

Enrolled
Senate Bill 234

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CHAPTER

AN ACT

Relating to paternity; creating new provisions; and amending ORS 109.070, 109.073, 109.092, 109.096, 109.098, 109.124, 109.175, 109.326, 419A.004, 419B.819, 419B.839 and 419B.875.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 419A.004 is amended to read:

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

- (1) "CASA Volunteer Program" means a program approved or sanctioned by the juvenile court to recruit, train and supervise volunteer persons to serve as court appointed special advocates.
- (2) "Child care center" means a residential facility for wards or youth offenders that is licensed under the provisions of ORS 418.240.
- (3) "Community service" has the meaning given that term in ORS 137.126.
- (4) "Conflict of interest" means a person appointed to a local citizen review board who has a personal or pecuniary interest in a case being reviewed by that board.
- (5) "Counselor" means a juvenile department counselor.
- (6) "Court" means the juvenile court.
- (7) "Court appointed special advocate" or "CASA" means a person appointed by the court pursuant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.
- (8) "Court facility" has the meaning given that term in ORS 166.360.
- (9) "Department" means the Department of Human Services.
- (10) "Detention" or "detention facility" means a facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders pursuant to a judicial commitment or order.
- (11) "Director" means the director of a juvenile department established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063.
- (12) "Guardian" means guardian of the person and not guardian of the estate.
- (13) "Indian child" means any unmarried person less than 18 years of age who is:
 - (a) A member of an Indian tribe; or
 - (b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.
- (14) "Juvenile court" means the court having jurisdiction of juvenile matters in the several counties of this state.
- (15) "Local citizen review board" means the board specified by ORS 419A.090 and 419A.092.

(16) "Parent" means the biological or adoptive mother and the legal [or *adoptive*] father of the child, ward, youth or youth offender. [A *legal father* includes:]

[*(a) A nonimpotent, nonsterile man who was cohabiting with his wife, who is the mother of the child, ward, youth or youth offender, at the time of conception;*]

[*(b) A man married to the mother of the child, ward, youth or youth offender at the time of birth, when there is no judgment of separation and the presumption of paternity has not been disputed;*]

[*(c) A biological father who marries the mother of the child, ward, youth or youth offender after the birth of the child, ward, youth or youth offender;*]

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

[*(e) A biological father who has, with the mother, established paternity through a voluntary acknowledgment of paternity under ORS 109.070*] **As used in this subsection, "legal father" means:**

(a) A man who has adopted the child, ward, youth or youth offender or whose paternity has been established or declared under ORS 109.070 or 416.400 to 416.470 or by a juvenile court; and

(b) In cases in which the Indian Child Welfare Act applies, a man who is a father under applicable tribal law.

(17) "Permanent foster care" means an out-of-home placement in which there is a long-term contractual foster care agreement between the foster parents and the department that is approved by the juvenile court and in which the foster parents commit to raise a ward in substitute care or youth offender until the age of majority.

(18) "Planned permanent living arrangement" means an out-of-home placement other than by adoption, placement with a relative or placement with a legal guardian that is consistent with the case plan and in the best interests of the ward.

(19) "Public building" has the meaning given that term in ORS 166.360.

(20) "Reasonable time" means a period of time that is reasonable given a child or ward's emotional and developmental needs and ability to form and maintain lasting attachments.

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

(22) "Resides" or "residence," when used in reference to the residence of a child, ward, youth or youth offender, means the place where the child, ward, youth or youth offender is actually living or the jurisdiction in which wardship or jurisdiction has been established.

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

(24) "Serious physical injury" means:

(a) A serious physical injury as defined in ORS 161.015; or

(b) A physical injury that:

(A) Has a permanent or protracted significant effect on a child's daily activities;

(B) Results in substantial and recurring pain; or

(C) In the case of a child under 10 years of age, is a broken bone.

(25) "Shelter care" means a home or other facility suitable for the safekeeping of a child, ward, youth or youth offender who is taken into temporary custody pending investigation and disposition.

(26) "Short-term detention facility" means a facility established under ORS 419A.050 (3) for holding children, youths and youth offenders pending further placement.

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

(a) A detention facility, forestry camp or youth correction facility;

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

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

(28) "Surrogate" means a person appointed by the court to protect the right of the child, ward, youth or youth offender to receive procedural safeguards with respect to the provision of free appropriate public education.

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

(30) "Ward" means a person within the jurisdiction of the juvenile court under ORS 419B.100.

(31) "Youth" means a person under 18 years of age who is alleged to have committed an act that is a violation, or, if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city.

(32) "Youth care center" has the meaning given that term in ORS 420.855.

(33) "Youth offender" means a person who has been found to be within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age.

SECTION 2. ORS 419B.819 is amended to read:

419B.819. (1) A court may make an order establishing permanent guardianship under ORS 419B.365 or terminating parental rights under ORS 419B.500, 419B.502, 419B.504, 419B.506 or 419B.508 only after service of summons and a true copy of the petition on the parent, as provided in ORS 419B.812, 419B.823, 419B.824, 419B.827, 419B.830 and 419B.833. **A putative father who satisfies the criteria set out in ORS 419B.839 (1)(d) or 419B.875 (1)(c) also must be served with summons and a true copy of the petition, unless a court of competent jurisdiction has found him not to be the child or ward's legal father or he has filed a petition for filiation that was dismissed and no appeal of the judgment or order is pending.**

(2) A summons under this section must require one of the following:

(a) That the parent appear personally before the court at the time and place specified in the summons for a hearing on the allegations of the petition;

(b) That the parent appear personally before the court at the time and place specified in the summons to admit or deny the allegations of the petition; or

(c) That the parent file a written answer to the petition within 30 days from the date on which the parent is served with the summons.

