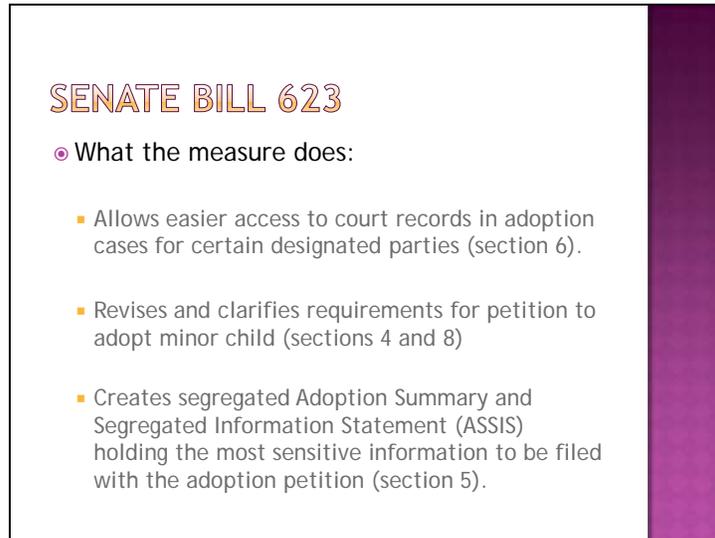


Slide 1



My name is Megan Hassen. I work within Juvenile Court Programs as a Law and Policy Analyst. Today, I'm going to walk you through the changes to Oregon law primarily with respect to the confidentiality of court adoption records. I will be discussing how the provisions of Senate Bill 623, passed by the legislature during the 2013 regular session, alter the confidentiality of the records, as well as new filing requirements for adoption cases.



SENATE BILL 623

- ◉ What the measure does:
 - Allows easier access to court records in adoption cases for certain designated parties (section 6).
 - Revises and clarifies requirements for petition to adopt minor child (sections 4 and 8)
 - Creates segregated Adoption Summary and Segregated Information Statement (ASSIS) holding the most sensitive information to be filed with the adoption petition (section 5).

Senate Bill 623 makes three major changes to adoption law:

First, section (6) of the bill allows certain parties to access court records in adoption cases without a court order.

Second, sections 4 and 8 revise and clarify what needs to be contained in a petition for adoption of a minor child, and provides guidance on when an adoption petition does not need to be filed.

Third, section (5) creates a new Adoption Summary and Segregated Information Statement (ASSIS) that must be filed with the petition. The ASSIS contains the most sensitive information in the case, and is therefore segregated from the other filings the court receives.

HISTORY BEHIND SB 623

- ◉ Referral from OJD to Oregon Law Commission to study whether to permit limited access to adoption files without a court order.
- ◉ Revise law consistent with changing technology (Oregon eCourt).
- ◉ Make filing requirements more uniform.

In July 2010, the Oregon Judicial Department referred review of ORS 7.211 to the Oregon Law Commission. This statute requires adoption records be sealed and only allows disclosure by court order. The OJD asked the Commission to consider whether to permit limited access to adoption files without a court order. The referral came out of the Law and Policy Work Group created as part of the Oregon eCourt program.

In addition to addressing confidentiality issues and recommending the repeal of ORS 7.211, the Commission noted Oregon law prescribing filing requirements had not been reviewed and revised for decades. The Commission addressed this by revising the requirements for petitions in adoption cases under ORS 109.309 and creating the ASSIS, which we will be talking about more in a minute.

CONFIDENTIALITY OF ADOPTION COURT RECORDS:

- ◉ The Court shall keep a **separate** record of the case, apart from the general records of the court, including records from juvenile dependency proceedings.
- ◉ The Adoption Summary and Segregated Information Statement and related exhibits must be kept separately from the other "records, papers and files" in the record of the adoption case.
- ◉ Records are to be "sealed", prior to and after entry of judgment.

Starting with the basics, SB 623 requires the court to keep adoption records separate from other records, including those in juvenile dependency proceedings.

