver where the
3 matter is still pending in the adult court or on appeal therefrom, or to any
4 disposition as an adult pursuant to such order;

5 (E) Records related to a support obligation;

6 (F) Medical records other than those related to a finding of responsible
7 except for insanity under ORS 419C.411;

8 (G) Records of a proposed or adjudicated termination of parental rights
9 and adoptions;

10 (H) Any law enforcement record of a person who currently does not
11 qualify for expunction or of current investigations or cases waived to the
12 adult court;

13 (I) Records and case reports of the Oregon Supreme Court and the Oregon
14 Court of Appeals;

15 (J) Any records in cases under ORS 419C.005 in which a juvenile court
16 found a person to be within the jurisdiction of the court based upon the
17 person's commission of an act which if done by an adult would constitute
18 one of the following offenses:

19 (i) Aggravated murder under ORS 163.095;

20 (ii) Murder in any degree under ORS 163.107 or 163.115;

21 (iii) Attempt, solicitation or conspiracy to commit murder in any degree
22 or aggravated murder;

23 (iv) Manslaughter in the first degree under ORS 163.118;

24 (v) Manslaughter in the second degree under ORS 163.125;

25 (vi) Criminally negligent homicide under ORS 163.145;

26 (vii) Assault in the first degree under ORS 163.185;

27 (viii) Criminal mistreatment in the first degree under ORS 163.205;

28 (ix) Kidnapping in the first degree under ORS 163.235;

29 (x) Rape in the third degree under ORS 163.355;

30 (xi) Rape in the second degree under ORS 163.365;

31 (xii) Rape in the first degree under ORS 163.375;

- 1 (xiii) Sodomy in the third degree under ORS 163.385;
- 2 (xiv) Sodomy in the second degree under ORS 163.395;
- 3 (xv) Sodomy in the first degree under ORS 163.405;
- 4 (xvi) Unlawful sexual penetration in the second degree under ORS 163.408;
- 5 (xvii) Unlawful sexual penetration in the first degree under ORS 163.411;
- 6 (xviii) Sexual abuse in the third degree under ORS 163.415;
- 7 (xix) Sexual abuse in the second degree under ORS 163.425;
- 8 (xx) Sexual abuse in the first degree under ORS 163.427;
- 9 (xxi) Promoting prostitution under ORS 167.012;
- 10 (xxii) Compelling prostitution under ORS 167.017;
- 11 (xxiii) Aggravated driving while suspended or revoked under ORS 163.196;
- 12 (xxiv) Aggravated vehicular homicide under ORS 163.149; or
- 13 (xxv) An attempt to commit a crime listed in this subparagraph other

14 than manslaughter in the second degree and criminally negligent homicide;

15 (K) Blood samples, buccal samples and other physical evidence and iden-
16 tification information obtained, stored or maintained by the Department of
17 State Police under authority of ORS 137.076, 181A.155 or 419C.473; or

18 (L) Records maintained in the Law Enforcement Data System under ORS
19 163A.035.

20 **(M) Records of a law enforcement agency or public investigative**
21 **agency concerning an open or otherwise unresolved investigation.**

22 **(e) “Seal” means to make a record not accessible and to categorize**
23 **the record as only accessible upon order of a court of competent ju-**
24 **risdiction.**

25 [(e)] **(f) “Termination” means:**

26 (A) For a person who is the subject of a record kept by a juvenile court
27 or juvenile department, the final disposition of a case by informal means, by
28 a decision not to place the person on probation or make the person a ward
29 of the court after the person has been found to be within the court’s juris-
30 diction or by a discontinuance of probation, of the court’s wardship or of the
31 jurisdiction of the Psychiatric Security Review Board, the Oregon Health

1 Authority or the Department of Human Services.

2 (B) For a person who is the subject of a record kept by a law enforcement
3 or public investigative agency, a juvenile court or juvenile department or an
4 agency of the State of Oregon, the final disposition of the person's most re-
5 cent contact with a law enforcement agency.

6 (2) The juvenile court or juvenile department shall make reasonable effort
7 to provide written notice to a child who is within the court's jurisdiction
8 under ORS 419B.100 (1)(a) to (c) and (f) or to a youth who is within the
9 court's jurisdiction under ORS 419C.005, and to the child's or youth's parent,
10 of the procedures for expunction of a record, the right to **and procedure to**
11 **access** counsel under this chapter, the legal effect of an expunction order
12 and the procedures for seeking relief from the duty to report as a sex
13 offender provided under ORS 163A.130, at the following times:

14 (a) At any dispositional hearing or at the time of entering into a formal
15 accountability agreement;

16 (b) At the time of termination;

17 (c) Upon notice to the subject of an expunction pending pursuant to ap-
18 plication of a juvenile department or motion on a juvenile court; and

19 (d) At the time of notice of execution of an expunction order.

