

Chapter 419A

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Juvenile Code: General Provisions and Definitions

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GENERAL PROVISIONS

419A.002 Juvenile court; jurisdiction; policy. (1) The juvenile court is a court of record and exercises jurisdiction as a court of general and equitable jurisdiction and not as a court of limited or inferior jurisdiction. The juvenile court is called "The Court of _____ County, Juvenile Department."

(2) It is the policy of the State of Oregon to recognize that children are individuals who have legal rights and are not chattels of their parents or guardians. The provisions of this chapter and ORS chapters 419B and 419C shall be liberally construed to the end that a child coming within the jurisdiction of the court may receive such care, guidance, treatment and control as will lead to the child's welfare and the protection of the community. Although there is a strong preference that children live in their own homes with their own families, the state recognizes that this is not always possible or in the best interests of the child or the public.

(3) The State of Oregon recognizes the value of the Indian Child Welfare Act, 25 U.S.C. §§1901 to 1923, and hereby incorporates the policies of that Act. [1993 c.33 §1; 1993 c.546 §1]

419A.004 Definitions. As used in this chapter and ORS chapters 419B and 419C, unless the context requires otherwise:

(1) "CASA Volunteer Program" means a program approved or sanctioned by the juvenile court to recruit, train and supervise volunteer persons to serve as court appointed special advocates.

(2) "Child" means a person within the jurisdiction of the juvenile court as provided in ORS 419B.100 and 419C.005.

(3) "Child care center" means a residential facility for the care and supervision of children that is licensed under the provisions of ORS 418.240.

(4) "Community service" has the meaning given that term in ORS 137.126.

(5) "Conflict of interest" means a person appointed to a local citizen review board who has a personal or pecuniary interest in a case being reviewed by that board.

(6) "Counselor" means a juvenile department counselor.

(7) "Court" means the juvenile court.

(8) "Court appointed special advocate" or "CASA" means a person appointed by the court pursuant to a CASA Volunteer Program to act as special advocate for a child pursuant to ORS 419A.170.

(9) "Detention" or "detention facility" means a facility established under ORS

419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of dependent or delinquent children pursuant to a judicial commitment or order.

(10) "Director" means the director of a juvenile department established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063.

(11) "Division" means the Children's Services Division.

(12) "Guardian" means guardian of the person and not guardian of the estate.

(13) "Indian child" means any unmarried person less than 18 years of age who is:

(a) A member of an Indian tribe;

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe; or

(c) Covered by the terms of an Indian Child Welfare Act agreement between Oregon and an Indian tribe.

(14) "Juvenile court" means the court having jurisdiction of juvenile matters in the several counties of this state.

(15) "Local citizen review board" means the board specified by ORS 419A.090 and 419A.092.

(16) "Parent" means the biological or adoptive mother of the child and the legal or adoptive father of the child. A legal father includes:

(a) A nonimpotent, nonsterile man who was cohabiting with his wife, who is the mother of the child, at the time of conception;

(b) A man married to the mother of the child at the time of birth, where there is no decree of separation and the presumption of paternity has not been disputed;

(c) A biological father who marries the mother of the child after the birth of the child;

(d) A biological father who has established or declared paternity through filiation proceedings or under ORS 416.400 to 416.470; and

(e) A biological father who has, with the mother, established paternity through a joint declaration of paternity under ORS 109.070.

(17) "Records" means any information in written form, pictures, photographs, charts, graphs, recordings or documents pertaining to a case.

(18) "Resides" or "residence," when used in reference to the residence of a child, means the place where the child is actually living and not the legal residence or domicile of the parent or guardian.

(19) "Restitution" has the meaning given that term in ORS 137.103.

(20) "Shelter care" means a home or other facility suitable for the safekeeping of a child who is taken into temporary custody pending investigation and disposition where the circumstances are such that the child does not need to be kept in secure custody.

(21) "Substitute care" means an out-of-home placement directly supervised by the division or other agency, including placement in a foster family home, group home or other child caring institution or facility. "Substitute care" does not include care in:

(a) A detention facility, forestry camp or training school;

(b) A family home which the court has approved as a child's permanent placement, where a private child caring agency has been appointed guardian of the child and where the child's care is entirely privately financed; or

(c) In-home placement subject to conditions or limitations.

(22) "Surrogate" means a person appointed by the court to protect the right of the child to receive procedural safeguards with respect to the provision of free appropriate public education.

(23) "Tribal court" means a court with jurisdiction over child custody proceedings and that is either a Court of Indian Offenses, a court established and operated under the code of custom of an Indian tribe or any other administrative body of a tribe that is vested with authority over child custody proceedings.

(24) "Youth care center" has the meaning given that term in ORS 420.855. [1993 c.33 §2; 1993 c.546 §2]

COUNTY JUVENILE DEPARTMENT

419A.010 Appointment of counselors and director. (1)(a) Subject to paragraph (b) of this subsection, the governing body of any county, after consultation with the judges of the juvenile court in that county, shall appoint or designate one or more persons of good moral character as counselors of the juvenile department of the county, to serve at the pleasure of and at a salary designated by the governing body of the county.

(b) The governing bodies of two or more contiguous counties may, pursuant to an agreement between the counties concerned, and after consultation with the judges of the juvenile courts in those counties, jointly appoint one or more persons of good moral character as counselors of the juvenile departments of the counties, to serve at the

pleasure of and at a salary designated by the governing bodies of the counties concerned.

(c) When more than one person is appointed under this subsection, the appointing authority may designate one as director of the juvenile department or departments and the others to serve as juvenile counselors or staff members.

(d) Additional qualifications for a person appointed director of a juvenile department of a county under this subsection may be established by the governing body of a county, subject to the approval of such qualifications by the judge of the juvenile court in that county.

(e) When the chairperson of the governing body of the county is also the judge of the juvenile court under ORS 5.020, only the judge shall make the decisions described in this subsection.

(2) The director shall be the administrator of the juvenile department or departments for the county or counties, including any juvenile detention facilities maintained by the county or by the counties jointly, and the supervisor of the staff of the juvenile department or departments and detention facilities, subject to the direction of the appointing authority. [1993 c.33 §4; 1993 c.546 §3]

419A.012 Duties of director or counselor. The director of a juvenile department or one of the counselors shall:

(1) Make or cause to be made an investigation of every child brought before the court and report fully thereon to the court.

(2) Be present in court to represent the interests of the child when the case is heard.

(3) Furnish such information and assistance as the court requires.

(4) Take charge of any child before and after the hearing as may be directed by the court. [1993 c.33 §5]

419A.014 Reports by juvenile department. The juvenile department of a county shall report annually to the State Commission on Children and Families the frequency with which juveniles are held in preadjudicative detention and the duration of the detention. [1993 c.33 §6]

419A.016 Powers of director or counselor. Any director or counselor shall have power of a peace officer as to any child committed to the care of the director or counselor. Any director or counselor may, in the discretion of the director or counselor and at any time, bring a child committed to the custody and care by the juvenile court before such court for any further action the court considers advisable. [1993 c.33 §7]

419A.018 Juvenile department is county agency. Except as provided in ORS 419A.010, the juvenile department of a county is and shall be considered a county agency for all purposes. [1993 c.33 §15]

419A.020 County responsibility for expenses of juvenile department. (1) The cost of maintaining a juvenile department and all expenditures incidental thereto, including traveling expenses, and necessarily incurred in supplying the immediate necessities of dependent or delinquent children while committed to the charge of a director or counselor, and all salaries for the personnel of a juvenile department and of any detention facilities maintained in the county, shall be payable upon the order of the board of county commissioners or county court of the county from county funds budgeted and levied for that purpose in any manner provided by law.

