

Enrolled
Senate Bill 575

Sponsored by Senators DEMBROW, MANNING JR, LIEBER; Senators GORSEK, THATCHER, Representatives REARDON, SOLLMAN (Presession filed.)

CHAPTER

AN ACT

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

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

EXPUNCTION OF JUVENILE RECORDS

SECTION 1. (1) Sections 2 to 4 of this 2021 Act are added to and made a part of ORS chapter 419A.

(2) ORS 419A.260 and 419A.262 are added to and made a part of sections 2 to 4 of this 2021 Act.

SECTION 2. Notice of expunction. (1) A juvenile department shall issue a notice of expunction of a subject person's records if the subject person:

- (a) Has had contact with the juvenile department;
- (b) Has never been the subject of a petition alleging that the subject person is subject to the juvenile court's jurisdiction under ORS 419C.005;
- (c) Has never been found to be within the jurisdiction of the juvenile court under ORS 419C.005;
- (d) Does not have an open referral for a case by informal means; and
- (e) Has not had contact with the juvenile department resulting in a conviction under ORS 137.707.

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

- (a) The date the subject person attains 18 years of age; or
- (b) If the subject person was 18 years of age or older on the date specified in section 14 (1) of this 2021 Act, the date the juvenile department receives a request for expunction from the subject person.

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

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

(b) The juvenile department may, upon an agency's written request, provide the agency with an extension of time to comply with paragraph (a) of this subsection. The duration of the extension may not exceed the later of 30 days or, if an audit or grievance under the Interstate Compact for Juveniles relating to the subject person's records is pending, the date the audit or grievance is concluded.

(c) If an agency fails to comply with the requirements of paragraph (a) of this subsection, the juvenile department shall petition the juvenile court in the county in which the juvenile department is located for an order compelling the agency to comply.

(5) When all agencies subject to the notice of expunction have indicated their compliance or in any event no later than the later of 90 days following the date the notice was delivered as required by subsection (3) of this section or, if the juvenile department granted an extension of time under subsection (4) of this section, 90 days following the expiration of the extension of time, the juvenile department shall provide the subject person with a copy of the notice of expunction, a list of complying and noncomplying agencies, and a written notice of rights and effects of expunction. The juvenile department then shall expunge forthwith all records in its possession that are subject to the notice of expunction, except the juvenile department shall retain a record of the expunction processes under this section and keep the record confidential.

(6) The Oregon Youth Authority, in consultation with county juvenile departments, shall develop statewide model forms to implement the provisions of this section.

SECTION 3. Effect of expunction; confidentiality; penalties. (1) Upon issuance of a notice of expunction under section 2 of this 2021 Act or entry of an expunction judgment under ORS 419A.262, the contact that is the subject of the expunged record may not be disclosed by any agency. An agency that is subject to a notice of expunction or an expunction judgment shall respond to any inquiry about the contact by indicating that no record or reference concerning the contact exists.

(2) A person who is the subject of a record that has been expunged under ORS 419A.262 or section 2 of this 2021 Act may assert that the record never existed and that the contact that was the subject of the record never occurred without incurring a penalty for perjury or false swearing under the laws of this state.

(3) Upon the juvenile department's expunction of a subject person's records under section 2 of this 2021 Act or ORS 419A.262, the juvenile department may destroy any records in the juvenile department's possession relating to the subject person's contact under ORS 419B.100 if the records are duplicate copies of records maintained by the Department of Human Services. The destruction of records related to the subject person's contact under ORS 419B.100 pursuant to this subsection does not constitute expunction.

(4) Juvenile courts, by court rule or by order related to a particular matter, may direct that records concerning a subject person be destroyed. No records may be destroyed until at least three years have elapsed after the date of the subject's most recent termination. In the event the record has been expunged, the expunction judgment and list of complying and noncomplying agencies may not be destroyed, but shall be preserved under seal. The destruction of records under this subsection does not constitute expunction.

(5) A notice of expunction or an expunction judgment and the list of complying and noncomplying agencies shall be disclosed only on order of the court that would have had jurisdiction to compel compliance with the notice of expunction or that originated the expunction judgment, based on a finding that review of a particular case furthers compliance with the expunction provisions of sections 2 to 4 of this 2021 Act.

