

D R A F T

SUMMARY

Establishes procedures by which certain crime or abuse victims and other authorized persons may request and receive copies of law enforcement agency records concerning case.

A BILL FOR AN ACT

Relating to victim access to records; creating new provisions; and amending
ORS 419B.035.

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

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

(a) **“Domestic violence crime” means a crime constituting domestic violence as defined in ORS 135.230.**

(b) **“Law enforcement agency” has the meaning given that term in ORS 133.741.**

(c) **“Law enforcement agency record” includes documents or records that are created by or originate from the law enforcement agency or the victim.**

(d) **“Open criminal case” means a criminal case that has been formally charged by information or indictment and for which no final judgment has been entered.**

(e) **“Sexual assault crime” means a crime described in ORS 163.355 to 163.427.**

(f) **“Victim” means the person or persons who have suffered financial, social, psychological or physical harm as a result of a crime or suspected crime and includes, in the case of a homicide, a member of**

1 the immediate family of the decedent and, in the case of a minor vic-
2 tim, the legal guardian of the minor. In no event shall the defendant
3 or the person suspected of committing the crime be considered a vic-
4 tim.

5 (2)(a) A victim of a sexual assault crime, a domestic violence crime
6 or a suspected sexual assault or domestic violence crime, or the
7 victim's attorney, has the right to obtain law enforcement agency re-
8 cords relating to the crime as provided in this section.

9 (b) In order to obtain law enforcement agency records under this
10 section, the victim or attorney shall make a request in writing to the
11 law enforcement agency with jurisdiction over the offense. Upon re-
12 ceipt of a request under this paragraph, the law enforcement agency
13 shall immediately notify the district attorney with jurisdiction over
14 the offense of the request.

15 (c) The district attorney shall respond in writing to a request de-
16 scribed in this subsection within 60 days of the date the request is
17 submitted indicating the approval or denial of the request. The request
18 shall be approved if, in consultation with the law enforcement agency,
19 the district attorney determines that the release of the records to the
20 victim would not compromise or interfere with an investigation or an
21 open criminal case, or that a compelling reason exists to provide such
22 records despite the risk of compromising or interfering with an in-
23 vestigation or an open criminal case. If the request is denied, the dis-
24 trict attorney shall provide the victim with the reason for the denial
25 and a reasonable estimate of when the records will be available. The
26 records shall be released to the victim promptly upon approval or upon
27 the expiration of the reasons for a denial.

28 (d) Notwithstanding paragraph (c) of this subsection, upon a show-
29 ing by the victim of an urgent need for the records, or if the district
30 attorney determines there is another pending court proceeding neces-
31 sitating release of the records, the district attorney shall respond

1 **within 10 days of the date the request is submitted.**

2 **(3)(a) The district attorney may seek a protective order from the**
3 **court to prohibit further dissemination of records disclosed under this**
4 **section, or to authorize redaction of the records to prevent the iden-**
5 **tification of third parties. A protective order sought under this sub-**
6 **section must be narrowly tailored in scope and duration to protect the**
7 **integrity of an investigation or open criminal case or the privacy of**
8 **third parties.**

9 **(b) The district attorney shall notify the victim of the intent to seek**
10 **a protective order under this subsection. Upon receipt of the notifica-**
11 **tion, the victim may file an objection within 10 days.**

12 **(c) The court shall issue a protective order under this subsection**
13 **if the court determines that the order is necessary to protect the vic-**
14 **tim or another person from annoyance, embarrassment, oppression or**
15 **undue burden or expense.**

16 **(d) While a protective order issued under this subsection is in ef-**
17 **fect, the victim has standing to challenge or request to modify the**
18 **protective order, and the court has jurisdiction to vacate or modify the**
19 **order.**

20 **(e) Records disclosed under this section must be disclosed in ac-**
21 **cordance with a protective order issued under this subsection.**

22 **SECTION 2. ORS 419B.035 is amended to read:**

23 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170,
24 192.210 to 192.478 and 192.610 to 192.810 relating to confidentiality and ac-
25 cessibility for public inspection of public records and public documents, re-
26 ports and records compiled under the provisions of ORS 419B.010 to 419B.050
27 are confidential and may not be disclosed except as provided in this section.
28 The Department of Human Services shall make the records available to:

29 (a) Any law enforcement agency or a child abuse registry in any other
30 state for the purpose of subsequent investigation of child abuse;

31 (b) Any physician, physician assistant licensed under ORS 677.505 to

1 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390, at the
2 request of the physician, physician assistant or nurse practitioner, regarding
3 any child brought to the physician, physician assistant or nurse practitioner
4 or coming before the physician, physician assistant or nurse practitioner for
5 examination, care or treatment;

6 (c) Attorneys of record for the child or child's parent or guardian in any
7 juvenile court proceeding;

8 (d) Citizen review boards established by the Judicial Department for the
9 purpose of periodically reviewing the status of children, youths and adjudi-
10 cated youths under the jurisdiction of the juvenile court under ORS 419B.100
11 and 419C.005. Citizen review boards may make such records available to
12 participants in case reviews;