Within the file, the new ASSIS and related exhibits must be kept separately from the other filings in the adoption case.

Last, the records are to be sealed throughout the life of the case.

TWO PARTS TO THE FILE:

- **Petition and exhibits:**
 - Written release/ surrender/ disclaimer of rights
 - Consent
 - Certificate of irrevocability and waiver
 - Continuing contact agreement
 - Disclosure statement (adoption expenses)
 - Any other supporting documentation
- **Other motions, orders, etc. that are not ASSIS and ASSIS exhibits**
- **ASSIS and exhibits:**
 - Home study or evidence home study has been approved or waived
 - Adoption report
 - Medical history of minor child and biological parents.

Senate Bill 623 requires the ASSIS and related exhibits be segregated from other parts of the court file. The exhibits to the ASSIS include the home study, or evidence the home study has been approved or waived, the adoption report, and the medical history of the child and biological parents. Please see the document “Senate Bill 623: Changes to Circuit Court Adoption Records” for a detailed list of what must be included in the petition and ASSIS, and the exhibits that go with each document.

NEW REQUIREMENT: ASSIS

- ◉ An Adoption Summary and Segregated Information Statement must contain the following if known or readily ascertainable by the petitioner:
 - Full name, address and telephone number of petitioner
 - Current full name, proposed adoptive name and the date and place of birth of the minor child
 - Names, permanent addresses and telephone numbers of any person whose consent to the adoption is required under ORS 109.312

Let's look at the new requirement of the Adoption Summary and Segregated Information Statement in more detail. The ASSIS serves as a summary reference tool to the court, by providing the essential case information in one document. Remember, it is segregated from the other filings due to the sensitivity of the information it contains. I'm going over it in detail because items included in the ASSIS, along with the home study, the adoption report and the medical history forms, will need to be segregated and redacted in some circumstances when the court releases adoption records that were filed before 1/1/14. Here's a run down of what's in it:

Full name, address and telephone number of petitioner

Current full name, proposed adoptive name and the date and place of birth of the minor child

Names, permanent addresses and telephone numbers of any person whose consent to the adoption is required under ORS 109.312 (usually this is the biological parents)

REQUIREMENTS OF ASSIS (CONTINUED)

- Name and relationship to the minor child and address of any person or entity for whom the written consent requirement is waived or not required or may be substituted for.
- UCCJEA information.
- Name, address and telephone number of any adoption agency that will be consenting or has consented.

Name and relationship to the minor child and address of any person or entity for whom the written consent requirement is waived or not required (this covers parents who don't have legal custody, who have surrendered custody to DHS, parent who has been adjudged mentally ill or mentally retarded or is in prison)

UCCJEA (uniform child custody jurisdiction and enforcement act) information

Name, address and telephone number of any adoption agency that will be consenting or has consented.

**REQUIREMENTS OF ASSIS
(CONTINUED)**

- Name, bar number and contact info for attorneys representing petitioner or person whose consent is required.

- An indication of the type of adoption as specified in section (5)(1)(h). For example:
 - Private agency adoption
 - Nonrelated independent adoption
 - Stepparent independent adoption

Name, bar number and contact information for attorneys representing petitioner or person whose consent is required (typically, the biological parent).

An indication of the type of adoption as specified in section (5)(1)(h). For example:

Private agency adoption

Nonrelated independent adoption

Stepparent independent adoption

There are a number of other types specified in section (5) such as a relative independent adoption, an independent adoption involving one petitioner who retains parental rights, etc...

Those are the requirements of the ASSIS. Please note the petitioner must file an amended ASSIS when any of the required information changes or is now ascertainable, prior to entry of judgment.

WHO CAN ACCESS THE COURT ADOPTION RECORD WITHOUT A COURT ORDER?

- Judges, court staff, and persons operating under the direction of the judges;
- Petitioners and their attorneys of record;
- Department of Human Services;
- An adopted person after the entry of the adoption judgment and after turning age 18.
 - Except for the home study. The court must find good cause exists and enter an order allowing disclosure of the home study.

