LC 3510 2023 Regular Session 10/21/22 (TSB/ps)

# DRAFT

#### **SUMMARY**

Prohibits employer, state agency or licensing board from taking certain actions on basis of record created or maintained under jurisdiction of juvenile court. Specifies exemptions.

Provides that adjudication that youth is within jurisdiction of juvenile court does not forfeit any right or privilege or operate as disqualification from holding public office or pursuing or engaging in lawful activity, occupation, profession or calling.

Provides that information about act committed by youth or adjudicated youth may be disclosed to victim of act and to and among law enforcement unit, district attorney, county juvenile authority and certain other entities.

1 A BILL FOR AN ACT

- 2 Relating to the effects on adjudicated persons of adjudications for criminal
- acts; creating new provisions; and amending ORS 419A.255, 419C.400 and
- 4 670.290.
- 5 Be It Enacted by the People of the State of Oregon:
- 6 **SECTION 1.** ORS 670.290 is amended to read:
- 7 670.290. (1) [It shall be unlawful for any] An employer, state agency or
- 8 licensing board, including the Oregon State Bar, [to] may not:
- 9 [(1)] (a) Require [that] an applicant for employment, licensing or admis-
- sion **to** answer any questions regarding the existence or contents of a [juve-
- 11 nile] record that [has been expunged pursuant to ORS 419A.260 to 419A.271]
- was created or maintained under the jurisdiction of a juvenile court;
- 13 (b) Inquire in connection with an application for employment, li-14 censing or admission as to the existence or contents of a record that
- was created or maintained under the jurisdiction of a juvenile court;

- 1 [(2)] (c) Bar or discharge from employment or refuse to hire or employ
- 2 [such] an individual because of the existence or contents of a [juvenile] re-
- 3 cord that [has been expunged pursuant to ORS 419A.260 to 419A.271] was
- 4 created or maintained under the jurisdiction of a juvenile court; or
- 5 [(3)] (d) Deny, revoke or suspend a license because of the existence or
- 6 contents of a [juvenile] record that [has been expunged pursuant to ORS
- 7 419A.260 to 419A.271] was created or maintained under the jurisdiction
- 8 of a juvenile court.
- 9 (2) This section does not apply to or affect:
- 10 (a) An employer, state agency, licensing board or commission that
- 11 state or federal law explicitly requires or authorizes to consider the
- 12 juvenile adjudication history of an applicant;
- 13 (b) An employer's, state agency's, licensing board's or commission's
- 14 power or duty to view or consider an applicant's or licensee's juvenile
- 15 adjudication history for the following offenses, if the employer, state
- 16 agency, licensing board or commission is authorized or required to
- 17 consider the applicant's or licensee's criminal history, moral charac-
- 18 ter, fitness or similar qualifications:
- 19 (A) An act that, if committed by an adult, would constitute a crime
- 20 under ORS 163.107 or 163.115; or
- 21 (B) An act that the applicant committed between the ages of 16 and
- 22 18 that would constitute a crime under ORS 163.185, 163.375, 163.405 or
- 23 **163.427**;
- 24 (c) A licensing board's, commission's or state agency's power or
- 25 duty to view or consider an applicant's criminal history under ORS
- 26 **443.004**;
- 27 (d) A license the Department of Human Services issues under ORS
- 28 443.410 or a license that the department or the Oregon Health Au-
- 29 thority issues under ORS 443.735;
- 30 (e) Enrollment in the Central Background Registry under ORS
- 31 **329A.030**; or

