

Enrolled Senate Bill 962

Sponsored by Senator TAYLOR, Representatives BARKER, WILLIAMSON, HELT; Senators
KNOPP, MANNING JR, PROZANSKI, THATCHER, THOMSEN, Representatives HERNANDEZ,
LIVELY, PILUSO, REARDON

CHAPTER

AN ACT

Relating to victims of certain crimes; creating new provisions; and amending ORS 419A.255.

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

SECTION 1. (1) As used in this section:

(a) "Certifying agency" means:

(A) A state or local law enforcement agency;

(B) A prosecutor's or district attorney's office;

(C) The Judicial Department, with respect to a judge of a state court acting as a certifying official;

(D) A judge other than a judge of a state court; or

(E) Any other agency that has responsibility for the detection, investigation or prosecution of a qualifying criminal activity, including but not limited to a certifying agency as defined in 8 C.F.R. 214.14.

(b) "Certifying official" means:

(A) The head of a certifying agency;

(B) A judge; or

(C) A person in a supervisory role who has been designated by the head of a certifying agency to issue certifications under this section on behalf of the agency.

(c) "Law enforcement agency" has the meaning given that term in ORS 146.003.

(d) "Petitioner" means a person requesting certification under this section.

(e) "Qualifying criminal activity" has the meaning given that term in 8 C.F.R. 214.14.

(f) "Victim of qualifying criminal activity" has the meaning given that term in 8 C.F.R. 214.14.

(2) Upon the request of a victim or a victim's representative, a certifying official shall in writing certify that a victim has been helpful on a certification form designated by the United States Citizenship and Immigration Services if:

(a) The victim is a victim of qualifying criminal activity; and

(b) The victim has been helpful, is being helpful or is likely to be helpful to the detection, investigation or prosecution of the qualifying criminal activity.

(3) An ongoing investigation, a prosecution or a conviction is not required for a certification under this section.

(4) For purposes of determining victim helpfulness, there is a rebuttable presumption that a victim is helpful, has been helpful or is likely to be helpful to the detection, investi-

gation or prosecution of a qualifying criminal activity if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement officials.

(5)(a) A certifying official processing a certification under this section shall:

(A) Fully complete and sign the certification form; and

(B) Except as provided in paragraph (b) of this subsection, include in the form specific details about the nature of the qualifying criminal activity investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness.

(b) If the qualifying criminal activity was committed by a youth offender as defined in ORS 419A.004, the certifying official shall include on the certification form only the following information:

(A) The name of the youth offender;

(B) The case number, if applicable; and

(C) A description of the qualifying criminal activity.

(6) Except under circumstances in which there is good cause for delay, a certifying agency shall grant or deny a request for certification:

(a) Within 90 days of the date of the certification request; or

(b) Within 14 days of the date of the certification request if the victim is in removal proceedings.

(7)(a) If a certifying official or agency denies certification under this section, the official or agency shall in writing notify the petitioner of the reason for the denial. The denial notification must contain the following information:

(A) An internal case number that allows the certifying agency to individually identify each certification request;

(B) The date of the denial; and

(C) The reason for the denial consisting of one of the following:

(i) Lack of qualifying criminal activity;

(ii) Lack of helpfulness;

(iii) Lack of jurisdiction over certification request; or

(iv) Other circumstances for which a certifying official or agency may lawfully deny certification.

(b) Upon receiving notice that a request for certification under this section is denied, a petitioner may provide supplemental information to the certifying agency and request that the certification denial be reviewed by the certifying agency.

(c) A petitioner may submit a new request for certification, after a previous request is denied, to another certifying agency for processing if the other certifying agency was involved in investigating the qualifying criminal activity.

(d) A certification agency shall keep a copy of a denial notification for at least three years from the date of the notification.

(e) A decision by a certifying agency to deny certification under this section is not appealable under ORS chapter 19.

(8)(a) Certifying agencies and certifying officials are prohibited from disclosing the immigration status of a victim or other petitioner unless the disclosure is:

(A) Required by federal law or legal process; or

(B) Authorized by the victim or other petitioner.