(3) If the court does not direct the type of response to be required by the summons under subsection (2) of this section, the summons shall require the parent to respond in the manner authorized by subsection (2)(c) of this section.

(4) A summons under this section must contain:

(a) A statement that the rights of the parent are proposed to be terminated or, if the petition seeks to establish a permanent guardianship, that a permanent guardianship is proposed to be established.

(b) A statement that, if the parent fails to appear at the time and place specified in the summons or in an order under ORS 419B.820 or, if the summons requires the filing of a written answer, fails to file the answer within the time provided, the court may, without further notice and in the parent's absence, terminate the parent's rights or grant the guardianship petition, either on the date specified in the summons or order or on a future date, and may take any other action that is authorized by law.

(c) A notice that the parent has the right to be represented by an attorney. The notice must be in substantially the following form:

You have a right to be represented by an attorney. If you wish to be represented by an attorney, please retain one as soon as possible to represent you in this proceeding. If you cannot afford to hire an attorney and you meet the state's financial guidelines, you are entitled to have an attorney appointed for you at state expense. To request appointment of an attorney to represent you at state

expense, you must contact the juvenile court immediately. Phone _____ for further information.

(d) A statement that the parent has the responsibility to maintain contact with the parent's attorney and to keep the attorney advised of the parent's whereabouts.

(5) If the summons requires the parent to appear before the court to admit or deny the allegations of the petition or requires the parent to file a written answer to the petition, the summons must advise the parent that, if the parent contests the petition, the court:

(a) Will schedule a hearing on the allegations of the petition and order the parent to appear personally; and

(b) May schedule other hearings related to the petition and order the parent to appear personally.

(6) At a hearing, when the parent is required to appear personally, or in the parent's written answer to the petition, the parent shall inform the court and the petitioner of the parent's current residence address, mailing address and telephone number.

(7) If a parent fails to appear for any hearing related to the petition, or fails to file a written answer, as directed by summons or court order under this section or ORS 419B.820, the court, without further notice and in the parent's absence, may:

(a) Terminate the parent's rights or, if the petition seeks to establish a permanent guardianship, grant the guardianship petition either on the date specified in the summons or order or on a future date; and

(b) Take any other action that is authorized by law.

SECTION 3. ORS 419B.839 is amended to read:

419B.839. (1) Summons in proceedings to establish jurisdiction under ORS 419B.100 must be served on:

(a) The [legal] parents of the child without regard to who has legal or physical custody of the child;

(b) The legal guardian of the child;

(c) A putative father of the child [*if he has provided or offered to provide for the physical, emotional, custodial or financial needs of the child in the previous six months or was prevented from doing so by the mother of the child;*] **who satisfies the criteria set out in ORS 419B.875 (1)(c), except as provided in subsection (4) of this section;**

(d) A putative father of the child if notice of the initiation of filiation or paternity proceedings was on file with the Center for Health Statistics of the Department of Human Services prior to the initiation of the juvenile court proceedings, except as provided in subsection (4) of this section;

[(d)] (e) The person who has physical custody of the child, if the child is not in the physical custody of a parent; and

[(e)] (f) The child, if the child is 12 years of age or older.

(2) If it appears to the court that the welfare of the child or of the public requires that the child immediately be taken into custody, the court may indorse an order on the summons directing the officer serving it to take the child into custody.

(3) Summons may be issued requiring the appearance of any person whose presence the court deems necessary.

(4) Summons under subsection (1) of this section is not required to be given to a putative father whom a court of competent jurisdiction has found not to be the child's legal father or who has filed a petition for filiation that was dismissed if no appeal from the judgment or order is pending.

SECTION 4. ORS 419B.875 is amended to read:

419B.875. (1) Parties to proceedings in the juvenile court under ORS 419B.100 and, except as provided in paragraph (h) of this subsection, under ORS 419B.500 are:

(a) The child or ward;
(b) The [legal] parents or guardian of the child or ward;
(c) A putative father of the child or ward [if he has provided or offered to provide for the physical, emotional, custodial or financial needs of the child or ward in the previous six months or was prevented from doing so by the mother of the child or ward;] **who has demonstrated a direct and significant commitment to the child or ward by assuming, or attempting to assume, responsibilities normally associated with parenthood, including but not limited to:**

- (A) Residing with the child or ward;**
- (B) Contributing to the financial support of the child or ward; or**
- (C) Establishing psychological ties with the child or ward;**

(d) The state;
(e) The juvenile department;
(f) A court appointed special advocate, if appointed;
(g) The Department of Human Services or other child-caring agency if the agency has temporary custody of the child or ward;

(h) An intervenor who is granted intervention under ORS 419B.116. An intervenor under this paragraph is not a party to a proceeding under ORS 419B.500;

(i) A guardian ad litem appointed under subsection (2) of this section; and

(j) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pursuant to the Indian Child Welfare Act.