(2) When two or more counties have counselors appointed to serve the counties jointly, each county shall provide funds to pay its share of the costs and expenses of the employment of counselors and maintaining juvenile departments. The method of determining the portion of such costs and expenses each county is to bear shall be provided in the agreement made between the counties under ORS 419A.010 (1)(b). [1993 c.33 §16]

419A.022 Responsibility of counties over 400,000 population. The board of county commissioners or county court of counties having more than 400,000 inhabitants, according to the latest federal decennial census, shall provide proper accommodations for detention rooms and hospital wards, as may be necessary for the care, custody and discipline of minor children. The expense of the same shall be audited and paid in the same manner as other bills in such county are audited and paid. [1993 c.33 §17]

DETENTION FACILITIES

419A.050 Authority to acquire, equip and maintain detention facilities. (1) Any county may acquire in any lawful manner, equip and maintain within the county suitable detention facilities for the detention of dependent and delinquent children confined pursuant to a judicial commitment or order pending final adjudication of the case by the juvenile court.

(2) Where two or more counties have entered into an agreement under ORS 419A.010, the counties jointly may acquire in any lawful manner, equip and maintain, at a suitable site or sites in the counties, detention facilities suitable for the detention

of dependent and delinquent children confined pursuant to judicial commitment or order pending final adjudication of the case by the juvenile court. [1993 c.33 §8; 1993 c.546 §4]

419A.052 Specifications of facilities. (1) Suitable detention facilities shall be of Class I construction and comply with Oregon Structural Specialty Code and Fire Life Safety Code of the State Fire Marshal. In addition, the facilities shall provide:

- (a) Sanitary drinking water in living units and dayrooms;
- (b) Toilets and washbasins accessible to juveniles in all housing and activity areas;
- (c) At least one shower for every 10 detainees;
- (d) A heating system and all equipment required to insure healthful and comfortable living and working conditions for juveniles and staff, and which maintains a temperature no lower than 64 degrees;
- (e) Lighting at 20 footcandles density; and
- (f) Verbal or mechanical communications from sleeping rooms to staff.

(2) New or major renovated facilities shall conform to the requirements of subsection (1) of this section and shall also provide:

- (a) That any single sleeping rooms located therein are at least 70 square feet and that any dormitories located therein are at least 50 square feet per occupant and house no more than five individuals each;
- (b) At least one toilet and washbasin for every five detainees;
- (c) Corridors of at least six feet in width;
- (d) Thirty square feet of dayroom space per child;
- (e) Heating units capable of maintaining 68 to 85 degrees temperature;
- (f) Tamper-proof lighting with capability of 20 footcandles;
- (g) Air circulation of 10 cubic feet of fresh air per minute, per occupant;
- (h) Sleeping rooms' water valves accessible for staff control;
- (i) Rooms provided for classes, library, arts and crafts; and
- (j) Indoor and outdoor recreation and exercise areas. [1993 c.33 §9]

419A.055 Examination of facilities; capacity limits. The county court or board of commissioners of a county may institute an examination of the county's juvenile detention facility and establish the maximum number of juveniles that may be held in accordance with constitutional standards in the

facility at any given time. If a county court or board of commissioners adopts a capacity limit on the number of juveniles that may be held in the detention facility and the number of juveniles held in the juvenile facility exceeds the established capacity, the county, through the juvenile department director, shall immediately notify the judge of the juvenile court who shall authorize the release of a sufficient number of juveniles to reduce the population of the detention facility to the established capacity. [1993 c.33 §10]

419A.057 Payment of maintenance expenses. (1) All expenses incurred in the maintenance of the facilities for detention and the personnel required therefor, except as otherwise provided in subsection (2) of this section, shall be paid upon order of the board of county commissioners or county court from county funds duly levied and collected in any manner provided by law. When joint detention facilities are maintained as provided in ORS 419A.050 (2), each county shall pay its share of the costs and expenses of acquiring, equipping and maintaining the joint detention facilities, to be determined pursuant to an agreement between the counties. Counties may accept gifts or donations of property, including money, for the use of detention facilities to be expended and used as directed by the board of county commissioners.

(2) When a county operates a combined facility to provide both care and rehabilitation services, under ORS 420.855 to 420.885, and detention facilities, the county may also receive state support for such care and rehabilitation services as permitted by ORS 420.880.

(3) When a county operates a combined facility as described in subsection (2) of this section, only those juveniles shall be admitted to the youth care center of such facility who:

(a) Are 12 years of age or older;

(b) Have been found to be within the jurisdiction of the juvenile court as a result of an adjudication of a petition filed by reason of ORS 419C.005; and

(c) Have had the placement in such combined facility reviewed by the juvenile court. [1993 c.33 §11; 1993 c.546 §5]

419A.059 Designation of detention and shelter facilities. The juvenile court of each county shall designate the place or places in which children are to be placed in detention or shelter care when taken into temporary custody. If the county is adjacent to another state, the court may designate a place or places in the adjoining state where children, pursuant to an agreement between such place or places and the juvenile department

of the county, may be placed in detention when taken into custody. A county juvenile department shall not enter into an agreement with an out-of-state place for detention of juveniles, as provided in this section, unless the place or places conform to standards of this state for such a place and unless the agreement includes a provision that the place be subject to inspection by officers of this state under ORS 419A.061. [1993 c.33 §12]

419A.061 Inspection of detention facilities. Inspection of juvenile detention facilities, including jails or lockups where juveniles are detained, and enforcement of those juvenile detention standards contained in ORS 419A.059 or otherwise established by statute, shall be conducted in the same manner as provided in ORS 169.070 and 169.080. [1993 c.33 §13]

419A.063 Requirements for detention facilities. (1) The juvenile court shall not place a child in a detention facility for children under ORS 419C.453 unless the facility:

(a) Houses children in a room or ward screened from the sight and sound of adults who may be detained in the facility; and

(b) Is staffed by juvenile department employees.

(2) In no case may the court order, pursuant to ORS 419C.453, that a child under 14 years of age be placed in any detention facility in which adults are detained or imprisoned. [1993 c.33 §14]

LOCAL CITIZEN REVIEW BOARDS

419A.090 Establishment of local citizen review boards. Subject to the availability of funds, the Judicial Department shall establish local citizen review boards. There shall be at least one local citizen review board in each county with a population of 5,000 or more, except that for two or more contiguous counties, each with a population of fewer than 100,000, there may be joint local citizen review boards. [1993 c.33 §18]

419A.092 Membership; training. (1) Each local citizen review board shall be composed of at least three and not more than seven members appointed by the Chief Justice of the Supreme Court of the State of Oregon. If more than five members are appointed to a local citizen review board, the additional members serve as alternate members. Each member appointed shall be sworn in by a judge of the court to which the member is to be appointed to serve. The Chief Justice shall appoint local citizen review boards according to the following guidelines:

(a) Members of each local citizen review board shall be recruited from groups with

special knowledge or interest in foster care and child welfare which may include but shall not be limited to adoptive parents and members of the professions of law, medicine, psychology, social work and education;

(b) As far as practicable, members of each local citizen review board shall represent the various socioeconomic and ethnic groups of the area served;

(c) No person employed by the Children's Services Division, by any private agency regulated, certified, directed or licensed by or contracting with the division or by any juvenile court shall serve on any local citizen review board;

(d) The appointment of any individual member of a local citizen review board shall be made only from a list approved by the presiding judge of the court to which the individual member is to be appointed to serve; and

(e) Members of local citizen review boards must be domiciled within the counties of the court that they are appointed to serve.

