

Oregon Secretary of State
Certificate and Order for Filing Temporary Administrative Rules and
Statement of Need and Justification

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on

August 25, 2015 by the

Department of Human Services, Office of Child Welfare Programs

413

Agency and Division

Chapter Number

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to become effective August 25, 2015 through February 20, 2016.*

**Temporary rules are effective for a maximum of 180 days including the effective date.*

Rule Caption: *Amending rule relating to disclosure of information compiled for criminal law purposes*

In the Matter of: *The temporary amendment of OAR 413-010-0035*

AMEND: 413-010-0035

ORS 418.005

Stat. Auth.

None.

Other Auth.

ORS 192.501, 419B.035

Stats. Implemented

Rule Summary

The Department of Human Services, Office of Child Welfare Programs, is amending OAR 413-010-0035 to remove the requirement for explicit law enforcement approval prior to disclosing records that include investigatory information compiled for criminal law purposes. The amended rule prohibits disclosure of this information unless the Department determines after consultation with law enforcement or a prosecutor that the information can be disclosed without interfering in an ongoing law enforcement investigation or prosecution of a case or disclosure is required under [ORS 419B.035](#). Disclosure will still need to be approved by the manager or designee.

Need for the Rules

OAR 413-010-0035 needs to be amended because the current rule imposes a barrier to public records beyond what is required in [ORS 192.501](#) by requiring explicit approval from law enforcement. This results in a back and forth between the Department and law enforcement that delays the response from Department paralegals and records clerks who are responding to public records requests from clients who are referenced in law enforcement reports. Further, the Department's ability to release these reports could be blocked entirely if law enforcement refuses to authorize release based on legal advice that they should not authorize the release of information in another entity's possession. Making this rule change will improve the Department's ability to respond timely to public records requests and is consistent with the statutory protections this type of information is afforded under Oregon law.

Documents Relied Upon

None.

Justification of Temporary Rules

The Department finds that failure to act promptly by amending OAR 413-010-0035 will result in serious prejudice to the public interest, the Department, and members of the public who are entitled to public records in the Department's possession. Currently, the Department's rules imposes a barrier to the public's ability to access public records beyond what is required under Oregon law. Therefore, the Department needs to proceed by temporary rule because the public, the Department, and members of the public will immediately benefit when the Department's rules reflect the proper balance between protecting law enforcement information from disclosure when it would hinder the investigation or prosecution of a case and the public's right to access public records.

Confidentiality of Client Information

413-010-0035

Prohibited Disclosures

(Amended 02/01/16)

- (1) If a court order or a specific statute requires the Department to *disclose* information that this rule protects, the Department must *disclose* the information.
- (2) The Department may not *disclose client information*:
 - (a) For purposes not directly connected with the administration of child welfare laws; or
 - (b) When disclosure is not required nor authorized by:
 - (A) ORS 419B.035 (governing confidentiality of child abuse records), set out in section (11) of this rule;
 - (B) ORS 419A.255 (governing confidentiality of juvenile court records) set out in section (12) of this rule; or
 - (C) Another statute.
- (3) The Department may not *disclose* investigatory information compiled for criminal law purposes, including the record of an arrest or a report of a crime, unless ~~law enforcement explicitly authorizes the Department to disclose such information;~~
 - (a) The Department determines after consultation with law enforcement or a prosecutor that the information can be disclosed without interfering with an ongoing law enforcement investigation or prosecution of a case; or
 - (b) The Department determines that disclosure is required by ORS 419B.035(1)(i) because a child, as the result of abuse, died or suffered serious physical injury taking into account the factors listed in ORS 419B.035(2)(a).
- (4) Department employees may not *disclose* the information described in section (3) of this rule unless authorized to do so by the ~~branch~~ manager or designee.
- (5) A person authorized to review client records may not review the complete case file if the complete file contains *confidential information* about other persons, including, but not limited to other clients, ex-spouses, battering partners,

- housemates, and half-siblings unless the other person provides written consent that meets the requirements of OAR 413-010-0045(2)(a).
- (6) The Department may not *disclose* the records of a patient at a drug and alcohol abuse treatment facility to any person without the consent of the patient.
 - (7) The Department may not *disclose client information* contained in a *record* sealed by a court order of expunction or any part of the expunged *record*.
 - (8) Department Adoption Records.
 - (a) The Department must seal *Department adoption records* in its possession consistent with ORS 109.319.
 - (b) The Department may not access, use, or *disclose Department adoption records* in its possession except as provided in ORS 109.319.
 - (c) Subject to subsection (d) of this section, the Department may, without a court order, access, use, or *disclose Department adoption records* in its possession for the purpose of providing adoption services or administering child welfare services that the Department is authorized to provide under federal or state law.
 - (d) The Child Permanency or Post-Adoption Program Manager, or their designee, must authorize the unsealing of and access to, use of, or disclosure of *Department adoption records* by other Department employees.
 - (e) The Department may, upon request and if available, *disclose* the county in which an adoption was finalized and the case number of the adoption proceeding as provided in section 6 of HB 2365 (2015).
 - (9) Reporter of Abuse. The identity of the person making a report of suspected child abuse, and any identifying information about the reporting person, must be removed from the records or shielded from view before records are viewed or copied. The name, address or other identifying information may only be disclosed to a law enforcement officer or district attorney in order to complete an investigation report of child abuse.
 - (10) Reports and Records Compiled Pursuant to the Child Abuse Reporting Law.
 - (a) Each report of suspected child abuse must be immediately reported to a law enforcement agency.
 - (b) The Department must assist in the protection of a *child* who is believed to have been abused or neglected by providing information as needed to:

