

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 1573**

1 On page 1 of the printed bill, line 3, delete “declaring an emergency” and
2 insert “prescribing an effective date”.

3 Delete lines 5 through 24 and delete pages 2 through 16 and insert:
4

5 **“EXPUNCTION OF JUVENILE RECORDS**

6
7 **“SECTION 1. (1) Sections 2 to 4 of this 2020 Act are added to and
8 made a part of ORS chapter 419A.**

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

11 **“SECTION 2. Notice of expunction. (1) A juvenile department shall
12 issue a notice of expunction of a subject person’s records if the subject
13 person:**

14 **“(a) Has had contact with the juvenile department and the contact
15 could have resulted in a juvenile court’s assumption of jurisdiction
16 under ORS 419C.005;**

17 **“(b) Has never been the subject of a petition alleging that the sub-
18 ject person is subject to the juvenile court’s jurisdiction under ORS
19 419C.005; and**

20 **“(c) Has never been found to be within the jurisdiction of the ju-
21 venile court.**

1 **“(2) The juvenile department shall issue the notice described in**
2 **subsection (1) of this section within 90 days following the later of:**

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

4 **“(b) If the subject person was 18 years of age or older on the date**
5 **specified in section 14 (1) of this 2020 Act, the date the juvenile de-**
6 **partment receives a request for expunction from the subject person.**

7 **“(3) The juvenile department shall send the notice described in**
8 **subsection (1) of this section to each agency that the juvenile depart-**
9 **ment determines, after a reasonable search of the juvenile**
10 **department’s files, may be in possession of records relating to the**
11 **subject person. The notice must notify the recipient agency that the**
12 **agency has 60 days from the date of receipt to expunge the subject**
13 **person’s records.**

14 **“(4)(a) Upon receipt of a notice of expunction, an agency shall**
15 **comply and, within 60 days of the date of receipt, return a copy of the**
16 **notice to the juvenile department with an indorsement indicating**
17 **compliance.**

18 **“(b) The juvenile department may, upon an agency’s written re-**
19 **quest, provide an extension of time of no more than 30 days to comply**
20 **with paragraph (a) of this subsection.**

21 **“(c) If an agency fails to comply with the requirements of para-**
22 **graph (a) of this subsection, the juvenile department shall petition the**
23 **juvenile court in the county in which the juvenile department is lo-**
24 **cated for an order compelling the agency to comply.**

25 **“(5) When all agencies subject to the notice of expunction have in-**
26 **dicated their compliance or in any event no later than 90 days follow-**
27 **ing the date the notice was delivered as required by subsection (3) of**
28 **this section, the juvenile department shall provide the subject person**
29 **with a copy of the notice of expunction, a list of complying and non-**
30 **complying agencies, and a written notice of rights and effects of**

1 expunction. The juvenile department then shall expunge forthwith all
2 records in its possession that are subject to the notice of expunction,
3 except the juvenile department shall retain a record of the expunction
4 processes under this section and keep the record confidential.

5 “(6) The Oregon Youth Authority, in consultation with county ju-
6 venile departments, shall develop statewide model forms to implement
7 the provisions of this section.

8 “SECTION 3. Effect of expunction; confidentiality; penalties. (1)
9 Upon issuance of a notice of expunction under section 2 of this 2020
10 Act or entry of an expunction judgment under ORS 419A.262, the con-
11 tact that is the subject of the expunged record may not be disclosed
12 by any agency. An agency that is subject to a notice of expunction or
13 an expunction judgment shall respond to any inquiry about the con-
14 tact by indicating that no record or reference concerning the contact
15 exists.

16 “(2) A person who is the subject of a record that has been expunged
17 under ORS 419A.262 or section 2 of this 2020 Act may assert that the
18 record never existed and that the contact that was the subject of the
19 record never occurred without incurring a penalty for perjury or false
20 swearing under the laws of this state.

21 “(3) Juvenile courts, by court rule or by order related to a partic-
22 ular matter, may direct that records concerning a subject person be
23 destroyed. No records shall be destroyed until at least three years have
24 elapsed after the date of the subject’s most recent termination. In the
25 event the record has been expunged, the expunction judgment and list
26 of complying and noncomplying agencies may not be destroyed, but
27 shall be preserved under seal. The destruction of records under this
28 subsection does not constitute expunction.

29 “(4) A notice of expunction or an expunction judgment and the list
30 of complying and noncomplying agencies shall be disclosed only on

1 order of the court that would have had jurisdiction to compel compli-
2 ance with the notice of expunction or that originated the expunction
3 judgment, based on a finding that review of a particular case furthers
4 compliance with the expunction provisions of sections 2 to 4 of this
5 2020 Act.