Switching gears, let's talk about who can have access to the court adoption record without a court order. Section (6) of the bill sets out categories of parties that don't need a court order to access the records:

Judges, court staff, and persons operating under the direction of the judges;

Petitioners and their attorneys of record;

Department of Human Services;

An adopted person after the entry of the adoption judgment and after turning age 18.

Except for the home study. The court must find good cause exists and enter an order allowing disclosure of the home study.

WHO CAN ACCESS THE COURT ADOPTION RECORD WITHOUT A COURT ORDER?

- Person or entity who signed a document in the court record (except for parents whose rights have been terminated/surrendered).
 - Access is limited to document that was signed.
 - Court must redact the signature and the printed name under the signature of any other individual or entity contained in that document.

Person or entity who signed a document in the court record

Access is limited to document that was signed.

Court must redact the signature and the printed name under the signature of any other individual or entity contained in that document.

Note this exception does not apply to parents who have had their rights terminated under ORS Chapter 419B, or who have surrendered rights under ORS 418.270. These parents must obtain a court order to get access to the records.

BIOLOGICAL PARENTS

- Can't access records until adoption judgment entered and child has reached 18 years of age; court order required.
- Presumption for granting order permitting inspection differs for biological parents who consent, versus those whose rights were terminated under ORS 419B.500 or released and surrendered to DHS under ORS 418.270.

Now let's look at circumstances in which a court order is required. Starting with biological parents, court adoption records are not accessible until the adoption judgment has been entered and the child has reached 18 years of age. The parent must file a motion requesting disclosure of the records, and the court must authorize the disclosure in an order. Subsection (6)(5) of the bill requires the court to apply different standards to parents who have consented to the adoption under ORS 109.312 versus parents who have had their parental rights terminated pursuant to ORS 419B.500 or who have released and surrendered their rights to DHS under ORS 418.270.

BIOLOGICAL PARENTS WHO CONSENTED

- ◉ Also applies to guardian, next of kin, or person whose consent under ORS 109.312 is required.
- ◉ Must file a motion requesting access to records.
- ◉ Court shall grant the motion except for good cause.
- ◉ ASSIS /equivalent information and exhibits (home study, adoption report, medical history) are excluded from disclosure.

Let's start by looking at the rules that apply to biological parents who have consented under ORS 109.312. Note these rules also apply to others who have the authority to consent under ORS 109.312, such as guardians or next of kin. A parent must file a motion requesting access to the records. Subsection (6)(5)(b) provides the court shall grant the motion unless good cause exists not to. However, the ASSIS and exhibits are exempt from disclosure. For cases filed prior to 1/1/14, the court must redact any information that would normally be included in the ASSIS and segregate out the ASSIS exhibits – namely, the adoption report, home study and medical history of the child and biological parents. Removing the ASSIS information will require the judge, supervisor or court staff, to go through the adoption records line by line and remove all of those items required to be placed in the ASSIS. Slides 6 through 8 as well as the accompanying document, "Senate Bill 623: New Filing Requirements for Circuit Court Adoption Cases" sets out those items in detail.

BIOLOGICAL PARENTS WHO LOST OR SURRENDERED THEIR PARENTAL RIGHTS.

- ◉ Can not access adoption record without a court order.
- ◉ Judge must find good cause exists for allowing the disclosure. The following are exempt from disclosure:
 - ASSIS (must redact similar information for cases filed prior to 1/1/14) and any exhibits attached (home study, adoption report and medical history).
 - Court must redact: name, address, and other identifying information of any individual or entity other than the parent.

Moving on to parents whose rights have been terminated or who surrendered their rights to DHS under ORS 418.270. Again, biological parents are required to file a motion requesting access to the records, but in this case, must show good cause exists for the disclosure. After the judge finds good cause to release the records, at a minimum, the home study, adoption report and medical history should be withheld from the documents that are released. For cases filed after 1/1/14, the ASSIS also must be withheld. For cases filed prior to 1/1/14, any information normally contained in the ASSIS must again be redacted from any document provided to the parent.