13 (e) A court appointed special advocate in any juvenile court proceeding
14 in which it is alleged that a child has been subjected to child abuse or neg-
15 lect;

16 (f) The Office of Child Care for certifying, registering or otherwise regu-
17 lating child care facilities;

18 (g) The Office of Children's Advocate;

19 (h) The Teacher Standards and Practices Commission for investigations
20 conducted under ORS 339.390 or 342.176 involving any child or any student;

21 (i) Any person, upon request to the Department of Human Services, if the
22 reports or records requested regard an incident in which a child, as the re-
23 sult of abuse, died or suffered serious physical injury as defined in ORS
24 161.015. Reports or records disclosed under this paragraph must be disclosed
25 in accordance with ORS 192.311 to 192.478;

26 (j) The Office of Child Care for purposes of ORS 329A.030 (10)(g), (h) and
27 (i);

28 (k) With respect to a report of abuse occurring at a school or in an edu-
29 cational setting that involves a child with a disability, Disability Rights
30 Oregon;

31 (L) The Department of Education for purposes of investigations conducted

1 under ORS 339.391; and

2 (m) An education provider for the purpose of making determinations un-
3 der ORS 339.388.

4 (2)(a) When disclosing reports and records pursuant to subsection (1)(i)
5 of this section, the Department of Human Services may exempt from disclo-
6 sure the names, addresses and other identifying information about other
7 children, witnesses, victims or other persons named in the report or record
8 if the department determines, in written findings, that the safety or well-
9 being of a person named in the report or record may be jeopardized by dis-
10 closure of the names, addresses or other identifying information, and if that
11 concern outweighs the public's interest in the disclosure of that information.

12 (b) If the Department of Human Services does not have a report or record
13 of abuse regarding a child who, as the result of abuse, died or suffered seri-
14 ous physical injury as defined in ORS 161.015, the department may disclose
15 that information.

16 (3) The Department of Human Services may make reports and records
17 compiled under the provisions of ORS 419B.010 to 419B.050 available to any
18 person, administrative hearings officer, court, agency, organization or other
19 entity when the department determines that such disclosure is necessary to
20 administer its child welfare services and is in the best interests of the af-
21 fected child, or that such disclosure is necessary to investigate, prevent or
22 treat child abuse and neglect, to protect children from abuse and neglect or
23 for research when the Director of Human Services gives prior written ap-
24 proval. The Department of Human Services shall adopt rules setting forth the
25 procedures by which it will make the disclosures authorized under this sub-
26 section or subsection (1) or (2) of this section. The name, address and other
27 identifying information about the person who made the report may not be
28 disclosed pursuant to this subsection and subsection (1) of this section.

29 (4)(a) A law enforcement agency may make reports and records compiled
30 under the provisions of ORS 419B.010 to 419B.050 available to other law
31 enforcement agencies, district attorneys, city attorneys with criminal

1 prosecutorial functions and the Attorney General when the law enforcement
2 agency determines that disclosure is necessary for the investigation or
3 enforcement of laws relating to child abuse and neglect or necessary to de-
4 termine a claim for crime victim compensation under ORS 147.005 to 147.367.

5 **(b)(A) A minor victim of abuse, neglect, a sexual assault crime, a**
6 **domestic violence crime or a suspected sexual assault or domestic vi-**
7 **olence crime, or the victim's attorney, parent or legal guardian, has**
8 **the right to obtain law enforcement agency records relating to the**
9 **crime as provided in this paragraph.**

10 **(B) In order to obtain law enforcement agency records under this**
11 **section, the victim or other authorized requester shall make a request**
12 **in writing to the law enforcement agency with jurisdiction over the**
13 **offense. Upon receipt of a request under this paragraph, the law**
14 **enforcement agency shall immediately notify the district attorney with**
15 **jurisdiction over the offense of the request.**

16 **(C) The district attorney shall respond in writing to a request de-**
17 **scribed in this subsection within 60 days of the date the request is**
18 **submitted indicating the approval or denial of the request. The request**
19 **shall be approved if, in consultation with the law enforcement agency,**
20 **the district attorney determines that the release of the records to the**
21 **requester would not compromise or interfere with an investigation or**
22 **an open criminal case, or that a compelling reason exists to provide**
23 **such records despite the risk of compromising or interfering with an**
24 **investigation or an open criminal case. If the request is denied, the**
25 **district attorney shall provide the requester with the reason for the**
26 **denial and a reasonable estimate of when the records will be available.**
27 **The records shall be released to the requester promptly upon approval**
28 **or upon the expiration of the reasons for a denial.**

29 **(D) Notwithstanding subparagraph (C) of this paragraph, upon a**
30 **showing by the requester of an urgent need for the records, or if the**
31 **district attorney determines there is another pending court proceeding**

1 **necessitating release of the records, the district attorney shall respond**
2 **within 10 days of the date the request is submitted.**

