



# **HOUSE BILL 2320: JUVENILE SEX OFFENDER REGISTRATION**

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January 7, 2016**

# EFFECTIVE AUGUST 12, 2015

- Oregon Laws 2015, chapter 820
- Codified in new ORS Chapter 163A
  - ORS 163A.025 (Reporting by sex offender adjudicated in juvenile court)
  - ORS 163A.030 (Hearing on issue of reporting by sex offender adjudicated in juvenile court)



# HB 2320

- Removes automatic requirement that juveniles register as sex offenders for youth adjudicated on or after 8/12/15.
- ***Requires the court to hold a hearing*** prior to termination of juvenile court or Psychiatric Security Review Board jurisdiction to determine if registration should occur.



# OVERVIEW

- Applicability
- Notice of right to hearing
- Timing of hearing
- Appointment of attorney
- Evidence
- Submission and review of records
- Right to be heard
- Burden of proof and considerations
- Order; notice to youth and Oregon State Police
- Relief
- 2016 “Fix”



# APPLICABILITY: FELONY SEX CRIMES

## Adjudication on or after 8/12/15

- ORS 419C.005 jurisdiction, or responsible except for insanity under ORS 419C.111, for:
- Felony sex crime
  - “Sex crime” defined in ORS 163A.005(5)

## Adjudication prior to 8/12/15

- Does not apply
- Drafting problem in ORS 163A.025(1) resulting in no obligation to report since 8/12/15



# NOTICE OF RIGHT TO HEARING

- New notice required. ORS 163A.030(1)(c)
  - When: at the time the court finds the youth within the jurisdiction of the juvenile court under ORS 419C.005
  - What: “court shall notify the person of the person’s right to a hearing under this section..”
    - May be done orally or in writing
    - OJD form available on JCIP website.
      - May use Notice event (NO) in OJIN/Odyssey
      - May be scanned and attached to event in Odyssey
    - Best practice is to fill in attorney’s name and phone number for youth’s future reference



# TIMING OF HEARING

- Six month period before: ORS 163A.030(1)(b)
  - Termination of juvenile court jurisdiction; or
  - Discharge, if the person is under Psychiatric Security Review Board jurisdiction.
- Trigger:
  - County or state agency responsible for supervision ***shall notify the person*** when the agency determines that termination of jurisdiction will occur within six months. ORS 163.030(1)(d)
  - Person ***may*** file a petition requesting a hearing. ORS 163.030(1)(e)
- ***What if no petition is filed? ORS 163A.030 requires a hearing, regardless of petition.***



# TIMING OF HEARING: CALENDARING

## ○ Voluntary 6 month notice to courts:

- OYA, juvenile departments and PSRB (*timing of discharge hearings under ORS 419C.540 may result in inadequate notice from PSRB*)

## ○ Tracking cases - options:

- Regular hearings,
- Status conference once a year,
- Require a periodic report and track receipt

## ○ Once 6 months notice received:

- Status conference (best practice)
  - Appoint/re-appoint attorney
  - Discuss submission of required materials
  - Set hearing date





# APPOINTMENT OF ATTORNEY

- Person has right to court appointed attorney if financially eligible. ORS 163A.030(8)(b). The court may:
  - Continue the appointment of the existing attorney at the time of disposition;
  - Set a date prior to the hearing to reappoint the attorney;
  - Appoint or reappoint an attorney based on the person's request.



# EVIDENCE

- Court may receive testimony, reports and other evidence *if it is relevant* to the determination and findings, regardless of whether it is admissible under ORS 40.010 to 40.210 and 40.310 to 40.585. ORS 163A.030(5).
  - Privilege may be asserted.



# RECORDS



- The juvenile court shall review:
  - ***Evaluations and treatment records*** concerning the person conducted by a clinician or program operating under the standards of practice of the Sex Offender Treatment Board
  - ***Recommendations*** regarding the need for the person to register to protect the public from future sex crimes
  - ***Examination preparation material and examination records from polygraph examinations*** conducted by or for the treatment provider, juvenile department or Oregon Youth Authority. ORS 163A.030(6)(a)
- ***How far back in time? Who submits the records? ORS 419A.257 (OYA and JD authority to release)***



## RECORDS: DISCLOSURE

- Any records and materials to be reviewed by the court under ORS 163A.030(6) ***shall be released and disclosed to:***
  - The court
  - District attorney
  - Person's attorney
  - OYA or juvenile department
- ***No less than 15 days*** prior to the hearing.
- History and prognosis materials maintained in SCF until offered as an exhibit. ORS 419A.252(5).
  - Above entities have inspection and copy rights under ORS 419A.255(2)(b) & (d).



