

House Bill 4110

Sponsored by Representative WILLIAMS, Senator GELSER BLOUIN, Representatives NERON, RUIZ; Representatives HELM, KROPF, WILDE, Senators DEMBROW, MANNING JR (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes procedures by which certain crime or abuse victims and other authorized persons may request and receive copies of law enforcement agency records concerning case.

A BILL FOR AN ACT

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

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

SECTION 1. (1) As used in this section:

4
5 (a) **“Domestic violence crime” means a crime constituting domestic violence as defined**
6 **in ORS 135.230.**

7 (b) **“Law enforcement agency” has the meaning given that term in ORS 133.741.**

8 (c) **“Law enforcement agency record” includes documents or records that are created by**
9 **or originate from the law enforcement agency or the victim.**

10 (d) **“Open criminal case” means a criminal case that has been formally charged by in-**
11 **formation or indictment and for which no final judgment has been entered.**

12 (e) **“Sexual assault crime” means a crime described in ORS 163.355 to 163.427.**

13 (f) **“Victim” means the person or persons who have suffered financial, social, psycholog-**
14 **ical or physical harm as a result of a crime or suspected crime and includes, in the case of**
15 **a homicide, a member of the immediate family of the decedent and, in the case of a minor**
16 **victim, the legal guardian of the minor. In no event shall the defendant or the person sus-**
17 **pected of committing the crime be considered a victim.**

18 (2)(a) **A victim of a sexual assault crime, a domestic violence crime or a suspected sexual**
19 **assault or domestic violence crime, or the victim’s attorney, has the right to obtain law**
20 **enforcement agency records relating to the crime as provided in this section.**

21 (b) **In order to obtain law enforcement agency records under this section, the victim or**
22 **attorney shall make a request in writing to the law enforcement agency with jurisdiction**
23 **over the offense. Upon receipt of a request under this paragraph, the law enforcement**
24 **agency shall immediately notify the district attorney with jurisdiction over the offense of the**
25 **request.**

26 (c) **The district attorney shall respond in writing to a request described in this subsection**
27 **within 60 days of the date the request is submitted indicating the approval or denial of the**
28 **request. The request shall be approved if, in consultation with the law enforcement agency,**
29 **the district attorney determines that the release of the records to the victim would not**
30 **compromise or interfere with an investigation or an open criminal case, or that a compelling**
31 **reason exists to provide such records despite the risk of compromising or interfering with**

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 an investigation or an open criminal case. If the request is denied, the district attorney shall
 2 provide the victim with the reason for the denial and a reasonable estimate of when the re-
 3 cords will be available. The records shall be released to the victim promptly upon approval
 4 or upon the expiration of the reasons for a denial.

5 (d) Notwithstanding paragraph (c) of this subsection, upon a showing by the victim of an
 6 urgent need for the records, or if the district attorney determines there is another pending
 7 court proceeding necessitating release of the records, the district attorney shall respond
 8 within 10 days of the date the request is submitted.

9 (3)(a) The district attorney may seek a protective order from the court to prohibit fur-
 10 ther dissemination of records disclosed under this section, or to authorize redaction of the
 11 records to prevent the identification of third parties. A protective order sought under this
 12 subsection must be narrowly tailored in scope and duration to protect the integrity of an
 13 investigation or open criminal case or the privacy of third parties.

14 (b) The district attorney shall notify the victim of the intent to seek a protective order
 15 under this subsection. Upon receipt of the notification, the victim may file an objection
 16 within 10 days.

17 (c) The court shall issue a protective order under this subsection if the court determines
 18 that the order is necessary to protect the victim or another person from annoyance, em-
 19 barrassment, oppression or undue burden or expense.

20 (d) While a protective order issued under this subsection is in effect, the victim has
 21 standing to challenge or request to modify the protective order, and the court has jurisdic-
 22 tion to vacate or modify the order.

23 (e) Records disclosed under this section must be disclosed in accordance with a protective
 24 order issued under this subsection.

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

26 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.478 and
 27 192.610 to 192.810 relating to confidentiality and accessibility for public inspection of public records
 28 and public documents, reports and records compiled under the provisions of ORS 419B.010 to
 29 419B.050 are confidential and may not be disclosed except as provided in this section. The Depart-
 30 ment of Human Services shall make the records available to:

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

33 (b) Any physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practi-
 34 tioner licensed under ORS 678.375 to 678.390, at the request of the physician, physician assistant
 35 or nurse practitioner, regarding any child brought to the physician, physician assistant or nurse
 36 practitioner or coming before the physician, physician assistant or nurse practitioner for examina-
 37 tion, care or treatment;

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

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

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

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

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

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

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

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

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

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

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

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

22 (b) If the Department of Human Services does not have a report or record of abuse regarding
 23 a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS
 24 161.015, the department may disclose that information.

