

SENATE AMENDMENTS TO SENATE BILL 209

By COMMITTEE ON HUMAN SERVICES

March 31

1 In line 2 of the printed bill, after “records” insert “; amending ORS 409.225, 419B.035 and
2 419B.881”.

3 Delete lines 4 through 10 and insert:

4 “**SECTION 1.** ORS 409.225 is amended to read:

5 “409.225. (1) In the interest of family privacy and for the protection of children, families and
6 other recipients of services, the Department of Human Services [*shall*] **may** not disclose or use the
7 contents of any child welfare records, files, papers or communications that contain any information
8 about an individual child, family or other recipient of services for purposes other than those directly
9 connected with the administration of child welfare laws or unless required or authorized by ORS
10 419A.255 or 419B.035. The records, files, papers and communications are confidential and are not
11 available for public inspection. General information, policy statements, statistical reports or similar
12 compilations of data are not confidential unless such information is identified with an individual
13 child, family or other recipient of services or protected by other provision of law.

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

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

18 “(b) Regarding a specific individual if the individual gives written authorization to release con-
19 fidential information;

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

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

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

25 “(A) When the child objects; or

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

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

31 “(a) Treatment providers, foster parents, adoptive parents, school officials or other persons
32 providing services to the child or family to the extent that such disclosure is necessary to provide
33 services to the child or family; or

34 “(b) A person designated as a member of a sensitive review committee convened by the Director
35 of Human Services when the purpose of the committee is to determine whether the department acted

1 appropriately and to make recommendations to the department regarding policy and practice.

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

5 “(5) Unless exempt from disclosure under ORS chapter 192, when an adult who is the subject
6 of information made confidential by subsection (1) of this section publicly reveals or causes to be
7 revealed any significant part of the confidential matter or information, the protections afforded by
8 subsection (1) of this section are presumed voluntarily waived and confidential information about the
9 person making or causing the public disclosure, not already disclosed but related to the information
10 made public, may be disclosed if disclosure is in the best interests of the child or necessary to the
11 administration of the child welfare laws.

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

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

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

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

24 “**(b) The department determines, in written findings, that disclosure of the record is**
25 **necessary to provide services to the child or the child’s family; or**

26 “**(c) The child consents to the disclosure.**

27 “[8] **(9)** As used in this section[.];

28 “**(a)** ‘Adult’ means a person who is 18 years of age or older.

29 “**(b)** ‘**Record of sexual orientation, gender identity or gender expression**’ means a written
30 or recorded statement made by a child, memoranda of an oral statement made by a child or
31 any other documentation in a child’s child welfare records of the child’s statement, if the
32 statement concerns the child’s sexual orientation, gender expression or gender identity.

33 “**SECTION 2.** ORS 419B.035, as amended by section 10, chapter 27, Oregon Laws 2022, and
34 section 9, chapter 90, Oregon Laws 2022, is amended to read:

35 “419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.478 and
36 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records
37 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
38 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
39 ment of Human Services shall make the records available to:

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

42 “(b) Any physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practi-
43 tioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant
44 or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse
45 practitioner or coming before the physician, physician assistant or nurse practitioner for examina-

1 tion, care or treatment;

2 “(c) Attorneys of record for the child or child’s parent or guardian in any juvenile court pro-
3 ceeding;

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

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

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

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

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

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

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

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

24 “(L) The Department of Education for purposes of investigations conducted under ORS 339.391;
25 and

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

27 “(2)(a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the
28 Department of Human Services may exempt from disclosure the names, addresses and other identi-
29 fying information about other children, witnesses, victims or other persons named in the report or
30 record if the department determines, in written findings, that the safety or well-being of a person
31 named in the report or record may be jeopardized by disclosure of the names, addresses or other
32 identifying information, and if that concern outweighs the public’s interest in the disclosure of that
33 information.

34 “(b) If the Department of Human Services does not have a report or record of abuse regarding
35 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
36 161.015, the department may disclose that information.

37 “(3) The Department of Human Services may make reports and records compiled under the
38 provisions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer,
39 court, agency, organization or other entity when the department determines that such disclosure is
40 necessary to administer its child welfare services and is in the best interests of the affected child,
41 or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to
42 protect children from abuse and neglect or for research when the Director of Human Services gives
43 prior written approval. The Department of Human Services shall adopt rules setting forth the pro-
44 cedures by which it will make the disclosures authorized under this subsection or subsection (1) or
45 (2) of this section. The name, address and other identifying information about the person who made

1 the report may not be disclosed pursuant to this subsection and subsection (1) of this section.

