

A-Engrossed
Senate Bill 209

Ordered by the Senate March 31
Including Senate Amendments dated March 31

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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.

[Requires Department of Human Services to study options for protecting from disclosure in certain proceedings information regarding sexual orientation, gender identity and gender expression of children in department's custody. Directs department to submit findings to interim committees of Legislative Assembly related to human services not later than September 15, 2024.]

[Sunsets January 2, 2025.]

Prohibits certain persons from disclosing records of sexual orientation, gender identity or gender expression of child or ward. Creates exceptions.

A BILL FOR AN ACT

Relating to confidentiality of child welfare records; amending ORS 409.225, 419B.035 and 419B.881.

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

SECTION 1. ORS 409.225 is amended to read:

409.225. (1) In the interest of family privacy and for the protection of children, families and other recipients of services, the Department of Human Services *[shall]* **may** not disclose or use the contents of any child welfare records, files, papers or communications that contain any information about an individual child, family or other recipient of services for purposes other than those directly connected with the administration of child welfare laws or unless required or authorized by ORS 419A.255 or 419B.035. The records, files, papers and communications are confidential and are not available for public inspection. General information, policy statements, statistical reports or similar compilations of data are not confidential unless such information is identified with an individual child, family or other recipient of services or protected by other provision of law.

(2) Notwithstanding subsection (1) of this section, unless exempt from disclosure under **subsection (8) of this section** or ORS chapter 192, the department shall disclose child welfare records:

(a) About a recipient of services, to the recipient if the recipient is 18 years of age or older or is legally emancipated, unless prohibited by court order;

(b) Regarding a specific individual if the individual gives written authorization to release confidential information;

(c) Concerning a child receiving services on a voluntary basis, to the child's parent or legal guardian;

(d) To the juvenile court in proceedings regarding the child; and

(e) Concerning a child who is or has been in the custody of the department, to the child's parent or legal guardian except:

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 (A) When the child objects; or

2 (B) If disclosure would be contrary to the best interests of any child or could be harmful to the
3 person caring for the child.

4 (3) Notwithstanding subsection (1) of this section, unless exempt from disclosure under **sub-**
5 **section (8) of this section or** ORS chapter 192, the department shall disclose child welfare records,
6 if in the best interests of the child, to:

7 (a) Treatment providers, foster parents, adoptive parents, school officials or other persons pro-
8 viding services to the child or family to the extent that such disclosure is necessary to provide
9 services to the child or family; or

10 (b) A person designated as a member of a sensitive review committee convened by the Director
11 of Human Services when the purpose of the committee is to determine whether the department acted
12 appropriately and to make recommendations to the department regarding policy and practice.

13 (4) Any record disclosed under subsection (1), (2) [or (3)], **(3) or (6)** of this section shall be kept
14 confidential by the person or entity to whom the record is disclosed and shall be used only for the
15 purpose for which disclosure was made.

16 (5) Unless exempt from disclosure under ORS chapter 192, when an adult who is the subject of
17 information made confidential by subsection (1) of this section publicly reveals or causes to be re-
18 vealed any significant part of the confidential matter or information, the protections afforded by
19 subsection (1) of this section are presumed voluntarily waived and confidential information about the
20 person making or causing the public disclosure, not already disclosed but related to the information
21 made public, may be disclosed if disclosure is in the best interests of the child or necessary to the
22 administration of the child welfare laws.

23 (6) Notwithstanding subsection (1) of this section, unless exempt from disclosure under **sub-**
24 **section (8) of this section or** ORS chapter 192, the department shall disclose information related
25 to the department's activities and responsibilities in a case where child abuse or neglect has re-
26 sulted in a child fatality or near fatality or where an adult has been charged with a crime related
27 to child abuse or neglect.

28 (7) Notwithstanding subsections (2), (3), (5) and (6) of this section, ORS 192.345 (3) shall apply
29 to investigatory information compiled for criminal law purposes that may be in the possession of the
30 department.

31 **(8) A record of sexual orientation, gender identity or gender expression is exempt from**
32 **disclosure under this section unless:**

33 **(a) The department determines, in written findings, that failure to disclose the record is**
34 **reasonably likely to jeopardize the child's safety or well-being;**

35 **(b) The department determines, in written findings, that disclosure of the record is nec-**
36 **essary to provide services to the child or the child's family; or**

37 **(c) The child consents to the disclosure.**

38 [(8)] **(9) As used in this section[,]:**

39 **(a) "Adult" means a person who is 18 years of age or older.**

40 **(b) "Record of sexual orientation, gender identity or gender expression" means a written**
41 **or recorded statement made by a child, memoranda of an oral statement made by a child or**
42 **any other documentation in a child's child welfare records of the child's statement, if the**
43 **statement concerns the child's sexual orientation, gender expression or gender identity.**

44 **SECTION 2.** ORS 419B.035, as amended by section 10, chapter 27, Oregon Laws 2022, and sec-
45 tion 9, chapter 90, Oregon Laws 2022, is amended to read:

1 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.478 and
2 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records
3 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
4 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
5 ment of Human Services shall make the records available to:

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

8 (b) Any physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practi-
9 tioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant
10 or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse
11 practitioner or coming before the physician, physician assistant or nurse practitioner for examina-
12 tion, care or treatment;

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

15 (d) Citizen review boards established by the Judicial Department for the purpose of periodically
16 reviewing the status of children, youths and adjudicated youths under the jurisdiction of the juvenile
17 court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to
18 participants in case reviews;

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

21 (f) The Early Learning Division for the purpose of carrying out the functions of the division,
22 including the certification, registration or regulation of child care facilities and child care providers
23 and the administration of enrollment in the Central Background Registry;

24 (g) The Office of Children's Advocate;

25 (h) The Teacher Standards and Practices Commission for investigations conducted under ORS
26 339.390 or 342.176 involving any child or any student;

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

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

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

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

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

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

44 (b) If the Department of Human Services does not have a report or record of abuse regarding
45 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS

1 161.015, the department may disclose that information.