20 **SECTION 6.** ORS 419A.262 is amended to read:

21 419A.262. (1)(a) **An expunction proceeding under subsection (2) of**
22 **this section shall be commenced in the county where the subject per-**
23 **son resided at the time of the most recent contact.**

24 (b) An expunction proceeding **under subsections (3) to (9) of this sec-**
25 **tion** shall be commenced in the county where the subject person resided at
26 the time of the most recent termination.

27 (2)(a) **A juvenile department shall file with the juvenile court an**
28 **application for expunction of the records of a person the juvenile de-**
29 **partment determines meets the criteria under paragraph (b) of this**
30 **subsection no later than 90 days following:**

31 (A) **The date that the person attains 18 years of age; or**

1 **(B) If the person was 18 years of age or older on the effective date**
2 **of this 2020 Act, the date that the juvenile department receives a re-**
3 **quest to file the application for expunction.**

4 **(b) Upon receipt of an application for expunction under this sub-**
5 **section, the juvenile court shall order expunction if it finds that:**

6 **(A) The subject person had contact with the juvenile department**
7 **and the contact could have resulted in a juvenile court's assumption**
8 **of jurisdiction under ORS 419C.005;**

9 **(B) The subject person has never been found to be within the ju-**
10 **risdiction of the juvenile court;**

11 **(C) There is no petition pending alleging that the subject person is**
12 **subject to the juvenile court's jurisdiction under ORS 419C.005; and**

13 **(D) The subject person has not been waived to criminal court pur-**
14 **suant a hearing under ORS 419C.349 or 419C.352.**

15 **(c) If the juvenile court denies the application for expunction under**
16 **this subsection:**

17 **(A) The court must specify in the judgment denying the application**
18 **for expunction the reason for the denial.**

19 **(B) The juvenile department shall make reasonable efforts to send**
20 **to the subject person the following:**

21 **(i) Notice of the court's decision and a copy of the judgment deny-**
22 **ing the application for expunction; and**

23 **(ii) Notice of the person's right to an attorney, right to file a new**
24 **application for expunction under this subsection and right to request**
25 **expunction by application under subsections (3) to (9) of this section.**

26 **(C) The juvenile department or the subject person may file a new**
27 **application for expunction under this subsection.**

28 **[(2)] (3) Upon application of either a person who is the subject of a record**
29 **or a juvenile department, or upon its own motion, the juvenile court shall**
30 **order expunction if, after a hearing when the matter is contested, it finds**
31 **that:**

1 (a) At least five years have elapsed since the date of the person's most
2 recent termination;

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

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

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

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

12 [(3)(a)] **(4)(a)** Notwithstanding subsection [(2)] **(3)** of this section, upon
13 application of a person who is the subject of a record kept by a juvenile
14 court or juvenile department, upon application of the juvenile department,
15 or upon its own motion, the juvenile court, after a hearing when the matter
16 is contested under subsection [(13)] **(14)** of this section, shall order
17 expunction if it finds that:

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

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

23 (b) Except as provided in subsections [(13) and] (14) **and (15)** of this sec-
24 tion, there is no waiting period required before the juvenile court orders
25 expunction under this subsection.

26 [(4)] **(5)** In the case of an application by the juvenile department or of the
27 court acting upon its own motion, expunction shall not be ordered **under**
28 **subsections (3) or (4) of this section** if actual notice of expunction has not
29 been given to the person in accordance with subsection [(12)] **(13)** of this
30 section unless the person has reached 21 years of age.

31 [(5)] **(6)** When a person who is the subject of a record kept by a juvenile

1 court or juvenile department reaches 18 years of age, the juvenile court, after
2 a hearing when the matter is contested, shall order expunction if:

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

5 (b) The conditions of subsection [(2) or] (3) **or** (4) of this section have
6 been met.

7 [(6)] (7) Expunction shall not be ordered under **subsections (3) to (9) of**
8 this section if actual notice of expunction has not been given to the person
9 in accordance with subsection [(12)] (13) of this section unless the person
10 has reached 21 years of age.

11 [(7)] (8) Subsections [(5) and] (6) **and** (7) of this section apply only to
12 cases resulting in termination after September 13, 1975.

13 [(8)] (9) Notwithstanding subsections [(2),] (3), (4) and [(5) to (7)] (6) to
14 (8) of this section, upon application of a person who is the subject of a re-
15 cord kept by a juvenile court or juvenile department, upon application of the
16 juvenile department, or upon its own motion, the juvenile court, after a
17 hearing when the matter is contested, may order expunction of all or any
18 part of the person's record if it finds that to do so would be in the best in-
19 terests of the person and the public. In the case of an application by the
20 juvenile department or of the court acting upon its own motion, expunction
21 shall not be ordered if actual notice of expunction has not been given to the
22 person in accordance with subsection [(12)] (13) of this section unless the
23 person has reached 21 years of age.

