Oregon Juvenile Delinquency Bench Book

A judicial resource on juvenile delinquency in Oregon

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The first edition/version of this bench book was completed in the Spring of 2025 by the Oregon Judicial Department, with the help of many system partners. It will be updated annually, with notable legislative changes and appellate decisions. It is meant primarily to be a tool to assist judicial officers in juvenile delinquency cases but is available to system partners as well. For questions, please email Jordan.f.Bates@ojd.state.or.us.

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Chapter 1
Juvenile Delinquency Law in Oregon

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1. Relevant Law

ORS Chapters 419A, 419B, and 419C provide much of the legal basis for juvenile law in Oregon. In ORS 419C.001, the Oregon Legislature declares that the purpose of Oregon's juvenile justice system is to protect the public and reduce juvenile delinquency and to provide fair and impartial procedures for the initiation, adjudication and disposition of allegations of delinquent conduct. Although delinquency case law is not thorough, criminal case law applies in some circumstances, and dependency case law is extremely thorough. The Oregon Judicial Department (OJD) keeps an updated summary of juvenile delinquency and dependency cases online. This includes summaries of juvenile case law from 2008 to the present. It is important to have a good grasp on the criminal code as well as updated criminal case law, which also applies. A Criminal Codebook[1] is extremely helpful to have on the bench, as it incorporates both the juvenile and criminal codes. Each jurisdiction may also have Supplementary Local Rules, which address specific local practices for juvenile and other cases. Additionally, it is important to be aware of any Presiding Judge Orders (PJOs) that relate to juvenile law.

2. Brief History

Delinquency law, both in Oregon and nationally, is an ever-changing model of how our society views and treats young people. Numerous resources exist that cover the evolution of juvenile law in the United States, starting with the creation of the first juvenile court in Cook County Illinois in 1899. Rather than summarizing that history here, we suggest you visit the Center on Juvenile and Criminal Justice and Juvenile Law Center websites for a more in-depth overview.

In Oregon, the first juvenile court was established in 1905. The juvenile court operated similarly to others in the country at that time. The court often conflated delinquency and dependency with a view that the children needed to be saved, which frequently led to a lack of due process rights. More details about the evolution of Oregon's juvenile system can be found in Janine Robben's "Juvenile Court Grows Up." The system continued to evolve, which led to more criminalization of young people starting in the 1990s.

Oregon followed the national trend of charging more youth in criminal court in the 1990s, with the passage of Measure 11 (1994) and Senate Bill (SB) 1 (1995) (codified

[1] This is published by the Legislature every two years.

as ORS 137.707). More recently, along with other states across the nation, Oregon began to recognize that a less punitive approach led to better outcomes for youth.

Before 1993, Oregon juvenile law was governed by ORS Chapter 419, which covered both delinquency and dependency law. In 1993, the Legislature split the code into 419B to govern dependency law and 419C to govern delinquency law.[2] ORS 419A includes provisions that apply to both; for example, ORS 419A.252 – ORS 419A.258 cover records and confidentiality in all juvenile cases. In 1994, Oregon voters passed Ballot Measure 11,[3] which greatly changed the way youth were treated in the judicial system. This law required cases to be filed in criminal court for certain youth aged 15 and older and established presumptive minimum sentences for certain offenses.[4] Under this scheme, many youth's cases were initiated in criminal court, where the youth were convicted rather than adjudicated.

Parties, policymakers, and others in the juvenile justice system started to recognize the importance of adolescent brain development in the early 2000s. The U.S. Supreme Court issued several decisions incorporating brain development research into their decisions to establish that youth should be treated differently than adults. *See Roper v. Simmons*, 543 US 551, 125 S Ct 1183 (2005) (the Eighth and Fourteenth Amendments forbid the imposition of the death penalty on youth who committed their offense prior to age 18); *Graham v. Florida*, 560 US 48, 130 S Ct 2011 (2010) (the Eighth Amendment prohibits the imposition of life without parole for a juvenile offender for a nonhomicide crime); *Miller v. Alabama*, 567 US 460, 132 S Ct 2455 (2012) (a mandatory life sentence without the possibility of parole for a juvenile under 18 at the time of the commission of their offense violates the Eighth Amendment); *J.D.B. v. North Carolina*, 564 US 261, 131 S Ct 2394 (2011) (developing a "reasonable child" standard to determine whether a youth believes they are in custody for the purposes of *Miranda* rights).

Following national trends, the Oregon Legislature passed SB 1008 in 2019. SB 1008 now affords all youth the opportunity to have their case remain in juvenile court. These laws will be discussed more in depth in Chapter 2.

3. Terms

Juvenile law is distinct from criminal law, and the courts in which the cases are filed are set up to recognize that distinction. Consequently, many distinct terms are used in the juvenile code, and a review of those terms is important when working with and

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[2] Or Laws 1993, ch. 33.

[3] Or Laws 1995, ch. 2, *codified as amended at* ORS 137.700–137.712.

[4] Senate Bill (SB) 1 also passed that year and revamped the delinquency system relating to adjudicated youth who remained under juvenile court jurisdiction.

discussing youth that come into the juvenile system. Some of these terms are defined within the code, and others result from standard court practices.

Juvenile Term	Criminal Term
Youth (ORS 419A.004(41))	Defendant/Accused
Adjudicated Youth (ORS 419A.004(1))	Offender/Defendant
Adjudication	Conviction
Disposition	Sentencing
Admission	Plea
Within the Jurisdiction of the Court (ORS 419C.005)	Guilty
Juvenile Counselor/Juvenile Department Counselor/Community Justice Officer/Juvenile Court Counselor	Probation Officer
Delinquency	Criminal
Detention (ORS 419C.004(14))	Jail
Protective custody	Arrested
Petition	Indictment or Information
Youth Correctional Facility	Prison/Correctional Facility
Young Person (ORS 419A.004(40))	Defendant
Initial Appearance/Preliminary Hearing/Shelter Hearing	Arraignment/Release Hearing

4. Parties, Rights, and Roles

A. Parties

A juvenile delinquency case involves different people at different stages of the proceedings. From initiation through adjudication, the state, through the District Attorney's (DA) Office or the juvenile department, and the youth are parties to the case. A youth's parent; a Court Appointed Special Advocate (CASA); the Oregon Youth Authority (OYA) or other child care agency, if the youth is temporarily committed; and any intervenor (granted rights under ORS 109.119) become a party at disposition. ORS 419C.285(1)(a). The rights of the parties apply to the hearings at which they are parties, and their rights or duties are adversely affected by a judgment.

The rights of the parties include, but are not limited to:

(a) The right to notice of the proceedings and copies of the pleadings;

(b) The right to appear with counsel and to have counsel appointed if otherwise provided by law;

(c) The right to call witnesses, cross-examine witnesses and participate in hearings;

(d) The right to appeal;

(e) The right to request a hearing; and

(f) The right to notice of any proceeding before the Psychiatric Security Review Board (PSRB).

ORS 419C.285(2). Many of these rights, especially for the youth, are discussed later in more detail. Others may also petition the court for the right to limited participation in a delinquency case. The petition for such a right must include the reason, how the involvement will serve the best interests of the youth or the administration of justice, why the parties cannot adequately present the case, and the specific relief being sought. ORS 419C.285(3)(a).

B. Judges and Referees

Judicial officers that hear juvenile delinquency cases can be judges or referees. Judges of the circuit courts shall exercise all juvenile court jurisdiction, authority, powers, functions, and duties. ORS 3.260. However, as of 2024, the Sherman and Wheeler County Courts retain juvenile court jurisdiction, pursuant to ORS 3.265. As in other cases over which they preside, judges are required to follow the code of judicial conduct and preside over juvenile delinquency cases in the manner expected of all judicial officers.

Counties may use juvenile court referees to preside over delinquency (and dependency) cases. ORS 419A.150 permits the juvenile court judge to appoint one or more juvenile court referees and requires the appointment of a referee in every county in which there is no resident juvenile court judge. Juvenile court referees must be qualified by training and experience in handling juvenile matters. The judge in each jurisdiction may direct the type of cases that a referee will hear in the first instance and then require that the referee transmit the findings, recommendations, or order to the judge. ORS 419A.150(2). All orders of the referee become effective immediately, subject to the right of review, unless stayed, vacated, or modified upon rehearing. However, any order entered by a referee becomes a final order of the juvenile court upon the expiration of the 10 days following its entry, unless a rehearing is requested. ORS 419A.150(4). The judge or presiding judge of the juvenile court may require that all orders of a juvenile court referee must be approved by a juvenile court judge before becoming effective, and the judge themself may also order a rehearing. ORS 419A.150(5)-(6). Each jurisdiction may have Supplementary Local Rules or PJOs that further define how a juvenile referee may hear cases.

Re-hearings: Delinquency cases heard by referees may be subject to a rehearing pursuant to ORS 419A.150(7). The request for rehearing must be made within 10 days of the entry of the order or recommendations. All parties must be notified of the referee's decision and their right to request a rehearing. However, the DA may not request a rehearing if the referee finds the youth is not within the jurisdiction of the court in a proceeding brought under ORS 419C.005. ORS 419A.150(9). The rehearing must take place within 30 days of the filing of the request or within 45 days at the latest if a continuance is ordered. ORS 419A.150(8).

C. Juvenile Department

The county juvenile department consists of counselors or probation officers,[5] a director, or both, based on appointment by the governing body, in consultation with the judges of the juvenile court. ORS 419A.010(1). Upon agreement and after consultation with the judges of the juvenile courts, two or more contiguous counties may jointly appoint a counselor or counselors. *Id.* If a director is appointed, they act as the administrator of the department, including juvenile detention facilities maintained by the county, and as a supervisor of the department's and detention facilities' staff. ORS 419A.010(2). In some circumstances, an oversight committee may assume the responsibilities of the director if certain requirements are met. *See* ORS 419A.010(3).

The director and/or counselors are required to:

- Investigate every child, ward, youth, or adjudicated youth brought before the court and report fully to the court;
- Be present in court to represent the interests of the young person;
- Furnish information and assistance the court requires; and
- Take charge of the young person before and after the hearings as may be directed by the court.

ORS 419A.012. The law also states that "[a]ny director or counselor has the power of a peace officer as to any child, ward, youth or adjudicated youth committed to the care of the director or counselor." ORS 419A.016. Historically, juvenile department counselors filed petitions alleging that a youth was within the jurisdiction of the court under ORS 419C.005. That practice is still legally accepted in some counties when authorized by the DA. ORS 419C.250.

If a youth is placed on probation, the juvenile court counselor supervises the youth, monitors their probation conditions, and provides reports to the court. *See* ORS

[5] Different jurisdictions refer to the people performing the duties of the juvenile department in different ways. Some examples are Juvenile Court Counselors, Probations Officers, and Community Justice Officers.

419C.620; ORS 419C.623. Juvenile court counselors also have other duties in a juvenile case, including victim notification in certain circumstances (e.g., expunction, notice of hearings). *See, e.g.,* ORS 419C.273.

D. District Attorney

In most cases, the DA appears on behalf of the state in juvenile court matters within the jurisdiction of the juvenile court. ORS 8.658.

E. Oregon Youth Authority

OYA was established to supervise, oversee, and carry out dispositions of adjudicated youth committed to its custody. OYA supervises the management and administration of youth correction facilities and oversees parole, probation, and community out-of-home placements for youth committed to its legal custody. ORS 420A.010. Youth may remain in OYA custody up to the age of 25. ORS 419C.501(2). The juvenile court may commit a youth to the custody of OYA and recommend either community placement or placement in a youth correction facility and may specify the type of care, supervision, or services, but the actual planning and provision of services, as well as the specific placement, are to be determined by OYA. *See* ORS 419C.478(2), (5); ORS 419C.495. OYA is required to supervise and manage both youth correction facilities and community facilities, in addition to providing supervision in the community. ORS 420A.010(1)(a).

OYA is a party to the case at disposition if the youth has been committed to their legal custody. ORS 419C.285(1)(c). OYA's duties and authority over the youth are governed by ORS 419C.550, which include but are not limited to maintaining physical custody, providing food and clothing, authorizing ordinary medical treatment, supplying information to the court, and applying for Social Security benefits and other public assistance.

OYA also houses some individuals who are convicted in criminal court after being waived from juvenile court, pursuant to ORS 419C.349, as well as persons who commit offenses before turning 18 and are sentenced prior to their 20th birthday. *See* ORS 137.124(5); ORS 420.011.

F. Oregon Department of Human Services

The Oregon Department of Human Services (ODHS) is also involved in juvenile delinquency cases when a youth is temporarily committed to their custody. Youth may already be in ODHS custody when they come before the juvenile court in a delinquency case. In that situation, ODHS would have the rights of a child-caring agency at disposition, as noted in Section 4(A).

A youth may be committed to the custody of ODHS pre-adjudication.[6] The court may also place an adjudicated youth in the legal custody of ODHS for care, placement, and supervision as part of the dispositional order. ORS 419C.478. The details of when and how a youth may be placed into ODHS custody will be addressed in Chapter 8, which addresses disposition.

G. Parents

As noted above, a youth's parents are not parties to the delinquency case until disposition. However, parents must be served with the petition at the initiation of the case, bring the youth to court at the time and place stated in the summons (if they have physical custody), and appear at the initial hearing themselves, as well as at future hearings as directed by the court. ORS 419C.306. Once a youth is adjudicated, a parent is still subject to the jurisdiction of the court (if properly served with the summons prior to adjudication) and must comply with court orders to assist with providing education or counseling or to enter into a contract with the juvenile department relating to the supervision of the youth while on probation. ORS 419C.570. The court can also order parents to participate in educational or counseling programs themselves or require them to enter drug and alcohol treatment. ORS 419C.573; ORS 419C.575. However, a youth's probation may not be revoked based on a parent's failure to comply.

If a youth is waived to criminal or municipal court, the court may still retain jurisdiction over the parent as well. *See* 419C.346.

H. Victims' Rights

Victims' rights are laid out in the Oregon Constitution, Article I, Section 42, as well as in statute in ORS 147.430, 419C.273, 419C.274 (right to notification concerning waiver or second-look hearings), and 419C.276 (disclosure of contact information and rights regarding contact by the youth's attorney). Victims have a right to participate meaningfully in a juvenile delinquency case, including the right to be informed in advance of and present at any "critical stage" of the proceedings held in open court and to be heard at pretrial release hearings, sentencing, and disposition. Or Const Art I, § 42(1)(a). Additional rights include the right "to obtain information about the conviction,

[6] Several statutes support this. ORS 419C.109(1)(d) and (e) authorize placement in "shelter care," which is defined in ORS 419A.004(31) as a home or other facility suitable for the safekeeping of a child, ward, youth, or adjudicated youth who is taken into temporary custody pending investigation. ORS 419C.170 requires a hearing after a youth is placed in shelter care. ORS 419C.080(2) discusses placement in substitute care for a youth taken into protective custody and the requirement for a best interests finding. ORS 418.470 authorizes ODHS to establish shelter care homes for children taken into temporary custody pending investigation and disposition.

sentence, imprisonment, criminal history and future release" of a youth[7]; "[t]he right to refuse an interview, deposition or other discovery request" by the youth (without restriction on the constitutional rights of the youth to discovery against the state); "[t]he right to receive prompt restitution"; the right to have a copy of any transcript prepared in open court; "[t]he right to be consulted, upon request, regarding plea negotiations" in a violent felony; and "[t]he right to be informed of these rights as soon as practicable." Or Const Art I, § 42(1)(b)-(g). In delinquency cases, victims are often supported by victim advocates in the DA's Office.

As noted above, victims have the right to be present at critical stages of the proceedings. These include, but are not limited to:

- Detention and shelter hearings;
- Placement reviews;
- Setting or changing conditions of release;
- Transfer hearings;
- Waiver hearings;
- Adjudication and plea hearings;
- Dispositional and restitution hearings;
- Hearings on motions to amend, set aside, or dismiss petitions, orders, or judgments;
- Probation violation or revocation hearings when the basis for the alleged violation directly implicates a victim's rights;
- Hearings for sex offender registration relief; and
- Expunction hearings.

ORS 419C.273(1)(b). Victims are not parties and do not have the same rights as parties. The Oregon Supreme Court has weighed in on victims' access to records in a juvenile case in *State v. C.P.*, 371 Or 512, 538 P3d 882 (2023). In this case, the Supreme Court determined that the judge appropriately exercised discretion in deciding that the victim in the case had a "legitimate need" to access some of the case's

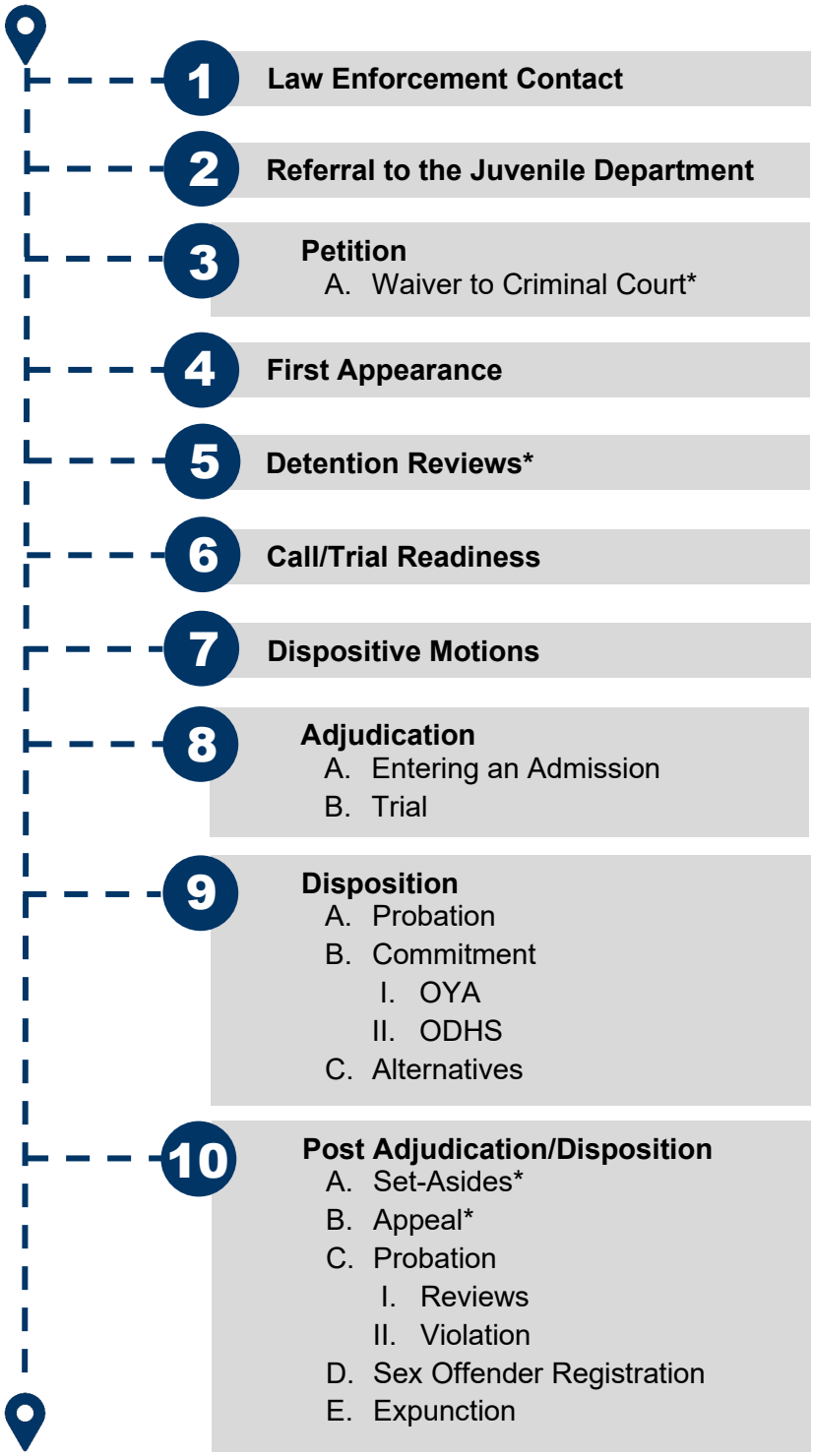
[7] Though care should be taken to use the correct terms in juvenile court, as noted in this chapter, in some criminal procedure statutes, victims' rights statutes, and others, definitions are broadened to include youth when certain criminal terms are used. For example, Article I, Section 42(6) of the Oregon Constitution indicates that the phrases "convicted criminal" and "criminal defendant" include "youth" and "youth offender" as part of the definition.

confidential records under ORS 419A.258. This statute requires a victim (or other interested person) to file a motion to access those records. The court noted that such an interpretation of the statute would not always entitle victims to access confidential case records but would give some discretion to the juvenile court to weigh the victim's interests against other interests.

Victims also have protections when it comes to contact by the youth and youth's attorney. Unless authorized by the court, the youth's attorney may not disclose personal identifiers of the victim. ORS 419C.276(1). The court shall order disclosure if the requirements of ORS 419C.276(b) are met. The attorney may contact the victim, but they must inform the victim that they represent the youth, the victim is not required to talk, and the victim may have a representative. ORS 419C.276(2). The statute lays out additional safeguards relating to contact by the youth and their attorney. The youth may not have contact with the victim unless authorized by the court, and if unauthorized contact occurs, the court may revoke the youth's release after a hearing, pursuant to ORS 419C.276(5).

5. Timeline of a Delinquency Case

This shows the general timeline of a delinquency case, though the process varies. Items marked with an asterisk may occur throughout the case or at different times.



Chapter 2
Juvenile Court Jurisdiction

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1. Juvenile Court Jurisdiction

This bench book is focused primarily on delinquency. Because some youth are also involved with the dependency system, it's important to understand both delinquency and dependency law. The beginning of this chapter provides an overview of juvenile court jurisdiction.

The purpose of the juvenile justice system, as laid out in ORS 419C.001(1), is

> [T]o protect the public and reduce juvenile delinquency and to provide fair and impartial procedures for the initiation, adjudication and disposition of allegations of delinquent conduct. The system is founded on the principles of personal responsibility, accountability and reformation within the context of public safety and restitution to the victims and the community. The system shall provide a continuum of services that emphasize prevention of further criminal activity by the use of early and certain sanctions, reformation and rehabilitation programs and swift and decisive intervention in delinquent behavior. The system shall be accountable to the people of Oregon and their elected representatives.

The juvenile system is separate from the criminal system, as noted not just in the law establishing the system, but through case law as well. Juveniles who come to and remain in the juvenile court's jurisdiction are neither prosecuted, convicted, nor sentenced criminally as adults; in that sense, they are not held criminally responsible for their conduct. *State ex rel. Juv. Dept. of Washington Cnty. v. Fitch*, 192 Or App 56, 84 P3d 190 (2004). "The primary objective of the juvenile justice system is to avoid the stigma associated with a criminal conviction and to emphasize instead rehabilitative efforts for a juvenile offender." *Id.* Juvenile courts in Oregon are tasked with determining "not whether the child should be punished for his or her conduct but, rather, whether the statutory grounds for jurisdiction have been established and, if so, what disposition is in the child's best interests. Juvenile courts are concerned with rehabilitation, not punishment." *State ex rel. Juv. Dept. v. Reynolds*, 317 Or 560, 857 P2d 842 (1993). When a youth is within the jurisdiction of the juvenile court, these principles should be kept in mind.

ORS 419C.005 provides that the juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and who has committed an act that is a violation, or that if done by an adult would constitute a violation, of a law or

ordinance of the Unites States or a state,[1] county, or city. This jurisdiction does not apply to youth who have been emancipated pursuant to ORS 419B.550, nor does it prevent another court from entering a civil action or suit involving the youth. Certain cases, discussed in detail below, may be waived out of juvenile court and heard in criminal, county, or municipal court. Jurisdiction continues until one of the following occurs:

- The court dismisses the petition;
- The court waives the case to criminal or municipal court under ORS 419C.340;[2]
- The court transfers jurisdiction as provided in ORS 419C.053, 419C.056, and 419C.059;[3]
- The court enters an order terminating jurisdiction;
- The person becomes 25 years of age;[4] or
- The court places the person under the jurisdiction of the Psychiatric Security Review Board (PSRB).[5]

Jurisdiction attaches at the time the youth is taken into custody, pursuant to ORS 419C.094. If the youth is not taken into custody, jurisdiction attaches when other steps are taken to initiate judicial proceedings. *Brown v. Zenon*, 133 Or App 291, 295, 891 P2d 666 (1995); *but see State v. Goin*, 334 Or App 497, 556 P3d 663 (2024) (noting the 1997 amendments to ORS 419C.094 and whether those altered the jurisdictional analysis in *Brown*). If an alleged offense occurs before a youth turns 18, but the

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[1] This includes authority over youth who have committed law violations in another state. In *State v. W.*, 34 Or App 437, 442-43, 578 P2d 824 (1978), the court held that it was constitutional to extend extra-state jurisdiction to a youth. The court noted that the youth only challenged her adjudication under Article 1, Section 20 of the Oregon Constitution and the Equal Protection Clause of the Fourteenth Amendment (no due process arguments were raised). The court must determine whether the law violation violated the other state's law, but must apply the procedural laws of Oregon.

[2] Waiver under this statute is decided based on the severity of the offense and age and sophistication of the youth, except for game, motor vehicle, or boating violations when the jurisdiction allows for blanket waiver of such offense types under ORS 419C.370. This will be discussed in more detail below in the section on waiver.

[3] Transfer under these statutes relates to transfer to another county based on residence or transfer to the tribal court of the Confederated Tribes of Warm Springs.

[4] While jurisdiction is statutorily permitted in some cases up to age 25, it varies. For youth on probation, ORS 419C.504 directs that a youth may not be placed on probation past age 23.

[5] If the court also has jurisdiction over the person based on a previous adjudication under ORS 419C.005 or ORS Chapter 419B, placing a person under the jurisdiction of the board in a later case does not terminate wardship under the previous case unless the court so orders. 419C.005(4)(e).

investigation and indictment or discovery of the youth do not occur until after they turn 18, the case may be properly filed in criminal court. *See State v. Scurlock*, 286 Or 277, 593 P2d 1159 (1979). The prosecution may not intentionally delay investigation and filing until after a youth reaches 18 solely for the purpose of filing in criminal court. *Id.* at 282. A youth's case may be transferred to circuit court under ORS 137.707 (discussed in detail below) and later return to the jurisdiction of the juvenile court based on specifics of the conviction in circuit court. *See* ORS 419C.067. If this occurs, the juvenile court subsequently regains jurisdiction and is required to enter an order finding the youth within the jurisdiction of the court under ORS 419C.005, based on the verdict in criminal court. This means that the youth is not to be considered to have been convicted of a crime.

A youth may be under the jurisdiction of the court for a delinquency case and a dependency case at the same time. While jurisdiction in juvenile delinquency cases is determined based on law violations by those under 18, juvenile dependency jurisdiction is covered in ORS Chapter 419B and involves children and their parents. The Oregon Judicial Department's (OJD) Juvenile Dependency Bench Book provides a more in-depth review of dependency law. The purpose of the dependency system is distinct from that noted above in the delinquency system. ORS 419B.090(a) describes the policy: "It is the policy of the State of Oregon to recognize that children are individuals who have legal rights. Among those rights are the right to:

(A) Permanency with a safe family;

(B) Freedom from physical, sexual or emotional abuse or exploitation; and

(C) Freedom from substantial neglect of basic needs."

Id. When a young person is involved in both the delinquency and dependency systems, it is important for the court to understand the full social history of a youth and ensure that all appropriate parties are provided opportunities to appear at the appropriate hearings and assist in supporting the child at the right times.

2. Venue And Transfer

A. Venue

Venue is proper either in the county where the youth resides[6] or the county in which the alleged act was committed. ORS 419C.013. However, a proceeding that is subject to waiver under ORS 419C.349(1) (waiver of youth to criminal court for certain felony offenses) must be commenced only in the county where the alleged act was committed. A person committed to a youth correctional facility who is applying for a writ of habeas

[6] "'Resides' or 'residence,' when used in reference to the residence of a child, ward, youth or adjudicated youth, means where the child, ward, youth, or adjudicated youth is actually living or the jurisdiction in which wardship or jurisdiction has been established." ORS 419A.004(28).

corpus must bring that action in the county of the court that entered the initial order of commitment. ORS 419C.013.

