# Juvenile Legislative Update, August 2023

## Senate Bill 93

This summary only addresses the sections that require attention by OJD.

Section 5: Amends the definition of "abuse" in ORS 419B.005 to be "Any mental injury to a child, which shall include only **cruel or unconscionable acts or statements made, or threatened to be made, to a child if the acts, statements or threats result in severe harm to the child's psychological, cognitive, emotional or social well-being and functioning."** (language change in bold).

Section 8: Amends 419B.875 to include the Department of Human Services as a party to a juvenile dependency case if the **"department has taken the child or ward into protective custody"** in addition to when the agency has temporary custody.

## Senate Bill 202

SB 202 requires the Oregon Department of Human Services (DHS) to develop and administer a voluntary placement program to support young adults who were previously in DHS custody. The bill permits DHS to provide a young adult with financial support, a stable living situation and other necessary supports and also outlines the requirements for a young person to qualify. SB 202 directs that DHS will determine admission based on certain factors. Requires a young adult who is accepted to enter into a voluntary placement agreement with the department. The agreement must describe the roles and responsibilities of both parties clearly, and how the agreement will be terminated. Directs that the department is responsible for the young adult's placement and care, but clarifies the young adult is not in the legal custody of DHS.

SB 202 requires the court to make a judicial determination about best interests after 180 days, and to hold a permanency hearing pursuant to ORS 419B.476 if the young adult remains in voluntary placement for more than 12 months.

## Senate Bill 208

SB 208 amends ORS 419B.328 by adding a provision to address wardship after a permanent guardianship has been established in a juvenile dependency case.

Section 1**:** Adds subsection (3) to ORS 419B.328, which relates to the duration of wardship. Subsection (3) adds that, for a ward for whom a permanent guardianship has been granted, the court’s wardship shall continue and the child/ward is subject to the court’s jurisdiction until either (1) the court vacates the guardianship under ORS 419B.368 and subsequently enters an order terminating wardship or (2) the ward turns 21.

Section 2**:** Amends ORS 419B.365(6). As currently written, a permanent guardianship continues as long as the ward is subject to the court's jurisdiction, unless vacated under ORS 419B.368. The proposed change states that the guardianship continues unless vacated under ORS 419B.368 or until the ward becomes 21, removing the requirement that the ward remain subject to the court's jurisdiction.

Section 3**:** Amends ORS 419B.368 to require a party filing a motion to terminate wardship under ORS 419B.328 to serve the Department of Human Services (DHS) in all circumstances. The statute previously required DHS to be served only when the agency is a party or when a guardianship is in place.

## Senate Bill 209

SB 209 exempts child welfare records of a child's sexual orientation, gender identity, or gender expression (SOGIE) from public disclosure.

Section 1:

- Amends ORS 409.225 (relating to the confidentiality of child welfare records) to prevent disclosure of a child's sexual orientation, gender identity or gender expression, when the department may other disclose child welfare records.
- Exceptions apply if the department determines, in written findings, that failure to disclose is likely to jeopardize the child's safety or well-being, discolsure is necessary to provide services to the child or their family, or the child consents to disclosure.
- Defines "record of sexual orientation, gender identity or gender expression" as a written or recorded statement made by a child, or documentation thereof, in child welfare records that concern a child's SOGIE.

Section 2:

- Amends ORS 419B.035 (relating to the confidentiality of records related to child abuse reporting). Prohibits disclosure of SOGIE information when child welfare records are otherwise disclosed under 419B.035 (e.g., to a law enforcement agency for a subsequent investigation, to attorneys of record in a juvenile court proceeding).
- Exceptions apply if the department determines, in written findings, that failure to disclose is likely to jeopardize the child's safety or well-being, discolsure is necessary to provide services to the child or their family, or the child consents to disclosure.