Finally, the court must redact the name, address, and any other identifying information of any individual or entity other than the parent.

ALL OTHER PERSONS (I.E. "THE PUBLIC")

- Court order required: must find good cause exists prior to allowing disclosure.
- SB 623 does not require notice to the petitioner, adoptee, or consenting individuals prior to the court's entry of an order allowing disclosure.
- Consider extra protections afforded to ASSIS and related exhibits when deciding which documents to release.

For any other person, a motion must be filed and the court must find good cause exists and enter an order allowing disclosure of the records. As SB 623 is written, no notice must be provided to the parties to the adoption proceeding prior to the court's consideration of the motion. The Oregon Law Commission debated whether or not to require notice, but did not have time to carefully draft a provision requiring notice. It is on a tentative "to do" list with the Oregon Law Commission for 2015. In the meantime, there is nothing in the law that would prevent the court from requiring notice to the parties before considering whether or not to disclose the records. Further, the court can consider releasing only certain documents, and withholding others, especially those considered most sensitive: the information contained in the ASSIS along with the adoption report, home study and medical history. Clear direction in the court order about which documents to release will be helpful for court staff.

**PROHIBITION ON RE-DISCLOSURE
REQUIRED**

When the court grants a motion to inspect, copy or disclose material in the record of the adoption case, **the court shall order a prohibition or a limitation on re-disclosure of the disclosed information unless good cause is shown.**

If the court grants an order allowing disclosure of adoption records, subsection (6)(12) of the bill requires the court to order a prohibition or a limitation on re-disclosure of the information released unless good cause is shown.

SB 623 DOES NOT AFFECT:

- The court's ability to mail the judgment document to the State Registrar of the Center for Health Statistics as the adoption report under ORS 432.415.
- The court's ability to provide a certificate of adoption to the adopted person, adoptive parent and his or her attorney.
- Court's ability to protect the confidentiality of the names and addresses of petitioners in contested adoptions. ORS 109.308.

Senate Bill 623 does not change the following aspects of current law:

The court can still mail the judgment to the State Registrar of the Center for Health Statistics as the adoption report under ORS 432.415.

The court can still provide a certificate of adoption to the adopted person, adoptive parent and his or her attorney.

The court may protect the confidentiality of the names and addresses of petitioners in contested adoptions.

SB 623 DOES NOT AFFECT:

- Court's ability to send a copy of the judgment to the U.S. Secretary of the Interior if ICWA applies. ORS 109.350.
- Adult adoptions.

SB 623 also does not affect

The court's ability to send a copy of the judgment to the U.S. Secretary of the Interior if ICWA applies.

Finally, SB 623 does not address adult adoptions.



EFFECTIVE DATE

- ◉ **January 1, 2014**
 - New requirements regarding the petition and Adoption Summary and Segregated Information sheet apply to cases filed after 1/1/14.
 - New rules regarding the confidentiality of adoption case court records apply to all adoption records on file with the court (filed before and after 1/1/14).

SB 623 goes into effect on January 1st, 2014. The new filing requirements contained in the bill apply to cases filed after 1/1/14. The new confidentiality rules will apply to cases filed after and prior to the effective date of the bill. So for pre-2014 cases, materials that are now defined as ASSIS exhibits are subject to the new disclosure rules set out in Senate Bill 623, even though they were not filed as exhibits to an ASSIS. Information required by the new ASSIS document will also have to be redacted in some circumstances for pre-2014 cases.

APPLICABLE COURT FEES

- ◉ SB 623 allows the court to collect fees for copies and services relating to segregation and redaction, including filing, inspection and research fees.

- ◉ CJO 12-028:
 - For segregation of documents: \$25
 - For redaction of information: \$1 per page redacted
 - Normal fees regarding paper copies, scanning and e-mailing documents apply.