(2) Prior to reviewing cases, all persons appointed to serve as local citizen review board members shall participate in a 16-hour orientation training program established and approved by the Supreme Court of the State of Oregon. In addition, each local citizen review board member must receive eight hours of training annually. [1993 c.33 §19; 1993 c.412 §1]

419A.094 Additional boards; creation. Local citizen review boards shall be added when the number of cases requiring review by existing boards exceeds a number per month established by rule under ORS 419A.096, as the maximum number that may be reviewed by a single board. [1993 c.33 §20]

419A.096 Duties of Judicial Department in administering boards. (1) Subject to the availability of funds, the Judicial Department, in accordance with the direction of the Supreme Court of the State of Oregon, shall:

(a) Establish and approve policies and procedures for the operation of local citizen review boards;

(b) Approve and cause to have conducted training programs for local citizen review board members;

(c) Provide consultation services on request to local citizen review boards;

(d) Establish reporting procedures to be followed by the local citizen review boards to provide data for the evaluation of ORS 419A.090 to 419A.128, 419B.470, 419B.473, 419B.476, 419B.500 and 419B.502; and

(e) Employ staff and provide for support services for the local citizen review boards.

(2) The Supreme Court shall establish requirements and procedures necessary for compliance with subsection (1) of this section and shall direct the State Court Administrator to carry out duties prescribed by the Supreme Court relating to the administration of the local citizen review board program established under this ORS 419A.090, 419A.092, 419A.094 and 419A.098. [1993 c.33 §21]

419A.098 Rulemaking by Judicial Department. The Chief Justice, in consultation with the Supreme Court, shall adopt rules under ORS 1.002 that may include any procedures for the administration of the local citizen review board program regarding:

(1) Removal of members of local citizen review boards;

(2) The time, content and manner in which case plans and case progress reports shall be provided by the division or other agency or individual directly responsible for the care of the child to the local citizen review board. These rules may require that such information be provided in shorter time periods than those contained in ORS 419B.443, and that information in addition to that specified by ORS 419B.443 be provided;

(3) Procedures for providing written notice of the review to the division, any other agency directly responsible for the care or placement of the child, the parents or their attorneys, foster parents, surrogate parents, mature children or their attorneys, the court-appointed attorney or court appointed special advocate of any child, any district attorney or attorney general actively involved in the case and other interested persons. The notice shall include advice that persons receiving a notice may participate in the hearing and be accompanied by a representative;

(4) Procedures for securing or excusing the presence at the review of caseworkers and other employees of the division or other agencies directly responsible for the care of the child;

(5) Procedures by which boards can remove cases from review when such review is not required under federal law;

(6) Grounds for removal of members;

(7) Terms of board members; and

(8) Organization of individual boards. [1993 c.33 §23; 1993 c.546 §6]

419A.100 Confidentiality of information; penalty. (1) Before beginning to serve on a local citizen review board, each member shall swear or affirm to the court that the member shall keep confidential the information reviewed by the board and its actions and recommendations in individual cases.

(2) The members and staff of a local citizen review board are not subject to subpoena to appear in court to testify regarding information reviewed by the board or actions taken or recommendations made by the board in individual cases.

(3) A member of a local citizen review board who violates the duty imposed by subsection (1) of this section commits a violation punishable by a fine not exceeding \$1,000. [1993 c.33 §27; 1993 c.412 §3]

419A.102 Access to confidential information by boards; procedure. (1) Notwithstanding the provisions of ORS 40.225 to 40.275, 418.130, 419B.035, 419B.045, 419B.440, 419B.443, 419B.446, 419B.449, 419B.452 and 419B.460, each local citizen review board shall have access to:

(a) Any records of the court which are pertinent to the case; and

(b) Any records of the Children's Services Division that would be admissible in a dispositional review hearing conducted under ORS 419B.470, 419B.473 and 419B.476, including school records and reports of private service providers contained in the records of the division or other agency.

(2) All requested records not already before the local citizen review board shall be submitted by the division within five working days after receipt of the request. The following provisions apply:

(a) Copies may be sent in lieu of originals.

(b) Except as otherwise provided in this paragraph, the local citizen review boards and the staff provided for the boards must return all records and copies received from the division to the division within seven working days after completion of the review. The staff of a local citizen review board may retain a reference copy of case materials used by the local citizen review board to make its recommendation if the following apply:

(A) The material is necessary for the ongoing work of the board with regard to the particular case or to work of the board; and

(B) The confidentiality of the material is continued and protected in the same manner as other materials received from the Children's Services Division. Materials thus retained by the local boards are exempt from disclosure under the public records law.

(3) If a local citizen review board is denied access to requested records, it may request a court hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section. [1993 c.33 §28; 1993 c.546 §91]

419A.104 Report on children in substitute care. Within seven working days after the first of each month, the Children's Services Division shall send to the citizen review board state administrative office the federally required report listing all children in substitute care. The report must include the dates of placement and the dates by which a review must be conducted. [1993 c.412 §5 (enacted in lieu of 1993 c.33 §29)]

419A.106 Review of cases. (1) Except for cases removed from review under procedures established under ORS 419A.098, the local citizen review board shall review the case of each child in substitute care which is assigned by the court. The following provisions apply:

(a) The review shall take place at times set by the board, the first review to be no more than six months after the child is placed in substitute care and subsequent reviews to take place no less frequently than once every six months thereafter until the child is no longer within the jurisdiction of the court, no longer in substitute care or until an adoption proceeding becomes final.

(b) The court, by rule of the court or on an individual case basis, may relieve the local citizen review board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(c) The court shall notify the local citizen review board of a denial of a petition to terminate parental rights within 10 days of the denial. As soon as practical but no later than 45 days after the denial, the board shall review any case where a petition to terminate parental rights has been denied.

(2) The local citizen review board may hold joint or separate reviews for groups of siblings. [1993 c.33 §30; 1993 c.412 §6]

419A.108 Procedure for conflicts of interest. Whenever a member of a local citizen review board has a potential conflict of interest in a case being reviewed, the member shall declare to the local citizen review board the nature of the potential conflict prior to participating in the case review. The following apply as described:

(1) The declaration of the member shall be recorded in the official records of the board.

(2) If, in the judgment of the majority of the local board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the local board may remove the member from participation in the review. [1993 c.33 §32]

419A.110 Immunity of participants in case review. Anyone participating in a case

review by a local citizen review board shall have:

(1) Immunity from any liability, civil or criminal, for defamation for statements made in good faith by the participant, orally or in writing, in the course of such case review.

(2) The same immunity with respect to participating in any judicial proceeding resulting from the review or recommendation of a local board to the juvenile court. [1993 c.33 §35]

419A.112 Disclosure of information to participants in case review; confidentiality. (1) The local citizen review board may disclose to parents and their attorneys, foster parents, mature children and their attorneys and other persons authorized by the local board to participate in the case review, records disclosed to the local board under ORS 419A.102.

(2) Before participating in a local citizen review board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant shall keep confidential the information disclosed by the board in the case review and to disclose it only as authorized by law. [1993 c.33 §34]

419A.114 When presence of agency personnel at board hearings required. (1) Unless excused from doing so by the local citizen review board, the division and any other agency directly responsible for the care and placement of the child shall require the presence of any employees having knowledge of the case at local board meetings.

(2) The local citizen review board may require the presence of specific employees of the division or agency at local board meetings. If an employee fails to be present at such a meeting, the local review board may request a court hearing. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the local citizen review board.

(3) As used in this section, "presence" includes telephone participation except that the caseworker on the case at the time of the meeting must be physically present if required. [1993 c.33 §37]

419A.116 Findings and recommendations. After reviewing each case, the local citizen review board shall prepare written findings and recommendations with respect to:

(1) Whether reasonable efforts were made prior to the placement, to prevent or eliminate the need for removal of the child from the home, and to make it possible for the child to be returned home;

(2) The continuing need for and appropriateness of the placement;

(3) Compliance with the case plan;

(4) The progress which has been made toward alleviating the need for placement;

(5) A likely date by which the child may be returned home or placed for adoption;

(6) Other problems, solutions or alternatives the board determines should be explored; and

(7) Whether the court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child under ORS 419B.195. [1993 c.33 §31]

419A.118 Records; disclosure of findings and recommendations. The local citizen review board shall keep accurate records and retain these records on file. The local citizen review board shall send copies of its written findings and recommendations to the following:

(1) The court;

(2) The Children's Services Division; and

(3) Other participants in the review. [1993 c.33 §33]

419A.120 Court use of findings and recommendations. Upon receipt of findings and recommendations from the local citizen review board, the court shall:

(1) Review the findings and recommendations of the local citizen review board within 10 days after the findings and recommendations are received by the court. If the court finds it appropriate, the court may on its own motion schedule a review hearing.