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

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

20 “(6)(a) Any record made available to a law enforcement agency or community corrections
21 agency in this state, to the Department of Corrections, the Oregon Youth Authority or the State
22 Board of Parole and Post-Prison Supervision or to a physician, physician assistant or nurse practi-
23 tioner in this state, as authorized by subsections (1) to (5) of this section, shall be kept confidential
24 by the agency, department, board, physician, physician assistant or nurse practitioner. Any record
25 or report disclosed by the Department of Human Services to other persons or entities pursuant to
26 subsections (1) and (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 Department of Cor-
29 rections, the Oregon Youth Authority and the State Board of Parole and Post-Prison Supervision
30 may disclose records made available to them under subsection (5) of this section to each other, to
31 law enforcement, community corrections, corrections and parole agencies of other states and to au-
32 thorized treatment providers for the purpose of managing and supervising offenders in custody or
33 on probation, parole, post-prison supervision or other form of conditional or supervised release.

34 “(B) The Department of Corrections and the Oregon Youth Authority may disclose records made
35 available to them under subsection (5) of this section regarding a person in the custody of the De-
36 partment of Corrections or the Oregon Youth Authority to each other, to the court, to the district
37 attorney and to the person’s attorney for the purpose of the person’s hearing under ORS 420A.200
38 to 420A.206.

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

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

45 “(8) **A record of sexual orientation, gender identity or gender expression, as defined in**

1 **ORS 409.225, is exempt from disclosure under subsection (1) of this section unless:**

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

4 **“(b) The department determines, in written findings, that disclosure of the record is**
5 **necessary to provide services to the child or the child’s family; or**

6 **“(c) The child consents to the disclosure.**

7 “[8] (9) As used in this section, ‘law enforcement agency’ has the meaning given that term in
8 ORS 181A.010.

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

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

12 **“419B.881. (1) In all proceedings brought under ORS 419B.100 or 419B.500, each party, including**
13 **the state, shall disclose to each other party and to a guardian ad litem appointed under ORS**
14 **419B.231 the following information and material within the possession or under the control of the**
15 **party:**

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

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

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

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

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

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

29 **“(B) Three days before any review hearing, except for information received or discovered less**
30 **than three days prior to the hearing.**

31 **“(C) Ten days before a permanency hearing or a termination trial, except for information re-**
32 **ceived or discovered less than 10 days prior to the hearing or trial.**

33 **“(b) The court may supervise the exercise of discovery to the extent necessary to insure that**
34 **it proceeds properly and expeditiously.**

35 **“(3)(a) When a ward has been placed in the legal custody of the Department of Human Services**
36 **for care, placement and supervision under ORS 419B.337, the department shall disclose to all parties**
37 **the case plan developed under ORS 419B.343, modifications to the case plan and any written mate-**
38 **rial or information about services provided to the ward, or to the ward’s parent or parents, under**
39 **the case plan.**

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

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

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

44 **“(4) The obligation to disclose is an ongoing obligation and if a party finds, either before or**
45 **during the hearing, additional material or information that is subject to disclosure, the information**

1 or material shall be promptly disclosed.

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

3 “(a) Attorney work product; and

4 “(b) Transcripts, recordings or memoranda of testimony of witnesses before the grand jury, ex-
5 cept transcripts or recordings of testimony of a party to the current juvenile court proceeding.

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

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

10 **“(b) The child or the child’s attorney consents to the disclosure.**

11 “[6] (7) Upon a showing of good cause, the court may at any time order that specified disclo-
12 sure be denied, restricted or deferred or make such other order as is appropriate.

13 “[7] (8) Upon request of a party, the court may permit a showing of good cause for denial or
14 regulation of disclosure by the parties or the contents of subpoenaed materials, or portion of the
15 showing, to be made in camera. A record shall be made of the proceeding.

16 “[8] (9) If the court enters an order following an in camera showing, the entire record of the
17 showing shall be sealed and preserved in the records of the court, to be made available to the ap-
18 pellate court in the event of an appeal. The trial court may, after disposition, unseal the record.

19 “[9] (10) When some parts of certain material are subject to disclosure and other parts are not,
20 as much of the material as is subject to disclosure shall be disclosed.

21 “[10] (11) Upon being notified of any breach of a duty to disclose material or information, the
22 court may:

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

24 “(b) Grant a continuance;

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

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

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

28