6 “(5) A person who, in the person’s official capacity with a juvenile
7 department, sends a notice of expunction for an ineligible individual
8 or fails to send a notice of expunction for an eligible individual under
9 section 2 of this 2020 Act has immunity from any liability, civil or
10 criminal, that might otherwise be incurred or imposed for making the
11 disclosure or failing to make the disclosure, except when the person
12 who sends the notice has knowledge that the individual is ineligible
13 or when the person who fails to send the notice has knowledge that
14 the individual is eligible.

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

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

23 “(8) A person who releases all or part of an expunged record com-
24 mits a Class A violation.

25 “SECTION 4. Appointment of counsel. (1) If a person who is the
26 subject of a record for which expunction under ORS 419A.262 (2) has
27 been denied or that is eligible for expunction under ORS 419A.262 (3)
28 to (10) 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-

1 cess, the person may request the juvenile court having jurisdiction
2 over the expunction process under ORS 419A.262 (1) to appoint counsel
3 to represent the person in the expunction proceeding.

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

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

22 “**SECTION 5.** ORS 419A.260 is amended to read:

23 “419A.260. (1) As used in [*this section and ORS 419A.262*] **sections 2 to**
24 **4 of this 2020 Act:**

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

30 “(b) ‘Expunction’ means:

1 “[A] *The removal and destruction or sealing of a judgment or order related*
2 *to a contact and all records and references; and*]

3 “(A) **The removal by destruction of a judgment or order related to**
4 **a contact and all records and references associated with a subject**
5 **person;**

6 “(B) **The removal by sealing of a judgment or order related to a**
7 **contact and all records and references associated with a subject per-**
8 **son;**

9 “(C) **The removal by redaction of a subject person’s name and all**
10 **personal identifiers and all references to the subject person within a**
11 **record; or**

12 “[B] (D) [*Where*] **If** a record is kept by the Department of Human Ser-
13 vices [*or the Oregon Youth Authority, either the sealing of such record by the*
14 *department or the Oregon Youth Authority or, in a multiperson file,*] the
15 **department’s** affixing to the front of the file[, *by the department or the youth*
16 *authority,*] **containing the record** a stamp or statement identifying the name
17 of the individual, the date of expunction and instruction that no further
18 reference [*shall*] **may** be made to the [*material*] **record** that is subject to the
19 expunction **notice or** order [*except upon an order of a court of competent ju-*
20 *risdiction*].

21 “(c) ‘Person’ includes a person under 18 years of age.

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

1 “(A) A transcript of a student’s Youth Corrections Education Program
2 academic record;

3 “(B) Material on file with a public agency which is necessary for obtain-
4 ing federal financial participation regarding financial assistance or services
5 on behalf of a person who has had a contact;

6 “(C) Records kept or disseminated by the Department of Transportation,
7 State Marine Board and State Fish and Wildlife Commission pursuant to
8 juvenile or adult order or recommendation;

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

12 “(E) Records related to a support obligation;

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

15 “(G) Records of a proposed or adjudicated termination of parental rights
16 and adoptions;

17 “(H) Any law enforcement record of a person who currently does not
18 qualify for expunction or of current investigations or cases waived to the
19 adult court;

20 “(I) Records and case reports of the Oregon Supreme Court and the
21 Oregon Court of Appeals;

22 “(J) Any records in cases under ORS 419C.005 in which a juvenile court
23 found a person to be within the jurisdiction of the court based upon the
24 person’s commission of an act which if done by an adult would constitute
25 one of the following offenses:

26 “(i) Aggravated murder under ORS 163.095;

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

28 “(iii) Attempt, solicitation or conspiracy to commit murder in any degree
29 or aggravated murder;

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

- 1 “(v) Manslaughter in the second degree under ORS 163.125;
- 2 “(vi) Criminally negligent homicide under ORS 163.145;
- 3 “(vii) Assault in the first degree under ORS 163.185;
- 4 “(viii) Criminal mistreatment in the first degree under ORS 163.205;
- 5 “(ix) Kidnapping in the first degree under ORS 163.235;
- 6 “(x) Rape in the third degree under ORS 163.355;
- 7 “(xi) Rape in the second degree under ORS 163.365;
- 8 “(xii) Rape in the first degree under ORS 163.375;
- 9 “(xiii) Sodomy in the third degree under ORS 163.385;
- 10 “(xiv) Sodomy in the second degree under ORS 163.395;
- 11 “(xv) Sodomy in the first degree under ORS 163.405;
- 12 “(xvi) Unlawful sexual penetration in the second degree under ORS
- 13 163.408;
- 14 “(xvii) Unlawful sexual penetration in the first degree under ORS 163.411;
- 15 “(xviii) Sexual abuse in the third degree under ORS 163.415;
- 16 “(xix) Sexual abuse in the second degree under ORS 163.425;
- 17 “(xx) Sexual abuse in the first degree under ORS 163.427;
- 18 “(xxi) Promoting prostitution under ORS 167.012;
- 19 “(xxii) Compelling prostitution under ORS 167.017;
- 20 “(xxiii) Aggravated driving while suspended or revoked under ORS
- 21 163.196;
- 22 “(xxiv) Aggravated vehicular homicide under ORS 163.149; or
- 23 “(xxv) An attempt to commit a crime listed in this subparagraph other
- 24 than manslaughter in the second degree and criminally negligent homicide;
- 25 “(K) Blood samples, buccal samples and other physical evidence and
- 26 identification information obtained, stored or maintained by the Department
- 27 of State Police under authority of ORS 137.076, 181A.155 or 419C.473; [or]
- 28 “(L) Records maintained in the Law Enforcement Data System under ORS
- 29 163A.035[.]; **or**
- 30 “(M) **Records of a law enforcement agency or public investigative**

