

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: SB 1573 - A6

80th Oregon Legislative Assembly – 2020 Regular Session
Legislative Fiscal Office

*Only Impacts on Original or Engrossed
Versions are Considered Official*

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Measure Description:

Modifies procedure for expunction of certain juvenile records.

Government Unit(s) Affected:

Oregon Youth Authority (OYA), District Attorneys and their Deputies (DAs), Oregon Judicial Department (OJD), Public Defense Services Commission (PDSC), Counties, Cities

Summary of Fiscal Impact:

Costs related to the measure are indeterminate at this time - See explanatory analysis.

Analysis:

The bill as amended requires juvenile departments to file an application for expunction of a subject person’s records with the juvenile court in the county in which the department is located within 90 days following the later of a subject person reaching 18 years of age or the date the department receives an expunction request from the subject person. If the juvenile court denies the application, the specific reason for the denial must be included in the judgment. Either the department or the subject person may file a new application for expunction. A subject person is one who has had contact with a juvenile department that did not result in a petition and who has never been found within the jurisdiction of the juvenile court.

Within the same 90-day period, either the department or the juvenile court must issue a notice of expunction.

Notice must be sent to all state agencies the department reasonably determines may be in possession of records relating to the subject person. The notice must specify that the recipient agency has 60 days from the date of receipt to expunge the subject person’s records. State agencies failing to comply with the notice can be ordered by the juvenile court to comply. When all notified state agencies have indicated their compliance or no later than 90 days after notice was delivered, the department shall provide a copy of the notice of expunction as well as a list of complying and non-complying agencies and a list of rights and effects of expunction to the subject person. The department will then expunge all records in its possession subject to the notice.

The Oregon Youth Authority (OYA), consulting with county juvenile departments, will develop model forms to implement the provisions summarized above.

Upon issuance of a notice of expunction, the contact that is the subject of the expunged record may not be disclosed by any agency. The subject person may without penalty represent that the record never existed and that the contact never occurred.

Protection is afforded to public officials who unknowingly send notice for an ineligible individual or who fail to send notice for an eligible individual. However, a subject person has a right of action against any person intentionally violating the provisions of this section including up to \$1,000 in punitive damages on top of any actual damages. Further, intentional violation of these provisions by a public employee is cause for dismissal.

Upon denial or if eligible for expunction under ORS 419A, a subject person without financial ability to employ skilled counsel to apply for expunction may request that the juvenile court appoint counsel to represent the person at state expense.

The definition of expunction is modified and no longer allows OYA to seal records.

OYA must report on implementation of the bill to the interim committees of the Legislative Assembly relating to juveniles no later than September 15, 2020 in collaboration with the county juvenile departments and the Judicial Department. No later than January 2, 2021, OYA in collaboration with the county juvenile departments and the Judicial Department, shall submit to the interim committees of the Legislative Assembly relating to juveniles another report describing the process by which records of contacts are expunged under this bill.

Oregon Youth Authority

There is a minimal fiscal impact to the Oregon Youth Authority (OYA). OYA will develop forms for use by the juvenile departments to implement this bill. It will also collect data and report to the Legislature on its findings. OYA can absorb these activities with existing resources.

Oregon Judicial Department

The Oregon Judicial Department (OJD) may experience additional court cases pursuant to this bill. The fiscal impact to OJD is anticipated to be minimal as these additional cases can be absorbed using existing resources.

Counties

The fiscal impact to counties is indeterminate. County juvenile departments will do the expunction work outlined in the bill, however, it is unclear to what extent these activities will require additional staff. The report to the Legislature by OYA in September of 2020 may provide additional information regarding actual costs incurred by county juvenile departments resulting from implementation of this bill.

District Attorney and their Deputies

The fiscal impact on District Attorney's and their Deputies cannot be determined at this time. Any impact depends on the number of cases involved. This bill may have some cost savings as it removes the statutory provision which makes certain violations of an expunction order a misdemeanor.

Public Defense Services Commission

This bill is anticipated to have a minimal impact on the Public Defense Services Commission. While there will be some cases in which a person will be entitled to a public defender, the automatic process established by the bill will likely address the majority of expunction cases. In addition, this bill and its automatic process replaces the current process in which individuals must apply for expunction and often use public defenders for assistance with their application.