

Senate Bill 774

Sponsored by Senators DEMBROW, FREDERICK, WINTERS, Representatives BYNUM, SANCHEZ; Senator MAN-
NING JR, Representatives HELT, LEIF, PILUSO, SOLLMAN, WILLIAMS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies procedure for expunction of juvenile records. Directs juvenile court to automatically initiate expunction proceeding upon dismissal of juvenile case. Directs juvenile court to automatically order expunction of juvenile adjudication records if no fewer than two years have elapsed since termination, person has not been subject to subsequent delinquency adjudication or criminal conviction and no proceedings are pending against person. Exempts certain offenses from automatic mandatory expunction.

Directs juvenile court to initiate discretionary expunction proceedings for cases not eligible for automatic mandatory expunction if no fewer than two years have elapsed since most recent termination, person has not been subject to subsequent delinquency adjudication or criminal conviction and no proceedings are pending against person. Exempts certain offenses from automatic discretionary expunction.

Permits persons to apply for expunction of juvenile records related to acts that would have constituted Class A felony if committed by adult if no fewer than five years have elapsed since most recent termination, person has not been subject to subsequent delinquency adjudication or criminal conviction and no proceedings are pending against person.

Requires notice of discretionary expunction proceeding to be sent to person whose records are subject of proceeding and district attorney. Directs district attorney to provide notice to victim. Permits district attorney to object to expunction application. Requires court to hold expunction hearing on any objections.

Directs State Court Administrator to study and make recommendations on updating provisions of state law relating to records of juvenile adjudications to align Oregon law with American Bar Association's model Act governing confidentiality of juvenile delinquency records.

A BILL FOR AN ACT

1
2 Relating to juvenile records; creating new provisions; and amending ORS 419A.250, 419A.260,
3 419A.262, 419A.265, 419C.370, 659A.030 and 670.290.

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

EXPUNCTION OF JUVENILE RECORDS

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8 **SECTION 1. Sections 2 to 4 of this 2019 Act are added to and made a part of ORS 419A.260**
9 **to 419A.262.**

10 **SECTION 2. Expunction venue. An expunction proceeding under ORS 419A.260 to 419A.262**
11 **shall be commenced in the county where the subject person resided at the time of the most**
12 **recent termination.**

13 **SECTION 3. Mandatory expunction. (1)(a)(A) For cases in which a petition was filed in**
14 **juvenile court but the case was dismissed prior to adjudication, the court shall initiate**
15 **expunction as provided in paragraph (b) of this subsection immediately following dismissal**
16 **of the case.**

17 **(B) For cases resolved informally by the juvenile department, the juvenile department**
18 **shall move the court for expunction immediately following termination of the case.**

19 **(C) For cases of law enforcement or public agency investigations that never resulted in**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 referral to the juvenile department or charges, the holder of the records shall move the
2 court for expunction immediately following termination of the case.

3 (b) Upon its own motion or upon application of the juvenile department or other holder
4 of records under paragraph (a) of this subsection, the juvenile court shall immediately order
5 expunction if the court finds that there was no adjudication of delinquency, including in:

6 (A) Dismissed cases, if the time for the state to appeal the dismissal has lapsed;

7 (B) Diverted cases, if the person has successfully completed diversion;

8 (C) Cases in which the charges were not substantiated; or

9 (D) Cases in which the law enforcement agency did not refer the subject to court.

10 (2)(a) Except as provided in paragraph (b) of this subsection, in cases in which there was
11 an adjudication of delinquency, the juvenile court shall, on its own motion, automatically
12 order expunction if:

13 (A) At least two years have elapsed since the date of the person's most recent termi-
14 nation;

15 (B) Since the date of the most recent termination, the person has not been subject to a
16 subsequent delinquency adjudication or criminal conviction; and

17 (C) No proceedings seeking a criminal conviction or an adjudication in a juvenile court
18 are pending against the person.

