

Supplemental Statutory Plain Language Comparison Resource for...

What Court-Connected Mediators Need to Know About Confidentiality

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Purpose of Resource

- This resource provides a plain language summary of specific Oregon mediation confidentiality statutes as of June 12, 2026.
- It does not cover all confidentiality statutes and should be used together with the other training resources, including:
 - The live (or recorded) oral presentation
 - The primary PowerPoint slide deck
 - The supplemental PFD handout.

All materials will be posted on the Oregon Judicial Department's [Mediator Resources Webpage](#).

Resource Disclaimers

- This resource **does not** provide the full picture, especially for:
 - Mediators who work outside the court context (i.e., exclusively in private practice or non-court-connected community resolution centers)
 - Cases involving executive branch state agencies.
 - Refer to confidentiality resources from the [Oregon Department of Justice](#) instead.
- **This resource and the related presentation materials are not a substitute for legal advice**
- This resource should not be used in place of statute. Statutes change over time. Always refer to the current [Oregon Revised Statutes](#) for the most accurate information.

Oregon Law: What is confidential?

ORS 36.220(1)

Plain Language

Assume mediation communication is confidential and cannot be shared unless one of the following applies:

1. The law specifically says the communication is not confidential
2. The law provides a specific exception to confidentiality
3. All parties agree in writing to waive some or all confidentiality protections

Statute

- 1) Except as provided in ORS 36.220 to 36.238:
 - a) **Mediation communications are confidential and may not be disclosed to any other person.**
 - b) The parties to a mediation may agree **in writing** that all or part of the mediation communications are not confidential.

Oregon Law: What is confidential?

ORS 36.220(2)

Plain Language

- Mediated settlement agreements are not confidential
- However, parties may agree in keep some or all of the agreement terms confidential.

Statute

- 2) Except as provided in ORS 36.220 to 36.238:
 - a) The terms of any mediation agreement are not confidential.
 - b) The parties to a mediation may agree that all or part of the terms of a mediation agreement are confidential.

Oregon Law: What is confidential?

ORS 36.220(3)

Plain Language

If a document or other material wasn't created specifically for the mediation, then it isn't confidential and can be requested or used in discovery.

Statute

- 3) Statements, memoranda, work products, documents and other materials, otherwise subject to discovery, that were not prepared specifically for use in a mediation, are not confidential.

Oregon Law: What is confidential?

ORS 36.220(4)

Plain Language

If something was a public record, it stays a public record and is subject to public record laws, even if introduced in mediation.

Statute

- 4) Any document that, before its use in a mediation, was a public record as defined in ORS 192.311 remains subject to disclosure to the extent provided by ORS 192.311 to 192.478.

Oregon Law: What is confidential?

ORS 36.220(5)

Plain Language

- 1) If someone is a mandatory child abuse reporter
- 2) and has reasonable cause to believe there is abuse based on mediation communications,
- 3) that communication is not confidential to the extent the law requires reporting.
- The same applies to elder abuse: If someone is a mandatory elder abuse reporter and has reasonable cause to believe there is abuse based on mediation communications, that communication is not confidential to the extent the law requires reporting.

Statute

- 5) Any mediation communication relating to child abuse that is made to a person who is required to report child abuse under the provisions of ORS 419B.010 is not confidential to the extent that the person is required to report the communication under the provisions of ORS 419B.010. Any mediation communication relating to elder abuse that is made to a person who is required to report elder abuse under the provisions of ORS 124.050 to 124.095 is not confidential to the extent that the person is required to report the communication under the provisions of ORS 124.050 to 124.095.

Oregon Law: What is confidential?

ORS 36.220(6)

Plain Language

If the mediator or a party reasonably believes someone might commit a crime that could kill someone or cause the person substantial bodily injury, they can share the mediation communication to help prevent the crime.

Statute

- 6) A mediation communication is not confidential if the mediator or a party to the mediation reasonably believes that disclosing the communication is necessary to prevent a party from committing a crime that is likely to result in death or substantial bodily injury to a specific person

Oregon Law: What is confidential?

ORS 36.220(7)

Plain Language

- A party can share mediation communications with anyone with whom they share a “Privileged Relationships.”
For example:
 - Lawyer
 - Spouse/domestic partner
 - Other legally protected relationships
- A party can also share confidential mediation communications with anyone else to get advice about the mediation, but only if all parties in the mediation agree.

Statute

- 7) A party to a mediation may disclose confidential mediation communications to a person if the party’s communication with that person is privileged under ORS 40.010 to 40.585 or other provision of law. A party may disclose confidential mediation communications to any other person for the purpose of obtaining advice concerning the subject matter of the mediation, if all parties to the mediation so agree.

Oregon Law: What is confidential?

ORS 36.220(8)

Plain Language

- Special rules apply when public bodies or state agencies are involved, as outlined
- Mediators should not assume mediation is confidential in cases involving public bodies or state agencies with regulatory authority.
- The Oregon Department of Justice created a resource about confidentiality, especially for cases involving public bodies: [DOJ Confidentiality Resource](#).