1 **agency concerning an open or otherwise unresolved investigation.**

2 “(e) ‘Termination’ means:

3 “(A) For a person who is the subject of a record kept by a juvenile court
4 or juvenile department, the final disposition of a case by informal means, by
5 a decision not to place the person on probation or make the person a ward
6 of the court after the person has been found to be within the court’s juris-
7 diction or by a discontinuance of probation, of the court’s wardship or of the
8 jurisdiction of the Psychiatric Security Review Board, the Oregon Health
9 Authority or the Department of Human Services.

10 “(B) For a person who is the subject of a record kept by a law enforce-
11 ment or public investigative agency, a juvenile court or juvenile department
12 or an agency of the State of Oregon, the final disposition of the person’s
13 most recent contact with a law enforcement agency.

14 “(2) The juvenile court or juvenile department shall make reasonable ef-
15 fort to provide written notice to a child who is within the court’s jurisdiction
16 under ORS 419B.100 (1)(a) to (c) and (f) or to a youth who is within the
17 court’s jurisdiction under ORS 419C.005, and to the child’s or youth’s parent,
18 of the procedures for expunction of a record, the right to **and procedure to**
19 **access** counsel under this chapter, the legal effect of an expunction order
20 and the procedures for seeking relief from the duty to report as a sex
21 offender provided under ORS 163A.130, at the following times:

22 “(a) At any dispositional hearing or at the time of entering into a formal
23 accountability agreement;

24 “(b) At the time of termination;

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

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

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

29 **“419A.262. (1)(a) An expunction proceeding under subsection (2) of**
30 **this section shall be commenced in the county where the subject per-**

1 **son resided at the time of the most recent contact.**

2 **“(b) An expunction proceeding under subsections (3) to (10) of this**
3 **section shall be commenced in the county where the subject person resided**
4 **at the time of the most recent termination.**

5 **“(2)(a) A juvenile department shall file with the juvenile court an**
6 **application for expunction of the records of a person the juvenile de-**
7 **partment determines meets the criteria under paragraph (b) of this**
8 **subsection within 90 days following the later of:**

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

10 **“(B) If the subject person was 18 years of age or older on the date**
11 **specified in section 14 (1) of this 2020 Act, the date that the juvenile**
12 **department receives a request to file the application for expunction**
13 **from the subject person.**

14 **“(b) Upon application of either a person who is the subject of a re-**
15 **cord or a juvenile department, the juvenile court shall order**
16 **expunction if it finds that:**

17 **“(A) The subject person had contact with the juvenile department**
18 **and the contact could have resulted in a juvenile court’s assumption**
19 **of jurisdiction under ORS 419C.005;**

20 **“(B) The subject person has never been found to be within the ju-**
21 **risdiction of the juvenile court under ORS 419C.005;**

22 **“(C) There is no petition pending alleging that the subject person**
23 **is subject to the juvenile court’s jurisdiction under ORS 419C.005; and**

24 **“(D) The subject person has not been waived to criminal court**
25 **pursuant a hearing under ORS 419C.349 or 419C.352.**

26 **“(c) If the juvenile court denies the application for expunction un-**
27 **der this subsection:**

28 **“(A) The court must specify in the judgment denying the applica-**
29 **tion for expunction the reason for the denial.**

30 **“(B) If the juvenile department submitted the application that was**

1 **denied, the juvenile department shall make reasonable efforts to send**
2 **to the subject person the following:**

3 **“(i) Notice of the court’s decision and a copy of the judgment de-**
4 **nying the application for expunction; and**

5 **“(ii) Notice of the person’s right to an attorney, right to file a new**
6 **application for expunction under this subsection and right to request**
7 **expunction under subsections (3) to (10) of this section.**

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

10 “[2] **(3)** Upon application of either a person who is the subject of a re-
11 cord or a juvenile department, or upon its own motion, the juvenile court
12 shall order expunction if, after a hearing when the matter is contested, it
13 finds that:

14 **“(a) At least five years have elapsed since the date of the person’s most**
15 **recent termination;**