The Oregon Court of Appeals has held that venue is not a material element of proof in a juvenile delinquency proceeding.[7] *State ex rel. Juv. Dept. of Marion Cnty. v. Smith*, 126 Or App 646, 870 P2d 240 (1994). For criminal defendants, Article I, Section 11 of the Oregon Constitution guarantees the right to a jury trial in the county in which an offense was committed. The court in *Smith* distinguished this for youth, noting the purpose of juvenile court and holding that proof of venue is immaterial to the determination of whether the child committed the alleged act and is properly within the court's jurisdiction. *Id.* at 651.

B. Transfer

Transfer to or from juvenile court from another court, and between different jurisdictions (counties), comes up in different contexts. Both are summarized below.

I. Transfer from Another Court

If a person has a proceeding against them in another court, and it is determined during the pendency of the proceeding that they are of the age that their case should be within the jurisdiction of the juvenile court, the case shall be transferred to juvenile court. ORS 419C.050.

II. Transfer Between Counties

A court, upon its own motion or on the motion of a party made prior to the time of disposition, may transfer a proceeding to the county where the youth resides. ORS 419C.053(1). If this occurs, the clerk of the transferring county must notify the court to which the proceeding is being transferred. This may be done if:

- The proceeding was initiated in a court of a county other than the county where the youth resides,
- The residence of the youth changes during the proceeding, or
- The youth has already been adjudicated and other proceedings are pending in the county of the youth's residence.[8]

If a case is pending in a county other than that of the youth's residence and the case is transferrable, the county of residence may authorize the court in which the case is

[7] This, along with the right to a jury trial, is one of the few areas in which some constitutional due process protections that are afforded to criminal defendants are not extended to juveniles.

[8] If a youth has no ascertainable county of residence, the county where a proceeding is initiated may adjudicate any petition.

proceeding to proceed if it will facilitate disposition of the case without adverse effect on the interests of the youth. Two possible options exist:

1. The court may hear the case in its entirety, including disposition; or

2. The court may conduct a fact-finding hearing, enter an order, and notify the county in which the youth resides of its findings.

The court where a case is pending may authorize the court of *any other* county to take action to facilitate the disposition of the youth. ORS 419C.059. Two possible options exist:

1. The other court may adjudicate the petition and notify the court in which the case is pending; or

2. The other court may assume jurisdiction and supervise probation or protective supervision.[9] This may only occur if the court in which the case is proceeding finds the youth has moved to the other county as part of disposition, legal custody is with a person in that jurisdiction, and the other court agrees to accept jurisdiction.

III. Tribal Court, Transfer, and Jurisdiction

If a youth is an enrolled member of a federally recognized tribe and resides on the Warm Springs Reservation, the case may be transferred. ORS 419C.058(1) provides that with the approval of the Chief Justice, the presiding judge of the twenty-second judicial district, and for cases arising in Wasco County or Hood River County, the presiding judge of the seventh judicial district, may enter into a Memorandum of Understanding (MOU) with the Confederated Tribes of Warm Springs regarding the adjudication and disposition of youth.

If an MOU is entered, the juvenile court may either waive its jurisdiction and transfer the case to the tribal court of the Confederated Tribes of Warm Springs for adjudication, or it may transfer the case for disposition after finding a youth within the jurisdiction of the juvenile court under ORS 419C.005. ORS 419C.058(2).

C. Interstate Compact on Juveniles

The Interstate Compact for Juveniles (ICJ) is a multi-state agreement, governed by the Interstate Commission for Juveniles, that provides the procedural backdrop for the movement of youth within the delinquency system between states. All states and the U.S. territories are parties to the ICJ, which is a legal contract. Oregon's adoption of the ICJ is codified in ORS 417.030–417.080. Here are links to the ICJ Rules and the forms

[9] The cost of administering probation or protective supervision will be paid by the county accepting jurisdiction unless otherwise agreed.

required and approved by the ICJ. This section will provide a brief overview of the ICJ, but the Interstate Commission for Juveniles has also created a bench book that is updated annually and provides a much more thorough overview. Further, much of the work behind the ICJ is taken on by the state's ICJ commissioner and the supervising authority of the individual youth in question. In Oregon, the Director of the Oregon Youth Authority (OYA) serves as the state's Juvenile Compact Administrator. ORS 417.040(1). This section is meant to address those circumstances in which a juvenile may come before the juvenile court. If you have a question about the ICJ, you should contact Oregon ICJ Commissioner.

Courts will see youth who are pre-adjudication and adjudicated, as well as those who are not formally involved in the delinquency system. The ICJ governs the supervision of adjudicated youth or youth on deferred adjudication from other states residing in Oregon, the return of "adjudicated delinquent" or "accused delinquent"[10] youth to their home state if they have absconded, and the return of nondelinquent youth who have run away from their home state. The common situations in which a youth will be before an Oregon court are discussed in turn.

I. Escapees, Absconders, and Accused Delinquents[11]

If a juvenile who is an escapee, absconder, or accused delinquent is in Oregon from another state, they may be detained in a secure facility.[12] If detained, the Oregon ICJ office shall contact the home/demanding state for them to determine the appropriate steps. The court must hold a hearing and inform the youth of their due process rights. The court may also appoint counsel. ICJ Rule 6-102(5). If the juvenile voluntarily consents to return, the juvenile and court must sign Form III - Consent for Voluntary Return of Out-of-State Juvenile. ICJ Rule 6-102(6). Juveniles must be returned within 5 business days from the date the home/demanding state receives the consent form.

If the youth does not voluntarily agree to return home, the home/demanding state will issue Form II - Requisition for Escapee, Absconder, or Accused Delinquent to request the return of the juvenile. The court may sign this form. ICJ Rule 6-103A(3)(3). Once the

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[10] ICJ Rule 1-101 includes definitions for the various terms used in the ICJ.

[11] Definitions of these terms are as follows (from ICJ Rule 1-101):

Absconder: a juvenile probationer or parolee who hides, conceals, or absents him/herself so that he/she is unavailable for the legal process or authorized control

Accused Delinquent: a person charged with an offense that, if committed by an adult, would be a criminal offense.

Escapee: a juvenile who has made an unauthorized flight from in custody status or a facility to which he/she has been committed by a lawful authority.

[12] Absconders, escapees, or accused delinquents shall be detained in a secure facility if they have an active warrant; otherwise, they may be held at another location deemed appropriate. ICJ Rule 6-102(2).

ICJ office in the holding state receives the appropriate requisition form, it must be forwarded to the court for a hearing within 30 days of receipt. If the juvenile is not already held, the court shall order the juvenile be held pending a hearing on requisition. ICJ Rule 6-103A(5). The court shall inform the juvenile of the demand for their return and may appoint counsel. The purpose of the hearing is to determine proof of entitlement for the return of the juvenile. If proof is not established, the court shall issue written findings. ICJ Rule 6-103A(6). Juveniles must be returned within 5 days of receipt of the order granting requisition. Juveniles may only be held for a maximum of 90 days. ICJ Rule 6-103A(8).

II. Runaways and Non-Delinquent Juveniles

Runaways[13] and other non-delinquent juveniles, if detained, may be released to their legal custodian within the first 24 hours without applying the ICJ, unless abuse or neglect is suspected. If they remain in custody more than 24 hours, the home/demanding state must be contacted and the ICJ must be applied. Runaways may only be detained in secure facilities if they are a danger to themselves or others. If they are deemed not a danger, they may be held at another location deemed appropriate.

If detained, the Oregon ICJ office shall contact the home/demanding state for them to determine the appropriate steps. The home/demanding state may present a requisition form and request. ICJ Rule 6-103A(3). If this occurs, the juvenile may either voluntarily consent to return or the home/demanding state may submit a requisition form. Either way, the court must hold a hearing if the youth has been detained. Even if the juvenile voluntarily agrees to return home, they shall also have the opportunity to appear in court. ICJ Rule 6-102(6). The court must advise the juvenile of their due process rights and may appoint counsel. ICJ Rule 6-102(5). If the juvenile voluntarily consents to return, the juvenile and court must sign Form III - Consent for Voluntary Return of Out-of-State Juveniles. ICJ Rule 6-103(6). Juveniles must be returned within 5 business days from the date the home/demanding state receives the consent form.

If a detained runaway does not voluntarily agree to return home, the home/demanding state, based on a petition from the legal guardian or custodial agency, may present Form I - Requisition for Runaway Juvenile to the holding state. The holding state must hold a hearing within 30 days from the date the ICJ office provides Form I. “If not already detained, the court shall order the juvenile be held pending a hearing on the requisition.” ICJ Rule 6-103(5). The purpose of the hearing is to determine proof of entitlement for the return of the juvenile. ICJ Rule 6-103(6). Juveniles may only be held for a maximum of 90 days. ICJ Rule 6-103(8). Juveniles must be returned within 5 business days of the receipt of the order granting the requisition. ICJ Rule 6-103(9).

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[13] A runaway is defined as a “[person] within the juvenile jurisdictional age limit established by the home state who (1) have voluntarily left their residence without permission of their legal guardian or custodial agency or (2) refuse to return to their residence as directed by their legal guardian or custodial agency, but who may or may not have been adjudicated.” ICJ Rule 1-101.

III. Transfer of Supervision

Another state may request that Oregon supervise a juvenile who is within the jurisdiction of the sending state and meets a set of specific criteria.[14] Oregon may also request another state supervise a juvenile who is under the jurisdiction of the Oregon juvenile court or who has a deferred adjudication. ICJ Rule 4-101(2). If Oregon sends a youth to another state for supervision, the youth must complete an application, which needs to be signed by the juvenile court.[15] If a juvenile from another state is accepted by the Oregon ICJ and is on probation or parole, Oregon has the authority to enforce the terms of said supervision, which may include sanctions. ICJ Rule 5-101(3). This suggests that an Oregon court may hear a probation violation if a transferred youth on supervision here violates the terms of their probation. The rule indicates that both states may enforce the terms. If a youth violates their probation, the ICJ process should be followed. ICJ Rule 5-103 indicates that if a juvenile is out of compliance with supervision, the receiving state shall notify the sending state and include the "status and disposition" of any new citation or technical violation. ICJ Rule 5-103(1).

3. Waiver

A. Waiver to Criminal Court Under ORS 419C.349

I. Brief History: Measure 11 and Senate Bill 1008

The 1959 Juvenile Code, Oregon's first juvenile code, vested exclusive and original jurisdiction over any person under 18 years of age in juvenile court. The code included a provision for remand:[16]

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[14] These criteria are listed in ICJ Rule 4-101, and include:

(a) is classified as a juvenile in the sending state;

(b) is an adjudicated delinquent, status offender, or has a deferred adjudication in the sending state;

(c) is under the jurisdiction of a court in the sending state;

(d) has a plan to reside in another state for more than 90 days in a 12-month period;

(e) has more than 90 days (or an indefinite period) of supervision remaining at the time of the request; and

(f) will reside with a legal guardian, relative, non-relative or independently (excluding residential facilities) or is a full time student at an accredited school or training program.

[15] This is done by submitting Form VI - Application for Services and Waiver.

[16] The term "remand" was previously used in Oregon. It is synonymous with the term "waiver." "Waiver" is now considered the correct term.

A child may be remanded to a circuit, district, justice or municipal court of competent jurisdiction as an adult if:

(a) The child is at the time of the remand 16 years of age or older; and

(b) The child committed or is alleged to have committed a criminal offense or violation of a municipal ordinance; and

(c) The juvenile court determines that retaining jurisdiction will not serve the best interests of the child and the public.

State v. Little, 241 Or 557, 560, 407 P2d 627 (1965) (citing ORS 419.533 (1959)). In the late 1960s, the U.S. Supreme Court issued two decisions that impacted the waiver of juvenile court jurisdiction in Oregon: *Kent v. United States*, 383 US 541, 86 S Ct 1045, 16 L. Ed 2d 84 (1966) and *In re Gault*, 387 US 1, 87 S Ct 1428 18 L Ed 527 (1967). In *Kent,* the Court articulated criteria for the juvenile court to consider in a waiver hearing.[17] The Supreme Court solidified these requirements with their decision a year

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[17] In *Kent*, the U.S. Supreme Court held:

> [W]e conclude that, as a condition to a valid waiver order, petitioner was entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the Juvenile Court's decision. We believe this result is required by the statute real in constitutional principles relating to due process and the assistance of counsel.

Kent at 557. The Court noted, with approval, that in 1959, the District of Columbia Juvenile Court set out the following criteria for the juvenile court to consider during a waiver hearing:

1. The seriousness of the alleged offense to the community and whether protection of the community requires waiver.

2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.

3. Whether the alleged offense was against persons or property . . . .

4. The prosecutive merit of the complaint . . . .

5. The desirability of trial and disposition of the entire offense in one court . . . .

6. The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living.

7. The record and previous history of the juvenile . . . .

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile . . . by use of procedures, services and facilities available to the Juvenile Court.

Kent at 565-67.

later in *In re Gault*. Although *Gault* was not a waiver case, the Court noted, with approval, the decision of the requirement of due process and equal protection in juvenile delinquency proceedings.

The Oregon Court of Appeals followed the U.S. Supreme Court's decisions in *Kent* and *Gault* when it overturned a waiver decision in *State v. Weidner*, 6 Or App 317, 487 P2d 1385 (1971). The Court of Appeals found that the 9-minute hearing of the Washington County Juvenile Court did not comply with the hearing requirements in *Kent* and *Gault.*

The court first set out the factors that it considered when it reviewed waiver decisions in *State ex rel. Juvenile Department of Washington County v. Kent,* 31 Or App 1219, 572 P2d 1059 (1977). The court stated:

> In many of our past decisions, we have looked to the age of the juvenile remanded. The closer a juvenile is to the age of 18, the less reluctant we are to affirm a remand to the adult criminal court system. Generally, remands involving juveniles aged 17 have been upheld by this court. Where we found a 16-year-old male to be physically as well as emotionally immature for his age, we reversed a remand of the juvenile to adult criminal court. *See State ex rel. Juv. Dept. v. Cardiel,* 18 Or App 49, 523 P2d 1057 (1974).
>
> Next, we have considered whether the child has had previous contact with the juvenile system and whether such contact has been helpful in rehabilitating the child. Where we find that a child has been involved with the juvenile system in the past and either has not been rehabilitated or is presently manipulating the juvenile system to accomplish his own goals, we usually uphold a remand to adult court. . . .
>
> Third, we have examined the length of time that a child will be exposed to the juvenile system in order to determine whether the juvenile system can rehabilitate him before he is discharged at age 21. Where the evidence indicates that a child will need supervision beyond the age of 21 or the child will only be exposed to the juvenile system for a short period of time due to his proximity to age 21, we have upheld the propriety of a remand of the child to adult court.
>
> Finally, we have looked to the number and severity of the acts of a criminal nature that the child has committed in the past. The greater the number and the more severe the past acts, the greater the likelihood that we will uphold a remand. Where acts of violence (assaults and homicides) are committed by a juvenile, we have tended to examine the behavior in order to determine if it was done impulsively or reflects a general pattern of juvenile violence. An impulsive act may not require a remand, while a planned assault will support a remand.

Id. at 1227-1229 (citations omitted) (there is no connection between the federal *Kent* case and the Oregon *Kent* case). The Oregon Legislature did not adopt any specific criteria for a juvenile court judge to consider in waiver decisions until the 1985 legislative session. During this session, several changes to the waiver statute were made, including:

1. Lowered the age of waiver from 16 to 14 for certain enumerated violent felonies.

2. Established a new list of criteria that must be reviewed and considered by the juvenile court judge when deciding a waiver motion.

3. Prohibited the death penalty for any juvenile and established that no waived juvenile can receive a minimum sentence.

4. Established that waived juveniles shall be held in a juvenile facility until they turn 16 years of age.

The criteria established by the Oregon Legislature in 1985 are the same criteria that are in the current Oregon waiver statute. *See* ORS 419C.349(2). These criteria were taken from both *Kent v. U.S., supra,* and *State ex rel. Juv. Dept. v. Kent, supra.*

In the early 1990s, a "tough on crime" wave swept across the country, with many states making it easier to prosecute juveniles as if they were adults. Oregon was no different. In 1994, Governor Barbara Roberts established the Governor's Task Force on Juvenile Justice to "examine Oregon's juvenile justice system, to identify the components of the system that are working and those that are not, and to help amend and reform the system to meet current and future needs." Ted Kulongoski, Final Report, Governor's Task Force on Juvenile Justice, at 3.

Measure 11 was passed by the Oregon voters in November 1994 and went into effect on April 1, 1995. Measure 11 did two things regarding juveniles. First, it required any person 15 years or older who is charged with one of the enumerated Measure 11 offenses to be tried in criminal court as an adult, thereby carving out those youth from the exclusive and original juvenile court jurisdiction. Second, it required a presumptive minimum sentence for any person under 18 years of age who was convicted of at least one of the enumerated offenses. ORS 137.707.

The task force did not issue the final report with their recommendations until after November 1994. In anticipation of the passage of Measure 11 (1994), the task force made several reformative recommendations within the juvenile justice system in Oregon. Among the recommendations were adding 14-year-olds to Measure 11 (automatic waiver for enumerated offenses), changing the enumerated offenses in Measure 11 (adding some and removing others), establishing "Second Look" hearings, creating OYA, and extending juvenile court jurisdiction to age 25. Many (but not all) of these recommendations became part of Senate Bill (SB) 1 (1995) which implemented Measure 11 for juveniles and changed many aspects of Oregon's juvenile justice system. Kulongoski, *supra*, at 6-8. It is clear from the legislative history of SB 1 (1995) that the Oregon Legislature was concerned about the reported increase in juvenile

crime, the alleged increase in the severity of the crimes committed by juveniles, and the fear of more and more hardened juveniles entering a system that the Legislature felt was ill-equipped to handle them. However, in 1994, national juvenile crime rates began to drop, including in Oregon.

II. Current Law

As noted in Chapter 1, many of the changes made by Measure 11 were rolled back by SB 1008 in 2019.[18] Now, in order for a youth to be waived to criminal court, the state must proactively file a motion to waive them to circuit court. ORS 419C.349(1). The state can file a motion for waiver if the youth was 15, 16, or 17 at the time of the commission of an alleged offense. The offenses for which a youth can be waived, which include many violent crimes such as aggravated murder, are listed in ORS 137.707. In addition, the state can file a motion requesting a waiver hearing for any Class A or B felony and some class C felonies.[19] If the youth is between the age of 12 and 14[20] at the time of commission of the alleged offense, the youth must be represented by counsel and must be alleged to have committed one of the offenses enumerated in ORS 419C.352.[21]

In a waiver hearing, the purpose is not to determine whether the youth has committed the alleged acts. *State ex rel. Juv. Dept. of Marion Cnty. v. Johnson,* 11 Or App 313,

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[18] In 2019, the Oregon Legislature passed SB 1008, which significantly reformed the Oregon justice system. The changes to the waiver statute (ORS 419C.349), other than restructuring of the statute, included:

1. Adding "and whether the youth can be safely rehabilitated under the jurisdiction of the juvenile court" to ORS 419C.349(2)(b)(B).

2. Changing "which" to "that" in ORS 419C.349(2)(E).

3. Adding subsection (3)(a): "The victim of the alleged offense has the right to appear at the hearing on this section and to provide the court with any information reasonably related to the court's determination."

4. Adding subsection (4): "The right to counsel, and the appointment of counsel under 419C.200, applies to a hearing under this section."

5. Adding subsection (5): "The state has the right to have at least one psychiatrist or licensed psychologist of its selection examine the youth concerning the determination of whether to waive the youth under this section."

[19] ORS 419C.349(b)(B) details the Class C felonies for which the state may file a motion for a waiver hearing.

[20] A youth must be over 12 years of age to be waived to circuit court. ORS 161.290.

[21] The charges for which a youth aged 12-14 may be waived are Murder or Aggravated Murder, Rape I, Sodomy I, or Unlawful Sexual Penetration I. ORS 419C.352(1)(c).

501 P2d 1011 (1972). This does not mean that the fact of the underlying allegations are not relevant, as they may have relevance for the other questions before the court. *State ex rel. Juv. Dept. of Gilliam Cnty. v. Dahl,* 37 Or App 839, 588 P2d 132 *(1978).* Additionally, hearsay is admissible in waiver hearings as the evidence code does not apply. *See In re Fox,* 51 Or App 257, 625 P2d 163 (1981). However, the youth still retains a constitutional right to confront the witnesses against them.

ORS 419C.349(2)(a) requires that for all youth where waiver of juvenile court jurisdiction is sought, the court must find that "[t]he youth at the time of the alleged offense was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved." The only interpretation of this language was provided by the Oregon Supreme Court in *State v. J.C.N.-V. (In re J.C.N.-V.)*, 359 Or 559, 380 P3d (2016). The court in *J.C.N.-V.* found that "to authorize waiver of a youth who is otherwise eligible for waiver under ORS 419C.349 or 419C.352, a juvenile court must find that the youth possess sufficient adult-like understanding of the significance of his or her conduct, including its wrongfulness and its consequences for the youth, the victim, and others." *Id.* at 598. The Court goes on to say:

> The legislature intended that a juvenile court take measure of a youth
>
> and reach an overall determination as to whether the youth's capabilities are,
>
> on the whole, sufficiently adult-like to justify a conclusion that the youth was
>
> capable of appreciating, on an intellectual and emotional level, the significance
>
> and consequences of his conduct.

Id. at 598.[22] If the trial court determines that a youth, at the time of the offense, did have sufficient sophistication and maturity to appreciate the nature and quality of the conduct

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[22] The Court goes on to offer the types of considerations and evidence the juvenile court may find helpful in its determination of whether the youth's capabilities are sufficiently like those of a typical adult:

> As one researcher in the field has observed, '[m]aturity itself is not a unified concept; many youth—especially in later adolescence—may be relatively mature in some ways and not in others. They may be intellectually mature but socially immature; they may have mature decision-making capacities in terms of abilities to consider and weigh options, yet be morally immature in the ways in which they apply those abilities.' Thomas Grisso, *Clinicians' Transfer Evaluations: How Well Can They Assist Judicial Discretion?* 71 LaL Rev 157, 184 (2010). . . .
>
> In this case, the juvenile court did not undertake that kind of analysis. The court's findings boiled down to their essence, were that the youth understood and acknowledged his own role in the murder and knew it constituted a crime and knew it would carry criminal consequences. Those findings demonstrate the youth's knowledge of his physical conduct and its physical

involved, the court then considers the factors set out in ORS 419C.349(2)(b). The criteria are as follows:

(A) The amenability of the youth to treatment and rehabilitation given the techniques, facilities and personnel for rehabilitation available to the juvenile court and to the criminal court that would have jurisdiction after transfer;

(B) The protection required by the community, given the seriousness of the offense alleged, and whether the youth can be safely rehabilitated under the jurisdiction of the juvenile court;

(C) The aggressive, violent, premeditated or willful manner in which the offense was alleged to have been committed;

(D) The previous history of the youth, including:

(i) Prior treatment efforts and out-of-home placements; and

(ii) The physical, emotional and mental health of the youth;

(E) The youth's prior record of acts that would be crimes if committed by an adult;

(F) The gravity of the loss, damage or injury caused or attempted during the offense;

(G) The prosecutive merit of the case against the youth; and

(H) The desirability of disposing of all cases in one trial if there were adult co-offenders.

The presumption is that the youth should remain under juvenile court jurisdiction and the state must prove these criteria by a preponderance of the evidence. The court must find, based on these criteria, that waiver of juvenile court jurisdiction over the youth is in the best interests of the youth and society. ORS 419C.349(2)(b). The victim also has a right to appear at the hearing and provide the court with information "reasonably related to the court's determination". *Id.*

SB 1008 (2019) also made the following significant reforms to the sentences of waived youth:

> consequences and criminality. They do not demonstrate or even relate to the question of whether the youth had the adult-like capacities that would allow him to appreciate the significance and wrongfulness of his conduct and its consequences in both an intellectual and an emotional sense. . . . The court's . . . finding shows the court did not understand that ORS 419C.349(3) looks for an overall adult-like rather than juvenile-like capacity to appreciate the nature and quality of the conduct emotionally as well as intellectually.

J.C.N.-V. at 599-600.

- Requiring the courts to consider juvenile mitigating factors when sentencing a waived youth (ORS 161.740), ensuring that waived youth qualify for second-look hearings (ORS 420A.203),

- Expanding second-look hearings to include situations where a waived youth has less than 2 years remaining on their sentence after transfer from an OYA facility to a Department of Corrections facility because the youth is turning 25 years of age (ORS 420A.203(1)(a)(B),

- Eliminating the sentence of life without the possibility of parole for an offense that was committed prior to the youth's 18th birthday (ORS 161.740), and

- Establishing a release hearing for a waived juvenile after serving 15 years of a sentence (ORS 144.397).

B. Motor Vehicle, Boating, and Game Offenses (Blanket Waiver)

The juvenile court may enter an order directing that all cases involving the violation of a motor vehicle, boating, or game law be waived to criminal or municipal court. ORS 419C.370(1). The court may also order that all offenses classified as a violation or a misdemeanor that entails theft, destruction, tampering with, or vandalism of property be waived to municipal court if the municipal court agrees to accept jurisdiction. *Id.* This varies among jurisdictions and is typically done through a Presiding Judge Order (PJO). When cases are waived to a criminal or municipal court, the criminal or municipal court must notify the juvenile court of the waiver, and the juvenile court may direct that any further proceedings occur in juvenile court. ORS 419C.370(2). It is important to reference the PJOs in each jurisdiction where one of the cases may be heard, as venue is implicated.

The Oregon Court of Appeals reviewed ORS 419C.370 (or what some refer to as "blanket waiver") in *State v. Reasoner*, 313 Or App 139, 495 P3d 686 (2021). The court determined two issues brought forth by the defendant. First, the court held that the authority for juvenile courts to determine where jurisdiction lies for a class of cases (motor vehicle cases) was not an unconstitutional delegation of legislative powers to the judicial branch. *Id. at* 148-49. The court reasoned that the juvenile court had authority to bring juvenile cases back before the juvenile court, either on the court's own motion or at the youth's request. *Id.* Second, the court held that ORS 419C.370 did not violate procedural due process even though a class of juveniles was waived without individual hearings because the statute did not prevent the juvenile court from applying procedural due process in bringing a youth back to juvenile court. *Id. at* 150-151.

For cases waived to municipal court involving theft, destruction of, tampering with, or vandalism of property, a youth may not serve any term of incarceration. If the youth is alleged to have violated probation in one of these cases, the juvenile court may recall the case to juvenile court for further proceedings. Additionally, the records are considered juvenile records for purposes of expunction. ORS 419C.370(4).

If a boating or gaming violation remains in juvenile court, the processes for filing a petition, summons, and service are all the same as any other offense filed in juvenile court. *See* ORS 419C.374. The court shall hold a hearing if detention is sought, pursuant to ORS 419C.142. The court does not need to hold separate hearings for motor vehicle cases (not involving death or serious injury) as typically required for separate cases in juvenile court. ORS 419C.280(1). Otherwise, a motor vehicle, boating, or gaming law violation shall be subject to the same procedures for trial, as any other juvenile case. A youth shall be considered adjudicated and within the jurisdiction of the juvenile court. ORS 419C.374(4); ORS 419C.400. If a youth is a boating or gaming law offender, the juvenile court may suspend a hunting or fishing license or permit. ORS 419C.374(5).

If a motor vehicle violation remains in juvenile court and the youth is adjudicated to be a "motor vehicle offender," the court and state must also follow the processes provided in ORS 809.412, relating to suspension and revocation of driving privileges. ORS 419C.374(1), (4)(a). The law directs the juvenile court to order the suspension or revocation of driving privileges if the offense is grounds for suspension upon conviction. ORS 809.412 directs the court to follow the statutes for processes of suspension or revocation. The Department of Transportation has created a form, in consultation with the Judicial Department, that is available for courts to use when ordering suspension or revocation.[23]

[23] The juvenile court form based on an adjudication is Driver and Motor Vehicle Services Form 6116A. Contact the clerk or Driver and Motor Vehicle Services if your court does not have copies of this already.

Chapter 3
Juvenile Delinquency Procedure

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This chapter provides information about juvenile delinquency procedure, including the statutory framework, notable cases, the application of criminal procedure laws, and Uniform Trial Court Rules (UTCRs).