19 (b) The following offenses are not eligible for automatic mandatory expunction under this
20 subsection:

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

24 (i) Aggravated murder under ORS 163.095;

25 (ii) Murder under ORS 163.115;

26 (iii) Attempt, solicitation or conspiracy to commit murder or aggravated murder;

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

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

29 (vi) Criminally negligent homicide under ORS 163.145;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (xxi) Promoting prostitution under ORS 167.012;

45 (xxii) Compelling prostitution under ORS 167.017;

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

2 (xxiv) Aggravated vehicular homicide under ORS 163.149; or

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

5 (B) Any offense for which the person is currently required to register as a sex offender.

6 **SECTION 4. Discretionary expunction.** (1)(a) In cases in which there was an adjudication
7 of delinquency, but that are not eligible for automatic mandatory expunction under section
8 3 of this 2019 Act, the juvenile court shall, on its own motion, initiate an expunction pro-
9 ceeding as described in this section and may order expunction if, after a hearing when the
10 matter is contested:

11 (A) At least two years have elapsed since the date of the person's most recent termi-
12 nation;

13 (B) Since the date of the most recent termination, the person has not been subject to a
14 subsequent delinquency adjudication or criminal conviction; and

15 (C) No proceedings seeking a criminal conviction or an adjudication in a juvenile court
16 are pending against the person.

17 (b) A person is not eligible for automatic discretionary expunction under this subsection
18 if:

19 (A) The adjudication of the offense in the records to be expunged currently requires the
20 person to register as a sex offender; or

21 (B) If the offense in the records to be expunged resulted from acts that would have
22 constituted a Class A felony if committed by an adult.

23 (2) Persons who were adjudicated delinquent for acts that would have constituted a Class
24 A felony if committed by an adult may move the juvenile court for expunction if:

25 (a) At least five years have elapsed since the date of the person's most recent termi-
26 nation;

27 (b) Since the date of the most recent termination, the person has not been subject to a
28 subsequent delinquency adjudication or criminal conviction; and

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

31 (3)(a) When an expunction proceeding is commenced upon the juvenile court's own mo-
32 tion under subsection (1) of this section, the motion shall set forth the names and addresses
33 of the juvenile courts, juvenile departments, institutions and law enforcement and other
34 agencies that a reasonable search of juvenile court files indicates have expungible records
35 and those provided by the subject person.

36 (b) When an expunction proceeding is commenced under subsection (2) of this section by
37 application of the person whose records are to be expunged, the person shall set forth as part
38 of the application the names of the juvenile courts, juvenile departments, institutions and
39 law enforcement and other agencies that the person has reason to believe possess an
40 expungible record of the person. The juvenile department shall provide the names and ad-
41 dresses of the juvenile courts, juvenile departments, institutions and law enforcement and
42 other agencies that a reasonable search of juvenile department files indicates have
43 expungible records.

44 (4)(a) Notice and a copy of an application for expunction under subsection (1) or (2) of
45 this section shall be given to:

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

4 (B) The person who is the subject of the record.

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

9 (5)(a) Within 30 days of receiving the notice of an application for expunction under sub-
10 section (4) of this section, a district attorney shall give written notice of any objection and
11 the grounds therefor to the person whose records are to be expunged and to the juvenile
12 court.

13 (b) If no objection is filed, the court may decide the issue of expunction either without
14 a hearing or after full hearing under subsection (8) of this section.

15 (6) When an expunction is pending under subsection (1) or (2) of this section, the court
16 may proceed with or without a hearing, except that:

17 (a) The court may not enter an expunction judgment without a hearing if a timely ob-
18 jection to expunction has been filed under subsection (5) of this section; and

19 (b) The court may not deny an expunction without a hearing if the proceeding is based
20 on an application of the subject person.

21 (7)(a) Notice of a hearing on a pending expunction shall be served on the subject person
22 and any district attorney filing a timely objection under subsection (5) of this section.

