

SB 209-4  
(LC 380)  
3/14/23 (LAS/ps)

Requested by SENATE COMMITTEE ON HUMAN SERVICES (at the request of Department of Human Services)

**PROPOSED AMENDMENTS TO  
SENATE BILL 209**

1 In line 2 of the printed bill, after “records” insert “; amending ORS  
2 409.225, 419B.035 and 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  
6 children, families and other recipients of services, the Department of Human  
7 Services [*shall*] **may** not disclose or use the contents of any child welfare  
8 records, files, papers or communications that contain any information about  
9 an individual child, family or other recipient of services for purposes other  
10 than those directly connected with the administration of child welfare laws  
11 or unless required or authorized by ORS 419A.255 or 419B.035. The records,  
12 files, papers and communications are confidential and are not available for  
13 public inspection. General information, policy statements, statistical reports  
14 or similar compilations of data are not confidential unless such information  
15 is identified with an individual child, family or other recipient of services  
16 or protected by other provision of law.

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

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

1 order;

2 “(b) Regarding a specific individual if the individual gives written au-  
3 thorization to release confidential information;

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

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

7 “(e) Concerning a child who is or has been in the custody of the depart-  
8 ment, to the child’s parent or legal guardian except:

9 “(A) When the child objects; or

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

12 “(3) Notwithstanding subsection (1) of this section, unless exempt from  
13 disclosure under **subsection (8) of this section or** ORS chapter 192, the  
14 department shall disclose child welfare records, if in the best interests of the  
15 child, to:

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

19 “(b) A person designated as a member of a sensitive review committee  
20 convened by the Director of Human Services when the purpose of the com-  
21 mittee is to determine whether the department acted appropriately and to  
22 make recommendations to the department regarding policy and practice.

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

27 “(5) Unless exempt from disclosure under ORS chapter 192, when an adult  
28 who is the subject of information made confidential by subsection (1) of this  
29 section publicly reveals or causes to be revealed any significant part of the  
30 confidential matter or information, the protections afforded by subsection (1)

1 of this section are presumed voluntarily waived and confidential information  
2 about the person making or causing the public disclosure, not already dis-  
3 closed but related to the information made public, may be disclosed if dis-  
4 closure is in the best interests of the child or necessary to the administration  
5 of the child welfare laws.

6 “(6) Notwithstanding subsection (1) of this section, unless exempt from  
7 disclosure under **subsection (8) of this section or** ORS chapter 192, the  
8 department shall disclose information related to the department’s activities  
9 and responsibilities in a case where child abuse or neglect has resulted in  
10 a child fatality or near fatality or where an adult has been charged with a  
11 crime related to child abuse or neglect.

12 “(7) Notwithstanding subsections (2), (3), (5) and (6) of this section, ORS  
13 192.345 (3) shall apply to investigatory information compiled for criminal law  
14 purposes that may be in the possession of the department.

15 “(8) **A record of sexual orientation, gender identity or gender ex-  
16 pression is exempt from disclosure under this section unless:**

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

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

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

24 “[8] (9) As used in this section[,]:

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

26 “(b) ‘**Record of sexual orientation, gender identity or gender ex-  
27 pression’ means a written or recorded statement made by a child,  
28 memoranda of an oral statement made by a child or any other doc-  
29 umentation in a child’s child welfare records of the child’s statement,  
30 if the statement concerns the child’s sexual orientation, gender ex-**

1 **pression or gender identity.**

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

5 “419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170,  
6 192.210 to 192.478 and 192.610 to 192.810 relating to confidentiality and ac-  
7 cessibility for public inspection of public records and public documents, re-  
8 ports and records compiled under the provisions of ORS 419B.010 to 419B.050  
9 are confidential and may not be disclosed except as provided in this section.  
10 The Department of Human Services shall make the records available to:

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

13 “(b) Any physician, physician assistant licensed under ORS 677.505 to  
14 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390, at the  
15 request of the physician, physician assistant or nurse practitioner, regarding  
16 any child brought to the physician, physician assistant or nurse practitioner  
17 or coming before the physician, physician assistant or nurse practitioner for  
18 examination, care or treatment;

19 “(c) Attorneys of record for the child or child’s parent or guardian in any  
20 juvenile court proceeding;

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

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

29 “(f) The Early Learning Division for the purpose of carrying out the  
30 functions of the division, including the certification, registration or regu-

1 lation of child care facilities and child care providers and the administration  
2 of enrollment in the Central Background Registry;

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

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

6 “(i) Any person, upon request to the Department of Human Services, if  
7 the reports or records requested regard an incident in which a child, as the  
8 result of abuse, died or suffered serious physical injury as defined in ORS  
9 161.015. Reports or records disclosed under this paragraph must be disclosed  
10 in accordance with ORS 192.311 to 192.478;

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

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

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

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

20 “(2)(a) When disclosing reports and records pursuant to subsection (1)(i)  
21 of this section, the Department of Human Services may exempt from disclo-  
22 sure the names, addresses and other identifying information about other  
23 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-  
25 being of a person named in the report or record may be jeopardized by dis-  
26 closure of the names, addresses or other identifying information, and if that  
27 concern outweighs the public’s interest in the disclosure of that information.