1. Petition and Summons

A. Filing

The state may file a petition alleging the youth is within the jurisdiction of the juvenile court. ORS 419C.250. The law permits either the District Attorney (DA), Attorney General (AG), or a juvenile department counselor with permission from the DA to file the petition. ORS 419C.250(1). At any time after the filing, the court may make an order providing for the temporary custody of the youth.[1] The petition must be verified upon the information and belief of the petitioner. ORS 419C.250(3). "Promptly after the petition is filed, there shall be an investigation of the circumstances concerning the youth. No later than 60 days after the petition is filed, summons may be issued." ORS 419C.300. Some recognize that the timing within which a summons must be issued (along with cases providing that due process rights extend to juveniles) suggests that speedy trial rights extend to youth.[2] However, Oregon courts have held that failure to comply with the 60-day timeline does not necessarily require dismissal of the petition. *State v. Zauner*, 250 Or 96, 441 P2d 81 (1968).

B. Legal Requirements

I. Petition

ORS 419C.255 lays out the requirements for the contents of a petition, including, but not limited to, the facts that bring the youth within the jurisdiction of the court. The name

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[1] This is covered more in depth in Chapter 4.

[2] In *State v. Zauner*, 250 Or 96, 441 P2d 81 (1968), the court referenced the legislative history behind what is now ORS 419C.300 to support the court's reasoning that previous informal handling of petitions without timelines for the summons (which resulted in delays) was improper. Though the case was not directly on point regarding speedy trial rights, the issue was discussed. The child in that case made constitutional arguments under Article 1, Section 10 of the Oregon Constitution stating that his right to have justice administered without delay was violated when a summons was not issued within 60 days of the initial petition. *Id.* at 99. An amended petition was filed in *Zauner*, and the summons was issued shortly thereafter. The court ultimately found that was proper. *See also In re Knox*, 20 Or App 455, 532 P2d 245 (1975); *State ex rel. Juv. Dept. of Coos Cnty. v. Clements*, 95 Or App 640, 770 P2d 937 (1989).

of the person who was physically injured or who suffered a loss as a result of the alleged conduct must also be included. ORS 419C.255.

II. Summons

The summons must be signed by a counselor or other person acting under the direction of the court and must contain the name of the court, the title of the proceeding, and a brief statement of facts alleging jurisdiction. ORS 419C.303. The summons is now also required to include a notice that neither the youth nor the parent or guardian is responsible for any administrative fees in a delinquency proceeding, but the youth may be required to pay restitution at some future date.[3] ORS 419C.303(2).

The summons shall require the person who has physical custody of the youth to bring them before the court at a specific time and date. The time for the hearing must be reasonable and not less than 24 hours after issuance of the summons. ORS 419C.306(1). The court may indorse an order on the summons directing the officer serving it to take the youth into custody, as provided in ORS 419C.080(2), if it appears to the court that the welfare of the youth or the public so require. ORS 419C.306(1).

The parents or guardians of the youth are required to appear personally at the initial appearance. After that, they are only required to appear as directed by the court (though they are able to attend all hearings, if they choose).[4] The law protects parents or guardians from being discharged, intimidated, or coerced by their employer as a result of compulsory attendance in court. ORS 419C.306(2).

A summons may also be issued to "any person whose presence the court deems necessary." ORS 419C.306(4). Additionally, a copy of the summons must also be mailed to all victims whose names appear on the petition, along with a notice that they may be present and may receive notification of future hearings in the case. *Id.*

C. Service

ORS 419C.258 requires service of a true copy of the petition, along with the summons upon the youth (if over the age of 12),[5] to be served upon the person who has physical custody of the youth, the youth's legal parents (regardless of who has legal or physical custody), and the youth's legal guardians. ORS 419C.258; ORS 419C.306.

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[3] Senate Bill (SB) 817 (2021) eliminated fines and fees associated with juvenile delinquency matters.

[4] Oregon juvenile courts are open, and anyone may attend any hearing, including in juvenile court. *State ex rel. Oregonian Publishing Company v. Deiz,* 289 Or 277, 613 P2d 23 (1980).

[5] If the petition alleges the youth is within the jurisdiction for having violated ORS 471.430, the summons must include a statement that the driving privileges of the youth are subject to suspension under ORS 419C.472 for failure to appear. ORS 419C.306(3).

Summonses or other process issuing from the juvenile court may be served in any county by an officer of the county in which the proceeding is pending, an officer in the county where the person is found, or any person authorized by the court. ORS 419C.309. This means that within Oregon, summonses may be served anywhere in the state by the above persons.[6] Unless otherwise provided in law, the Oregon Rules of Civil Procedure regarding summonses apply in juvenile cases.[7] Service of the summons under ORS 419C.309 or 419C.312 "shall vest the court with jurisdiction over the parents or guardian in the same manner and to the same extent as if the person served were served personally within [Oregon]." ORS 419C.312. ORS 419C.315 lays out the requirements for travel expenses pursuant to a summons.

D. Failure to Appear

If the summons cannot be served, the person to whom the summons is directed fails to obey or appear, or it appears to the court that the summons will be ineffectual, the court may direct issuance of a warrant of arrest against the person summonsed (most likely the person having physical custody of the youth or the youth's parent or guardian) or the youth. ORS 419C.320. However, if the youth is before the court, the court may proceed with the case despite a failure of service of the summons upon another. ORS 419C.323(1). If the parent or guardian was not served in accordance with the law, the court may, upon petition of the parent, reopen the case for full consideration. ORS 419C.323(2).

2. Criminal Procedure, Motions to Suppress, Evidence, and Discovery

The juvenile code does not cover procedure as comprehensively as the criminal code, but some provisions of the criminal code do apply. ORS 419C.270 lists the specific rules of criminal procedure that apply in juvenile proceedings. Below is a list of the statutes with a summary. Judges and attorneys should consult the Criminal Law Bench Book or Bar Book for a more detailed analysis of the concepts below. Many of these concepts (e.g., motions to suppress, demurrers, discovery) have been heavily litigated in the Oregon Court of Appeals and Supreme Court, as well as the federal district courts and the U.S. Supreme Court as they apply in criminal proceedings. Unless otherwise specifically noted, the established law applies in juvenile proceedings as well.

A. Motions in Delinquency Cases

Many of the criminal procedure laws below govern the different types of motions one may see in a delinquency case. While search and seizure and *Miranda* issues are

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[6] If the parent or guardian is out of the state, the summons may be served by sending it to their known address by registered or certified mail with a return receipt or by personal service outside the state. ORS 419C.312(1).

[7] The Oregon Rules of Civil Procedure do not typically apply in juvenile cases, so it is important to consult them in instances where they are referenced in statute.

called out specifically, several other motions are frequently filed in delinquency cases. These include but are not limited to the following:

- Motions in limine
- Motions to declare someone an expert
- OEC 803(18a)(b) (hearsay)
- Motions for protective orders/requiring in camera reviews (discussed below)
- Motions regarding records under ORS 419A.258
- Motions regarding subpoenas/Cartwright

I. In Camera Review

The court may, upon motion of the state or youth, order that subpoenaed books, papers, or documents be provided to the court prior to the time at which those materials could be offered into evidence. ORS 136.580. The court may then allow the state or youth to copy or inspect those documents. The subpoena process applies in juvenile delinquency proceedings. ORS 419C.405.

Upon request of any party, the court may permit a showing of good cause to deny or restrict disclosures of documents to be made in camera. ORS 136.873(3). A record shall be made of the proceeding. Although this statute is not specifically incorporated into delinquency proceedings, it seems to be a necessary component of ORS 136.580(2)'s provision that the court may allow a defendant to copy or inspect the documents, and case law seems to presume the availability of in camera review. *See State v. J.D.B.*, 326 Or App 237, 532 P3d 99 (2023).

The necessity for in camera review can arise due to the state's obligation to provide discovery under ORS 135.815(1) and the youth's due process rights under *Brady v. Maryland*, 373 US 83, 83 S Ct 1194 (1963) (*Brady* is applicable in juvenile proceedings. *Schall v. Martin*, 467 US 253, 104 S Ct 2403 (1984); *State v. J.D.B. (In re J.D.B.)*, 326 Or App 237, 532 P3d 99 (2023)). The court must conduct the in camera review before deciding what, if any, material shall be shared; this duty cannot be delegated to the state or youth (or the youth's defense). *State ex rel. Carlile v. Lewis*, 310 Or 541, 800 P2d 786 (1990).

II. Disclosure of Juvenile Case File

Any person or entity who does not otherwise have access to the juvenile case file may file a motion with the court to inspect or copy all or portions of the juvenile case file. ORS 419A.258. Where the person or entity has met the requirements of ORS 419A.258(1)-(2), the court must conduct an in camera review (419A.258(5)) and determine whether disclosure is allowed while balancing the interests in ORS

419A.258(6). *See State v. C.P.*, 371 Or 512, 538 P3d 882 (2023) for an appropriate disclosure of the juvenile case file following an in camera review.

B. Applicable Criminal Procedure Laws Under ORS 419C.270

I. Evidentiary Exclusions (and Custodial Interviews)

- **ORS 133.403[8] (custodial interview considered involuntary):** A statement made by someone under 18 is presumed involuntary if the law enforcement officer used information known to be false to elicit the statement and it is made in connection with an investigation into a misdemeanor or felony.

- **ORS 133.402 (electronic recording of juveniles):** House Bill (HB) 3261 (2019) added ORS 133.402, requiring the electronic recording by law enforcement of people under 18 in connection with the investigation of a misdemeanor or felony.

- **ORS 133.673 (motions to suppress):** A motion to suppress is required to object to the use in evidence of things seized in violation of ORS 133.525 to 133.703. The motion must be heard and determined in advance of trial. Juvenile-specific considerations for the legal concepts are discussed below.

- **ORS 133.693 (good faith, accuracy, and truthfulness; burden of proof):** This statute details the process and burden for challenging or proving good faith, accuracy, and truthfulness of the affiant presenting evidence or a search warrant resulting in the evidence sought to be presented.

- **ORS 133.703 (identity of informants):** When the identity of a confidential informant is not disclosed in testimony during a motion to suppress and the good faith of the testimony is contested, the moving party shall be entitled to prevail and the evidence shall be suppressed, unless certain conditions are met.

II. "Related Procedure" and Pretrial Motions

- **ORS 135.455 (alibi evidence; notice):** If the youth intends to rely on alibi evidence, they must provide detailed notice (including time, place, and witness contact information) not less than 5 days before trial. If not provided, the youth may not introduce such evidence unless good cause is shown. This does not apply in cases where the youth themself provides the alibi during testimony. *See State v. Edgmand*, 306 Or 535, 761 P2d 505 (1988).

- **ORS 135.465 (acquittal on merits notwithstanding defects in accusatory instrument)**

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[8] Note that this provision is not included in ORS 419C.270, but is specific to youth and custodial interviews and thus is applicable in juvenile cases.

- **ORS 135.470 (motion to dismiss based upon former jeopardy):** The court shall dismiss the accusatory instrument (petition) upon a motion of the youth if it appears that a former prosecution bars the prosecution for the offense charged. Note that ORS 419A.190[9] may also apply in circumstances that bring up former jeopardy concerns. *See State v. S.Q.K.,* 292 Or App 836, 426 P3d 659 (2018) (holding that a probation violation proceeding was the type of "adjudicatory hearing" that barred subsequent prosecution for conduct arising from allegations based on the same conduct).

III. Demurrers

- **ORS 135.610 (time for entry and requirements):** The demurrer shall be entered at time of arraignment or such other time as may be allowed. It shall be in writing, be signed, and the state ground of objection.

- **ORS 135.630(3)-(6) (permitted grounds for demurrer):** Note that only subsections (3)-(6) apply in juvenile proceedings.

- **ORS 135.640 (when objections may be taken):** Grounds or objections that appear on the face of the accusatory instrument may only be taken by demurrer, except for an objection to the jurisdiction of the court over the subject of the accusatory instrument or an objection that the facts stated do not constitute an offense, both of which may be taken at trial.

- **ORS 135.670 (allowance, resubmission, or refiling):** If the demurrer is allowed, the judgment is final and bars another action for the same crime, unless the court has the opinion that the objection on which the demurrer is allowed may be avoided in a new accusatory instrument. If resubmission is allowed, it must be done within 30 days of the date the order was entered.

IV. Sufficiency of Accusatory Instruments

- **ORS 135.711 (facts sufficient to constitute crime or subcategory):** For any felony committed on or after November 1, 1989, the accusatory instrument shall allege facts sufficient to constitute a crime or specific subcategory thereof in the Crime Seriousness Scale. An indictment is insufficient only if an accused can admit the truth of every allegation of fact therein and still be innocent of a crime. *State v. Barker*, 140 Or App 82, 914 P2d 111 (1996).

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[9] *See State v. Fair*, 157 Or App 648, 972 P2d 907 (1998), holding that juvenile adjudications are not predicate offenses for the purposes of the Oregon Racketeering Influenced and Corrupt Organizations Act (ORICO), and thus, ORS 419A.190 bars prosecution of such based on juvenile adjudications.

- **ORS 135.713 (presumptions; judicial notice):** Neither presumptions of law nor matters of which judicial notice is taken need to be stated in an accusatory instrument.

- **ORS 135.715 (formal defects; prejudice):** Defects in the accusatory instrument that do not prejudice the substantial rights of the defendant on the merits do not make the accusatory instrument insufficient and cannot affect the trial, judgment, or other proceedings.

- **ORS 135.717 (time of offense):** The time of an offense need not be stated in the accusatory instrument except where it is a material element of the offense.

- **ORS 135.720 (place of offense for certain crimes):** In an accusatory instrument for an offense committed as described in ORS 131.315 and 131.325, it is sufficient to allege that the offense was committed within the county where the accusatory instrument is found.[10]

- **ORS 135.725 (erroneous victim description):** Erroneous victim description in the accusatory instrument is not material if a crime is otherwise described with sufficient certainty in other respects to identify the act.

- **ORS 135.727 (animal descriptions):** If an offense involves the taking of or injury to an animal, the accusatory instrument is sufficiently certain if it describes the animal by the common name of its class.

- **ORS 135.730 (facts conferring jurisdiction)**

- **ORS 135.733 (criminal defamation)**

- **ORS 135.735 (forgery; destroying or withholding forged instrument)**

- **ORS 135.737 (perjury and similar offenses)**

- **ORS 135.740 (construction of language in accusatory instrument):** The words used in an accusatory instrument must be construed in their usual acceptation in common language, except words and phrases defined by law, which are to be construed according to their legal meaning.

- **ORS 135.743 (fictitious or erroneous name; true name):** If a youth is charged by a fictitious or erroneous name and the true name is later discovered, it may be inserted in the subsequent proceedings.

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[10] Also note that ORS 419C.013 still applies in juvenile cases, which allows venue in the place where the youth resides or where the alleged offense was committed.

V. Discovery

- **ORS 135.805 (applicability; scope of disclosure):** This statute defines "disclose" as the term relates to discovery and includes exceptions.

- **ORS 135.815(1)(a)-(e), (g) and 135.815(3) (required disclosures to defendant):** Subsection (1) requires the DA to disclose specified information (laid out in statute) within their possession or control to a represented defendant. Subsection (3) provides necessary disclosures in cases brought under ORS 813.010 (driving under the influence) when an instrument was used to test a person's breath, blood, or urine to determine alcoholic content. *See State v. Huskey*, 130 Or App 419, 882 P2d 1127 (1994) for application in a juvenile case.

- **ORS 135.825 (search and seizure information):** The DA must disclose the occurrence of a search and seizure and any relevant material or information obtained, including any specified statements from the defendant, upon written request.

- **ORS 135.835 (required disclosure by defense):** The defense must disclose specified information (laid out in statute) within their possession and control.

- **ORS 135.845 (time for disclosure; subsequent additional material):** The obligation to disclose shall be as soon as is practicable following the filing of the accusatory instrument. The court may supervise the exercise of discovery to the extent necessary to ensure that it proceeds properly and expeditiously. If a party finds, either before or during trial, additional material that is subject to disclosure, the party must promptly notify the other party of the additional information.

- **ORS 135.855 (exempt materials and information):** This statute specifies the material and information not subject to disclosure under these provisions.

- **ORS 135.857 (disclosures to victim in certain cases):** Certain material may be provided to the victim if the prosecution relates to an automobile collision in which the defendant is alleged to have been under the influence. The statute sets limits on redisclosure and timing.

- **ORS 135.865 (penalties for violations):** Once apprised of a violation of the discovery provisions, the court may order the violating party to permit inspection of the material, grant a continuance, refuse to permit a witness to testify, or refuse to receive in evidence the material not disclosed. The court may also enter such other order as it considers appropriate.

- **ORS 135.873 (protective orders; in camera proceedings; sealing records):** The court may order that specified disclosures be denied, restricted, or deferred or make such other order as is appropriate upon a showing of good cause. The statute lays out specific requirements for sexual offenses, appellate procedure, and exceptions. *See State v. Wixom*, 275 Or App 824, 366 P3d 353 (2015) for

application in a criminal case regarding records about victim from a juvenile dependency case.

VI. Court's Authority to Exclude Relevant Evidence

ORS 136.432 (exclusion of evidence): A court may not exclude relevant and otherwise admissible evidence on the grounds it was obtained in violation of any statutory provision unless exclusion is required by the U.S. or Oregon Constitution, the rules of evidence governing privileges and the admission of hearsay, or the rights of the press.

C. Search and Seizure and *Miranda* in Juvenile Court

While most of the due process rights and statutory and constitutional protections that apply to adults extend to juveniles as well, there are some additional considerations that are made based on age.[11]

I. Search and Seizure

1. Consent

Oregon courts have examined whether parental consent, or that of an adult is sufficient to overcome the lack of consent or denial by a youth. Some notable cases are listed below.

- *State v. H.K.D.S.*, 305 Or App 86, 469 P3d 770 (2020) (parental consent alone, under Article I, Section 9 of the Oregon Constitution, does not permit law enforcement to search the child for DNA collection).

- *State v. A.S.*, 296 Or App 722, 443 P3d 618 (2019) (the youth's grandmother, who was also the homeowner, could consent to the search of the youth's room based on circumstances of the case and her individual authority and access).

- *State v. J.D.H.*, 294 Or App 364, 432 P3d 297 (2018) (the youth's mother had actual authority to consent to the search of a youth's room and specific items based on the particular parent-child relationship in the case).

2. Stop

In *State v. K.A.M.*, 361 Or 805, 401 P3d 774 (2017), the Oregon Supreme Court held that a reasonable person, regardless of age, would not have felt free to leave in the youth's situation. Thus, based on the totality of circumstances, it was reasonable for youth to feel he was not free to leave. In this case, the youth argued at the Court of

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[11] *See In re Knox*, 20 Or App 455, 532 P2d 245 (1975) (holding that any procedure constitutionally required in criminal proceedings that is one of the essentials of due process and fair treatment is also required in juvenile proceedings, including protection against double jeopardy).

Appeals and Supreme Court that the court should have considered his age. However, the court did not address his age based on lack of preservation.

3. School Searches

Oregon recognizes that school personnel acting in their official capacity are "public officials," and the rules of the Fourth Amendment apply to any search they conduct. *State v. Walker*, 19 Or App 420, 528 P2d 113 (1974). However, the U.S. Supreme Court has held that there is a lower standard of reasonableness, as opposed to probable cause, to conduct searches of students at school. *New Jersey v. T.L.O.*, 469 US 325, 105 S Ct 733 (1985). A case from Oregon relating to mandatory drug testing also touches on the question of school searches. In *Vernonia School District v. Acton*, 515 US 646, 115 S Ct 2386 (1995), the U.S. Supreme Court held that students have lesser privacy expectations in school based on the school's legitimate concern about safety.

II. Miranda

The U.S. Supreme Court and Oregon courts have adopted the reasoning that the *Miranda* analysis for youth should take the youth's age into consideration whether determining whether the warnings should have been given. A few cases are listed below.

- *J.D.B. v. North Carolina*, 564 US 261, 131 S Ct 2394 (2011) (holding that courts should consider a youth's age in determining a Fifth Amendment *Miranda* issue).

- *State ex rel. Juv. Dept. v. Loredo*, 125 Or App 390, 865 P2d 1312 (1993) (courts should consider whether a reasonable person in a *child's position of similar age*, knowledge, and experience, placed in a similar environment, would have felt required to stay and answer all of the officer's questions when determining whether circumstances were compelling for purposes of *Miranda*) (emphasis added).

- *State v. D.P.*, 259 Or App 252, 313 P3d 306 (2013) (using the "reasonable child" standard to determine that a youth was interviewed under compelling circumstances and *Miranda* warnings were required).

3. Miscellaneous

A. Consolidation

ORS 419C.280 requires the juvenile court to hear each juvenile case separately. The only cases that may be heard together are violations of motor vehicle laws that do not result in death or serious injury and cases arising in whole or in part out of a single transaction or series of related transactions.

B. Amendment or Dismissal of a Petition

ORS 419C.261 permits the amendment or dismissal of a petition at any time. This includes during trial. The court may direct the amendment on the motion of a party or on its own motion. If the amendment results in a substantial departure from the facts alleged, the court may grant a continuance in the interests of justice. The provisions regarding dismissal and set-asides will be addressed in greater detail in Chapter 7.

C. Change of Judge

Under ORS 14.260, a party may file a motion supported by affidavit for a change of judge. The motion and affidavit must be supported by the belief that the party or attorney cannot have a fair and impartial trial or hearing before the judge. No specific grounds need to be alleged. The motion shall be allowed unless the judge moved against, or the presiding judge challenges the good faith of the affiant. ORS 14.270 requires the affidavit and motion to be filed at the time of the assignment of the case for trial or hearing on a motion, though oral notice of the intention is sufficient if they are filed by the end of the next judicial day. These provisions are distinct from those noted in Chapter 1 regarding the ability to request a rehearing under ORS 419C.150(3).

In 2023, the Legislature passed Senate Bill (SB) 807, which added provisions permitting a judge to challenge the motion if it were to effectively disqualify the judge from the assignment to a criminal or juvenile delinquency docket.

D. UTCR Chapter 11 and Exhibits

A few UTCR rules apply in juvenile delinquency proceedings. The most important have to do with predisposition investigation and the submission and maintenance of exhibits.[12]

I. UTCR 11.060: Predisposition Investigation

If the state or juvenile department investigates the youth and prepares a report under ORS 419A.112 or 419C.300, it shall be made available to the parties at least 7 days before the dispositional hearing. If jurisdiction is contested, the court *shall not* read the report until after jurisdiction has been established. If the investigation produces information the juvenile department concludes should not be divulged to the youth, parents, or attorneys, notice must be given and the information must be separated. It may be divulged pursuant to court order.

[12] UTCR 11.040 also applies, which requires the parties to notify the court prior to jurisdictional or dispositional hearing of an admission or stipulation of jurisdiction or of a dismissal.

II. UTCR 11.110: Submission of Exhibits

Judges should consult the Supplementary Local Rules or Presiding Judge Orders (PJOs) in their jurisdiction to determine the process for offering exhibits, as directed by UTCR 11.110(1). If the Supplementary Local Rules or PJOs requires electronic filing, the following requirements apply:

(a) The court shall maintain an exhibit log for each hearing or trial listing each exhibit offered and whether or not it was received. The log shall be maintained in the record of the case (ROC).

(b) The exhibits must comply with the format requirements of UTCR 21.040. Additional requirements noted.

(c) Exhibits shall be electronically filed on the day or the hearing or trial, or by the end of the next judicial day.

UTCR 11.110(2).

III. UTCR 11.120: Maintenance of Exhibits

UTCR 11.120(1) requires the court to maintain all exhibits, regardless of whether they were received in evidence, pursuant to ORS 419A.255(1)(a) and 7.120. Exhibits may not be removed from the trial court's control except by stipulation or order of the court. The parties are still able to seek an earlier return.

Upon the filing of a notice of appeal, the court must promptly transmit documentary and nondocumentary exhibits to the appellate court when requested.

Chapter 4
Initial Appearance and Pre-Adjudication Release and Detention

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This chapter provides an overview of the initial appearance in a delinquency case, which is conducted in response to:

1. Service of a petition and summons on the youth to appear in court,
2. Detention of the youth pursuant to ORS 419C.145, or
3. Placement of the youth in shelter care pursuant to ORS 419C.080 or 419C.088.

This chapter identifies important preliminary matters, legal issues including the right to counsel, required findings in cases where youth are being held in detention or elsewhere, and review hearings for youth in placement pending adjudication.

1. Preliminary Matters and Legal Issues

A. Preliminary Matters

At the outset of every delinquency case, the court shall:

- Inform the youth of the allegation(s) against them;
- Inform the youth of their rights, including their right to counsel and their right to remain silent;
- Give notice to the youth's parents regarding their rights and obligations; and
- Appoint an attorney to represent the youth if one has not already been appointed or retained.

ORS 419C.109(3)(b); ORS 419C.285(2). If the youth is not detained or placed in shelter care pre-adjudication, these preliminary matters can be done at the initial appearance to which the youth is summoned pursuant to ORS 419C.306.

Practice Tip: A court may hold a preliminary hearing after the petition is filed and prior to the date of adjudication to ensure that the youth has been advised of their rights and appointed counsel.

B. Right to Counsel and Waiver of Counsel

I. Right to Counsel

The U.S. Supreme Court established a constitutional right to counsel for youth in delinquency proceedings in *In Re Gault*, 387 US 1, 87 S Ct 1428 (1967). Oregon statute extends this right to all critical stages of delinquency proceedings involving alleged offenses classified as crimes, all proceedings concerning probation orders, and any hearing that would require appointment of counsel if the youth were an adult. ORS 419C.200(1). Further, *State v. J.T.-B.*, 307 Or App 414, 476 P3d 538 (2020) held that a court erred in rejecting appointment for a youth at a motion to set aside hearing, clarifying the right to counsel at like hearings.

In 2022, fees associated with court-appointed counsel were eliminated by Senate Bill (SB) 817 (2021) and codified as ORS 419C.457.

Practice Tip: Consider appointing counsel to the youth as early as possible and prior to the initial appearance so the youth can consult with their attorney prior to court.

II. Waiver of Counsel

While not advised, a youth may waive their right to counsel if the following requirements are met:

(A) The youth is at least 16;

(B) The youth has met with and been advised regarding the right to counsel by an attorney appointed by the court or retained on behalf of the youth;

(C) A written waiver, signed by both the youth and the youth's attorney, is filed with the court; and

(D) A hearing is held on the record at which the youth and the youth's attorney appear and the court finds, after consulting with the youth, that the youth is waiving their right to counsel knowingly, intelligently, and voluntarily and that the waiver is not unduly influenced by the interests of others, including the interests of the youth's parents or guardians.

ORS 419C.200(2)(a). In *State v. J.T.-B.*, the court held that the juvenile court was not required to inform the youth of potential statutory defenses to obtain a valid waiver of counsel and voluntary plea because the youth's plea agreement informed youth of the charges against him, his right to an attorney, and the maximum possible punishment that he faced by admitting to the charges.

C. Notice and Right to Be Heard

Notice of hearings concerning detention of a youth must be given to the youth; a parent, guardian, or any other person responsible for the youth; and, if the victim requests

notice, the victim. ORS 419C.142(1). Victims have a right to be heard at all critical stages in a delinquency case. ORS 419C.273(2)(a). For release hearings, victims also have the right to reasonably express any views relevant to the issues before the court. ORS 419C.273(2)(c).

Youth are parties in the initial appearance and have all the rights noted in ORS 419C.285, as discussed in Chapter 1.

While parents or guardians are not parties at the first appearance, the court must inform them verbally of and provide a standard written notice describing:

(a) The youth's right to court-appointed counsel at state expense;

(b) The right of the parents or guardian to appeal a decision on jurisdiction or disposition made by the court;

(c) The time for filing an appeal of a decision by the court;

(d) That neither the youth nor the youth's parents or guardian may be asked or ordered to pay administrative costs associated with the youth's involvement with the court, probation, detention or Oregon Youth Authority (OYA) services; and

(e) The court's obligation to consider assessment of restitution.

ORS 419C.020(1).

D. Evidence

The rules of evidence have limited application in preliminary, detention, or shelter care hearings pursuant to 419C.400(4) and OEC Rule 101. Youth are entitled to rebut evidence and present evidence at detention hearings. ORS 419C.145(3).

2. Detention Hearings

A. Overview

A youth may be held in detention or must be held in detention pending adjudication as outlined below. When a youth is held or placed in detention, the court must state in writing the basis for the detention and a finding why it is in the best interest of the youth to be placed in detention. ORS 419C.145(3).