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

28 (8) At a hearing on a pending expunction, the court shall take into consideration the
29 following circumstances when determining whether to allow expunction:

30 (a) The best interest of the person;

31 (b) The age of the person during the person's contact with the juvenile court or law
32 enforcement agency;

33 (c) The nature of the offense;

34 (d) The disposition of the case;

35 (e) The manner in which the person participated in any court-ordered rehabilitative pro-
36 gramming or supervised services;

37 (f) Whether the person has any subsequent criminal involvement; and

38 (g) The adverse consequences the person will suffer as a result of retention of the
39 person's record.

40 (9) The court shall conduct a hearing under subsection (8) of this section in accord with
41 the provisions of ORS 419B.195, 419B.198, 419B.201, 419B.205, 419B.208, 419B.310, 419B.812 to
42 419B.839 and 419B.908. Rules of evidence shall be as in a hearing to establish juvenile court
43 jurisdiction and as defined in ORS 419B.310 (3) and 419C.400 (2). The burden of proof shall be
44 with the party contesting expunction.

45 (10) At the conclusion of a hearing on a pending expunction, the court shall issue judg-

1 **ment granting or denying expunction.**

2 **SECTION 5.** ORS 419A.262 is amended to read:

3 419A.262. [(1) An expunction proceeding shall be commenced in the county where the subject person
4 resided at the time of the most recent termination.]

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

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

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

11 [(c) No proceedings seeking a criminal conviction or an adjudication in a juvenile court are pend-
12 ing against the person;]

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

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

17 [(3)(a) Notwithstanding subsection (2) of this section, upon application of a person who is the sub-
18 ject of a record kept by a juvenile court or juvenile department, upon application of the juvenile de-
19 partment, or upon its own motion, the juvenile court, after a hearing when the matter is contested under
20 subsection (13) of this section, shall order expunction if it finds that:]

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

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

25 [(b) Except as provided in subsections (13) and (14) of this section, there is no waiting period re-
26 quired before the juvenile court orders expunction under this subsection.]

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

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

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

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

35 [(6) Expunction shall not be ordered under this section if actual notice of expunction has not been
36 given to the person in accordance with subsection (12) of this section unless the person has reached 21
37 years of age.]

38 [(7) Subsections (5) and (6) of this section apply only to cases resulting in termination after Sep-
39 tember 13, 1975.]

40 [(8) Notwithstanding subsections (2), (3) and (5) to (7) of this section, upon application of a person
41 who is the subject of a record kept by a juvenile court or juvenile department, upon application of the
42 juvenile department, or upon its own motion, the juvenile court, after a hearing when the matter is
43 contested, may order expunction of all or any part of the person's record if it finds that to do so would
44 be in the best interests of the person and the public. In the case of an application by the juvenile de-
45 partment or of the court acting upon its own motion, expunction shall not be ordered if actual notice

1 of expunction has not been given to the person in accordance with subsection (12) of this section unless
2 the person has reached 21 years of age.]

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

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

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

11 [(B) Has been relieved of the obligation to report as a sex offender pursuant to a court order en-
12 tered under ORS 163A.145 or 163A.150; and]

13 [(C) Has not been convicted of, found guilty except for insanity of or found to be within the juris-
14 diction of the juvenile court based on a crime listed in ORS 419A.260 (1)(d)(J), other than the adjudi-
15 cation that is the subject of the motion.]

16 [(b) A sex crime that is a Class C felony may apply for an order of expunction under this section.
17 The court shall order expunction of the records in the case if, after a hearing when the matter is con-
18 tested, the court finds that:]

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

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

21 [(C) The person is:]

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

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

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

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

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

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

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

40 [(11) When an expunction proceeding is commenced by application of the juvenile department or
41 upon the court's own motion, the application or motion shall set forth the names and addresses of the
42 juvenile courts, juvenile departments, institutions and law enforcement and other agencies that a rea-
43 sonable search of department files indicates have expungible records and those provided by the subject
44 person.]