(b) Documents submitted with a request for certification under this section and any written response to a certification request from a certifying official or agency are confidential and may not be disclosed unless the disclosure is:

(A) Required by state or federal law or legal process;

(B) Required by ORS 135.815;

(C) Constitutionally required;

(D) Requested by a law enforcement agency and necessary for the investigation of a criminal charge; or

(E) Authorized by the victim.

(9) A certifying official is immune from civil and criminal liability for, in good faith, certifying or denying certification under this section.

(10) A certifying agency shall:

(a) Designate a person or persons within the agency responsible for processing requests for certification under this section.

(b) Develop written procedures for processing requests for certification under this section.

SECTION 2. (1)(a) Beginning June 1, 2021, and annually thereafter, all certifying agencies that received certification requests under section 1 of this 2019 Act within the previous calendar year shall report to the Oregon Criminal Justice Commission in the manner described in this subsection.

(b) A report required under this subsection shall be in a format specified by the commission by rule and must include the following information:

(A) The total number, within the previous year, of certification requests received, requests granted and requests denied, and the number of pending certifications on the date of the report; and

(B) For denied certification requests, the number of times each of the following were the reason for the denial:

(i) Lack of qualifying criminal activity;

(ii) Lack of helpfulness;

(iii) Lack of jurisdiction over certification request; or

(iv) Other circumstances for which a certifying official or agency may lawfully deny certification.

(c) A report made under this subsection may not contain any personally identifying information.

(2) The commission shall maintain a list of certifying agencies other than individual judges within the state in order to monitor compliance with the reporting requirement described in subsection (1) of this section.

(3)(a) Within 90 days of receiving reports under subsection (1) of this section, the commission shall prepare a comprehensive report on the certification process within this state and submit the comprehensive report, in the manner described in ORS 192.245, to the committees of the Legislative Committee related to the judiciary. The report shall identify any certifying agency that did not submit a report as required by subsection (1) of this section.

(b) Notwithstanding section 1 (8)(b) of this 2019 Act, in preparing the report under paragraph (a) of this subsection, the commission may request from a certifying agency or official copies of denial notifications containing personally identifying information if the information is needed in order to prepare an accurate report. The certifying agency or official shall provide the denial notification to the commission on request. A denial notification received under this paragraph is confidential.

SECTION 3. Section 2 of this 2019 Act is repealed on January 2, 2023.

SECTION 4. ORS 419A.255 is amended to read:

419A.255. (1)(a) The clerk of the court shall maintain a record of each case and a supplemental confidential file for each case, except as otherwise provided in ORS 7.120.

(b) The record of the case shall be withheld from public inspection but is open to inspection by the following:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) The child;

(C) The ward;

(D) The youth;

(E) The youth offender;

(F) The parent or guardian of the child, ward, youth or youth offender;

(G) The guardian ad litem for the parent;
(H) A person allowed to intervene in a proceeding involving the child, ward, youth or youth offender;

(I) The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in ORS 184.489, when reasonably necessary for the appointment or supervision of court appointed special advocates;

(J) The attorneys or prospective appellate attorneys for any of the persons listed in subparagraphs (B) to (I) of this paragraph;

(K) The surrogate;

(L) Service providers in the case;

(M) The district attorney or assistant attorney general representing a party in the case;

(N) The juvenile department;

(O) The Department of Human Services;

(P) The Oregon Youth Authority; and

(Q) Any other person or entity allowed by the court pursuant to ORS 419A.258.

(c) The following are entitled to copies of the record of the case:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) A party to the extent permitted under ORS 419B.875 (2) or 419C.285 (2);

(C) A guardian ad litem for a parent to the same extent the parent is permitted to copies under ORS 419B.875 (2) or 419C.285 (2);

(D) Persons listed in paragraph (b)(J) to (P) of this subsection; and

(E) Any other person or entity allowed by the court pursuant to ORS 419A.258.