B. Required Findings

The information below describes the findings required for a youth to be held in detention, pre-adjudication.

A youth may be held in detention pre-adjudication if the court makes *all three* of the following findings:

1. There is probable cause to believe that one or more of the following circumstances exist:
    - The youth is a fugitive from another jurisdiction;
    - The youth is alleged to be within the jurisdiction of the court under ORS 419C.005, by having committed or attempted to commit an offense which, if committed by an adult, would be chargeable as:
        - A crime involving infliction of physical injury to another person;
        - A misdemeanor under ORS 166.023; or
        - Any felony crime;
    - The youth has willfully failed to appear at one or more juvenile court proceedings by having disobeyed a proper summons, citation, or subpoena;
    - The youth is currently on probation for having been found to be within the jurisdiction of the court on a delinquency petition, and there is probable cause to believe the youth has violated one or more of the conditions of that probation;
    - The youth is subject to conditions of release pending or following adjudication of a delinquency petition and there is probable cause to believe the youth has violated a condition of release;
    - The youth is alleged to be in possession of a firearm in violation of ORS 166.250; or
    - The youth is required to be held or placed in detention for the reasonable protection of the victim.

    ORS 419C.145(1). AND

2. It is in the youth's best interest to be detained. ORS 419C.145(3). AND

3. One or more of the following circumstances are present:
    - That no less restrictive means will reasonably assure youth's attendance at adjudication; or
    - The youth's behavior endangers the physical welfare of the youth, victim, another person, or endangers the community.

    ORS 419C.145(2).

If the court does not make all three of the above findings, the youth must be released to the custody of a parent or other responsible person, released upon the youth's own recognizance or placed in shelter care.

If a youth is held in detention, some circumstances apply in which they may not be released pre-adjudication, as described below.

A court may *not* release a youth from detention when *both* of the following are true:

1. There is probably cause to believe the youth committed an offense that, if committed by an adult, would be a violent felony. ORS 419C.145(5)(a). AND

2. There is clear and convincing evidence the youth poses a danger of serious physical injury to or sexual victimization of the victim or members of the public while on release. ORS 419C.145(5)(b).

C. Timing

A hearing to determine whether the youth will be released must occur within 36 hours of the youth being placed in detention, excluding weekends and judicial holidays. ORS 419C.139. If the court continues detention, it must review the case every 10 business days, except in cases in which a waiver hearing to criminal court has been filed. ORS 419C.153. At the review hearing, the court shall determine whether sufficient cause exists to require continued detention of the youth. If a youth intends to request release at a review hearing, the youth's attorney must notify the District Attorney (DA) at least 5 days prior to the hearing. ORS 419C.153(3). The court may also review, modify, or revoke detention ex parte for cases in which the youth is alleged to have engaged in activities that, were they an adult, would constitute a misdemeanor or class C felony. ORS 419C.153(1).

If the state has filed for a waiver hearing against a detained youth, the court shall hold a detention review hearing every 30 days. ORS 419C.153(2)(a). In these cases, the youth's presence may be waived only with a written waiver signed by the youth and youth's attorney.

D. Time Limits on Detention

A youth may be held in detention for a maximum of 28 calendar days unless good cause is found to continue detention. ORS 419C.150(1). Detention may extend for no more than an additional 28 days without the express consent of the youth for a maximum 56 days total. *Id.*

The limits on detention above do not apply if any of the following circumstances exist:

- It is alleged that a youth committed an act which would be the crime of murder, attempted murder, conspiracy to commit murder or treason if committed by an adult and if proof of the act is evident or the presumption strong that the youth committed the act. The juvenile court may conduct such hearing as the court considers necessary to determine whether the proof is evident or the presumption strong. ORS 419C.150(2).

- A fitness to proceed motion has been filed, the court has not entered an order determining the youth's fitness to proceed or the motion has not otherwise been resolved, the court has stayed the proceedings; and the court holds the review

hearings required by ORS 419C.153 and determines that detention of the youth should continue. ORS 419C.150(3).

    - Once an order has been entered determining a youth's fitness, the detention may be extended for no more than 28 days, unless expressly agreed to by the youth. ORS 419C.150(3)(b)(A), (B).

- The state has filed a motion requesting waiver under ORS 419C.349 (discussed in Chapter 2), the motion has not been resolved, and the court holds the review hearings and determines that detention of the youth should continue. ORS 419C.150(4).

    - Upon entry of an order denying the motion for waiver, or a waiver hearing, the youth may be extended for no more than 28 days, unless expressly agreed to by the youth. ORS 419C.150(4)(b)(A), (B).

- The youth expressly agrees to continue detention, and the court holds the review hearings and determines that detention should continue. ORS 419C.150(1).

If a youth consents to extending detention beyond 56 days, the court should have the youth sign a written waiver and ensure the waiver is addressed on the record.

E. Age

Youth under 12 cannot be detained without court review and written findings describing why it is in the youth's best interest to be detained. ORS 419C.133. The review may be ex parte, and the youth is not required to be present. During the review, the court must determine whether the youth is eligible for detention under ORS 419C.145 or 419C.156 and must find that appropriate alternative methods to control the youth's behavior do not exist. Youth under 12 have the same right to review hearings as all youth.

Regardless of age, youth who are alleged to have possessed a firearm or destructive device in a public building or court facility within the past 120 days must be detained pending review by a judicial officer. ORS 419C.100(3); ORS 419C.080(3).

F. Release Factors

If a court is statutorily allowed to either detain or release the youth, the court may consider the following factors in making that decision:

(a) The youth's relationships with family or responsible adults in the community;

(b) The youth's previous record of referrals and recent demonstrable conduct;

(c) The youth's past and present residence;

(d) The youth's education status and school attendance record;

(e) The youth's past and present employment;

(f) The youth's previous record regarding appearance in court;

(g) The nature of the charges and any mitigating or aggravating factors;

(h) The youth's mental health;

(i) The reasonable protection of the victim; and

(j) Any other facts relevant to the likelihood of the youth's appearance or compliance with the law and other conditions of release.

ORS 419C.145(4). Victims have a right to be notified of detention hearings and have a right to be heard during detention hearings. Provisions regarding security for release in criminal cases are not applicable to youth held or taken into custody in delinquency cases. ORS 419C.179.

G. Conditional Release

Conditional release is when the court releases the youth subject to conditions that will protect the safety of the youth, the victim, other persons, and the community and will insure the youth's appearance in court. ORS 419C.176. Courts may only order conditional release if probable cause exists to believe that the youth may be detained under ORS 419A.063, 419C.145, or 419C.453.

Examples of common release conditions include:

- Regular school attendance
- House arrest
- Daily telephone contact with a juvenile department counselor
- Participation in a pre-adjudication release program, such as Electronic or Community Monitoring.
- No contact with the victim

While parents or guardians are not parties at detention hearings, the court may still hear from them to help determine release factors or conditions.

3. Shelter Care

A. Overview

A youth may be taken into temporary custody and placed in shelter care pending adjudication on a delinquency petition. The practice of shelter care varies throughout the state. Some jurisdictions have juvenile departments that contract with agencies for

short term placements. The court may release them to the juvenile department, in order to have them placed in one of these agencies. The court also has authority to make an order for the youth to be placed into temporary custody of the Oregon Department of Human Services (ODHS) or an individual other than their parents. ORS 419C.250(2); ORS 419A.004(31). At the shelter hearing, a parent or youth must be given the opportunity to present evidence to the court that the youth can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication. ORS 419C.173(1).

B. Timing

A youth may not be held in shelter care for more than 36 hours, excluding weekends and judicial holidays, unless the court has already issued an order authorizing detention. ORS 419C.170.

C. Required Findings

At a shelter hearing, the court must:

(a) Make a written finding as to whether reasonable efforts have been made, considering the circumstances of the youth's conduct, to prevent or eliminate the need for removal of the youth from the home;

(b) In determining whether a youth shall be removed or continued out of the home, consider whether the provision of reasonable and available services can prevent or eliminate the need to remove the youth from the home; and

(c) Make a written finding in every order of removal that it is in the best interest of the youth and the community that the youth be removed from the home or continued in care.

ORS 419C.173(3).

Chapter 5
Adjudication

Nella Hogberg, Delinquency Analyst, Oregon Judicial Department

1. Overview

The adjudication phase in a juvenile delinquency case is similar to the guilt phase in criminal court. In juvenile court, instead of a conviction, the court enters a judgment finding that the youth is "within the jurisdiction of the court." A juvenile court finding that a youth is within its jurisdiction is not a conviction of a crime or offense. ORS 419C.400(5). *See also State v. Johnson*, 168 Or App 81, 7 P3d 529 (2000). If applicable, the court may order dismissal of the case or dismissal of specific allegations in the petition. Findings of jurisdiction and dismissals are both types of dispositional findings, and youth are entitled to a dispositional finding on each allegation in their petition. *State v. W.*, 34 Or App 437, 578 P2d 824 (1978), *State v. Beyea*, 126 Or App 215, 867 P2d 565 (1994). If a youth is found to be within the court's jurisdiction, they may thereafter be referred to as the "adjudicated youth."

This chapter will cover the two hearings that lead to adjudication (a dispositional finding):

1. Admission to the facts (similar to a plea hearing in criminal court)

2. Fact-finding (similar to a trial in criminal court)

An adjudication is separate from disposition (the sentencing phase), though disposition may take place directly after and on the same day as adjudication.[1] When a youth is found within the jurisdiction of the court, the court typically enters a "Judgment of Jurisdiction and Disposition." For more information about disposition, see Chapter 8.

2. Admission

A. Overview

An admission is when a youth admits to the facts alleged in the petition showing that they are within the juvenile court's jurisdiction. ORS 419C.400(2). Admissions take place during a hearing conducted similarly to a plea hearing in criminal court. Parental consent is not required for the youth to make an admission. The factual basis for jurisdiction must be established by the youth or by the state with agreement by the

[1] A youth cannot be held in detention post-adjudication and pre-disposition. In *State v. J.R.*, 318 Or App 21, 507 P3d 778(2022), the court held that ORS 419C.145 only authorizes detention of a youth before adjudication. A youth may be held in detention for 8 days as part of the disposition of the case, after adjudication.

youth. The admission may be received in writing or orally. Many jurisdictions use a written admission form that attorneys prepare and review with the youth and the District Attorney (DA) prior to the admission hearing.

B. Requirements for Admission

Requirements to ensure due process and fairness for delinquency admissions are provided by case law. In *State v. Welch*, 12 Or App 400, 501 P2d 991 (1972), the court held that the trial court erred in accepting an admission when the youth was not made aware of any of the guaranteed rights he waived when he made an admission and was not made aware that he was given the maximum sentence. The court held that admissions must be made intelligently, knowingly, and voluntarily. During an admission hearing, the court should ensure the youth understands their due process rights, by ensuring:

- The youth understands their rights potentially being waived, including right to counsel, right to an adjudicatory hearing, right to confront and cross examine witnesses, privilege against self-incrimination, and right to have the prosecutor prove their guilt beyond a reasonable doubt.

- The youth is aware of the minimum and maximum penalties associated with their admission and that no disposition is guaranteed. *See* ORS 419C.501

- The legal consequences of an admission have been explained to the youth, including case-specific consequences like the possibility of sex offender registration or the revocation of driving privileges. The court should ensure the youth understands these consequences and still wishes to make an admission. For more information about collateral consequences, see Chapter 9.

3. Fact-Finding (Trial)

A. Overview

A juvenile delinquency fact-finding hearing closely resembles a criminal trial. A key difference from criminal trials is that the judge is the fact finder instead of a jury. Parties at the fact-finding stage include the youth and the state, represented by either the juvenile department or the DA's Office. Parents become parties at the disposition (sentencing) stage which, if the youth is found within the court's jurisdiction, occurs after adjudication.

For more in-depth information about criminal law, judicial officers may access the Criminal Law Bench Book, and members of the Oregon State Bar may access the Criminal Law Bar Book. To review the application of criminal offenses in the juvenile context, reference the Oregon Juvenile Appellate Case Law Outline. The same factors regarding burden of proof and elements of the offense must be met when an offense is

alleged in juvenile court as that in criminal court.[2] The Appellate Outline highlights specific offenses in some juvenile cases that have been reviewed by the Court of Appeals and Supreme Court.

B. No Right to Jury Trials

Youth do not have a constitutional right to a jury trial as defendants in criminal cases do, and in Oregon, there are no jury trials in juvenile court. While *Gault* established that youth are entitled to due process rights, *McKeiver v. Pennsylvania*, 403 US 528, 91 S Ct 1976, (1971) held that youth are not entitled to a jury trial. Oregon law provides that juvenile hearings shall be held by the court without a jury. ORS 419C.400(1). In *State v. N.R.L.*, 354 Or 222, 311 P3d 510 (2013), the court held that the right to jury trial for civil proceeding established in Article 1, Section 17 of the Oregon Constitution does not confer the right to a jury trial for a restitution determination in a delinquency trial.

C. Burden of Proof

The U.S. Supreme Court held that juvenile courts must require proof beyond a reasonable doubt to adjudicate a youth. *In re Winship*, 397 US 358, 90 S Ct 1068 (1970). Oregon law also provides that the facts alleged in a youth's petition must be established beyond a reasonable doubt for a youth to be found within the juvenile court's jurisdiction. ORS 419C.400(2). Age, while alleged in a youth's petition, does not need to be proved beyond a reasonable doubt in order for the court to find the youth within its jurisdiction. *State v. V.L.*, 318 Or App 571, 509 P3d 142 (2022). The Oregon Court of Appeals has also held that other standards, provided by criminal law, may not apply to juvenile cases. In *State v. A.O.*, 328 Or App 762, 538 P3d 591 (2023), the court overturned an adjudication of a minor who was found to have committed the act of possession of alcohol, a violation, by a preponderance of the evidence. The preponderance standard applies to violations in criminal cases, but not in juvenile court. The court held that "[t]he facts alleged in the petition showing the youth to be within the jurisdiction of the court as provided in ORS 419C.005, unless admitted, must be established beyond a reasonable doubt," which includes violations.

D. Defenses

Most defenses available in criminal proceedings are also available in delinquency proceedings, including affirmative defenses. Rather than go into detail in them here, please consult the criminal law resources available. Some specifics of note in the juvenile context:

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[2] The exception to this is in the case of Violations. *See State v. A.O.*, 328 Or App 762, 538 P3d 591 (2023) (holding that evidence that a youth committed a violation must be proven beyond a reasonable doubt in juvenile court pursuant to ORS 419C.400(2), as opposed to by a preponderance of evidence in criminal court).

- If a youth files written notice of intent to rely on the affirmative defense of a qualifying mental disorder, the youth has the burden to prove this defense by a preponderance of the evidence. *State v. L.J.*, 26 Or App 461, 464, 552 P2d 1322 (1976). This will be discussed in more detail in Chapter 6.

- Incapacity due to immaturity is available to defendants in criminal court under ORS 161.290 but is not available as a defense to youth in delinquency proceedings. *State v. Wicks*, 97 Or App 390, 394, 776 P2d 582 (1989). However, many youth under the age of 12 do receive psychological testing and may have certain claims they assert prior to the adjudication phase of the proceeding, such as fitness to proceed. This is also discussed in more detail in Chapter 6.

E. Right to Confrontation

Gault established that the sixth amendment right to confront witnesses is also available to youth. Unavailability exceptions provided by criminal law are also available to youth.

F. Privilege Against Self-Incrimination

The privilege against self-incrimination was established by *Gault*. Oregon case law has identified some limitations to this. If a youth testifies, they waive their privilege against self-incrimination (*State v. Deal*, 52 Or 568, 98 P 165 (1908)) and may be subject to cross-examination. *See State v. Cruse*, 231 Or 326, 372 P2d 974 (1962); ORS 136.643. Youth may, however, testify during motion to suppress hearings, and that testimony will not be used to prove the facts of their case. *Simmons v. U.S.*, 390 US 377, 389-94, 88 S Ct 967, 19 L Ed 2d 1247 (1968).

G. Evidence

The same evidentiary rules apply in a juvenile adjudicatory hearing as do in a criminal trial. Consult the Criminal Law Bench Book and Bar Book for extensive case law covering evidentiary issues at trial.

Youth in a delinquency proceeding have the "right to call witnesses, cross-examine witnesses and participate in hearings." ORS 419C.285(2)(c). Witnesses may be subpoenaed, and compulsory attendance is available as provided in ORS 136.567–136.603. ORS 419C.405(1). Subpoenas should comply with 136.575(4) or (6) and should specify that the action is a "juvenile court proceeding." ORS 419C.405.

One provision from the evidence code that is frequently applicable in juvenile cases is OEC 803(18a)(b). This concerns statements made by a person regarding abuse if the person was under the age of 12 at the time of the statement. The proponent must give notice of the intent to rely on such a statement at least 15 days before trial. The requirement for corroborative statements for hearsay to be admissible was unclear until recently. In *State v. R.J.S.*, 318 Or App 351, 506 P3d 1151 (2022), the court held that the OEC 803(18a)(b) requirement for corroborative statements for hearsay statements to be admissible did not apply to juvenile cases. However, in 2023, Senate Bill (SB) 317

amended ORS 40.460 to now require corroborative evidence for hearsay to be admissible in juvenile cases.

H. Restitution

For the state to seek restitution in a delinquency case, evidence of the nature and amount of the injury, loss, or damage must be presented prior to or at the time of adjudication. ORS 419C.450(1)(a). In *State v. R.D.M.*, 330 Or App 692, 544 P3d 425 (2024), the youth appealed a supplemental judgment awarding restitution on grounds that no evidence of the amount or nature of restitution was raised during the adjudication hearing. The state argued that the adjudication did not take place until the judgment was entered. The court held that the presentation of evidence for restitution was untimely and the evidence must be presented prior to or at the time of adjudication, whether done by admission or a fact-finding hearing. More information about restitution can be found in Chapter 8.

I. Adjudication and Entry of Disposition Without Hearing

If a youth is cited or summoned for purchase or possession of alcohol by a person under 21 (ORS 471.430) or for purchase, attempt to purchase, or possession of marijuana (ORS 475B.316; ORS 475C.341) and fails to appear, the court may adjudicate the citation or petition and enter a disposition without a hearing. ORS 419C.420.

Chapter 6
Fitness to Proceed and Qualifying Mental Disorders

Jordan Bates, Senior Assistant General Counsel, Oregon Judicial Department

"Fitness to proceed" is a legal phrase that refer to a youth's ability to proceed with a juvenile case, in the typical course, through adjudication. Fitness to proceed references the ability of a young person to aid and assist with their defense. This process is initiated prior to the adjudication phase of the proceeding and may eventually result in the dismissal of the case.

A qualifying mental disorder is raised as an affirmative defense and must be based on insanity: That is, as a result of a qualifying mental health disorder at the time of the act alleged, the youth lacked the capacity to appreciate the nature and quality of the act or to conform their conduct to the requirements of the law.

Both processes are detailed below.

1. Fitness To Proceed

Raising the Issue of Fitness to Proceed

A youth's fitness to proceed may be raised by a party to the proceeding or by the court on its own motion.[1] This is typically done when it is believed that the youth is unable to understand the nature of the proceedings against them, assist and cooperate with counsel, or participate in their own defense. ORS 419C.378(1). The issue must be raised by written motion (if not raised by the court), and it may be made at any time after the petition is filed. ORS 419C.378(3). After the issue is raised, the court must make two initial determinations:

(a) Is there reason to doubt the youth's fitness to proceed?

(b) Is there probable cause to believe that the factual allegations contained in the petition are true?

ORS 419C.378(3). If the court finds both of the above to be true, the court must stay the proceedings and may order the youth to participate in an evaluation to determine fitness. *Id.* These motions are most often filed by the youth, and the arrangements for the evaluation are made by the attorney for the youth. The evaluation may already be

[1] Case law is limited on this issue, but if a judicial officer or party has a concern, it is a good idea to raise fitness to proceed concerns. *See State v. C.L.E.*, 316 Or App 5, 502 P3d 1154 (2021) (holding that an attorney provided ineffective assistance of counsel for failing to raise the concern).

arranged or may have already occurred prior to the motion regarding fitness. If the evaluation has not occurred, the court may order the youth to participate in an evaluation to determine fitness. *Id.*

ORS 419C.380 provides the parameters for who can conduct an evaluation ordered by the court and directs that any written materials provided to the evaluator must also be provided to the court and the opposing party. This provision also directs responsibility for the costs of an evaluation. The law permits the state to seek an independent evaluation at its own expense after the motion regarding fitness is made. ORS 419C.380(5).

The Oregon Health Authority (OHA) is tasked with providing restorative services to youth found unfit to proceed and also assists youth and the courts with appropriate services. Coordination with OHA is important through the life of a case to ensure the youth is receiving appropriate and timely services. Below is a list of situations in which the Oregon Judicial Department (OJD) and OHA should coordinate. OJD staff should be aware of the times at which coordination with OHA is required to ensure statutory timelines are met and youth are receiving appropriate services.

A. Report on the Evaluation

Once the evaluation has been completed, the evaluation report must be filed with the clerk within 30 days after the order for evaluation is issued. This may be extended by an additional 30 days upon a showing of good cause and requires a written court order. ORS 419C.386(1)(c). Due to the nature of evaluations and the availability of those who are qualified to conduct them, this means the process must be initiated quickly after the order is issued. The party that raises the issue of fitness is required to file the report with the court and provide copies to all parties. ORS 419C.386(1)(a). If the court raised the issue of fitness, the person conducting the evaluation is required to file it along with two copies, and the clerk of the court must then deliver copies to the District Attorney (DA) and youth's attorney. ORS 419C.386(1)(b).

The evaluation will provide the court and parties with information about how to proceed. The report must include the following:

(a) A description of the evaluation;

(b) A list of information the evaluator reviewed;

(c) The evaluator's opinion as to whether the youth is unfit to proceed, including the evaluator's opinion as to whether the youth suffers from a qualifying mental disorder or another condition; and

(d) If the evaluator is of the opinion that the youth is unfit to proceed, the opinion regarding whether there is a substantial probability that the youth will gain or regain fitness to proceed and, if so, the specific restorative services under ORS 419C.396 that are needed and the anticipated duration of those services.

ORS 419C.386(2). Because the evaluation occurs pre-adjudication, safeguards are built into the statute to ensure that youth do not incriminate themselves to their detriment. The report may not contain any statements made by the youth about the acts alleged in the petition, and any statements made during the evaluation are not admissible against the youth in any proceeding relating to the petition. ORS 419C.386(3)-(4).

I. Objections to and Adoption of the Evaluator's Opinion

Parties may object to the evaluation report but must do so within 14 days after they receive it. The objection must be in writing and state whether the party seeks another evaluation. ORS 419C.388(1). If an objection is filed, the court must hold a hearing within 21 days after the objection is filed. If a written objection is not filed, but the court does not adopt the evaluator's opinion, the court must also hold a hearing within 21 days. The hearing may be postponed for good cause. ORS 419C.388(2).

If a hearing is held for either of the reasons above, the court must decide whether the youth is unfit by a preponderance of competent evidence introduced at the hearing. The order is required to set forth the findings regarding fitness. ORS 419C.388(3).

If no objections are filed and the court adopts the evaluator's opinion, the court must issue a written order within 24 days after the report is filed. The order must include findings regarding the youth's fitness. If objections are filed and a hearing is held, the court must issue an order within 10 days after the hearing and include findings on fitness. ORS 419C.390.

The court may find a youth is unfit if, as a result of a qualifying mental disorder or another condition, the youth is unable to understand the nature of the proceedings against them, they are unable to assist and cooperate with counsel, or they are unable to participate in their own defense. ORS 419C.378(1). The court may not find a youth unfit solely based on the youth's age, current inability to remember acts alleged in a petition, or being under the influence at the time of the acts. ORS 419C.378(2).

II. Findings and Orders Regarding Fitness

1. Youth Is Fit to Proceed

If the court finds the youth is fit to proceed, the court must vacate the stay, and the case will proceed in the normal course. ORS 419C.392(1).

2. Youth Is Unfit and Unlikely to Gain Fitness

If the court finds that the youth is unfit and there is *not* a substantial probability that the youth will regain fitness in the foreseeable future, the court shall:

(a) Immediately enter a judgment dismissing the petition without prejudice; or

(b) If necessary for planning or instituting an alternative proceeding, then not more than 5 days after the findings are made, enter a judgment that dismisses the petition without prejudice.

ORS 419C.392(2).

3. Youth Is Unfit but Will Benefit from Restorative Services

If the court finds the youth is unfit, but there is a "substantial probability" that the youth will gain or regain fitness to proceed in the foreseeable future if provided restorative services, the proceedings shall remain stayed and the court shall order the youth to receive restorative services. The court must forward the order for restorative services to OHA. ORS 419C.392(3). The court should consider coordination with OHA as early as possible to ensure that services will begin in a timely manner.

III. Restorative Services and Coordination with OHA

OHA is tasked with developing and providing restorative services to youth requiring them. OHA must develop qualifications and standards for those who provide restorative services and shall also solicit qualified applicants to provide them. ORS 419C.394.

The court must send a copy of the order for services to OHA. ORS 419C.392(3)(b). Though not in statute, this must be done *promptly* in order to alert OHA to the need for services and to allow the youth to start receiving needed services without delay. As of 2024, OJD has a business process that staff can follow to ensure that orders are sent to the right place.[2] OHA must begin providing restorative services to the youth within 30 days after receiving the court order. ORS 419C.396(1). No later than 90 days after receiving the court order, OHA must send a report to the court, with copies to the parties, that indicates whether the youth is fit or presents a substantial probability of gaining or regaining fitness. ORS 419C.396(1).

Within 14 days of receiving the report on the services, the court must enter an order determining the youth's fitness. ORS 419C.396. The next steps vary, depending on the court's order. Regardless of the court's determination on fitness, the court should again communicate the subsequent determinations to OHA.

1. Youth Is Fit to Proceed

If the court finds that after receiving restorative services, the youth is now fit to proceed, the court shall vacate the stay under ORS 419C.378 and the case shall proceed through adjudication and disposition. ORS 419C.396(4).

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[2] If you are an OJD employee, please contact the Juvenile and Family Court Programs Division for additional information about coordination with OHA.

2. Youth Is Unfit and Unlikely to Gain Fitness[3]

If the court finds that the youth is unfit and there is *not* a substantial probability that the youth will regain fitness in the foreseeable future, the court shall:

(a) Immediately enter a judgment dismissing the petition without prejudice; or

(b) If necessary for planning or instituting an alternative proceeding, then not more than 5 days after the findings are made, enter a judgment that dismisses the petition without prejudice.

ORS 419C.396(5).

3. Youth Is Unfit but Will Benefit from Restorative Services

If the court determines the youth remains unfit, but there is a substantial probability that the youth will gain or regain fitness, the court shall order that restorative services shall continue. ORS 419C.396(6). The court must once again send this order to OHA promptly for services to continue. The court shall order OHA to send another report to the court and parties within a specified time not to exceed 90 days. ORS 419C.396(6).

The youth may continue to receive restorative services based on the reports from OHA and the court's determinations for a specified period of time. The youth may not be continued in restorative services (measuring from the date the petition was filed) for longer than 3 years or the period that is equal to the maximum commitment time the court could have imposed if the petition had been adjudicated, whichever is shorter. ORS 419C.396(7). The court and parties should keep this timeline in mind to ensure that youth are not receiving services for longer than legally permissible.

a. Hearings

While a youth is pending a fitness to proceed determination, the court is not necessarily required to hold ongoing review hearings. However, there are certain stages of the proceedings where a court may want to consider scheduling a hearing. ORS 419C.396(3) permits the court to hold a review hearing upon the recommendation of OHA, at the request of a party, or on the court's own motion.

A review hearing may take place:

- When the court makes an initial finding after receiving the original evaluation report.

[3] Note that these are the same requirements as when a youth is found unfit after the initial evaluation.

- If restorative services are ordered, at the time that the first 90-day report is issued.

- If restorative services are continued, every 3-6 months.

- Any time the court or parties request a review.

b. Coordination with OHA and Timelines

The court's role in coordinating with OHA is extremely important to ensure that youth receive appropriate services and that agencies are complying with statutory timelines. OJD has business processes that provide direction for this coordination. Listed below, in chronological order, are steps the court and OHA must take:[4]

1. OHA must provide a list of qualified evaluators to the courts, though the evaluator used does not necessarily have to be on the list provided by OHA. ORS 419C.382(1)(c).