45 [(12)(a) Notice and a copy of an application for expunction under subsections (2) to (8) of this sec-

1 *tion shall be given to:]*

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

4 *[(B) The person who is the subject of the record if the person has not initiated the expunction*
5 *proceeding.]*

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

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

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

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

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

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

21 *[(c) The court shall proceed without a hearing if:]*

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

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

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

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

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

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

38 *[(17) At the conclusion of a hearing on a pending expunction, the court shall issue judgment*
39 *granting or denying expunction.]*

40 *[(18)] (1) The juvenile court or juvenile department shall send a copy of an expunction judgment*
41 **issued under ORS 419A.260 to 419A.262** to each agency subject to the judgment. Upon receipt of
42 a copy of the judgment, the agency shall comply and, within 21 days of the date of receipt, return
43 the copy to the juvenile court or juvenile department with an indorsement indicating compliance.

44 *[(19)] (2) When all agencies subject to an expunction judgment have indicated their compliance*
45 *or in any event no later than six weeks following the date the judgment was delivered as required*

1 by subsection [(18)] (1) of this section, the juvenile court shall provide the person who is the subject
 2 of the record with a copy of the expunction judgment, a list of complying and noncomplying agen-
 3 cies, and a written notice of rights and effects of expunction. The juvenile court and juvenile de-
 4 partment then shall expunge forthwith all records which they possess and which are subject to the
 5 judgment, except the original expunction judgment and the list of complying and noncomplying
 6 agencies which must be preserved under seal.

7 [(20)] (3) In addition to those agencies identified in ORS 419A.260 (1)(d), the juvenile, circuit,
 8 municipal and justice courts, and the district and city attorneys of this state, are bound by an
 9 expunction judgment of any juvenile court of appropriate jurisdiction in this state issuing an
 10 expunction judgment.

11 [(21)] (4) Upon entry of an expunction judgment, the contact that is the subject of the expunged
 12 record shall not be disclosed by any agency. An agency that is subject to an expunction judgment
 13 shall respond to any inquiry about the contact by indicating that no record or reference concerning
 14 the contact exists.

15 [(22)] (5) A person who is the subject of a record that has been expunged under this section may
 16 assert that the record never existed and that the contact, which was the subject of the record, never
 17 occurred without incurring a penalty for perjury or false swearing under the laws of this state.

18 [(23)] (6) Juvenile courts, by court rule or by order related to a particular matter, may direct
 19 that records concerning a subject person be destroyed. No records shall be destroyed until at least
 20 three years have elapsed after the date of the subject's most recent termination. In the event the
 21 record has been expunged, the expunction judgment and list of complying and noncomplying agen-
 22 cies may not be destroyed, but shall be preserved under seal. The destruction of records under this
 23 subsection does not constitute expunction.

24 [(24)] (7) An expunction judgment and list of complying and noncomplying agencies shall be re-
 25 leased from confidentiality only on order of the court originating the expunction judgment, based
 26 on a finding that review of a particular case furthers compliance with the expunction provisions of
 27 this chapter.

28 [(25)] (8) A subject has a right of action against any person who intentionally violates the
 29 confidentiality provisions of this section. In the proceeding, punitive damages up to an amount of
 30 \$1,000 may be sought in addition to any actual damages. The prevailing party shall be entitled to
 31 costs and reasonable attorney fees.

32 [(26)] (9) Intentional violation of the confidentiality provisions of this section by a public em-
 33 ployee is cause for dismissal.

34 [(27)] (10) A person who intentionally releases all or part of an expunged record commits a Class
 35 C misdemeanor.

36 **SECTION 6.** ORS 419A.260 is amended to read:

37 419A.260. (1) As used in [this section and ORS 419A.262] **ORS 419A.260 to 419A.262:**

38 (a) "Contact" means any instance in which a person's act or behavior, or alleged act or behav-
 39 ior, which could result in a juvenile court's assumption of jurisdiction under ORS 419B.100 (1)(a) to
 40 (c) and (f) or 419C.005 comes to the attention of an agency specified in paragraph (d) of this sub-
 41 section.