(2) Cause the findings and recommendations of the local citizen review board to become part of the juvenile court file.

(3) Give the local citizen review board written notice if the court modifies, alters or takes action on a case as a result of the board's recommendations. [1993 c.33 §38]

419A.122 Children's Services Division's use of findings and recommendations. Upon receipt of findings and recommendations from the local citizen review board, the Children's Services Division shall:

(1) Review the findings and recommendations of the local citizen review board within 10 days after the findings and recommendations are received by the division. The recommendations shall be implemented and the case plan modified as the division deems appropriate and resources permit.

(2) Give the local citizen review board written notice of such intent within 17 days of receipt of the report if the division does not intend to implement the recommendations.

(3) Cause the findings and recommendations of the local citizen review board to become part of the case file of the division. [1993 c.33 §39; 1993 c.412 §7]

419A.124 Policy and procedure recommendations. In addition to reviewing individual cases of children in substitute care, local citizen review boards may make recommendations to the court and the division concerning substitute care services, policies, procedures and laws. [1993 c.33 §36]

419A.128 State Citizen Review Board Operating Account. (1) There is created a State Citizen Review Board Operating Account in the General Fund which is continuously appropriated to the State Court Administrator to pay the expenses incurred under ORS 419A.090 to 419A.128, 419B.470, 419B.473 and 419B.476. Such expenses shall be paid only from funds specifically appropriated for the purposes of ORS 419A.090 to 419A.128, 419B.470, 419B.473 and 419B.476 and no other moneys appropriated to the State Court Administrator shall be used for these purposes.

(2) The State Court Administrator may apply for and receive funds from federal and private sources for carrying out the purposes of ORS 419A.090 to 419A.128, 419B.470, 419B.473 and 419B.476. Such funds shall be credited to the State Citizen Review Board Operating Account. [1993 c.33 §42]

JUVENILE COURT REFEREES

419A.150 Appointment; qualifications; hearings; orders; rehearings. (1) The judge of the juvenile court may appoint one or more persons as referee of the juvenile court. A referee shall be appointed in every county in which there is no resident juvenile court judge. A person appointed referee shall be qualified by training and experience in the handling of juvenile matters, shall have such further qualifications as may be prescribed by law and shall hold office as such at the pleasure of the judge. The compensation of a referee appointed by the judge of a circuit court shall be paid by the state from funds available for the purpose. The compensation of a referee appointed by the judge of a county court shall be paid by the county.

(2) The judge may direct that any case, or all cases of a class designated by the judge, shall be processed or heard in the first instance by a referee in the manner provided for the hearing of cases by the court. Upon conclusion of the hearing in each case, the referee shall transmit to the judge the findings, recommendations or order in writing of the referee.

(3) Where the referee conducts a hearing, the persons entitled to request rehearing as

provided in subsection (7) of this section shall be notified of the referee's findings, recommendations or order, together with a notice to the effect that a rehearing shall be had before a judge if requested within 10 days. A rehearing before a judge of the juvenile court may be determined on the same evidence introduced before the referee if a stenographic transcript of the proceedings was kept, but, in any case, additional evidence may be presented.

(4) All orders of a referee shall become immediately effective, subject to the right of review provided in this section, and shall continue in full force and effect, unless stayed by order of the referee or by a juvenile court judge, until vacated or modified upon rehearing by order of a judge of the juvenile court. Any order entered by a referee shall become a final order of the juvenile court upon expiration of 10 days following its entry, unless a rehearing is ordered or requested.

(5) The judge of the juvenile court or, in counties having more than one judge of the juvenile court, the presiding judge of the juvenile court may establish requirements that any or all orders of referees must be expressly approved by a judge of the juvenile court before becoming effective.

(6) A judge of the juvenile court may, on the judge's own motion, order a rehearing of any matter heard before a referee.

(7) At any time prior to the expiration of 10 days after the entry of the order and findings of a referee into the court register, a child, the parent, guardian, district attorney, Children's Services Division, juvenile department or other party affected by the order may request rehearing. The request for rehearing shall be served upon all parties by the party requesting the rehearing.

(8) All rehearings of matters heard before a referee shall be heard expeditiously by a judge of the juvenile court within 30 days after the filing of the request, unless the court orders a continuance. In no event shall the rehearing occur later than 45 days after the date of the filing of the request. The rehearing shall be conducted de novo.

(9) Notwithstanding subsection (7) of this section, when a referee finds that a child is not within the jurisdiction of the court in a proceeding brought under ORS 419C.005, the district attorney may not request a rehearing. [1993 c.33 §43; 1993 c.546 §7]

COURT APPOINTED SPECIAL ADVOCATES

419A.170 Appointment; duties; immunity; access to information; CASA Fund. (1) In every case involving an abused or

neglected child which results in a judicial proceeding in juvenile court, the court shall appoint a court appointed special advocate. The court appointed special advocate shall be deemed a party in these proceedings, and in the furtherance thereof, may be represented by counsel, file pleadings and request hearings and may subpoena, examine and cross-examine witnesses. If the court appointed special advocate is represented by counsel, counsel shall be paid from funds available to the Court Appointed Special Advocate Volunteer Program. No funds from the State Indigent Defense Fund or Judicial Department operating funds shall be used for this purpose.

(2) Subject to the direction of the court, the duties of the court appointed special advocate shall be to:

(a) Investigate all relevant information about the case;

(b) Advocate for the child, assuring that all relevant facts are brought before the court;

(c) Facilitate and negotiate to insure that the court, Children's Services Division or State Office for Services to Children and Families, if applicable, and the child's attorney, if any, fulfill their obligations to the child in a timely fashion; and

(d) Monitor all court orders to insure compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order.

(3) If a juvenile court does not have available to it a CASA Volunteer Program, or a sufficient number of qualified CASA volunteers, the court may, in fulfillment of the requirements of this section, appoint a juvenile department employee or other suitable person to represent the child's interest in court pursuant to ORS 419A.012 or 419B.195.

(4) Any person appointed as a court appointed special advocate in any judicial proceeding on behalf of the child shall be immune from any liability for defamation or statements made in good faith by that person, orally or in writing, in the course of the case review or judicial proceeding.

(5) Any person appointed as a court appointed special advocate, CASA Volunteer Program director, CASA Volunteer Program employee or member of the board of directors or trustees of any CASA Volunteer Program shall be immune from any liability for acts or omissions or errors in judgment made in good faith in the course or scope of that person's duties or employment as part of a CASA Volunteer Program.

(6) Whenever the court appoints a court appointed special advocate or other person under subsections (1) to (3) of this section to represent the child, it may require a parent, if able, or guardian of the estate, if the estate is able, to pay, in whole or in part, the reasonable costs of CASA services including reasonable attorney fees. The court's order of payment shall be enforceable in the same manner as an order of support under ORS 419B.408.

(7) Upon presentation of the order of appointment by the court appointed special advocate, any agency, hospital, school organization, division or department of the state, doctor, nurse or other health care provider, psychologist, psychiatrist, police department or mental health clinic shall permit the court appointed special advocate to inspect and copy any records relating to the child or children involved in the case, without the consent of the child or children or parents.

(8) All records and information acquired or reviewed by a court appointed special advocate during the course of official duties shall be deemed confidential under ORS 419A.255.

