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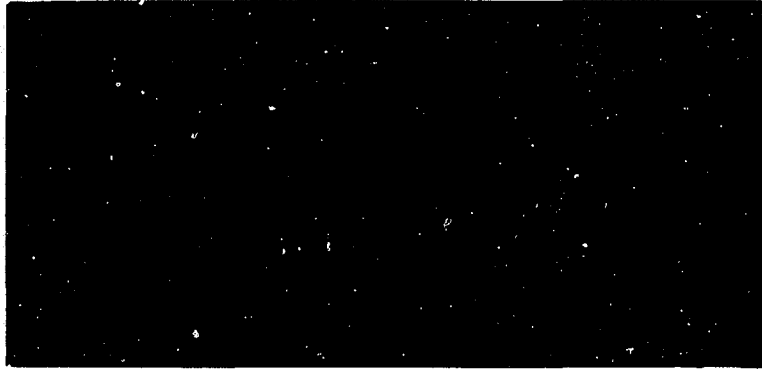
The American University Law School

Washington, D.C.

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ASSESSMENT OF RECORDS MANAGEMENT
PRACTICES IN THE JUVENILE DEPARTMENT
OF THE CLACKAMAS COUNTY CIRCUIT COURT
OREGON CITY, OREGON

February 1978

Consultant

H. J. Koenig

NCJRS
MAR 30 1978
ACQUISITIONS

CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
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I. INTRODUCTION

The Court Administrator of the Clackamas County, Oregon Circuit Court, Mr. Michael A. Maier, requested technical assistance from LEAA's Criminal Courts Technical Assistance Project at the American University, through the Oregon Law Enforcement Council (SPA). The purpose of Mr. Maier's request was to study records management practices in the Juvenile Department of the Circuit Court.

This technical assistance request was prompted by concerns Mr. Maier and Mr. Donald Welsh, Director of the Juvenile Department, had concerning some facets of the Department's records system. These included the adequacy of the present indexing system for court records, exhibits, court reporter's notes and other court documents; retention schedules; costs of the records system; and, the actual management of juvenile records.

The consultant who was selected to provide this assistance was Mr. H. J. "Mark" Koenig. Mr. Koenig is a private management consultant specializing in court's records management and filing systems, and was formerly the director of the Records Management Division of the National Archives.

Through discussion with Messrs. Maier and Welsh, who served as co-local coordinators for this study, it was determined that Mr. Koenig would focus his site efforts in the following areas: 1) a review of existing juvenile records handling practices, 2) an examination of records storage facilities, 3) a review of existing expunction and purging practices, and 4) an assessment of feasible technology applications to the records system. As a result of the fact that the Oregon legislature

is currently considering changes in the juvenile records expunction laws, this area was not given the in-depth treatment originally anticipated.

As a result of the fact that this project and Mr. Koenig were involved in a records management study in the Circuit and District Courts of Lane County in Eugene, Oregon, and because of a desire to build on past and on-going efforts in the court's records management area in Oregon, a pre-site work planning meeting was held in Salem, Oregon on January 16, 1978. In addition to Mr. Koenig, this meeting was attended by Messrs. Maier and Welsh; Mr. Michael Terry, Court Administrator of the Lane County Courts; Mr. Yosef Yacob, Court Specialist with the Oregon SPA; Mr. Michael Hall, Court Administrator of the Multnomah County Circuit Court; and, staff of the Oregon State Court Administrator's Office.

After three days of site work in Lane County, Mr. Koenig spent two days on-site in Clackamas County. During this period he worked closely with Mr. Welsh and his staff and met with other appropriate Court, County and state employees.

The following report contains Mr. Koenig's analysis and recommendations.

II. ANALYSIS OF EXISTING SITUATION

A. Existing Records Management

1. Informal Records

The records maintained by the juvenile department are presently divided into four categories:

- open - pending action
- closed - case closed
- agency - social and other agencies file
- incidental - similar to closed cases

(The closed and the incidental categories above serve the same purpose)

All four file categories are arranged in alphabetical order by name of the juvenile, and are kept in a centrally located reception and case processing area. File security is adequate, although plans to upgrade the records storage area are included in the expansion of office space which is now under construction. It appears that case files are not always properly charged out or signed for by the juvenile counselors.

The four categories of records listed above are informal records which do not constitute a formal charge or a legal case until, or if, a petition is filed. These informal files are comprised of arrest reports, correspondence, the juvenile statistical card (see below), family histories, supervision summaries, social histories, evaluations and other preliminary or informal documentation.

2. Formal Records-Legal Files

The juvenile file becomes a formal or legal file at the time a petition is filed. At that time, a case number is assigned

by the circuit court. Juvenile files are numbered in one continuous numbering system, and yearly breaks and yearly designations are not used. The formal file remains in the juvenile department until court action has been completed. At that time it is sent to the circuit court where it is filed with other juvenile court cases.