42 (b) "Expunction" means:

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

45 (B) Where a record is kept by the Department of Human Services or the Oregon Youth Au-

1 thority, either the sealing of such record by the department or the Oregon Youth Authority or, in
 2 a multiperson file, the affixing to the front of the file, by the department or the youth authority, a
 3 stamp or statement identifying the name of the individual, the date of expunction and instruction
 4 that no further reference shall be made to the material that is subject to the expunction order ex-
 5 cept upon an order of a court of competent jurisdiction.

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

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

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

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

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

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

20 (E) Records related to a support obligation;

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

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

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

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

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

30 [(i) Aggravated murder under ORS 163.095;]

31 [(ii) Murder under ORS 163.115;]

32 [(iii) Attempt, solicitation or conspiracy to commit murder or aggravated murder;]

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

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

35 [(vi) Criminally negligent homicide under ORS 163.145;]

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

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

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

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

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

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

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

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

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

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

1 [(xvii) *Unlawful sexual penetration in the first degree under ORS 163.411;*]

2 [(xviii) *Sexual abuse in the third degree under ORS 163.415;*]

3 [(xix) *Sexual abuse in the second degree under ORS 163.425;*]

4 [(xx) *Sexual abuse in the first degree under ORS 163.427;*]

5 [(xxi) *Promoting prostitution under ORS 167.012;*]

6 [(xxii) *Compelling prostitution under ORS 167.017;*]

7 [(xxiii) *Aggravated driving while suspended or revoked under ORS 163.196;*]

8 [(xxiv) *Aggravated vehicular homicide under ORS 163.149; or*]

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

11 [(K)] (J) Blood samples, buccal samples and other physical evidence and identification informa-
12 tion obtained, stored or maintained by the Department of State Police under authority of ORS
13 137.076, 181A.155 or 419C.473; or

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

15 (e) "Termination" means:

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

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

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

31 (a) At any dispositional hearing or at the time of entering into a formal accountability agree-
32 ment;

33 (b) At the time of termination;

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

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

37 38 CONFIDENTIALITY OF JUVENILE RECORDS

39
40 **SECTION 7. (1) The State Court Administrator shall study and make recommendations**
41 **on updating provisions of state law relating to records of juvenile adjudications to align**
42 **Oregon law with the principles of the American Bar Association's model Act governing the**
43 **confidentiality of juvenile delinquency records.**

44 **(2) The administrator shall submit a report on its findings to an appropriate interim**
45 **committee of the Legislative Assembly no later than January 1, 2021.**

CONFORMING AMENDMENTS

1
2
3 **SECTION 8.** ORS 419A.250 is amended to read:

4 419A.250. (1) A child, ward, youth or youth offender may be photographed or fingerprinted by
5 a law enforcement agency:

6 (a) Pursuant to a search warrant;

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

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

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

14 (e) By order of the juvenile court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (B) No later than one year following receipt of a notice of dismissal of a petition under para-
15 graph (b)(B) of this subsection; or

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

18 (6) Fingerprint and photograph files and records of a child, ward, youth or youth offender must
19 be expunged when the juvenile court orders expunction of a child, ward, youth or youth offender's
20 record pursuant to ORS 419A.260 [and] to 419A.262.

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

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

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

31 **SECTION 9.** ORS 419A.265 is amended to read:]

32 419A.265. Notwithstanding [ORS 419A.262 (2)(a)] **section 3 (2)(a)(A) of this 2019 Act**, a person
33 is eligible for an order of expunction under [ORS 419A.262] **section 3 (2)(a) of this 2019 Act** if the
34 person was adjudicated for committing an act that, if committed by an adult, would constitute a
35 criminal offense in which possession, delivery or manufacture of marijuana or a marijuana item as
36 defined in ORS 475B.015 is an element and:

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

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

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

42 **SECTION 10.** ORS 419C.370 is amended to read:

43 419C.370. (1) The juvenile court may enter an order directing that all cases involving:

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

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

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

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

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

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

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

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

20 (4) Records of cases waived under subsection (1)(c) of this section are juvenile records for pur-
21 poses of expunction under ORS 419A.260 **to 419A.262**.