- 1 (f) The authority of a law enforcement unit, as defined in ORS
- 2 181A.355, or the Department of Public Safety Standards and Training,
- 3 to consider an applicant's criminal history for the purpose of evaluat-
- 4 ing the applicant for employment or certification.
- 5 **SECTION 2.** ORS 419A.255 is amended to read:
- 6 419A.255. (1)(a) The clerk of the court shall maintain a record of each
- 7 case and a supplemental confidential file for each case, except as otherwise
- 8 provided in ORS 7.120.
- 9 (b) The record of the case shall be withheld from public inspection but
- 10 is open to inspection by the following:
- 11 (A) The judge of the juvenile court and those acting under the judge's
- 12 direction;
- 13 (B) The child;
- 14 (C) The ward;
- 15 (D) The youth;
- 16 (E) The adjudicated youth;
- 17 (F) The parent or guardian of the child, ward, youth or adjudicated youth;
- 18 (G) The guardian ad litem for the parent;
- 19 (H) A person allowed to intervene in a proceeding involving the child,
- 20 ward, youth or adjudicated youth;
- 21 (I) The court appointed special advocate, and a representative of a CASA
- 22 Volunteer Program as defined in ORS 184.489, when reasonably necessary for
- 23 the appointment or supervision of court appointed special advocates;
- 24 (J) The attorneys or prospective appellate attorneys for any of the persons
- 25 listed in subparagraphs (B) to (I) of this paragraph;
- 26 (K) The surrogate;
- 27 (L) Service providers in the case;
- 28 (M) The district attorney or assistant attorney general representing a
- 29 party in the case;
- 30 (N) The juvenile department;
- 31 (O) The Department of Human Services;

- 1 (P) The Oregon Youth Authority; and
- Q) Any other person or entity allowed by the court pursuant to ORS 419A.258.
- 4 (c) The following are entitled to copies of the record of the case:
- 5 (A) The judge of the juvenile court and those acting under the judge's direction;
- 7 (B) A party to the extent permitted under ORS 419B.875 (2) or 419C.285 8 (2);
- 9 (C) A guardian ad litem for a parent to the same extent the parent is 10 permitted to copies under ORS 419B.875 (2) or 419C.285 (2);
- (D) Persons listed in paragraph (b)(J) to (P) of this subsection; and
- 12 (E) Any other person or entity allowed by the court pursuant to ORS 13 419A.258.
- (2)(a) Reports and other material relating to the child, ward, youth or 14 adjudicated youth's history and prognosis in the record of the case or the 15 supplemental confidential file are privileged and, except at the request of the 16 child, ward, youth or adjudicated youth, shall be withheld from public in-17 spection except that inspection is permitted as set forth in subsection (1)(b) 18 of this section and paragraph (b) of this subsection. The offer or admission 19 of reports and other material in the record of the case or the supplemental 20 confidential file as exhibits in a hearing or trial does not waive or otherwise 21 change the privileged status of the reports and other material, except for 22 purposes of the hearing or trial in which the reports and other material are 23 offered or admitted. Once offered as an exhibit, reports and other material 24 relating to the child, ward, youth or adjudicated youth's history and 25 prognosis that were maintained in the supplemental confidential file become 26 part of the record of the case but are subject to paragraph (e) of this sub-27 section. 28
- 29 (b) A supplemental confidential file is open to inspection by the following:
- 30 (A) The judge of the juvenile court and those acting under the judge's direction;

- 1 (B) The parent or guardian of the child or ward in a dependency case;
- 2 (C) The guardian ad litem for the parent of a child or ward in a depend-3 ency case;
- 4 (D) The parent or guardian of the youth or adjudicated youth in a delin-
- 5 quency case if the youth or adjudicated youth consents to, or the court au-
- 6 thorizes, inspection;
- 7 (E) The guardian ad litem for the parent of a youth or adjudicated youth
- 8 in a delinquency case if the youth or adjudicated youth consents to, or the
- 9 court authorizes, inspection;
- 10 (F) A person allowed to intervene in a proceeding involving the child,
- 11 ward, youth or adjudicated youth;
- 12 (G) The court appointed special advocate, and a representative of a CASA
- 13 Volunteer Program as defined in ORS 184.489, when reasonably necessary for
- 14 the appointment or supervision of court appointed special advocates;
- 15 (H) The surrogate;
- 16 (I) Service providers in the case;
- 17 (J) The attorneys or prospective appellate attorneys for:
- 18 (i) The child;
- 19 (ii) The ward;
- 20 (iii) The youth;
- 21 (iv) The adjudicated youth;
- (v) The parent or guardian of the child, ward, youth or adjudicated youth;
- 23 (vi) The guardian ad litem for the parent;
- (vii) A person allowed to intervene in a proceeding involving the child
- 25 or ward in a dependency case; or
- 26 (viii) The court appointed special advocate and a representative of a
- 27 CASA Volunteer Program as defined in ORS 184.489;
- 28 (K) The district attorney or assistant attorney general representing a
- 29 party in the case;
- 30 (L) The juvenile department;
- 31 (M) The Department of Human Services;