3 **(E)(i) The district attorney may seek a protective order from the**
4 **court to prohibit further dissemination of records disclosed under this**
5 **section, or to authorize redaction of the records to prevent the iden-**
6 **tification of third parties. A protective order sought under this sub-**
7 **paragraph must be narrowly tailored in scope and duration to protect**
8 **the integrity of an investigation or open criminal case or the privacy**
9 **of third parties.**

10 **(ii) The district attorney shall notify the requester of the intent to**
11 **seek a protective order under this subparagraph. Upon receipt of the**
12 **notification, the requester may file an objection within 10 days.**

13 **(iii) The court shall issue a protective order under this subpara-**
14 **graph if the court determines that the order is necessary to protect**
15 **the victim or another person from annoyance, embarrassment, op-**
16 **pression or undue burden or expense.**

17 **(iv) While a protective order issued under this subparagraph is in**
18 **effect, the requester has standing to challenge or request to modify**
19 **the protective order, and the court has jurisdiction to vacate or modify**
20 **the order.**

21 **(v) Records disclosed under this section must be disclosed in ac-**
22 **cordance with a protective order issued under this subparagraph.**

23 **(5) A law enforcement agency, upon completing an investigation and**
24 **closing the file in a specific case relating to child abuse or neglect, shall**
25 **make reports and records in the case available upon request to any law**
26 **enforcement agency or community corrections agency in this state, to the**
27 **Department of Corrections, to the Oregon Youth Authority or to the State**
28 **Board of Parole and Post-Prison Supervision for the purpose of managing and**
29 **supervising offenders in custody or on probation, parole, post-prison super-**
30 **vision or other form of conditional or supervised release. A law enforcement**
31 **agency may make reports and records compiled under the provisions of ORS**

1 419B.010 to 419B.050 available to the Oregon Youth Authority, law enforce-
2 ment, community corrections, corrections or parole agencies in an open case
3 when the law enforcement agency determines that the disclosure will not
4 interfere with an ongoing investigation in the case. The name, address and
5 other identifying information about the person who made the report may not
6 be disclosed under this subsection or subsection (6)(b) of this section.

7 (6)(a) Any record made available to a law enforcement agency or com-
8 munity corrections agency in this state, to the Department of Corrections,
9 the Oregon Youth Authority or the State Board of Parole and Post-Prison
10 Supervision or to a physician, physician assistant or nurse practitioner in
11 this state, as authorized by subsections (1) to (5) of this section, shall be kept
12 confidential by the agency, department, board, physician, physician assistant
13 or nurse practitioner. Any record or report disclosed by the Department of
14 Human Services to other persons or entities pursuant to subsections (1) and
15 (3) of this section shall be kept confidential.

16 (b) Notwithstanding paragraph (a) of this subsection:

17 (A) A law enforcement agency, a community corrections agency, the De-
18 partment of Corrections, the Oregon Youth Authority and the State Board
19 of Parole and Post-Prison Supervision may disclose records made available
20 to them under subsection (5) of this section to each other, to law enforce-
21 ment, community corrections, corrections and parole agencies of other states
22 and to authorized treatment providers for the purpose of managing and
23 supervising offenders in custody or on probation, parole, post-prison super-
24 vision or other form of conditional or supervised release.

25 (B) The Department of Corrections and the Oregon Youth Authority may
26 disclose records made available to them under subsection (5) of this section
27 regarding a person in the custody of the Department of Corrections or the
28 Oregon Youth Authority to each other, to the court, to the district attorney
29 and to the person's attorney for the purpose of the person's hearing under
30 ORS 420A.200 to 420A.206.

31 (C) A person may disclose records made available to the person under

1 subsection (1)(i) of this section if the records are disclosed for the purpose
2 of advancing the public interest.

3 (7) Except as provided by ORS 339.389, an officer or employee of the De-
4 partment of Human Services or of a law enforcement agency or any person
5 or entity to whom disclosure is made pursuant to subsections (1) to (6) of this
6 section may not release any information not authorized by subsections (1) to
7 (6) of this section.

8 (8) As used in this section[,]:

9 (a) **“Domestic violence crime” means a crime constituting domestic**
10 **violence as defined in ORS 135.230.**

11 (b) “Law enforcement agency” has the meaning given that term in ORS
12 181A.010.

13 (c) **“Law enforcement agency record” includes documents or re-**
14 **ords that are created by or originate from the law enforcement**
15 **agency or the victim.**

16 (d) **“Open criminal case” means a criminal case that has been**
17 **formally charged by information or indictment and for which no final**
18 **judgment has been entered.**

19 (e) **“Sexual assault crime” means a crime described in ORS 163.355**
20 **to 163.427.**

21 (f) **“Victim” means the person or persons who have suffered finan-**
22 **cial, social, psychological or physical harm as a result of abuse, neg-**
23 **lect, a crime or a suspected crime and includes, in the case of a**
24 **homicide, a member of the immediate family of the decedent. In no**
25 **event shall the defendant or the person suspected of committing the**
26 **crime, abuse or neglect be considered a victim.**

27 (9) A person who violates subsection (6)(a) or (7) of this section commits
28 a Class A violation.

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