24 [(9)] (10) Notwithstanding ORS 419A.260 (1)(d)(J)[(x), (xiii), (xix) or
25 (xviii)], a person who has been found to be within the jurisdiction of the
26 juvenile court based on an act that if committed by an adult would consti-
27 tute:

28 (a) Rape in the third degree under ORS 163.355, sodomy in the third de-
29 gree under ORS 163.385 or sexual abuse in the third degree under ORS
30 163.415, or an attempt to commit those crimes, may apply for an order of
31 expunction under **subsections (3) to (9) of** this section. The court shall or-

1 der expunction of the records in the case if, after a hearing when the matter
2 is contested, the court finds that the person:

3 (A) Meets the requirements of subsection [(2)] **(3)** of this section;

4 (B) [*Has been relieved of the obligation to report as a sex offender pursuant*
5 *to a court order entered under ORS 163A.145 or 163A.150*] **Is not required**
6 **to report as a sex offender**; and

7 (C) Has not been convicted of, found guilty except for insanity of or found
8 to be within the jurisdiction of the juvenile court based on a crime listed in
9 ORS 419A.260 (1)(d)(J), other than the adjudication that is the subject of the
10 motion.

11 (b) A sex crime that is a Class C felony may apply for an order of
12 expunction under **subsections (3) to (9)** of this section. The court shall
13 order expunction of the records in the case if, after a hearing when the
14 matter is contested, the court finds that:

15 (A) The person meets the requirements of subsection [(2)] **(3)** of this sec-
16 tion;

17 (B) The person was under 16 years of age at the time of the offense;

18 (C) The person is:

19 (i) Less than two years and 180 days older than the victim; or

20 (ii) At least two years and 180 days older, but less than three years and
21 180 days older, than the victim and the expunction is in the interests of
22 justice and of benefit to the person and the community;

23 (D) The victim's lack of consent was due solely to incapacity to consent
24 by reason of being less than a specified age;

25 (E) The victim was at least 12 years of age at the time of the offense;

26 (F) Each finding described in this paragraph involved the same victim;
27 and

28 (G) The person has not been convicted of, found guilty except for insanity
29 of or found to be within the jurisdiction of the juvenile court based on a
30 crime listed in ORS 419A.260 (1)(d)(J) or an offense the court is prohibited
31 from setting aside under ORS 137.225, other than the adjudication that is the

1 subject of the motion.

2 [(10)] **(11)** When an expunction proceeding **under subsections (3) to (9)**
3 **of this section** is commenced by application of the person whose records are
4 to be expunged, the person shall set forth as part of the application the
5 names of the juvenile courts, juvenile departments, institutions and law
6 enforcement and other agencies that the person has reason to believe possess
7 an expungible record of the person. The juvenile department shall provide
8 the names and addresses of the juvenile courts, juvenile departments, insti-
9 tutions and law enforcement and other agencies that a reasonable search of
10 department files indicates have expungible records.

11 [(11)] **(12)** When an expunction proceeding is commenced by application
12 of the juvenile department or upon the court's own motion, the application
13 or motion shall set forth the names and addresses of the juvenile courts,
14 juvenile departments, institutions and law enforcement and other agencies
15 that a reasonable search of department files indicates have expungible re-
16 cords and those provided by the subject person.

17 [(12)(a)] **(13)(a)** Notice and a copy of an application for expunction under
18 subsections [(2) to (8)] **(3) to (9)** of this section shall be given to:

19 (A) The district attorney of the county in which the expunction proceed-
20 ing is commenced and the district attorney of each county in which the re-
21 cord sought to be expunged is kept; and

22 (B) The person who is the subject of the record if the person has not in-
23 itiated the expunction proceeding.

24 (b) A district attorney who receives notice under this subsection shall
25 notify the victim of the acts that resulted in the disposition that is the sub-
26 ject of the application for expunction and shall mail a copy of the applica-
27 tion for expunction to the victim's last known address.

28 [(13)(a)] **(14)(a)** Within 30 days of receiving the notice of application for
29 expunction under subsection [(12)] **(13)** of this section, a district attorney
30 shall give written notice of any objection and the grounds therefor to the
31 person whose records are to be expunged and to the juvenile court.

1 (b) Except as provided in subsection [(14)(c)] **(15)(c)** of this section, if no
2 objection is filed the court may decide the issue of expunction either without
3 a hearing or after full hearing under subsections [(14) to (17)] **(15) to (18)**
4 of this section.