(2)(a) Reports and other material relating to the child, ward, youth or youth offender's history and prognosis in the record of the case or the supplemental confidential file are privileged and, except at the request of the child, ward, youth or youth offender, shall be withheld from public inspection except that inspection is permitted as set forth in subsection (1)(b) of this section and paragraph (b) of this subsection. The offer or admission of reports and other material in the record of the case or the supplemental confidential file as exhibits in a hearing or trial does not waive or otherwise change the privileged status of the reports and other material, except for purposes of the hearing or trial in which the reports and other material are offered or admitted. Once offered as an exhibit, reports and other material relating to the child, ward, youth or youth offender's history and prognosis that were maintained in the supplemental confidential file become part of the record of the case but are subject to paragraph (e) of this subsection.

(b) A supplemental confidential file is open to inspection by the following:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) The parent or guardian of the child or ward in a dependency case;

(C) The guardian ad litem for the parent of a child or ward in a dependency case;

(D) The parent or guardian of the youth or youth offender in a delinquency case if the youth or youth offender consents to, or the court authorizes, inspection;

(E) The guardian ad litem for the parent of a youth or youth offender in a delinquency case if the youth or youth offender consents to, or the court authorizes, inspection;

(F) A person allowed to intervene in a proceeding involving the child, ward, youth or youth offender;

(G) The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in ORS 184.489, when reasonably necessary for the appointment or supervision of court appointed special advocates;

(H) The surrogate;

(I) Service providers in the case;

(J) The attorneys or prospective appellate attorneys for:

(i) The child;

(ii) The ward;

(iii) The youth;

(iv) The youth offender;
(v) The parent or guardian of the child, ward, youth or youth offender;
(vi) The guardian ad litem for the parent;
(vii) A person allowed to intervene in a proceeding involving the child or ward in a dependency case; or

(viii) The court appointed special advocate and a representative of a CASA Volunteer Program as defined in ORS 184.489;

(K) The district attorney or assistant attorney general representing a party in the case;

(L) The juvenile department;

(M) The Department of Human Services;

(N) The Oregon Youth Authority; and

(O) Any other person or entity allowed by the court pursuant to ORS 419A.258.

(c) The supplemental confidential file in cases under ORS 419C.005 may be disclosed to the superintendent of the school district in which the youth offender resides or the superintendent's designee.

(d) The following are entitled to copies of material maintained in the supplemental confidential file:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) Service providers in the case;

(C) School superintendents and their designees in cases under ORS 419C.005;

(D) Attorneys designated under subsection (2)(b)(J) of this section;

(E) The district attorney or assistant attorney general representing a party in the case;

(F) The juvenile department;

(G) The Department of Human Services;

(H) The Oregon Youth Authority;

(I) The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in ORS 184.489, when reasonably necessary for the appointment or supervision of court appointed special advocates; and

(J) Any other person or entity allowed by the court pursuant to ORS 419A.258.

(e) A person that obtains copies of material in the supplemental confidential file pursuant to paragraph (d) of this subsection is responsible for preserving the confidentiality of the material in the supplemental confidential file. A service provider, school superintendent or superintendent's designee who obtains copies of such material shall destroy the copies upon the conclusion of involvement in the case.

(3) Except as otherwise provided in subsection (5) of this section, no information appearing in the record of the case or in the supplemental confidential file may be disclosed to any person not described in subsections (1)(b) and (2)(b) of this section, respectively, without the consent of the court, except for purposes of evaluating the child, ward, youth or youth offender's eligibility for special education as provided in ORS chapter 343, and no such information may be used in evidence in any proceeding to establish criminal or civil liability against the child, ward, youth or youth offender, whether such proceeding occurs after the child, ward, youth or youth offender has reached 18 years of age or otherwise, except for the following purposes:

(a) In connection with a presentence investigation after guilt has been admitted or established in a criminal court.

(b) In connection with a proceeding in another juvenile court concerning the child, ward, youth or youth offender or an appeal from the juvenile court.

(4)(a) When a person described in subsection (1)(b)(M), (N), (O) or (P) of this section inspects or obtains copies of reports, materials or documents under this subsection or under subsection (1) or (2) of this section, the person may not use or disclose the reports, materials or documents, except:

(A) As provided in this subsection or under subsection (1) or (2) of this section;

(B) In the juvenile court proceeding for which the reports, materials or documents were sought or disclosed;

- (C) With the consent of the court; or
- (D) As provided in ORS 419A.253.

