

SB 209-1
(LC 380)
2/24/23 (LAS/ps)

Requested by SENATE COMMITTEE ON HUMAN SERVICES

**PROPOSED AMENDMENTS TO
SENATE BILL 209**

1 In line 2 of the printed bill, after “records” insert “; amending ORS
2 419B.035 and 419B.881”.

3 Delete lines 4 through 10 of the printed bill and insert:

4 **“SECTION 1.** ORS 419B.035, as amended by section 10, chapter 27,
5 Oregon Laws 2022, and section 9, chapter 90, Oregon Laws 2022, is amended
6 to read:

7 “419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170,
8 192.210 to 192.478 and 192.610 to 192.810 relating to confidentiality and ac-
9 cessibility for public inspection of public records and public documents, re-
10 ports and records compiled under the provisions of ORS 419B.010 to 419B.050
11 are confidential and may not be disclosed except as provided in this section.
12 The Department of Human Services shall make the records available to:

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

15 “(b) Any physician, physician assistant licensed under ORS 677.505 to
16 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390, at the
17 request of the physician, physician assistant or nurse practitioner, regarding
18 any child brought to the physician, physician assistant or nurse practitioner
19 or coming before the physician, physician assistant or nurse practitioner for
20 examination, care or treatment;

21 “(c) Attorneys of record for the child or child’s parent or guardian in any

1 juvenile court proceeding;

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

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

10 “(f) The Early Learning Division for the purpose of carrying out the
11 functions of the division, including the certification, registration or regu-
12 lation of child care facilities and child care providers and the administration
13 of enrollment in the Central Background Registry;

14 “(g) The Office of Children’s Advocate;

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

17 “(i) Any person, upon request to the Department of Human Services, if
18 the reports or records requested regard an incident in which a child, as the
19 result of abuse, died or suffered serious physical injury as defined in ORS
20 161.015. Reports or records disclosed under this paragraph must be disclosed
21 in accordance with ORS 192.311 to 192.478;

22 “(j) The Office of Child Care for purposes of applications described in
23 ORS 329A.030 (10)(c)(G) to (J);

24 “(k) With respect to a report of abuse occurring at a school or in an ed-
25 ucational setting that involves a child with a disability, Disability Rights
26 Oregon;

27 “(L) The Department of Education for purposes of investigations con-
28 ducted under ORS 339.391; and

29 “(m) An education provider for the purpose of making determinations
30 under ORS 339.388.

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

9 “(b) If the Department of Human Services does not have a report or re-
10 cord of abuse regarding a child who, as the result of abuse, died or suffered
11 serious physical injury as defined in ORS 161.015, the department may dis-
12 close that information.

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

26 “(4) A law enforcement agency may make reports and records compiled
27 under the provisions of ORS 419B.010 to 419B.050 available to other law
28 enforcement agencies, district attorneys, city attorneys with criminal
29 prosecutorial functions and the Attorney General when the law enforcement
30 agency determines that disclosure is necessary for the investigation or

1 enforcement of laws relating to child abuse and neglect or necessary to de-
2 termine a claim for crime victim compensation under ORS 147.005 to 147.367.

3 “(5) A law enforcement agency, upon completing an investigation and
4 closing the file in a specific case relating to child abuse or neglect, shall
5 make reports and records in the case available upon request to any law
6 enforcement agency or community corrections agency in this state, to the
7 Department of Corrections, to the Oregon Youth Authority or to the State
8 Board of Parole and Post-Prison Supervision for the purpose of managing and
9 supervising offenders in custody or on probation, parole, post-prison super-
10 vision or other form of conditional or supervised release. A law enforcement
11 agency may make reports and records compiled under the provisions of ORS
12 419B.010 to 419B.050 available to the Oregon Youth Authority, law enforce-
13 ment, community corrections, corrections or parole agencies in an open case
14 when the law enforcement agency determines that the disclosure will not
15 interfere with an ongoing investigation in the case. The name, address and
16 other identifying information about the person who made the report may not
17 be disclosed under this subsection or subsection (6)(b) of this section.

18 “(6)(a) Any record made available to a law enforcement agency or com-
19 munity corrections agency in this state, to the Department of Corrections,
20 the Oregon Youth Authority or the State Board of Parole and Post-Prison
21 Supervision or to a physician, physician assistant or nurse practitioner in
22 this state, as authorized by subsections (1) to (5) of this section, shall be kept
23 confidential by the agency, department, board, physician, physician assistant
24 or nurse practitioner. Any record or report disclosed by the Department of
25 Human Services to other persons or entities pursuant to subsections (1) and
26 (3) of this section shall be kept confidential.

27 “(b) Notwithstanding paragraph (a) of this subsection:

28 “(A) A law enforcement agency, a community corrections agency, the
29 Department of Corrections, the Oregon Youth Authority and the State Board
30 of Parole and Post-Prison Supervision may disclose records made available

1 to them under subsection (5) of this section to each other, to law enforce-
2 ment, community corrections, corrections and parole agencies of other states
3 and to authorized treatment providers for the purpose of managing and
4 supervising offenders in custody or on probation, parole, post-prison super-
5 vision or other form of conditional or supervised release.

6 “(B) The Department of Corrections and the Oregon Youth Authority may
7 disclose records made available to them under subsection (5) of this section
8 regarding a person in the custody of the Department of Corrections or the
9 Oregon Youth Authority to each other, to the court, to the district attorney
10 and to the person’s attorney for the purpose of the person’s hearing under
11 ORS 420A.200 to 420A.206.