(2) When a court determines that a parent or guardian, due to mental or physical disability, cannot adequately act in the parent's or guardian's interests or give direction to the parent's or guardian's counsel on decisions the parent or guardian must make, the court shall appoint some suitable person to act as guardian ad litem for the parent or guardian.

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

(a) The right to notice of the proceeding and copies of the petitions, answers, motions and other papers;

(b) The right to appear with counsel and, except for intervenors under subsection (1)(h) of this section, to have counsel appointed as otherwise provided by law;

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

(d) The right of appeal; and

(e) The right to request a hearing.

(4) A putative father who satisfies the criteria set out in subsection (1)(c) of this section shall be treated as a parent, as that term is used in this chapter and ORS chapters 419A and 419C, until the court confirms his paternity or finds that he is not the legal father of the child or ward.

(5) If no appeal from the judgment or order is pending, a putative father whom a court of competent jurisdiction has found not to be the child or ward's legal father or who has filed a petition for filiation that was dismissed is not a party under subsection (1) of this section.

[4(a)] **(6)(a)** A person granted rights of limited participation under ORS 419B.116 is not a party to a proceeding under ORS 419B.100 or 419B.500 but has only those rights specified in the order granting rights of limited participation.

(b) Persons moving for or granted rights of limited participation are not entitled to appointed counsel but may appear with retained counsel.

[5] **(7)** If a foster parent, preadoptive parent or relative is currently providing care for a child or ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative notice of a hearing concerning the child or ward and the court shall give the person an opportunity to be heard. Except when allowed to intervene, the foster parent, preadoptive parent or relative providing care for the child or ward is not considered a party to the juvenile court proceeding solely because of notice and an opportunity to be heard.

[6] **(8)** When a legal grandparent of a child or ward requests in writing and provides a mailing address, the Department of Human Services shall give the legal grandparent notice of a hearing

concerning the child or ward and the court shall give the legal grandparent an opportunity to be heard. Except when allowed to intervene, a legal grandparent is not considered a party to the juvenile court proceeding solely because of notice and an opportunity to be heard.

[(7)] (9) Interpreters for parties and persons granted rights of limited participation shall be appointed in the manner specified by ORS 45.275 and 45.285.

SECTION 5. ORS 109.096 is amended to read:

109.096. (1) When the paternity of a child has not been established under ORS 109.070, the putative father [*shall be*] **is** entitled to reasonable notice in adoption[, *juvenile court,*] or other court proceedings concerning the custody of the child, **except for juvenile court proceedings**, if the petitioner knows, or by the exercise of ordinary diligence should have known:

(a) That the child resided with the putative father at any time during the 60 days immediately preceding the initiation of the proceeding, or at any time since the child's birth if the child is less than 60 days old when the proceeding is initiated; or

(b) That the putative father repeatedly has contributed or tried to contribute to the support of the child during the year immediately preceding the initiation of the proceeding, or during the period since the child's birth if the child is less than one year old when the proceeding is initiated.

(2) Except as provided in subsection (3) or (4) of this section, a verified statement of the mother of the child or of the petitioner, or an affidavit of another person with knowledge of the facts, filed in the proceeding and asserting that the child has not resided with the putative father, as provided in subsection (1)(a) of this section, and that the putative father has not contributed or tried to contribute to the support of the child, as provided in subsection (1)(b) of this section, [*shall be*] **is** sufficient proof to enable the court to grant the relief sought without notice to the putative father.

(3) The putative father [*shall be*] **is** entitled to reasonable notice in a proceeding for the adoption of the child if notice of the initiation of filiation proceedings as required by ORS 109.225 was on file with the Center for Health Statistics of the Department of Human Services prior to the child's being placed in the physical custody of a person or persons for the purpose of adoption by them. If the notice of the initiation of filiation proceedings was not on file at the time of the placement, the putative father [*shall be*] **is** barred from contesting the adoption proceeding.

(4) Except as otherwise provided in subsection (3) of this section, the putative father [*shall be*] **is** entitled to reasonable notice in [*juvenile court or other*] court proceedings **concerning the custody of the child, other than juvenile court proceedings**, if notice of the initiation of filiation proceedings as required by ORS 109.225 was on file with the Center for Health Statistics prior to the initiation of the [*juvenile court or other court*] proceedings.

(5) Notice under this section [*shall not be*] **is not** required to be given to a putative father who was a party to filiation proceedings under ORS 109.125 [*which either*] **that** were dismissed or resulted in a finding that he was not the father of the child.

(6) The notice required under this section shall be given in the manner provided in ORS 109.330.

(7) No notice given under this section need disclose the name of the mother of the child.

(8) A putative father has the primary responsibility to protect his rights, and nothing in this section shall be used to set aside an act of a permanent nature including, but not limited to, adoption or termination of parental rights, unless the father establishes within one year after the entry of the final judgment or order fraud on the part of a petitioner in the proceeding with respect to matters specified in subsections (1) to (5) of this section.

SECTION 6. ORS 109.098 is amended to read:

109.098. (1) If a putative father of a child by due appearance in a proceeding of which he is entitled to notice under ORS 109.096 objects to the relief sought, the court:

(a) May stay the adoption[, *juvenile court*] or other court proceeding to await the outcome of the filiation proceedings only if notice of the initiation of filiation proceedings was on file as required by ORS 109.096 (3) or (4).