(b) Nothing in this section prohibits the district attorney or assistant attorney general representing a party in a juvenile court proceeding, the juvenile department, the Department of Human Services, the Oregon Youth Authority or other parties in the proceeding or their attorneys from disclosing to each other reports, materials or documents described in subsections (1) and (2) of this section if the disclosure is reasonably necessary to perform official duties related to the involvement of the child, ward, youth or youth offender with the juvenile court or the juvenile department. A person to whom reports, materials or documents are disclosed under this subsection is subject to subsection (3) of this section.

(5)(a) Information contained in the supplemental confidential file that, in the professional judgment of the juvenile counselor, caseworker, school superintendent or superintendent's designee, teacher or detention worker to whom the information in the supplemental confidential file has been provided, indicates a clear and immediate danger to another person or to society shall be disclosed to the appropriate authority and the person who is in danger from the child, ward, youth or youth offender.

(b) A person that discloses information under paragraph (a) of this subsection has immunity from any liability, civil or criminal, that might otherwise be incurred or imposed for making the disclosure.

(c) Nothing in this subsection affects the provisions of ORS 146.750, 146.760, 419B.035, 419B.040 and 419B.045. The disclosure of information under this subsection does not make the information admissible in any court or administrative proceeding if it is not otherwise admissible.

(6) Notwithstanding any other provision of law, and subject to subsection (8) of this section, the following are not confidential and not exempt from disclosure:

- (a) The name and date of birth of the youth or youth offender;
- (b) The basis for the juvenile court's jurisdiction over the youth or youth offender;
- (c) The date, time and place of any juvenile court proceeding in which the youth or youth offender is involved;
- (d) The act alleged in the petition that if committed by an adult would constitute a crime if jurisdiction is based on ORS 419C.005;

(e) That portion of the juvenile court order providing for the legal disposition of the youth or youth offender when jurisdiction is based on ORS 419C.005;

- (f) The names and addresses of the youth or youth offender's parents or guardians; and
- (g) The register described in ORS 7.020 when jurisdiction is based on ORS 419C.005.

(7) Notwithstanding any other provision of law, and subject to subsection (8) of this section, when a youth has been taken into custody under ORS 419C.080, the following information shall be disclosed unless, and only for so long as, there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim:

- (a) The youth's name and age and whether the youth is employed or in school;
- (b) The youth offense for which the youth was taken into custody;
- (c) The name and age of the adult complaining party and the adult victim, unless the disclosure of such information is otherwise prohibited or restricted;
- (d) The identity of the investigating and arresting agency; and
- (e) The time and place that the youth was taken into custody and whether there was resistance, pursuit or a weapon used in taking the youth into custody.

(8) Except as provided in ORS 419A.300 and unless otherwise directed by the court, only the juvenile court, the county juvenile department and the Oregon Youth Authority may disclose the information under subsections (6) and (7) of this section if the information is subject to disclosure. The youth authority may disclose only information relating to youth offenders committed to the youth authority by order of the juvenile court if the information is subject to disclosure under subsection (6) or (7) of this section.

(9) Nothing in this section limits access to any juvenile court records by an appellate court reviewing a juvenile court order or judgment. Appellate court rules may establish procedures for appellate court access to juvenile records.

(10) Nothing in this section prohibits the court from providing to the administrator as defined in ORS 25.010 the date of entry of a judgment terminating parental rights or the date of entry of a judgment terminating wardship following entry of a judgment of adoption together with the names and dates of birth of the parents and children subject to the judgment.

(11) In addition to any other provision in this section, the Judicial Department may permit county or statewide access to juvenile court records or information by county juvenile departments, the Department of Human Services, the Oregon Youth Authority, district attorney offices, the office of the Attorney General, the office of public defense services, prospective appellate attorneys or public defense providers subject to the following restrictions:

(a) A prospective appellate attorney or public defense provider granted access under this subsection must agree, pursuant to a written agreement with the Judicial Department, to access:

(A) Party information only for purposes of conflicts screening procedures; and

(B) Other records or information about a client only as reasonably necessary for the representation of that client in any juvenile case in which the client is a party, subject to applicable state and federal confidentiality laws.