5 [(14)] **(15)** When an expunction is pending under subsections [(2) to (8)]
6 **(3) to (9)** of this section, the court may proceed with or without a hearing,
7 except that:

8 (a) The court may not enter an expunction judgment without a hearing
9 if a timely objection to expunction has been filed under subsection [(13)] **(14)**
10 of this section;

11 (b) The court may not deny an expunction without a hearing if the pro-
12 ceeding is based on an application of the subject; and

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

14 (A) No objection is filed under subsection [(13)] **(14)** of this section;

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

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

20 [(15)(a)] **(16)(a)** Notice of a hearing on a pending expunction shall be
21 served on the subject and any district attorney filing a timely objection un-
22 der subsection [(13)] **(14)** of this section.

23 (b) When a district attorney receives notice of a hearing for expunction
24 of a record concerning a youth or youth offender proceeding under ORS
25 chapter 419C, if the victim of the acts that resulted in the disposition that
26 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 [(16)] **(17)** The court shall conduct a hearing on [*a pending expunction*]
29 **an expunction pending under subsections (3) to (9) of this section** in
30 accord with the provisions of ORS [419B.195, 419B.198, 419B.201,] 419B.205,
31 419B.208, 419B.310, 419B.812 to 419B.839 and 419B.908. Rules of evidence shall

1 be as in a hearing to establish juvenile court jurisdiction and as defined in
2 ORS 419B.310 (3) and 419C.400 (2). The burden of proof shall be with the
3 party contesting expunction.

4 [(17)] **(18)(a)** At the conclusion of a hearing on [*a pending expunction*]
5 **an expunction pending under subsections (3) to (9) of this section**, the
6 court shall issue judgment granting or denying expunction.

7 **(b) The court's denial of an application for expunction under this**
8 **section does not preclude the subject person from filing an application**
9 **for expunction under any other applicable subsection of this section.**

10 [(18)] **(19)(a)** The juvenile court or juvenile department shall send a copy
11 of an expunction judgment to each agency subject to the judgment. **Attached**
12 **to the expunction judgment must be information, to remain confi-**
13 **dential, regarding the record to be expunged and the date of the re-**
14 **cord.**

15 **(b) Upon receipt of a copy of the judgment granting an application**
16 **for expunction under subsection (2) of this section, the agency shall**
17 **comply and, within 60 days of the date of receipt, return the copy to**
18 **the juvenile court or the juvenile department with an indorsement**
19 **indicating compliance.**

20 **(c)** Upon receipt of a copy of the judgment **granting an application for**
21 **expunction under subsections (3) to (9) of this section**, the agency shall
22 comply and, within 21 days of the date of receipt, return the copy to the ju-
23 venile court or juvenile department with an indorsement indicating compli-
24 ance.

25 **(d) The juvenile court may, upon an agency's written request, grant**
26 **an extension of time of no more than 30 days to comply with para-**
27 **graph (b) or (c) of this subsection.**

28 [(19)] **(20)** When all agencies subject to an expunction judgment have in-
29 dicated their compliance or in any event no later than [*six weeks*] **90 days**
30 following the date the judgment was delivered as required by subsection
31 [(18)] **(19)** of this section, the juvenile court shall provide the person who is

1 the subject of the record with a copy of the expunction judgment, a list of
2 complying and noncomplying agencies, and a written notice of rights and
3 effects of expunction. The juvenile court and juvenile department then shall
4 expunge forthwith all records which they possess and which are subject to
5 the judgment, except the original expunction judgment and the list of com-
6 complying and noncomplying agencies which must be preserved under seal.

7 [(20)] **(21)** In addition to those agencies identified in ORS 419A.260 (1)(d),
8 the juvenile, circuit, municipal and justice courts, and the district and city
9 attorneys of this state, are bound by an expunction judgment of any juvenile
10 court of appropriate jurisdiction in this state issuing an expunction judg-
11 ment.

12 **(22)(a) Applications for expunction under this section shall be**
13 **available from the clerk of the court in a form prescribed by the State**
14 **Court Administrator.**

15 **(b) The State Court Administrator shall prescribe the content and**
16 **form of expunction judgments under this section. The judgment forms**
17 **must include a place for the court to specify the method of expunction**
18 **under ORS 419A.260 (1)(b) that applies to a given record and, if the**
19 **record is kept by an agency in a multiperson file, whether the agency**
20 **must redact the subject person's name from all records subject to the**
21 **order or seal the entire file.**

22 [(21) *Upon entry of an expunction judgment, the contact that is the subject*
23 *of the expunged record shall not be disclosed by any agency. An agency that*
24 *is subject to an expunction judgment shall respond to any inquiry about the*
25 *contact by indicating that no record or reference concerning the contact*
26 *exists.*]