This movement of files between the two offices and the assignment of circuit court cases numbers is reportedly working well and there are no delays in processing cases because of the separate file locations.

a. Juvenile Court Statistical Card - A juvenile statistical card (See Exhibit I) is prepared each time a juvenile referral is made to the juvenile department. This card contains space for recording management data on juvenile offenses and referrals. The form has two sections, the upper half for recording statistical data and the lower half for supplementary data and court use. It is carbon interleaved, prepared in two copies with distribution as follows:

- original (white copy-upper half) used for ADP input and alphabetical record card
- original (white copy-lower half) used for ADP input of court action and discarded
- second copy (buff copy-upper half) filed in case folder or with white copies when case is reviewed or a petition is filed
- second copy (buff copy-lower half) filed in folder -- not used

The form is supplied by the National Center for Juvenile Justice, Pittsburg, Pennsylvania.

This form is a key document in the procedural steps taken to process a referral through the juvenile department. It appears to be working

well as a statistical and data collection document and as a control or indexing record.

A juvenile offender may be referred to the juvenile department by an arresting agency (arrest report), a school, parents, relatives or other interested person or persons. The initial step at the receiving or intake desk is to check the statistical card file (original white copies). At that time the following steps occur:

- If a statistical card is in file, it is pulled and another card is prepared to reflect the new data. Next, a search is made for the individual's previous file. The file could be located in one of 19 different places:

- one of 19 juvenile counselors
- one of four files - open cases, closed cases, agency file or incidental file

- If a statistical card is not found in the card file, a new card is prepared from the data in the referral document. Assuming at this point that a card does exist and may be in the data processing department, a "dummy" or interim card is prepared even though a file search (19 locations) fails to turn up a previous record on the juvenile.

- The second (buff copy-upper and lower portions) of the statistical card is filed in the previous or earlier case file, if one exists, or is filed with the referral documents pending further action. This is called the "open file" or the "incidental file".

- The lower half of the original white copy is also filed with the previous file or referral and is used by the court as a record of the court actions that occur (i.e., sort of informal docket). After final judgement this copy is sent to data processing. Following this the copy is usually discarded.

3. Recommendations

It is recommended that:

- The numbering system used for the juvenile legal case file maintained in the circuit court include a calendar year designation. Also, a numbering system beginning with case number one be established on a yearly basis. Thus, case number one filed in January 1979 would be:

<u>Year</u>		<u>No.</u>		<u>Identifier</u>
79	-	001	-	J

- The four file categories - open cases, closed cases, agency file and incidental file - be combined into one alphabetical file. Also, the referral papers now filed loosely should be placed in folders as consolidation of the four files into one file occurs.

- The current office space expansion should include provisions for adequate file storage under optimum security conditions.

- Reusable file charge cards for tracking cases should be instituted immediately. At the time case files are requested by counselors or other staff members, a file charge-out card is prepared showing the date of withdrawal and signature or initial of the requesting individual. This card is placed in the file in proper case number sequence. When the case is returned the charge out information is lined out, the case is returned to file and the charge-out card is placed in a convenient tray for reuse.

- An inventory should be taken of all out-of-file cases now in possession of the juvenile counselors. These cases should then be charged to the individual counselors on appropriate file charge cards. (See above.)

- The intake clerks should discontinue the preparation of a "dummy" statistical card each time a card is not found in file. Instead, use the buff copy of the statistical card as a suspense file until it is established that a previous file does not exist. At that time, remove the card from the suspense file and file it with the referral papers.

Because of the confidential nature of juvenile records the consultant recommends against storing the cases on shelf file units.

4. Potential Benefits

Adoption of the above recommendations will provide the following benefits:

- improve file security
- positive file location
- reduce file searching points from 19 to 2
- save clerical time spent on file searches
- reduce number of alphabetical files in the intake office from 4 to 1

B. Expunction of Juvenile Records

The recently adopted legislation (Oregon laws - 1975, Chap. 680) which revised and added to ORD 419.472 to 419.587 is the subject of considerable controversy.

Discussions with the director and deputy director of the juvenile department and a review of the revised statute indicates that the legislative intent of the revised statute is clear. The administrative, clerical and paperwork burdens placed on the juvenile departments, however, are such that the law is extremely difficult to administer.

It would be inappropriate for this report to comment on the legislation other than to say that legislation is often passed without giving due and appropriate consideration to the bureaucratic consequences. Consequently, unnecessary and burdensome administrative and clerical tasks must be initiated to cope with the requirements of the statute.

On January 3, 1978 Mr. Donald D. Welsh, Director of Clackamas County juvenile department in a letter to Mr. Hardy Myers, Chairman of the Interim Judiciary Committee, proposed a number of changes to the revised statute. Because of Mr. Welsh's proposals and the current controversy over the subject of expunging juvenile records, this report refrains from making any recommendations relating to the methods and procedures used to accomplish the expungement process. The Clackamas County juvenile court is proceeding to expunge their juvenile files as best they can under the provisions of the law.