(b) Any other person or entity granted access under this subsection must agree, pursuant to a written agreement with the department, to access records or information only as authorized and allowed by this section, subject to applicable state and federal confidentiality laws.

(c) The State Court Administrator shall prescribe standards and procedures to implement the provisions of this subsection.

(d) Any person or entity granted access to juvenile court records or information under this subsection must preserve the confidentiality of that information as required under this section.

(12) A petition filed under ORS 419B.851 alleging that a child who is a foreign national is within the jurisdiction of the court, or a motion requesting an implementation plan other than return of a ward to the ward's parent, is subject to disclosure to the consulate for the child or ward's country as provided under ORS 419B.851 (3).

(13) Nothing in this section prohibits a guardian appointed under ORS 419B.365 or 419B.366 from disclosing or providing copies of letters of guardianship when so required to fulfill the duties of a guardian.

(14) The court shall cooperate in the sharing of information with a court in another state to facilitate an interstate placement of a child or ward.

(15) Nothing in this section prohibits the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals or a presiding judge from permitting access to juvenile court records, including the record of the case and the supplemental confidential file in a juvenile court proceeding, or audio or video recordings of a juvenile court proceeding, by researchers or evaluators for the purposes of developing statistics and performing analyses or audits on the effectiveness, cost and other areas of public interest regarding juvenile court programs and activities in accordance with child welfare and juvenile justice state plans and programs related to Title IV-B and IV-E of the Social Security Act and to the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq). The Chief Justice shall, by rule or order, establish standards and guidelines for the release of juvenile court information for research and evaluation purposes to ensure confidentiality consistent with state and federal law and to promote consistent statewide application of this subsection. Statistics and analyses released by researchers and evaluators under this subsection may not contain any information that identifies any individual person involved in a juvenile court proceeding.

(16) Subject to subsection (11) of this section, the office of public defense services shall be permitted access to juvenile court records for the purposes of performing the office's duties as set forth in ORS 151.219 to audit or investigate attorney appointment or representation of a party in a juvenile court proceeding in order to ensure adequate representation of parties in juvenile court pro-

ceedings consistent with the child welfare state plan related to Title IV-E of the Social Security Act.

(17) Subject to subsection (11) of this section, the Oregon State Bar shall be permitted access to juvenile court records maintained in the record of the case for the purpose of performing the bar's duties as set forth in ORS 9.005 to 9.757 to investigate attorney representation of a party in a juvenile court proceeding and in order to ensure adequate representation of parties in juvenile court proceedings consistent with the child welfare state plan related to Title IV-E of the Social Security Act.

(18)(a) A child, ward, youth or youth offender, or the parent or guardian of a child, ward, youth or youth offender who is a party to the juvenile court proceeding, who is entitled to inspect or copy the record of the case under subsection (1)(b) and (c) of this section maintains the right to inspect or copy the record of the case after jurisdiction of the court over the child, ward, youth or youth offender terminates and after the child, ward, youth or youth offender has reached the age of majority.

(b) Notwithstanding ORS 419B.524, a parent of a child, ward, youth or youth offender whose parental rights have been terminated maintains the right that existed under subsection (1)(b) and (c) of this section to inspect or copy the record of the case as the record of the case existed up until the time of entry of the judgment terminating the parent's parental rights and may obtain a copy of the judgment terminating the parent's parental rights.

(19) When inspection or copying of the record of the case or of the supplemental confidential file is allowed pursuant to this section, and unless otherwise required by law, the court that maintains the record of the case or the supplemental confidential file is not required to redact the names of, or information about, siblings or other persons contained in the record of the case or the supplemental confidential file.

(20) Nothing in this section prohibits the court, acting as a certifying agency or official as defined in section 1 of this 2019 Act, from certifying a request under section 1 of this 2019 Act and including in the certification document any information obtained from the record of the case or the confidential supplemental file that is necessary to complete the certification.

Passed by Senate April 24, 2019

Received by Governor:

Repassed by Senate June 12, 2019

.....M.,....., 2019

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2019

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House June 4, 2019

Filed in Office of Secretary of State:

.....M.,....., 2019

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Tina Kotek, Speaker of House

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Bev Clarno, Secretary of State