2. If a youth is found to need restorative services, the court shall forward the order for restorative services to OHA promptly. ORS 419C.392.

3. The clerk of the court must provide OHA with copies of the petition and the report upon request. ORS 419C.386(5).

4. OHA shall arrange for restorative services or begin providing them within 30 days after receiving the court order. ORS 419C.396.

5. No later than 90 days after receiving the order for restorative services from the court, OHA must provide a report regarding restorative services to the court, with copies provided to the parties. ORS 419C.396(1).

6. Within 14 days of receiving the report, the court must determine fitness and enter an order. ORS 419C.396(2). Regardless of whether the court finds that the youth is fit or remains unfit, the court should notify OHA so that OHA can take appropriate actions (either continue or discontinue services as appropriate).

7. If the court finds that the youth remains unfit and restorative services need to be continued, OHA must continue to provide a report to the court at the time specified by the court, not to exceed 90 days, and the court shall continue to inform OHA of their findings regarding fitness.

[4] These provisions are noted elsewhere but are also provided here for ease.

Though receiving restorative services from OHA, the youth is *not* in the custody of OHA, and the order for restorative services alone should not otherwise alter the guardianship of the youth. ORS 419C.392(3)(C).

B. Removal and Placement of a Youth

The statutes address the removal of the youth for both the evaluation itself and, later, the provision of restorative services. All of the situations below require coordination between the court and OHA to ensure stability for the youth (for example, the location of the evaluation may be able to provide placement and services for the youth).

I. Evaluation

For purposes of the evaluation only, a youth may not be removed from their current placement unless they are in a detention facility or a youth correctional facility and the removal is for less than 14 days. ORS 419C.380(6).

II. Restorative Services

Under ORS 419C.398(1), for the youth to be removed from their current placement to receive restorative services, the court must find:

(a) That removal is necessary to provide restorative services;

(b) That removal is in the best interest of the youth; and

(c) If the Oregon Department of Human Services (ODHS) has custody, that:

(A) ODHS made reasonable efforts to prevent or eliminate the need for removal and make it possible for the youth to safely return to their current placement; or

(B) Reasonable efforts have not been made but would not have eliminated the need for removal.

If a youth is removed for restorative services, they must be returned to their "current placement" immediately upon conclusion of the provision of services unless they were placed in detention or a youth correctional facility. ORS 419C.398(2).

If the court orders placement for restorative services, the court may specify the type of care, supervision, security, or services to be provided by OHA to any youth in ODHS custody "and to the parents or guardians of the youth." ORS 419C.396(8). However, as laid out in ORS 419C.392(3)(c), the youth is not in the custody of OHA by virtue of receiving restorative services. OHA, in consultation with ODHS, the county juvenile department, or the youth's family, may place the youth in an authorized facility and provide the appropriate and necessary services and care. ORS 419C.396(8). Regardless of placement, OHA must continue to provide restorative services.

2. Qualifying Mental Disorder[5]

A. Raising the Issue of a Qualifying Mental Disorder

Unlike fitness to proceed, a qualifying mental disorder constituting insanity must be raised as an affirmative defense. ORS 419C.522. A defense attorney will typically obtain a psychological or psychiatric evaluation to determine whether the youth has a qualifying mental disorder. If the report concludes that the youth has a qualifying mental disorder or serious mental condition such that they could not appreciate the nature and quality of the alleged act or to conform their conduct to the requirements of the law, and the youth wishes to assert that as a defense, they must provide notice of intent to rely on the defense of insanity and file a copy of the psychological or psychiatric evaluation report with the court. ORS 419C.524.

The notice of intent must be in writing and filed with the court no later than 60 days after the petition is filed if the youth is not in detention. This time limit may be extended for "good cause." ORS 419C.524(2). If the notice is not timely, the youth may not introduce evidence of the defense of insanity at trial unless the court permits the evidence to be introduced when "just cause" for failure to file the notice is shown. Just cause includes but is not limited to the youth not being represented by counsel until after the filing period.[6] ORS 419C.524(2)-(3).

When a youth in detention files a notice of intent to rely on the defense of insanity, this constitutes express consent for continued detention beyond 28 or 56 days under ORS 419C.150. ORS 419C.524(4).

The following definitions are provided in ORS 419C.520:

(1) "Conditional release" includes but is not limited to the monitoring of mental and physical health treatment.

(2) "Qualifying mental disorder" does not include an abnormality:

(a) Manifested only by repeated criminal or otherwise antisocial conduct;

(b) Constituting solely a personality disorder; or

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[5] As of the date this bench book was first released in the Spring of 2025, the Oregon State Legislature was considering a bill, House Bill (HB) 2804, that would repeal the provisions related to the juvenile panel of the Psychiatric Security Review Board (PSRB). The bill would consolidate the adult and juvenile panels of the PSRB, remove the child-specific members of the board, and allow for a child psychologist or psychiatrist to review juvenile cases when needed. If the bill is passed, the bench book will be updated to reflect the changes.

[6] Note that there is an exception for "good cause" to extend the time limit and for "just cause" to introduce evidence. These are different standards.

(c) Constituting solely a conduct disorder.

(3) “Serious mental condition” means a condition that requires supervision and treatment services for the safety of others and is:

(a) A mental illness of major depression;

(b) A mental illness of bipolar disorder; or

(c) A mental illness of psychotic disorder.

B. Evaluation Report

The psychological or psychiatric evaluation report must be filed before trial but need not be filed at the same time as the notice of intent. The requirements for the report are provided in ORS 419C.524(5). If the report is not filed before trial, the youth may not rely on the defense unless the court permits the evidence to be introduced for good cause.

The state may seek its own examination of the youth once notice of intent is filed. The examination must occur within 60 days after the notice of intent was filed or the evidence was introduced, though that time may be extended for good cause. ORS 419C.527. The state must file a notice of its intent, and the court shall order the youth to participate in the state’s evaluation, though the youth may object and the court may order a different examiner upon good cause shown. *Id.*

C. Adjudication

Procedurally, unless admitted by the youth, the state must prove the facts alleged in the petition beyond a reasonable doubt. A qualifying mental disorder constituting insanity is an affirmative defense, requiring the youth, in their portion of the case, to prove by a preponderance of the evidence that they are responsible except for insanity. More details about disposition are provided below, but it should be noted that a youth is still considered to have an adjudication for the offense, and the provisions relating to expunction, relief from sex offender registration, and other collateral consequences still apply. In other words, the defense of responsible except for insanity does not change the outcome of a juvenile court adjudication.

If the court does not find the youth responsible except for insanity, the petition will continue in the normal course toward adjudication and disposition.

In some cases, a youth is found responsible except for insanity, but the court does not find that (a) at the time of disposition, the youth has a serious mental condition, or (b) they have a qualifying mental disorder other than a serious mental condition and present a substantial danger to others. This means that the court may find the youth was responsible except for insanity at the time of the offense, but at the time of disposition, the circumstances have changed. At the time of disposition, if the court finds

no current serious mental condition, or if the court finds that the youth has a qualifying mental disorder but does not present a substantial danger to others, the court may:

(a) Find the youth within the jurisdiction of the court under ORS 419B.100;

(b) Initiate civil commitment proceedings; or

(c) Enter an order of discharge.

ORS 419C.411(7). To proceed with a dependency case under ORS 419B.100 or a civil commitment, the court must consider due process of both the youth and their parents. Judges still need to ensure that initiating any other proceeding type is done pursuant to statute and in consideration of other legal requirements, including notice and right to an attorney.

D. Disposition

If the court finds the young person responsible except for insanity, additional steps must be taken. The court must find a young person[7] responsible except for insanity if they assert a qualifying mental disorder as a defense and the court determines

> [B]y a preponderance of the evidence that, as a result of a qualifying mental disorder at the time the youth committed the act alleged in the petition, the youth lacked substantial capacity either to appreciate the nature and quality of the act or to conform the youth's conduct to the requirements of the law.

ORS 419C.411(2). The question then becomes whether, based on a preponderance of the evidence, at the time of disposition, the young person (a) has a serious mental condition or qualifying mental disorder other than a serious mental condition *and* (b) presents a substantial danger to others. If both conditions are true, the court must determine whether the young person should be conditionally released or committed to a hospital designated by ODHS or OHA under ORS 419C.529(6). Then, the court shall order the youth placed under the jurisdiction of the Psychiatric Security Review Board (PSRB[8]). The Oregon Administrative Rules govern some of the procedures of the JPSRB. If the court is interested in learning more, the rules can be found here.

The court must determine whether the young person should be committed to a hospital or facility or be conditionally released pending the JPSRB's review. The primary

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[7] Once a youth is found responsible except for insanity and is placed under the jurisdiction of the PSRB, they are now legally referred to in statute as a "young person," pursuant to ORS 419A.004(40).

[8] A juvenile panel of the Psychiatric Security Review Board reviews juvenile cases and is commonly referred to as the "JPSRB." Throughout this section, we use JPSRB, juvenile panel, and panel to refer to the juvenile panel of the Psychiatric Security Review Board.

concern of the court in determining whether a designated facility or hospital or conditional release is appropriate is the protection of society.

Pursuant to ORS 419C.529(5), the juvenile court shall:

(a) Determine whether the parent or guardian is able and willing to assist the young person in obtaining appropriate services and is willing to acquiesce to the decisions of the juvenile panel.

    (A) If the parent or guardian is able and willing, the court shall order them to sign an irrevocable consent form in which the parent agrees to any placement decision.

    (B) If they are unable or unwilling, the court shall order the young person to be placed in the custody of ODHS for the purpose of obtaining necessary services.

(b) Make specific findings regarding any potential victims (discussed below).

(c) Include in the order a list of persons who wish to be notified of board hearings.

(d) Determine on the record the act committed for which the young person was found responsible except for insanity.

(e) State on the record the qualifying mental disorder on which the young person relied for the responsible except for insanity defense.

The court has two options for placement of the young person, outlined below.

I. Secure Hospital or Facility

If the court finds the young person is not a proper subject for conditional release, the court must order the "young person committed to a secure hospital or a secure intensive community inpatient facility designated on an individual case basis by the Department [of Human Services] or the [Oregon Health] Authority"[9] for custody, supervision, and treatment. ORS 419C.529(2)(a).

Once a young person is committed to a designated hospital or facility under ORS 419C.529, the JPSRB has continuing jurisdiction over them. While the actual placement of the young person is the responsibility of either ODHS or OHA, the panel may direct specific care or supervision if it determines the particular placement is so inappropriate as to create a substantial danger to others. ORS 419C.530.

[9] ORS 419C.529(6) provides the requirements for OHA or ODHS to specifically designate the appropriate hospital or facility.

II. Conditional Release

If the court finds that the young person can be adequately controlled with supervision and treatment services and that those services are available, the young person may be conditionally released. The court may order examinations or evaluations to determine the question of conditional release. ORS 419C.529(3). The young person will be subject to supervisory orders of the court that are in the best interests of justice and the young person. The court must designate the appropriate person or agency (noted in ORS 419C.529(2)(b)) to supervise the youth, subject to the court's conditions. Prior to designation, the court must notify the person or agency to whom conditional release is contemplated and provide them with an opportunity to be heard before the court. Once ordered, the designated person or agency shall assume supervision, subject to the direction of the JPSRB. The treatment provider must report at least monthly to the JPSRB regarding the young person's compliance with the conditions of release.

The court must notify the juvenile panel in writing of the court's conditional release order, the designated supervisor, and all conditions of release pending a hearing before the JPSRB. ORS 419C.529(4).

E. Ongoing Hearings

ORS 419C.532 is a substantial statute that provides the requirements for the JPSRB to conduct ongoing hearings for young people within its jurisdiction.[10] Should a member of the bench need more information about what occurs at these hearings, consulting the statute is advised, as this section provides a general summary. Within 90 days from the date of the court's order for a young person to be committed to a hospital or facility, an initial hearing must occur to determine whether discharge or conditional release is appropriate. ORS 419C.542.

Other situations in which a hearing before the JPSRB is required are outlined below:

- A hearing must be held at least once a year for a young person held in a hospital or designated facility, and once every 3 years for a young person on conditional release. ORS 419C.542(2)-(3).

- The juvenile panel must also conduct a hearing within 20 days if a young person on conditional release is ordered by the panel to be returned to a hospital or designated facility. ORS 419C.538(5). At that hearing, the state has the burden of proving the young person's lack of fitness for conditional release. A young person on conditional release may also request discharge from or modification of conditional release. If they do so, the panel must conduct a hearing within 60

[10] When a young person turns 18, the juvenile panel shall transfer their case to the adult panel if the act would constitute murder or aggravated murder. For all other young people, the juvenile panel may hold a hearing to determine whether it is in their best interests to transfer their case to the adult panel. ORS 419C.544.

days after receiving an application from the young person. In those hearings, the young person has the burden of proving fitness for discharge or modification.

- If a young person is committed to a hospital or facility and the director believes they (a) no longer have a qualifying mental disorder, (b) have a qualifying mental disorder but no longer presents a substantial danger to others, or (c) can be controlled with proper supervision and treatment while conditionally released, the director shall submit an application to the JPSRB for discharge or release. ORS 419C.540(1). A hearing must be held within 30 days of receipt of the application.

At each hearing, the panel must determine whether the young person still (a) has a serious mental condition or (b) has a qualifying mental disorder other than a serious mental condition and presents a substantial danger to others. ORS 419C.532(2). ORS 419C.532(3)-(5) lay out the requirements for the panel's determination of whether the young person should be discharged from commitment, conditionally released, or committed to or retained in the hospital or facility. As with the juvenile court determination, the primary concern remains the protection of society. ORS 419C.532(6).

The JPSRB may appoint a psychiatrist or psychologist to examine the young person and may make a determination based upon the written report. ORS 419C.532(8)-(9). However, the panel shall also consider all other available evidence, and the standard of proof is preponderance of the evidence. ORS 419C.532(10)-(11). ORS 419C.532(12) lays out the requirements for notice. ORS 419C.532(13) provides the rights of a young person at the JPSRB hearings, including but not limited to the right to counsel. The JPSRB shall appoint suitable counsel to a young person appearing before the panel, and the state may be represented either by the Attorney General (AG) or the DA. ORS 419C.535. The panel is required to provide written notice of their decision within 30 days after the conclusion of the hearing to the young person, their parents or guardians, the DA, and the AG. ORS 419C.532(16). The panel shall maintain the young person's records and determine their confidentiality pursuant to ORS 192.338, 192,345, and 192.355. ORS 419C.532(17).

F. Victims' Rights

If there is a victim in a case where a young person is found responsible except for insanity and placed under the jurisdiction of the JPSRB, the court is required to make findings regarding whether the victim wishes to be notified of future JPSRB hearings and orders concerning conditional release, discharge, or escape. ORS 419C.529(5)(b). If the victim desires notification, the JPSRB shall make reasonable efforts to notify them of hearings, orders, conditional release, discharge, or escape. Other information remains privileged. The victim shall also have the right to be heard at the hearings. ORS 419C.531(1)-(2). If the JPSRB fails to make reasonable efforts to notify the victim, they may request reconsideration of the order, and they may have another opportunity to be heard if certain determinations are made. ORS 419C.531(3).

Chapter 7
Alternatives to Formal Adjudication

Jordan Bates, Senior Assistant General Counsel, Oregon Judicial Department

The juvenile system provides judges and the juvenile department with a great deal of discretion while still respecting due process rights of juveniles, as noted in previous chapters. This discretion gives judges room to individualize each youth's disposition and adjudication, with some limits. This chapter addresses some of the alternatives available.

1. Formal Accountability Agreements

Formal Accountability Agreements (FAAs) are created by statute in ORS 419C.230–419C.245. These are available to a youth prior to a formal petition being filed in juvenile court and act as a type of contract between the youth and the juvenile department. ORS 419C.233. FAAs, formerly referred to as Informal Dispositions, were initially created in 1979. Legislative history supports the idea that these were provided to youth to avoid the formal procedures and stigma of juvenile court and to permit low-level intervention and treatment.[1] The court may not require the juvenile department to enter into an FAA with a youth, as it is a voluntary contract. *See State v. Gladen*, 168 Or App 319, 7 P3d 574 (2000).

Before entering into an FAA, the youth has the right to counsel at state expense and must be informed in writing of that right. ORS 419C.245(1). The youth may waive their right to counsel, but it must be done in writing and presented to the juvenile counselor. ORS 419C.245(2).

The juvenile department has discretion to offer FAAs to youth without judicial involvement if they have probable cause to believe that the youth may be found to be within the jurisdiction of the court. *See* ORS 419C.230(1). No prohibition exists regarding what type of offense they can be used for, but youth who are alleged to have committed certain enumerated offenses cannot be offered an FAA without authorization by the District Attorney (DA).[2] ORS 419C.230(2)(a). This also applies to youth who have been referred to the juvenile department for a subsequent offense that would constitute

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[1] Senate Bill (SB) 114 (1979) lead to the creation of ORS 419.630 – 419.655 (informal dispositions), which was renumbered to ORS 419C.230 after the juvenile code changed in 1993. *See* Sen. Ted Kulongoski. Statements before the Senate Committee on Judiciary. February 19, 1979. SB 114 (1979); Lee Penny (Project Director, Governor's Task Force on Juvenile Corrections). Testimony before the House Committee on Judiciary. May 10, 1979. SB 114 (1979); Claudia Burton (ACLU of Oregon). Testimony for the House Committee on Judiciary. May 10, 1979. SB 114 (1979).

[2] These include felony sex offenses enumerated in ORS 419C.230(2)(a)(A) and any offense involving the use or possession of a firearm or destructive device.

a felony. The juvenile department is required to consult the victim before entering into an FAA with the youth if the victim has requested notification *and* the offense involves an act that would constitute a violent felony. ORS 419C.230(3). Youth and their parents may not be required to pay any fees or costs as part of the FAA but may cover a program through their own insurance or otherwise. ORS 419C.230(4).

A. Requirements

A youth may be required to participate in certain activities that will be beneficial to them, such as counseling, community service, drug or alcohol treatment, or any other "legal" activity which would be beneficial to the youth (in the opinion of the juvenile counselor). ORS 419C.236. However, that list is non-exhaustive. Though not required to pay any fees, a youth may still be ordered to pay restitution to any person who was physically injured or suffered a loss as a result of the alleged conduct. The juvenile department is required to consult with the victim to determine the amount of the loss. ORS 419C.236(2). Like restitution in an adjudicated case, this does not prevent the victim from initiating a civil action for damages, though the court shall credit any restitution that was already paid. *Id.*

The FAA must:

(a) Be completed in a year or less;

(b) Be voluntarily entered into by all parties;

(c) Be revocable by the youth in writing;

(d) Be revocable by the juvenile department if there is reasonable cause to believe the youth failed to carry out the terms of the agreement or has committed a subsequent offense;

(e) *Not* be used as evidence against the youth during an adjudicatory hearing;

(f) Be executed in writing and understandable;

(g) Be signed by the juvenile department, the youth, the parent or guardian, and youth's attorney (if they have one); and

(h) Become a part of the juvenile department record.[3]

ORS 419C.239(1).

[3] This is the type of record that can be expunged by the juvenile department pursuant to ORS 419A.261. However, the youth's name and date of birth, the act alleged, and the portion of the agreement providing for disposition are not confidential nor exempt from disclosure. ORS 419C.239(2).

B. Revocation and Modification

The youth may revoke the agreement at any time, but the juvenile department may only revoke it if the counselor has reasonable cause to believe that the youth did not comply with the terms of the agreement or that they committed a subsequent offense. *See* ORS 419C.242(1). The department may revoke the FAA or provide the youth an opportunity for more time to complete the agreement. The extension of time may only be granted once. ORS 419C.242(2). If the juvenile department revokes the agreement, they must file a petition with the court. ORS 419C.242(1). The Oregon Court of Appeals has held that a child may not be "subject to a petition if a juvenile department makes an after-the-fact determination of non-compliance with an agreement that has expired." *State v. Harkness*, 114 Or App 440, 445 836 P2d 144 (1992). The juvenile department may only bring the youth back into the system through the procedures laid out in the statutory scheme for FAAs. *Id.*

2. Conditional Postponement (or Conditional Dismissal[4])

The legal avenues to support a conditional postponement are found in ORS 419C.400(1), 419C.261, and 419C.610. ORS 419C.400(1) directs that "[t]he hearing shall be held by the court without a jury and may be continued from time to time." The juvenile court has the power and discretion to dismiss or set aside a petition in the furtherance of justice after considering the circumstances of the youth and the interests of the state in having the petition adjudicated. ORS 419C.261(2). Additionally, the court may modify or set aside any order made by it. ORS 419C.610.[5] These statutes, along with the purposes of the juvenile code generally, have been interpreted to mean that juvenile court judges have discretion and flexibility. An often-quoted decision from the Oregon Supreme Court states:

> The clear and unequivocal message of Oregon's juvenile code is to notify and involve parents whenever possible to focus on the family, to involve schools and appropriate social agencies as early as possible, to handle matters informally, and to approach each child's alleged delinquency as an equitable problem rather than as a criminal problem. The least restrictive alternative disposition is preferred.

State ex rel. Juv. Dept. v. Reynolds, 317 Or 560, 573, 857 P2d 842, 849 (1993). Both the youth and the state will have the opportunity to be heard before the court makes a decision regarding conditional postponement. The juvenile court is required to allow the state the opportunity to be fully heard as to its position prior to entry of any order

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[4] The author and editorial board of this bench book considered whether the phrase "conditional dismissal" may be more legally appropriate in these cases. However, because conditional postponement is what appears to be used most universally, that is how it is described here. Different jurisdictions may use different terms.

[5] Motions to dismiss and motions for alternative disposition will be discussed in more detail in Chapter 9, but arguments incorporating this statute arise in motions for conditional postponement as well.

granting dismissal of the delinquency petition. ORS 419C.261(2); *State ex rel. Juv. Dept. v. Eichler*, 121 Or App 155, 854 P2d 493 (1993). "The state must have the opportunity to investigate and present its case before its petition is dismissed, but that opportunity need not include a complete adjudication of the allegations . . . ." *Eichler*, 121 Or App at 159.

Though cases directly relating to conditional postponement are limited, in *State v. T.Q.N.*, 275 Or App 969, 365 P3d 1112 (2015), the Oregon Court of Appeals held that the juvenile court has authority to consider a motion for conditional postponement that would permit the court to dismiss a youth's petition after completing treatment pursuant to the county's conditional postponement program.

Procedurally, the youth will typically file a motion for conditional postponement.[6] "Conditional postponement" does not have a legal definition, but in practice, it is understood to mean that the adjudication of a youth will be withheld. ORS 419C.400(1) permits the court to continue the adjudication hearing, which suggests that the court has the authority to postpone the resolution of a case. However, the youth's due process rights must still be respected and considered. Different judges may choose to handle these differently, while some judges may require a petition for admission to be filled out, and others may require a discussion on the record. Some jurisdictions have a conditional postponement program run through the juvenile department, while others are less formal and fashioned by the judge's order, in coordination with the juvenile department.

If the conditional postponement is granted, the youth will be provided an opportunity to work with the juvenile department or complete certain conditions ordered by the court (such as community service, treatment, or otherwise). If the youth is successful, the court will never enter the admissions on the record and will dismiss the case. If the youth is not successful and does not complete the conditions, the admission will then be entered on the youth's record. Practice varies when it comes to how and when a youth is to provide admissions. It is possible for the court to resolve the petition by resolving the factual basis and finding the admissions are legally sufficient, but not formally accepting them pending the completion of conditions ordered by the court. Upon completion of those conditions, the court would then dismiss the petition and the youth will have never been found within the jurisdiction of the court. This is notable for future consequences, such as expunction. As noted in some case law, a more general motion for alternative disposition may provide the court with different options, such as the conditional postponement noted above, dismissal and entry of an FAA, conversion to a

[6] Practitioners may refer to this type of motion by other names, such as a motion for conditional dismissal, and sometimes, the youth may request a conditional postponement and an alternative disposition in the same motion. Alternative dispositions are discussed in Chapter 9.

dependency case, or outright dismissal of the petition.[7] Many of these will be discussed in Chapter 9.

3. Other

The juvenile code offers additional opportunities for youth to avoid entry into juvenile court.

A. Juvenile Treatment Courts and Authorized Diversion Programs

Some jurisdictions in Oregon have a juvenile drug treatment court. These specialty courts provide youth with the opportunity to engage with system partners, receive treatment, and ultimately have their cases dismissed or records expunged. As of 2024, four Oregon counties—Washington, Marion, Lane, and Yamhill—operated juvenile drug treatment courts, though the practice in each jurisdiction varies. Marion County, for example, runs the STAR[8] (Supervised Treatment and Recovery) Court to provide intensive outpatient treatment, mental health, case management, educational assistance, and family support. The judge, the DA, the juvenile department, the defense attorney, an educational liaison, and other service providers are involved in the case. If youth graduate, they are able to have their record expunged. The youth are typically identified as moderate to high risk, and each court has a list of offenses that would disqualify a youth from participating. A youth does not need to have a drug offense to qualify. Each jurisdiction runs its court differently, though most are run concurrently with probation. Of the courts currently operating in Oregon, all offer youth the opportunity to expunge their records upon successful completion. The U.S. Office of Juvenile Justice and Delinquency Prevention also provides guidelines and information on juvenile drug treatment courts, linked here.

The juvenile department may refer a youth to an authorized diversion program after referral to the department if they would otherwise qualify for an FAA. "An authorized diversion program may include a youth court, mediation program, crime prevention or chemical substance abuse education program or other program established for the purpose of providing consequences and reformation and preventing future delinquent acts." ORS 419C.225(2). These are also available to youth alleged to have committed the offense of Driving Under the Influence of Intoxicants. ORS 419C.225(3). As of 2024,

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[7] Although the court has an obligation to give due consideration to the reasons for alternative disposition and the objections thereto, it is still within the judge's discretion to order a disposition that is suited to the individual case. For example, if the court finds that a particular case is appropriate for alternative disposition, including the dismissal of the petition upon completion of probation, it may act accordingly. Similarly, if the court is presented with a delinquency petition, it may amend the petition to allege dependency.

State v. Bishop, 110 Or App 503, 506, 823 P2d 1012 (1992) (citations omitted) (called into doubt on other grounds by *State v. C.E.B.*, 254 Or App 353, 360 n.4, 295 P3d 118 (2012)).

[8] More information can be found here.

Deschutes and Clackamas County have dedicated authorized diversion programs that are geared toward youth.

B. Youth Courts

Organizations may establish a youth court with the agreement and cooperation of a county juvenile department. ORS 419C.226. These are courts typically run by juveniles or peers of those who appear. The organization and the juvenile department must have a written agreement that describes the types of cases that may be referred, establishes a protocol for cases (including time limits), and establishes data collection and outcome reporting requirements. These courts are sometimes referred to as peer or teen courts or peer juries. As of 2024, Marion County runs a teen court that requires a referral from the juvenile department. The youth are required to admit their conduct to a jury of their peers, and the jury then provides sanctions, which may include community service, a letter of apology, and service on the jury panel. A petition is not filed and a youth does not have an adjudication, though they still have some records that need to be considered when looking at future expunction options.

Chapter 8
Disposition

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Once a youth is found within the jurisdiction of the juvenile court, the court needs to determine disposition for the youth. ORS 419C.411(1). "The disposition order sets forth the requirements and conditions that the youth must complete as part of the youth's rehabilitation. The disposition also includes any changes in the youth's custody—guardianship, parental custody, or Oregon Youth Authority (OYA) custody—when the court determines that a change in custody is appropriate." *State v. B.Y.*, 371 Or 364, 369, 510 P3d 247 (2023) (citations omitted). The court must set the length of disposition, which may be for an indefinite period. ORS 419C.501(1). The statute then limits that indefinite period for specific types of offenses. *B.Y.*, 371 Or 369. Limits apply to the amount of time a youth can be placed in the custody of OYA or the Oregon Department of Human Services (ODHS), as well as to the youth's length of time on probation, both of which are discussed below. The primary concern for juvenile judges, based on the legislative history of the juvenile code as well as established case law, should be rehabilitation rather than punishment.[1]

Limits on Duration of Disposition (Institutionalization or Commitment)[2]

Offense	Duration of Disposition
Unclassified Misdemeanor	Period of time specified in statute
Class C Misdemeanor	30 days
Class B Misdemeanor	6 months
Class A Misdemeanor	364 days
Class C Felony	5 years
Class B Felony	10 years
Class A Felony	20 years
Murder or Aggravated Murder[3]	Life

[1] *See also State v. Reynolds*, 317 Or 560, 574, 857 P2d 842 (1993); *State v. S.Q.K.*, 292 Or App 836, 846, 426 P3d 659, *adh'd to as modified on recons.*, 294 Or App 184, *rev. den.*, 364 Or 209 (2018); *State v. B.Y.*, 371 Or 364, 510 P3d 247 (2023).