Applicable Court Fees:

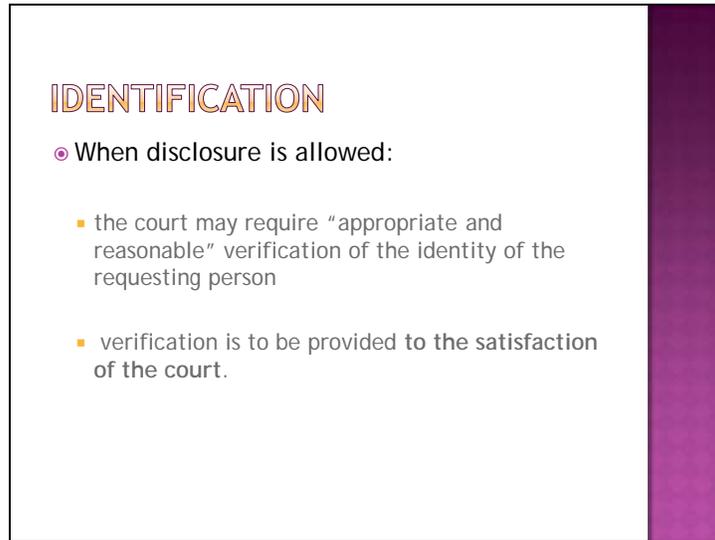
Senate Bill 623 allows the court to collect fees for copies and FOR SERVICES relating to the segregation and redaction required, including filing, inspection and research fees. The current Chief Justice Order setting fees allows the court to charge \$25 when whole documents from a court file have to be segregated out and withheld from disclosure. In addition, for every page in which information has to be redacted, the court can charge \$1 per page. Normal fees for running paper copies and scanning and e-mailing documents apply.

APPLICABLE COURT FEES

- The CJO may be amended to raise the per page redaction fee in early 2014.
- We would appreciate local court feedback on staff, supervisory and judicial time spent segregating and redacting materials so the fee can be adjusted if it's not representative of actual time spent segregating and redacting information.

At the time of this writing, the current Chief Justice Order is being revised, so please reference any new CJO for the latest fee information.

Juvenile Court Programs would appreciate hearing from you if your experience handling these requests leads you to believe the current fee is not representative of the cost of judicial or staff time spent researching, segregating and redacting material from court records.

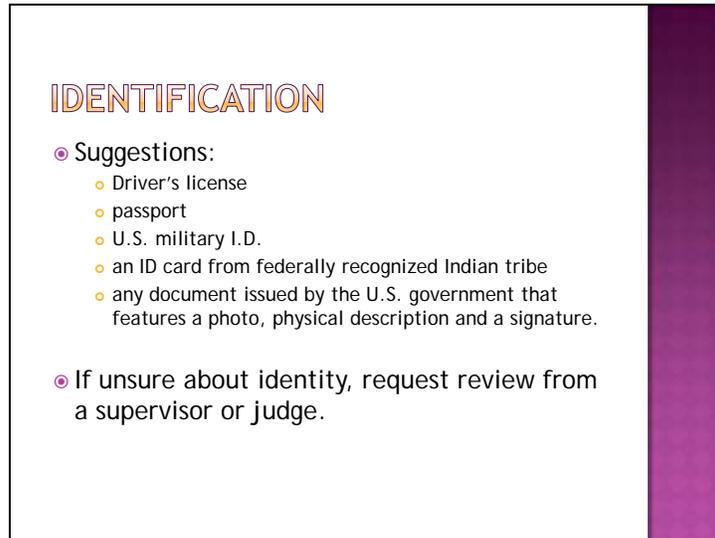


IDENTIFICATION

- ◉ When disclosure is allowed:
 - the court may require “appropriate and reasonable” verification of the identity of the requesting person
 - verification is to be provided to the satisfaction of the court.

