

Enrolled Senate Bill 519

Sponsored by Senator DEMBROW; Senator SOLLMAN, Representatives DEXTER, MCLAIN (Pre-session filed.)

CHAPTER

AN ACT

Relating to juvenile records; creating new provisions; amending ORS 21.135, 147.508, 419A.262, 419A.265, 419A.267, 419A.269, 419A.271 and 419C.273; and prescribing an effective date.

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

SECTION 1. Sections 2 and 3 of this 2023 Act are added to and made a part of ORS 419A.260 to 419A.271.

SECTION 2. (1) An expunction proceeding under this section shall be commenced in the county where the subject person resided at the time of the most recent contact.

(2)(a) A juvenile department shall file with the juvenile court an application for expunction of the records of a person the juvenile department determines meets the criteria under paragraph (b) of this subsection within 90 days following the later of:

(A) The date that the person attains 18 years of age; or

(B) If the subject person was 18 years of age or older on January 2, 2022, the date that the juvenile department receives a request to file the application for expunction from the subject person.

(b) Upon application of either a person who is the subject of a record or a juvenile department, the juvenile court shall issue a judgment granting expunction, without a hearing, if:

(A) The subject person had contact with the juvenile department;

(B) The subject person has never been found to be within the jurisdiction of the juvenile court under ORS 419C.005;

(C) There is no petition pending alleging that the subject person is subject to the juvenile court's jurisdiction under ORS 419C.005;

(D) The subject person has not been waived to criminal court pursuant to a hearing under ORS 419C.349 or 419C.352;

(E) The subject person does not have an open referral for a case by informal means; and

(F) The subject person has not had contact with the juvenile department resulting in a conviction under ORS 137.707.

(3)(a) A juvenile department shall file with the juvenile court an application for expunction of the records of a person the juvenile department determines meets the criteria under paragraph (b) of this subsection within 90 days following the later of:

(A) The date that the person attains 18 years of age;

(B) The date of the person's termination if the person was within the jurisdiction of the juvenile court under ORS 419C.005 on their 18th birthday; or

(C) If the subject person was 18 years of age or older on the operative date of this section, the date the juvenile department receives a request to file the application for expunction from the subject person.

(b) Upon application of either a person who is the subject of a record or a juvenile department, the juvenile court shall issue a judgment granting expunction, without a hearing, if:

(A) The subject person had contact with the juvenile department that resulted in the subject person being found to be within the jurisdiction of the juvenile court under ORS 419C.005 for acts that, if committed by an adult, would constitute one or more violations or misdemeanors;

(B) The subject person has not been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for an act that, if committed by an adult, would constitute a felony;

(C) There is no petition pending alleging that the subject person is subject to the juvenile court's jurisdiction under ORS 419C.005;

(D) The subject person does not owe restitution;

(E) The subject person has not had contact with the juvenile department resulting in a conviction under ORS 137.707; and

(F) The subject person has not been waived to criminal court pursuant to a hearing under ORS 419C.349 or 419C.352.

(4) If the juvenile court denies the application for expunction under this section:

(a) The court must specify in the judgment denying the application for expunction the reason for the denial;

(b) The juvenile department or the subject person may file a new application for expunction under this subsection; and

(c) If the juvenile department submitted the application that was denied, the juvenile department shall make reasonable efforts to send to the subject person the following:

(A) Notice of the court's decision and a copy of the judgment denying the application for expunction; and

(B) Notice of the person's right to an attorney, right to file a new application for expunction under this subsection and right to request expunction under ORS 419A.262.

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

(b) When an expunction proceeding under this section is commenced by application of the juvenile department, the application shall set forth the names and addresses of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies that a reasonable search of department files indicates have expungible records and those provided by the subject person.

(6)(a) The juvenile court or juvenile department shall send a copy of an expunction judgment entered under this section to each agency subject to the judgment. Attached to the expunction judgment must be information, to remain confidential, regarding the record to be expunged and the date of the record.

(b) Upon receipt of a copy of the judgment, the agency shall comply and, within 60 days following the date of receipt, return the copy to the juvenile court or the juvenile department with an indorsement indicating compliance.

(c) The juvenile department may, upon an agency's written request, provide the agency with an extension of time to comply with paragraph (b) of this subsection. The duration of

the extension may not exceed the later of 30 days or, if an audit or grievance under the Interstate Compact for Juveniles relating to the subject person's records is pending, the date the audit or grievance is concluded. If the juvenile department grants an extension under this paragraph, the juvenile department shall notify the juvenile court of the extension.

