

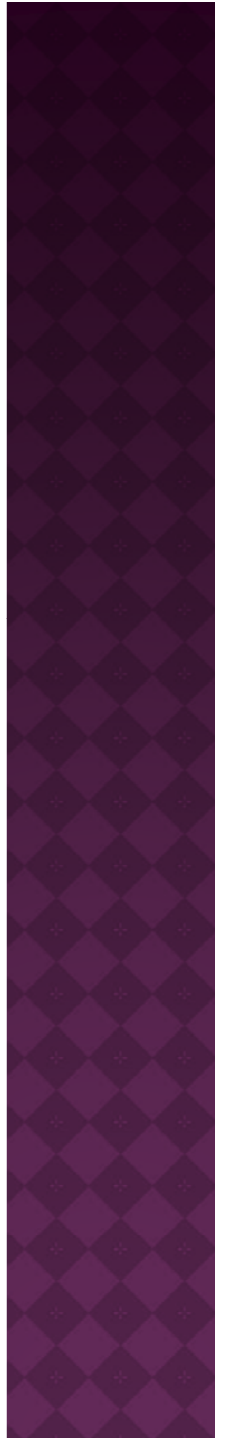


SENATE BILL 622

New Rules for
Juvenile Court Records

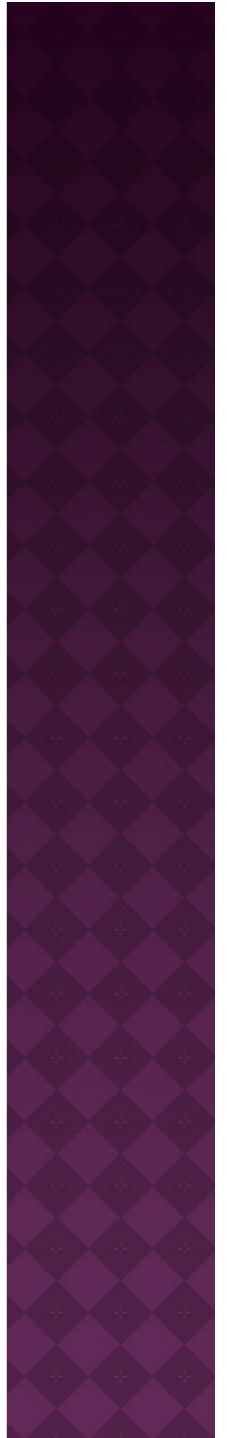
MAJOR CHANGES IN BILL

- Defines “record of the case” and “supplemental confidential file” in juvenile court proceedings.
- Requires court to keep and maintain a file with materials relating to history and prognosis, when such materials are submitted to the court.
- Clarifies requirements when judge takes judicial notice of fact or law. Retains requirement for “judicial notice” list.
- Clarifies rules for inspection and copying of record of the case and supplemental confidential file.
- Requires summary sheet of guardianship report in record of case, to be filed separately from report.



SOME CHANGES PROMPTED BY ADVENT OF OREGON ECOURT

- ⦿ Important to define “record of the case” and content of what used to be called “legal file” and “social file.”
- ⦿ Important to clarify how court should handle “social file” materials.
- ⦿ Important to define precisely who gets access to what documents and delete requirement that some records be physically returned to the court.



EFFECTIVE DATE

- ◉ Most provisions apply to juvenile court proceedings commenced on/after January 1, 2014, except court granting access to “any other person” applies on/after July 1, 2014.
- ◉ As of now, all provisions are prospective only but OJD proposing amendments in February 2014 so that access rules will be retroactive and apply to existing cases.
- ◉ New definitions for ROC/SCF and requirement for court to maintain SCF would apply only prospectively.

SECTION ONE: DEFINITIONS

- ◉ “Legal file” now called “record of the case” “ROC”
- ◉ “Social File” now called “supplemental confidential file” “SCF”
- ◉ “Person” defined to include public bodies
- ◉ “Prospective appellate attorney” defined as an attorney designated by office of public defense services (OPDS) when case referred for appeal.

WHAT THE RECORD OF THE CASE CONTAINS: SECTION 1 (3)

- ◉ Summons/other process
- ◉ Petitions
- ◉ Papers in nature of pleadings, answers, motions, affidavits, and other papers filed with the court, including supporting documentation
- ◉ Local CRB findings and recommendations
- ◉ Guardianship report summary sheet now required by Section 6, amending ORS 419B.367
- ◉ Orders and judgments, including supporting documentation
- ◉ Transcripts
- ◉ Exhibits and materials offered as exhibits whether or not received in evidence
- ◉ Other documents that become part of the record by operation of law
- ◉ May include electronic records

WHAT THE SCF CONTAINS: SECTION 1(4)