The consultant supports the proposed changes to the law recommended by Mr. Welsh insofar as they will ease the administrative burdens of the juvenile court. (See Exhibit II)

III. EXHIBITS

JUVENILE COURT STATISTICAL CARD

A. COURT _____

B. CHILD'S NAME OR NUMBER _____ (Last) (First) (Middle)

C. ADDRESS _____

D. DATE OF BIRTH _____ mo. day year

E. AGE AT TIME OF REFERRAL _____

F. SEX: 1 Male 2 Female

G. RACE: 1 White 2 Negro 3 Indian 4 Other

Enter only one code in the designated code box for each major category from "H" to "O"

<p>H. DATE OF REFERRAL _____ mo. day year</p>	<p>L. REASON REFERRED</p> <p>Offenses applicable to both juveniles and adults (excluding traffic)</p> <p>01 Murder and non-negligent manslaughter 11 Larceny: Shoplifting</p> <p>02 Manslaughter by negligence 12 Larceny: All except shoplifting</p> <p>03 Forcible rape 13 Weapons-carrying, possessing, etc.</p> <p>04 Robbery: Purse snatching by force 14 Sex offenses (except forcible rape)</p> <p>05 Robbery: All except purse snatching 15 Violation of drug laws: Narcotic</p> <p>06 Assault: Aggravated 16 Violation of drug laws: All except narcotic</p> <p>07 Assault: All except aggravated 17 Drunkenness</p> <p>08 Burglary—breaking or entering 18 Disorderly conduct</p> <p>09 Auto theft: Unauthorized use 19 Vandalism</p> <p>10 Auto theft: All except unauthorized use 20 Other (specify) _____</p> <p>Offenses applicable to juveniles only (excluding traffic)</p> <p>31 Running away 34 Ungovernable behavior</p> <p>32 Truancy 35 Possessing or drinking of liquor</p> <p>33 Violation of curfew 36 Other (specify) _____</p> <p>Traffic offenses</p> <p>41 Driving while intoxicated 44 Driving without a license</p> <p>42 Hit and run 45 All other traffic (specify) _____</p> <p>43 Reckless driving</p> <p>Neglect (abuse, desertion, inadequate care, etc.)</p> <p>51 Abuse 52 All other neglect (specify) _____</p> <p>Special proceedings (adoption, consent to marry, etc.)</p> <p>61 Specify _____</p>	<p>M. MANNER OF HANDLING</p> <p>1 Without petition 2 With petition</p>
<p>I. REFERRED BY</p> <p>1 Law enforcement agency</p> <p>2 School department</p> <p>3 Social agency</p> <p>4 Probation officer</p> <p>5 Parents or relatives</p> <p>6 Other court</p> <p>7 Other source (specify) _____</p>		<p>N. DATE OF DISPOSITION _____ mo. day year</p> <p>O. DISPOSITION</p> <p>00 Waived to criminal court</p> <p>Complaint not substantiated</p> <p>01 Dismissed: Not proved or found not involved</p> <p>Complaint substantiated</p> <p>No transfer of legal custody</p> <p>11 Dismissed: Warned, adjusted, counseled</p> <p>12 Held open without further action</p> <p>13 Probation officer to supervise</p> <p>14 Referred to another agency or individual for supervision or service</p> <p>15 Runaway returned to _____</p> <p>16 Other (specify) _____</p> <p>Transfer of legal custody to:</p> <p>21 Public institution for delinquents</p> <p>22 Other public institution</p> <p>23 Public agency or department (including court)</p> <p>24 Private agency or institution</p> <p>25 Individual</p> <p>26 Other (specify) _____</p> <p>99 Inapplicable—Special Proceedings</p>
<p>J. PRIOR DELINQUENCY (excluding traffic) REFERRALS</p> <p>a. This calendar year— 0 1 2 3 4 5 or more referrals</p> <p>b. In prior years— 0 1 2 3 4 5 or more referrals</p>		
<p>K. CARE PENDING DISPOSITION</p> <p>00 No detention or shelter care overnight</p> <p>Detention or shelter care overnight or longer in:</p> <p>01 Jail or police station</p> <p>02 Detention home</p> <p>04 Foster family home</p> <p>08 Other place (specify) _____</p> <p>In this category (K) if more than one code is applicable, add the appropriate codes and enter total sum in coding box.</p>		

SUPPLEMENTARY DATA (for court's use)