Section 3:

- Amends ORS 419B.881 (relating to discovery obligations in juvenile court proceedings) to prohibit disclosure of a child's SOGIE information.
- Exceptions include if failure to disclose is reasonably likely to jeopardize the child's safety or well-being, or the child or child's attorney consents to disclosure.

## Senate Bill 212

SB 212 makes peer support communications confidential. Peer support participants, communication, team members and check-in session are defined. Relates to employees of the Oregon Youth Authority or county juvenile departments who provide and seek emotional and moral support. Peer support communications are not admissible in court or other adjudicative proceedings. Exceptions/limitations on disclosure include consent by the participant, threats of suicide or homicide, information relating to the abuse of children or the elderly, and admission of criminal conduct.

## Senate Bill 231

SB 231 requires the Department of Human Services (DHS) to establish a centralized child abuse reporting system. The system shall include a website for electronic reports. Permits mandatory reporters to make reports to the electronic system, hotline, or local law enforcement. Voluntary reports to be made to the hotline.

## Senate Bill 317

SB 317 corrects an inconsistency in the evidence code. Prior to SB 317 taking effect, ORS 40.460(18a)(b) required that hearsay statements of unavailable witnesses must be supported by corroborative evidence in a criminal trial. However, the law was silent about juvenile delinquency proceedings. In 2022, the court of appeals decided *State v. R.J.S.*, 318 Or App 351 (2022). The court held that corroborative evidence was only required in a criminal case. Now, under SB 317, ORS 40.460(18a)(b) provides that hearsay statements of abuse made by an unavailable witness must have both a sufficient indicia of reliability and must also be supported by corroborative evidence in delinquency proceedings (and retains the language of criminal trial). SB 317 adds "or juvenile delinquency proceeding" after the words "criminal trial".

## Senate Bill 519

SB 519 expands the circumstances that were first introduced by SB 575 (2021) under which a youth may be granted a presumptive expunction. SB 519 broadly requires the juvenile department to file an application for expunction for youth adjudicated of a violation or misdemeanor, after also reviewing several other qualifying factors.

Section 2 streamlines the expunction statutes applying to juvenile records.

- Subsections (1) and (2) include language that was previously present in ORS 419A.262, and adds language "without a hearing" to the subsection requiring the court to expunge a subject's record, if certain criteria are met. The law does not change in permitting the juvenile department to file an application for expunction for a youth who had contact with the juvenile department but was never found within the jurisdiction of the court. The other qualifying factors remain the same as previoulsy provided in statute.

- Subsection (3) directs the juvenile department to apply for expunction on behalf of a youth who was adjudicated for a violation or misdemeanor. It also directs the court to order expunction without a hearing if certain criteria are met. The other requirements must be sworn to in an affidavit as well, namely:
- The subject has never been found within the jurisdiction of the juvenile court for an act that would constitute a felony;
- No petition is pending alleging that the person is subject to juvenile court jurisdiction;
- The subject does not owe restitution;
- The subject has not had contact with the juvenile department leading to a conviction under ORS 137.707; and
- The subject has not been waived to criminal court pursuant to ORS 419C.349 or 419C.352.
- Subsection (4) lays out the requirements of what is required of the court, if the application is denied. Including, specifying the reason for denial, permitting the subject or juvenile department to refile, requiring the juvenile department to contact the subject, and providing notice of the person's right to an attorney.
- Subsections (5) provides the requirements for information contained in the applications either by the subject or the juvenile department.
- Subsection (6) requires the court or juvenile department to send a copy of the expunction judgment to all agencies subject to the judgment, and requires compliance within 60 days, and proof of compliance returned to the court or juvenile department. An extension may be granted. If granted, the juvenile department shall notify the court.
- Subsection (7) requires the juvenile court to provide a copy of the expunction judgment and a copy of the list of complying and noncomplying agencies to the subject. The court and department are then directed to expunge all records that are subject to the judgment, except the original expunction judgment and list of agencies that must be preserved under seal.