(9) For the purposes of a Child Abuse Prevention and Treatment Act (42 U.S.C. § 5101 et seq.) grant to this state under Public Law No. 93-247, or any related state or federal legislation, a court appointed special advocate or other person appointed pursuant to subsections (1) to (3) of this section shall be deemed a guardian ad litem to represent the interests of the minor in proceedings before the court. Any provisions of this section and ORS 419B.035 and 419B.045 which shall cause this state to lose federal funding shall be considered null and void.

(10) There is created a Court Appointed Special Advocate (CASA) Fund in the General Fund. The fund shall consist of all moneys credited thereto. Moneys appropriated to the Court Appointed Special Advocate Fund by this section and ORS 419B.035 and 419B.045 may be used only to carry out the purposes of this section. The State Commission on Children and Families may apply for and receive funds from federal and private sources for carrying out the provisions of this section and ORS 419B.035 and 419B.045.

(11) The state commission may expend moneys from the Court Appointed Special Advocate Fund directly or indirectly through contracts or grants for the creation, supervision and operation of CASA Volunteer Programs statewide in accordance with the provisions of ORS 423.310 to 423.350. The commission may also expend moneys from the Court Appointed Special Advocate Fund to pay the reasonable costs of its adminis-

tration of the Court Appointed Special Advocate Fund. The commission shall adopt rules for carrying out its responsibilities under this section and ORS 419B.035 and 419B.045. [1993 c.33 §44; 1993 c.546 §92; 1993 c.676 §41]

CONTEMPT

419A.180 Power of court to enforce orders by contempt order. In case of failure to comply with any order of the juvenile court, the court may proceed for contempt of court against the person failing to comply. [1993 c.33 §45]

FORMER JEOPARDY

419A.190 Effect of adjudicatory hearing or admission. Except as provided in ORS 153.585 (1), proceedings in adult criminal court and other juvenile court adjudicatory proceedings based on an act alleged in a petition or citation to have been committed by a child or allegations arising out of the same conduct are barred when the juvenile court judge or referee has begun taking evidence in an adjudicatory hearing or has accepted a child's admission or answer of no contest to the allegations of the petition or citation. This section shall not prevent appeal of any preadjudicatory order of the court which could be appealed in a criminal case, including, but not limited to, an order suppressing evidence. [1993 c.33 §46]

APPEALS

419A.200 Who may appeal time limitations; procedure; effect of filing appeal; release pending appeal; appointment of counsel. (1) Except as provided in ORS 419A.190, any person whose right or duties are adversely affected by a final order of the juvenile court may appeal therefrom. An appeal from a circuit court shall be taken to the Court of Appeals, and an appeal from a county court shall be taken to the circuit court.

(2) If the proceeding is in the circuit court and no record of the proceedings was kept, the court, on motion made not later than 15 days after the entry of the court's order, shall grant a rehearing and shall direct that a record of the proceedings be kept. However, the court shall not grant a rehearing in a case barred by ORS 419A.190 without the consent of the child affected by such case. If a rehearing is held, the time for taking an appeal shall run from the date of entry of the court's order after the rehearing.

(3)(a) The appeal may be taken by causing a notice of appeal, in the form prescribed by ORS 19.029, to be served:

(A) On all parties who have appeared in the proceeding;

(B) On the clerk of the juvenile court; and

(C) On the juvenile court reporter, if a transcript is designated in connection with the appeal.

(b) The original of the notice with proof of service shall be filed with:

(A) The Court of Appeals if the appeal is from a circuit court; or

(B) The circuit court if the appeal is from a county court.

(c) The notice shall be filed not later than 30 days after the entry of the court's order. On appeal from the county court, the circuit court shall hear the matter de novo and its order shall be appealable to the Court of Appeals in the same manner as if the proceeding had been commenced in the circuit court.

(4)(a) Upon motion of a person, other than the state, entitled to appeal under subsection (1) of this section, if the person was not represented by counsel in the proceeding from which the appeal is being taken, the appellate court shall grant the person leave to file a notice of appeal after the time limits described in subsection (3) of this section if the person shows a colorable claim of error in the proceeding from which the appeal is taken.

(b) A person other than the state shall not be entitled to relief under this subsection for failure to file timely notice of cross-appeal when the state appeals pursuant to subsection (7) of this section.

(c) The request for leave to file a notice of appeal after the time limits prescribed in subsection (3) of this section shall be filed no later than 90 days after entry of the order being appealed and shall be accompanied by the notice of appeal sought to be filed. A request for leave under this subsection may be filed by mail and shall be deemed filed on the date of mailing if the request is mailed as provided in ORS 19.028.

(d) The court shall not grant relief under this subsection unless the state has notice and opportunity to respond to the person's request for relief.

(5) An appeal to the Court of Appeals shall be conducted in the same manner as an appeal in an equity suit and shall be advanced on the court's docket in the same manner as appeals in criminal cases.

(6) Except as provided in subsection (8) of this section or when otherwise ordered by the appellate court, the filing of an appeal does not suspend the order of the juvenile court nor discharge the child from the custody of the person, institution or agency in

whose custody the child may have been placed, nor preclude the trial court after notice and hearing from entering such further orders relating to the child's custody pending final disposition of the appeal as it finds necessary by reason only of matters transpiring subsequent to the order appealed from. Certified copies of any such order shall be filed by the clerk of the juvenile court forthwith with the Court of Appeals.

(7) In a juvenile proceeding, the state may take an appeal from the order of a judge or referee from:

(a) An order made prior to an adjudicatory hearing dismissing or setting aside a delinquency petition;

(b) An order made after an adjudicatory hearing in which the juvenile is found to be within the jurisdiction of the court, setting aside the petition for delinquency;

(c) An order made prior to an adjudicatory hearing suppressing or limiting evidence or refusing to suppress or limit evidence; or

(d) An order made prior to an adjudicatory hearing for the return or restoration of things seized.

(8) If the state pursuant to subsection (7) of this section appeals a preadjudicatory order, and the child is in detention in the same proceeding pursuant to ORS 419C.109, 419C.136, 419C.139, 419C.170 and 419C.173, the juvenile court shall consider release of the child from detention during the pendency of the appeal in accordance with the following provisions:

(a) When the child is charged with an act which would be murder if committed by an adult, release shall be denied when the proof is evident or the presumption strong that the child committed the act.

(b) The child shall be released upon the child's personal recognizance unless release criteria show to the satisfaction of the juvenile court that the child would not be likely to appear before the court as ordered upon later appearance dates and that such a release is therefore unwarranted. Release criteria shall include the following:

(A) The child's education and employment status and history and financial condition;

(B) The nature and extent of the child's family relationships;

(C) The child's past and present residences;

(D) Identification of persons who agree to assist the child in attending court at the proper time;

(E) The nature of the current petition;

(F) The child's juvenile record, if any, and, if the child has previously been released pending trial, whether the child appeared as required;

(G) Any facts indicating the possibility of violations of law if the child is released without restrictions;

(H) Any facts tending to indicate that the child has strong ties to the community; and

(I) Any other facts tending to indicate the likelihood of the child's appearing before the court as ordered upon later appearance dates.

(c) If the court finds that release of the child on the child's personal recognizance is unwarranted, it shall order conditional release. The court may impose upon the released child one or more of the following conditions, but shall impose the least onerous condition reasonably likely to assure the child's later appearance:

(A) Release of the child into the care of a parent or other responsible person or organization for supervising the child and assisting the child in appearing in court. The supervisor shall notify the court immediately in the event that the child breaches the terms of the conditional release.

(B) Reasonable restrictions on the activities, movements, associations and residences of the child.

(C) Any other reasonable restriction designed to assure the child's appearance.

(9) If the child, parent or guardian is shown to be without sufficient financial means to employ suitable counsel possessing skills and experience commensurate with the nature and complexity of the case to represent the person in an appeal as provided in subsections (1) to (8) of this section, the court, upon request of the person or upon its own motion, shall appoint suitable counsel to represent the person. Counsel appointed by the court shall be paid compensation determined by the appellate court as provided in ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or Supreme Court is the appellate court.