16 **“(b) Since the date of the most recent termination, the person has not**
17 **been convicted of a felony or a Class A misdemeanor;**

18 **“(c) No proceedings seeking a criminal conviction or an adjudication in**
19 **a juvenile court are pending against the person;**

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

23 **“(e) The juvenile department is not aware of any pending investigation**
24 **of the conduct of the person by any law enforcement agency.**

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

1 “(A) The application requests expunction of only that part of the person’s
2 record that involves a charge, allegation or adjudication based on conduct
3 that if done by an adult would constitute the crime of prostitution under
4 ORS 167.007; and

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

6 “(b) Except as provided in subsections [(13) and] (14) **and (15)** of this
7 section, there is no waiting period required before the juvenile court orders
8 expunction under this subsection.

9 “[(4)] (5) In the case of an application by the juvenile department or of
10 the court acting upon its own motion, expunction shall not be ordered **under**
11 **subsections (3) or (4) of this section** if actual notice of expunction has not
12 been given to the person in accordance with subsection [(12)] (13) of this
13 section unless the person has reached 21 years of age.

14 “[(5)] (6) When a person who is the subject of a record kept by a juvenile
15 court or juvenile department reaches 18 years of age, the juvenile court, after
16 a hearing when the matter is contested, shall order expunction if:

17 “(a) The person never has been found to be within the jurisdiction of the
18 court; or

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

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

25 “[(7)] (8) Subsections [(5) and] (6) **and (7)** of this section apply only to
26 cases resulting in termination after September 13, 1975.

27 “[(8)] (9) Notwithstanding subsections [(2),] (3), (4) and [(5) to (7)] (6) **to**
28 **(8)** of this section, upon application of a person who is the subject of a re-
29 cord kept by a juvenile court or juvenile department, upon application of the
30 juvenile department, or upon its own motion, the juvenile court, after a

1 hearing when the matter is contested, may order expunction of all or any
2 part of the person’s record if it finds that to do so would be in the best in-
3 terests of the person and the public. In the case of an application by the
4 juvenile department or of the court acting upon its own motion, expunction
5 shall not be ordered if actual notice of expunction has not been given to the
6 person in accordance with subsection [(12)] (13) of this section unless the
7 person has reached 21 years of age.

8 “[9] (10) Notwithstanding ORS 419A.260 (1)(d)(J)[(x), (xiii), (xix) or
9 (xviii)], a person who has been found to be within the jurisdiction of the
10 juvenile court based on an act that if committed by an adult would consti-
11 tute:

12 “(a) Rape in the third degree under ORS 163.355, sodomy in the third de-
13 gree under ORS 163.385 or sexual abuse in the third degree under ORS
14 163.415, or an attempt to commit those crimes, may apply for an order of
15 expunction under **subsections (3) to (10) of** this section. The court shall
16 order expunction of the records in the case if, after a hearing when the
17 matter is contested, the court finds that the person:

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

19 “(B) [*Has been relieved of the obligation to report as a sex offender pursu-*
20 *ant to a court order entered under ORS 163A.145 or 163A.150*] **Is not re-**
21 **quired to report as a sex offender;** and

22 “(C) Has not been convicted of, found guilty except for insanity of or
23 found to be within the jurisdiction of the juvenile court based on a crime
24 listed in ORS 419A.260 (1)(d)(J), other than the adjudication that is the sub-
25 ject of the motion.

26 “(b) A sex crime that is a Class C felony may apply for an order of
27 expunction under **subsections (3) to (10) of** this section. The court shall
28 order expunction of the records in the case if, after a hearing when the
29 matter is contested, the court finds that:

30 “(A) The person meets the requirements of subsection [(2)] (3) of this

1 section;

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

3 “(C) The person is:

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

5 “(ii) At least two years and 180 days older, but less than three years and
6 180 days older, than the victim and the expunction is in the interests of
7 justice and of benefit to the person and the community;

8 “(D) The victim’s lack of consent was due solely to incapacity to consent
9 by reason of being less than a specified age;

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

11 “(F) Each finding described in this paragraph involved the same victim;
12 and

13 “(G) The person has not been convicted of, found guilty except for in-
14 sanity of or found to be within the jurisdiction of the juvenile court based
15 on a crime listed in ORS 419A.260 (1)(d)(J) or an offense the court is pro-
16 hibited from setting aside under ORS 137.225, other than the adjudication
17 that is the subject of the motion.

18 “[~~(10)~~] **(11)** When an expunction proceeding **under subsections (3) to (10)**
19 **of this section** is commenced by application of the person whose records are
20 to be expunged, the person shall set forth as part of the application the
21 names of the juvenile courts, juvenile departments, institutions and law
22 enforcement and other agencies that the person has reason to believe possess
23 an expungible record of the person. The juvenile department shall provide
24 the names and addresses of the juvenile courts, juvenile departments, insti-
25 tutions and law enforcement and other agencies that a reasonable search of
26 department files indicates have expungible records.