(b) Shall, if filiation proceedings are not pending, inquire as to the paternity of the child, the putative father's past endeavors to fulfill his obligation to support the child and to contribute to the pregnancy-related medical expenses, the period that the child has lived with the putative father, the

putative father's fitness to care for and rear the child and whether the putative father is willing to be declared the father of the child and to assume the responsibilities of a father.

(2) If after inquiry under subsection (1)(b) of this section the court finds:

(a) That the putative father is the father of the child and is fit and willing to assume the responsibilities of a father, it shall have the power:

(A) Upon the request of the putative father, to declare his paternity and to certify the fact of paternity in the manner provided in ORS 109.094; and

(B) To award custody of the child to the mother or the father as may be in the best interests of the child, or to take any other action which the court may take if the parents are or were married to each other.

(b) That the putative father is not the father of the child, it may grant the relief sought in the proceeding without the putative father's consent.

(c) That the putative father is the natural father of the child but is not fit or willing to assume the responsibilities of a father, it may grant the relief sought in the proceeding or any other relief that the court deems to be in the best interests of the child, notwithstanding the father's objection.

(3) If a putative father of a child is given the notice of a proceeding required by ORS 109.096 and he fails to enter due appearance and to object to the relief sought therein within the time specified in the notice, the court may grant the relief sought without the putative father's consent.

SECTION 7. Section 8 of this 2005 Act is added to and made a part of ORS chapter 419B.

SECTION 8. (1) If in any proceeding under ORS 419B.100 or 419B.500 the juvenile court determines that the child or ward has no legal father or that paternity is disputed as allowed in ORS 109.070, the court may enter a judgment of paternity or a judgment of nonpaternity in compliance with the provisions of ORS 109.070, 109.124 to 109.230, 109.250 to 109.262 and 109.326.

(2) Before entering a judgment under subsection (1) of this section, the court must find that adequate notice and an opportunity to be heard was provided to:

(a) The parties to the proceeding;

(b) The man alleged or claiming to be the child or ward's father; and

(c) The Administrator of the Division of Child Support of the Department of Justice or the branch office providing support services to the county in which the court is located.

(3) When appropriate, the court shall inform a man before the court claiming to be the father of a child or ward that paternity establishment services may be available through the administrator if the child or ward:

(a) Is a child born out of wedlock;

(b) Has not been placed for adoption; and

(c) Has no legal father.

(4) As used in this section:

(a) "Administrator" has the meaning given that term in ORS 25.010.

(b) "Child born out of wedlock" has the meaning given that term in ORS 109.124.

(c) "Legal father" has the meaning given that term in ORS 419A.004 (16).

SECTION 9. (1) As used in this section, "legal father" includes a man whose paternity has been established under ORS 109.070 (1) and a man who has been ordered to pay child support.

(2) After paternity has been established under ORS 109.070 (1), if no blood tests, as defined in ORS 109.251, were performed to establish paternity, the mother or the legal father may petition the court to reopen the issue of paternity. The petitioner:

(a) Must file the petition within two years after a voluntary acknowledgment of paternity is filed with the State Registrar of the Center for Health Statistics;

(b) Must file the petition within two years after paternity is established as a result of a default order or a default judgment that is no longer subject to appeal; or

(c) May file the petition at any time if the legal father is the presumed father under ORS 109.070.

(3) The petition must contain:

(a) An affidavit executed by the petitioner stating that the petitioner has discovered new evidence since paternity was established or that the legal father is the presumed father and the petitioner has not had an opportunity previously to challenge the paternity; and

(b) The results of blood tests, administered within 90 days before the petition is filed, that show a zero percent probability that the legal father is the biological father of the child.

(4) Upon receipt of a petition, the court:

(a) May order the mother, child and legal father to submit to blood tests as provided in ORS 109.250 to 109.262 if the blood test results submitted with the petition were not properly conducted or documented; or

(b) Shall order the mother, child and legal father to submit to blood tests as provided in ORS 109.250 to 109.262 upon the motion of a party.

(5) Notwithstanding ORS 109.252, the petitioner shall pay any costs for blood tests ordered under subsection (4) of this section.

(6) The provisions of ORS 109.155 apply to a proceeding under this section.

(7) The court shall make a determination of nonpaternity if the court finds, based on all the evidence as provided in ORS 109.258, that:

(a) The blood tests were properly conducted and documented;

(b) The legal father is not the biological father of the child;

(c) The legal father has not adopted the child;

(d) The child was not conceived by artificial insemination while the legal father and the mother were married;

(e) The petitioner has not acted to prevent the biological father from asserting his parental rights;

(f) The petitioner, with knowledge that the legal father is not the biological father, has not:

(A) Taken any action to affirm the legal father's parentage of the child; and

(B) Failed to respond to a judicial or administrative proceeding to establish paternity after receipt of proper notice and an opportunity to be heard; and

(g) In the absence of fraud, granting the petition would not cause undue harm to the child.

(8) The petitioner has the burden of proving subsection (7)(a) to (f) of this section. However:

(a) Except as provided in paragraph (b) of this subsection, when a petitioner fails to prove subsection (7)(f) of this section, the court may nevertheless grant the petition and enter a judgment of nonpaternity if the court finds that the judgment would not cause undue harm to the child.