[2] These time limits do not apply to probation. Probation time limits are discussed in the section below on probation.

[3] Under ORS 163.095, 163.107, and 163.115.

In determining disposition, the court shall consider each of the following factors, pursuant to ORS 419C.411(3):

(a) The gravity of the loss, damage or injury caused or attempted during, or as part of, the conduct that is the basis for jurisdiction under ORS 419C.005;

(b) Whether the manner in which the adjudicated youth engaged in the conduct was aggressive, violent, premeditated or willful;

(c) Whether the adjudicated youth was held in detention under ORS 419C.145 and, if so, the reasons for the detention;

(d) The immediate and future protection required by the victim, the victim's family and the community; and

(e) The adjudicated youth's juvenile court record and response to the requirements and conditions imposed by previous juvenile court orders.

In addition to the above, the court *may* consider the following under ORS 419C.411(4):

(a) Whether the adjudicated youth has made any efforts toward reform or rehabilitation or making restitution;

(b) The adjudicated youth's educational status and school attendance record;

(c) The adjudicated youth's past and present employment;

(d) The disposition proposed by the adjudicated youth;

(e) The recommendations of the District Attorney (DA) and the juvenile court counselor and the statements of the victim and the victim's family;

(f) The adjudicated youth's mental, emotional and physical health and the results of the mental health or substance abuse treatment; and

(g) Any other relevant factors or circumstances raised by the parties.

Some of the specific and common dispositions are detailed in the remainder of this chapter.

1. Probation

The purpose of the juvenile code is to provide the youth with the disposition that is the least restrictive and that allows them to remain in the community. Because of this, many youth are placed on probation.

The juvenile statutory scheme for probation is much less detailed than the criminal statute. The law states: “In any case under ORS 419C.005 the court, notwithstanding

ORS 419C.501, may place the adjudicated youth on probation to the court for a period not to exceed 5 years. However, the period of probation shall not extend beyond the date on which the adjudicated youth becomes 23 years of age." ORS 419C.504. Practice regarding the length of probation terms varies around the state, and attention should be paid to the requirements and considerations discussed below when determining the length of probation.

The court may place an adjudicated youth on probation if it is in their best interest and welfare. In addition to placement on probation, the court may direct that the adjudicated youth remain in the custody of their parents or another person with whom they are living. The court may also direct that they be placed in the custody of another relative or with a person maintaining a foster home or child or youth care center. ORS 419C.446(1). The law also requires the juvenile department and parent or guardian to develop a plan for supervision of the youth, and the court must review and ratify the plan to make it a part of the court order. ORS 419C.570. The court should encourage the youth, the attorneys, and the juvenile department to explore options outside of the youth's family home and consider placement with relatives or kith if the youth are unable to be maintained in the home in the short term.

When considering conditions of probation, there is some legal direction for courts, though the statutory law is limited on specifics:

> The court may specify particular requirements to be observed during the probation consistent with recognized juvenile court practice, including but not limited to restrictions on visitation by the adjudicated youth's parents, restrictions on the adjudicated youth's associates, occupation and activities, restrictions on and requirements to be observed by the person having the adjudications youth's legal custody, requirements for visitation by and consultation with a juvenile counselor or other suitable counselor, requirements to make restitution under ORS 419C.450, requirements of a period of detention under ORS 419C.453, requirements to perform community service under ORS 419C.462, or service for the victim under ORS 419C.465, or requirements to submit to blood or buccal testing under ORS 419C.473.

ORS 419C.446(2). The language "consistent with recognized juvenile court practice" is notable. While some options for probation conditions are outlined in statute, others may be imposed. "However, the court's authority under the 'including but not limited to' text of ORS 419C.446(2) is not unlimited; rather 'any additional requirement must be of the same kind as those specifically set out in the statute.'" *State v. C.M.C.*, 259 Or App 789, 790, 316 P3d 316 (2013) (quoting *State ex rel. Juv. Dept. v. Ware*, 144 Or App 614, 616-17, 927 P2d 1114 (1996) (quoting *State ex rel. Juv. Dept. v. Gallagher*, 79 Or App 39, 41, 717 P2d 1242 (1986))). Further, the court is not restricted to imposing conditions of probation that are directly related to the conduct that gave rise to jurisdiction, but may impose conditions that fulfill the juvenile system's purposes and will assist with the youth's rehabilitation. *State v. Rial*, 181 Or App 249, 263-64, 46 P3d 217 (2002).

The court may not delegate certain authority to make decisions regarding a potential probation violation to the juvenile department. *See State v. B.H.C.*, 288 Or App 120, 404 P3d 1110 (2017) (holding that the delegation of authority for detention to the juvenile department was improper).[4] *But see State v. M.V.L.*, 288 Or App 845, 406 P3d 1131 (2017) (holding that the court may order a condition allowing the juvenile department to exercise discretion regarding house arrest based on the specific language in ORS 419C.446(2)). Additionally, when issuing probation conditions, it is important to note that the youth must raise any challenge to a specific condition of probation at the time of the order of that condition, rather than waiting for a violation to occur. *See State ex rel. Juv. Dept. v. Rial*, 181 Or App 249, 254, 46 P3d 217 (2002).

As of Spring 2025, the Oregon Judicial Department (OJD) is updating the model standard probation conditions based on newly developing reforms happening nationally. Additionally, Youth Development Oregon and the Oregon Juvenile Department Directors' Association have been working collaboratively on probation reform. Recommendations from the national perspective include individualized case planning, minimizing the number of conditions imposed, and using alternatives to detention in the case of violations.[5]

A. Probation Violations

When a youth is alleged to have violated their probation, either the juvenile department or the DA (usually upon suggestion of the juvenile department) will file a probation violation petition. The youth is entitled to counsel and has the right to an adjudication hearing, after which the court may impose disposition. *See* ORS 419C.200(1)(a)(B); *State v. S.-Q.K.*, 292 Or App 836, 426 P3d 659 (2018). The court must be able to identify the specific condition of probation a youth violated in order to adjudicate them of a probation violation. *State v. D.S.H.*, 339 Or App 596 (2025). In *D.S.H.* the court had ordered the youth to follow probation conditions as designated by OYA. However, no evidence was presented about what the conditions imposed by OYA were, and thus, the Court of Appeals determined the youth did not have adequate notice in order to submit a defense. *Id.* at 603-04.

A youth may be held in detention if there is probable cause to believe they violated probation, but time limits on detention continue to apply. *See* ORS 419C.145(1)(d);

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[4] *See also State v. D.S.H.*, 339 Or App 596 (2025) (determining that the youth did not properly preserve the argument that the court could not direct OYA to set probation conditions).

[5] National organizations, including the National Council for Juvenile and Family Court Judges and the Coalition for Juvenile Justice, have published probation reform toolkits:

- The Role of the Judge in Transforming Juvenile Probation: A Toolkit for Leadership
- Probation Reform: A Toolkit for Juvenile Justice State Advisory Groups

State v. J.R., 318 Or App 21, 507 P3d 778 (2022) (holding that detention after adjudication but before disposition was not permitted by statute).

In *S.-Q.K.*, the Oregon Court of Appeals conducted a thorough review of the legislative history of the juvenile code in relation to probation violations to determine that a probation violation hearing was meant to be an adjudicatory hearing for purposes of the juvenile former jeopardy statute, ORS 419A.190. *S.-Q.K.* at 666. Other cases have followed suit. *See, e.g., State v. M.B.*, 293 Or App 122, 427 P3d 1121 (2018); *see also State v. G.E.S.*, 316 Or App 294, 504 P3d 61 (2021) (finding the conduct at issue was not the same act nor arising from the same conduct as that for which the youth was adjudicated on a probation violation for purposes of a former jeopardy analysis).

The court may impose sanctions permitted as part of the original disposition in the case. *See S.-Q.K.* at 845. Attention should be paid to the amount of time a youth has already spent in custody in light of the statutory maximums for the adjudicated offense. Courts have read ORS 419C.610 as authority for the court to modify earlier dispositional orders based on a probation violation. *See State v. Rial*, 181 Or App 249, 254 & n.2, 46 P3d 217 (2002). This means that a youth may initially be placed on probation, and if subsequently revoked, the youth could be committed to the custody of OYA or ODHS, including for placement in a correctional facility. The Oregon Court of Appeals has yet to issue a decision regarding whether time served in other out of home placements should be counted against the statutory maximums for a specific offense.[14] However, youth have made the argument in some Court of Appeals cases. *See, e.g., State v. Ortiz*, 187 Or App 116, 65 P3d 1118 (2003).

2. Detention

The court may impose limited detention time as part of the disposition post-adjudication. ORS 419C.453. The court may not order the youth to serve more than 8 days in detention, though in certain programs that meet specific requirements established by the Youth Development Council, they may serve up to 30 days.[6] This time may only be ordered pursuant to a hearing and imposed when the youth has been adjudicated or has been found to have violated probation. ORS 419C.453(1)(a)-(b). In limited circumstances, when the adjudicated youth is over 18, the court may order them to be placed in a jail where adults are detained. ORS 419C.453(2). This placement is also limited to 8 days, and the court must make case-specific findings that placement in a jail meets the specific needs of the adjudicated youth. ORS 419C.453(3). An adjudicated youth may also be placed in detention for 8 days if they've been found within the jurisdiction of the court for escape. ORS 419C.456. The Oregon Court of Appeals has held that post-adjudication detention under ORS 419C.453 is limited to 8 days, and an adjudicated youth may not be held longer than those 8 days while disposition is pending. *State v. J.R.*, 318 Or App 21, 36, 507 P3d 778 (2022).

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[6] OAR 213-050-0060 provides the minimum standards required for the 30-day detention programs.

3. Commitment

An adjudicated youth over the age of 12 may be placed in the legal custody of OYA or ODHS after a delinquency petition is adjudicated for care, placement, and supervision. ORS 419C.478. When placing a youth in the legal custody of OYA or ODHS, the court must use a previously approved form, which includes required legal findings. A copy of the form can be found here.[7] The court may not make a commitment to a specific residential facility but shall direct that the youth be delivered to the custody of OYA or ODHS at a time and place fixed by the department or agency. ORS 419C.478(5). Further, after commitment to the custody of OYA or ODHS, the court has continuing jurisdiction to protect the rights of the adjudicated youth and/or their parents or guardians. ORS 419C.492. Though the court may not direct placement, if a specific placement is so inappropriate as to violate the rights of the adjudicated youth or their parents or guardians, the court may direct OYA or ODHS to place them "in a specific type of residential placement." ORS 419C.492.

A. Best Interests

The court must make written findings describing why it is in the *best interests of the adjudicated youth* to be placed in the legal custody of OYA or ODHS. ORS 419C.478(1). The Oregon Court of Appeals has issued several opinions reversing juvenile court orders when the order of commitment to OYA does not include written findings specific to an individual adjudicated youth about why placement is in their best interests. Courts must be specific and youth-centered when making an order of commitment to either OYA or ODHS. Some of the opinions are linked below:

- *State v. S.D.M.*, 318 Or App 418, 506 P3d 1190 (2022) (The Oregon Legislature intended the court to make written findings about why it is in the youth's best interests to be in the custody of OYA or ODHS and not with family or in the community. Mere fact of a probation violation is not sufficient.).

- *State v. D.B.O.*, 325 Or App 746, 529 P3d 1004 (2023) (A finding that the youth cannot be maintained in the community is too ambiguous. The court noted the legislative intent is to ensure the juvenile court takes time to consider the positive and negative impacts a decision may have on the adjudicated youth.).

- *State v. E.S.*, 333 Or App 350, 552 P3d 754(2024) (Findings are too ambiguous when they do not specify why placement is in the youth's best interests rather than what is in the best interests of the community or others.).

[7] The forms are listed under the "Juvenile Delinquency" drop-down menu and are appropriate for placement with either ODHS or OYA.

- *State v. T.J.L.*, 335 Or App 477, 558 P3d 855(2024) (Consideration of all the factors in ORS 419C.411, which includes accountability, does not necessarily mean the court did not consider youth's best interests in a placement with OYA.).

B. Commitment to OYA

As noted above, a court may not direct a specific placement in OYA custody. OYA operates different types of facilities and community placements. Youth may be residing at home with a parent or guardian, placed in a community residential program, placed in foster care, and/or receiving supportive services from OYA. As of 2024, OYA operated 27 Behavior Rehabilitative Service (BRS) programs, 3 non-BRS residential programs, 3 transitional housing programs, and one 30-day detention-based youth care center program.[8] For more information about OYA community and residential placements, consult their website. If a youth is not placed in a correctional facility but in another OYA placement, they will also generally be placed in probation, as indicated by ORS 419C.478(1).[9]

I. Placement in a Youth Correction Facility

An adjudicated youth may only be placed in a youth correction facility (YCF) upon recommendation from the court. ORS 419C.495(1). The youth may be held in the correction facility for the duration of the commitment period but may not be retained after they have attained 25 years of age. The youth must be committed to the YCF before their 20th birthday. ORS 420.011(1). The Oregon Supreme Court has also held that a court may impose consecutive commitments to OYA for an act committed while a youth was already in OYA custody. *State v. B.Y.*, 371 Or 364, 537 P3d 517 (2023).

Once the youth has been committed to a correction facility, OYA may choose to release them and place them in a less secure setting on parole. The Director of OYA must advise the committing court of the release, and if parole is revoked at a later time, the Director shall immediately advise the committing court. ORS 420.045(1)-(2). If the Director believes final release is "compatible with the safety of the community and the best interests of the adjudicated youth," the Director may order discharge only with consent of the committing court. ORS 420.045(2). Once discharged, the youth may not be returned to a correction facility unless ordered by the court. ORS 419C.495(3). This does not prohibit the return of an adjudicated youth to the facility if they were released on parole, nor does it prohibit a transfer from one facility to another. ORS 419C.495(4). For certain adjudicated youth or persons who were under 18 at the time of the

[8] This information was obtained through a presentation from OYA in November of 2024.

[9] "The court may, *in addition to probation* or any other dispositional order, place an adjudicated youth . . . in the legal custody of [OYA] . . . ." ORS 419C.478(1) (emphasis added).

commission of their offense, certain rules apply to placement or temporary assignment in a youth correction facility. ORS 420.011.[10]

Some other notable statutes apply to youth committed to the custody of OYA:

- **ORS 419C.481:** The court retains jurisdiction, but OYA retains legal custody of a youth committed to it, regardless of physical placement. The court may also grant guardianship to OYA while the adjudicated youth is in the legal custody of OYA.

- **ORS 419C.486:** OYA must take information and recommendations from the court into account before placement in any facility. Case planning by OYA must be consistent with the principles of ORS 419C.001, incorporate the perspective of the adjudicated youth and their family, and be integrated with efforts of other agencies involved in the adjudicated youth's life.

- **ORS 419C.489:** When an adjudicated youth in OYA custody is in need of medical care or other special treatment by reason of a physical or mental condition, OYA must prepare a plan for care or treatment within 14 days of assuming custody. The court may indicate the type of care (in general terms) that it regards as initially appropriate. A copy of the plan and schedule for implementation must be sent to the court. The court may also request regular progress reports, and OYA must notify the court of any revisions.

C. Commitment to ODHS

Because an adjudicated youth's best interests are the primary concern in making the appropriate dispositional placement, the court may consider whether committing a youth to the custody of ODHS in a delinquency case is appropriate. ORS 419C.478(3) states:

> (a) The court has determined that a period of out-of-home placement and supervision should be part of the disposition in the case;
>
> (b) The court finds that, because of the adjudicated youth's age or mental or emotional condition, the adjudicated youth:
>
> > (A) Is not amenable to reform and rehabilitation through participation in the programs provided and administered by the youth authority; and
> >
> > (B) Is amenable to reform and rehabilitation through participation in the programs provided and administered by the department;
>
> (c) The court finds that the department can provide adequate security to protect the community and the adjudicated youth;

[10] For details about these specifics, please consult ORS 420.011.

(d) The court provides for periodic review of the placement; and

(e) The court, in making the findings and determinations required by this subsection, has considered the relevant facts and circumstances of the case, as provided in ORS 419C.411.

When an adjudicated youth is placed in the custody of OHDS, several of the juvenile dependency statutory provisions apply as if they were a ward in a dependency case. This means that the court will need to have ongoing oversight of the youth and ensure that ODHS is providing the court with appropriate and timely information about the adjudicated youth and their progress. For more information about the processes, consult the Juvenile Dependency Bench Book. The statutory provisions that also apply to an adjudicated youth in ODHS custody are as follows:

- ORS 419B.440 (requiring regular reports from ODHS)
- ORS 419B.443 (time and content of the reports)
- ORS 419B.446 (filing of the report)
- ORS 419B.449 (ongoing review hearings for the "ward")
- ORS 419B.453 (distribution of the report to the court)
- ORS 419B.470 (Permanency hearings)
- ORS 419B.473 (Notice and appearance at permanency hearings)
- ORS 419B.476 (conduct of the permanency hearing; court determinations; orders)

4. Restitution

In many cases, when a youth causes another person any physical, emotional, or psychological injury or any loss of or damage to property, the court may order restitution to be paid to the victim. *See* ORS 419C.450. Juvenile and criminal law relating to restitution differ in some ways but follow the same reasoning in others.[11] A brief legal overview is provided here.[12] Restitution is defined as the "full, partial or nominal payment of economic damages to a victim." ORS 419A.004(29). The term "economic damages" is defined as the victim's "objectively verifiable monetary losses." ORS 137.103(2)(a); ORS 31.705. "The juvenile court must award restitution when there is

[11] *See, e.g.*, *State v. N.R.L.*, 354 Or 222, 311 P3d 510 (2013) (holding that a juvenile restitution hearing is not civil in nature and thus, youth was not entitled to a jury trial on the issue of restitution).

[12] For more information, consult the Criminal Law Bench Book and Bar Book. Note that not all criminal statutes or cases are applicable in the juvenile system.

sufficient evidence of criminal activity, economic damages, and a causal relationship between the criminal activity and the economic damages." *State v. A.E.A.*, 332 Or App 584, 586, 549 P3d 590 (2024) (*citing State v. C.A.M.-D.*, 312 Or App 1, 4, 493 P3d 55, *rev. den.*, 368 Or 637 (2021)). Courts must consider the causal relationship between the adjudicated youth's conduct and the damages using a "but-for" test, as is used in civil cases. *Id.* at 583*; see also State v. Z.D.B.*, 238 Or App 377, 242 P3d 714 (2010). *But see State v. Mothershed*, 323 Or App 16, 522 P3d 921 (2022). The damages must have also been a reasonably foreseeable result of the youth's conduct. *State v. C.A.M.-D.*, 312 Or App at 4-5.

The DA must investigate and present evidence as to the nature and amount of the injury, loss, or damage prior to or at the time of adjudication. ORS 419C.450(1). This differs from the requirements in criminal cases. The Oregon Court of Appeals has held that the phrase "adjudication" is the determination of the court's jurisdiction over a youth based on the finding of delinquency. *State v. M.A.S.*, 302 Or App 687, 462 P3d 284 (2020). This signifies that disposition, which sometimes occurs after the finding of jurisdiction, is not a part of "adjudication," and presentation of restitution evidence after adjudication is not timely. In *State v. R.D.M.*, 330 Or App 692, 544 P3d 425 (2024), the state presented evidence at a restitution hearing that occurred several weeks after adjudication. The court held that the state must present actual evidence at the time of adjudication (or prior), and a mention of the amount owed or the nature of the loss alone was not sufficient.[13] ORS 419C.450(1)(a)(B) does permit the court to determine the specific amount and enter a supplemental judgment within 90 days of entry of judgment; however, the court in *R.D.M.* determined that the state must still present *some* evidence of the nature and amount prior to or at the time of adjudication. *Id.* at 697.

A. Victims' Rights

If the court conducts a restitution hearing, the adjudicated youth will be present at that hearing, and if the victim requests notice, the DA or juvenile department shall notify the victim of the hearing. ORS 419C.450(1)(e). Regardless of whether restitution is ordered in a delinquency case, victims have the right to sue in a civil action for damages. ORS 419C.450(1)(c), (2). However, the court shall credit any restitution paid by the adjudicated youth to a victim against any judgment in favor of the victim in the civil action. ORS 419C.450(2). Victims do have the right to be heard in a restitution hearing. Before setting the amount of restitution, the court shall notify "the person upon whom the injury was inflicted or the owner of the property taken, damaged or destroyed and give such person an opportunity to be heard on the issue of restitution." *Id.* If the adjudicated youth files a motion for satisfaction, the DA must promptly notify the victim and inform them of the right to object in writing through the DA.

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[13] *See State v. Stull*, 296 Or App 435, 440, 438 P3d 471 (2019) ("Evidence for the consideration of a factfinder at trial consists of the testimony and demeanor of witnesses while under oath and exhibits received into evidence. Statements by individuals in the courtroom, even parties, are not 'evidence' when those statements are not given while a person is under oath on the witness stand.").

B. Payment Schedule and Delays

If the adjudicated youth is able to establish, to the satisfaction of the court, that they are unable to pay the judgment of restitution in full at the time it is entered, the court may delay enforcement and/or create a payment schedule.[14] ORS 419C.450(3)(a). In establishing the payment schedule, the court (or supervising authority) shall take into consideration:

(a) The availability of paid employment during the time the adjudicated youth may be committed to a YCF;

(b) The financial resources of the adjudicated youth and the burden that restitution will impose (with regard to the other obligations of the adjudicated youth);

(c) The present and future ability to pay on an installment basis; and

(d) The rehabilitative effect on the adjudicated youth of the payment of restitution and method of payment.

Id.

C. Satisfaction

If 10 years have passed or at least 50% of the monetary obligation has been satisfied, a person required to pay restitution may file a motion and affidavit requesting satisfaction of the supplemental judgment requiring restitution.[15] The person must have also substantially complied with all established payment plans; must not have been found within the jurisdiction of the juvenile court or convicted in criminal court since the date of the original judgment; and have satisfactorily completed any probation or parole. ORS 419C.450(5). The DA must notify the victim, who has the right to object in writing. If the victim does not object, the court must hold a hearing on the motion for satisfaction. The court may grant full or partial satisfaction if the allegations (noted above) in the affidavit are true and a failure to grant the motion would result in an injustice. ORS 419C.450(7). The court shall take into account:

(a) The financial resources of the person and the burden that continued payment will impose, with due regard to other obligations;

(b) The ability of the person to continue paying on an installment basis; and

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[14] The supervising authority may also establish a payment schedule, and they are authorized to modify it.

[15] A person may file this motion no more than once a year for each judgment of restitution. ORS 419C.450(8).

(c) The rehabilitative effect on the person of the continued payment and the method of payment.

Id.

D. Other

I. Condition of Probation

If restitution is ordered, the court shall require payment as a condition of probation. ORS 419C.450(2).

II. Opportunities to Pay

Either OYA, when they have custody, or the county juvenile department, when supervising an adjudicated youth, must provide opportunities for the adjudicated youth to pay restitution and to perform any ordered community service. ORS 419C.470. Some county juvenile departments run programs for youth to work for the county for pay, which is then used to pay off their restitution.

III. Enforcement and Collections

The court shall enter the supplemental judgment in the register of the case in the manner provided by ORS Chapter 18 and enforce the judgment in the manner provided by ORS 18.252–18.993.[16] ORS 419C.450(4). The judgment is in favor of the state and may only be enforced by the state. The judgment is a public record, notwithstanding ORS 419A.255, relating to records and confidentiality in juvenile cases.

The supplemental judgment must have a separate section clearly labeled as a "money award," pursuant to ORS 18.048, with the separate section placed directly above the judge's signature. Additional requirements as to what should be included in the supplemental judgment are located in ORS 18.048.

If the juvenile is under 18 at the time the supplemental judgment of restitution is entered, the case should not go to collections, though it may go to collections after the youth turns 18. No additional fees are to be assessed by the courts under ORS 1.202(3).

IV. Emotional and Psychological Injury

The court may order restitution, including but not limited to counseling and treatment expenses, for emotional or psychological injury under this section only:

[16] OJD Court staff should follow the OJD business process relating to Delinquency Adjudications.

(A) When the youth was adjudicated for aggravated murder, murder, or a sex crime; *and*

(B) For an injury suffered by the victim or a family member who observed the act.

ORS 419C.450(1)(d).

5. Additional Dispositional Conditions

The following statutes provide some specific dispositional directives that were not covered elsewhere in this chapter:

- **ORS 419C.441 (mental health evaluation, care, and treatment):** For youth adjudicated of certain offenses involving animal abuse (ORS 167.315, 167.320, 167.322, or 167.333), the court may order the adjudicated youth undergo psychiatric, psychological, or mental health evaluation.

- **ORS 419C.457 (prohibition on fines and fees):** Since Senate Bill (SB) 817 was passed in 2021, the court may no longer assess any fee or fine against a person who was under 18 at the time of an act or who is subject to juvenile court probation. This prohibition does not apply to persons have been waived for prosecution as an adult under ORS 419C.340.

- **ORS 419C.461 (disposition for graffiti-related offenses):** For certain graffiti-related offenses, including but not limited to criminal mischief, the court may order personal service or specific community service consisting of graffiti removal. The adjudicated youth may not serve more hours than would be indicated by dividing the monetary damage caused by the legal minimum wage. The statute also provides authority for the court to find the adjudicated youth's parent or guardian liable for actual damages. Exceptions apply.

- **ORS 419C.462 (community service):** The court may order a youth to perform "appropriate" community service for a number of hours not to exceed what is laid out in ORS 137.129.

- **ORS 419C.465 (personal service):** The court may order an adjudicated youth to perform personal service for a victim, but only with the agreement of the adjudicated youth, their parents or guardians, and the victim. The service shall be considered to constitute full or partial satisfaction of any restitution ordered. The adjudicated youth may not serve more hours than would be indicated by dividing the monetary damage caused by the legal minimum wage.

- **ORS 419C.472 (suspension of driving privileges):** The court may order the suspension of a youth's driving privileges if the petition alleges a violation of ORS 471.430 (purchase or possession of liquor by a person under 21) or ORS 475C.317 (possession, purchase, or attempted purchase of marijuana by a

person under 21) and the person fails to appear after having been issued a summons. The court must send a notice to the Department of Transportation.

- **ORS 419C.473 (blood or buccal samples):** After a youth has been adjudicated for specified sex offenses or felonies (listed in ORS 419C.473(2)), the court must order the youth to submit to the obtaining of a blood or buccal sample in the manner provided by ORS 137.076. The court must also order the law enforcement agency attending upon the court to obtain and transmit the sample in accordance with the statute. No order is required if the Department of State Police indicates that they already have an adequate sample or if the court determines that obtaining the sample would create a "substantial and unreasonable risk to the health of the adjudicated youth." ORS 419C.473(3)(b). The court may not order the adjudicated youth or their parent or guardian to pay for or reimburse the cost of obtaining or transporting this sample.

- **ORS 419C.498 (disposition under compact agreement):** If an interstate compact or informal agreement is in place regarding a specific youth, the court may place the youth on probation, under protective supervision, or in a correctional institution in accordance with the agreement or compact.

- **ORS 419C.507 (additional options; consultation):** The court may order, in addition to any other disposition, that an adjudicated youth be examined or treated by a physician, psychiatrist, or psychologist or receive other care in a hospital or suitable facility. If the court determines services should be provided by the Oregon Health Authority (OHA), then ODHS, in consultation with OHA and other agencies, shall determine the appropriate placement and services. If there is an objection to the placement or services, the court shall determine the appropriate type of placement or service. The department may also be appointed guardian of the adjudicated youth.

Chapter 9
Post Disposition

Jordan Bates, Senior Assistant General Counsel, Oregon Judicial Department

Hon. Owyhee Weikel-Magden, Deschutes County Judge Pro Tem, Oregon Judicial Department (Section on Sex Offender Registration)

1. Appeals

ORS 419A.200 governs appeals in dependency and delinquency cases. The law allows anyone (including but not limited to a party) whose rights are adversely affected to appeal a judgment issued by the juvenile court. Chapters 18 and 19 of the Oregon Revised Statutes also provide direction regarding juvenile delinquency appeals. This chapter will not delve deeply into appellate procedure under ORS Chapters 18 and 19, nor the Oregon Rules of Appellate Procedure, but will provide an overview of the appropriate steps and considerations applicable in juvenile delinquency matters. For up-to-date juvenile appellate summaries, please find the cumulative update on the Oregon Judicial Department's (OJD) Juvenile Court Improvement Program website. For questions about local processes, judges should consult their Supplementary Local Rules.