- 1 (N) The Oregon Youth Authority; and
- 2 (O) Any other person or entity allowed by the court pursuant to ORS 3 419A.258.
- 4 (c) The supplemental confidential file in cases under ORS 419C.005 may
- 5 be disclosed to the superintendent of the school district in which the adju-
- 6 dicated youth resides or the superintendent's designee.
- 7 (d) The following are entitled to copies of material maintained in the 8 supplemental confidential file:
- 9 (A) The judge of the juvenile court and those acting under the judge's direction;
- 11 (B) Service providers in the case;
- 12 (C) School superintendents and their designees in cases under ORS 13 419C.005;
- (D) Attorneys designated under subsection (2)(b)(J) of this section;
- 15 (E) The district attorney or assistant attorney general representing a 16 party in the case;
- 17 (F) The juvenile department;
- 18 (G) The Department of Human Services;
- 19 (H) The Oregon Youth Authority;
- 20 (I) The court appointed special advocate, and a representative of a CASA
- 21 Volunteer Program as defined in ORS 184.489, when reasonably necessary for
- 22 the appointment or supervision of court appointed special advocates; and
- 23 (J) Any other person or entity allowed by the court pursuant to ORS 24 419A.258.
- 25 (e) A person that obtains copies of material in the supplemental confi-
- 26 dential file pursuant to paragraph (d) of this subsection is responsible for
- 27 preserving the confidentiality of the material in the supplemental confiden-
- 28 tial file. A service provider, school superintendent or superintendent's
- 29 designee who obtains copies of such material shall destroy the copies upon
- 30 the conclusion of involvement in the case.
- 31 (3) Except as otherwise provided in subsection (5) of this section, no in-

- 1 formation appearing in the record of the case or in the supplemental confi-
- 2 dential file may be disclosed to any person not described in subsections (1)(b)
- and (2)(b) of this section, respectively, without the consent of the court, ex-
- 4 cept for purposes of evaluating the child, ward, youth or adjudicated youth's
- 5 eligibility for special education as provided in ORS chapter 343, and no such
- 6 information may be used in evidence in any proceeding to establish criminal
- 7 or civil liability against the child, ward, youth or adjudicated youth, whether
- 8 such proceeding occurs after the child, ward, youth or adjudicated youth has
- 9 reached 18 years of age or otherwise, except for the following purposes:
- 10 (a) In connection with a presentence investigation after guilt has been 11 admitted or established in a criminal court.
- (b) In connection with a proceeding in another juvenile court concerning the child, ward, youth or adjudicated youth or an appeal from the juvenile court.
- (4)(a) When a person described in subsection (1)(b)(M), (N), (O) or (P) of this section inspects or obtains copies of reports, materials or documents under this subsection or under subsection (1) or (2) of this section, the person may not use or disclose the reports, materials or documents, except:
- 19 (A) As provided in this subsection or under subsection (1) or (2) of this 20 section;
- 21 (B) In the juvenile court proceeding for which the reports, materials or 22 documents were sought or disclosed;
- 23 (C) With the consent of the court; or
- 24 (D) As provided in ORS 419A.253.
- 25 (b) Nothing in this section prohibits the district attorney or assistant attorney general representing a party in a juvenile court proceeding, the juvenile department, the Department of Human Services, the Oregon Youth Authority or other parties in the proceeding or their attorneys from disclosing to each other reports, materials or documents described in subsections (1) and (2) of this section if the disclosure is reasonably necessary to perform official duties related to the involvement of the child, ward, youth