- ❖ Reports and other material relating to the child, ward, youth or youth offender's history and prognosis, including but not limited to reports from DHS, guardians or custodians that:
 - (A) Are not or do not become part of the record of the case; and
 - (B) Are not offered or received as evidence in the case.
- ❖ May include electronic records

SECTION 3: EXPANDS WHAT MUST BE MAINTAINED BY COURT

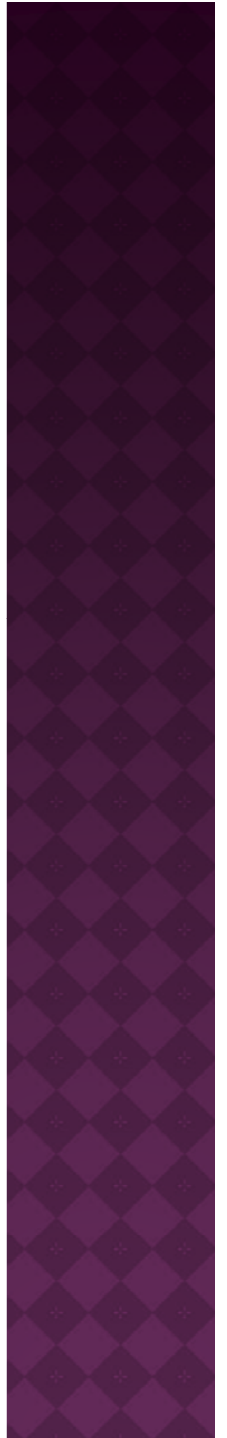
- Clerk of the court is to maintain both the “record of the case” and the SCF.
- **Exhibits** can still be returned to attorneys as provided in ORS 7.120. [PJ to establish a process for the return of exhibits to attorneys, destruction or other disposition of exhibits.]

SCF DOCUMENTS IN ODYSSEY

- ◉ Detailed instructions will be coming from Oregon eCourt program staff.
- ◉ The SCF will be associated with a particular juvenile **case**, instead of with a particular child.
- ◉ Upon receiving an SCF document, the clerk will enter it on the Documents Tab as a new document type "SCF."
- ◉ If an SCF document becomes an **exhibit** the clerk will designate and it will move to the Register of Actions, thereby making it part of the ROC.

NO SCF IN EXISTING CASES

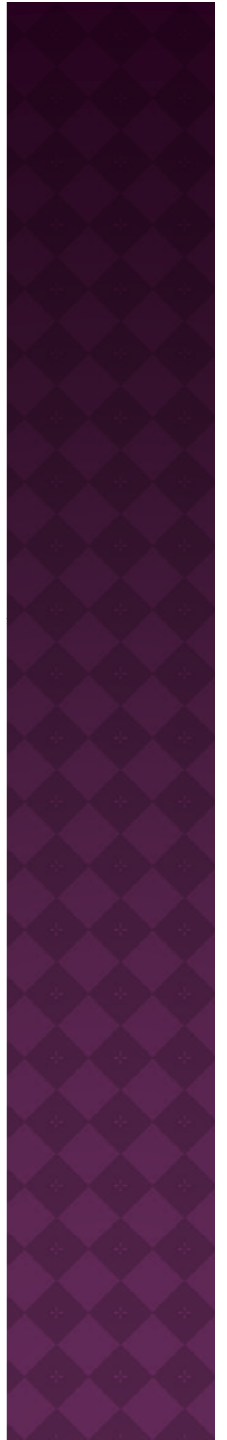
- Court must maintain a SCF only for cases filed after January 1, 2014
- For new cases, any “history and prognosis” materials that are submitted to the court will be maintained in the SCF unless they are marked and offered or received as exhibits.
- The idea was to create an SCF “container” separate from the court record to hold history/prognosis materials that are submitted to the court.



SECTION TWO: JUDICIAL NOTICE

- Clarifies that judge must identify on the record fact or law which court **intends to rely upon, including information in the SCF.**
- Retains requirement that judge take judicial notice, or make the information relied on an exhibit, subject to parties' objection.
- Clarifies court can take judicial notice only of specific "fact or law in the information" and cannot take judicial notice of entire documents.
- Retains requirement that court must create a list of judicially noted facts or law with reference to the source of the facts or law.
- The judicial notice list and any exhibits created by judge become part of the "record of the case"

**ACCESS RULES ARE
DIFFERENT FOR THE
RECORD OF THE CASE AND
THE SCF**



WHO MAY INSPECT THE RECORD OF THE CASE [SECTIONS 3(1) AND 11]