A. Procedure

Youth and their parents have a right to court-appointed appellate counsel at state expense, regardless of their financial circumstances. ORS 419A.211(4). The court shall appoint suitable counsel for the youth. ORS 419A.211(1).[1] The state shall be represented either by the District Attorney (DA) or the Attorney General (AG). ORS 419A.200(9). Procedurally, a notice of appeal, as outlined in ORS 19.250, must be served on all parties who have appeared in the case, the Trial Court Administrator (TCA) or clerk of the juvenile court, and the juvenile court transcript coordinator. ORS 419A.200(3)(a). It must be filed "not later than 30 days after the entry of the court's judgment." ORS 419A.200(3)(c). Though delinquency procedure does not provide direction regarding the period of time within which a judge must enter the dispositional order, providing a timely written dispositional order benefits the court and parties, as youth and their families can be significantly impacted.[2] The appellate court has options to grant leave for a person to file a notice of appeal outside of those 30 days. The law states that the court *shall* grant a late notice of appeal if "[t]he person shows a colorable

[1] Dependency cases are treated differently under ORS 419A.211, in that the child or ward and/or their parents or guardians do not qualify for court-appointed counsel regardless of financial circumstances. However, they still have the right to court-appointed counsel at state expense if they do financially qualify.

[2] *See* ORS 419C.411(1): "At the termination of the hearing or hearings in the proceeding . . . the court shall enter an appropriate order directing the disposition to be made of the case."

claim of error in the proceeding from which the appeal is taken; and . . . that the failure to file a timely notice of appeal is not personally attributable to the person." ORS 419A.200(5).[3] The court may not grant a late notice of appeal unless the state has notice and opportunity to respond. *Id.* In juvenile cases, the judge shall ensure that a judgment document complying with ORS 18.038 and 18.048 is created and filed. ORS 18.035(2).

The original notice of appeal must be filed with the Oregon Court of Appeals. ORS 419.200(3)(b).[4] Appellate counsel is responsible for ensuring filing and service, though court-appointed trial counsel is directed to discharge the duty to commence an appeal by following the procedures of the Oregon Public Defense Commission (OPDC).[5] ORS 419A.200(4).

The juvenile court is required to prepare and transmit a record on appeal in the manner provided in ORS 19.365.[6] ORS 419A.200(1).[7] The Court of Appeals is also required to keep an appellate record. The confidentiality provisions of ORS 419A.255, discussed in Chapter 10, apply to the Court of Appeals record of juvenile cases in the same way they apply to the juvenile court records. ORS 419A.200(10)(c). The statute provides that disclosure by the Court of Appeals may be done in the same manner as that allowed by the juvenile court under ORS 419A.255 and some provisions of ORS 419A.256 (regarding audio and video recordings). However, the decisions of the Oregon Supreme Court or Court of Appeals are not confidential nor exempt from disclosure. ORS 419A.200(10)(e).

If a judgment finding the youth within the jurisdiction of the juvenile court is reversed on appeal, the judgment disposing of the matter is reversed. If the judgment is modified, a party may move for relief as otherwise provided by law. ORS 419A.205(4).

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[3] The request for leave to file a late notice of appeal must still come within 90 days after entry of judgment. ORS 419A.200(5)(c). However, an additional 90 days to request a late appeal is not available to a person for failure to file a timely notice of *cross-appeal* when the state appeals pursuant to ORS 419A.208. ORS 419A.200(5)(b).

[4] If an appeal is filed from the county court in the circuit court, the circuit court shall hear the matter *de novo*, and that judgment is then appealable to the Court of Appeals in the same manner. The original notice of appeal from the county court must be filed with the circuit court. ORS 419A.200(b)-(c).

[5] Trial counsel does not typically also represent their client on an appeal and instead works with the state agency providing defense services to ensure their client is appropriately represented.

[6] If the appeal is from a county court to the circuit court, the county court is responsible for preparing and submitting the record. ORS 419A.200(10)(a).

[7] If no record was kept in the circuit court, the court shall grant a rehearing (upon a motion made within 15 days of entry of the court's judgment) and direct that a record of the proceeding be kept. ORS 419A.200(2). This may not occur in a case barred by ORS 419A.190 without consent of the youth.

B. Appealability

Both statutes and case law provide direction regarding what constitutes an appealable decision in a juvenile case. Contrary to what may be generally understood, orders, in addition to judgments, can be appealed if they adversely affect the rights or duties of a party. The list of what is appealable as a "judgment" as laid out in ORS 419A.205(1) includes:

(a) A judgment finding a child or youth to be within the jurisdiction of the court;

(b) A judgment disposing of a petition including, but not limited to, a disposition under ORS 419C.411;

(c) Any final disposition of a petition; and

(d) A final order adversely affecting the rights or duties of a party and made in a proceeding after judgment including, but not limited to, a final order under ORS 419B.449 or 419B.476.[8]

An order need not be "final," but it is does need to constitute an appealable judgment that has been entered. *See State v. J.H.-O.*, 223 Or App 412, 196 P3d 36 (2008). This case clarified that the previous case law and statutory schemes about what was appealable in juvenile cases was no longer precedent, as the statute had changed. *Id.* at 418.[9] As noted above, there are several types of judgments and final orders that are appealable. ORS 419A.205(2) also clarifies that a youth may file an appeal of a judgment finding them within the jurisdiction of the court before disposition is entered. However, if the judgment of jurisdiction is appealed prior to disposition, the appeal must be modified according to the rules of the appellate court based on the subsequent dispositional order under ORS 419C.411. ORS 419A.205(3). For more discussion about what is appealable, *see State v. J.G.G.*, 278 Or App 184, 372 P3d 620 (2016) (holding that a probation violation, even without a sanction, constituted an order that adversely affected youth's rights); *State v. Ortiz*, 187 Or App 116, 65 P3d 1118 (2003) (holding that the denial of a youth's motion to amend an order of commitment did not affect the rights and duties of a party).[10]

As noted in Chapter 1, juvenile court referees may hear delinquency cases. The first step in appealing a referee's decision is to request a rehearing before a circuit court

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[8] Note that while these two statutes are in the dependency code, the subsection applies to delinquency cases as well.

[9] *J.H.-O.* also interpreted the legislative intent behind ORS 419A.205 to be that the Legislature anticipated a youth may challenge a jurisdictional judgment while awaiting disposition.

[10] *See also State v. Gladen*, 168 Or App 319, 7 P3d 574 (2000) (an order to dismiss a petition and require the juvenile department to enter an FAA is a reviewable order pursuant to ORS 419A.200(7)(a) and ORS 19.425)).

judge.[11] In *State v. J.W.*, 345 Or 292, 193 P3d 20 (2008), the Oregon Supreme Court held that in order for a judgment to be appealable "under ORS 18.035, ORS 18.038, and ORS 18.245, a judgment must be signed by a judge, and the absence of a judge's signature is a jurisdictional defect." *Id.* at 299. Courts have gone on to interpret that to mean that either the referee must be sitting as a Judge Pro Tem, or that the order or judgment must be subject to a rehearing and that final order would then be signed by a judge. The court reasoned that a judgment under ORS 419A.200 and 419A.205 must also comply with the statutes in ORS Chapter 18 that govern judgments generally. *Id.* Those statutes require a *judge's* signature on a judgment for it to be appealable. Though the case cited is a dependency case, ORS Chapter 419A governs both delinquency and dependency cases for purposes of appeals, and there is no reason to suggest a delinquency judgment would be treated differently.

C. Open and Ongoing Juvenile Court Case

I. Pre-Adjudicatory Orders

The state has additional rights to appeal certain pre-adjudicatory orders under ORS 419A.208. These include:

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

(b) An order setting aside a delinquency petition after the adjudicatory hearing;

(c) An order suppressing or limiting evidence or refusing to suppress or limit evidence; or

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

ORS 419A.208(1). If the youth is in detention at the time of one of these appeals, the court shall consider release during the pendency of the appeal. ORS 419A.208(2). This provision lays out the factors a court must consider in determining release of the youth. If the youth is charged with murder, release shall be denied "when the proof is evident or the presumption strong that the youth committed the act." ORS 419A.200(2)(a). Otherwise, the court shall release the youth upon their own recognizance unless it appears the youth would not be likely to appear before the court in the future. The court must consider the list of criteria laid out in ORS 419A.208(2)(b)(A)-(I). If not released on their own recognizance, the court shall order conditional release and may impose the conditions specified in ORS 419A.208(2)(c)(A)-(B), with the caveat that the court "shall impose the least onerous condition reasonably likely to ensure the youth's later appearance." ORS 419A.208(2)(c).

[11] The process and timelines relating to rehearings can be found in ORS 419A.150 and are also discussed in Chapter 1.

II. Joint Motions

After a judgment or order is appealed, parties have some recourse. Under ORS 419A.209, the parties may jointly file a motion to vacate the judgment or order from which the appeal was taken. The court may vacate the judgment or order and remand the matter to the juvenile court to reconsider. Upon remand, the juvenile court has jurisdiction to enter a modified judgment or order. "After entry of a modified judgment or order on reconsideration, or upon reentry of the original judgment or order, either party may appeal in the same time and manner as an appeal from the original judgment or order." ORS 419A.209(2). This process permits parties to resolve their dispute more quickly, rather than waiting for the appellate process to be complete. The Oregon Rules of Appellate Procedure note that these motions may be decided by order, under ORS 2.570(6).

III. Post-Appeal Custody

Because more than just the judgment of jurisdiction may be appealed, some direction is provided about how to handle the underlying juvenile court case, as it may likely remain open in some regard while the appeal is pending. Except as provided in ORS 419A.208 (see above), the filing of an appeal does not suspend an order or judgment of the juvenile court nor discharge the adjudicated youth from the custody of the person or agency to whom/which custody was granted. ORS 419A.200(7). For example, if an adjudicated youth is in the custody of the Oregon Youth Authority (OYA) or Oregon Department of Human Services (ODHS), the youth will remain in OYA or ODHS custody during the pendency of the appeal. The court is also permitted to enter future orders relating to the adjudicated youth's custody as necessary "by reason only of matters transpiring subsequent to the order or judgment appealed from." *Id.* The TCA is required to file certified copies of any such orders or judgments with the Oregon Court of Appeals.

The Court of Appeals is also permitted to review any interlocutory order that was made after entry of the last appealable judgment or final order and either involves the merits of or necessarily affects the judgment or final order appealed from. ORS 419A.200(8)(a)-(b).

IV. Motions to Stay

If a party wishes that the judgment or order does not go into effect pending appeal, they may file a motion for a stay with the juvenile court under ORS 19.330. The court is required to consider:

(a) The likelihood of the appellant prevailing on appeal.

(b) Whether the appeal is taken in good faith and not for the purpose of delay.

(c) Whether there is any support in fact or in law for the appeal.

(d) The nature of the harm to the appellant, to the other parties, to other persons and to the public that will likely result from the grant or denial of a stay.

ORS 19.350(3). The court has discretion to impose reasonable conditions on the grant of a stay.

A party may also request a stay pending appeal from the appellate court in the first instance without first seeking that stay from the trial court. ORS 19.350(5). However, the party must establish that a request with the trial court would be futile or that the trial court would be unable or unwilling to act on the request within a reasonable time. The appellate court must consider the same factors noted above. *Id.*

2. Set-Asides and Modifications

Juvenile court set-asides are governed by ORS 419C.610–419C.617. These are not to be confused with juvenile expunction proceedings (discussed in Chapter 10 and governed by ORS 419A.260 – 419A.271), nor with the criminal set-aside provisions available in ORS 137.225 or post-conviction relief under ORS 138.510 – 138.686. Two types of set-asides exist in the juvenile code, as outlined below.

A. Set-Asides Under ORS 419C.610

A common way that a youth may seek to set aside or modify an order after adjudication is provided by ORS 419C.610, which states, "Except as provided in ORS 419C.613, 419C.615 and 419C.616, the court may modify or set aside any order made by it upon such notice and with such hearing as the court may direct." The statute requires the court to make specific findings about the reason for a set-aside if it is for an order of jurisdiction based on an act that would constitute a sex crime. ORS 419C.610(2).[12] Set-asides were mentioned briefly in Chapter 7, though they are more fitting in the post-adjudication, rather than pre-adjudication, phase of a proceeding. When filed under ORS 419C.610, an adjudicated youth may be seeking to address the collateral consequences of a juvenile adjudication. The individual will often file a motion seeking to dismiss the delinquency petition under ORS 419C.261(2) and set aside the jurisdictional judgment under ORS 419C.610.

While the statute and case law are clear that a juvenile set-aside does not erase the fact of the individual's adjudication, there may be benefits to having the adjudication set aside for purposes of things like sex offender registration. *See State v. Tyree*, 177 Or App 187, 33 P3d 729 (2001) (holding that setting aside and vacating a youth's adjudication under ORS 419C.610 did not conflict with the registration statutes). In *Tyree*, the court differentiated between the effect of an expunction, which would lead to the physical destruction or sealing of a youth's entire record, and that of the set-aside,

[12] ORS 419C.613 requires notice and a hearing if any modification or setting aside of an order under ORS 419C.610 could deprive a parent of the legal custody of their child or place the youth in or transfer them to an institution or agency.

which sets aside "prospectively the legal effect of youth's adjudication following youth's successful completion of the dispositional requirements imposed by the court." *Id.* at 194. The court was clear that the individual's records would not be destroyed as would have happened in an expunction, and the benefits of an expunction, such as being able to assert that the records never existed, would not apply.[13]

Some other notable cases are below:

- *State v. C.E.B.*, 254 Or App 353, 295 P3d 118 (2012) (holding that the court has the authority to enter an alternative disposition and dismiss the youth's petition under ORS 419C.261(2), even after the youth is no longer within the jurisdiction of the court).

- *State v. Dreyer,* 328 Or 332, 976 P2d 1123 (1999) (holding that the court may dismiss a petition after adjudication, with the question of expunction to be resolved at a later date).

- *State v. Bishop*, 110 Or App 503, 823 P2d 1012 (1992) (holding that the court has the authority to consider a motion for alternative disposition after placing a youth on probation).

B. Set-Asides Under ORS 419C.615

An individual may file for a set-aside under ORS 419C.615 if they have a claim that there was a substantial denial of their rights under the U.S. or Oregon Constitution and that denial of rights should render the adjudication void. A petition may also be filed under this provision if the person has an argument that the statute that would make their offense criminal (if they were an adult) was unconstitutional. This type of set-aside is analogous in some ways to that for post-conviction relief in the criminal context. *See, e.g., State v. J.T.-B.*, 307 Or App 414, 476 P3d 414 (2020); *Smith v. Jester,* 234 Or app 629, 228 P3d 1232 (2010). In *State v. J.T.-B.*, however, the Oregon Court of Appeals interpreted ORS 419C.615 (and ORS 419C.610) to be procedurally different than a post-conviction case. There, the court determined that petitions to set aside an order under ORS 419C.615 would not trigger a separate proceeding, but instead, the Legislature intended that this type of motion would be heard by the juvenile court itself. *J.T.-B.* 307 Or App at 416. The court held that a youth had the right to counsel in an ORS 419C.615 proceeding, as it was a stage of the juvenile court proceeding in which the youth was entitled to counsel. *Id.*

Procedurally, a person filing an ORS 419C.615 petition shall serve it on the DA. The court is to decide the issues raised and may do so by receiving proof through affidavits, depositions, and other competent evidence. Oral testimony may also be taken. The petition has the burden of proving, by a preponderance of the evidence, the facts alleged. "The court shall set aside the order finding the petition to be within the

[13] *See State v. P.T.*, 295 Or App 205, 433 P3d 778 (2018).

jurisdiction of the court if the petitioner establishes one of the grounds set forth in [ORS 419C.615(1)].” ORS 419C.615(2)(c). This order is also appealable by either the petitioner or the state, as laid out in ORS 419A.200. Additionally, the Oregon Supreme Court maintains original jurisdiction in habeas corpus proceedings as provided by the Oregon Constitution. ORS 419C.615(4).

ORS 419C.616(1)(a) provides that the failure to appeal an order for which a set-aside is sought under ORS 419C.615 does not affect the availability of relief under ORS 419C.615. However, if an appeal is pending, a youth may not pursue relief under ORS 419C.615. Additionally, if a petitioner sought and obtained direct appellate review of the adjudication, they may not assert a new ground for relief if it could have been sought in the appeal. Exceptions apply if the individual was not represented by counsel. ORS 419C.616(1)(b). The court may grant leave to withdraw the petition prior to the entry of an order, and may also make appropriate orders as to the amendment of the petition or other pleadings. ORS 419C.616(2). Finally, all grounds for relief claimed in a petition under ORS 419C.615 must be asserted in the original or amended petition, or they will be deemed waived. ORS 419C.616(3). If a person is over 18, a petition for relief under ORS 419C.615 must be filed within 2 years of the date the adjudication was entered in the register, or if an appeal is filed, the date the appeal is final in the Oregon appellate courts. ORS 419C.617. The court may, however, accept a later petition if it finds that the grounds for relief could not reasonably have been raised in the original or amended petition. ORS 419C.617.

3. Sex Offender Registration and Relief from Registration

Registration Requirements

A person found to be within the jurisdiction of the juvenile court under ORS 419C.005 or found by the juvenile court to be responsible except for insanity under ORS 419C.411 for having committed an act that, if committed by an adult, would constitute a felony sex crime shall report as a sex offender. ORS 163A.025. The reporting requirement applies to each of the following:

(a) A person who has been ordered under ORS 163A.030 to report as a sex offender;

(b) A person who was adjudicated, and the jurisdiction of the juvenile court or the Psychiatric Security Review Board (PSRB) over the person ended, prior to August 12, 2015;

(c) A person who was adjudicated prior to Aust 12, 2015, and the jurisdiction of the juvenile court or the PSRB over the person ended after August 12, 2015, and before April 4, 2016; or

(d) A person who has been found in a juvenile adjudication in another U.S. court to have committed an act while the person was under 18 years of age that would constitute a felony sex crime if committed in this state by an adult.

ORS 163A.025(1). A person required to register due to a juvenile adjudication must comply with the registration requirements in ORS 163A.025(2)-(4).

A. Registration Relief Hearings

A person who has been adjudicated for a felony sex offense on or after August 12, 2015, or who was adjudicated before that date but was still under the jurisdiction of the juvenile court or the PSRB on April 4, 2016, is entitled to a hearing, prior to the termination of supervision, to determine whether the person shall be required to register. ORS 163A.030. For all others subject to the registration requirement due to a juvenile adjudication, they may seek registration relief under ORS 163A.130 or 163A.135. The procedure and requirements for hearings under either ORS 163A.030 or 163A.130/135 are similar but will be addressed separately. The two processes are notably different in one respect: Youth subject to ORS 163A.030 are entitled to a hearing, and that hearing is initiated by the agency responsible for supervising them, whereas persons subject to ORS 163.130/135 must initiate the relief from registration process themselves.

I. Registration Relief Hearings Under ORS 163A.030

For all persons under the jurisdiction of the juvenile court or PSRB, the supervising agency initiates the relief hearing process by notifying the person and the court that jurisdiction is likely to terminate within 6 months. ORS 163A.030(2). Upon receipt of the notice, the court appoints an attorney to the person and sets an initial hearing. ORS 163A.030(3). The person has a right to be represented by an attorney under ORS 163.303(4), and one may be appointed at the initial hearing or before. A contested hearing is then set at least 60 days out to allow sufficient time for notice to all required parties. ORS 163A.030(3). The DA is required to notify the victim of the hearing and of their right to be heard at the hearing. ORS 163A.030(5). The hearing may be continued for good cause pursuant to ORS 163A.030(1)(b), so care should be taken to determine whether more time is needed.

At least 45 days prior to the hearing, the supervising agency shall provide to the court and the parties all relevant evaluations and treatment records as described in ORS 163.030(10). At the hearing, the person has the burden of proving by clear and convincing evidence that they are rehabilitated and does not pose a threat to the safety of the public. ORS 163A.030(7). The threat to public safety that the court must consider is the specific threat that the person might commit a future sex offense, not a generalized danger of future criminality. *State v. A.R.H.*, 371 Or 82, 530 P3d 897 (2023). The DA, victim, person, and juvenile department or OYA shall all have an opportunity to be heard. The court may consider, but is not limited to, the factors listed in ORS 163A.030(8). The court may order the person to register on the basis of pre-adjudication conduct alone only if that conduct demonstrates that the person *at the time of the hearing* is not, clearly and convincingly, rehabilitated and is a continuing threat to public safety. *Id.* So long as evidence is relevant, it is admissible without regard to the restrictions of ORS 40.010–40.210 or 40.310–40.585. ORS 163A.030(9).

If the person knowingly waives their right to the registration hearing (ORS 163A.030(6)(a)) or the court finds the person has not met their burden of proof (ORS 163A.030(7)(b)), the court shall enter an order requiring the person to report as a sex offender under ORS 163A.025. The court shall ensure that the person completes a form that documents the person's obligation to report and ensure that the form is provided to the Department of State Police. ORS 163A.030(11). Though not in statute, if a youth is *not* required to register, an order stating that they do not have to register benefits the youth, law enforcement agencies, and other parties by providing clarity.

II. Registration Relief Hearings Under ORS 163A.130 and 163A.135

Any person who is required to register as a sex offender in the state of Oregon as a result of a juvenile adjudication may seek relief from registration under ORS 163A.130 (for persons adjudicated in Oregon) or 163A.135 (for persons adjudicated for a registerable offense in another U.S. jurisdiction). The person must initiate the process by filing a petition for relief.

For petitions under ORS 163A.130, the proper venue for the petition is as follows:

- If the person resides in Oregon and is required to report under 163A.025(2) or (3), the petition must be filed where the person was adjudicated for the relevant offense.

- If the person resides in another state and must report under ORS 163A.025(4), the petition must be filed in the juvenile court in the county where the person attends school or goes to work.

- If the person resides in another state and is required to report under the laws of the other state, the petition must be filed in the juvenile court in which the person was adjudicated for the act that requires reporting.

- The juvenile court in which the petition is filed may transfer the matter to the juvenile court of the county that last supervised the person if the court determines that the convenience of the parties, the victim, and witnesses require the transfer.

For petitions under ORS 163A.135, the proper venue for the petition is as follows:

- If the person resides in Oregon and is required to report under ORS 163A.025(2) or (3), the petition must be filed in the juvenile court of the county in which the person resides.

- If the person resides in another state and is required to report under ORS 163A.025(4), the petition must be filed in the juvenile court of the county in which the person attends school or works.

ORS 163A.135(1). If the registerable offense is a class A or B felony, the petition for relief may not be filed sooner than 2 years after jurisdiction for the relevant offense has terminated. If the registerable offense is a Class C felony, the petition for relief may not

be filed sooner than 30 days before termination of jurisdiction for the relevant offense. ORS 163A.130(2); ORS 163A.135(2). The person has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public. ORS 163A.130(4); ORS 163A.135(4). If the court signs an order relieving the person of the duty to register, the person shall send a certified copy of the juvenile court order to the Department of State Police. ORS 163A.130(10); ORS 163A.135(9).

4. Collateral Consequences

A juvenile adjudication, as discussed previously, is not equivalent to a criminal conviction. ORS 419C.400(5). However, an adjudication does have implications for a youth's future opportunities. Educational and employment opportunities, housing, professional or occupational licensure, immigration, armed forces, and public benefits are just some things to consider. These are in addition to those already mentioned in this bench book, such restitution and sex offender registration. For a detailed look at what are referred to as "collateral consequences," this guide, provided by The Gault Center, has been designed for adjudicated youth. The difference between an adjudication and a conviction is important when considering collateral consequences. However, both youth and those making decisions that impact them often don't understand the difference between adjudication and conviction.

A. Education

- While a youth's case is open, if they are on probation, their status on probation and the underlying offense can be shared with their school by the juvenile department. ORS 419A.305. Certain safety plans may be shared with the school and implemented through education officials as well.

- The Common Application does not seek information about juvenile court adjudications or criminal convictions on the "common" screens of the application; however, specific colleges and universities do seek delinquency and criminal history information.

B. Employment

- ORS 659A.360 prohibits employers from asking about criminal *convictions* prior to an initial interview, but questions and considerations of an adjudication could come up later in the process of any employment opportunity.

- ORS 659A.030 does prohibit employers from refusing to hire someone because of an expunged juvenile record.

- Certain industries (e.g., child care, health care, education, finance) require criminal background checks. Even though an adjudication is not considered a criminal conviction, it may still show up and prohibit an individual from obtaining employment in that field.

C. Immigration

Immigration is a topic much too broad to cover here. Some helpful resources for attorneys and judges include the Oregon Justice Resource Center's Immigrant Rights Project and the Immigrant and Refugee Community Organization.

Anyone who is not a citizen, even with legal immigration status (e.g., lawful permanent resident, refugees, asylees, temporary protected status), could be subject to removal or inadmissibility based on certain juvenile court involvement. A juvenile adjudication by itself is not the same as a conviction under immigration law. However, certain adjudications may be considered a "bad act," such as those for prostitution, drug trafficking, drug abuse, and domestic violence. Behaviors disclosed in juvenile court showing a mental condition that poses a current threat to oneself or others could also be used. In *Padilla v. Kentucky*, 559 US 356, 130 S Ct 1473 (2010), the U.S. Supreme Court held that the Sixth Amendment required counsel to advise a defendant about potential immigration consequences of a conviction.

D. Other

- **Credit:** If a youth is required to pay restitution and they fail to pay in full before the case is closed, they may be sent to collections and required to pay interest. This can damage credit scores.

- **Housing:** Sex offender registration under 24 C.F.R.§ 982.553(a)(2)(i) means a youth required to register for a sex offense could be banned from public housing.

- **Military Service:** The military generally treats juvenile records like adult criminal records, and applications for all branches of the military require individuals to disclose their juvenile records. The federal government is not required to abide by a state's confidentiality or expunction laws.

- **Driving Privileges:** Adjudications are treated the same as convictions for suspension or revocation. ORS 419C.007; ORS 809.412. Driver and Motor Vehicle Services (DMV) provides a suspension guide, on page 3 of which is information regarding juvenile specific considerations.

    - Suspension is required for adjudication or conviction based on ORS 809.409, 809.411, 809.510–809.545, or 813.400.

    - Juvenile-specific adjudications can also result in suspension or revocation under ORS 419C.472, 809.260(3)-(4), 806.260(1)-(2), and 471.430.

- **Future Criminal Involvement:** Oregon's criminal sentencing grid considers juvenile felony adjudications in determining an individual's criminal history score. OAR 213-004-0006(2).

Chapter 10
Records, Confidentiality, and Expunction

Jordan Bates, Senior Assistant General Counsel, Oregon Judicial Department

1. Records in Juvenile Delinquency Cases

Records in juvenile cases are more protected than other court records and are subject to numerous confidentiality provisions. ORS 419A.250–419A.258 govern confidentiality in delinquency and dependency cases. The statutes are detailed and require re-reading often. The goal of this chapter is to provide an overview. ORS 419A.255 separates records into two broad categories: the record of the case (RoC) and the supplemental confidential file (SCF). ORS 419A.255 outlines access to both in three distinct ways: (1) those who may inspect documents in the RoC and SCF, (2) those who are entitled to copies of the documents in the RoC and SCF, and (3) those who may be provided information included in documents in the RoC or SCF by the juvenile court, juvenile department, or Oregon Youth Authority (OYA).

Reports and other materials relating to the youth or adjudicated youth's history and prognosis in either the RoC or the SCF are privileged and shall be withheld from public inspection unless the youth or adjudicated youth requests otherwise. ORS 419A.255(2)(a). Inspection is permitted based on the provisions described below to certain parties and interested individuals and agencies. *Id.* However, the main principles that need to be observed are that juvenile records are confidential and the confidentiality must be maintained. Even if an individual has access to the records, the records are still privileged, and they can only be used in limited proceedings and circumstances.