(7) When all agencies subject to an expunction judgment have indicated their compliance or in any event no later than the later of 90 days following the date the judgment was delivered as required by subsection (6) of this section or, if the juvenile department granted an extension of time under subsection (6)(c) of this section, 90 days following the expiration of the extension of time, the juvenile court shall provide the person who is the subject of the record with a copy of the expunction judgment, a list of complying and noncomplying agencies, and a written notice of rights and effects of expunction. The juvenile court and juvenile department then shall expunge forthwith all records which they possess and which are subject to the judgment, except the original expunction judgment and the list of complying and noncomplying agencies which must be preserved under seal.

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

SECTION 3. (1) Applications for expunction under ORS 419A.262 and section 2 of this 2023 Act shall be available from the clerk of the court in a form prescribed by the State Court Administrator. The application must include a declaration under penalty of perjury as described in ORCP 1 E.

(2) The State Court Administrator shall prescribe the content and form of expunction judgments under ORS 419A.262 and section 2 of this 2023 Act. The judgment forms must include a place for the court to specify the method of expunction under ORS 419A.260 (1)(b) that applies to a given record.

(3) The Oregon Youth Authority, in consultation with county juvenile departments and the State Court Administrator, shall develop statewide model forms for juvenile departments to use in carrying out the duties of a juvenile department under ORS 419A.267 and section 2 of this 2023 Act.

SECTION 4. ORS 419A.262 is amended to read:

419A.262. [(1)(a) An expunction proceeding under subsection (2) of this section shall be commenced in the county where the subject person resided at the time of the most recent contact.]

[(b)] (1) An expunction proceeding under [subsections (3) to (10) of] this section shall be commenced in the county where the subject person resided at the time of the most recent termination.

[(2)(a) A juvenile department shall file with the juvenile court an application for expunction of the records of a person the juvenile department determines meets the criteria under paragraph (b) of this subsection within 90 days following the later of:]

[(A) The date that the person attains 18 years of age; or]

[(B) If the subject person was 18 years of age or older on January 2, 2022, the date that the juvenile department receives a request to file the application for expunction from the subject person.]

[(b) Upon application of either a person who is the subject of a record or a juvenile department, the juvenile court shall order expunction if it finds that:]

[(A) The subject person had contact with the juvenile department;]

[(B) The subject person has never been found to be within the jurisdiction of the juvenile court under ORS 419C.005;]

[(C) There is no petition pending alleging that the subject person is subject to the juvenile court's jurisdiction under ORS 419C.005;]

[(D) The subject person has not been waived to criminal court pursuant to a hearing under ORS 419C.349 or 419C.352;]

[(E) The subject person does not have an open referral for a case by informal means; and]

[(F) The subject person has not had contact with the juvenile department resulting in a conviction under ORS 137.707.]

[(c) If the juvenile court denies the application for expunction under this subsection:]

[(A) The court must specify in the judgment denying the application for expunction the reason for the denial.]

[(B) If the juvenile department submitted the application that was denied, the juvenile department shall make reasonable efforts to send to the subject person the following:]

[(i) Notice of the court's decision and a copy of the judgment denying the application for expunction; and]

[(ii) Notice of the person's right to an attorney, right to file a new application for expunction under this subsection and right to request expunction under subsections (3) to (10) of this section.]

[(C) The juvenile department or the subject person may file a new application for expunction under this subsection.]

[(3)] (2) Except as provided in section 2 of this 2023 Act, upon application of either a person who is the subject of a record or a juvenile department, or upon its own motion, the juvenile court shall order expunction if, after a hearing when the matter is contested, it finds that:

(a) At least *[five]* **four** years have elapsed since the date of the person's most recent termination **and the person has attained 18 years of age;**

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

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

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

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

(f) The person does not owe restitution.

[(4)(a)] (3)(a) Notwithstanding subsection *[(3)] (2)* of this section, upon application of a person who is the subject of a record kept by a juvenile court or juvenile department, upon application of the juvenile department, or upon its own motion, the juvenile court, after a hearing when the matter is contested under subsection *[(14)] (13)* of this section, shall order expunction if it finds that:

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

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

(b) Except as provided in subsections *[(14) and (15)] (13) and (14)* of this section, there is no waiting period required before the juvenile court orders expunction under this subsection.