<u>Section 3</u> requires that applications for expunction under ORS 419A.262 and section 2 of the act shall be available from the clerk of the court. They must include a declaration. The State Court Administrator (SCA) is directed to prescribe the content and form of expunction judgments and those must include a place for the court to specify the method of expunction. The Oregon Youth Authority (OYA), in consultation with county juvenile departments and the SCA shall also develop statewide model forms for juvenile departments.

<u>Section 4</u> re-organizes the other expunction process, and decreases the time after which a person's most recent termination that they may file for expunction, from five years to four. It also adds that a person does not owe restitution to the list of requirements to be met when a court is directed to order expunction. Subection (18)(b) also provides a fix to allow agencies complying with expunction judgments 60 days, as

provided in the above circumstances. Additionally, juvenile departments are required to notify the courts if an extension is granted to an agency.

Section 6 provides a technical fix to ORS 419A.267(1), providing "A juvenile deparment in the county where the subject person resided at the time of the most recent contact shall issue a notice of expunction..." if the subject had contact with the juvenile department but was never the subject of a petition. Previously, the county was not specified.

Section 7

- Adds a provision allowing the juvenile department to destroy copies of records related to DHS contact, if they are duplicates, regardless of a pending application for expunction.
- Adds provision allowing the destruction of records related to motor vehicle, boating, or game violations that were waived to the criminal court. Specifies this does not equate to expunction.

Section 8 removes the requirement that a subject be financially eligible for appointed counsel.

Section 9 reorganizes ORS 419C.273, defining what is a critical stage of the proceeding, and adds a requirement that the DA or juvenile department shall notify the victim at or before the time of ajudication, of the expunction process laid out for adjudicated violations or misdemeanors.

All remaining sections provide conforming amendments.

## Senate Bill 556

SB 556 prohibits the Department of Human Services (DHS) from using "...funds, benefits, payments, proceeds, settlements, awards, inheritances, wages or any other moneys received by the department on behalf of the child for maintenance costs." Defines maintenance costs.

- Requires the department to establish separate accounts for each child for whom the department receives such moneys.
- Allows for the establishment of a trust or other privately held account established for the sole benefit of the child, at the request of the child or child's attorney or representative.

## Senate Bill 577

SB 577 amends ORS 161.205, defining circumstances where the use of physical force is justified, when it would otherwise be a criminal offense. ORS 161.205(1) no longer includes language that permits a parent, guardian, or other person entrusted with the care of an incompetent person to use reasonable physical force against the incompetent person. The statute now permits a parent or legal guardian to use

"reasonable physical force" against a minor, when the parent or guardian "reasonably believes" it necessary to maintain discipline or promote the welfare of the child. The force may not constitute abuse under ORS 418.257 or 419B.005.

Section 1 also amends the law relating to use of force in the public education setting. Language is now added to ensure that personnel may use physical force *only* (previous language permitted use of physical force "when and") to the extent that the application of force is consistent with ORS 339.285 to 339.303. It further prohibits the use of corporal punishment, as defined in ORS 339.250(9).

Section 1 also adds "...youth correction facility..." to the list of other jails and correctional facilities in ORS 161.205(2). This provision provides circumstances in which authorized officials of these facilities may use physical force.

Section 2 changes the description of what "corporal punishment" does not mean, under ORS 339.250(9)(b)(B)(i). It was previously defined to *not* include all physical force authorized by ORS 161.205. The law has narrowed this exception to only those circumstances where it is permitted under ORS 161.205(2), (4), & (5) (e.g., reasonable force by a parent as outlined above, to prevent suicide, in self-defense, or to prevent escape).

## Senate Bill 586

SB 586 was signed into law on May 16, 2023 and took effect on passage. SB 586 makes restorative justice communications confidential and creates a new provision.

Section 1:

- Defines "restorative justice communications" as all communications (written or oral), memoranda, work product, or other materials made during or in connection with any phase of a restorative justice program.
- Defines the following terms: offender, participant, restorative justice program, and survivor.
- A restorative justice program is defined as a "community-based program administered by a private or public entity that offers as a part of the program a facilitated dialogue between a crime victim or a survivor and the offender."