- or adjudicated youth with the juvenile court or the juvenile department. A person to whom reports, materials or documents are disclosed under this subsection is subject to subsection (3) of this section.
- (5)(a) Information contained in the supplemental confidential file that, in the professional judgment of the juvenile counselor, caseworker, school superintendent or superintendent's designee, teacher or detention worker to whom the information in the supplemental confidential file has been provided, indicates a clear and immediate danger to another person or to society shall be disclosed to the appropriate authority and the person who is in danger from the child, ward, youth or adjudicated youth.
- 11 (b) A person that discloses information under paragraph (a) of this sub-12 section has immunity from any liability, civil or criminal, that might other-13 wise be incurred or imposed for making the disclosure.
- (c) Nothing in this subsection affects the provisions of ORS 146.750, 146.760, 419B.035, 419B.040 and 419B.045. The disclosure of information under this subsection does not make the information admissible in any court or administrative proceeding if it is not otherwise admissible.
- (6) Notwithstanding any other provision of law, and subject to subsection 18 (8) of this section, the following [are not confidential and not exempt from 19 disclosure] information may be disclosed to the victim of an act com-20 21 mitted by a youth or an adjudicated youth, to a law enforcement unit, as defined in ORS 181A.355, to a district attorney, to a county juvenile 22 authority or to any entity to which records and information may be 23 disclosed under ORS 419A.257 (2), if the disclosure is reasonably nec-24 essary for the performance of official duties: 25
- 26 (a) The name and date of birth of the youth or adjudicated youth;
- (b) The basis for the juvenile court's jurisdiction over the youth or adjudicated youth;
- (c) The date, time and place of any juvenile court proceeding in which the youth or adjudicated youth is involved;
- 31 (d) The act alleged in the petition that if committed by an adult would

- 1 constitute a crime if jurisdiction is based on ORS 419C.005;
- 2 (e) That portion of the juvenile court order providing for the legal dis-
- 3 position of the youth or adjudicated youth when jurisdiction is based on ORS
- 4 419C.005;
- 5 (f) The names and addresses of the youth or adjudicated youth's parents
- 6 or guardians; and
- 7 (g) The register described in ORS 7.020 when jurisdiction is based on ORS
- 8 419C.005.
- 9 (7) Notwithstanding any other provision of law, and subject to subsection
- 10 (8) of this section, when a youth has been taken into custody under ORS
- 11 419C.080, the following information [shall] may be disclosed to a law
- 12 enforcement unit, as defined in ORS 181A.355, to a district attorney
- and by the district attorney to the victim, to a county juvenile au-
- 14 thority and to an entity to which records and information may be
- disclosed under ORS 419.257 (2), if the disclosure is reasonably neces-
- 16 sary for the performance of official duties [unless, and only for so long
- 17 as, there is a clear need to delay disclosure in the course of a specific investi-
- 18 gation, including the need to protect the complaining party or the victim]:
- 19 (a) The youth's name and age and whether the youth is employed or in
- 20 school;
- 21 (b) The youth offense for which the youth was taken into custody;
- (c) The name and age of the adult complaining party and the adult victim,
- 23 unless the disclosure of such information is otherwise prohibited or re-
- 24 stricted;
- 25 (d) The identity of the investigating and arresting agency; and
- 26 (e) The time and place that the youth was taken into custody and whether
- 27 there was resistance, pursuit or a weapon used in taking the youth into
- 28 custody.
- 29 [(8) Except as provided in ORS 419A.300 and unless otherwise directed by
- 30 the court, only the juvenile court, the county juvenile department and the
- 31 Oregon Youth Authority may disclose the information under subsections (6)