- ◉ The judge and those “acting under the judge's direction.”
 - CRB staff are treated like court staff and have access pursuant to ORS 419A.102(1)(a) to “any records of the court which are pertinent to the case.”
- ◉ Child/Ward/Youth/Youth offender (YO)
- ◉ Parent of Child/Ward/Youth/YO
- ◉ Guardian ad litem (GAL) for parent
- ◉ Surrogate
- ◉ Intervenor
- ◉ Service providers
- ◉ CASA and representative of CASA program
- ◉ Attorneys/prospective appellate attorneys for anyone listed above.
- ◉ DA/AG representing party
- ◉ Juvenile Department/DHS/OYA
- ◉ Any other person the court allows (Provision not effective until July 1, 2014)

WHO MAY COPY RECORD OF THE CASE

- ◉ Judge and staff
- ◉ CRB
- ◉ Parties as permitted under 419B.875(2)/419C.285(2)
- ◉ GAL to same extent as parent
- ◉ Service providers
- ◉ CASA and rep of program
- ◉ DA/AG representing party
- ◉ Juvenile Department, DHS, OYA
- ◉ Attorneys/Prospective appellate attorneys for all listed above
- ◉ Effective July 1, 2014: *Any other person court allows*
- ◉ ORS 419B. 875 allows parties in dependency cases to copy: 'Petitions, answers, motions, and other papers.'
 - "Other papers" interpreted differently by different courts.
- ◉ ORS 419C.285(2) gives parties in delinquency cases the right to 'copies of the pleadings.'
 - ORS 419C.285(1) defines parties differently at adjudication and disposition

SUMMARY OF CHANGES COPYING RIGHTS TO RECORD OF THE CASE

No changes to existing law except to expressly grant rights to:

- ◉ The judge and ‘those acting under judges direction”
- ◉ Guardian Ad Litem (GAL) given same rights as parents
- ◉ Service providers
- ◉ CASA and representative of CASA program
- ◉ Prospective appellate attorneys
- ◉ “Any other person the court allows”

WHO MAY INSPECT SUPPLEMENTAL CONFIDENTIAL FILE?

YES

- Judge, staff, CRB
- Parent/Guardian of child/ward and Guardian ad litem for parent in dependency case
- DA/AAG representing party
- Juvenile department/DHS/OYA staff
- Attorneys/prospective appellate attorneys for:
 - Child/ward/youth/youth offender
 - Parent/guardian of child/ward/youth/youth offender
 - Guardian ad litem for parent
- Surrogates, interveners, service providers and CASAs/CASA offices
 - Attorneys representing these parties are not listed as inspectors but since the four identified participants are entitled to inspect their lawyers should also be entitled.
- Any other person the court allows (effective July 1, 2014)

CONDITIONAL

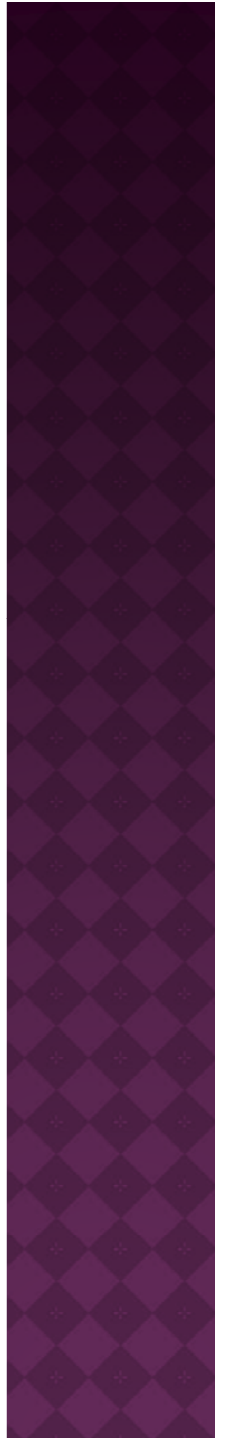
- Child/ward/youth/YO may NOT inspect but attorney may.
- Parent/guardian/Guardian ad litem of youth/youth offender ONLY with consent of youth/youth offender
- Superintendent of district where youth resides may inspect if jurisdiction taken in delinquency proceeding

SUMMARY OF CHANGES TO SCF INSPECTION RIGHTS

- ◉ Prior law confusing (ORS 419A. 255(2))
- ◉ SB 622 now clearly provides that all parents, guardians, GALs for parents, CASA's, surrogates and intervenors have SCF inspection rights in dependency cases.
- ◉ In delinquency cases, parents, guardians and GALs for parents need the consent of the youth/youth offender to inspect the SCF or authorization from the court.

WHO MAY COPY THE SCF?