22 **SECTION 11.** ORS 659A.030 is amended to read:

23 659A.030. (1) It is an unlawful employment practice:

24 (a) For an employer, because of an individual's race, color, religion, sex, sexual orientation, na-
25 tional origin, marital status or age if the individual is 18 years of age or older, or because of the
26 race, color, religion, sex, sexual orientation, national origin, marital status or age of any other
27 person with whom the individual associates, or because of an individual's juvenile record that has
28 been expunged pursuant to ORS 419A.260 [*and*] **to 419A.262**, to refuse to hire or employ the indi-
29 vidual or to bar or discharge the individual from employment. However, discrimination is not an
30 unlawful employment practice if the discrimination results from a bona fide occupational qualifica-
31 tion reasonably necessary to the normal operation of the employer's business.

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

38 (c) For a labor organization, because of an individual's race, color, religion, sex, sexual orien-
39 tation, national origin, marital status or age if the individual is 18 years of age or older, or because
40 of an individual's juvenile record that has been expunged pursuant to ORS 419A.260 [*and*] **to**
41 **419A.262**, to exclude or to expel from its membership the individual or to discriminate in any way
42 against the individual or any other person.

43 (d) For any employer or employment agency to print or circulate or cause to be printed or cir-
44 culated any statement, advertisement or publication, or to use any form of application for employ-
45 ment or to make any inquiry in connection with prospective employment that expresses directly or

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

10 (e) For an employment agency, because of an individual's race, color, religion, sex, sexual ori-
 11 entation, national origin, marital status or age if the individual is 18 years of age or older, or be-
 12 cause of the race, color, religion, sex, sexual orientation, national origin, marital status or age of
 13 any other person with whom the individual associates, or because of an individual's juvenile record
 14 that has been expunged pursuant to ORS 419A.260 [and] to 419A.262, to classify or refer for em-
 15 ployment, or to fail or refuse to refer for employment, or otherwise to discriminate against the in-
 16 dividual. However, it is not an unlawful employment practice for an employment agency to classify
 17 or refer for employment an individual when the classification or referral results from a bona fide
 18 occupational qualification reasonably necessary to the normal operation of the employer's business.

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

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

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

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

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

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

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

39 **SECTION 12.** ORS 670.290 is amended to read:

40 670.290. It shall be unlawful for any state agency or licensing board, including the Oregon State
 41 Bar, to:

42 (1) Require that an applicant for employment, licensing or admission answer any questions re-
 43 garding the existence or contents of a juvenile record that has been expunged pursuant to ORS
 44 419A.260 [and] to 419A.262;

45 (2) Bar or discharge from employment or refuse to hire or employ such individual because of the

1 existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 [*and*]
2 **to** 419A.262; or

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

5
6 **MISCELLANEOUS**
7

8 **SECTION 13.** (1) Sections 1 to 4 of this 2019 Act and the amendments to ORS 419A.250,
9 419A.260, 419A.262, 419A.265, 419C.370, 659A.030 and 670.290 by sections 5, 6 and 8 to 12 of this
10 2019 Act apply to expunction of juvenile records related to juvenile cases terminated on or
11 after the effective date of this 2019 Act.

12 (2) Expunction of records related to juvenile cases terminated before the effective date
13 of this 2019 Act shall continue to be governed by the law in effect prior to the effective date
14 of this 2019 Act.

15 **SECTION 14.** The unit and section captions used in this 2019 Act are provided only for
16 the convenience of the reader and do not become part of the statutory law of this state or
17 express any legislative intent in the enactment of this 2019 Act.
18