27 “[~~(11)~~] **(12)** When an expunction proceeding is commenced by application
28 of the juvenile department or upon the court’s own motion, the application
29 or motion shall set forth the names and addresses of the juvenile courts,
30 juvenile departments, institutions and law enforcement and other agencies

1 that a reasonable search of department files indicates have expungible re-
2 cords and those provided by the subject person.

3 “[~~(12)(a)~~] **(13)(a)** Notice and a copy of an application for expunction under
4 subsections [~~(2) to (8)~~] **(3) to (10)** of this section shall be given to:

5 “(A) The district attorney of the county in which the expunction pro-
6 ceeding is commenced and the district attorney of each county in which the
7 record sought to be expunged is kept; and

8 “(B) The person who is the subject of the record if the person has not
9 initiated the expunction proceeding.

10 “(b) A district attorney who receives notice under this subsection shall
11 notify the victim of the acts that resulted in the disposition that is the sub-
12 ject of the application for expunction and shall mail a copy of the applica-
13 tion for expunction to the victim’s last known address.

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

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

22 “[~~(14)~~] **(15)** When an expunction is pending under subsections [~~(2) to (8)~~]
23 **(3) to (10)** of this section, the court may proceed with or without a hearing,
24 except that:

25 “(a) The court may not enter an expunction judgment without a hearing
26 if a timely objection to expunction has been filed under subsection [~~(13)~~] **(14)**
27 of this section;

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

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

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

2 “(B) The application requests expunction of only that part of the person’s
3 record that involves a charge, allegation or adjudication based on conduct
4 that if done by an adult would constitute the crime of prostitution under
5 ORS 167.007; and

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

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

10 “(b) When a district attorney receives notice of a hearing for expunction
11 of a record concerning a youth or youth offender proceeding under ORS
12 chapter 419C, if the victim of the acts that resulted in the disposition that
13 is the subject of the application for expunction requests, the district attorney
14 shall mail notice of the hearing to the victim’s last-known address.

15 “[16)] (17) The court shall conduct a hearing on [*a pending expunction*]
16 **an expunction pending under subsections (3) to (10) of this section** in
17 accord with the provisions of ORS [*419B.195, 419B.198, 419B.201,*] 419B.205,
18 419B.208, 419B.310, 419B.812 to 419B.839 and 419B.908. Rules of evidence shall
19 be as in a hearing to establish juvenile court jurisdiction and as defined in
20 ORS 419B.310 (3) and 419C.400 (2). The burden of proof shall be with the
21 party contesting expunction.

22 “[17)] (18)(a) At the conclusion of a hearing on [*a pending expunction*]
23 **an expunction pending under subsections (3) to (10) of this section**, the
24 court shall issue judgment granting or denying expunction.

25 “(b) **The court’s denial of an application for expunction under sub-**
26 **sections (2) to (10) of this section does not preclude the subject person**
27 **from filing an application for expunction under any other applicable**
28 **subsection of this section.**

29 “[18)] (19)(a) The juvenile court or juvenile department shall send a copy
30 of an expunction judgment to each agency subject to the judgment. **Attached**

1 to the expunction judgment must be information, to remain confi-
2 dential, regarding the record to be expunged and the date of the re-
3 cord.

4 “(b) Upon receipt of a copy of the judgment granting an application
5 for expunction under subsection (2) of this section, the agency shall
6 comply and, within 60 days of the date of receipt, return the copy to
7 the juvenile court or the juvenile department with an indorsement
8 indicating compliance.

9 “(c) Upon receipt of a copy of the judgment granting an application for
10 expunction under subsections (3) to (10) of this section, the agency shall
11 comply and, within 21 days of the date of receipt, return the copy to the ju-
12 venile court or juvenile department with an indorsement indicating compli-
13 ance.

14 “(d) The juvenile court may, upon an agency’s written request,
15 grant an extension of time of no more than 30 days to comply with
16 paragraph (b) or (c) of this subsection.

17 “[19] (20) When all agencies subject to an expunction judgment have
18 indicated their compliance or in any event no later than *[six weeks]* 90 days
19 following the date the judgment was delivered as required by subsection
20 [(18)] (19) of this section, the juvenile court shall provide the person who is
21 the subject of the record with a copy of the expunction judgment, a list of
22 complying and noncomplying agencies, and a written notice of rights and
23 effects of expunction. The juvenile court and juvenile department then shall
24 expunge forthwith all records which they possess and which are subject to
25 the judgment, except the original expunction judgment and the list of com-
26 plying and noncomplying agencies which must be preserved under seal.

27 “[20] (21) In addition to those agencies identified in ORS 419A.260 (1)(d),
28 the juvenile, circuit, municipal and justice courts, and the district and city
29 attorneys of this state, are bound by an expunction judgment of any juvenile
30 court of appropriate jurisdiction in this state issuing an expunction judg-

1 ment.