- and (7) of this section if the information is subject to disclosure. The youth authority may disclose only information relating to adjudicated youths com-2 mitted to the youth authority by order of the juvenile court if the information 3 is subject to disclosure under subsection (6) or (7) of this section.]
- (8)(a) Except as provided in ORS 419A.015, 419A.300 and 419A.305 and 5 unless otherwise directed by the court, only the juvenile court, the 6 district attorney, the county juvenile department and the Oregon 7 Youth Authority may disclose the information listed under subsections 8 (6) and (7) of this section if the information is subject to disclosure. 9 The district attorney, county juvenile department and youth authority 10 may disclose to each other information listed under subsections (6) 11 12 and (7) of this section. The youth authority may disclose only information relating to adjudicated youths committed to the youth au-13 thority by order of the juvenile court if the information is subject to 14 disclosure under subsections (6) and (7) of this section. The district 15 attorney need not disclose information listed under subsections (6) and 16 (7) of this section that is not in the district attorney's possession. 17
- (b) Notwithstanding any other provision of law, the Oregon Youth 18 Authority may disclose any information the youth authority possesses about an adjudicated youth after receiving written consent for the disclosure from the adjudicated youth.

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- 22 (c)(A) An entity permitted to disclose the information described in subsection (6) or (7) of this section may not disclose the information, and a recipient of the disclosure may not use the information, to limit or deny access to employment, licensing, housing or any other right, benefit or opportunity unless the disclosure or use is necessary:
  - (i) To perform a legitimate law enforcement function; or
- (ii) To provide services to a juvenile who is under the jurisdiction 28 of a juvenile court. 29
- (B) Subparagraph (A)(i) of this paragraph does not limit the au-30 thority of an entity described in ORS 670.290 (2) to request or use in-31

- formation about the existence or contents of a record created or maintained under the jurisdiction of a juvenile court for purposes described in ORS 670.290 (2).
- (9) Nothing in this section limits access to any juvenile court records by an appellate court reviewing a juvenile court order or judgment. Appellate court rules may establish procedures for appellate court access to juvenile records.
- 8 (10) Nothing in this section prohibits the court from providing to the 9 administrator as defined in ORS 25.010 the date of entry of a judgment ter-10 minating parental rights or the date of entry of a judgment terminating 11 wardship following entry of a judgment of adoption together with the names 12 and dates of birth of the parents and children subject to the judgment.
- 13 (11) In addition to any other provision in this section, the Judicial De14 partment may permit county or statewide access to juvenile court records
  15 or information by county juvenile departments, the Department of Human
  16 Services, the Oregon Youth Authority, district attorney offices, the office of
  17 the Attorney General, the office of public defense services, prospective ap18 pellate attorneys or public defense providers subject to the following re19 strictions:
- 20 (a) A prospective appellate attorney or public defense provider granted 21 access under this subsection must agree, pursuant to a written agreement 22 with the Judicial Department, to access:
- 23 (A) Party information only for purposes of conflicts screening procedures; 24 and
- (B) Other records or information about a client only as reasonably necessary for the representation of that client in any juvenile case in which the client is a party, subject to applicable state and federal confidentiality laws.
- (b) Any other person or entity granted access under this subsection must agree, pursuant to a written agreement with the department, to access records or information only as authorized and allowed by this section, subject to applicable state and federal confidentiality laws.

- 1 (c) The State Court Administrator shall prescribe standards and proce-2 dures to implement the provisions of this subsection.
- 3 (d) Any person or entity granted access to juvenile court records or in-4 formation under this subsection must preserve the confidentiality of that 5 information as required under this section.
- 6 (12) A petition filed under ORS 419B.851 alleging that a child who is a 7 foreign national is within the jurisdiction of the court, or a motion request-8 ing an implementation plan other than return of a ward to the ward's parent, 9 is subject to disclosure to the consulate for the child or ward's country as 10 provided under ORS 419B.851 (3).
- 11 (13) Nothing in this section prohibits a guardian appointed under ORS 12 419B.365 or 419B.366 from disclosing or providing copies of letters of 13 guardianship when so required to fulfill the duties of a guardian.
  - (14) The court shall cooperate in the sharing of information with a court in another state to facilitate an interstate placement of a child or ward.