12 “(C) A person may disclose records made available to the person under
13 subsection (1)(i) of this section if the records are disclosed for the purpose
14 of advancing the public interest.

15 “(7) Except as provided by ORS 339.389, an officer or employee of the
16 Department of Human Services or of a law enforcement agency or any person
17 or entity to whom disclosure is made pursuant to subsections (1) to (6) of this
18 section may not release any information not authorized by subsections (1) to
19 (6) of this section.

20 **“(8) A person may not disclose any report or record under this**
21 **section without the consent of a child or ward if:**

22 **“(a) The report or record contains a written or recorded statement**
23 **of the child or ward or memoranda of any oral statement made by the**
24 **child or ward; and**

25 **“(b) The statement concerns the sexual orientation, gender ex-**
26 **pression or gender identity of the child or ward.**

27 “[8] (9) As used in this section, ‘law enforcement agency’ has the
28 meaning given that term in ORS 181A.010.

29 “[9] (10) A person who violates subsection (6)(a) or (7) of this section
30 commits a Class A violation.

1 **“SECTION 2.** ORS 419B.881 is amended to read:

2 “419B.881. (1) In all proceedings brought under ORS 419B.100 or 419B.500,
3 each party, including the state, shall disclose to each other party and to a
4 guardian ad litem appointed under ORS 419B.231 the following information
5 and material within the possession or under the control of the party:

6 “(a) The names and addresses of all persons the party intends to call as
7 witnesses at any stage of the hearing, together with any relevant written or
8 recorded statements or memoranda of any oral statements of such persons;

9 “(b) Any written or recorded statements or memoranda of any oral state-
10 ments made either by the parent or by the child to any other party or agent
11 for any other party;

12 “(c) Any reports or statements of experts who will be called as witnesses,
13 including the results of any physical or mental examinations and of com-
14 parisons or experiments that the party intends to offer in evidence at the
15 hearing; and

16 “(d) Any books, papers, documents or photographs that the party intends
17 to offer in evidence at the hearing, or that were obtained from or belong to
18 any other party.

19 “(2)(a) Disclosure under subsection (1) of this section must be made as
20 soon as practicable following the filing of a petition and no later than:

21 “(A) Thirty days after a petition alleging jurisdiction has been filed.

22 “(B) Three days before any review hearing, except for information re-
23 ceived or discovered less than three days prior to the hearing.

24 “(C) Ten days before a permanency hearing or a termination trial, except
25 for information received or discovered less than 10 days prior to the hearing
26 or trial.

27 “(b) The court may supervise the exercise of discovery to the extent nec-
28 essary to insure that it proceeds properly and expeditiously.

29 “(3)(a) When a ward has been placed in the legal custody of the Depart-
30 ment of Human Services for care, placement and supervision under ORS

1 419B.337, the department shall disclose to all parties the case plan developed
2 under ORS 419B.343, modifications to the case plan and any written material
3 or information about services provided to the ward, or to the ward's parent
4 or parents, under the case plan.

5 “(b) Disclosure under this subsection must be made within 10 days of:

6 “(A) Completion or modification of the case plan; and

7 “(B) Receipt by the department of the written material or information
8 about services provided under the case plan.

9 “(4) The obligation to disclose is an ongoing obligation and if a party
10 finds, either before or during the hearing, additional material or information
11 that is subject to disclosure, the information or material shall be promptly
12 disclosed.

13 “(5) The following material and information need not be disclosed:

14 “(a) Attorney work product; and

15 “(b) Transcripts, recordings or memoranda of testimony of witnesses be-
16 fore the grand jury, except transcripts or recordings of testimony of a party
17 to the current juvenile court proceeding.

18 **“(6) A party may not make a disclosure under this section without
19 the consent of a child or ward if:**

20 **“(a) The information or material to be disclosed contains a written
21 or recorded statement of the child or ward or memoranda of any oral
22 statement made by the child or ward; and**

23 **“(b) The statement concerns the sexual orientation, gender ex-
24 pression or gender identity of the child or ward.**

25 “[6] (7) Upon a showing of good cause, the court may at any time order
26 that specified disclosure be denied, restricted or deferred or make such other
27 order as is appropriate.

28 “[7] (8) Upon request of a party, the court may permit a showing of good
29 cause for denial or regulation of disclosure by the parties or the contents
30 of subpoenaed materials, or portion of the showing, to be made in camera.

1 A record shall be made of the proceeding.

2 “[8] (9) If the court enters an order following an in camera showing, the
3 entire record of the showing shall be sealed and preserved in the records of
4 the court, to be made available to the appellate court in the event of an
5 appeal. The trial court may, after disposition, unseal the record.

6 “[9] (10) When some parts of certain material are subject to disclosure
7 and other parts are not, as much of the material as is subject to disclosure
8 shall be disclosed.

9 “[10] (11) Upon being notified of any breach of a duty to disclose mate-
10 rial or information, the court may:

11 “(a) Order the violating party to permit inspection of the material;

12 “(b) Grant a continuance;

13 “(c) Refuse to permit the witness to testify;

14 “(d) Refuse to receive in evidence the material that was not disclosed; or

15 “(e) Enter such other order as the court considers appropriate.”.

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