When the court is allowed to disclose adoption records under Senate Bill 623 either with or without a court order, subsection (6)(13) allows the court to require appropriate and reasonable verification of the identity of the requesting person.

Verification is to be provided to the satisfaction of the court.



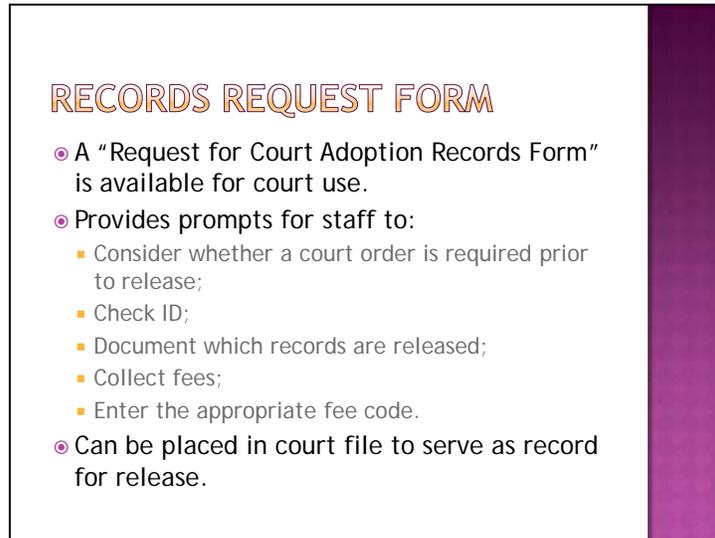
IDENTIFICATION

- ◉ Suggestions:
 - Driver's license
 - passport
 - U.S. military I.D.
 - an ID card from federally recognized Indian tribe
 - any document issued by the U.S. government that features a photo, physical description and a signature.

- ◉ If unsure about identity, request review from a supervisor or judge.

Senate Bill 623 provides no guidance on what courts should require as proof of identity. This is a local court issue. Courts may consider requiring a driver's license, passport, U.S. military ID, an ID card from a federally recognized Indian tribe or any document issued by the U.S. government that features a photo, physical description and a signature.

If a staff person is unsure about a person's identity either because the documentation provided is insufficient, or because its reliability is questioned, request the issue be reviewed by a supervisor or judge.



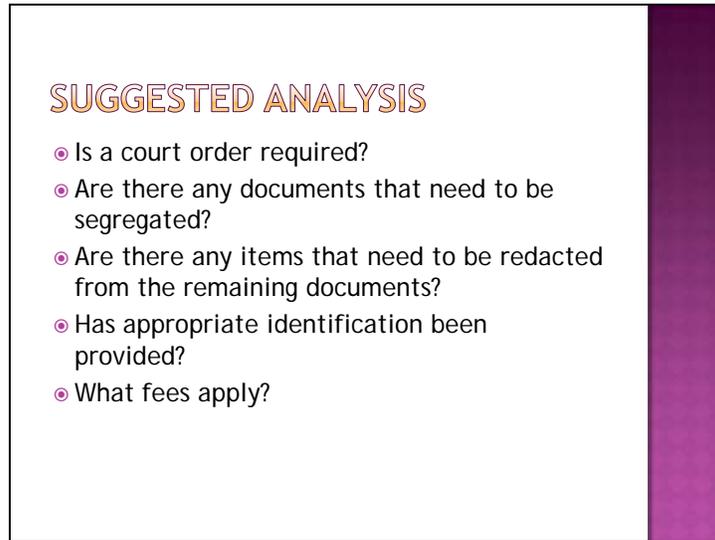
RECORDS REQUEST FORM

- A "Request for Court Adoption Records Form" is available for court use.
- Provides prompts for staff to:
 - Consider whether a court order is required prior to release;
 - Check ID;
 - Document which records are released;
 - Collect fees;
 - Enter the appropriate fee code.
- Can be placed in court file to serve as record for release.

A "Request for Court Adoption Records Form" has been developed for court use.