(6) A person who, in the person's official capacity with a juvenile department, sends a notice of expunction for an ineligible individual or fails to send a notice of expunction for an

eligible individual under section 2 of this 2021 Act has immunity from any liability, civil or criminal, that might otherwise be incurred or imposed for making the disclosure or failing to make the disclosure, except when the person who sends the notice has knowledge that the individual is ineligible or when the person who fails to send the notice has knowledge that the individual is eligible.

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

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

(9) A person who releases all or part of an expunged record commits a Class A violation.

SECTION 4. Appointment of counsel. (1) If a person who is the subject of a record for which expunction under ORS 419A.262 (2) has been denied or that is eligible for expunction under ORS 419A.262 (3) to (10) wishes to apply for expunction and if the person is without funds to employ suitable counsel possessing skills and experience commensurate with the nature and complexity of the expunction process, the person may request the juvenile court having jurisdiction over the expunction process under ORS 419A.262 (1) to appoint counsel to represent the person in the expunction proceeding.

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

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

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

419A.260. (1) As used in *[this section and ORS 419A.262]* sections 2 to 4 of this 2021 Act:

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

(b) "Expunction" means:

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

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

(B) The removal by sealing of a judgment or order related to a contact and all records and references associated with a subject person;

(C) The removal by redaction of a subject person's name and all personal identifiers and all references to the subject person within a record; or

[(B)] (D) [Where] If a record is kept by the Department of Human Services [or the Oregon Youth Authority, either the sealing of such record by the department or the Oregon Youth Authority or, in a multiperson file,] the department's affixing to the front of the file, by the department or the youth

authority,] containing the record a stamp or statement identifying the name of the individual, the date of expunction and instruction that no further reference *[shall]* **may** be made to the *[material] record* that is subject to the expunction **notice or** order *[except upon an order of a court of competent jurisdiction]*.

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

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

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

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

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

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

(E) Records related to a support obligation;

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

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

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

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

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

(i) Aggravated murder under ORS 163.095;

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

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

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

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

(vi) Criminally negligent homicide under ORS 163.145;

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

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

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

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

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

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

(xiii) Sodomy in the third degree under ORS 163.385;

(xiv) Sodomy in the second degree under ORS 163.395;

(xv) Sodomy in the first degree under ORS 163.405;

(xvi) Unlawful sexual penetration in the second degree under ORS 163.408;

(xvii) Unlawful sexual penetration in the first degree under ORS 163.411;

(xviii) Sexual abuse in the third degree under ORS 163.415;

(xix) Sexual abuse in the second degree under ORS 163.425;

(xx) Sexual abuse in the first degree under ORS 163.427;

(xxi) Promoting prostitution under ORS 167.012;

(xxii) Compelling prostitution under ORS 167.017;

(xxiii) Aggravated driving while suspended or revoked under ORS 163.196;

(xxiv) Aggravated vehicular homicide under ORS 163.149; or

(xxv) An attempt to commit a crime listed in this subparagraph other than manslaughter in the second degree and criminally negligent homicide;

(K) Blood samples, buccal samples and other physical evidence and identification information obtained, stored or maintained by the Department of State Police under authority of ORS 137.076, 181A.155 or 419C.473; [or]

(L) Records maintained in the Law Enforcement Data System under ORS 163A.035[.]; or

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

(e) "Termination" means:

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

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

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

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

(b) At the time of termination;

(c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile department or motion on a juvenile court; and

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

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

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

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

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

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

(B) **If the subject person was 18 years of age or older on the date specified in section 14 (1) of this 2021 Act, the date that the juvenile department receives a request to file the application for expunction from the subject person.**

(b) Upon application of either a person who is the subject of a record or a juvenile department, the juvenile court shall order expunction if it finds that:

(A) **The subject person had contact with the juvenile department;**

(B) **The subject person has never been found to be within the jurisdiction of the juvenile court under ORS 419C.005;**

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

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

(E) The subject person does not have an open referral for a case by informal means; and

(F) The subject person has not had contact with the juvenile department resulting in a conviction under ORS 137.707.