Though detailed below, the youth or adjudicated youth will always have access to inspect or copy the RoC and SCF of their own case. Further, even after the jurisdiction of the court ends, that right does not. *See* ORS 419A.255(18)(a). Unless otherwise required by law, the court is not required to redact names or information about siblings or others contained in the RoC or SCF. ORS 419A.255(19). The statute does not hinder a court's ability to act as a certifying agency in cases regarding victim helpfulness in immigration proceedings under ORS 147.620 or to provide an order requiring sex offender registration under ORS 163A.030(11). ORS 419A.255(20)-(21).

A. Record of the Case

The RoC consists mainly of the legal documents included in the youth's legal file. Specifically included are:

(a) The summons and other process;

(b) Petitions;

(c) Papers in the nature of pleadings, answers, motions, affidavits and other papers that are filed with the court, including supporting documentation;

(d) Local citizen review board findings and recommendations submitted under ORS 419A.118 or 419B.367;

(e) Guardianship report summaries filed with the court under ORS 419B.367;

(f) Orders and judgments of the court, including supporting documentation;

(g) Transcripts under ORS 419A.256;

(h) Exhibits and materials offered as exhibits whether or not received in evidence; and

(i) Other documents that become part of the RoC by operation of law.

ORS 419A.252(4). Rather than pasting the statute here, please consult ORS 419A.255(1)(b) to determine who is entitled to *inspect* the RoC and ORS 419A.255(1)(c) to determine who is entitled to obtain a *copy* of the RoC. As a reminder, in a delinquency case, the youth and the state (represented by the District Attorney (DA) or juvenile department) are the only parties at the time of adjudication. At disposition, parties also include the parent or guardian, a Court Appointed Special Advocate (CASA), OYA or the Oregon Department of Human Services (ODHS) if the youth is in custody, and any intervenor under ORS 109.119.

B. Supplemental Confidential File

The SCF "includes reports and other materials relating to the child, ward, youth or adjudicated youth's history and prognosis, including but not limited to reports filed under ORS 419B.440, and includes similar reports and other materials filed in juvenile court proceedings commenced before January 1, 2014, that:

(a) Are not or do not become a part of the [RoC]; and

(b) Are not offered or received as evidence in the case."

ORS 419A.252(5). Similar to above, rather than pasting the statute here, please consult ORS 419A.255(2)(b) to determine who may *inspect* the SCF and ORS 419A.255(2)(d) to determine who may *copy* the SCF. The superintendent of the school district in which the youth resides or their designee may also receive a copy of the SCF. ORS 419A.255(2)(c). An important note regarding the SCF in delinquency cases is that parents and guardians do not have a right to copy the SCF.

"Once offered as an exhibit, reports and other material relating to the…youth or adjudicated youth's history and prognosis that were maintained in the [SCF] become part of the [RoC] . . . ." ORS 419A.255(2)(a). The confidentiality must still be maintained pursuant to ORS 419A.255(2)(e).

C. Continuing Confidentiality and Privilege

A person that obtains copies of material in the SCF under this section is responsible for preserving the material's confidentiality. ORS 419A.255(2)(e).

Service providers and superintendents who obtain copies of the SCF must destroy the copies upon the conclusion of their involvement in the case. ORS 419A.255(2)(e).

When the DA or assistant attorney general (AG) representing a party in the case, the juvenile department, ODHS, or OYA inspects or obtains copies of the SCF or RoC, the person may not use or disclose any reports, materials, or documents except as provided in ORS 419A.255(1)-(2), in the specific juvenile court proceeding for which they were sought, with consent of the court, or as provided in ORS 419A.253. ORS 419A.255(4). However, these entities and any party to the proceeding may disclose the materials, reports, or documents to each other if disclosure is reasonably necessary to perform official duties related to the involvement of the youth with the court. ORS 419A.255(4)(b).

No information from the RoC or SCF may be disclosed to anyone not listed in ORS 419A.255(1)(b) or (2)(b) without the consent of the court. Two exceptions apply: (a) when information in the SCF, in the judgment of a juvenile counselor, caseworker, school superintendent or designee, teacher, or detention worker, reasonably indicates a clear and immediate danger to another person, ORS 419A.255(5), and (b) for the purposes of evaluating the youth or adjudicated youth's eligibility for special education, *see* ORS 419A.255(3). No information from the RoC or SCF may be used in evidence in any proceeding to establish criminal or civil liability against the youth or adjudicated youth. ORS 419A.255(3). Exceptions apply to allow for use in connection with a presentence investigation after guilt has been established or in a proceeding in *another* juvenile court concerning the youth or adjudicated youth or an appeal. ORS 419A.255(3)(a)-(b). *See also Dept. of Hum. Serv. v. E.J.*, 316 Or App 537, 504 P3d 1262 (2021) for a discussion of privilege and the use of the phrase "the child."

D. Motions Under ORS 419A.258

Though a youth's records are protected from public inspection, some interested persons may still wish to review or receive a copy of them. ORS 419A.258 provides an avenue for those not listed above to obtain a copy of the records. The statute permits anyone not included in ORS 419A.255 to file a motion to inspect or copy the RoC or SCF. The person or entity must file an affidavit or declaration stating:

(a) The reasons why the inspection or copying is sought;

(b) The relevancy to the juvenile court proceeding; and

(c) How inspection or copying will serve the interests the court is required to consider (listed below).

ORS 419A.258(1). The person or entity must serve all parties and attorneys of record no later than 14 days before the court considers the motion. Service must be done in accordance with ORS 419B.851 and 419B.854, even if filed in a juvenile delinquency matter under ORS 419C.005. ORS 419A.258(2). The statute provides direction to the court and parties in case an address isn't known or if more time is needed. *See* ORS 419A.258(2)(b)-(c). The court may summarily deny the motion if the requirements in ORS 419A.258(1)-(2) are not met. ORS 419A.258(3).

The court may set a hearing and shall send notice of the time and place to all parties. ORS 419A.258(4). Upon a determination by the court that the person or entity has met the requirements of ORS 419A.258(1)-(2), the court shall conduct an in camera review, taking any objections or responses into consideration. ORS 419A.258(5). The court is tasked with weighing the following interests in determining whether to release the RoC or SCF, in whole or in part:

(a) The privacy interests and particular vulnerabilities of the youth or adjudicated youth, or of family members, that may be affected by the inspection or copying of all or part of the RoC or the SCF;

(b) The interests of the other parties to, or victims in, the juvenile court proceeding;

(c) The interests of the person or entity filing the motion; and

(d) The interests of the public.

ORS 419A.258(6). If the court grants the motion, the court:

(a) Shall allow inspection or copying only as necessary to serve the legitimate need of the person or entity filing the motion, as determined by the court;

(b) May limit inspection or copying to particular parts of the RoC or SCF;

(c) May specify the timing and procedure for allowing inspection or copying; and

(d) Shall make protective orders governing the use of materials.

ORS 419A.258(7). In *State v. C.P.*, 371 Or 512, 538 P3d 882 (2023), the Oregon Supreme Court heard a case relating to a victim's access to certain parts of a juvenile record. The Supreme Court interpreted ORS 419A.258 to give juvenile courts some discretion in weighing the interests at stake before determining whether and to what extent disclosure of a juvenile court record is necessary to serve a legitimate need of the person or entity seeking disclosure. The court was clear that this would not lead to access by the victim of all juvenile delinquency records going forward, but that the juvenile court does have discretion.

E. Exceptions

I. Certain Youth Information

ORS 419A.255(6)-(8) provide some exceptions to the confidentiality provisions discussed above. However, only the juvenile court, the county juvenile department, or OYA may disclose the information outlined below. In delinquency cases, the following information[1] is not confidential and not exempt from disclosure:

(a) The name and date of birth of the youth or adjudicated youth;

(b) The basis for the juvenile court's jurisdiction;

(c) The date, time and place of any juvenile court proceeding;

(d) The act alleged;

(e) The portion of the juvenile court order providing for the legal disposition of the youth or adjudicated youth;

(f) The names and addresses of the youth or adjudicated youth's parents or guardians; and

(g) The register described in ORS 7.020[2] when jurisdiction is based on ORS 419C.005.

ORS 419A.255(6). Further, if a youth is taken into custody under ORS 419C.080, certain information *shall* be disclosed "unless, and only for so long as, there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim." ORS 419A.255(7). The same exceptions as

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[1] The word "information" rather than records was used specifically here. Only information from the records may be disclosed. *See* Oregon Law Commission, Juvenile Records Work Group Report for Senate Bill (SB) 622, at 18 (2013).

[2] The register is a record wherein the clerk or court administrator shall enter, by its title, every action, suit or proceeding commenced in, or transferred to appealed to, the court, according to the date of its commencement, transfer or appeal. Thereafter, the clerk or court administrator shall note therein all the following:

1. The date of any filing of any document.

2. The date of making, filing and entry of any order, judgment, ruling or other direction of the court in or concerning such action, suit or proceeding.

3. Any other information required by statute, court order or rule.

ORS 7.020.

noted above regarding to whom and how this information may be disclosed apply. The information required to be disclosed is:

(a) The youth's name and age and whether they are employed or in school;

(b) The offense for which they were taken into custody;

(c) Name and age of the adult victim (unless otherwise prohibited);

(d) The identity of the investigating and arresting agency; and

(e) The time and place the youth was taken into custody and whether there was resistance, pursuit or a weapon used.

Id. Though the above information, as noted, is not exempt from disclosure, only the juvenile court, the county juvenile department, and OYA may disclose this information. ORS 419A.255(8). OYA may only disclose information for youth committed to OYA custody. Further, these subsections do not authorize the release of actual documents, but only information contained in the documents.

II. Miscellaneous

ORS 419A.255 provides numerous exceptions to the rules listed above. For a detailed review of each of those exceptions, listed below for convenience, please consult the statute.[3]

- Appellate courts may have access to juvenile records if reviewing a case. ORS 419A.255(9).

- The judicial department may grant *statewide* access of juvenile information to county juvenile departments, ODHS, OYA, DAs' offices, prospective appellate attorneys, public defense providers, the Office of the Attorney General, or the Oregon Public Defense Commission (OPDC) subject to certain restrictions. ORS 419A.255(11). Any person or entity granted access to juvenile court records or information under this subsection must preserve the confidentiality of that information as required under this section. ORS 419A.255(11)(d).

- The Chief Justice of the Oregon Supreme Court, the Chief Judge of the Oregon Court of Appeals, or a presiding judge may grant access to researchers or evaluators to analyze or audit juvenile court programs' effectiveness, cost, or other areas of public interest. This access is only pursuant to standards and guidelines established by the Chief Justice by rule or order and is subject to restrictions. ORS 419A.255(15).

[3] This list does not include those exceptions applicable only in dependency cases.

- The OPDC, in line with provisions of ORS 419A.255(11), may have access to juvenile records. ORS 419A.255(16).

- The Oregon State Bar, in line with the provisions of ORS 419A.255(11) as well, may have access to juvenile records. ORS 419A.255(17).

F. Information the Court Intends to Rely On

ORS 419A.253 also provides an opportunity for the court to consider information that has not necessarily been offered as evidence. In the absence of a request by a party, the court may identify "any report, material or document" upon which the court intends to rely in making its ruling. ORS 419A.253(1). The court is required to identify the specific report, material, or document (or information within it) on which the court intends to rely, and "subject to the court's ruling on objections by the parties, either" take judicial notice of a law or fact, or cause the report, material, or document to be marked and received as an exhibit. ORS 419A.253(1)(a)-(b). The court must make a list that reasonably identifies the source, fact, or law that was judicially noticed. The exhibit and list then become a part of the RoC under ORS 419A.255(1). ORS 419A.253(3). Whatever the court relied on must be transmitted to the appellate court as part of the RoC on appeal. ORS 419A.253(4). In *State v. G.K.C.*, 313 Or App 380, 494 P3d 1038 (2021), the Oregon Court of Appeals held that the juvenile court's failure to take judicial notice of a packet from an adjudicated youth's parole officer in a sex offender registration hearing constituted harmless error.

2. Expunction

Expunction of juvenile records is an evolving practice in Oregon, having undergone changes from Senate Bill (SB) 575 (2021) and SB 519 (2023) to make the process more accessible for youth. Prior to 2021, youth were required to proactively file an application for expunction 5 years after they were terminated from juvenile court jurisdiction. Many young people thought their records would automatically be expunged, and very few applications for expunction were filed.[4] Applications for expunction, as prescribed by ORS 419A.266, along with judgments and other helpful documents, can be found on the Juvenile Court Improvement Program's model forms website.

As it stands today, many youth who were adjudicated after 2024 will be able to have their records expunged based on an application submitted by the juvenile department on their behalf. At the time this bench book was published, in the spring of 2025, the Oregon Legislature was also considering House Bill (HB) 2677, which could impact the processes outlined below. The way in which an expunction is processed varies depending on the underlying act for which the juvenile court had jurisdiction over a youth. The processes will be broken down below.

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[4] In 2022, 264 applications for expunction were filed, compared with 1,011 in 2024, according to data from the Oregon Judicial Department (OJD).

A. Definitions and Exceptions

ORS 419A.260 provides a roadmap for the expunction process. This provision also includes a list of offense types for which a youth may never have their record expunged. Rather than restating the entire statute here, below is a brief description of some of the terms.

- **"Contact":** Behavior that could result in a referral to the juvenile department or lead to jurisdiction of the juvenile court that comes to the attention of certain state, county or city agencies. ORS 419A.260(1)(a).

- **"Expunction":** The removal by *destruction* or *sealing* of a judgment or order related to a contact and all records and references associated with a person. It can also mean the removal by *redaction* of a person's name from all such records. ORS 419A.260(1)(b). If a record is kept by ODHS, "expunction" means the affixing to the front of the file a stamp or statement regarding the expunction.

- **"Person":** Includes a person under 18. ORS 419A.260(1)(c).

- **"Record":** Includes a fingerprint or photograph file, report, exhibit, or other material which contains information relating to a person's contact with law enforcement, the juvenile court, the juvenile department, the Psychiatric Security Review Board (PSRB), ODHS, OYA, or the Oregon Health Authority (OHA). ORS 419A.260(1)(d).

- ***Not* a Record:** ORS 419A.260(1)(d)(A)-(I) and (K)-(M) list certain materials that, because they are not considered "records," are not expungable. For specific questions, consult the statute, as they are too numerous to list here. Some frequent examples of this type include records kept by the Department of Transportation (e.g., driving while under the influence offenses that are reported to Driver and Motor Vehicle Services), records relating to a waiver to criminal court, appellate records, and records related to sex offender registration.

- **Specific Offenses:** ORS 419A.260(1)(d)(J) lists the offenses for which a youth or adjudicated youth's records *cannot* be expunged because they are more severe, and are not considered "records" for purposes of expunction. There are over twenty offenses listed, ranging from various degrees of murder, rape, and assault to sexual abuse and attempts to commit the included offenses.

- **"Termination":** The final disposition of a person's case, whether by informal or formal means. ORS 419A.260(1)(e).

Once a record is expunged, as provided by ORS 419A.260(1)(b), the existence of the records and the contact may not be disclosed by any agency. ORS 419A.269(1). The agency is required to respond to any inquiry by indicating that no record or reference exists. The person may also assert the record never existed and the contact never occurred. ORS 419A.269(2). If needed to further compliance with ORS 419A.260–

419A.271, the court may order disclosure of the notice of expunction or expunction judgment. ORS 419A.269(5).

B. No Adjudications (Notice)

For youth who have had contact with law enforcement or a juvenile department, but against whom no petition was ever filed, ORS 419A.267 requires the juvenile department to send a notice of expunction to each agency the department determines may have records relating to the subject person. These provisions apply to youth who were parties to a Formal Accountability Agreement (FAA) in addition to other circumstances. To qualify for this process, the juvenile department must determine that the subject person:

(a) Has had contact with the juvenile department;

(b) Has never been the subject of a juvenile delinquency petition;

(c) Has never been found within the jurisdiction of the juvenile court;

(d) Does not have an open referral; and

(e) Has not had contact with the juvenile department resulting in a conviction under ORS 137.707.

ORS 419A.267(1). If the person qualifies, the juvenile department must send a notice to all agencies that may be in possession (after a reasonable search of the department's files) of records relating to the person within 90 days of either the date the person turns 18 or, if they were older than 18 on January 2, 2022, the date the department receives a request for expunction. ORS 419A.267(2)-(3). Each agency has 60 days from the date they receive the notice to comply. The agency must destroy all the records and return an indorsement of compliance to the juvenile department. ORS 419A.267(4).[5]

Once all agencies have returned their indorsement of compliance, or in any event, no later than 90 days following the date the notice is delivered to the agencies, the juvenile department shall provide notice to the subject person. This notice must include a list of all complying and non-complying agencies as well as a written notice of the rights and effects of the expunction. ORS 419A.267(5). Once the notice is sent, the juvenile department shall then expunge all records in their possession, though they must retain a confidential record of the expunction process. *Id.*

[5] If requested by the agency in writing, the juvenile department may provide an extension of up to 30 days. ORS 419A.267(4)(b). If the agency fails to comply, the juvenile department may petition the court for an order compelling compliance. ORS 419A.267(4)(c).

C. Petitions, Misdemeanors, and Violations (Juvenile Department Application)

If a youth had a petition filed against them but they were never adjudicated, or if they were adjudicated of only a misdemeanor or violation, the juvenile department is required to file an application for expunction with the juvenile court. ORS 419A.261(2)-(3). In order to comply with the requirements of ORS 419A.261, a report is automatically generated by the Juvenile Justice Information System and sent to each county juvenile department that has venue to alert them of potential individuals that may qualify for the department-initiated expunction. The juvenile department is still responsible for ensuring that all other conditions (detailed below) are met.

I. No Adjudication

If the youth had a petition filed against them, but they were never adjudicated, the juvenile department must file an application for expunction with the juvenile court in the county where the person resided at the time of the most recent contact.[6] If the person meets the criteria below, the juvenile department shall file the application within 90 days following the later of the date the person turns 18, or, if they were 18 or older on January 2, 2022, the date the juvenile department receives a request to file from the person. The juvenile department must submit a signed declaration with the application, and the court shall grant the expunction without a hearing if the criteria below are met. In these cases, the DA does not have an opportunity to object or be served. The criteria for expunction under ORS 419A.261(2)(b) are as follows:

(A) The person had contact with the juvenile department;

(B) The person was never found within the jurisdiction of the court under ORS 419C.005;

(C) There is no petition pending;

(D) The person has not been waived to criminal court under ORS 419C.349 or 419C.352;

(E) The person does not have an open informal case; and

(F) The person has not had contact with the juvenile department resulting in a conviction under ORS 137.707.

II. Misdemeanor or Violation

If a youth was adjudicated for a misdemeanor or violation, a very similar process applies, with some differences. So, although this section may look similar to that above,

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[6] See above for the definition of “contact.” This is notable, as a person may have resided in a different county than the place in which the most recent contact occurred.

please read it and the statutes carefully. The juvenile department must file an application for expunction with the juvenile court in the county where the person resided at the time of the most recent contact.[7] If the person meets the criteria below, the juvenile department shall file the application within 90 days following the later of the date the person turns 18, the date of the person's termination if the person is within the jurisdiction of the court under ORS 419C.005 on their 18th birthday, or, if they were 18 or older on January 2, 2022, the date the juvenile department receives a request to file from the person. The juvenile department must submit a signed declaration with the application, and the court shall grant the expunction without a hearing if the criteria below are met. In these cases, the DA does not have an opportunity to object or be served. The criteria for expunction under ORS 419A.261(3)(b) are as follows:

(A) The person was found within the jurisdiction of the juvenile court for acts that would constitute one or more violations or misdemeanors;

(B) The person was never found within the jurisdiction of the court under ORS 419C.005 for an act that would constitute a felony;

(C) There is no petition pending;

(D) The person does not owe restitution;

(E) The person has not had contact with the juvenile department resulting in a conviction under ORS 137.707; and

(F) The person has not been waived to criminal court under ORS 419C.349 or 419C.352.

Pursuant to ORS 419C.273, because there is no hearing required, either the juvenile department or the DA is required to notify the victim of the expunction process under ORS 419A.261 at or before the time of adjudication. ORS 419C.273(2)(c).

D. Felonies (Individual Application, 4 Years)

For all felonies not listed in ORS 419A.260(1)(d)(J), ORS 419A.262(2) gives the individual the responsibility to file their own application for expunction. However, the statute also allows the juvenile department to file the application or the court to order expunction on its own motion. *Id.* The proceeding is to be commenced in the county

[7] See above for the definition of "contact." This is notable, as a person may have resided in a different county than the place in which the most recent contact occurred.

where the person resided at the time of the most recent termination.[8] The court "shall order expunction if, after a hearing when the matter is contested, it finds that":

(a) At least 4 years have elapsed since the person's most recent termination and the person is at least 18;

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

(c) No proceedings seeking a criminal conviction or juvenile adjudication are pending;

(d) The person is not within the jurisdiction of the juvenile court under ORS 419C.005 or 419B.100(1)(a)-(c) and (f);

(e) The juvenile department is not aware of any pending law enforcement investigation; and

(f) The person does not owe restitution.

ORS 419A.262(2). Unlike the applications submitted under ORS 419A.261, applications submitted under ORS 419A.262(2) require notice and a copy of the application to be provided to the DA of the county of filing and of each county in which the records are kept.[9] ORS 419A.262(12)(a)(A). The DA shall notify the victim of the expunction application and mail a copy to the victim's last known address. ORS 419A.262(12)(b). If the DA has any objections, they must give written notice within 30 days of receiving the notice of application for expunction. ORS 419A.262(13)(a).

The court may proceed without a hearing in expunctions under ORS 419A.262, with several exceptions. The court may not enter an order without a hearing if a timely objection was filed by the DA. ORS 419A.262(14)(a). The court may not deny an expunction without a hearing if the application was filed by the subject of the records. ORS 419A.262(14)(b). The court is *required* to proceed without a hearing if: (A) no objection was filed; (B) the application requests expunction of an offense that would constitute prostitution under ORS 167.007; and (C) the person was under 18 at the time of the conduct. ORS 419A.262(14)(c).

If the court holds a hearing based on an objection by the DA, notice must be provided to the DA, and the DA must provide notice of the hearing to the victim. ORS 419A.262(15). The hearing must be conducted in accordance with the statutory provisions listed in

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[8] See above for definition of "termination." Note that this is a different requirement than for those applications submitted under ORS 419A.261. Please also note that this is where a person resided, not necessarily where the adjudication occurred.

[9] Notice and a copy must also be provided to the subject of the record if the person was not the one who initiated the proceeding. ORS 419A.262(12)(a)(B).

ORS 419A.262(16), the rules of evidence apply, and the burden of proof shall be with the party contesting the expunction. ORS 419A.262(16). If the court denies the application for expunction, the person may file again under any other provision. ORS 419A.262(17). If the expunction is granted, the process to be followed is detailed below.

E. Other Avenues to Expunction

- **Best Interests:** Under ORS 419A.262(8), a person may apply for expunction if they do not otherwise qualify under the expunction statutes. The court may order expunction of all or any part of a person's record if it finds that to do so is in the best interests of the person and the public. *Id.*

- **Marijuana Offenses:** Under ORS 419A.265, marijuana offenses (including possession, delivery or manufacture) follow a separate process for expunction. A person may have their offense expunged if (1) at least one year has elapsed since the most recent termination; (2) the applicant has not been adjudicated or convicted of any other act or offense (excluding motor vehicle violations); and (3) the applicant performed all conditions of the adjudication. *Id.*

- **No Adjudication:** ORS 419A.262(5) provides an avenue to expunction for a person who was never adjudicated (which is also now available under ORS 419A.267) or for whom the conditions of ORS 419A.262(2) or (3) have been met.

- **Prostitution:** ORS 419A.262(3) provides that a person who was adjudicated for prostitution under ORS 167.007 shall have their record expunged if the person was under 18 at the time of the conduct and is not subject to the requirements of ORS 419A.262(2).

- **Certain Sex Offenses:** ORS 419A.262(9) provides an avenue for youth adjudicated of Rape III (ORS 163.355), Sodomy III (ORS 163.385), Sex Abuse III (ORS 163.415), an attempt of any of those crimes, or any Class C felony sex crime to apply for expunction notwithstanding the prohibitions listed in ORS 419A.260(1)(d)(J). The provision (ORS 419A.262(9)) lays out specific additional requirements for a person to qualify for expunction, and that statute should be consulted before reviewing an application for expunction of these offenses.

F. Processes Applicable in All Situations

I. Application Requirements

As noted above, the application for expunction is available on the Juvenile Court Improvement Program's model forms website. When the person who is the subject of the records submits the application, they shall provide the names of the juvenile courts, departments, and any other agencies they believe may have a record. *See* ORS 419A.261(5); ORS 419A.262(10). The juvenile department shall provide this information to the subject person. *Id.* If the juvenile department submits the application, it must include all names as well as addresses that a reasonable search of department files

indicates have expungable records. ORS 419A.261(5); ORS 419A.262(11). The application must include a declaration under penalty of perjury, pursuant to ORS 419A.266(1). It is important for the juvenile department to ensure that the person on behalf of whom they are filing has met the requirements laid out in ORS 419A.261(2) or (3). This includes reviewing restitution payments to ensure restitution is paid in full.

The juvenile court or juvenile department shall make reasonable efforts to provide written notice to a youth regarding procedures for expunction at the time of any dispositional hearing or termination, during a pending expunction, and at the time of an order for expunction. ORS 419A.260(2).

II. Appointment of Counsel

ORS 419A.271 provides that individuals eligible for expunction have the right to court-appointed counsel at state expense, regardless of age. The juvenile court is tasked with informing the person of their right to counsel prior to the filing of an application under ORS 419A.262 and prior to a hearing. ORS 419A.271(2). The court shall appoint counsel in accordance with ORS 419B.195 and 419B.198 (dependency provisions). ORS 419A.271(2). SB 519 (2023) removed the language requiring an individual to be financially eligible for counsel from ORS 419A.271(2)-(3). The legislative intent was to remove the requirement for one to be deemed financially eligible for counsel to be in line with SB 817 (2021).[10] However, language remains in ORS 419A.271(1) making it potentially unclear, as it still retains language regarding whether a person is without funds to employ suitable counsel.

III. Process After Judgment Is Signed

The process once an expunction has been granted may vary by jurisdiction, so it is important to confirm with local partners. However, whether the expunction is under ORS 419A.261 or 419A.262, the statutes mirror each other. The statutes require either the juvenile court or juvenile department to take certain steps. ORS 419A.261(6) and 419A.262(18) require *either* the juvenile court or juvenile department to send a copy of the expunction judgment to each agency subject to the judgment. Information must be included regarding the record to be expunged and the date of the record. Each agency has 60 days from the date they receive the notice to comply. The agency must destroy all the pertinent records and return an indorsement of compliance to *either* the juvenile court or the juvenile department. ORS 419A.261(6)(b); ORS 419A.262(18)(b).[11]

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[10] *See* written Testimony from Lisa Kay Williams, Youth Rights & Justice. Senate Bill 519 (2023). Senate Committee on Judiciary. March 2, 2023.

[11] If requested by the agency in writing, the juvenile department may provide an extension of up to 30 days. ORS 419A.261(6)(c); ORS 419A.262(18)(c). The juvenile department should provide notice to the court of this extension, and it may be longer than 30 days in case of an audit or grievance under the Interstate Compact for Juveniles (ICJ). *Id*.

Once all agencies have returned their indorsement of compliance, or in any event, no later than 90 days following the date the notice is delivered to the agencies, the juvenile court shall provide the person who is the subject with a copy of the expunction judgment. ORS 419A.261(7); ORS 419A.262(19). This must include a list of all complying and non-complying agencies as well as a written notice of the rights and effects of the expunction. *Id.* Once this is sent, the juvenile court and the juvenile department shall expunge all records in their possession, though they must retain the original expunction judgment and list of complying and noncomplying agencies, which must be preserved under seal. ORS 419A.261(7); ORS 419A.262(19).

In addition to the agencies identified in ORS 419A.260(1)(d), the juvenile, circuit, municipal, and justice courts and the district and city attorneys are bound by the expunction judgment. ORS 419A.261(8); ORS 419A.262(20).

IV. Denial

If the court denies an application for expunction under either ORS 419A.261(2) or (3), the court must specify the reason for denial. The person or the juvenile department may file a new application for expunction. If the juvenile department submitted the initial application, they must make reasonable efforts to send to the subject person notice of the denial and their rights to an attorney and to refile. ORS 419A.261(4).