

## SENATE AMENDMENTS TO SENATE BILL 921

By COMMITTEE ON JUDICIARY

March 21

- 1 On page 1 of the printed bill, line 15, delete “(2)(b)” and insert “(3)”.
- 2 Delete lines 24 and 25 and insert “if the court determines, on the date the answer is required  
3 or on a future date, that:
- 4 “(A) Consent of the parent is not required; and  
5 “(B) The adoption is in the best interests of the child.”.
- 6 On page 2, line 3, after “number” insert “or contact telephone number”.
- 7 After line 17, insert:  
8 “[ ] I consent to the proposed adoption.”.
- 9 In line 18, before “I” insert “[ ]”.
- 10 In line 33, after “ADDRESS” insert “OR CONTACT ADDRESS”.
- 11 In line 35, after “TELEPHONE” insert “OR CONTACT TELEPHONE”.
- 12 On page 3, line 17, after “number” insert “or contact telephone number”.
- 13 Delete lines 19 through 23 and insert:  
14 “(4) If the parent requests the assistance of appointed counsel and the court determines that the  
15 parent is financially eligible, the court shall appoint an attorney to represent the parent at state  
16 expense. Appointment of counsel under this subsection is subject to ORS 135.055, 151.216 and  
17 151.219.”.
- 18 On page 4, line 43, before the comma insert “or when the parent has failed to file a written  
19 answer as required in ORS 109.330 (3)”.
- 20 On page 5, delete lines 14 through 45 and delete page 6 and insert:  
21 “**SECTION 7.** ORS 109.326 is amended to read:  
22 “109.326. (1) If the mother of a child was married at the time of the conception or birth of the  
23 child, and it has been determined pursuant to ORS 109.070 or judicially determined that her husband  
24 at such time or times was not the father of the child, the husband’s authorization or waiver [*may*  
25 *not be*] **is not** required in adoption, juvenile court or other proceedings concerning the custody of  
26 the child.
- 27 “(2) If paternity of the child has not been determined, a determination of nonpaternity may be  
28 made by any court having adoption, divorce or juvenile court jurisdiction. The testimony or affidavit  
29 of the mother or the husband or another person with knowledge of the facts filed in the proceeding  
30 [*shall constitute*] **constitutes** competent evidence before the court making the determination.
- 31 “(3) Before making the determination of nonpaternity, [*citation*] **the petitioner shall serve on**  
32 **the husband a summons and a true copy of a motion and order** to show cause why [*such*] **the**  
33 **husband’s parental rights should not be terminated** [*shall be served on him in the manner provided*  
34 *by ORS 109.330*] if:  
35 “(a) There has been a determination by any court of competent jurisdiction that the husband is

1 the father of the child;

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

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

4 “(4) When the petitioner is required to serve the husband with a summons and a motion  
5 and order to show cause under subsection (3) of this section, service must be made in the  
6 manner provided in ORCP 7 D and E, except as provided in subsection (6) of this section.  
7 Service must be proved as required in ORCP 7 F. The summons and the motion and order  
8 to show cause need not contain the names of the adoptive parents.

9 “(5) A summons under subsection (3) of this section must contain:

10 “(a) A statement that if the husband fails to file a written answer to the motion and  
11 order to show cause within the time provided, the court, without further notice and in the  
12 husband’s absence, may take any action that is authorized by law, including but not limited  
13 to terminating the husband’s parental rights and entering a judgment of nonpaternity on the  
14 date the answer is required or on a future date.

15 “(b) A statement that:

16 “(A) The husband must file with the court a written answer to the motion and order to  
17 show cause within 30 days after the date on which the husband is served with the summons  
18 or, if service is made by publication under ORCP 7 D(6), within 30 days from the date of last  
19 publication.

20 “(B) In the answer, the husband must inform the court and the petitioner of the hus-  
21 band’s telephone number or contact telephone number and the husband’s current residence,  
22 mailing or contact address in the same state as the husband’s home. The answer may be in  
23 substantially the following form:

24 “ \_\_\_\_\_

25  
26 **IN THE CIRCUIT COURT OF**  
27 **THE STATE OF OREGON**  
28 **FOR THE COUNTY OF \_\_\_\_\_**

29 \_\_\_\_\_, )  
30 **Petitioner,** ) **NO.**\_\_\_\_\_

31 )  
32 ) **ANSWER**

33 **and** )  
34 )

35 \_\_\_\_\_, )  
36 **Respondent.** )

37 [ ] I consent to the termination of any parental rights that I may have.