(10) Where the court appoints counsel to represent the child, it may require the parent, if able, or guardian of the estate, if the estate is able, to pay compensation for counsel and costs and expenses necessary to the appeal. The test of the parent's or estate's ability to pay such compensation, costs and expenses shall be the same test as applied to appointment of counsel for defendants under ORS 135.050. The court's order of payment shall be enforceable in the same manner as

an order of support under ORS 419B.408 and 419C.600.

(11) Where the court appoints counsel and the child, parent or guardian is without sufficient financial means to employ counsel, the compensation for counsel and costs and expenses necessary to the appeal shall be allowed and paid as provided in ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or Supreme Court is the appellate court.

(12) The district attorney or Attorney General shall represent the state in the appeal. [1993 c.33 §47]

FINGERPRINTING AND PHOTOGRAPHING

419A.250 Authority; segregation of records; access; when records may be kept with those of adults; destruction of records; missing children. (1) A child may be photographed or fingerprinted by a law enforcement agency:

- (a) Pursuant to a search warrant;
- (b) According to laws concerning adults if the child has been transferred to criminal court for prosecution;
- (c) If a child is taken into custody for the commission of an act which if committed by an adult would constitute a felony or a Class A misdemeanor and the child's photograph or fingerprints are needed to complete the investigation of a crime;
- (d) Upon consent of both the child and the child's parent after advice that they are not required to give such consent;
- (e) Upon request or consent of the child's parent alone if the child is less than 10 years of age, and if the law enforcement agency delivers the original photographs or fingerprints to the parent and does not make or retain any copies thereof;
- (f) By order of the juvenile court; or
- (g) If a child is taken into custody and a law enforcement agency has probable cause to believe that the child is involved in a conspiracy or a conspiratorial relationship with others to commit acts that if committed by an adult would constitute a felony or a Class A misdemeanor.

(2) A child may be photographed or fingerprinted after the child has been found to be within the jurisdiction of the juvenile court for an act which if committed by an adult would constitute a felony or a Class A misdemeanor.

(3) Fingerprint and photograph files or records of children shall be kept separate from those of adults, and fingerprints and

photographs known to be those of a child shall be maintained on a local basis only and not sent to a central state or federal depository.

(4) Fingerprint and photograph files or records of a child shall be kept separate from the records and files of adults and shall be open to inspection only by, or the contents disclosed only to, the following:

(a) Public agencies for use in investigation or prosecution of crimes and of conduct by a child which if committed by an adult would be an offense, provided that a law enforcement agency may provide information to another agency only when the information is pertinent to a specific investigation by that agency;

(b) The juvenile department and the juvenile court having the child before it in any proceeding;

(c) Caseworkers and counselors taking action or otherwise responsible for planning and care of the child;

(d) The parties to the proceeding and their counsel;

(e) A criminal court to which jurisdiction of the child has been transferred;

(f) A criminal court for the purpose of a presentence report or other dispositional proceeding following conviction of a criminal offense; and

(g) The victim or a witness of an act or behavior described under ORS 419C.005 (1) or the victim's parent, guardian, personal representative or subrogee, when necessary to identify the child committing the act or behavior and identifying the apparent extent of the child's involvement in the act or behavior.

(5)(a) Notwithstanding subsections (3) and (4) of this section, fingerprint and photograph files or records of children found to be within the jurisdiction of the juvenile court for an act which if committed by an adult would constitute one of the crimes listed in paragraph (b) of this subsection need not be kept separate from those of adults but may be sent to a central state depository in the same manner as fingerprint and photograph files or records of adults. The fingerprint and photograph files or records of a child sent to a central depository under this subsection shall be open to inspection in the same manner and under the same circumstances as fingerprint and photograph files or records of adults.

(b) Paragraph (a) of this subsection applies to the following crimes:

(A) Tampering with a witness under ORS 162.285;

(B) Hindering prosecution under ORS 162.325;

(C) Aggravated murder under ORS 163.095;

(D) Murder under ORS 163.115;

(E) Manslaughter in the first degree under ORS 163.118;

(F) Manslaughter in the second degree under ORS 163.125;

(G) Criminally negligent homicide under ORS 163.145;

(H) Assault in the second degree under ORS 163.175;

(I) Assault in the first degree under ORS 163.185;

(J) Kidnapping in the second degree under ORS 163.225;

(K) Kidnapping in the first degree under ORS 163.235;

(L) Coercion under ORS 163.275;

(M) Rape in the third degree under ORS 163.355;

(N) Rape in the second degree under ORS 163.365;

(O) Rape in the first degree under ORS 163.375;

(P) Sodomy in the third degree under ORS 163.385;

(Q) Sodomy in the second degree under ORS 163.395;

(R) Sodomy in the first degree under ORS 163.405;

(S) Unlawful sexual penetration in the second degree under ORS 163.408;

(T) Unlawful sexual penetration in the first degree under ORS 163.411;

(U) Sexual abuse in the second degree under ORS 163.425;

(V) Sexual abuse in the first degree under ORS 163.427;

(W) Burglary in the first degree under ORS 164.225;

(X) Arson in the second degree under ORS 164.315;

(Y) Arson in the first degree under ORS 164.325;

(Z) Criminal mischief in the first degree under ORS 164.365;

(AA) Robbery in the third degree under ORS 164.395;

(BB) Robbery in the second degree under ORS 164.405;

(CC) Robbery in the first degree under ORS 164.415;

(DD) Intimidation in the second degree under ORS 166.155;

(EE) Intimidation in the first degree under ORS 166.165;

(FF) Unlawful possession of machine guns, certain short-barreled firearms and firearms silencers under ORS 166.272;

(GG) Use of a firearm during the commission of a felony under ORS 166.429;

(HH) Promoting prostitution under ORS 167.012; and

(II) Compelling prostitution under ORS 167.017.

(c) No later than five years and 30 days after fingerprint and photograph files or records are sent to the central state registry under paragraph (a) of this subsection, the Department of State Police shall delete the files and records from the registry and destroy the files and records.

(6) Fingerprint and photograph files and records of a child shall be destroyed when the juvenile court orders expunction of a child's record pursuant to ORS 419A.260 and 419A.262.

(7)(a) Fingerprint and photograph files of a child who is adjudicated and found not to be within the jurisdiction of the juvenile court for an act, which if committed by an adult would constitute a felony or a misdemeanor, shall be destroyed by the officer charged with the maintenance of those files within 60 days from the date of adjudication.

(b) Fingerprint and photograph files of a child who is not adjudicated and found to be within the jurisdiction of the juvenile court for an act, which if committed by an adult would constitute a felony or a misdemeanor, within two years from the date on which the fingerprints or photograph were obtained, shall be destroyed by the officer charged with the maintenance of those files.

(8) The parent or guardian of a missing child may submit a fingerprint card and photograph of the child to a law enforcement agency at the time a missing person report is made. The law enforcement agency may submit the fingerprint file to the Department of State Police Bureau of Criminal Identification. The information shall be entered into the Law Enforcement Data System and the Western Identification Network Automated Fingerprint Identification System.

(9) When fingerprint files or records are submitted under subsection (8) of this section, the Department of State Police shall enter in a special index in the computerized criminal history files the name of the child and the name of the county or agency that submitted the fingerprint file or record.

(10) Fingerprints and other information entered in any data system pursuant to sub-

section (8) of this section shall be deleted when the child is located. [1993 c.33 §48; 1993 c.602 §1]

RECORDS

419A.255 Maintenance; disclosure; providing transcript; exceptions to confidentiality. (1) The clerk of the court shall keep a record of each case, including therein the summons and other process, the petition and all other papers in the nature of pleadings, motions, orders of the court and other papers filed with the court, but excluding reports and other material relating to the child's history and prognosis. The record of the case shall be withheld from public inspection but shall be open to inspection by the child, parent, guardian, court appointed special advocate, surrogate or a person allowed to intervene in a proceeding involving the child under ORS 109.119 (1), and their attorneys. The attorneys are entitled to copies of the record of the case.