<p>P. PRIOR TRAFFIC AND NEGLECT REFERRALS</p> <p>a. Total No. of prior traffic referrals 0 1 2 3 4 5 or more</p> <p>b. Total No. of prior neglect referrals 0 1 2 3 4 5 or more</p>	<p>V. LIVING ARRANGEMENT OF CHILD</p> <p>In own home:</p> <p>01 With both parents</p> <p>02 With mother and stepfather</p> <p>03 With father and stepmother</p> <p>04 With mother only</p> <p>05 With father only</p> <p>06 In home of relatives</p> <p>07 In foster family home</p> <p>08 In institution</p> <p>09 In independent living arrangements</p> <p>10 In other place (specify) _____</p>	<p>ADDITIONAL SPACE FOR USE OF CC</p> <p>HEARING</p> <p>PRELIM JUDGE</p> <p>FORMAL JUDGE</p> <p>INFORMAL JUDGE</p> <p>TR FER TO</p> <p>EXHIBIT I</p>																				
<p>Q. DIAGNOSTIC SERVICES</p> <p>Need for Diagnostic Services</p> <table border="1"> <thead> <tr> <th></th> <th>Indicated and provided</th> <th>Indicated but not available</th> <th>Not indicated</th> </tr> </thead> <tbody> <tr> <td>a. Psychological</td> <td>1</td> <td>2</td> <td>3</td> </tr> <tr> <td>b. Psychiatric</td> <td>1</td> <td>2</td> <td>3</td> </tr> <tr> <td>c. Medical</td> <td>1</td> <td>2</td> <td>3</td> </tr> <tr> <td>d. Social</td> <td>1</td> <td>2</td> <td>3</td> </tr> </tbody> </table>		Indicated and provided	Indicated but not available	Not indicated	a. Psychological	1	2	3	b. Psychiatric	1	2	3	c. Medical	1	2	3	d. Social	1	2	3	<p>W. MARITAL STATUS OF NATURAL PARENTS</p> <p>01 Parents married and living together</p> <p>One or both parents dead:</p> <p>02 Both dead</p> <p>03 Father dead</p> <p>04 Mother dead</p> <p>Parents separated</p> <p>05 Divorced or legally separated</p> <p>06 Father deserted mother</p> <p>07 Mother deserted father</p> <p>08 Other reason (specify) _____</p> <p>09 Parents not married to each other</p> <p>10 Other status (specify) _____</p>	
	Indicated and provided	Indicated but not available	Not indicated																			
a. Psychological	1	2	3																			
b. Psychiatric	1	2	3																			
c. Medical	1	2	3																			
d. Social	1	2	3																			
<p>R. ESTIMATED MENTAL CAPACITY</p> <p>1 Below average 3 Above average</p> <p>2 Average 4 Not determined</p>	<p>X. FAMILY INCOME (Annual)</p> <p>1 Receiving public assistance at time of referral</p> <p>Not receiving public assistance at time of referral</p> <p>2 Under \$3,000</p> <p>3 \$3,000 to \$4,999</p> <p>4 \$5,000 to \$9,999</p> <p>5 \$10,000 and over</p> <p>6 Unknown</p>																					
<p>S. SCHOOL ATTAINMENT & ADJUSTMENT</p> <p>a. Years of schooling completed. 00 01 02 03 04 05 06 07 08 09 10 11 12 or more</p> <p>b. Grade placement in relation to age:</p> <p>1 Retarded 3 Accelerated</p> <p>2 At expected level 4 Inapplicable (not in school)</p> <p>c. Serious or persistent school misbehavior</p> <p>1 Yes 2 No 3 Inapplicable (not in school)</p>	<p>Y. LOCATION OF RESIDENCE</p> <p>1 Rural</p> <p>2 Urban—predominantly residential</p> <p>3 Urban—predominantly business or industrial area</p> <p>4 Suburban</p>																					
<p>T. EMPLOYMENT AND SCHOOL STATUS</p> <table border="1"> <thead> <tr> <th></th> <th>Out of School</th> <th>In School</th> </tr> </thead> <tbody> <tr> <td>Not employed</td> <td>1</td> <td>5</td> </tr> <tr> <td>Employed</td> <td></td> <td></td> </tr> <tr> <td>Full time</td> <td>2</td> <td>6</td> </tr> <tr> <td>Part time</td> <td>3</td> <td>7</td> </tr> <tr> <td>Inapplicable (pre-school)</td> <td>4</td> <td></td> </tr> </tbody> </table> <p>U. LENGTH OF RESIDENCE (of child) IN COUNTY</p> <p>0 Not currently resident of County</p> <p>1 Under one year</p> <p>2 One but less than five years</p> <p>3 Five years or more</p>		Out of School	In School	Not employed	1	5	Employed			Full time	2	6	Part time	3	7	Inapplicable (pre-school)	4					
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CIRCUIT COURT FOR CLACKAMAS COUNTY

JUVENILE DEPARTMENT

HOWARD J. BLANDING
WINSTON L. BRADSHAW
PATRICK D. GILROY
DALE JACOBS
Judge

2121 Keen Road
OREGON CITY, OREGON 97045
655-8342

DONALD D. WELCH
Director

January 3, 1978

TO: Hardy Myers, Chairman Interim Judiciary Committee
FROM: Donald D. Welch
RE: Expunction proposal

In response to the invitation of your committee I submit the following expunction proposal which has its genesis in the work of Lucy Schafer of the Advisory Committee of the Subcommittee on Laws Relating to Juveniles of the 1976 Legislative Interim Committee on the Judiciary. Mrs. Schafer's work was embodied in the first draft of Senate Bill 2 as Article 17, Sections 107 through 118. I consider the work itself a commendable and most acceptable improvement on the present law. Some of my proposed changes are cosmetic or simply meant to make references to Chapter 419 language rather than to SB 2. Others remove minor inconsistencies or identify areas which, in my view, remain ambiguous in the SB 2 version. It would be wise to read my work with Article 17 of the unengrossed version of SB 2 at hand as a reference.