[(5)] (4) In the case of an application by the juvenile department or of the court acting upon its own motion, expunction may not be ordered under subsection *[(3) or (4)] (2) or (3)* of this section if actual notice of expunction has not been given to the person in accordance with subsection *[(13)] (12)* of this section unless the person has reached 21 years of age.

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

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

(b) The conditions of *[subsection (3) or (4)] subsection (2) or (3)* of this section have been met.

[(7)] (6) Expunction *[shall]* **may** not be ordered under *[subsections (3) to (10) of]* this section if actual notice of expunction has not been given to the person in accordance with subsection *[(13)] (12)* of this section unless the person has reached 21 years of age.

[(8)] (7) Subsections *[(6) and (7)] (5) and (6)* of this section apply only to cases resulting in termination after September 13, 1975.

[(9)] **(8)** Notwithstanding subsections [(3), (4) and (6) to (8)] **(2), (3) and (5) to (7)** of this section, upon application of a person who is the subject of a record kept by a juvenile court or juvenile department, upon application of the juvenile department, or upon its own motion, the juvenile court, after a hearing when the matter is contested, may order expunction of all or any part of the person's record if it finds that to do so would be in the best interests of the person and the public. In the case of an application by the juvenile department or of the court acting upon its own motion, expunction *[shall]* **may** not be ordered if actual notice of expunction has not been given to the person in accordance with subsection [(13)] **(12)** of this section unless the person has reached 21 years of age.

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

(a) Rape in the third degree under ORS 163.355, sodomy in the third degree under ORS 163.385 or sexual abuse in the third degree under ORS 163.415, or an attempt to commit those crimes, may apply for an order of expunction under *[subsections (3) to (10) of]* this section. The court shall order expunction of the records in the case if, after a hearing when the matter is contested, the court finds that the person:

(A) Meets the requirements of subsection [(3)] **(2)** of this section;

(B) Is not required to report as a sex offender; and

(C) Has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime listed in ORS 419A.260 (1)(d)(J), other than the adjudication that is the subject of the motion.

(b) A sex crime that is a Class C felony may apply for an order of expunction under *[subsections (3) to (10) of]* this section. The court shall order expunction of the records in the case if, after a hearing when the matter is contested, the court finds that:

(A) The person meets the requirements of subsection [(3)] **(2)** of this section;

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

(C) The person is:

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

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

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

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

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

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

[(11)] **(10)** When an expunction proceeding under *[subsections (3) to (10) of]* this section is commenced by application of the person whose records are to be expunged, the person shall set forth as part of the application the names of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies that the person has reason to believe possess an expungible record of the person. The juvenile department shall provide the names and addresses of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies that a reasonable search of department files indicates have expungible records.

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

[(13)(a)] **(12)(a)** Notice and a copy of an application for expunction under [subsections (3) to (10) of] this section shall be given to:

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

(B) The person who is the subject of the record if the person has not initiated the expunction proceeding.

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

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

(b) Except as provided in subsection [(15)(c)] **(14)(c)** of this section, if no objection is filed the court may decide the issue of expunction either without a hearing or after full hearing under subsections [(15) to (18)] **(14) to (17)** of this section.

[(15)] **(14)** When an expunction is pending under [subsections (3) to (10) of] this section, the court may proceed with or without a hearing, except that:

(a) The court may not enter an expunction judgment without a hearing if a timely objection to expunction has been filed under subsection [(14)] **(13)** of this section;

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

(c) The court shall proceed without a hearing if:

(A) No objection is filed under subsection [(14)] **(13)** of this section;

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

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

[(16)(a)] **(15)(a)** Notice of a hearing on a pending expunction shall be served on the subject and any district attorney filing a timely objection under subsection [(14)] **(13)** of this section.

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

[(17)] **(16)** The court shall conduct a hearing on an expunction pending under [subsections (3) to (10) of] this section in accord with the provisions of ORS 419B.205, 419B.208, 419B.310, 419B.812 to 419B.839 and 419B.908. Rules of evidence shall be as in a hearing to establish juvenile court jurisdiction and as defined in ORS 419B.310 (3) and 419C.400 (2). The burden of proof shall be with the party contesting expunction.