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

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

(B) If the juvenile department submitted the application that was denied, the juvenile department shall make reasonable efforts to send to the subject person the following:

(i) Notice of the court's decision and a copy of the judgment denying the application for expunction; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The person meets the requirements of subsection [(2)] **(3)** of this section;

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

(C) The person is:

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

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

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

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

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

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

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

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

agencies that a reasonable search of department files indicates have expungible records and those provided by the subject person.

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

(A) The district attorney of the county in which the expunction proceeding is commenced and the district attorney of each county in which the record sought to be expunged is kept; and

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

(b) A district attorney who receives notice under this subsection shall notify the victim of the acts that resulted in the disposition that is the subject of the application for expunction and shall mail a copy of the application for expunction to the victim's last known address.

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

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

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

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

(b) The court may not deny an expunction without a hearing if the proceeding is based on an application of the subject; and

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

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

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

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

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

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

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

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

(b) The court's denial of an application for expunction under subsections (2) to (10) of this section does not preclude the subject person from filing an application for expunction under any other applicable subsection of this section.

[(18)] **(19)(a)** The juvenile court or juvenile department shall send a copy of an expunction judgment to each agency subject to the judgment. **Attached to the expunction judgment must be information, to remain confidential, regarding the record to be expunged and the date of the record.**

(b) Upon receipt of a copy of the judgment granting an application for expunction under subsection (2) of this section, the agency shall comply and, within 60 days following the date

of receipt, return the copy to the juvenile court or the juvenile department with an indorsement indicating compliance.

(c) Upon receipt of a copy of the judgment **granting an application for expunction under subsections (3) to (10) of this section**, the agency shall comply and, within 21 days of the date of receipt, return the copy to the juvenile court or juvenile department with an indorsement indicating compliance.

(d) **The juvenile department may, upon an agency's written request, provide the agency with an extension of time to comply with paragraph (b) or (c) of this subsection. The duration of the extension may not exceed the later of 30 days or, if an audit or grievance under the Interstate Compact for Juveniles relating to the subject person's records is pending, the date the audit or grievance is concluded.**

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

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

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

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

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

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

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

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

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

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

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

CONFORMING AMENDMENTS

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

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

(a) Pursuant to a search warrant;

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

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

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

(e) By order of the juvenile court.

(2) When a youth is taken into custody under ORS 419C.080, the law enforcement agency taking the youth into custody shall photograph and fingerprint the youth. When a youth is found within the jurisdiction of the juvenile court for the commission of an act that would constitute a crime if committed by an adult, the court shall ensure that the youth offender's fingerprints have been taken. The law enforcement agency attending upon the court is the agency responsible for obtaining the fingerprints. The law enforcement agency attending upon the court may, by agreement, arrange for another law enforcement agency to obtain the fingerprints on the attending agency's behalf.

(3) Fingerprint and photograph files or records of children, wards, youths and youth offenders must be kept separate from those of adults, and fingerprints and photographs known to be those of a child may be maintained on a local basis only and may not be sent to a central state or federal depository.

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

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

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

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

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

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

(5)(a) Fingerprint and photograph files or records of youths and youth offenders must be sent to a central state depository in the same manner as fingerprint and photograph files or records of adults. The fingerprint and photograph files or records of a youth or youth offender sent to a central depository under this subsection are open to inspection in the same manner and under the same circumstances as fingerprint and photograph files or records of adults.

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

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

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

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

(d) The Department of State Police shall delete the fingerprint and photograph files or records of a youth or youth offender from the depository and destroy the files or records relating to the conduct that caused the files or records to be sent to the depository:

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

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

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

(6) Fingerprint and photograph files and records of a child, ward, youth or youth offender must be expunged when the juvenile court orders expunction of a child, ward, youth or youth offender's record pursuant to [ORS 419A.260 and 419A.262] **sections 2 to 4 of this 2021 Act.**

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

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

(9) Fingerprints and other information entered in any data system pursuant to subsection (7) of this section must be deleted when the child is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Records of cases waived under subsection (1)(c) of this section are juvenile records for purposes of expunction under [ORS 419A.260] **sections 2 to 4 of this 2021 Act**.

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

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

(a) For an employer, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections 2 to 4 of this 2021 Act**, to refuse to hire or employ the individual or to bar or discharge the individual from employment. However, discrimination is not an unlawful employment practice if the discrimination results from a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business.