# MAKING A RECORD

- If the hearing results in an order or judgment, and there are materials not offered as an exhibit, but relied on by the court: ORS 419A.253
  - Identify on the record the materials the court intends to rely on;
  - Subject to the court's ruling on objections, either:
    - Take judicial notice of a fact or law pursuant to ORS 40.060 to 40.090 (make a list and include in judgment, or attach), or
    - Cause the material to be marked and received as an exhibit.
  - An exhibit marked and received and a judicial notice list are part of the record of the case. ORS 419A.253(3).



# RIGHT TO BE HEARD

- The following persons have the right to be heard at the hearing:
  - District attorney
  - Victim
  - Person (youth)
  - Juvenile court counselor or OYA representative

ORS 163A.030(3)



# BURDEN OF PROOF

- Person has burden of proving by *clear and convincing evidence*:
  - Person is rehabilitated; and
  - Does not pose a safety threat to the public.

ORS 163A.030(3)(b)



# CONSIDERATIONS

- Juvenile court may consider, but isn't limited to considering:
  - Physical and emotion injury to victim;
  - Nature of the act;
  - Use or threatened use of force during act;
  - Pre-mediation;
  - Whether person took advantage of a position of authority or trust;
  - Age of victim at time of act; age difference; # of victims
  - Vulnerability of victim;
  - Statements, documents, recommendations by or on behalf of victim or parents of victim;
  - Other acts by the person that would be crimes if committed by an adult prior to or after the act;
  - Person's ability and efforts to pay the victim's counseling and other trauma related expenses;
  - Other efforts to mitigate the effects of the act;
  - Participation in and satisfactory completion of a sex offender treatment program or other intervention:
    - Availability, duration and extent of treatment activities;
    - Reports and recommendations from treatment providers;
    - Person's compliance with court, board or supervision requirements regarding treatment;
    - Quality and thoroughness of treatment program;
  - Person's compliance with and success in completing terms of supervision;
  - Person's academic and employment history
  - Person's use of drugs or alcohol before and after the adjudication
  - History of public or private indecency;
  - Psychological examination results;
  - Protection afforded the public by the continued existence of the records.

ORS 163A.030(4).





# ORDER AND NOTICE

- If person does not meet burden:
  - Order required. Court shall order person to report as a sex offender under ORS 163A.025. ORS 163A.030(3)(b)
  - Notice required. Court shall provide notice to person regarding obligation to report, ensure it is filled out, and send it to the Oregon State Police within three business days. ORS 163A.030(7)
    - OJD form available on JCIP website.



# RELIEF FROM SEX OFFENDER REGISTRATION

- A person required to report as a sex offender under *ORS 163A.025(1)(a)\**, or required to report as a sex offender under the laws of another state as a result of an adjudication in an Oregon juvenile court, *may file a petition for an order relieving the person of the obligation to report:* ORS 163A.130(1)
  - Class A and B felony: may file no sooner than two years after termination of jurisdiction;
  - Class C felony: may file no sooner than *30 days before the termination of jurisdiction* . ORS 163A.130(2)

\*Refers to youth adjudicated on or after 8/12/15 who were ordered to report after a ORS 163A.030 hearing. Statute currently silent as to youth required to report based on pre-8/12/15 adjudication.



# 2016 “FIX”

- Potential issues that may be addressed in the 2016 session:
  - Notice to court
  - Timing issues of PSRB cases
  - Records submission and review
    - Proposal that supervising entity submit.
  - Hearing for youth who were already under jurisdiction of the juvenile court or PSRB on 8/12/15
  - Waiver of right to hearing
  - Clarify juvenile court’s continuing jurisdiction for purposes of this hearing after person turns 25 or if court terminates jurisdiction



Multnomah County Circuit Court:  
Judge Amy Holmes-Hehn



# DISCUSSION