(b) When a petitioner has signed a voluntary acknowledgment of paternity and fails to prove subsection (7)(f) of this section, the court may nevertheless grant the petition and enter a judgment of nonpaternity if the court finds that:

(A) The petitioner signed the acknowledgment without knowledge that the legal father was not the biological father of the child; and

(B) The judgment would not cause undue harm to the child.

(9)(a) A child support obligation ordered before a petition is filed under this section continues until a judgment of nonpaternity is entered. However, upon a showing of good cause, the court may suspend the obligation if:

(A) To do so would not cause undue harm to the child; and

(B) The petitioner has not signed a voluntary acknowledgment of paternity.

(b) In a judgment of nonpaternity, the court shall vacate any ongoing child support obligation of the legal father and may vacate any past due support. Child support payments made before entry of a judgment of nonpaternity may not be returned to the payer.

(c) This section does not give a legal father a cause of action against the mother or biological father for reimbursement of child support paid or accrued before the entry of the judgment of nonpaternity.

(10) If the court denies the petition, the court shall award reasonable attorney fees to the nonpetitioning parties.

(11) The authority to petition the court under this section expires on the death of the legal father of a child. The personal representative of the legal father's estate may not file a petition under this section.

SECTION 10. Section 9 of this 2005 Act is repealed on January 2, 2008.

SECTION 11. ORS 109.070 is amended to read:

109.070. (1) The paternity of a person may be established as follows:

[(a)] *The child of a wife cohabiting with her husband who was not impotent or sterile at the time of the conception of the child shall be conclusively presumed to be the child of her husband, whether or not the marriage of the husband and wife may be void.*

[(b)] (a) A child born in wedlock, there being no judgment of separation from bed or board, [shall be] **is** presumed to be the child of the mother's husband, whether or not the marriage of the husband and wife may be void. This [shall be] **is** a disputable presumption.

[(c)] (b) By the marriage of the parents of a child after birth of the child.

[(d)] (c) By filiation proceedings.

[(e)] (d) By filing with the State Registrar of the Center for Health Statistics the voluntary acknowledgment of paternity form as provided for by ORS 432.287. Except as otherwise provided in [subsection (2)] **subsections (2) to (4)** of this section, this filing establishes paternity for all purposes.

[(f)] (e) By having established paternity through a voluntary acknowledgment of paternity process in another state.

[(g)] (f) By paternity being established or declared by other provision of law.

[(2)(a)] (2) A party to a voluntary acknowledgment of paternity may rescind the acknowledgment within the earlier of:

[(A)] (a) Sixty days after filing the [voluntary] acknowledgment [of paternity]; or

[(B)] (b) The date of a proceeding relating to the child, including a proceeding to establish a support order, in which the party wishing to rescind the acknowledgment is also a party [to the proceeding]. For the purposes of this [subparagraph] **paragraph**, the date of a proceeding is the date on which an order is entered in the proceeding.

[(b)(A)] (3)(a) A signed voluntary acknowledgment of paternity filed in this state may be challenged **in circuit court**:

[(i)] (A) [At any time] After the 60-day period **in a proceeding under section 9 of this 2005 Act**.

(B) **At any time after the 60-day period** on the basis of fraud, duress or a material mistake of fact. *The party bringing the challenge has the burden of proof.* **by:**

(i) **A party to the acknowledgment;**

(ii) **The child named in the acknowledgment; or**

(iii) **The Department of Human Services or the administrator, as defined in ORS 25.010, if the child named in the acknowledgment is in the care and custody of the department under ORS chapter 419B and the department or the administrator reasonably believes that the acknowledgment was obtained through fraud, duress or a material mistake of fact.**

[(ii)] (C) Within one year after the [voluntary] acknowledgment has been filed, *unless the provisions of paragraph (c) of this subsection apply*. **Subsection (4) of this section applies to a challenge under this subparagraph.** [No] A challenge to the [voluntary] acknowledgment [may be] **is not** allowed more than one year after the [voluntary] acknowledgment has been filed, unless the provisions of [sub-subparagraph (i) of this] subparagraph (A) or (B) of this paragraph apply.

[(B)] (b) Legal responsibilities arising from the [voluntary] acknowledgment [of paternity], including child support obligations, may not be suspended during the challenge, except for good cause.

(c) The party challenging an acknowledgment under this subsection has the burden of proof.

[(c)] **(4)(a)** *[No later than]* **Within** one year after a voluntary acknowledgment of paternity form is filed in this state *[and if genetic parentage tests have not been previously completed]*, a party to the acknowledgment, **the child named in the acknowledgment** or the state, if child support enforcement services are being provided under ORS 25.080, may apply to the court or to the administrator, as defined in ORS 25.010, for an order requiring that the *[parties and]* **mother, the child and the male party** submit to *[genetic parentage tests]* **blood tests as provided in ORS 109.250 to 109.262.**

[(d)] **(b)** If the results of the tests **performed under paragraph (a) of this subsection** exclude the male party as a possible father of the child, **or if the court determines under subsection (3) of this section that the male party is not the father of the child**, a party *[or the state, if child support enforcement services are being provided under ORS 25.080,]* **to the challenge** may apply to the court for *[an order]* **a judgment** of nonpaternity. **The party that applied for the judgment shall send a certified true copy of the judgment to the State Registrar of the Center for Health Statistics and to the Department of Justice as the state disbursement unit.** Upon receipt of *[an order]* **a judgment** of nonpaternity, the *[Director of Human Services]* **state registrar** shall correct any records maintained by the state registrar *[of the Center for Health Statistics]* that indicate that the male party is the parent of the child.