2 “(22)(a) Applications for expunction under this section shall be
3 available from the clerk of the court in a form prescribed by the State
4 Court Administrator.

5 “(b) The State Court Administrator shall prescribe the content and
6 form of expunction judgments under this section. The judgment forms
7 must include a place for the court to specify the method of expunction
8 under ORS 419A.260 (1)(b) that applies to a given record.

9 “[21] Upon entry of an expunction judgment, the contact that is the subject
10 of the expunged record shall not be disclosed by any agency. An agency that
11 is subject to an expunction judgment shall respond to any inquiry about the
12 contact by indicating that no record or reference concerning the contact
13 exists.]

14 “[22] A person who is the subject of a record that has been expunged under
15 this section may assert that the record never existed and that the contact,
16 which was the subject of the record, never occurred without incurring a penalty
17 for perjury or false swearing under the laws of this state.]

18 “[23] Juvenile courts, by court rule or by order related to a particular
19 matter, may direct that records concerning a subject person be destroyed. No
20 records shall be destroyed until at least three years have elapsed after the date
21 of the subject’s most recent termination. In the event the record has been
22 expunged, the expunction judgment and list of complying and noncomplying
23 agencies may not be destroyed, but shall be preserved under seal. The de-
24 struction of records under this subsection does not constitute expunction.]

25 “[24] An expunction judgment and list of complying and noncomplying
26 agencies shall be released from confidentiality only on order of the court
27 originating the expunction judgment, based on a finding that review of a par-
28 ticular case furthers compliance with the expunction provisions of this
29 chapter.]

30 “[25] A subject has a right of action against any person who intentionally

1 *violates the confidentiality provisions of this section. In the proceeding, puni-*
2 *tive damages up to an amount of \$1,000 may be sought in addition to any ac-*
3 *tual damages. The prevailing party shall be entitled to costs and reasonable*
4 *attorney fees.]*

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

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

9

10

“CONFORMING AMENDMENTS

11

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

13 **“419A.250. (1)** A child, ward, youth or youth offender may be photographed
14 or fingerprinted by a law enforcement agency:

15 **“(a)** Pursuant to a search warrant;

16 **“(b)** According to laws concerning adults if the youth has been transferred
17 to criminal court for prosecution;

18 **“(c)** Upon consent of both the child or youth and the child or youth’s
19 parent after advice that they are not required to give such consent;

20 **“(d)** Upon request or consent of the child’s parent alone if the child is less
21 than 10 years of age, and if the law enforcement agency delivers the original
22 photographs or fingerprints to the parent and does not make or retain any
23 copies thereof; or

24 **“(e)** By order of the juvenile court.

25 **“(2)** When a youth is taken into custody under ORS 419C.080, the law
26 enforcement agency taking the youth into custody shall photograph and fin-
27 gerprint the youth. When a youth is found within the jurisdiction of the ju-
28 venile court for the commission of an act that would constitute a crime if
29 committed by an adult, the court shall ensure that the youth offender’s fin-
30 gerprints have been taken. The law enforcement agency attending upon the

1 court is the agency responsible for obtaining the fingerprints. The law
2 enforcement agency attending upon the court may, by agreement, arrange for
3 another law enforcement agency to obtain the fingerprints on the attending
4 agency's behalf.

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

10 “(4) Fingerprint and photograph files or records of a child, ward, youth
11 or youth offender are open to inspection only by, or the contents disclosed
12 only to, the following:

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

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

20 “(c) Caseworkers and counselors taking action or otherwise responsible
21 for planning and care of the child, ward, youth or youth offender;

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

23 “(e) The victim or a witness of an act or behavior described under ORS
24 419C.005 (1) or the victim's parent, guardian, personal representative or
25 subrogee, when necessary to identify the youth or youth offender committing
26 the act or behavior and identifying the apparent extent of the youth or youth
27 offender's involvement in the act or behavior.

28 “(5)(a) Fingerprint and photograph files or records of youths and youth
29 offenders must be sent to a central state depository in the same manner as
30 fingerprint and photograph files or records of adults. The fingerprint and

1 photograph files or records of a youth or youth offender sent to a central
2 depository under this subsection are open to inspection in the same manner
3 and under the same circumstances as fingerprint and photograph files or re-
4 cords of adults.

5 “(b) A party filing a petition alleging that a youth is within the juris-
6 diction of the court under ORS 419C.005 shall notify the central state de-
7 pository of the following:

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

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

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

14 “(d) The Department of State Police shall delete the fingerprint and pho-
15 tograph files or records of a youth or youth offender from the depository and
16 destroy the files or records relating to the conduct that caused the files or
17 records to be sent to the depository:

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

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

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

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

29 “(7) The parent or guardian of a missing child may submit a fingerprint
30 card and photograph of the child to a law enforcement agency at the time

1 a missing person report is made. The law enforcement agency may submit the
2 fingerprint file to the Department of State Police. The information must be
3 entered into the Law Enforcement Data System and the Western Identifica-
4 tion Network Automated Fingerprint Identification System.