[(18)(a)] **(17)(a)** At the conclusion of a hearing on an expunction pending under [subsections (3) to (10) of] this section, the court shall issue judgment granting or denying expunction.

(b) The court's denial of an application for expunction under subsections (2) to [(10)] **(9)** of this section does not preclude the subject person from filing an application for expunction under any other applicable subsection of this section.

[(19)(a)] **(18)(a)** The juvenile court or juvenile department shall send a copy of an expunction judgment to each agency subject to the judgment. Attached to the expunction judgment must be information, to remain confidential, regarding the record to be expunged and the date of the record.

[(b) Upon receipt of a copy of the judgment granting an application for expunction under subsection (2) of this section, the agency shall comply and, within 60 days following the date of receipt, return the copy to the juvenile court or the juvenile department with an indorsement indicating compliance.]

[(c)] **(b)** Upon receipt of a copy of the judgment granting an application for expunction under [subsections (3) to (10) of] this section, the agency shall comply and, within [21] **60** days of the date

of receipt, return the copy to the juvenile court or juvenile department with an indorsement indicating compliance.

[(d)] (c) The juvenile department may, upon an agency's written request, provide the agency with an extension of time to comply with paragraph (b) [or (c)] of this subsection. The duration of the extension may not exceed the later of 30 days or, if an audit or grievance under the Interstate Compact for Juveniles relating to the subject person's records is pending, the date the audit or grievance is concluded. **If the juvenile department grants an extension under this paragraph, the juvenile department shall notify the juvenile court of the extension.**

[(20)] (19) When all agencies subject to an expunction judgment have indicated their compliance or in any event no later than the later of 90 days following the date the judgment was delivered as required by subsection [(19)] (18) of this section or, if the juvenile department granted an extension of time under subsection [(19)(d)] (18)(c) of this section, 90 days following the expiration of the extension of time, the juvenile court shall provide the person who is the subject of the record with a copy of the expunction judgment, a list of complying and noncomplying agencies, and a written notice of rights and effects of expunction. The juvenile court and juvenile department then shall expunge forthwith all records which they possess and which are subject to the judgment, except the original expunction judgment and the list of complying and noncomplying agencies which must be preserved under seal.

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

[(22)(a)] *Applications for expunction under this section shall be available from the clerk of the court in a form prescribed by the State Court Administrator.*

[(b)] *The State Court Administrator shall prescribe the content and form of expunction judgments under this section. The judgment forms must include a place for the court to specify the method of expunction under ORS 419A.260 (1)(b) that applies to a given record.*

SECTION 5. ORS 419A.265 is amended to read:

419A.265. Notwithstanding ORS 419A.262 [(3)(a)] (2)(a), a person is eligible for an order of expunction under ORS 419A.262 [(3) to (10)] if the person was adjudicated for committing an act that, if committed by an adult, would constitute a criminal offense in which possession, delivery or manufacture of marijuana or a marijuana item as defined in ORS 475C.009 is an element and:

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

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

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

SECTION 6. ORS 419A.267 is amended to read:

419A.267. (1) A juvenile department **in the county where the subject person resided at the time of the most recent contact** shall issue a notice of expunction of a subject person's records if the subject person:

(a) Has had contact with the juvenile department;

(b) Has never been the subject of a petition alleging that the subject person is subject to the juvenile court's jurisdiction under ORS 419C.005;

(c) Has never been found to be within the jurisdiction of the juvenile court under ORS 419C.005;

(d) Does not have an open referral for a case by informal means; and

(e) Has not had contact with the juvenile department resulting in a conviction under ORS 137.707.

(2) The juvenile department shall issue the notice described in subsection (1) of this section within 90 days following the later of:

(a) The date the subject person attains 18 years of age; or

(b) If the subject person was 18 years of age or older on January 2, 2022, the date the juvenile department receives a request for expunction from the subject person.

(3) The juvenile department shall send the notice described in subsection (1) of this section to each agency that the juvenile department determines, after a reasonable search of the juvenile department's files, may be in possession of records relating to the subject person. The notice must notify the recipient agency that the agency has 60 days from the date of receipt to expunge the subject person's records.

(4)(a) Upon receipt of a notice of expunction, an agency shall comply and, within 60 days of the date of receipt, return a copy of the notice to the juvenile department with an indorsement indicating compliance.