27 [(22) *A person who is the subject of a record that has been expunged under*
28 *this section may assert that the record never existed and that the contact,*
29 *which was the subject of the record, never occurred without incurring a penalty*
30 *for perjury or false swearing under the laws of this state.*]

31 [(23) *Juvenile courts, by court rule or by order related to a particular mat-*

1 *ter, may direct that records concerning a subject person be destroyed. No re-*
2 *ords shall be destroyed until at least three years have elapsed after the date*
3 *of the subject's most recent termination. In the event the record has been*
4 *expunged, the expunction judgment and list of complying and noncomplying*
5 *agencies may not be destroyed, but shall be preserved under seal. The de-*
6 *struction of records under this subsection does not constitute expunction.]*

7 *[(24) An expunction judgment and list of complying and noncomplying*
8 *agencies shall be released from confidentiality only on order of the court*
9 *originating the expunction judgment, based on a finding that review of a par-*
10 *ticular case furthers compliance with the expunction provisions of this*
11 *chapter.]*

12 *[(25) A subject has a right of action against any person who intentionally*
13 *violates the confidentiality provisions of this section. In the proceeding, puni-*
14 *tive damages up to an amount of \$1,000 may be sought in addition to any ac-*
15 *tual damages. The prevailing party shall be entitled to costs and reasonable*
16 *attorney fees.]*

17 *[(26) Intentional violation of the confidentiality provisions of this section*
18 *by a public employee is cause for dismissal.]*

19 *[(27) A person who intentionally releases all or part of an expunged record*
20 *commits a Class C misdemeanor.]*

21

22

CONFORMING AMENDMENTS

23

24 **SECTION 7.** ORS 419A.250 is amended to read:

25 419A.250. (1) A child, ward, youth or youth offender may be photographed
26 or fingerprinted by a law enforcement agency:

27 (a) Pursuant to a search warrant;

28 (b) According to laws concerning adults if the youth has been transferred
29 to criminal court for prosecution;

30 (c) Upon consent of both the child or youth and the child or youth's
31 parent after advice that they are not required to give such consent;

1 (d) Upon request or consent of the child's parent alone if the child is less
2 than 10 years of age, and if the law enforcement agency delivers the original
3 photographs or fingerprints to the parent and does not make or retain any
4 copies thereof; or

5 (e) By order of the juvenile court.

6 (2) When a youth is taken into custody under ORS 419C.080, the law
7 enforcement agency taking the youth into custody shall photograph and fin-
8 gerprint the youth. When a youth is found within the jurisdiction of the ju-
9 venile court for the commission of an act that would constitute a crime if
10 committed by an adult, the court shall ensure that the youth offender's fin-
11 gerprints have been taken. The law enforcement agency attending upon the
12 court is the agency responsible for obtaining the fingerprints. The law
13 enforcement agency attending upon the court may, by agreement, arrange for
14 another law enforcement agency to obtain the fingerprints on the attending
15 agency's behalf.

16 (3) Fingerprint and photograph files or records of children, wards, youths
17 and youth offenders must be kept separate from those of adults, and finger-
18 prints and photographs known to be those of a child may be maintained on
19 a local basis only and may not be sent to a central state or federal deposi-
20 tory.

21 (4) Fingerprint and photograph files or records of a child, ward, youth or
22 youth offender are open to inspection only by, or the contents disclosed only
23 to, the following:

24 (a) Public agencies for use in investigation or prosecution of crimes and
25 of conduct by a child, ward, youth or youth offender that if committed by
26 an adult would be an offense, provided that a law enforcement agency may
27 provide information to another agency only when the information is perti-
28 nent to a specific investigation by that agency;

29 (b) The juvenile department and the juvenile court having the child, ward,
30 youth or youth offender before it in any proceeding;

31 (c) Caseworkers and counselors taking action or otherwise responsible for

1 planning and care of the child, ward, youth or youth offender;

2 (d) The parties to the proceeding and their counsel; and

3 (e) The victim or a witness of an act or behavior described under ORS
4 419C.005 (1) or the victim's parent, guardian, personal representative or
5 subrogee, when necessary to identify the youth or youth offender committing
6 the act or behavior and identifying the apparent extent of the youth or youth
7 offender's involvement in the act or behavior.

8 (5)(a) Fingerprint and photograph files or records of youths and youth
9 offenders must be sent to a central state depository in the same manner as
10 fingerprint and photograph files or records of adults. The fingerprint and
11 photograph files or records of a youth or youth offender sent to a central
12 depository under this subsection are open to inspection in the same manner
13 and under the same circumstances as fingerprint and photograph files or re-
14 cords of adults.