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

9 “(9) Fingerprints and other information entered in any data system pur-
10 suant to subsection (7) of this section must be deleted when the child is lo-
11 cated.

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

13 “419A.265. Notwithstanding ORS 419A.262 [(2)(a)] **(3)(a)**, a person is eli-
14 gible for an order of expunction under ORS 419A.262 **(3) to (10)** if the person
15 was adjudicated for committing an act that, if committed by an adult, would
16 constitute a criminal offense in which possession, delivery or manufacture
17 of marijuana or a marijuana item as defined in ORS 475B.015 is an element
18 and:

19 “(1) The court finds that at least one year has elapsed since the date of
20 the person’s most recent termination;

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

23 “(3) The applicant has complied with and performed all conditions of the
24 adjudication.

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

26 “419C.370. (1) The juvenile court may enter an order directing that all
27 cases involving:

28 “(a) Violation of a law or ordinance relating to the use or operation of
29 a motor vehicle, boating laws or game laws be waived to criminal or mu-
30 nicipal court;

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

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

7 “(2) Cases waived under subsection (1) of this section are subject to the
8 following:

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

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

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

18 “(b) When a person has been waived under subsection (1) of this section
19 and fails to appear as summoned or is placed on probation and is alleged to
20 have violated a condition of the probation, the juvenile court may recall the
21 case to the juvenile court for further proceedings. When a person has been
22 returned to juvenile court under this paragraph, the juvenile court may
23 proceed as though the person had failed to appear as summoned to the ju-
24 venile court or had violated a juvenile court probation order under ORS
25 419C.446.

26 “(4) Records of cases waived under subsection (1)(c) of this section are
27 juvenile records for purposes of expunction under [ORS 419A.260] **sections**
28 **2 to 4 of this 2020 Act.**

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

30 “659A.030. (1) It is an unlawful employment practice:

1 “(a) For an employer, because of an individual’s race, color, religion, sex,
2 sexual orientation, national origin, marital status or age if the individual is
3 18 years of age or older, or because of the race, color, religion, sex, sexual
4 orientation, national origin, marital status or age of any other person with
5 whom the individual associates, or because of an individual’s juvenile record
6 that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections**
7 **2 to 4 of this 2020 Act**, to refuse to hire or employ the individual or to bar
8 or discharge the individual from employment. However, discrimination is not
9 an unlawful employment practice if the discrimination results from a bona
10 fide occupational qualification reasonably necessary to the normal operation
11 of the employer’s business.

12 “(b) For an employer, because of an individual’s race, color, religion, sex,
13 sexual orientation, national origin, marital status or age if the individual is
14 18 years of age or older, or because of the race, color, religion, sex, sexual
15 orientation, national origin, marital status or age of any other person with
16 whom the individual associates, or because of an individual’s juvenile record
17 that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections**
18 **2 to 4 of this 2020 Act**, to discriminate against the individual in compen-
19 sation or in terms, conditions or privileges of employment.

20 “(c) For a labor organization, because of an individual’s race, color, reli-
21 gion, sex, sexual orientation, national origin, marital status or age if the
22 individual is 18 years of age or older, or because of an individual’s juvenile
23 record that has been expunged pursuant to [ORS 419A.260 and 419A.262]
24 **sections 2 to 4 of this 2020 Act**, to exclude or to expel from its membership
25 the individual or to discriminate in any way against the individual or any
26 other person.

27 “(d) For any employer or employment agency to print or circulate or
28 cause to be printed or circulated any statement, advertisement or publica-
29 tion, or to use any form of application for employment or to make any in-
30 quiry in connection with prospective employment that expresses directly or

1 indirectly any limitation, specification or discrimination as to an individual's
2 race, color, religion, sex, sexual orientation, national origin, marital status
3 or age if the individual is 18 years of age or older, or on the basis of an
4 expunged juvenile record, or any intent to make any such limitation, spec-
5 ification or discrimination, unless based upon a bona fide occupational
6 qualification. Identification of prospective employees according to race,
7 color, religion, sex, sexual orientation, national origin, marital status or age
8 does not violate this section unless the Commissioner of the Bureau of Labor
9 and Industries, after a hearing conducted pursuant to ORS 659A.805, deter-
10 mines that the designation expresses an intent to limit, specify or discrimi-
11 nate on the basis of race, color, religion, sex, sexual orientation, national
12 origin, marital status or age.

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

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

30 “(g) For any person, whether an employer or an employee, to aid, abet,

1 incite, compel or coerce the doing of any of the acts forbidden under this
2 chapter or to attempt to do so.