The form provides prompts for records staff to consider whether a court order is required prior to release, check ID of person requesting the records, document which records are released, collect applicable fees and enter the appropriate fee code.

The filled out form can be placed in the court file as a record of which documents were released.



SUGGESTED ANALYSIS

- ◉ Is a court order required?
- ◉ Are there any documents that need to be segregated?
- ◉ Are there any items that need to be redacted from the remaining documents?
- ◉ Has appropriate identification been provided?
- ◉ What fees apply?

For court staff faced with an adoption records request, the following analysis is recommended.

The first question is whether court records staff may release the information without a court order. If the records request requires a court order, staff should direct the person making the request to file an appropriate motion with the court.

If the release is allowed without a court order, or if a court order allowing disclosure has been entered, the next question is whether there are any documents that need to be segregated.

Of any remaining documents, the next question is whether there is any information contained in those documents that must be redacted.

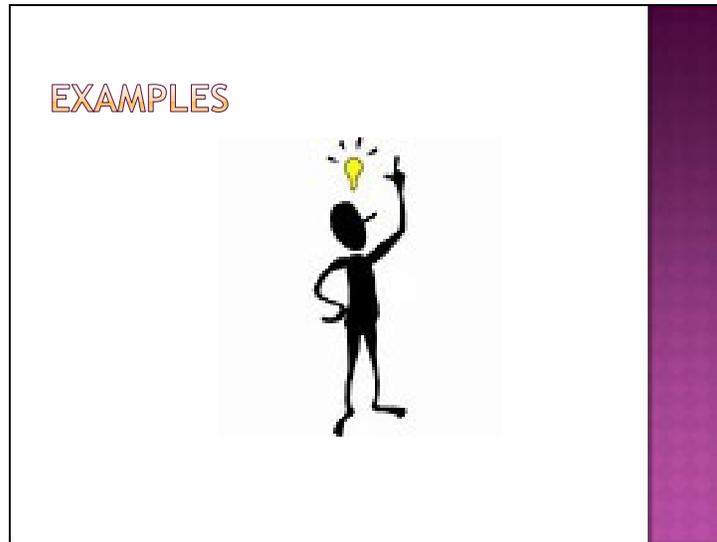
Before releasing the information, court staff should check the ID of the requesting individual to verify the person's identity.

Finally, staff will need to determine which fees to apply.

I strongly recommend referring to the accompanying reference document, "Senate Bill 623: Summary of Records Release Requirements in Court Adoption Cases" which sets forth when a court order is required, what documents must be segregated and what information must be redacted. In addition, the document "Senate Bill 623: New Filing Requirements for Circuit Court

Adoption Cases” sets out in more detail information required to be included in the ASSIS, which will become particularly important for cases in which redaction of ASSIS information is required for adoption cases filed prior to 1/1/14.

Slide 25



Let's turn to some examples to demonstrate the practical application of these principles.

CASE EXAMPLE #1 (ADOPTEE)

- Sarah Dixon comes to the records department and requests adoption records. She fills out the "Request for Court Adoption Records" and identifies herself as "the adoptee". What do you do?

Read

CASE EXAMPLE #1: ANSWER

- ◉ Check her ID to make sure she really is Sally Dixon;
- ◉ Retrieve the court file;
- ◉ Segregate the home study out (unless the court has entered an order allowing disclosure) and copy the rest of the file;
- ◉ Charge her \$25 for segregation, and 25 cents per page copied.
- ◉ Fill out the bottom of the “Request for Court Adoption Records” form and place in the court file.

First, check her identification to verify she is Sally Dixon;

Next, check the court record to verify she was the subject of an adoption and retrieve the court file;

Next, segregate the home study out. If there is no home study because written evidence the home study was approved, or a waiver of the home study requirement was submitted instead, the approval or waiver information should be segregated. Copy the rest of the file.

Next, charge her \$25 for segregating out the home study, and 25 cents per page copied.

Finally, fill out the bottom of the “Request for Court Adoption Records” form and place it in the court file.