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

12 (4) A law enforcement agency may make reports and records compiled under the provisions of
13 ORS 419B.010 to 419B.050 available to other law enforcement agencies, district attorneys, city at-
14 torneys with criminal prosecutorial functions and the Attorney General when the law enforcement
15 agency determines that disclosure is necessary for the investigation or enforcement of laws relating
16 to child abuse and neglect or necessary to determine a claim for crime victim compensation under
17 ORS 147.005 to 147.367.

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

30 (6)(a) Any record made available to a law enforcement agency or community corrections agency
31 in this state, to the Department of Corrections, the Oregon Youth Authority or the State Board of
32 Parole and Post-Prison Supervision or to a physician, physician assistant or nurse practitioner in
33 this state, as authorized by subsections (1) to (5) of this section, shall be kept confidential by the
34 agency, department, board, physician, physician assistant or nurse practitioner. Any record or report
35 disclosed by the Department of Human Services to other persons or entities pursuant to subsections
36 (1) and (3) of this section shall be kept confidential.

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

38 (A) A law enforcement agency, a community corrections agency, the Department of Corrections,
39 the Oregon Youth Authority and the State Board of Parole and Post-Prison Supervision may disclose
40 records made available to them under subsection (5) of this section to each other, to law enforce-
41 ment, community corrections, corrections and parole agencies of other states and to authorized
42 treatment providers for the purpose of managing and supervising offenders in custody or on pro-
43 bation, parole, post-prison supervision or other form of conditional or supervised release.

44 (B) The Department of Corrections and the Oregon Youth Authority may disclose records made
45 available to them under subsection (5) of this section regarding a person in the custody of the De-

1 partment of Corrections or the Oregon Youth Authority to each other, to the court, to the district
2 attorney and to the person's attorney for the purpose of the person's hearing under ORS 420A.200
3 to 420A.206.

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

6 (7) Except as provided by ORS 339.389, an officer or employee of the Department of Human
7 Services or of a law enforcement agency or any person or entity to whom disclosure is made pur-
8 suant to subsections (1) to (6) of this section may not release any information not authorized by
9 subsections (1) to (6) of this section.

10 **(8) A record of sexual orientation, gender identity or gender expression, as defined in**
11 **ORS 409.225, is exempt from disclosure under subsection (1) of this section unless:**

12 **(a) The department determines, in written findings, that failure to disclose the record is**
13 **reasonably likely to jeopardize the child's safety or well-being;**

14 **(b) The department determines, in written findings, that disclosure of the record is nec-**
15 **essary to provide services to the child or the child's family; or**

16 **(c) The child consents to the disclosure.**

17 [(8)] (9) As used in this section, "law enforcement agency" has the meaning given that term in
18 ORS 181A.010.

19 [(9)] (10) A person who violates subsection (6)(a) or (7) of this section commits a Class A vio-
20 lation.

21 **SECTION 3.** ORS 419B.881 is amended to read:

22 419B.881. (1) In all proceedings brought under ORS 419B.100 or 419B.500, each party, including
23 the state, shall disclose to each other party and to a guardian ad litem appointed under ORS
24 419B.231 the following information and material within the possession or under the control of the
25 party:

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

29 (b) Any written or recorded statements or memoranda of any oral statements made either by the
30 parent or by the child to any other party or agent for any other party;

31 (c) Any reports or statements of experts who will be called as witnesses, including the results
32 of any physical or mental examinations and of comparisons or experiments that the party intends
33 to offer in evidence at the hearing; and

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

36 (2)(a) Disclosure under subsection (1) of this section must be made as soon as practicable fol-
37 lowing the filing of a petition and no later than:

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

39 (B) Three days before any review hearing, except for information received or discovered less
40 than three days prior to the hearing.

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

43 (b) The court may supervise the exercise of discovery to the extent necessary to insure that it
44 proceeds properly and expeditiously.

45 (3)(a) When a ward has been placed in the legal custody of the Department of Human Services

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

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

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

13 (a) Attorney work product; and

14 (b) Transcripts, recordings or memoranda of testimony of witnesses before the grand jury, except
15 transcripts or recordings of testimony of a party to the current juvenile court proceeding.

16 **(6) A party may not disclose a record of sexual orientation, gender identity or gender**
17 **expression, as defined in ORS 409.225, under this section unless:**

18 **(a) The department determines, in written findings, that failure to disclose the record is**
19 **reasonably likely to jeopardize the child's safety or well-being; or**

20 **(b) The child or the child's attorney consents to the disclosure.**

21 [(6)] (7) Upon a showing of good cause, the court may at any time order that specified disclosure
22 be denied, restricted or deferred or make such other order as is appropriate.

23 [(7)] (8) Upon request of a party, the court may permit a showing of good cause for denial or
24 regulation of disclosure by the parties or the contents of subpoenaed materials, or portion of the
25 showing, to be made in camera. A record shall be made of the proceeding.

26 [(8)] (9) If the court enters an order following an in camera showing, the entire record of the
27 showing shall be sealed and preserved in the records of the court, to be made available to the ap-
28 pellate court in the event of an appeal. The trial court may, after disposition, unseal the record.

29 [(9)] (10) When some parts of certain material are subject to disclosure and other parts are not,
30 as much of the material as is subject to disclosure shall be disclosed.

31 [(10)] (11) Upon being notified of any breach of a duty to disclose material or information, the
32 court may:

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

34 (b) Grant a continuance;

35 (c) Refuse to permit the witness to testify;

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

37 (e) Enter such other order as the court considers appropriate.

38