15 (b) A party filing a petition alleging that a youth is within the jurisdic-
16 tion of the court under ORS 419C.005 shall notify the central state depository
17 of the following:

18 (A) The filing of a petition alleging that a youth committed an act that
19 if committed by an adult would constitute a crime; or

20 (B) The dismissal of a petition alleging that a youth committed an act
21 that if committed by an adult would constitute a crime.

22 (c) The juvenile court shall notify the central state depository of the
23 disposition of a case in which jurisdiction is based on ORS 419C.005.

24 (d) The Department of State Police shall delete the fingerprint and pho-
25 tograph files or records of a youth or youth offender from the depository and
26 destroy the files or records relating to the conduct that caused the files or
27 records to be sent to the depository:

28 (A) One year after receiving the files, if the central state depository has
29 not received notice under paragraph (b) of this subsection;

30 (B) No later than one year following receipt of a notice of dismissal of
31 a petition under paragraph (b)(B) of this subsection; or

1 (C) In all other circumstances, no later than five years and 30 days after
2 fingerprint and photograph files or records are sent to the central state de-
3 pository.

4 (6) Fingerprint and photograph files and records of a child, ward, youth
5 or youth offender must be expunged when the juvenile court orders
6 expunction of a child, ward, youth or youth offender's record pursuant to
7 [ORS 419A.260 and 419A.262] **sections 2 to 4 of this 2020 Act.**

8 (7) The parent or guardian of a missing child may submit a fingerprint
9 card and photograph of the child to a law enforcement agency at the time
10 a missing person report is made. The law enforcement agency may submit the
11 fingerprint file to the Department of State Police. The information must be
12 entered into the Law Enforcement Data System and the Western Identifica-
13 tion Network Automated Fingerprint Identification System.

14 (8) When fingerprint files or records are submitted under subsection (7)
15 of this section, the Department of State Police shall enter in a special index
16 in the computerized criminal history files the name of the child and the name
17 of the county or agency that submitted the fingerprint file or record.

18 (9) Fingerprints and other information entered in any data system pursu-
19 ant to subsection (7) of this section must be deleted when the child is lo-
20 cated.

21 **SECTION 8.** ORS 419A.265 is amended to read:

22 419A.265. Notwithstanding ORS 419A.262 [(2)(a)] **(3)(a)**, a person is eligi-
23 ble for an order of expunction under ORS 419A.262 **(3) to (9)** if the person
24 was adjudicated for committing an act that, if committed by an adult, would
25 constitute a criminal offense in which possession, delivery or manufacture
26 of marijuana or a marijuana item as defined in ORS 475B.015 is an element
27 and:

28 (1) The court finds that at least one year has elapsed since the date of
29 the person's most recent termination;

30 (2) The applicant has not been adjudicated or convicted for any other act
31 or offense, excluding motor vehicle violations; and

1 (3) The applicant has complied with and performed all conditions of the
2 adjudication.

3 **SECTION 9.** ORS 419C.370 is amended to read:

4 419C.370. (1) The juvenile court may enter an order directing that all
5 cases involving:

6 (a) Violation of a law or ordinance relating to the use or operation of a
7 motor vehicle, boating laws or game laws be waived to criminal or municipal
8 court;

9 (b) An offense classified as a violation under the laws of this state or a
10 political subdivision of this state be waived to municipal court if the mu-
11 nicipal court has agreed to accept jurisdiction; and

12 (c) A misdemeanor that entails theft, destruction, tampering with or
13 vandalism of property be waived to municipal court if the municipal court
14 has agreed to accept jurisdiction.

15 (2) Cases waived under subsection (1) of this section are subject to the
16 following:

17 (a) That the criminal or municipal court prior to hearing a case, other
18 than a case involving a parking violation, in which the defendant is or ap-
19 pears to be under 18 years of age notify the juvenile court of that fact; and

20 (b) That the juvenile court may direct that any such case be waived to
21 the juvenile court for further proceedings.

22 (3)(a) When a person who has been waived under subsection (1)(c) of this
23 section is convicted of a property offense, the municipal court may impose
24 any sanction authorized for the offense except for incarceration. The munic-
25 ipal court shall notify the juvenile court of the disposition of the case.

26 (b) When a person has been waived under subsection (1) of this section
27 and fails to appear as summoned or is placed on probation and is alleged to
28 have violated a condition of the probation, the juvenile court may recall the
29 case to the juvenile court for further proceedings. When a person has been
30 returned to juvenile court under this paragraph, the juvenile court may
31 proceed as though the person had failed to appear as summoned to the ju-

1 venile court or had violated a juvenile court probation order under ORS
2 419C.446.