Not every problem in the present expunction law is addressed here. For example, I find no solution to ORS 419.835(2) - the legislatively mandated lie - short of a total revamp of the concept of record usage. It is my conviction we are approaching the problem from the wrong end by creating a structure to pretend a record does not exist rather than face squarely the issue of what sort of controls we wish to impose on freedom of access. With that note of caution and lack of allegiance to the expunction concept I proceed with my mission.

Major problems which are dealt with include right of automatic expunction, notice, grounds and standards for trial courts to consider in expunction, effect of expunction orders on sister county courts and agencies, removal of apparent expunction effect on appellate court records, and impact on police records related to remanded cases.

I exclude specific reference to right to counsel in expunction proceedings in this portion of the Code in favor of a refining of the language of 419.498 to make clear the inclusion of expunction

EXHIBIT II
13 PAGES

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proceedings within the umbrella of a child's full rights to counsel together with limitation of what now seems an over-broad parents' right to representation. Article 6 of SB 2 is an approximation of my intent here.

Section 001. Definitions. As used (here), unless the context requires otherwise:

(1) "Conduct" means any act or behavior engaged in by a person while under 18 years of age which constitutes a basis for jurisdiction of a juvenile court as defined in ORS 419.476.

(2) "Conduct-related record" means any record containing information related to a person's conduct or alleged conduct as defined in subsection (1) of this section except:

(a) Records kept or disseminated by the Motor Vehicles Division, the State Marine Board and the State Fish and Wildlife Commission pursuant to a juvenile or adult court order or recommendation;

(b) Records directly related to a juvenile court's order of removal to court pursuant to ORS 419.533, or to any disposition as an adult pursuant to such an order;

(c) Records related to a support obligation which is the subject of juvenile court proceedings or proceedings consolidated as provided in ORS 419.559;

(d) Medical records;

(e) Records related to proposed or adjudicated termination of the parent-child relationship and adoption of a subject;

(f) That part of any record kept by a law enforcement agency which relates to:

(A) Conduct of persons whose records do not currently qualify for

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expunction proceedings;

(B) Current investigations of suspected conduct by the subject; and

(C) Reports and records directly related to conduct which is the basis for criminal court jurisdiction of a case remanded to criminal court pursuant to ORS 419.533.

Comment: I see nothing in current law which protects police files of remanded cases from expunction. Clearly, a remanded case is not one which is based on a finding of juvenile court jurisdiction. Therefore, why is not an automatic expunction right likewise a right for the police file to be destroyed, at least if there has not yet been an adult indictment?

(g) Academic records;

(h) Records mandatorily maintained by (CSD) in connection with federal financial participation in the provision of financial assistance or services on behalf of a person named in an expunction order;

(i) Records kept for the purposes of research and evaluation of treatment programs, provided that the subject is not identifiable therein;

Comment: I here alter SB 2 language on page 58, line 15 to make the limitation on the exception conceptual rather than specific.

(j) Any record which is known to the court to be relevant to a pending civil or criminal action; and

(k) An order of expunction and list of complying courts, departments and agencies.

Comment: The definition of conduct related record is the same as present law and SB 2. What is left out is pure dependency, an exclusion to which some have objected. Why can not a child who is dependent have the same rights of record control as other persons? I cannot answer that one.

(3) "Discharge" means an occurrence of the following:

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(a) Dismissal of a petition or entry of an order remanding jurisdiction of a child to criminal court, leaving no pending or active conduct-related petition kept by juvenile courts;

(b) Attainment of age 21 by a person then within the jurisdiction of the juvenile court on the grounds specified in ORS 419.476(1a), or attainment of age 18 by a person then within the jurisdiction of the juvenile court on any of the other grounds specified in ORS 419.4 or

(c) Successful completion of the terms of a court order or informal adjustment, providing no conduct-related referral to the juvenile court is then pending or active;

Comment: Since informal adjustment is not necessarily, nor should it be within the definition "closed at intake", the vast majority of cases escape eligibility for expunction in SB 2 by a too narrow definition of discharge. Also, a non-petition referral which is pending is given the dignity of frustrating discharge.

(d) Closing at intake of a referral by the juvenile department either by contact with the subject or by failure to proceed on the filing of a petition or to informal adjustment within one year of the referral to the juvenile department;

Comment: Removed from the discharge definition in SB 2 is the two year measure from the time of protective supervision, a term not now part of Chapter 419. Added is a simple completion of informal adjustment and a closing at intake or failure to move on a case. The latter is to avoid limbo, as it is not a reasonable basis for lack of discharge.