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

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

41 **(b)(A) A minor victim of abuse, neglect, a sexual assault crime, a domestic violence crime**
 42 **or a suspected sexual assault or domestic violence crime, or the victim’s attorney, parent**
 43 **or legal guardian, has the right to obtain law enforcement agency records relating to the**
 44 **crime as provided in this paragraph.**

45 **(B) In order to obtain law enforcement agency records under this section, the victim or**

1 other authorized requester shall make a request in writing to the law enforcement agency
2 with jurisdiction over the offense. Upon receipt of a request under this paragraph, the law
3 enforcement agency shall immediately notify the district attorney with jurisdiction over the
4 offense of the request.

5 (C) The district attorney shall respond in writing to a request described in this subsection
6 within 60 days of the date the request is submitted indicating the approval or denial of the
7 request. The request shall be approved if, in consultation with the law enforcement agency,
8 the district attorney determines that the release of the records to the requester would not
9 compromise or interfere with an investigation or an open criminal case, or that a compelling
10 reason exists to provide such records despite the risk of compromising or interfering with
11 an investigation or an open criminal case. If the request is denied, the district attorney shall
12 provide the requester with the reason for the denial and a reasonable estimate of when the
13 records will be available. The records shall be released to the requester promptly upon ap-
14 proval or upon the expiration of the reasons for a denial.

15 (D) Notwithstanding subparagraph (C) of this paragraph, upon a showing by the requester
16 of an urgent need for the records, or if the district attorney determines there is another
17 pending court proceeding necessitating release of the records, the district attorney shall re-
18 spond within 10 days of the date the request is submitted.

19 (E)(i) The district attorney may seek a protective order from the court to prohibit fur-
20 ther dissemination of records disclosed under this section, or to authorize redaction of the
21 records to prevent the identification of third parties. A protective order sought under this
22 subparagraph must be narrowly tailored in scope and duration to protect the integrity of an
23 investigation or open criminal case or the privacy of third parties.

24 (ii) The district attorney shall notify the requester of the intent to seek a protective or-
25 der under this subparagraph. Upon receipt of the notification, the requester may file an ob-
26 jection within 10 days.

27 (iii) The court shall issue a protective order under this subparagraph if the court deter-
28 mines that the order is necessary to protect the victim or another person from annoyance,
29 embarrassment, oppression or undue burden or expense.

30 (iv) While a protective order issued under this subparagraph is in effect, the requester
31 has standing to challenge or request to modify the protective order, and the court has ju-
32 risdiction to vacate or modify the order.

33 (v) Records disclosed under this section must be disclosed in accordance with a protec-
34 tive order issued under this subparagraph.

35 (5) A law enforcement agency, upon completing an investigation and closing the file in a specific
36 case relating to child abuse or neglect, shall make reports and records in the case available upon
37 request to any law enforcement agency or community corrections agency in this state, to the De-
38 partment of Corrections, to the Oregon Youth Authority or to the State Board of Parole and Post-
39 Prison Supervision for the purpose of managing and supervising offenders in custody or on
40 probation, parole, post-prison supervision or other form of conditional or supervised release. A law
41 enforcement agency may make reports and records compiled under the provisions of ORS 419B.010
42 to 419B.050 available to the Oregon Youth Authority, law enforcement, community corrections,
43 corrections or parole agencies in an open case when the law enforcement agency determines that
44 the disclosure will not interfere with an ongoing investigation in the case. The name, address and
45 other identifying information about the person who made the report may not be disclosed under this

1 subsection or subsection (6)(b) of this section.

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

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

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

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

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

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

27 (8) As used in this section[,]:

28 (a) **“Domestic violence crime” means a crime constituting domestic violence as defined**
 29 **in ORS 135.230.**

30 (b) **“Law enforcement agency”** has the meaning given that term in ORS 181A.010.

31 (c) **“Law enforcement agency record” includes documents or records that are created by**
 32 **or originate from the law enforcement agency or the victim.**

33 (d) **“Open criminal case” means a criminal case that has been formally charged by in-**
 34 **formation or indictment and for which no final judgment has been entered.**

35 (e) **“Sexual assault crime” means a crime described in ORS 163.355 to 163.427.**

36 (f) **“Victim” means the person or persons who have suffered financial, social, psycholog-**
 37 **ical or physical harm as a result of abuse, neglect, a crime or a suspected crime and in-**
 38 **cludes, in the case of a homicide, a member of the immediate family of the decedent. In no**
 39 **event shall the defendant or the person suspected of committing the crime, abuse or neglect**
 40 **be considered a victim.**

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

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