3 (4) Records of cases waived under subsection (1)(c) of this section are ju-
4 venile records for purposes of expunction under [ORS 419A.260] **sections 2**
5 **to 4 of this 2020 Act.**

6 **SECTION 10.** ORS 659A.030 is amended to read:

7 659A.030. (1) It is an unlawful employment practice:

8 (a) For an employer, because of an individual's race, color, religion, sex,
9 sexual orientation, national origin, marital status or age if the individual is
10 18 years of age or older, or because of the race, color, religion, sex, sexual
11 orientation, national origin, marital status or age of any other person with
12 whom the individual associates, or because of an individual's juvenile record
13 that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections**
14 **2 to 4 of this 2020 Act**, to refuse to hire or employ the individual or to bar
15 or discharge the individual from employment. However, discrimination is not
16 an unlawful employment practice if the discrimination results from a bona
17 fide occupational qualification reasonably necessary to the normal operation
18 of the employer's business.

19 (b) For an employer, because of an individual's race, color, religion, sex,
20 sexual orientation, national origin, marital status or age if the individual is
21 18 years of age or older, or because of the race, color, religion, sex, sexual
22 orientation, national origin, marital status or age of any other person with
23 whom the individual associates, or because of an individual's juvenile record
24 that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections**
25 **2 to 4 of this 2020 Act**, to discriminate against the individual in compen-
26 sation or in terms, conditions or privileges of employment.

27 (c) For a labor organization, because of an individual's race, color, reli-
28 gion, sex, sexual orientation, national origin, marital status or age if the
29 individual is 18 years of age or older, or because of an individual's juvenile
30 record that has been expunged pursuant to [ORS 419A.260 and 419A.262]
31 **sections 2 to 4 of this 2020 Act**, to exclude or to expel from its membership

1 the individual or to discriminate in any way against the individual or any
2 other person.

3 (d) For any employer or employment agency to print or circulate or cause
4 to be printed or circulated any statement, advertisement or publication, or
5 to use any form of application for employment or to make any inquiry in
6 connection with prospective employment that expresses directly or indirectly
7 any limitation, specification or discrimination as to an individual's race,
8 color, religion, sex, sexual orientation, national origin, marital status or age
9 if the individual is 18 years of age or older, or on the basis of an expunged
10 juvenile record, or any intent to make any such limitation, specification or
11 discrimination, unless based upon a bona fide occupational qualification.
12 Identification of prospective employees according to race, color, religion, sex,
13 sexual orientation, national origin, marital status or age does not violate
14 this section unless the Commissioner of the Bureau of Labor and Industries,
15 after a hearing conducted pursuant to ORS 659A.805, determines that the
16 designation expresses an intent to limit, specify or discriminate on the basis
17 of race, color, religion, sex, sexual orientation, national origin, marital sta-
18 tus or age.

19 (e) For an employment agency, because of an individual's race, color, re-
20 ligion, sex, sexual orientation, national origin, marital status or age if the
21 individual is 18 years of age or older, or because of the race, color, religion,
22 sex, sexual orientation, national origin, marital status or age of any other
23 person with whom the individual associates, or because of an individual's
24 juvenile record that has been expunged pursuant to [ORS 419A.260 and
25 419A.262] **sections 2 to 4 of this 2020 Act**, to classify or refer for employ-
26 ment, or to fail or refuse to refer for employment, or otherwise to discrimi-
27 nate against the individual. However, it is not an unlawful employment
28 practice for an employment agency to classify or refer for employment an
29 individual when the classification or referral results from a bona fide occu-
30 pational qualification reasonably necessary to the normal operation of the
31 employer's business.

1 (f) For any person to discharge, expel or otherwise discriminate against
2 any other person because that other person has opposed any unlawful prac-
3 tice, or because that other person has filed a complaint, testified or assisted
4 in any proceeding under this chapter or has attempted to do so.

5 (g) For any person, whether an employer or an employee, to aid, abet,
6 incite, compel or coerce the doing of any of the acts forbidden under this
7 chapter or to attempt to do so.

8 (2) The provisions of this section apply to an apprentice under ORS
9 660.002 to 660.210, but the selection of an apprentice on the basis of the
10 ability to complete the required apprenticeship training before attaining the
11 age of 70 years is not an unlawful employment practice. The commissioner
12 shall administer this section with respect to apprentices under ORS 660.002
13 to 660.210 equally with regard to all employees and labor organizations.

14 (3) The compulsory retirement of employees required by law at any age
15 is not an unlawful employment practice if lawful under federal law.

16 (4)(a) It is not an unlawful employment practice for an employer or labor
17 organization to provide or make financial provision for child care services
18 of a custodial or other nature to its employees or members who are respon-
19 sible for a minor child.