(4) "Expunction" means the removal and destruction of any conduct-related record kept by a law enforcement agency, public investigative agency, juvenile department, juvenile court, or any other agency of this State which constitutes or could constitute a basis for the exercise of juvenile court jurisdiction. For purposes of this section

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the Oregon Supreme Court and the Oregon Court of Appeals and the Oregon Tax Court are not agencies of this State;

Comment: SB 2 at page 58, line 34, limits expunction to records kept pursuant to juvenile court order. Since many cases produce no orders, and certainly none generating record keeping by police, etc., I have opted for the more general statement shown. Also, I offer the observation that the appellate courts of Oregon are agencies of the State as defined in 419.800(4) and thereby obligated under current law to excise their records, including the official State Reports, relative to any expunged matter.

(5) "Subject" means a person who is the subject of a conduct-related record and may include a person who is under the age of 18 years.

Section 002. Venue in expunction proceedings. An expunction proceeding shall be commenced in the county where the subject resided at the time of the most recent discharge, or the subject's county of residence at the time of filing the application for expunction if there has been no discharge.

Comment: Since one can apply for expunction even where there has been no discharge of a case we must offer a statement of venue in such admittedly rare instances. Even more rare and ignored here is the situation where there has been no discharge and the person no longer lives in the State of Oregon. That esoteric kind of problem does not need to consume our attention.

Section 003. Expunction of juvenile court records; conditions for eligibility: The juvenile court may determine the question of expunction upon application of either a subject or a juvenile department or upon its own motion. Subject to the hearing provisions of section 006, the juvenile court may order expunction of all or any part of the subject's conduct-related record if it finds that to do so would be in the best interests of the subject and society. In

determining whether expunction is in the subject's and society's best interest, the court shall consider the nature of the conduct engaged in by the subject, the likelihood of the subject's repeating the conduct, as evidenced by the record, and the likelihood that denial of expunction may prevent injury to persons or property.

Comment: See notes regarding hearings in section 006.

(2) It is a rebuttable presumption that expunction would be in the best interests of the subject and of society if the court finds that:

(a) At least two years have elapsed since the subject's most recent discharge;

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

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

(d) The subject is not within the jurisdiction of any juvenile court; and

(e) There is no pending investigation of the subject's conduct by a law enforcement agency nor referral of findings of a conduct related investigation to a juvenile department.

Comment: Here we combine sections 109 and 116 of SB 2 to make clear that a person may apply for expunction at any time but that the ultimate question for the court remains the same, i.e., the best interests of the child and society. This is a pointed departure from present law where expunction is a matter of right in most circumstances. Also removed is the automatic expunction. By subsection (2) a person who is now entitled to expunction as a right would have only a presumption of right - rebuttable by an affirmative showing, pre-

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sumably by a district attorney, that it should not be granted.

Section 004. Right of the child and parent to advice of expunction proceedings and their effect. The juvenile court or the juvenile department shall advise the child who is a subject as defined in section 001 (of this proposal) and his parent, guardian or legal custodian of the procedures for expunction of a conduct related record, the right to counsel in this chapter, and the legal effect of an expunction order at the following times:

(1) At any dispositional hearing, or at any informal disposition;
and

(2) At the time of discharge as defined in section 001 (of this proposal).

Comment: Deleted is the SB 2 provision for advice at the adjudicatory hearing concerning the legal effect of expunction. As to "legal effect" language see comment regarding section 007. Very often the adjudicatory and dispositional hearing are held at the same time, bifurcated though they may be. To require by statute that the judge advise at each would usually create a double notice within minutes.

Added here is the right to notice at the time of an informal disposition, a practice roughly equal to the dispositional hearing and much more common.

Section 005. Advice of courts, departments, institutions and agencies holding records; notice to district attorneys:

(1) When an expunction proceeding is commenced by application of the subject, he shall set forth as part of his application the names and addresses of the juvenile courts, juvenile departments, institutions and agencies which the subject has reason to believe possess in their records and files a conduct-related record of the subject. The county clerk and the juvenile department shall provide the subject

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for inclusion in the application the names of juvenile courts, juvenile departments, institutions and agencies which a reasonable search of the county clerk and juvenile department files indicate have records regarding the subject and eligible for expunction as defined herein.

Comment: Present law is silent regarding the relative rights and responsibilities for identifying where records may be found. SB 2 could be interpreted to require the clerk or juvenile court to act as an insurer of the completeness of such a compilation. Since an omitted agency could cause a later leak of information, I assume a course of action in negligence, or even warranty, could lie against the clerk or juvenile department. It is for this reason that I exclude the words "or may have" now found on page 60, line 24 of SB 2. Change of "subject" to "eligible for" on page 60, line 25 is to avoid inconsistent use of a word which has been defined as a term of art for expunction purposes.

