

# Senate Bill 234

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies provisions relating to putative fathers in adoption, juvenile court and other court proceedings. Modifies provisions relating to establishment of paternity.

## A BILL FOR AN ACT

1  
2 Relating to paternity; amending ORS 109.070, 109.096, 109.098, 419A.004, 419B.839 and 419B.875.

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

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

5 419A.004. As used in this chapter and ORS chapters 419B and 419C, unless the context requires  
6 otherwise:

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

9 (2) "Child care center" means a residential facility for wards or youth offenders that is licensed  
10 under the provisions of ORS 418.240.

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

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

14 (5) "Counselor" means a juvenile department counselor.

15 (6) "Court" means the juvenile court.

16 (7) "Court appointed special advocate" or "CASA" means a person appointed by the court pur-  
17 suant to a CASA Volunteer Program to act as special advocate pursuant to ORS 419A.170.

18 (8) "Court facility" has the meaning given that term in ORS 166.360.

19 (9) "Department" means the Department of Human Services.

20 (10) "Detention" or "detention facility" means a facility established under ORS 419A.010 to  
21 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youths or youth offenders  
22 pursuant to a judicial commitment or order.

23 (11) "Director" means the director of a juvenile department established under ORS 419A.010 to  
24 419A.020 and 419A.050 to 419A.063.

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

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

27 (a) A member of an Indian tribe; or

28 (b) Eligible for membership in an Indian tribe and is the biological child of a member of an In-  
29 dian tribe.

30 (14) "Juvenile court" means the court having jurisdiction of juvenile matters in the several

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 counties of this state.

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

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

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

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

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

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

13 [(e) *A biological father who has, with the mother, established paternity through a voluntary ac-*  
14 *knowledgment of paternity under ORS 109.070] is a man who has adopted the child, ward, youth*  
15 **or youth offender or whose paternity has been established or declared under ORS 109.070 or**  
16 **416.400 to 416.470 or by a juvenile court.**

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

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

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

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

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

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

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

33 (24) "Serious physical injury" means:

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

35 (b) A physical injury that:

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

37 (B) Results in substantial and recurring pain; or

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **SECTION 2.** ORS 419B.839 is amended to read:

21 419B.839. (1) Summons in proceedings to establish jurisdiction under ORS 419B.100 must be  
22 served on:

23 (a) The *legal* parents of the child without regard to who has legal or physical custody of the  
24 child;

25 (b) The legal guardian of the child;

26 (c) A putative father of the child [*if he has provided or offered to provide for the physical, emo-*  
27 *tional, custodial or financial needs of the child in the previous six months or was prevented from doing*  
28 *so by the mother of the child;*] **who has demonstrated a direct and significant commitment to**  
29 **the child by assuming responsibilities normally associated with parenthood, including but not**  
30 **limited to:**

31 **(A) Residing with the child;**

32 **(B) Contributing to or attempting to contribute to the financial support of the child; or**

33 **(C) Establishing psychological ties with the child;**

34 **(d) A putative father of the child if notice of the initiation of filiation proceedings as re-**  
35 **quired by ORS 109.225 was on file with the Center for Health Statistics of the Department**  
36 **of Human Services prior to the initiation of the juvenile court proceedings;**

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

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

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

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

45 **(4) Summons under subsection (1) of this section is not required to be given to a putative**

1 **father who was a party to filiation proceedings under ORS 109.125 that were dismissed or**  
 2 **resulted in a finding that he was not the father of the child.**

3 **SECTION 3.** ORS 419B.875 is amended to read:

4 419B.875. (1) Parties to proceedings in the juvenile court under ORS 419B.100 and, except as  
 5 provided in paragraph (h) of this subsection, under ORS 419B.500 are:

6 (a) The child or ward;

7 (b) The [*legal*] parents or guardian of the child or ward;

8 (c) A putative father of the child or ward [*if he has provided or offered to provide for the physical,*  
 9 *emotional, custodial or financial needs of the child or ward in the previous six months or was pre-*  
 10 *vented from doing so by the mother of the child or ward;*] **who has demonstrated a direct and**  
 11 **significant commitment to the child by assuming responsibilities normally associated with**  
 12 **parenthood, including but not limited to:**

13 **(A) Residing with the child;**

14 **(B) Contributing to or attempting to contribute to the financial support of the child; or**

15 **(C) Establishing psychological ties with the child;**

16 (d) The state;

17 (e) The juvenile department;

18 (f) A court appointed special advocate, if appointed;

19 (g) The Department of Human Services or other child-caring agency if the agency has temporary  
 20 custody of the child or ward;

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

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

24 (j) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pursu-  
 25 ant to the Indian Child Welfare Act.

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

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

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

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

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

36 (d) The right of appeal; and

37 (e) The right to request a hearing.

38 **(4) A putative father who was a party to filiation proceedings under ORS 109.125 that**  
 39 **were dismissed or resulted in a finding that he was not the father of the child is not a party**  
 40 **to a proceeding under ORS 419B.100 or 419B.500.**

41 [(4)(a)] **(5)(a)** A person granted rights of limited participation under ORS 419B.116 is not a party  
 42 to a proceeding under ORS 419B.100 or 419B.500 but has only those rights specified in the order  
 43 granting rights of limited participation.