28 “(b) If the Department of Human Services does not have a report or re-  
29 cord of abuse regarding a child who, as the result of abuse, died or suffered  
30 serious physical injury as defined in ORS 161.015, the department may dis-

1 close that information.

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

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

22 “(5) A law enforcement agency, upon completing an investigation and  
23 closing the file in a specific case relating to child abuse or neglect, shall  
24 make reports and records in the case available upon request to any law  
25 enforcement agency or community corrections agency in this state, to the  
26 Department of Corrections, to the Oregon Youth Authority or to the State  
27 Board of Parole and Post-Prison Supervision for the purpose of managing and  
28 supervising offenders in custody or on probation, parole, post-prison super-  
29 vision or other form of conditional or supervised release. A law enforcement  
30 agency may make reports and records compiled under the provisions of ORS

1 419B.010 to 419B.050 available to the Oregon Youth Authority, law enforce-  
2 ment, community corrections, corrections or parole agencies in an open case  
3 when the law enforcement agency determines that the disclosure will not  
4 interfere with an ongoing investigation in the case. The name, address and  
5 other identifying information about the person who made the report may not  
6 be disclosed under this subsection or subsection (6)(b) of this section.

7 “(6)(a) Any record made available to a law enforcement agency or com-  
8 munity corrections agency in this state, to the Department of Corrections,  
9 the Oregon Youth Authority or the State Board of Parole and Post-Prison  
10 Supervision or to a physician, physician assistant or nurse practitioner in  
11 this state, as authorized by subsections (1) to (5) of this section, shall be kept  
12 confidential by the agency, department, board, physician, physician assistant  
13 or nurse practitioner. Any record or report disclosed by the Department of  
14 Human Services to other persons or entities pursuant to subsections (1) and  
15 (3) of this section shall be kept confidential.

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

17 “(A) A law enforcement agency, a community corrections agency, the  
18 Department of Corrections, the Oregon Youth Authority and the State Board  
19 of Parole and Post-Prison Supervision may disclose records made available  
20 to them under subsection (5) of this section to each other, to law enforce-  
21 ment, community corrections, corrections and parole agencies of other states  
22 and to authorized treatment providers for the purpose of managing and  
23 supervising offenders in custody or on probation, parole, post-prison super-  
24 vision or other form of conditional or supervised release.

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

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

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

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

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

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

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

19 “[8] (9) As used in this section, ‘law enforcement agency’ has the  
20 meaning given that term in ORS 181A.010.

21 “[9] (10) A person who violates subsection (6)(a) or (7) of this section  
22 commits a Class A violation.

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

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

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



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

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

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

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

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

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

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

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

21 “(3)(a) When a ward has been placed in the legal custody of the Depart-  
22 ment of Human Services for care, placement and supervision under ORS  
23 419B.337, the department shall disclose to all parties the case plan developed  
24 under ORS 419B.343, modifications to the case plan and any written material  
25 or information about services provided to the ward, or to the ward’s parent  
26 or parents, under the case plan.

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

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

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

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

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

6 “(a) Attorney work product; and

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

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

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

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

17 “[6] (7) Upon a showing of good cause, the court may at any time order  
18 that specified disclosure be denied, restricted or deferred or make such other  
19 order as is appropriate.

20 “[7] (8) Upon request of a party, the court may permit a showing of good  
21 cause for denial or regulation of disclosure by the parties or the contents  
22 of subpoenaed materials, or portion of the showing, to be made in camera.  
23 A record shall be made of the proceeding.

24 “[8] (9) If the court enters an order following an in camera showing, the  
25 entire record of the showing shall be sealed and preserved in the records of  
26 the court, to be made available to the appellate court in the event of an  
27 appeal. The trial court may, after disposition, unseal the record.

28 “[9] (10) When some parts of certain material are subject to disclosure  
29 and other parts are not, as much of the material as is subject to disclosure  
30 shall be disclosed.

1        “[~~(10)~~] (11) Upon being notified of any breach of a duty to disclose mate-  
2 rial or information, the court may:

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

4        “(b) Grant a continuance;

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

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

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

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