(c) Child support payments made before entry of a judgment of nonpaternity may not be returned to the payer.

[(e) The state Child Support Program shall pay any costs for genetic parentage tests subject to recovery from the party who requested the tests.]

SECTION 12. ORS 109.073 is amended to read:

109.073. Except as otherwise provided in ORS 25.020, the Social Security number of a parent who is subject to a paternity determination pursuant to ORS 109.070 **(1)(c), (d), (e) or (f)** *[(1)(d), (e), (f) or (g)]* or 416.400 to 416.470 shall be included in the order, judgment or other declaration establishing paternity.

SECTION 13. ORS 109.092 is amended to read:

109.092. When it is determined that a woman is pregnant with a child, the woman and any man to whom she is not married and with whom she engaged in sexual intercourse at approximately the time of conception have an obligation to recognize that the man may be the other person responsible for the conception. During the months of pregnancy, the man may join the woman in acknowledging paternity and assuming the rights and duties of expectant parenthood. If the man acknowledges paternity of the expected child and the woman denies that he is the father or refuses to join him in acknowledging paternity, the man may seek relief under ORS 109.125. If the woman wants the man to join her in acknowledging his paternity of the expected child and the man denies that he is the father or refuses to join her in acknowledging paternity, the woman may seek relief under ORS 109.125. If after the birth of the child the mother decides to surrender the child for adoption and paternity has not been acknowledged as provided in ORS 109.070 *[(1)(e)]* **(1)(d)** or the putative father has not asserted his rights in filiation proceedings, the mother has the right without the consent of the father to surrender the child as provided in ORS 418.270 or to consent to the child's adoption.

SECTION 14. ORS 109.124 is amended to read:

109.124. As used in ORS 109.124 to 109.230, unless the context requires otherwise:

(1) "Child attending school" has the meaning given that term in ORS 107.108.

(2) "Child born out of wedlock" means a child born to an unmarried woman, or to a married woman by a man other than her husband, *[if the conclusive presumption in ORS 109.070 (1)(a) does not apply]*.

(3) "Respondent" may include, but is not limited to, one or more persons who may be the father of a child born out of wedlock, the husband of a woman who has or may have a child born out of wedlock, the mother of a child born out of wedlock, the female pregnant with a child who may be born out of wedlock, or the duly appointed and acting guardian of the child or conservator of the child's estate.

SECTION 15. ORS 109.175 is amended to read:

109.175. (1) If paternity of a child born out of wedlock is established pursuant to a petition filed under ORS 109.125 or an order or judgment entered pursuant to ORS 109.124 to 109.230 or ORS 416.400 to 416.470, or if paternity is established by the filing of a voluntary acknowledgment of paternity as provided by ORS 109.070 [(1)(e)] **(1)(d)**, the parent with physical custody at the time of filing of the petition or the notice under ORS 416.415, or the parent with physical custody at the time of the filing of the voluntary acknowledgment of paternity, has sole legal custody until a court specifically orders otherwise. The first time the court determines who should have legal custody, neither parent shall have the burden of proving a change of circumstances. The court shall give primary consideration to the best interests and welfare of the child and shall consider all the standards set out in ORS 107.137.

(2) In any proceeding under this section, the court may cause an investigation, examination or evaluation to be made under ORS 107.425 or may appoint an individual or a panel or may designate a program to assist the court in creating parenting plans or resolving disputes regarding parenting time and to assist parents in creating and implementing parenting plans under ORS 107.425 (3).

SECTION 16. ORS 109.326 is amended to read:

109.326. (1) If the mother of a child was married at the time of the conception or birth of the child, and it has been determined pursuant to ORS 109.070 or judicially determined that her husband at such time or times was not the father of the child, the husband's authorization or waiver may not be required in adoption, juvenile court or other proceedings concerning the custody of the child.

(2) If paternity of the child has not been determined, a determination of nonpaternity may be made by any court having adoption, divorce or juvenile court jurisdiction. The testimony or affidavit of the mother or the husband or another person with knowledge of the facts filed in the proceeding shall constitute competent evidence before the court making the determination.

(3) Before making the determination of nonpaternity, citation to show cause why such husband's parental rights should not be terminated shall be served on him in the manner provided by ORS 109.330 if:

(a) There has been a determination by any court of competent jurisdiction that the husband is the father of the child;

(b) The child resided with the husband at any time since the child's birth; or

(c) The husband repeatedly has contributed or tried to contribute to the support of the child.

(4) There shall be sufficient proof to enable the court to grant the relief sought without notice to the husband provided that the affidavit of the mother of the child, of the husband or of another person with knowledge of the facts filed in the proceeding states or the court finds from other competent evidence:

(a) That the mother of the child was not cohabiting with her husband at the time of conception of the child and that the husband is not the father of the child;

(b) That the husband has not been judicially determined to be the father;

(c) That the child has not resided with the husband; and

(d) That the husband has not contributed or tried to contribute to the support of the child.