(2) Reports and other material relating to the child's history and prognosis are privileged and, except at the request of the child, shall not be disclosed directly or indirectly to anyone other than the judge of the juvenile court, those acting under the judge's direction and to the attorneys of record for the child or the child's parent, guardian, court appointed special advocate, surrogate or person allowed to intervene in a proceeding involving the child under ORS 109.119 (1). The attorneys are entitled to examine and obtain copies of any reports or other material relating to the child's history and prognosis. Any attorney who examines or obtains copies of such reports or materials shall be responsible for preserving their confidentiality and shall return the copies to the court upon the conclusion of the attorney's involvement in the case.

(3) Except as otherwise provided in subsection (6) of this section, no information appearing in the record of the case or in reports or other material relating to the child's history or prognosis may be disclosed to any person not described in subsection (2) of this section without the consent of the court, except for purposes of evaluating the child's eligibility for special education as provided in ORS chapter 343, and no such information may be used in evidence in any proceeding to establish criminal or civil liability against the child, whether such proceeding occurs after the child has reached 18 years of age or otherwise, except for the following purposes:

(a) In connection with a presentence investigation after the guilt of the child has been admitted or established in a criminal court.

(b) In connection with a proceeding in another juvenile court concerning the child or an appeal from the juvenile court.

(4) If the court finds that the child or parent is without financial means to purchase all or a necessary part of the transcript of the evidence or proceedings, the court shall order upon motion the transcript or part thereof to be furnished. The transcript or part thereof furnished under this subsection shall be paid for in the same manner as furnished transcripts are paid for in criminal cases.

(5) Notwithstanding any other provision of law, the name of the juvenile, the basis for the juvenile court's jurisdiction over the juvenile, the date, time and place of any juvenile court proceeding in which the juvenile is involved and that portion of the juvenile court order providing for the legal disposition of the juvenile where jurisdiction is based on ORS 419B.100 (1)(g) or 419C.005 shall not be confidential.

(6)(a) Information contained in reports and other materials relating to a child's history and prognosis that, in the professional judgment of the juvenile counselor, caseworker, teacher or detention worker to whom the information for the reports or other materials has been provided, indicates a clear and immediate danger to another person or to society shall be disclosed to the appropriate authority and the person or entity who is in danger from the child.

(b) An agency or a person who discloses information under paragraph (a) of this subsection shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed for making the disclosure.

(c) Nothing in this subsection affects the provisions of ORS 146.750, 146.760, 419B.035, 419B.040 and 419B.045. The disclosure of information under this section does not make the information admissible in any court or administrative proceeding if it is not otherwise admissible. [1993 c.33 §49; 1993 c.234 §3; 1993 c.546 §8]

419A.260 Expunction; definitions. (1) As used in this section and ORS 419A.262:

(a) "Contact" means any instance in which a person's act or behavior, or alleged act or behavior, which could result in a juvenile court's assumption of jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or 419C.005 comes to the attention of an agency specified in paragraph (d) of this subsection.

(b) "Expunction" means:

(A) The removal and destruction of a judgment or order related to a contact;

(B) The removal and destruction of all records and all references; and

(C) Where a record is kept by the Children's Services Division, either the sealing of such record by the division, or in a multi-person file, the affixing to the front of the file, by the division, a stamp or statement identifying the name of the individual, the date of expunction and instruction that no further reference shall be made to the material that is subject to the expunction order except upon an order of a court of competent jurisdiction.

(c) "Person" includes a person under 18 years of age.

(d) "Record" includes a fingerprint or photograph file, report, exhibit or other material which contains information relating to a person's contact with any law enforcement agency or juvenile court or juvenile department and is kept manually, through the use of electronic data processing equipment, or by any other means by a law enforcement or public investigative agency, a juvenile court or juvenile department or an agency of the State of Oregon. "Record" does not include:

(A) A transcript of a student's academic record at MacLaren School for Boys or Hillcrest School of Oregon;

(B) Material on file with a public agency which is necessary for obtaining federal financial participation regarding financial assistance or services on behalf of a person who has had a contact;

(C) Records kept or disseminated by the Department of Transportation, State Marine Board and State Fish and Wildlife Commission pursuant to juvenile or adult order or recommendation;

(D) Police and court records related to an order of waiver where the matter is still pending in the adult court or on appeal therefrom, or to any disposition as an adult pursuant to such order;

(E) Records related to a support obligation;

(F) Medical records;

(G) Records of a proposed or adjudicated termination of parent-child relationship and adoptions;

(H) Any law enforcement record of a person who currently does not qualify for expunction or of current investigations or cases waived to the adult court;

(I) Records and case reports of the Oregon Supreme Court and the Oregon Court of Appeals;

(J) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be within the jurisdiction of the

court based upon the person's commission of an act which would constitute child abuse as defined in ORS 419B.005 and if done by an adult would constitute one of the following offenses:

(i) Criminal mistreatment in the first degree under ORS 163.205;

(ii) Rape in the third degree under ORS 163.355;

(iii) Rape in the second degree under ORS 163.365;

(iv) Rape in the first degree under ORS 163.375;

(v) Sodomy in the third degree under ORS 163.385;

(vi) Sodomy in the second degree under ORS 163.395;

(vii) Sodomy in the first degree under ORS 163.405;

(viii) Unlawful sexual penetration in the second degree under ORS 163.408;

(ix) Unlawful sexual penetration in the first degree under ORS 163.411;

(x) Sexual abuse in the third degree under ORS 163.415;

(xi) Sexual abuse in the second degree under ORS 163.425;

(xii) Sexual abuse in the first degree under ORS 163.427;

(xiii) Promoting prostitution under ORS 167.012; and

(xiv) Compelling prostitution under ORS 167.017;

(K) Blood samples, autoradiographs and other physical evidence and identification information obtained, stored or maintained by the Department of State Police under authority of ORS 137.076, 181.085 or 419C.473; or

(L) Any records in cases under ORS 419C.005 in which a juvenile court found a person to be within the jurisdiction of the court based upon the person's commission of an act which if done by an adult would constitute one of the following offenses:

(i) Aggravated murder under ORS 163.095;

(ii) Murder under ORS 163.115;

(iii) Manslaughter in the first degree under ORS 163.118;

(iv) Manslaughter in the second degree under ORS 163.125; or

(v) Criminally negligent homicide under ORS 163.145.

(e) "Termination" means:

(A) For a person who is the subject of a record kept by a juvenile court or juvenile

department, the final disposition of a case by informal means, by a decision not to place the person on probation or make the person a ward of the court after the person has been found to be within the court's jurisdiction, or by a discontinuance of probation or of the court's wardship under ORS 419A.290.

(B) For a person who is the subject of a record kept by a law enforcement or public investigative agency, a juvenile court or juvenile department or an agency of the State of Oregon, the final disposition of the person's most recent contact with a law enforcement agency.

(2) The juvenile court or juvenile department shall make reasonable effort to provide written notice to a child who is within the court's jurisdiction under ORS 419B.100 (1)(a) to (c) and (f) or 419C.005, and to the child's parent, of the procedures for expunction of a record, the right to counsel under this chapter, and the legal effect of an expunction order, at the following times:

(a) At any dispositional hearing or at any informal disposition;

(b) At the time of termination;

(c) Upon notice to the subject of an expunction pending pursuant to application of a juvenile department or motion on a juvenile court; and

(d) At the time of notice of execution of an expunction order. [1993 c.33 §50; 1993 c.546 §93; 1993 c.602 §2]

419A.262 Expunction proceeding; application; notice; hearing; orders; effect of expunction; confidentiality. (1) An expunction proceeding shall be commenced in the county where the subject child resided at the time of the most recent termination.