(b) The juvenile department may, upon an agency's written request, provide the agency with an extension of time to comply with paragraph (a) of this subsection. The duration of the extension may not exceed the later of 30 days or, if an audit or grievance under the Interstate Compact for Juveniles relating to the subject person's records is pending, the date the audit or grievance is concluded.

(c) If an agency fails to comply with the requirements of paragraph (a) of this subsection, the juvenile department shall petition the juvenile court in the county in which the juvenile department is located for an order compelling the agency to comply.

(5) When all agencies subject to the notice of expunction have indicated their compliance or in any event no later than the later of 90 days following the date the notice was delivered as required by subsection (3) of this section or, if the juvenile department granted an extension of time under subsection (4) of this section, 90 days following the expiration of the extension of time, the juvenile department shall provide the subject person with a copy of the notice of expunction, a list of complying and noncomplying agencies, and a written notice of rights and effects of expunction. The juvenile department then shall expunge forthwith all records in its possession that are subject to the notice of expunction, except the juvenile department shall retain a record of the expunction processes under this section and keep the record confidential.

[(6) The Oregon Youth Authority, in consultation with county juvenile departments, shall develop statewide model forms to implement the provisions of this section.]

SECTION 7. ORS 419A.269 is amended to read:

419A.269. (1) Upon issuance of a notice of expunction under ORS 419A.267 or entry of an expunction judgment under ORS 419A.262 **or section 2 of this 2023 Act**, the contact that is the subject of the expunged record may not be disclosed by any agency. An agency that is subject to a notice of expunction or an expunction judgment shall respond to any inquiry about the contact by indicating that no record or reference concerning the contact exists.

(2) A person who is the subject of a record that has been expunged under ORS 419A.262 or 419A.267 **or section 2 of this 2023 Act** may assert that the record never existed and that the contact that was the subject of the record never occurred without incurring a penalty for perjury or false swearing under the laws of this state.

(3)(a) *[Upon the juvenile department's expunction of a subject person's records under ORS 419A.262 or 419A.267,]* The juvenile department may destroy any records in the juvenile department's possession relating to the subject person's contact under ORS 419B.100 if the records are duplicate copies of records maintained by the Department of Human Services. The destruction of records related to the subject person's contact under ORS 419B.100 pursuant to this *[subsection]* **paragraph** does not constitute expunction.

(b) The juvenile department may destroy any records in the juvenile department's possession relating to the subject person's record of a motor vehicle, boating or game violation waived to the criminal or municipal court pursuant to ORS 419C.370. The destruction of records related to the subject person's record of a motor vehicle, boating or game violation pursuant to this paragraph does not constitute expunction.

(4) Juvenile courts, by court rule or by order related to a particular matter, may direct that records concerning a subject person be destroyed. No records may be destroyed until at least three

years have elapsed after the date of the subject's most recent termination. In the event the record has been expunged, the expunction judgment and list of complying and noncomplying agencies may not be destroyed, but shall be preserved under seal. The destruction of records under this subsection does not constitute expunction.

(5) A notice of expunction or an expunction judgment and the list of complying and noncomplying agencies shall be disclosed only on order of the court that would have had jurisdiction to compel compliance with the notice of expunction or that originated the expunction judgment, based on a finding that review of a particular case furthers compliance with the expunction provisions of ORS 419A.260 to 419A.271.

(6) A person who, in the person's official capacity with a juvenile department, sends a notice of expunction for an ineligible individual or fails to send a notice of expunction for an eligible individual under ORS 419A.267 has immunity from any liability, civil or criminal, that might otherwise be incurred or imposed for making the disclosure or failing to make the disclosure, except when the person who sends the notice has knowledge that the individual is ineligible or when the person who fails to send the notice has knowledge that the individual is eligible.

(7) A person subject to a notice of expunction or expunction judgment has a right of action against any person who intentionally violates the confidentiality provisions of this section. In the proceeding, punitive damages up to an amount of \$1,000 may be sought in addition to any actual damages. The prevailing party shall be entitled to costs and reasonable attorney fees.

(8) Intentional violation of the confidentiality provisions of this section by a public employee is cause for dismissal.

(9) A person who releases all or part of an expunged record commits a Class A violation.