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

- 1 that identifies any individual person involved in a juvenile court proceeding.
- 2 (16) Subject to subsection (11) of this section, the office of public defense 3 services shall be permitted access to juvenile court records for the purposes 4 of performing the office's duties as set forth in ORS 151.219 to audit or in-5 vestigate attorney appointment or representation of a party in a juvenile
- 6 court proceeding in order to ensure adequate representation of parties in
- 7 juvenile court proceedings consistent with the child welfare state plan re
  - lated to Title IV-E of the Social Security Act.

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- 9 (17) Subject to subsection (11) of this section, the Oregon State Bar shall be permitted access to juvenile court records maintained in the record of the case for the purpose of performing the bar's duties as set forth in ORS 9.005 to 9.757 to investigate attorney representation of a party in a juvenile court proceeding and in order to ensure adequate representation of parties in juvenile court proceedings consistent with the child welfare state plan related to Title IV-E of the Social Security Act.
- (18)(a) A child, ward, youth or adjudicated youth, or the parent or guardian of a child, ward, youth or adjudicated youth who is a party to the juvenile court proceeding, who is entitled to inspect or copy the record of the case under subsection (1)(b) and (c) of this section maintains the right to inspect or copy the record of the case after jurisdiction of the court over the child, ward, youth or adjudicated youth terminates and after the child, ward, youth or adjudicated youth has reached the age of majority.
  - (b) Notwithstanding ORS 419B.524, a parent of a child, ward, youth or adjudicated youth whose parental rights have been terminated maintains the right that existed under subsection (1)(b) and (c) of this section to inspect or copy the record of the case as the record of the case existed up until the time of entry of the judgment terminating the parent's parental rights and may obtain a copy of the judgment terminating the parent's parental rights.
  - (19) When inspection or copying of the record of the case or of the supplemental confidential file is allowed pursuant to this section, and unless otherwise required by law, the court that maintains the record of the case

- or the supplemental confidential file is not required to redact the names of, or information about, siblings or other persons contained in the record of the case or the supplemental confidential file.
- 4 (20) Nothing in this section prohibits the court, acting as a certifying agency or official as defined in ORS 147.620, from certifying a request under ORS 147.620 and including in the certification document any information obtained from the record of the case or the confidential supplemental file that is necessary to complete the certification.
- 9 (21) Nothing in this section prohibits a court from providing to the De10 partment of State Police, pursuant to ORS 163A.030 (11), a copy of an order
  11 requiring a youth or adjudicated youth to report as a sex offender or a copy
  12 of a form that documents the youth's or adjudicated youth's obligation to
  13 report as a sex offender.
- **SECTION 3.** ORS 419C.400 is amended to read:
- 419C.400. (1) The hearing [shall] **must** be held by the court without a jury and may be continued from time to time.
- 17 (2) The facts alleged in the petition showing the youth to be within the 18 jurisdiction of the court as provided in ORS 419C.005, unless admitted, must 19 be established beyond a reasonable doubt.
- 20 (3) If the youth files written notice of intent to rely on the defense set 21 forth in ORS 419C.522, the youth has the burden of proving the defense by 22 a preponderance of the evidence.
- 23 (4) For the purpose of determining proper disposition of the youth, testi-24 mony, reports or other material relating to the youth's mental, physical and 25 social history and prognosis may be received by the court without regard to 26 their competency or relevancy under the rules of evidence.
- (5)(a) An adjudication by a juvenile court that a youth is within [its] the juvenile court's jurisdiction is not a conviction of a crime or offense. The adjudication does not find the youth guilty or determine that the youth is a criminal.
  - (b) A juvenile court's adjudication that a youth is within the juve-

1	nile court's jurisdiction does not forfeit any right or privilege or dis-
2	qualify any person from holding any public office. Unless a law of this
3	state explicitly authorizes a disqualification, an adjudication in a ju-
4	venile court does not disqualify a person from pursuing or engaging
5	in any lawful activity, occupation, profession or calling.
6	<b>SECTION 4.</b> The amendments to ORS 419A.255, 419C.400 and 670.290
7	by sections 1 to 3 of this 2023 Act become operative on July 1, 2024.
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