- ◉ Judges/staff/CRB
 - ◉ Service providers
 - ◉ CASA/Rep of CASA
 - ◉ DA/AG representing party
 - ◉ Juvenile department
 - ◉ DHS
 - ◉ OYA
 - ◉ Superintendent/designee who is entitled to inspect
 - ◉ Any other person court allows (effective July 1, 2014).
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- ◉ Attorneys/prospective appellate attorneys for:
 - Child/ward/youth/YO
 - Parent or guardian of child/ward/youth/YO
 - Guardian ad litem for parent
 - Intervenor, including tribe in ICWA cases



NOTABLE DIFFERENCES IN ACCESS TO RECORD OF CASE AND SCF

- ◉ Child/ward/youth/YO may inspect record of case but not SCF except through attorney.
- ◉ Parent/guardian/GAL may inspect record of case but not SCF in delinquency cases w/o youth/YO's consent.
- ◉ School superintendent and designees may not inspect record of the case but can inspect and copy SCF in delinquency cases
- ◉ Parties have limited copy rights to both files.

MUST MAINTAIN CONFIDENTIALITY OF SCF MATERIALS

- SCF content or any material relating to history and prognosis is privileged and continues to be privileged whether maintained in SCF or when the material becomes part of record of the case.
- Any person - including the court - who gets copies of SCF or any history/prognosis materials in record of the case is responsible for maintaining confidentiality.
 - Except such material may be disclosed for purposes of special ed evaluation of child/ward/youth/YO.
- Service provider, superintendent/designee must **destroy** copies at conclusion of case.



INFORMATION THAT COURT AND JUVENILE DEPT. MAY DISCLOSE

For all youth/YO

- ◉ Name/DOB
- ◉ Basis for jurisdiction
- ◉ Date/time/place of proceeding
- ◉ Act alleged in petition
- ◉ Part of order for legal disposition
- ◉ Case register

Section 3(8) Only
court/juvenile department
may disclose except

For youth/YO in custody on felony
unless clear need to delay
disclosure in course of
investigation, including need to
protect complaining
party/victim:

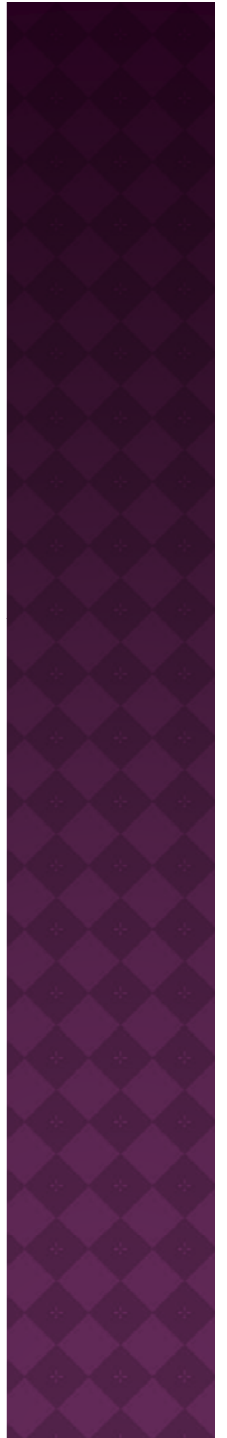
- ◉ Name/age
- ◉ Whether employed/in school
- ◉ Offense for which in custody
- ◉ Name/age of adult complaining party/adult victim (unless otherwise prohibited)
- ◉ ID of investigating/arresting agency
- ◉ Time/place taken into custody and whether resistance, pursuit or weapon used.

DHS may report "young persons on conditional release" to schools

OYA may give notice when YO transfers to new school district.

COURT DISCLOSURE OF OFFICIAL RECORDING OF PROCEEDING: SECTION 4 AND 8

- ◉ ORS 419A. 256 unchanged in that court may provide access **but not copies** of official audio, video or other record of proceeding to any of the persons entitled to inspect the record of the case.
- ◉ Remainder of Section 4 contains unchanged provision moved from 419A.255 under which court provides, upon motion, free transcript to those without financial means.
- ◉ 419A.200(10) is amended to authorize court on appeal from judgment in juvenile court proceeding to consent to disclosure of audiotape or videotape of oral proceeding on appeal.
(section 8)



SECTION FIVE: OYA AND JUVENILE DEPARTMENT REPORTS AND MATERIALS

- ◉ Rules essentially unchanged from previous provision in ORS 419A.255(2). Moved to ORS 419A.257. Leaves court as gatekeeper.
- ◉ Materials are privileged/OYA and Juvenile Departments must not disclose except:
 - With consent of child, ward, youth, YO
 - With authorization from court
 - Information shows clear and immediate danger
 - If necessary for special ed evaluation under ORS chapter 243.
 - If necessary to perform official duties may disclose and copy to each other, the court, service providers, school superintendant/designee, attorneys representing child/ward/youth/YO or party, DA/AAG, DHS, CASA, PSRB.
 - Persons with copies must maintain confidentiality
 - Service providers and school superintendants/designee must destroy copies after involvement in case. (Previous law required them to return copies to the court)

QUESTIONS?



Juvenile Court Improvement Program
Oregon Judicial Department

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