(b) For an employer, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections 2 to 4 of this 2021 Act**, to discriminate against the individual in compensation or in terms, conditions or privileges of employment.

(c) For a labor organization, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of an individual's juvenile record that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections 2 to 4 of this 2021 Act**, to exclude or to expel from its membership the individual or to discriminate in any way against the individual or any other person.

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

(e) For an employment agency, because of an individual's race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual is 18 years of age or older, or because of the race, color, religion, sex, sexual orientation, national origin, marital status or age of any other person with whom the individual associates, or because of an individual's juvenile record that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections 2 to 4 of this 2021 Act**, to classify or refer for employment, or to fail or refuse to refer for employment, or otherwise to discriminate against the individual. However, it is not an unlawful employment practice for an employment agency to classify or refer for employment an individual when the classification or re-

ferral results from a bona fide occupational qualification reasonably necessary to the normal operation of the employer's business.

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

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

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

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

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

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

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

SECTION 11. ORS 670.290 is amended to read:

670.290. It shall be unlawful for any state agency or licensing board, including the Oregon State Bar, to:

(1) Require that an applicant for employment, licensing or admission answer any questions regarding the existence or contents of a juvenile record that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections 2 to 4 of this 2021 Act;**

(2) Bar or discharge from employment or refuse to hire or employ such individual because of the existence or contents of a juvenile record that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections 2 to 4 of this 2021 Act;** or

(3) Deny, revoke or suspend a license because of the existence or contents of a juvenile record that has been expunged pursuant to [ORS 419A.260 and 419A.262] **sections 2 to 4 of this 2021 Act.**

REPORT

SECTION 12. Report to Legislative Assembly. (1) No later than September 15, 2021, the Oregon Youth Authority, in collaboration with county juvenile departments and the Judicial Department, shall submit a report to the interim committees of the Legislative Assembly relating to juveniles describing the status of the authority's preparations for the implementation of sections 2 to 4 of this 2021 Act, and the amendments to ORS 419A.250, 419A.260, 419A.262, 419A.265, 419C.370, 659A.030 and 670.290 by sections 5 to 11 of this 2021 Act.

(2) No later than January 2, 2022, the Oregon Youth Authority, in collaboration with county juvenile departments and the Judicial Department, shall submit a report to the interim committees of the Legislative Assembly relating to juveniles describing the process by which records of contacts are expunged under sections 2 to 4 of this 2021 Act, and include:

(a) The number of individuals to whom notices of expunction were sent by juvenile departments under section 2 of this 2021 Act and the number of applications for expunction submitted by juvenile departments to juvenile courts under ORS 419A.262 (2).

(b) The number of applications for expunction submitted by persons who are subjects of records under ORS 419A.262 (2).

(c) The number of applications for expunction under ORS 419A.262 granted by the court, the number of applications denied by the court and the number of applications still pending.

(d) The number of attorneys appointed pursuant to section 4 of this 2021 Act.

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

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

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

(h) The estimated cost of the legislation recommended under paragraphs (e) and (f) of this subsection.

MISCELLANEOUS

SECTION 13. Sections 2 to 4 of this 2021 Act and the amendments to ORS 419A.250, 419A.260, 419A.262, 419A.265, 419C.370, 659A.030 and 670.290 by sections 5 to 11 of this 2021 Act apply to expunction of records related to contacts occurring before, on or after the effective date of this 2021 Act.

SECTION 14. (1) Sections 2 to 4 of this 2021 Act, and the amendments to ORS 419A.250, 419A.260, 419A.262, 419A.265, 419C.370, 659A.030 and 670.290 by sections 5 to 11 of this 2021 Act become operative on January 2, 2022.

(2) The State Court Administrator and the Oregon Youth Authority may take any action before the operative date specified in subsection (1) of this section that is necessary for the administrator or the authority to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the administrator or the authority by sections 2 to 4 of this 2021 Act and the amendments to ORS 419A.250, 419A.260, 419A.262, 419A.265, 419C.370, 659A.030 and 670.290 by sections 5 to 11 of this 2021 Act.

SECTION 15. The unit and section captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

EFFECTIVE DATE

SECTION 16. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Passed by Senate June 24, 2021

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Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 25, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2021

Approved:

.....M,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2021

.....
Shemia Fagan, Secretary of State