Section 2:

- Declares the following:
  - Restorative justice programs can promote justice and healing for crime victims and survivors.
  - The dialogue is most successful when participants can practice openness about the crime, with knowledge that communications will not be disclosed or used against them in subsequent proceedings.
  - The policy and purpose of the Act is that restorative justice communications are confidential, with limited exceptions.

Section 3:

- Establishes that restorative justice communications are confidential and exempt from public disclosure by program staff members, facilitators, participants, or any others providing support.
- Establishes that restorative justice communications are not admissible as evidence in any administrative or judicial proceeding.
- Provides exceptions to the confidentiality laid out above. Not confidential if:
    - Facilitator or staff believes disclosure is necessary to prevent commission of a crime that is likely to result in death or substantial bodily injury; or
    - Parties provide written consent.
- Any communication relating to child abuse made to a mandatory reporter is not confidential to the extent that the person is required to report under ORS 419B.010.
- Any communication relating to elder abuse is not confidential if made to a mandatory reporter.

## Senate Bill 865

Section 2: requires the Department of Human Services (DHS) to imediately begin searching for potential substitute care placements from among relatives when a child is placed into care. Also requires notice to parents and their relatives about placement preference and amends provisions relating to adoption placements with current caretakers and relatives.

Section 3: amends ORS 109.270 to take Indian Child Welfare Act (ICWA) placement preferences into consideration along with retaining adoption placement preferences to consider current caretakers and relatives equally. Also adds provision to allow consideration of a relative or current caretaker who was not previously selected if an adoption disrupts.

Section 4: amends ORS 419B.192 to include current caretakers in initial placement preference when a child is taken into care.

Section 5: amends ORS 419B.402 to provide that any child support arrears owed to the state of Oregon upon termination or relinquishment are deemed satisfied. Additionally gives the court authority to deem any arrears satisfied that are owed to the state of Oregon.

Section 6: Removes failure to pay a reasonable portion of substitute care and maintenance by a parent as a reason for termination of parental rights. Amends ORS 419B.506(1).

## Senate Bill 902

SB 902 was signed by the Governor on May 19, 2023, and became effective on passage. SB 902 permits a person who is 20 years of age or older at the time of resentencing for a crime committed when the person was under 18 years of age, to continue temporary assignment to a youth correctional facility (YCF) if they were temporarily assigned to a YCF following their original sentence.

This changes the law for the small number of youth who choose to seek a court remedy (e.g., appeal or post-conviction relief) relating to their conviction. If a youth was originally convicted as an adult but assigned temporarily to a YCF, they may be resentenced after the age of 20. Prior to the law change, they had to be transferred to DOC, even if their sentence was set to end before age 25. SB 902 now permits them to remain temporarily assigned to a YCF after resentencing.

## House Bill 2320

HB 2320 creates the Juvenile Justice Policy Commission (JJPC) within the CJC.

Section 1: Establishes the Juvenile Justice Policy Commission and lays out membership. It shall consist of 17 members, including one member to be appointed by the Chief Justice of the Supreme Court. The Governor shall appoint 12, the President of the Senate shall appoint two members of the Senate, and the Speaker of the House shall appoint two members of the House.

Section 2: Sets term lengths.

Section 3: Sets rules relating to officers, compensation, meeting expectations, staff support.

Section 4: Establishes duties of the JJPC. Requires analysis of the juvenile justice system at the state and local levels and recommendations for improvements. The Commission shall oversee data-driven and qualitative analysis to examine a variety of factors at play in the juvenile justice system. Requires a report to the legislature by September 1st of every even-numbered year. Requires the assistance of agencies of state government (OJD included).

Section 5: Initial report due September 1, 2024.

Section 6: Appropriates money from the General Fund to the Criminal Justice Commission, CJC.