(5) Notwithstanding the provision of ORS 109.070 [(1)(b)] **(1)(a)**, notice to the husband pursuant to ORS 109.330 shall not be required and the husband's consent, authorization or waiver shall not be required in adoption proceedings concerning the child unless the husband has met the requirements for notice in subsection (3)(a), (b) or (c) of this section.

(6) A husband who was not cohabiting with the mother at the time of the child's conception has the primary responsibility to protect the husband's rights.

(7) Nothing in this section shall be used to set aside an act of a permanent nature, including but not limited to adoption or termination of parental rights, unless the father establishes within one year after the entry of the final judgment or order fraud on the part of the petitioner with respect to the matters specified in subsection (4)(a), (b), (c) or (d) of this section.

SECTION 17. ORS 109.070, as amended by section 11 of this 2005 Act, is amended to read:

109.070. (1) The paternity of a person may be established as follows:

(a) The child of a wife cohabiting with her husband who was not impotent or sterile at the time of the conception of the child is conclusively presumed to be the child of her husband, whether or not the marriage of the husband and wife may be void.

[(a)] **(b)** A child born in wedlock, there being no judgment of separation from bed or board, is presumed to be the child of the mother's husband, whether or not the marriage of the husband and wife may be void. This is a disputable presumption.

[(b)] **(c)** By the marriage of the parents of a child after birth of the child.

[(c)] **(d)** By filiation proceedings.

[(d)] **(e)** By filing with the State Registrar of the Center for Health Statistics the voluntary acknowledgment of paternity form as provided for by ORS 432.287. Except as otherwise provided in subsections (2) to (4) of this section, this filing establishes paternity for all purposes.

[(e)] **(f)** By having established paternity through a voluntary acknowledgment of paternity process in another state.

[(f)] **(g)** By paternity being established or declared by other provision of law.

(2) A party to a voluntary acknowledgment of paternity may rescind the acknowledgment within the earlier of:

(a) Sixty days after filing the acknowledgment; or

(b) The date of a proceeding relating to the child, including a proceeding to establish a support order, in which the party wishing to rescind the acknowledgment is also a party. For the purposes of this paragraph, the date of a proceeding is the date on which an order is entered in the proceeding.

(3)(a) A signed voluntary acknowledgment of paternity filed in this state may be challenged in circuit court:

(A) **At any time** after the 60-day period [*in a proceeding under section 9 of this 2005 Act.*]

[(B) *At any time after the 60-day period*] on the basis of fraud, duress or a material mistake of fact. **The party bringing the challenge has the burden of proof.** [by:]

[(i) *A party to the acknowledgment;*]

[(ii) *The child named in the acknowledgment; or*]

[(iii) *The Department of Human Services or the administrator, as defined in ORS 25.010, if the child named in the acknowledgment is in the care and custody of the department under ORS chapter 419B and the department or the administrator reasonably believes that the acknowledgment was obtained through fraud, duress or a material mistake of fact.*]

[(C)] **(B)** Within one year after the acknowledgment has been filed, **unless the provisions of subsection (4)(a) of this section apply.** [*Subsection (4) of this section applies to a challenge under this subparagraph.*] A challenge to the acknowledgment is not allowed more than one year after the acknowledgment has been filed, unless the provisions of subparagraph (A) [*or (B)*] of this paragraph apply.

(b) Legal responsibilities arising from the acknowledgment, including child support obligations, may not be suspended during the challenge, except for good cause.

[(c) *The party challenging an acknowledgment under this subsection has the burden of proof.*]

(4)(a) Within one year after a voluntary acknowledgment of paternity form is filed in this state **and if blood tests, as defined in ORS 109.251, have not been previously completed**, a party to the acknowledgment[, *the child named in the acknowledgment*] or the state, if child support enforcement services are being provided under ORS 25.080, may apply to the court or to the administrator, as defined in ORS 25.010, for an order requiring that the mother, the child and the male party submit to blood tests as provided in ORS 109.250 to 109.262.

(b) If the results of the tests performed under paragraph (a) of this subsection exclude the male party as a possible father of the child, [*or if the court determines under subsection (3) of this section that the male party is not the father of the child,*] a party [*to the challenge*] **or the state, if child support enforcement services are being provided under ORS 25.080**, may apply to the court for a judgment of nonpaternity. The party that applied for the judgment shall send a certified true copy of the judgment to the State Registrar of the Center for Health Statistics and to the Department

of Justice as the state disbursement unit. Upon receipt of a judgment of nonpaternity, the state registrar shall correct any records maintained by the state registrar that indicate that the male party is the parent of the child.

[(c) Child support payments made before entry of a judgment of nonpaternity may not be returned to the payer.]

(c) The state Child Support Program shall pay any costs for blood tests subject to recovery from the party who requested the tests.

SECTION 18. ORS 109.073, as amended by section 12 of this 2005 Act, is amended to read:

109.073. Except as otherwise provided in ORS 25.020, the Social Security number of a parent who is subject to a paternity determination pursuant to ORS 109.070 [(1)(c), (d), (e) or (f)] **(1)(d), (e), (f) or (g)** or 416.400 to 416.470 shall be included in the order, judgment or other declaration establishing paternity.