38 [ ] I do not consent to the termination of my parental rights. The court should not order  
39 the termination of my parental rights for the following reasons:

40 \_\_\_\_\_

41 \_\_\_\_\_

42 \_\_\_\_\_

43 \_\_\_\_\_

44 \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_

Signature

DATE: \_\_\_\_\_

ADDRESS OR CONTACT ADDRESS: \_\_\_\_\_

TELEPHONE OR CONTACT TELEPHONE: \_\_\_\_\_

“ \_\_\_\_\_

- “(c) A notice that, if the husband answers the motion and order to show cause, the court:
  - “(A) Will schedule a hearing to address the motion and order to show cause and, if appropriate, the adoption petition;
  - “(B) Will order the husband to appear personally; and
  - “(C) May schedule other hearings related to the petition and may order the husband to appear personally.
- “(d) A notice that the husband 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 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 circuit court immediately. Phone \_\_\_\_\_ for further information.

“ \_\_\_\_\_

- “(e) A statement that the husband has the responsibility to maintain contact with the husband’s attorney and to keep the attorney advised of the husband’s whereabouts.
- “(6) A husband who is served with a summons and a motion and order to show cause under this section shall file with the court a written answer to the motion and order to show cause within 30 days after the date on which the husband is served with the summons or, if service is made by publication under ORCP 7 D(6), within 30 days from the date of last publication. In the answer, the husband shall inform the court and the petitioner of the husband’s telephone number or contact telephone number and current address, as defined in ORS 25.011. The answer may be in substantially the form described in subsection (5) of this section.
- “(7) If the husband requests the assistance of appointed counsel and the court determines that the husband is financially eligible, the court shall appoint an attorney to represent the husband at state expense. Appointment of counsel under this subsection is subject to ORS 135.055, 151.216 and 151.219.
- “(8) If the husband files an answer as required under subsection (6) of this section, the court, by oral order made on the record or by written order provided to the husband in

1 person or mailed to the husband at the address provided by the husband, shall:

2 “(a) Inform the husband of the time, place and purpose of the next hearing or hearings  
3 related to the motion and order to show cause or the adoption petition;

4 “(b) Require the husband to appear personally at the next hearing or hearings related to  
5 the motion and order to show cause or the adoption petition; and

6 “(c) Inform the husband that, if the husband fails to appear as ordered for any hearing  
7 related to the motion and order to show cause or the adoption petition, the court, without  
8 further notice and in the husband’s absence, may take any action that is authorized by law,  
9 including but not limited to terminating the husband’s parental rights and entering a judg-  
10 ment of nonpaternity on the date specified in the order or on a future date, without the  
11 consent of the husband.

12 “(9) If a husband fails to file a written answer as required in subsection (6) of this section  
13 or fails to appear for a hearing related to the motion and order to show cause or the petition  
14 as directed by court order under this section, the court, without further notice to the hus-  
15 band and in the husband’s absence, may take any action that is authorized by law, including  
16 but not limited to terminating the husband’s parental rights and entering a judgment of  
17 nonpaternity.

18 “[4] (10) There shall be sufficient proof to enable the court to grant the relief sought without  
19 notice to the husband provided that the affidavit of the mother of the child, of the husband or of  
20 another person with knowledge of the facts filed in the proceeding states or the court finds from  
21 other competent evidence:

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

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

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

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

27 “[5] (11) Notwithstanding the provision of ORS 109.070 (1)(b), [*notice to the husband pursuant*  
28 *to ORS 109.330 shall not be*] **service of a summons and a motion and order to show cause on**  
29 **the husband under subsection (3) of this section is not** required and the husband’s consent, au-  
30 thorization or waiver [*shall not be*] **is not** required in adoption proceedings concerning the child  
31 unless the husband has met the requirements [*for notice in*] **of** subsection (3)(a), (b) or (c) of this  
32 section.

33 “[6] (12) A husband who was not cohabiting with the mother at the time of the child’s con-  
34 ception has the primary responsibility to protect the husband’s rights.

35 “[7] (13) Nothing in this section shall be used to set aside an act of a permanent nature, in-  
36 cluding but not limited to adoption or termination of parental rights, unless the father establishes,  
37 within one year after the entry of the [*final judgment or order*] **order or general judgment, as**  
38 **defined in ORS 18.005**, fraud on the part of the petitioner with respect to the matters specified in  
39 subsection [(4)(a)] (10)(a), (b), (c) or (d) of this section.

40 “**SECTION 8. The amendments to ORS 109.308, 109.314, 109.322, 109.324 and 109.330 by**  
41 **sections 1, 2, 4, 5 and 6 of this 2005 Act apply only to petitions for adoption filed on or after**  
42 **the effective date of this 2005 Act. The amendments to ORS 109.326 by section 7 of this 2005**  
43 **Act apply only to proceedings to determine the paternity of a child initiated under ORS**  
44 **109.326 on or after the effective date of this 2005 Act.”.**