Statute

- 8) The confidentiality of mediation communications and agreements in a mediation in which a public body is a party, or in which a state agency is mediating a dispute as to which the state agency has regulatory authority, is subject to ORS 36.224, 36.226 and 36.230.

Admissibility and disclosure of mediation communications – ORS 36.222(1)

Plain Language

- Unless the law makes an exception, confidential mediation communications and confidential mediation agreements cannot be used as evidence in any later legal proceeding,
- Parties and the mediator cannot share confidential mediation communications or confidential mediation agreements in any later legal proceeding.

Statute

- 1) Except as provided in ORS 36.220 to 36.238, mediation communications and mediation agreements that are confidential under ORS 36.220 to 36.238 are not admissible as evidence in any subsequent adjudicatory proceeding, and may not be disclosed by the parties or the mediator in any subsequent adjudicatory proceeding.

Admissibility and disclosure of mediation communications – ORS 36.222(2) & ORS 36.222(3)

Plain Language

- **A party** can share confidential mediation communications or agreements in a later legal proceeding only if everyone from the mediation agrees in writing.

Statute

- 2) **A party** may disclose confidential mediation communications or agreements in any subsequent adjudicative proceeding if all parties to the mediation agree in writing to the disclosure.

Plain Language

- **A mediator** can share confidential mediation communications or agreements in a later legal proceeding only if everyone from the mediation agrees in writing

Statute

- 3) **A mediator** may disclose confidential mediation communications or confidential mediation agreements in a subsequent adjudicatory proceeding if all parties to the mediation, the mediator, and the mediation program, if any, agree in writing to the disclosure.

Admissibility and disclosure of mediation communications – ORS 36.222(4)

Plain Language

- In any legal proceeding to enforce, change, or void a mediation agreement, confidential mediation communications or agreements can be shared, but only as much as needed to handle the case.
- If a party asks, the court can seal parts of the record so the information is not revealed to anyone outside the agreement.

Statute

- 4) In any proceeding to enforce, modify or set aside a mediation agreement, confidential mediation communications and confidential mediation agreements may be disclosed to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

Admissibility and disclosure of mediation communications – ORS 36.222(5)

Plain Language

- If someone involved in a mediation later sues the mediator or the mediation program, confidential mediation communications or agreements can be shared, but only as much as needed to handle the case.
- If a party asks, the court can seal parts of the record so the information isn't disclosed any further.

Statute

- 5) In an action for damages or other relief between a party to a mediation and a mediator or mediation program, confidential mediation communications or confidential mediation agreements may be disclosed to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

Admissibility and disclosure of mediation communications – ORS 36.222(6)

Plain Language

- A mediator who is legally required to report child or elder abuse can share mediation communications about that abuse as needed to make the required report.

Statute

- 6) A mediator may disclose confidential mediation communications directly related to child abuse or elder abuse if the mediator is a person who has a duty to report child abuse under ORS 419B.010 or elder abuse under ORS 124.050 to 124.095.

Admissibility and disclosure of mediation communications – ORS 36.222(7)

Plain Language

- These limits on using or sharing mediation information in later cases apply to any court case, administrative case, or arbitration, and during discovery.
- No one can be forced to reveal confidential mediation information if this law says it must stay confidential.
- If the law allows certain confidential mediation information to be shared in a later case, then that information can also be used as evidence in that case.

Statute

- 7) The limitations on admissibility and disclosure in subsequent adjudicatory proceedings imposed by this section apply to any subsequent judicial proceeding, administrative proceeding or arbitration proceeding. The limitations on disclosure imposed by this section include disclosure during any discovery conducted as part of a subsequent adjudicatory proceeding, and no person who is prohibited from disclosing information under the provisions of this section may be compelled to reveal confidential communications or agreements in any discovery proceeding conducted as part of a subsequent adjudicatory proceeding. Any confidential mediation communication or agreement that may be disclosed in a subsequent adjudicatory proceeding under the provisions of this section may be introduced into evidence in the subsequent adjudicatory proceeding.

Disclosures for reporting, research, training & educational purposes – ORS 36.232(3)

Plain Language

In any court case sent to mediation:

- The court can require the parties or the mediator to tell the court how the mediation ended
- The court can share:
 - Which cases were referred to mediation
 - The outcome of mediation reported to the court

Statute

- 3) In any mediation in a case that has been filed in court, ORS 36.220 to 36.238 do not limit the ability of the court to:
- a) Require the parties or the mediator to report to the court the disposition of the mediation at the conclusion of the mediation proceeding;
 - b) Disclose records reflecting which matters have been referred for mediation; or
 - c) Disclose the disposition of the matter as reported to the court.