SECTION 19. ORS 109.092, as amended by section 13 of this 2005 Act, is amended to read:

109.092. When it is determined that a woman is pregnant with a child, the woman and any man to whom she is not married and with whom she engaged in sexual intercourse at approximately the time of conception have an obligation to recognize that the man may be the other person responsible for the conception. During the months of pregnancy, the man may join the woman in acknowledging paternity and assuming the rights and duties of expectant parenthood. If the man acknowledges paternity of the expected child and the woman denies that he is the father or refuses to join him in acknowledging paternity, the man may seek relief under ORS 109.125. If the woman wants the man to join her in acknowledging his paternity of the expected child and the man denies that he is the father or refuses to join her in acknowledging paternity, the woman may seek relief under ORS 109.125. If after the birth of the child the mother decides to surrender the child for adoption and paternity has not been acknowledged as provided in ORS 109.070 [(1)(d)] **(1)(e)** or the putative father has not asserted his rights in filiation proceedings, the mother has the right without the consent of the father to surrender the child as provided in ORS 418.270 or to consent to the child's adoption.

SECTION 20. ORS 109.124, as amended by section 14 of this 2005 Act, is amended to read:

109.124. As used in ORS 109.124 to 109.230, unless the context requires otherwise:

(1) "Child attending school" has the meaning given that term in ORS 107.108.

(2) "Child born out of wedlock" means a child born to an unmarried woman, or to a married woman by a man other than her husband, **if the conclusive presumption in ORS 109.070 (1)(a) does not apply.**

(3) "Respondent" may include, but is not limited to, one or more persons who may be the father of a child born out of wedlock, the husband of a woman who has or may have a child born out of wedlock, the mother of a child born out of wedlock, the female pregnant with a child who may be born out of wedlock, or the duly appointed and acting guardian of the child or conservator of the child's estate.

SECTION 21. ORS 109.175, as amended by section 15 of this 2005 Act, is amended to read:

109.175. (1) If paternity of a child born out of wedlock is established pursuant to a petition filed under ORS 109.125 or an order or judgment entered pursuant to ORS 109.124 to 109.230 or ORS 416.400 to 416.470, or if paternity is established by the filing of a voluntary acknowledgment of paternity as provided by ORS 109.070 [(1)(d)] **(1)(e)**, the parent with physical custody at the time of filing of the petition or the notice under ORS 416.415, or the parent with physical custody at the time of the filing of the voluntary acknowledgment of paternity, has sole legal custody until a court specifically orders otherwise. The first time the court determines who should have legal custody, neither parent shall have the burden of proving a change of circumstances. The court shall give primary consideration to the best interests and welfare of the child and shall consider all the standards set out in ORS 107.137.

(2) In any proceeding under this section, the court may cause an investigation, examination or evaluation to be made under ORS 107.425 or may appoint an individual or a panel or may designate a program to assist the court in creating parenting plans or resolving disputes regarding parenting time and to assist parents in creating and implementing parenting plans under ORS 107.425 (3).

SECTION 22. ORS 109.326, as amended by section 16 of this 2005 Act, is amended to read:

109.326. (1) If the mother of a child was married at the time of the conception or birth of the child, and it has been determined pursuant to ORS 109.070 or judicially determined that her husband at such time or times was not the father of the child, the husband's authorization or waiver may not be required in adoption, juvenile court or other proceedings concerning the custody of the child.

(2) If paternity of the child has not been determined, a determination of nonpaternity may be made by any court having adoption, divorce or juvenile court jurisdiction. The testimony or affidavit of the mother or the husband or another person with knowledge of the facts filed in the proceeding shall constitute competent evidence before the court making the determination.

(3) Before making the determination of nonpaternity, citation to show cause why such husband's parental rights should not be terminated shall be served on him in the manner provided by ORS 109.330 if:

(a) There has been a determination by any court of competent jurisdiction that the husband is the father of the child;

(b) The child resided with the husband at any time since the child's birth; or

(c) The husband repeatedly has contributed or tried to contribute to the support of the child.

(4) There shall be sufficient proof to enable the court to grant the relief sought without notice to the husband provided that the affidavit of the mother of the child, of the husband or of another person with knowledge of the facts filed in the proceeding states or the court finds from other competent evidence:

(a) That the mother of the child was not cohabiting with her husband at the time of conception of the child and that the husband is not the father of the child;

(b) That the husband has not been judicially determined to be the father;

(c) That the child has not resided with the husband; and

(d) That the husband has not contributed or tried to contribute to the support of the child.

(5) Notwithstanding the provision of ORS 109.070 [(1)(a)] (1)(b), notice to the husband pursuant to ORS 109.330 shall not be required and the husband's consent, authorization or waiver shall not be required in adoption proceedings concerning the child unless the husband has met the requirements for notice in subsection (3)(a), (b) or (c) of this section.

(6) A husband who was not cohabiting with the mother at the time of the child's conception has the primary responsibility to protect the husband's rights.

(7) Nothing in this section shall be used to set aside an act of a permanent nature, including but not limited to adoption or termination of parental rights, unless the father establishes within one year after the entry of the final judgment or order fraud on the part of the petitioner with respect to the matters specified in subsection (4)(a), (b), (c) or (d) of this section.

SECTION 23. The amendments to ORS 109.070, 109.073, 109.092, 109.124, 109.175 and 109.326 by sections 17 to 22 of this 2005 Act become operative on January 2, 2008.

Passed by Senate May 4, 2005

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Secretary of Senate

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President of Senate

Passed by House May 20, 2005

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Speaker of House

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State