20 (b) As used in this subsection, “responsible for a minor child” means
21 having custody or legal guardianship of a minor child or acting in loco
22 parentis to the child.

23 (5) This section does not prohibit an employer from enforcing an other-
24 wise valid dress code or policy, as long as the employer provides, on a
25 case-by-case basis, for reasonable accommodation of an individual based on
26 the health and safety needs of the individual.

27 **SECTION 11.** ORS 670.290 is amended to read:

28 670.290. It shall be unlawful for any state agency or licensing board, in-
29 cluding the Oregon State Bar, to:

30 (1) Require that an applicant for employment, licensing or admission an-
31 swer any questions regarding the existence or contents of a juvenile record

1 that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections**
2 **2 to 4 of this 2020 Act;**

3 (2) Bar or discharge from employment or refuse to hire or employ such
4 individual because of the existence or contents of a juvenile record that has
5 been expunged pursuant to [ORS 419A.260 and 419A.262] **sections 2 to 4 of**
6 **this 2020 Act;** or

7 (3) Deny, revoke or suspend a license because of the existence or contents
8 of a juvenile record that has been expunged pursuant to [ORS 419A.260 and
9 419A.262] **sections 2 to 4 of this 2020 Act.**

10

11

REPORT

12

13 **SECTION 12. Report to Legislative Assembly.** No later than Sep-
14 **tember 15, 2021, the Oregon Youth Authority, in collaboration with**
15 **county juvenile departments and the Judicial Department, shall sub-**
16 **mit a report to the interim committees of the Legislative Assembly**
17 **relating to juveniles describing the process by which records of con-**
18 **tacts are expunged under sections 2 to 4 of this 2020 Act, and include:**

19 (1) **The number of applications for expunction submitted by juvenile**
20 **departments under section 2 of this 2020 Act and ORS 419A.262 (2).**

21 (2) **The number of applications for expunction submitted by persons**
22 **who are subjects of records under section 2 of this 2020 Act and ORS**
23 **419A.262 (2).**

24 (3) **The number of applications for expunction described in sub-**
25 **sections (1) and (2) of this section granted by the court, the number**
26 **of applications denied by the court and the number of applications still**
27 **pending.**

28 (4) **Recommendations for legislation to improve the expunction**
29 **process.**

30 (5) **Recommendations for legislation extending the expunction pro-**
31 **cess under ORS 419A.262 (2) to records of juveniles who have been**

1 found to be under the jurisdiction of the juvenile court for certain
2 misdemeanors and felonies and recommendations regarding which
3 misdemeanor and felony records should be automatically expunged.

4 (6) A description of the types of access to court data information
5 and law enforcement data information systems the Oregon Youth
6 Authority and juvenile departments have or would require to certify
7 the accuracy of both juvenile and adult criminal records checks to
8 implement the legislation recommended under subsection (5) of this
9 section.

10 (7) The estimated cost of the legislation recommended under sub-
11 sections (4) and (5) of this section.

12
13 MISCELLANEOUS
14

15 SECTION 13. Sections 2 to 4 of this 2020 Act and the amendments
16 to ORS 419A.250, 419A.260, 419A.262, 419A.265, 419C.370, 659A.030 and
17 670.290 by sections 5 to 11 of this 2020 Act apply to expunction of re-
18 cords related to juvenile cases created before, on or after the effective
19 date of this 2020 Act.

20 SECTION 14. (1) Sections 2 to 4 of this 2020 Act, and the amend-
21 ments to ORS 419A.250, 419A.260, 419A.262, 419A.265, 419C.370, 659A.030
22 and 670.290 by sections 5 to 11 of this 2020 Act become operative on
23 January 1, 2021.

24 (2) The State Court Administrator and the Oregon Youth Authority
25 may take any action before the operative date specified in subsection
26 (1) of this section that is necessary for the administrator or the au-
27 thority to exercise, on and after the operative date specified in sub-
28 section (1) of this section, all of the duties, functions and powers
29 conferred on the administrator or the authority by sections 2 to 4 of
30 this 2020 Act and the amendments to ORS 419A.250, 419A.260, 419A.262,
31 419A.265, 419C.370, 659A.030 and 670.290 by sections 5 to 11 of this 2020

1 **Act.**

2 **SECTION 15. The unit and section captions used in this 2020 Act**
3 **are provided only for the convenience of the reader and do not become**
4 **part of the statutory law of this state or express any legislative intent**
5 **in the enactment of this 2020 Act.**

6 **SECTION 16. This 2020 Act being necessary for the immediate**
7 **preservation of the public peace, health and safety, an emergency is**
8 **declared to exist, and this 2020 Act takes effect on its passage.**

9