(2) Upon application of either a person who is the subject of a record or a juvenile department, or upon its own motion, the juvenile court shall order expunction if, after a hearing when the matter is contested, it finds that:

(a) At least five years have elapsed since the date of the person's most recent termination;

(b) Since the date of the most recent termination, the person has not been convicted of a felony or a Class A misdemeanor;

(c) No proceedings seeking a criminal conviction or an adjudication in a juvenile court are pending against the person;

(d) The person is not within the jurisdiction of any juvenile court on the basis of a petition alleging an act or behavior as defined in ORS 419B.100 (1)(a) to (c) and (f) or 419C.005; and

(e) The juvenile department is not aware of any pending investigation of the conduct of the person by any law enforcement agency.

(3) In the case of an application by the juvenile department or of the court acting upon its own motion, expunction shall not be ordered if actual notice of expunction has not been given to the person in accordance with subsection (10) of this section unless the person has reached 21 years of age.

(4) When a person who is the subject of a record kept by a juvenile court or juvenile department reaches 18 years of age, the juvenile court, after a hearing when the matter is contested, shall order expunction if:

(a) The person never has been found to be within the jurisdiction of the court; or

(b) The conditions of subsection (2) of this section have been met.

(5) Expunction shall not be ordered under this section if actual notice of expunction has not been given to the person in accordance with subsection (10) of this section unless the person has reached 21 years of age.

(6) Subsections (4) and (5) of this section shall apply only to cases which result in termination after September 13, 1975.

(7) Notwithstanding subsections (2) and (4) to (6) of this section, upon application of a person who is the subject of a record kept by a juvenile court or juvenile department, upon application of the juvenile department, or upon its own motion, the juvenile court, after a hearing when the matter is contested, may order expunction of all or any part of the person's record if it finds that to do so would be in the best interests of the person and the public. In the case of an application by the juvenile department or of the court acting upon its own motion, expunction shall not be ordered if actual notice of expunction has not been given to the person in accordance with subsection (10) of this section unless the person has reached 21 years of age.

(8) When an expunction proceeding is commenced by application of the person whose records are to be expunged, the person shall set forth as part of the application the names of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies which the person has reason to believe possess an expungible record of the person. The juvenile department shall provide the names and addresses of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies which a reasonable search of department files indicates have expungible records.

(9) When an expunction proceeding is commenced by application of the juvenile department or upon the court's own motion, the application or motion shall set forth the names and addresses of the juvenile courts, juvenile departments, institutions and law enforcement and other agencies which a reasonable search of department files indicates have expungible records and those provided by the subject child.

(10) Notice of an application for expunction under subsections (2) to (7) of this section shall be given to:

(a) The district attorney of the county in which the expunction proceeding is commenced and the district attorney of each county in which the record sought to be expunged is kept; and

(b) The person who is the subject of the record if the person has not initiated the expunction proceeding.

(11) Within 30 days of receiving the notice of application for expunction under subsection (10) of this section, a district attorney shall give written notice of any objection and the grounds therefor to the person whose records are to be expunged and to the juvenile court. If no objection is filed the court may decide the issue of expunction either without a hearing or after full hearing pursuant to subsections (12) to (15) of this section.

(12) When an expunction is pending pursuant to subsections (2) to (7) of this section, the court may proceed with or without a hearing, except that:

(a) The court may not enter an order of expunction without a hearing if a timely objection to expunction has been filed pursuant to subsection (11) of this section; and

(b) The court may not deny an expunction without a hearing if the proceeding is based on an application of the subject.

(13) Notice of a hearing on a pending expunction shall be served on the subject and any district attorney filing a timely objection pursuant to subsection (11) of this section.

(14) The court shall conduct a hearing on a pending expunction in accord with the provisions of ORS 419B.195, 419B.198, 419B.201, 419B.205, 419B.208, 419B.310, 419B.317 and 419B.320. Rules of evidence shall be as in a hearing to establish juvenile court jurisdiction and as defined in ORS 419B.310 (3) and 419C.400 (2). The burden of proof shall be with the party contesting expunction.

(15) At the conclusion of a hearing on a pending expunction, the court shall issue an order granting or denying expunction. Such

order shall be a final order of the court for purposes of appeal.

(16) The juvenile court or juvenile department shall send a copy of an expunction order to each agency subject to the order. Upon receipt of a copy of the order, an agency subject thereto shall comply and, within 21 days of the date of receipt, return the copy to the juvenile court or juvenile department with an indorsement indicating compliance.

(17) When all agencies subject to an expunction order have indicated their compliance or in any event no later than six weeks following the date the order was delivered as required by subsection (16) of this section, the juvenile court shall provide the person who is the subject of the record with a copy of the expunction order, a list of complying and noncomplying agencies, and a written notice of rights and effects of expunction. The juvenile court and juvenile department then shall remove and destroy forthwith all records which they possess and which are subject to the order, except the original expunction order and a list of complying and noncomplying agencies which shall be preserved under seal.

(18) In addition to those agencies identified in ORS 419A.260 (1)(d), the juvenile, circuit, district, municipal and justice courts, and the district and city attorneys of this state, are bound by an expunction order of any juvenile court of appropriate jurisdiction in this state issuing an order of expunction.

(19) Upon entry of an expunction order, the contact which is the subject of the expunged record shall not be disclosed by any agency. An agency which is subject to an expunction order shall respond to any inquiry about the contact by indicating that no record or reference concerning the contact exists.

(20) A person who is the subject of a record which has been expunged under this section may assert that the record never existed and that the contact, which was the subject of the record, never occurred without incurring a penalty for perjury or false swearing under the laws of this state.

(21) Juvenile courts, by court rule or by order related to a particular matter, may direct that records concerning a subject child be destroyed. No such records shall be destroyed until at least three years have elapsed after the date of the subject's most recent termination. In the event the record has been expunged, the order of expunction and list of complying agencies shall not be destroyed, but shall be preserved under seal. The destruction herein defined does not constitute expunction.

(22) An order of expunction and list of complying agencies shall be released from confidentiality only on order of the court originating the order of expunction, based on a finding that review of a particular case furthers compliance with the expunction provisions of this chapter.

(23) A subject has a right of action against any person who intentionally violates the confidentiality provisions of this section. In any such proceeding, punitive damages up to an amount of \$1,000 may be sought in addition to any actual damages. The prevailing party shall be entitled to costs and reasonable attorney fees.

(24) Intentional violation of the confidentiality provisions of this section by a public employee is cause for dismissal.

(25) A person who intentionally releases all or part of an expunged record commits a Class C misdemeanor. [1993 c.33 §51; 1993 c.546 §9]

TERMINATION OF WARDSHIP

419A.290 Court's wardship; termination. The court's wardship over a child brought before it continues until whichever of the following occurs first:

(1) The court dismisses the petition concerning the child or waives the case to the appropriate court handling criminal actions, or to municipal court. If the court has wardship of a child based upon a prior petition, then waiving the child to the court handling criminal actions or to municipal court in connection with a subsequent violation of a law or ordinance relating to the use or operation of a motor vehicle does not terminate the wardship, unless the court so orders.

(2) The court transfers jurisdiction over the child as provided in ORS 419B.127, 419B.130 and 419B.132 or ORS 419C.053, 419C.056 and 419C.059.

(3) The court by order terminates its wardship.

(4) A decree of adoption of the child is entered by a court of competent jurisdiction.

(5) The child becomes 21 years of age. [1993 c.33 §52; 1993 c.546 §114]

419A.295 Appointment of person to appear in behalf of child. In any proceeding the court may appoint some suitable person to appear in behalf of the child. [Formerly 419.494]