(2) When an expunction proceeding is commenced by application of a juvenile department or the court's own motion, the department or court shall set forth in the application or motion the names and addresses in the files and records as described in (1) of this section and the names and addresses which the subject may have provided to the department or court for purposes of notification of expunction.

(3) The clerk of the juvenile court where an application for expunction is filed shall give notice of the application or motion to the district attorney of the county of venue and each county in which a record sought to be expunged is kept.

Comment: It is possible that the venue county has no conduct-related record, yet the district attorney of that county should have notice of proceedings in which he has a potential interest as a protagonist or simply to represent the juvenile department.

Section 006. Notice of objections; hearings; burden of proof; Expunction order.

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Within thirty (30) days of receipt of notice pursuant to Section 005 (3) (of this proposal)

a district attorney of the County of venue or any county in which a record sought to be expunged is kept shall give written notice of any objection to the proceedings and grounds therefore to the subject and to the juvenile court and the juvenile department in the county in which the application is made. If an objection is filed the matter shall be set for hearing and the nature of a hearing to determine disposition. If no objection is filed the Court may decide the issue of expunction ex parte or after full hearing.

Comment: This change offers the Court the opportunity (which it may have inherently, but perhaps does not) to explore the question of best interests even when there is no district attorney in opposition. Also, it is clear by this language that the rules of evidence related to dispositive rather than adjudicatory proceedings apply. Whether a child shall have a right to counsel in an ex parte expunction proceeding is an open question.

Section 007. Transmitting an expunction order to affected agencies; compliance with order; notice to subject.

(1) The clerk of the juvenile court shall send a certified copy of the expunction order to each court, juvenile department, and agency set forth in the application or motion whose records are subject to expunction as defined (in this proposal). Upon receipt of a copy of the order, the court, department or agency shall comply and, within 30 days of receipt, return the copy to the juvenile court with an endorsement indicating compliance. The juvenile, circuit, district, municipal, and justice courts

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of the State of Oregon are bound by an expunction order of any juvenile court of appropriate jurisdiction in this state issuing an order of expunction as defined herein.

Comment: The statement of extra-territoriality of an expunction order addresses a problem in existing law. Some counties hold that a person must apply in each county in which a record exists. Inconvenience, multiplicity of proceedings and foolishness are avoided by the proposed language. The problem created or exacerbated is the right of the county retaining records to rule on expunction. Since the entire jurisdiction of the juvenile court is predicated on decisions being made in the county of residence as the jurisdiction most knowledgable, and since the district attorney of the county retaining records may appear, this seems, the most reasonable approach.

(2) When all courts, departments and agencies which receive an expunction order have indicated their compliance as provided in (1) of this Section, the juvenile court shall provide the subject with a copy of the expunction order, a list of complying courts, departments and agencies, and a written explanation of the legal effect of an expunction order. The juvenile court and juvenile department then shall remove and destroy forthwith all records which they possess and which are subject to the order, except the original expunction order and a list of complying courts, department and agencies. Such order and list shall be held confidential.

Comment: Sprinkled among the provisions of the law and SB 2 are the following terms:

- "Rights under (1) of 419.805" (419.805 (2))
- "Explanation of (the expunction statutes)" (419.805 (2))
- "Statement of the significance of expunction" (419.820 (2))
- ". . . rights under 419.835" (419.830 (2), SB 2, page 61, lines 21 - 2)
- "The effect of an expunction order" (SB 2, page 60, lines 9-10)

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I have chosen to reduce notice of rights to a statement of the legal affect of an expunction order. Admittedly, in this proposal the language may mean something broader than some of the excerpts above, but the multiplicity of notices of impact is confusing and a functional muddle.

(3) An order of expunction and a list of complying courts, departments and agencies shall be released from confidentiality only on order of a juvenile court which issued the order of expunction, based on a finding that review of a particular case furthers compliance with the provisions of the expunction law.

Comment: It may be stating the obvious to limit the power to open a record to the court which ordered the expunction, but I think not.

Section 008. Effect of expunction on conduct that created the record; subject may assert record never existed without incurring false swearing penalty.

Comment: I adopt the thrust of Section 15 of SB 2, subject to the following alterations and my earlier statement regarding my disdain for this concept.

(1) Upon entry of an expunction order, the conduct which is the subject of the conduct related record shall not be referred to or commented upon by any court, department or agency subject to this law. The court, department or agency which has expunged a record pursuant (to this proposal) shall respond to any inquiry about the conduct by indicating that no record or reference concerning the conduct exists.

Comment: Again, to avoid the unringing of a bell I abandon the language "treated as if it never occurred." If the difference is only semantic, so be it, but to simply deny an agency a right to expose a record is a more rational statement of the same policy.

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(2) A person who is the subject of a conduct-related record which has been expunged pursuant (to this proposal) may assert that the record never existed and that the conduct which was the subject of the record never occurred without incurring a penalty for perjury or false swearing under the laws of this State.

Section 009. Destruction of juvenile records at age 25.