SECTION 8. ORS 419A.271 is amended to read:

419A.271. (1) If a person who is the subject of a record for which expunction under [ORS 419A.262 (2)] **section 2 of this 2023 Act** has been denied or that is eligible for expunction under ORS 419A.262 [(3) to (10)] wishes to apply for expunction and if the person is without funds to employ suitable counsel possessing skills and experience commensurate with the nature and complexity of the expunction process, the person may request the juvenile court having jurisdiction over the expunction process under ORS 419A.262 (1) to appoint counsel to represent the person in the expunction proceeding.

(2) The juvenile court shall inform a person requesting court-appointed counsel under this section of the person's right to be represented by suitable counsel possessing skills and experience commensurate with the nature and complexity of the expunction process, to consult with counsel prior to the filing of an application for expunction under ORS 419A.262 [(3) to (10)] and prior to a hearing on the matter and[, *if financially eligible,*] to have suitable counsel appointed at state expense. Upon request of the person, the juvenile court shall appoint counsel in accordance with the provisions of ORS 419B.195 and 419B.198 to aid the person in the expunction proceeding, including in the completion of an application for expunction and representation in any hearings on the application for expunction.

(3) When the juvenile court appoints counsel for a person under this section and the person is determined to be entitled to[, *and financially eligible for,*] appointment of counsel at state expense, the compensation for counsel and reasonable fees and expenses of investigation, preparation and presentation paid or incurred shall be determined and paid as provided in ORS 135.055.

SECTION 9. ORS 419C.273 is amended to read:

419C.273. (1) **As used in this section:**

(a) **"Critical stage of the proceeding" means a hearing that:**

(A) **Affects the legal interests of the youth or adjudicated youth;**

(B) **Is held in open court; and**

(C) **Is conducted in the presence of the youth or adjudicated youth.**

(b) **"Critical stage of the proceeding" includes, but is not limited to:**

(A) **Detention and shelter hearings;**

(B) **Hearings to review placements;**

- (C) Hearings to set or change conditions of release;
- (D) Hearings to transfer proceedings or to transfer parts of proceedings;
- (E) Waiver hearings;
- (F) Adjudication and plea hearings;
- (G) Dispositional hearings, including but not limited to restitution hearings;
- (H) Review or dispositional review hearings;
- (I) Hearings on motions to amend, dismiss or set aside petitions, orders or judgments;
- (J) Probation violation hearings, including probation revocation hearings, when the basis for the alleged violation directly implicates a victim's rights;
- (K) Hearings for relief from the duty to report under ORS 163A.130; and
- (L) Expunction hearings.

[(1)(a)] (2)(a) The victim of any act alleged in a petition filed under this chapter may be present at and, upon request, must be informed in advance of critical stages of the proceedings held in open court when the youth or adjudicated youth will be present.

(b) The victim must be informed of any constitutional rights of the victim. Except as provided in ORS 147.417, the district attorney or juvenile department must ensure that victims are informed of their constitutional rights.

(c) The district attorney or the juvenile department shall notify the victim at or before the time of adjudication of an act that, if committed by an adult, would constitute a violation or misdemeanor of the expunction process under section 2 of this 2023 Act.

[(2)(a)] (3)(a) The victim has the right, upon request, to be notified in advance of or to be heard at:

- (A) A detention or shelter hearing;
 - (B) A hearing to review the placement of the youth or adjudicated youth; or
 - (C) A dispositional hearing.
- (b) For a release hearing, the victim has the right:
- (A) Upon request, to be notified in advance of the hearing;
 - (B) To appear personally at the hearing; and
 - (C) If present, to reasonably express any views relevant to the issues before the court.

[(3)] (4) If the victim is not present at a critical stage of the proceeding, the court shall ask the district attorney or juvenile department whether the victim requested to be notified of critical stages of the proceedings. If the victim requested to be notified, the court shall ask the district attorney or juvenile department whether the victim was notified of the date, time and place of the hearing.

[(4) As used in this section:]

[(a) "Critical stage of the proceeding" means a hearing that:]

[(A) Affects the legal interests of the youth or adjudicated youth;]

[(B) Is held in open court; and]

[(C) Is conducted in the presence of the youth or adjudicated youth.]

