

House Bill 2400

Sponsored by Representative NERON (Pre-session filed.)

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**.

Provides that victim of sexual assault or domestic violence crime has right to obtain law enforcement records relating to crime.

Requires law enforcement agencies to provide copy of reports and records of child abuse and neglect investigation to victim, or victim's attorney, upon request.

Requires district attorney in any criminal prosecution to make available to victim, upon request, all discovery that was disclosed to defendant.

A BILL FOR AN ACT

1
2 Relating to victim access to records; creating new provisions; and amending ORS 135.857 and
3 419B.035.

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

5 **SECTION 1. (1)(a) A victim of a sexual assault crime or a crime constituting domestic**
6 **violence has the right to obtain law enforcement agency records relating to the crime unless**
7 **the provision of the records to the victim would compromise an active investigation.**

8 **(b) Records disclosed under this section must be disclosed in accordance with ORS 192.311**
9 **to 192.478.**

10 **(2) As used in this section:**

11 **(a) "Domestic violence" has the meaning given that term in ORS 135.230.**

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

13 **(c) "Sexual assault crime" means an offense described in ORS 163.355 to 163.427.**

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

15 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.478 and
16 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records
17 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
18 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
19 ment of Human Services shall make the records available to:

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

22 (b) Any physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practi-
23 tioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant
24 or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse
25 practitioner or coming before the physician, physician assistant or nurse practitioner for examina-
26 tion, care or treatment;

27 (c) Attorneys of record for the child or child's parent or guardian in any juvenile court pro-
28 ceeding;

29 (d) Citizen review boards established by the Judicial Department for the purpose of periodically

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 reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile
 2 court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to
 3 participants in case reviews;

4 (e) A court appointed special advocate in any juvenile court proceeding in which it is alleged
 5 that a child has been subjected to child abuse or neglect;

6 (f) The Office of Child Care for certifying, registering or otherwise regulating child care facili-
 7 ties;

8 (g) The Office of Children’s Advocate;

9 (h) The Teacher Standards and Practices Commission for investigations conducted under ORS
 10 339.390 or 342.176 involving any child or any student;

11 (i) Any person, upon request to the Department of Human Services, if the reports or records
 12 requested regard an incident in which a child, as the result of abuse, died or suffered serious phys-
 13 ical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be
 14 disclosed in accordance with ORS 192.311 to 192.478;

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

16 (k) With respect to a report of abuse occurring at a school or in an educational setting that
 17 involves a child with a disability, Disability Rights Oregon;

18 (L) The Department of Education for purposes of investigations conducted under ORS 339.391;
 19 and

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

21 (2)(a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the De-
 22 partment of Human Services may exempt from disclosure the names, addresses and other identifying
 23 information about other children, witnesses, victims or other persons named in the report or record
 24 if the department determines, in written findings, that the safety or well-being of a person named in
 25 the report or record may be jeopardized by disclosure of the names, addresses or other identifying
 26 information, and if that concern outweighs the public’s interest in the disclosure of that information.

27 (b) If the Department of Human Services does not have a report or record of abuse regarding
 28 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
 29 161.015, the department may disclose that information.

30 (3) The Department of Human Services may make reports and records compiled under the pro-
 31 visions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court,
 32 agency, organization or other entity when the department determines that such disclosure is neces-
 33 sary to administer its child welfare services and is in the best interests of the affected child, or that
 34 such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect
 35 children from abuse and neglect or for research when the Director of Human Services gives prior
 36 written approval. The Department of Human Services shall adopt rules setting forth the procedures
 37 by which it will make the disclosures authorized under this subsection or subsection (1) or (2) of this
 38 section. The name, address and other identifying information about the person who made the report
 39 may not be disclosed pursuant to this subsection and subsection (1) of this section.

40 (4)(a) A law enforcement agency may make reports and records compiled under the provisions
 41 of ORS 419B.010 to 419B.050 available to other law enforcement agencies, district attorneys, city
 42 attorneys with criminal prosecutorial functions and the Attorney General when the law enforcement
 43 agency determines that disclosure is necessary for the investigation or enforcement of laws relating
 44 to child abuse and neglect or necessary to determine a claim for crime victim compensation under
 45 ORS 147.005 to 147.367.

1 **(b) A law enforcement agency shall make reports and records compiled under the pro-**
 2 **visions of ORS 419B.010 to 419B.050 available to the named victim in a child abuse and neglect**
 3 **case, or to the victim’s attorney, upon written request. Reports or records disclosed under**
 4 **this paragraph must be disclosed in accordance with ORS 192.311 to 192.478.**

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

16 (6)(a) Any record made available to a law enforcement agency or community corrections agency
 17 in this state, to the Department of Corrections or the State Board of Parole and Post-Prison Super-
 18 vision or to a physician, physician assistant or nurse practitioner in this state, as authorized by
 19 subsections (1) to (5) of this section, shall be kept confidential by the agency, department, board,
 20 physician, physician assistant or nurse practitioner. Any record or report disclosed by the Depart-
 21 ment of Human Services to other persons or entities pursuant to subsections (1) and (3) of this sec-
 22 tion shall be kept confidential.

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

24 (A) A law enforcement agency, a community corrections agency, the Department of Corrections
 25 and the State Board of Parole and Post-Prison Supervision may disclose records made available to
 26 them under subsection (5) of this section to each other, to law enforcement, community corrections,
 27 corrections and parole agencies of other states and to authorized treatment providers for the pur-
 28 pose of managing and supervising offenders in custody or on probation, parole, post-prison super-
 29 vision or other form of conditional or supervised release.

30 (B) A person may disclose records made available to the person under subsection (1)(i) of this
 31 section if the records are disclosed for the purpose of advancing the public interest.

32 (7) An officer or employee of the Department of Human Services or of a law enforcement agency
 33 or any person or entity to whom disclosure is made pursuant to subsections (1) to (6) of this section
 34 may not release any information not authorized by subsections (1) to (6) of this section.

35 (8) As used in this section, “law enforcement agency” has the meaning given that term in ORS
 36 181A.010.

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

38 **SECTION 3.** ORS 135.857 is amended to read:

39 135.857. [(1)] In any criminal prosecution, [*arising from an automobile collision in which the de-*
 40 *defendant is alleged to have been under the influence of alcohol or drugs,*] the district attorney, **as de-**
 41 **defined in ORS 131.005, who is** prosecuting the action shall make available, upon request, to the
 42 victim or victims and to their attorney, or to the survivors of the victim or victims and to their
 43 attorney, all reports and information disclosed to the defendant pursuant to ORS 135.805 to 135.873.
 44 The reports and information shall be made available at the same time as it is disclosed to the de-
 45 fendant or as soon thereafter as may be practicable after a request is received. The district attorney

1 may impose such conditions as may be reasonable and necessary to prevent the release of the re-
2 ports and information from interfering with the trial of the defendant. The district attorney may
3 apply to the court for an order requiring any person receiving such reports and information to
4 comply with the conditions of release.

5 *[(2) For the purpose of this section:]*

6 *[(a) "District attorney" has that meaning given in ORS 131.005.]*

7 *[(b) "Drug" has that meaning given in ORS 475.005.]*

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