(1) Within six months after the subject of a conduct-related record reaches the age of 25 years, or at an earlier time as set by court rule, the conduct-related record kept by any juvenile court and juvenile department concerning the subject shall be destroyed. In the event that a subject's conduct-related record has been expunged, the order of expunction and list of complying courts, department and agencies shall be preserved under seal.

(2) Destruction of conduct-related records of juvenile courts and juvenile departments under subsection (1) of this section does not constitute expunction.

Section 010. Intentional violation of ORS 419.830 as grounds for action for damages; dismissal of public employee.

(1) A subject has a right of action against any person who intentionally violates (subsection (1) or (2) of ORS 419.830.) In any such proceeding, punitive damages may be sought in addition to any actual damages. The prevailing party shall be entitled to reasonable attorney fees.

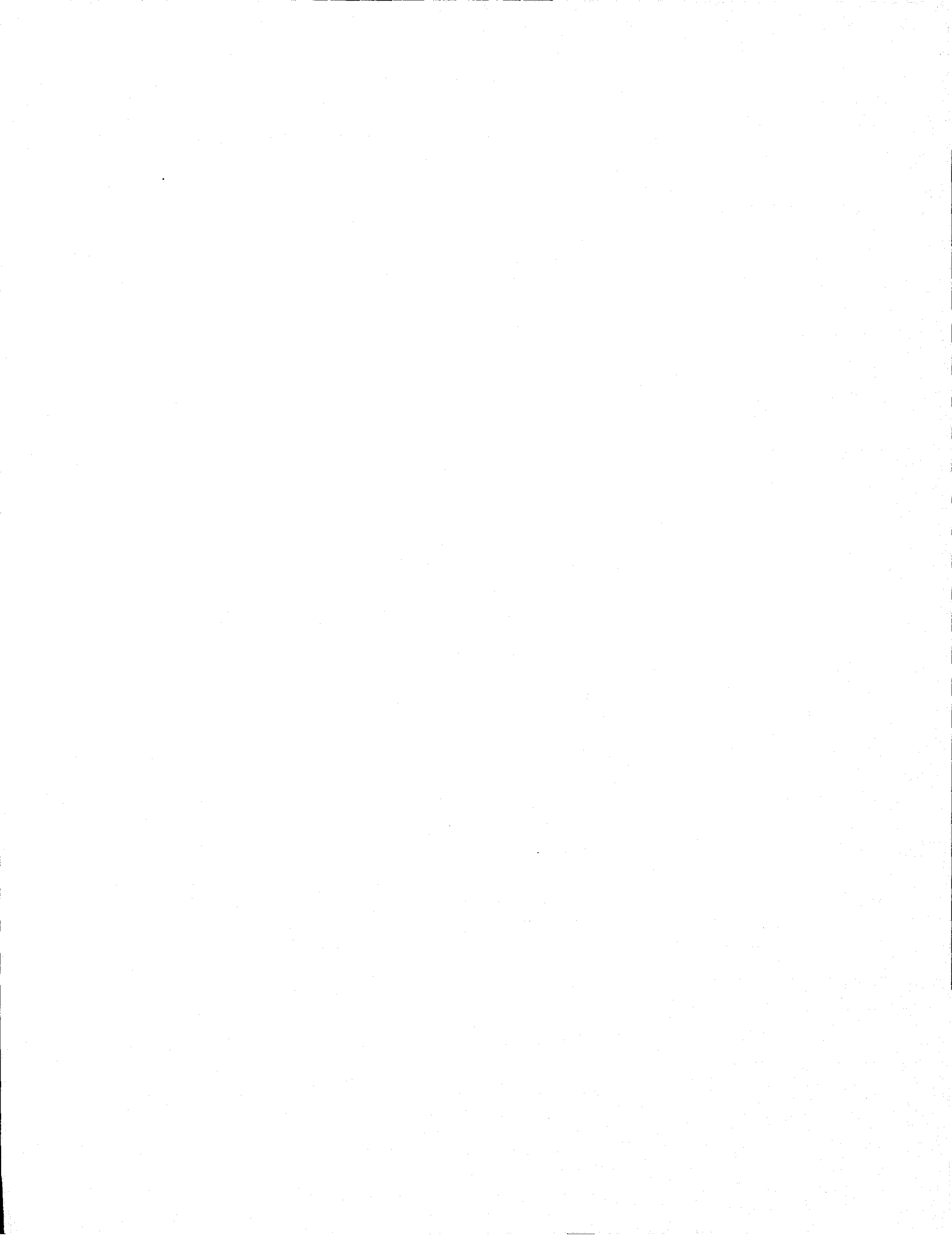
(2) Intentional violation of (subsection (1) or (2) of ORS 419.830) on the part of a public employee shall be considered cause for dismissal.

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(3) Any person who knowingly makes a false statement on an application made pursuant to Sections 005 (of this proposal) commits the crime of false swearing.

Comment: Certainly, the subject should be held to the same high standard of conduct we expect of any person who avers to a court. He should be aware of that standard.

cw



END