CASE EXAMPLE #1: VARIATION

- What if you notice on Sally's ID that she is only 17 years of age?
- A court order is required before you can release the records.

Let's change the facts a little....

What if you notice on Sally's identification that she is only 17 years of age?

You should advise her a court order is required before you can release the records.

CASE EXAMPLE #2 (PARENT)

- Jeffrey Alvaro wants to find out who adopted his son. He is the biological parent. He insists there is a new law allowing access to adoption records, and wants to view the court file. What do you do?

Read.

CASE EXAMPLE #2: ANSWER

- Court staff: Advise him he needs a court order to access that information. Refer him to any existing court forms your court has for purposes of making that request.
- Judge:
 - Check to ensure a judgment has been entered and the child has reached age 18.
 - Determine if his rights were terminated/surrendered to DHS under ORS 419B.500/ORS 418.270. Note it for court staff.
 - Determine what standard to apply.

Court staff handling this request should advise Mr. Alvaro he needs a court order to access the information. Advise him he should file an appropriate motion to make the request and refer him to any existing court forms your court has for purposes of making the request.

For Judges, the first inquiry is whether an adoption judgment has been entered and the child has reached 18. Otherwise, subsection (6)(5) of Senate Bill 623 appears to prohibit disclosure.

Next, determine if his rights were terminated or surrendered, and note it for court staff.

This will inform you as to what standard to apply. Disclosure to a parent whose rights have been terminated or surrendered to DHS is subject to a showing of good cause. On the other hand, parents whose rights were not terminated or surrendered don't have to show good cause. The records are subject to release "except for good cause" subject to segregation and redaction requirements.

EXAMPLE # 2 (CONTINUED)

- Judge (continued):
 - Make good cause finding.
 - Consider whether only certain documents should be released, and specify those in the order.
 - Order further disclosure is prohibited (unless good cause is shown).
- Court staff:
 - Check the terms of the order to see which documents can be disclosed.
 - Segregate the ASSIS, home study, adoption report and medical history.
 - If the case was filed prior to 1/1/14, there will be no ASSIS. Redact any information that would have been contained in the ASSIS.

Next, the judge will make the applicable good cause finding.

If disclosure is allowed, the court should consider whether only certain documents should be released, and specify those in the order.

Finally, place a provision in the order prohibiting further disclosure of the information, unless good cause has been shown not to prohibit further disclosure.

Court staff should check the terms of the order to see if the court has provided any direction on which documents can be disclosed.

Next, segregate the home study, adoption report and medical history from the group of documents to be disclosed. Also, segregate the ASSIS.

If the case was filed prior to 1/1/14, there will be no ASSIS. Looking through the remaining documents that are subject to disclosure under the terms of the order, redact any information that would have been contained in the ASSIS. For a complete list of what this includes, please refer to the accompanying document, "SB 623: New Filing Requirements for Circuit Court Adoption Records"

**EXAMPLE #2: ANSWER
(CONTINUED)**

- If Mr. Alvaro's parental rights were terminated or surrendered to DHS, redact the name, address and other identifying information of any individual or entity other than the parent.
- Check his ID to verify his identity;
- Charge him \$25 for segregation, \$1 per page redacted, and 25 cents per page copied. (If you are reading this after November, 2013, the latest CJO on court fees may be higher).

Next, if the court determined Mr. Alvaro's parental rights were terminated or surrendered to DHS, redact the name, address or other identifying information of any individual or entity other than the parent to the extent that was not covered in the previous step.

Next, check his identification to verify his identity;

Finally, charge him \$25 for segregating the documents, \$1 for every page in which information was redacted and 25 cents for each page copied. After November, 2013, check the latest version of the Chief Justice Order on fees to determine if the fees have changed.

STILL HAVE QUESTIONS?

Contact Megan Hassen, Law and Policy Analyst,
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503.986.6403

Please feel free to contact me by phone or e-mail if you have any additional questions.