3 “(2) The provisions of this section apply to an apprentice under ORS
4 660.002 to 660.210, but the selection of an apprentice on the basis of the
5 ability to complete the required apprenticeship training before attaining the
6 age of 70 years is not an unlawful employment practice. The commissioner
7 shall administer this section with respect to apprentices under ORS 660.002
8 to 660.210 equally with regard to all employees and labor organizations.

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

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

15 “(b) As used in this subsection, ‘responsible for a minor child’ means
16 having custody or legal guardianship of a minor child or acting in loco
17 parentis to the child.

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

22 **“SECTION 11.** ORS 670.290 is amended to read:

23 “670.290. It shall be unlawful for any state agency or licensing board, in-
24 cluding the Oregon State Bar, to:

25 “(1) Require that an applicant for employment, licensing or admission
26 answer any questions regarding the existence or contents of a juvenile record
27 that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections**
28 **2 to 4 of this 2020 Act;**

29 “(2) Bar or discharge from employment or refuse to hire or employ such
30 individual because of the existence or contents of a juvenile record that has

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

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

6

7

“REPORT

8

9 **“SECTION 12. Report to Legislative Assembly. (1) No later than**
10 **September 15, 2020, the Oregon Youth Authority, in collaboration with**
11 **county juvenile departments and the Judicial Department, shall sub-**
12 **mit a report to the interim committees of the Legislative Assembly**
13 **relating to juveniles describing the status of the authority’s prepara-**
14 **tions for the implementation of sections 2 to 4 of this 2020 Act, and the**
15 **amendments to ORS 419A.250, 419A.260, 419A.262, 419A.265, 419C.370,**
16 **659A.030 and 670.290 by sections 5 to 11 of this 2020 Act.**

17 **“(2) No later than January 2, 2021, the Oregon Youth Authority, in**
18 **collaboration with county juvenile departments and the Judicial De-**
19 **partment, shall submit a report to the interim committees of the**
20 **Legislative Assembly relating to juveniles describing the process by**
21 **which records of contacts are expunged under sections 2 to 4 of this**
22 **2020 Act, and include:**

23 **“(a) The number of individuals to whom notices of expunction were**
24 **sent by juvenile departments under section 2 of this 2020 Act and the**
25 **number of applications for expunction submitted by juvenile depart-**
26 **ments to juvenile courts under ORS 419A.262 (2).**

27 **“(b) The number of applications for expunction submitted by per-**
28 **sons who are subjects of records under ORS 419A.262 (2).**

29 **“(c) The number of applications for expunction under ORS 419A.262**
30 **granted by the court, the number of applications denied by the court**

1 and the number of applications still pending.

2 “(d) The number of attorneys appointed pursuant to section 4 of
3 this 2020 Act.

4 “(e) Recommendations for legislation to improve the expunction
5 process.

6 “(f) Recommendations for legislation extending the expunction
7 process under ORS 419A.262 (2) to records of juveniles who have been
8 found to be under the jurisdiction of the juvenile court for
9 misdemeanors and felonies.

10 “(g) A description of the types of access to court data information
11 and law enforcement data information systems the Oregon Youth
12 Authority and juvenile departments have or would require to certify
13 the accuracy of both juvenile and adult criminal records checks to
14 implement the legislation recommended under paragraph (f) of this
15 subsection.

16 “(h) The estimated cost of the legislation recommended under par-
17 agraphs (e) and (f) of this subsection.

18

19

“MISCELLANEOUS

20

21 “SECTION 13. Sections 2 to 4 of this 2020 Act and the amendments
22 to ORS 419A.250, 419A.260, 419A.262, 419A.265, 419C.370, 659A.030 and
23 670.290 by sections 5 to 11 of this 2020 Act apply to expunction of re-
24 cords related to contacts occurring before, on or after the effective
25 date of this 2020 Act.

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

30 “(2) The State Court Administrator and the Oregon Youth Author-

1 ity may take any action before the operative date specified in sub-
2 section (1) of this section that is necessary for the administrator or
3 the authority to exercise, on and after the operative date specified in
4 subsection (1) of this section, all of the duties, functions and powers
5 conferred on the administrator or the authority by sections 2 to 4 of
6 this 2020 Act and the amendments to ORS 419A.250, 419A.260, 419A.262,
7 419A.265, 419C.370, 659A.030 and 670.290 by sections 5 to 11 of this 2020
8 Act.

9 **“SECTION 15.** The unit and section captions used in this 2020 Act
10 are provided only for the convenience of the reader and do not become
11 part of the statutory law of this state or express any legislative intent
12 in the enactment of this 2020 Act.

13 **“SECTION 16.** This 2020 Act takes effect on the 91st day after the
14 date on which the 2020 regular session of the Eightieth Legislative
15 Assembly adjourns sine die.”.

16