- (A) The juvenile court;
 - (B) The district attorney;
 - (C) Any law enforcement agency or a child abuse registry in another state investigating a child abuse report;
 - (D) Members of a child protection team or consultants involved in assessing whether or not abuse occurred and determining appropriate treatment for the *child* and family;
 - (E) A physician who is examining a *child* or providing care or treatment, and needs information about the child's history of abuse; and
 - (F) A non-abusing parent, foster parent, or other non-abusing person responsible for the care of the *child*.
- (c) A report, record, or findings of an assessment of child abuse may not be disclosed until the assessment is completed, except for the reasons stated in paragraphs (e)(A) and (B) of this section. An assessment will not be considered completed while either a protective service assessment or a related criminal investigation is in process. The Department determines when the protective service assessment is completed. The district attorney determines when a criminal investigation is completed.
- (d) *Records* or findings of completed child abuse assessments must be released upon request to the following:
- (A) Attorneys of record for the *child* or child's *parent* or *guardian* in a juvenile court proceeding for use in that proceeding; and
 - (B) A citizen review board established by the Department or by a juvenile court to review the status of children under the jurisdiction of the court for the purpose of completing a case review. Before providing information to a citizen review board, the Department must assure that the board has informed participants of their statutory responsibility to keep the information confidential, and will maintain records in an official, confidential file.
- (e) *Records* or information from *records* of abuse and neglect assessments may be disclosed to other interested parties if the Department determines that disclosure to a person or organization is necessary to:

- (A) Administer child welfare services and is in the best interests of the affected *child*. When disclosure is made for the administration of child welfare services, the Department will release only the information necessary to serve its purpose; and
- (B) Prevent abuse and neglect, assess reports of abuse or neglect, or protect children from further abuse or neglect.

(11) Juvenile Court Records in Department Files.

- (a) The Department may not *disclose records* and information in its possession that are also contained in the juvenile court's record of the case or supplemental confidential file, defined in subsections (b) and (c) of this section, except as provided in ORS 419A.255 and other federal and state confidentiality laws pertaining to *client records*.

(b) Record of the Case.

- (A) The juvenile court's "record of the case", as defined in ORS 419A.252, includes but is not limited to the summons, the petition, papers in the nature of pleadings, answers, motions, affidavits, and other papers filed with the court, orders and judgments, including supporting documentation, exhibits and materials offered as exhibits whether or not received in evidence, and other records listed in ORS 419A.252.
- (B) The record of the case is unavailable for public inspection, but is open to inspection and copying as provided in ORS 419A.255.

(c) Supplemental Confidential File.

- (A) The juvenile court's "supplemental confidential file", as defined in ORS 419A.252, includes reports and other material relating to the child's history and prognosis, including but not limited to reports filed under ORS 419B.440, that are not or do not become part of the record of the case and are not offered or received as evidence in the case.
- (B) The supplemental confidential file is unavailable for public inspection, but is open to inspection and copying as provided in ORS 419A.255.
- (C) The Department is entitled to copies of material maintained in the supplemental confidential file and if such material is obtained, the Department must ensure the confidentiality of that material as provided in ORS 419A.255.

- (d) Reports and other materials relating to the child's history and prognosis in the record of the case or in the supplemental confidential file are privileged and except at the request of the *child*, are unavailable for public inspection but are open to inspection and copying as provided in ORS 419A.255.
- (e) When the Department inspects or obtains copies of reports, materials, or documents pursuant to ORS 419A.255(4), the Department may not use or *disclose* the reports, materials, or documents except as provided in ORS 419A.255.
- (12) Records Received from the Oregon Youth Authority or the Juvenile Department. The Department must preserve the confidentiality of reports and other materials it receives from the Oregon Youth Authority or the juvenile department relating to the *child*, ward, youth or youth offender's history and prognosis, as provided in ORS 419A.257.

Stat. Auth.: ORS 409.050, 418.005, 418.340

Stats. Implemented: ORS 109.319, 109.329, 109.331, 192.501, 409.010, 409.194, 409.225, 418.005, 419A.102, 419A.252, 419A.255, 419A.263, 419B.035, 432.420, ~~Or~~
Laws 2015, ch 511