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

1        [(5)] (6) If a foster parent, preadoptive parent or relative is currently providing care for a child  
 2 or ward, the Department of Human Services shall give the foster parent, preadoptive parent or re-  
 3 lative notice of a hearing concerning the child or ward and the court shall give the person an op-  
 4 portunity to be heard. Except when allowed to intervene, the foster parent, preadoptive parent or  
 5 relative providing care for the child or ward is not considered a party to the juvenile court pro-  
 6 ceeding solely because of notice and an opportunity to be heard.

7        [(6)] (7) When a legal grandparent of a child or ward requests in writing and provides a mailing  
 8 address, the Department of Human Services shall give the legal grandparent notice of a hearing  
 9 concerning the child or ward and the court shall give the legal grandparent an opportunity to be  
 10 heard. Except when allowed to intervene, a legal grandparent is not considered a party to the ju-  
 11 venile court proceeding solely because of notice and an opportunity to be heard.

12        [(7)] (8) Interpreters for parties and persons granted rights of limited participation shall be ap-  
 13 pointed in the manner specified by ORS 45.275 and 45.285.

14        **SECTION 4.** ORS 109.070 is amended to read:

15        109.070. (1) The paternity of a person may be established as follows:

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

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

22        (c) By the marriage of the parents of a child after birth of the child.

23        (d) By filiation proceedings.

24        (e) By filing with the State Registrar of the Center for Health Statistics the voluntary ac-  
 25 knowledgment of paternity form as provided for by ORS 432.287. Except as otherwise provided in  
 26 [subsection (2)] **subsections (2) to (4)** of this section, this filing establishes paternity for all pur-  
 27 poses.

28        (f) By having established paternity through a voluntary acknowledgment of paternity process in  
 29 another state.

30        (g) By paternity being established or declared by other provision of law.

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

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

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

38        [(b)(A)] (3)(a) A signed voluntary acknowledgment of paternity filed in this state may be chal-  
 39 lenged **in circuit court**:

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

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

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

44        (iii) **The Department of Human Services or the administrator, as defined in ORS 25.010,**  
 45 **if the child named in the voluntary acknowledgment is in the care and custody of the de-**

1 **partment pursuant to ORS chapter 419B and the department or administrator has a rea-**  
 2 **sonable belief that the voluntary acknowledgment was the result of fraud, duress or material**  
 3 **mistake of fact.**

4 [(ii)] **(B)** Within one year after the voluntary acknowledgment has been filed, unless [*the pro-*  
 5 *visions of paragraph (c) of this subsection apply*] **subsection (4) of this section applies.** No chal-  
 6 lenge to the voluntary acknowledgment may be allowed more than one year after the voluntary  
 7 acknowledgment has been filed, unless [*the provisions of sub-subparagraph (i) of this subparagraph*  
 8 *apply*] **subparagraph (A) of this paragraph applies.**

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

11 **(c) The party bringing a challenge under this subsection has the burden of proof.**

12 [(c)] **(4)(a)** No later than one year after a voluntary acknowledgment of paternity form is filed  
 13 in this state [*and if genetic parentage tests have not been previously completed*], a party to the **vol-**  
 14 **untary acknowledgment, the child named in the voluntary acknowledgment** or the state, if child  
 15 support enforcement services are being provided under ORS 25.080, may apply to the court or to the  
 16 administrator, as defined in ORS 25.010, for an order requiring that the parties and the child submit  
 17 to genetic parentage tests. **The state Child Support Program shall pay the costs for genetic**  
 18 **parentage tests performed under this paragraph subject to recovery from the party who re-**  
 19 **quested the tests.**

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

31 [(e)] *The state Child Support Program shall pay any costs for genetic parentage tests subject to re-*  
 32 *covery from the party who requested the tests.]*

33 **(c) Support paid prior to a judgment of nonpaternity under paragraph (b) of this sub-**  
 34 **section shall not be returned to the payer.**

35 **SECTION 5.** ORS 109.096 is amended to read:

36 109.096. (1) When the paternity of a child has not been established under ORS 109.070, the pu-  
 37 tative father [*shall be*] **is** entitled to reasonable notice in adoption[, *juvenile court,*] or other court  
 38 proceedings concerning the custody of the child, **except for juvenile court proceedings,** if the  
 39 petitioner knows, or by the exercise of ordinary diligence should have known:

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

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

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

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

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

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

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

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

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

28 **SECTION 6.** ORS 109.098 is amended to read:

29 109.098. (1) If a putative father of a child by due appearance in a proceeding of which he is  
 30 entitled to notice under ORS 109.096 objects to the relief sought, the court:

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

34 (b) Shall, if filiation proceedings are not pending, inquire as to the paternity of the child, the  
 35 putative father's past endeavors to fulfill his obligation to support the child and to contribute to the  
 36 pregnancy-related medical expenses, the period that the child has lived with the putative father, the  
 37 putative father's fitness to care for and rear the child and whether the putative father is willing to  
 38 be declared the father of the child and to assume the responsibilities of a father.

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

40 (a) That the putative father is the father of the child and is fit and willing to assume the re-  
 41 sponsibilities of a father, it shall have the power:

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

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

1 to each other.

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

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

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

10