Disclosures for reporting, research, training & educational purposes – ORS 36.232(4)

Plain Language

Statute

- Mediators and mediation programs are allowed to use or share confidential mediation information for research, training, or education, but only under these conditions:
 - They can use or share the information only if it does not reveal who the parties are or which specific mediation it came from.
 - If they want to use or share information that does identify the parties or the specific mediation, they can do so only if all parties agree in writing or sign a written waiver of confidentiality.

- 4) ORS 36.220 to 36.238 do not limit the ability of a mediator or mediation program to use or disclose confidential mediation communications, the disposition of matters referred for mediation and the terms of mediation agreements to another person for use in research, training or educational purposes, subject to the following:
 - a) A mediator or mediation program may only use or disclose confidential mediation communications if the communications are used or disclosed in a manner that does not identify individual mediations or parties.
 - b) A mediator or mediation program may use or disclose confidential mediation communications that identify individual mediations or parties only if and to the extent allowed by a written agreement with, or written waiver of confidentiality by, the parties.

Effect on other laws– ORS 36.236

Plain Language

- These mediation-confidentiality rules do not change or override any confidentiality required by other laws, (including ORS 107.755 to 107.795).
- These rules also do not excuse any public body from following Oregon’s public-meetings and public-records laws.

Statute

- 1) Nothing in ORS 36.220 to 36.238 affects any confidentiality created by other law, including but not limited to confidentiality created by ORS 107.755 to 107.795.
- 2) Nothing in ORS 36.220 to 36.238 relieves a public body from complying with ORS 192.610 to 192.705.

Notice to court at completion of mediation – ORS 36.195(5)

Plain Language

- The mediator must tell the court whether the parties reached an agreement within set timeline.
- If the parties did not reach an agreement, the mediator may only report that fact — the mediator cannot recommend how to resolve the case unless all parties (or their lawyers) give written permission.
- After that, the case continues normally in court, either on an expedited schedule or the regular pretrial schedule.

Statute

- 3) Within 10 judicial days of the completion of the mediation, the mediator shall notify the court whether an agreement has been reached by the parties. If the parties do not reach agreement, the mediator shall report that fact only to the court, but shall not make a recommendation as to resolution of the dispute without written consent of all parties or their legal counsel. The action shall then proceed in the normal fashion on either an expedited or regular pretrial list.



Court-Connected Family Law Mediation



Privacy of proceedings; confidentiality of communications; record – ORS 107.785(1)

Plain Language

- Court-connected domestic relations mediation are private.
- The only people allowed in mediation are the mediator, the people involved in the case, their lawyers, and their children.
- Everyone else should be excluded

Statute

- 1) All mediation proceedings under ORS 107.755 (Court-ordered mediation) to 107.795 (Availability of other remedies) shall be held in private, and all persons other than mediation services personnel, the parties, their counsel and children of the parties shall be excluded.

Privacy of proceedings; confidentiality of communications; record – ORS 107.785(2)

Plain Language

- All communications made in mediation are confidential.
- No one can be forced to testify in court about what was said in mediation—civil or criminal—unless all parties in the mediation agree.
- The usual exceptions that might allow someone to be forced to testify do not apply to these confidential communications

Statute

- 2) All communications, verbal or written, made in mediation proceedings shall be confidential. A party or any other individual engaged in mediation proceedings shall not be examined in any civil or criminal action as to such communications and such communications shall not be used in any civil or criminal action without the consent of the parties to the mediation. Exceptions to testimonial privilege otherwise applicable under ORS 40.225 to 40.295 do not apply to communications made confidential under this subsection.

Privacy of proceedings; confidentiality of communications; record – ORS 107.785(3)

Plain Language

- All court records related to the mediation are closed to the public, except for:
 - Which cases were sent to mediation.
 - The mediator's official report to the court.
 - Information the court used to compile data.

Statute

- 3) All records of the court with respect to mediation proceedings shall be closed except for:
 - a) Records reflecting which cases have been referred for mediation under ORS 107.765 (1);
 - b) The mediator's report to the court made under the provisions of ORS 107.765 (2); and
 - c) Information used to compile statistical data.
[1983 c.671 §5; 1995 c.273 §19]

Report to court: outcome of mediation

ORS 107.765(2)

Plain Language

- The mediator must tell the court and the parties' attorneys whether the parties reached an agreement.
- If the parties reach an agreement, the mediator sends a written summary of that agreement to the court and the lawyers so it can be put into a proposed order or judgment.
- If the parties did not reach an agreement, the mediator may only report that fact — the mediator cannot recommend how to resolve the case unless all parties (or their lawyers) give written permission.

Statute

2. The mediator shall report to the court and to counsel for the parties the outcome of the mediation at the conclusion of the mediation proceeding. The mediator shall report in writing to the court and to counsel for the parties any agreement reached by the parties as a result of the mediation, and the agreement shall be incorporated in a proposed order or judgment provision prepared for the court. If the parties do not reach an agreement, the mediator shall report only that fact to the court and to counsel for the parties, but shall not make a recommendation to the court without the written consent of the parties or their counsel