[(b) "Critical stage of the proceeding" includes, but is not limited to:]

[(A) Detention and shelter hearings;]

[(B) Hearings to review placements;]

[(C) Hearings to set or change conditions of release;]

[(D) Hearings to transfer proceedings or to transfer parts of proceedings;]

[(E) Waiver hearings;]

[(F) Adjudication and plea hearings;]

[(G) Dispositional hearings, including but not limited to restitution hearings;]

[(H) Review or dispositional review hearings;]

[(I) Hearings on motions to amend, dismiss or set aside petitions, orders or judgments;]

[(J) Probation violation hearings, including probation revocation hearings, when the basis for the alleged violation directly implicates a victim's rights;]

[(K) Hearings for relief from the duty to report under ORS 163A.130; and]

[(L) Expunction hearings.]

(5) Nothing in this section creates a cause of action for compensation or damages. This section may not be used to invalidate an accusatory instrument or adjudication or otherwise terminate any proceeding at any point after the case is commenced or on appeal.

SECTION 10. ORS 21.135 is amended to read:

21.135. (1) Unless a specific fee is provided by subsection (3) of this section or other law for a proceeding, a circuit court shall collect a filing fee of \$281 when a complaint or other document is filed for the purpose of commencing an action or other civil proceeding and when an answer or other first appearance is filed in the proceeding.

(2) Except as provided in subsection (4) of this section, the filing fee established by subsection (1) of this section applies to:

(a) Proceedings in which only equitable remedies are sought.

(b) Appeals from a conviction of a violation in justice or municipal courts as provided in ORS 21.285.

(c) Interpleader actions.

(d) Actions relating to a trust.

(e) Proceedings for judicial review of an agency order.

(f) Declaratory judgment actions.

(g) Any other action or proceeding that is statutorily made subject to the fee established by this section and any other civil proceeding for which a specific filing fee is not provided.

(3)(a) The circuit court shall collect a filing fee of \$263 in adoption cases under ORS chapter 109, excluding readoptions under ORS 109.385, when a petition is filed for the purpose of commencing an adoption proceeding or when any other document or other first appearance is filed in the proceeding. The fee shall include the cost of issuing one or more certificates of adoption under ORS 109.410.

(b) When separate petitions for adoption of multiple minor children are concurrently filed under ORS 109.276 by the same petitioner, one filing fee shall be charged for the first petition filed and the filing fees for concurrently filed petitions shall not be charged.

(4) The filing fee established under subsection (1) of this section does not apply to:

(a) Expunction proceedings under ORS 419A.262 **or section 2 of this 2023 Act**;

(b) Petitions under ORS 163A.130 or 163A.135 for an order relieving the person from the duty to report as a sex offender if the person is required to report under ORS 163A.025; or

(c) Any juvenile delinquency proceeding arising under ORS chapter 419B or 419C.

SECTION 11. ORS 147.508 is amended to read:

147.508. (1) At the request of a victim, the prosecuting attorney may request that the court schedule a hearing to reconsider a release decision if:

(a) The victim did not have notice of, or an opportunity to be heard at, a hearing in which the court released the defendant from custody or reduced the defendant's security amount; and

(b) The victim's request is made no later than 30 days after the victim knew or reasonably should have known of the release decision that is to be reconsidered.

(2) As used in this section, "release decision" includes:

(a) Decisions made at arraignment; and

(b) Decisions made at hearings described in ORS 419C.273 [(4)(b)(A) to (C)] **(1)(b)(A) to (C)**.

SECTION 12. Sections 1 to 3 of this 2023 Act and the amendments to ORS 419A.262, 419A.265, 419A.267, 419A.269 and 419A.271 by sections 4 to 8 of this 2023 Act apply to expunction of records created before, on or after the effective date of this 2023 Act.

SECTION 13. (1) Sections 1 to 3 of this 2023 Act and the amendments to ORS 21.135, 147.508, 419A.262, 419A.265, 419A.267, 419A.269, 419A.271 and 419C.273 by sections 4 to 11 of this 2023 Act become operative on January 1, 2024.

(2) The State Court Administrator and the Oregon Youth Authority may take any action before the operative date specified in subsection (1) of this section that is necessary for the administrator or the authority to exercise, on and after the operative date specified in sub-

section (1) of this section, all of the duties, functions and powers conferred on the administrator or the authority by sections 1 to 3 of this 2023 Act and the amendments to ORS 21.135, 147.508, 419A.262, 419A.265, 419A.267, 419A.269, 419A.271 and 419C.273 by sections 4 to 11 of this 2023 Act.

SECTION 14. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by Senate April 11, 2023

.....
Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 25, 2023

.....
Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

.....
Secretary of State