

Enrolled
Senate Bill 921

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission)

CHAPTER

AN ACT

Relating to nonconsenting parent in adoption proceeding; creating new provisions; and amending ORS 109.308, 109.314, 109.322, 109.324, 109.326 and 109.330.

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

SECTION 1. ORS 109.330 is amended to read:

109.330. (1) In the cases provided for in ORS 109.314, 109.322 and 109.324, [*where*] **when** a parent does not consent to the adoption of the child, [*the court shall order citation to be served on the parent personally, if found in the state, and if not found in the state, then a copy of the citation to be published or served in the manner provided for the service of summons in a civil action in a circuit court by publication or personal service outside the state, and a copy of the citation to be deposited forthwith in the post office, directed to such parent at the place of residence of the parent, unless it appears that such residence is neither known to nor can with reasonable diligence be ascertained by the petitioner. The citation so served*] **the petitioner shall serve the parent with a summons and a true copy of a motion and order to show cause why the proposed adoption should not be ordered without the parent's consent. Except as provided in subsection (3) of this section, service must be made in the manner provided in ORCP 7 D and E. Service must be proved as required in ORCP 7 F. The summons and the motion and order to show cause need not contain the names of the adoptive parents.**

(2) A summons under this section must contain:

(a) A statement that an adoption petition has been filed and that, if the parent fails to file a written answer to the motion and order to show cause within the time provided, the court, without further notice and in the parent's absence, may take any action that is authorized by law, including but not limited to entering a judgment of adoption of the child if the court determines, on the date the answer is required or on a future date, that:

- (A) Consent of the parent is not required; and**
- (B) The adoption is in the best interests of the child.**

(b) A statement that:

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

(B) In the answer, the parent must inform the court and the petitioner of the parent's telephone number or contact telephone number and the parent's current residence, mailing or contact address in the same state as the parent's home. The answer may be in substantially the following form:

**IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____**

_____,)
Petitioner,) NO. _____
))
) ANSWER
and))
))
_____,)
Respondent.)

I consent to the proposed adoption.

I do not consent to the proposed adoption. The court should not order the proposed adoption without my consent for the following reasons:

_____.

Signature

DATE: _____
ADDRESS OR CONTACT ADDRESS: _____

TELEPHONE OR CONTACT TELEPHONE: _____

- (c) A notice that, if the parent 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 parent to appear personally; and
 - (C) May schedule other hearings related to the petition and may order the parent to appear personally.
- (d) 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 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 parent has the responsibility to maintain contact with the parent's attorney and to keep the attorney advised of the parent's whereabouts.

(3) A parent 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 parent is served with the summons or, if service is made by publication or posting under ORCP 7 D(6), within 30 days from the date of last publication or posting. In the answer, the parent shall inform the court and the petitioner of the parent'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 (2) of this section.

(4) If the parent requests the assistance of appointed counsel and the court determines that the parent is financially eligible, the court shall appoint an attorney to represent the parent at state expense. Appointment of counsel under this subsection is subject to ORS 135.055, 151.216 and 151.219. The court may not substitute one appointed counsel for another except pursuant to the policies, procedures, standards and guidelines adopted under ORS 151.216.

(5) If the parent files an answer as required under subsection (3) of this section, the court, by oral order made on the record or by written order provided to the parent in person or mailed to the parent at the address provided by the parent, shall:

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

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

(c) Inform the parent that, if the parent fails to appear as ordered for any hearing related to the motion and order to show cause or the adoption petition, the court, without further notice and in the parent's absence, may take any action that is authorized by law, including but not limited to entering a judgment of adoption of the child on the date specified in the order or on a future date, without the consent of the parent.

(6) If a parent fails to file a written answer as required in subsection (3) of this section or fails to appear for a hearing related to the motion and order to show cause or the petition as directed by court order under this section, the court, without further notice to the parent and in the parent's absence, may take any action that is authorized by law, including but not limited to entering a judgment of adoption of the child without the consent of the parent if the court finds, on the date the answer is required or on a future date, the action to be in the child's best interests.

[2] (7) If the child has no living parent and no guardian or next of kin in this state qualified to appear in behalf of the child, the court may order such notice, if any, to be given as [it] the court deems necessary or proper.

SECTION 2. ORS 109.308 is amended to read:

109.308. In [any] an adoption proceeding that is contested or in which [citation] a summons is required to be served, the court may preserve the confidentiality of the names and addresses of the petitioners for the adoption if [it] the court finds that to do so is in the best interests of the child.

SECTION 3. ORS 109.308 is added to and made a part of ORS 109.305 to 109.410.

SECTION 4. ORS 109.314 is amended to read:

109.314. (1) If the legal custody of the child has been awarded in [divorce] marital dissolution proceedings, the written consent of the person to whom custody of the child has been awarded may be held sufficient by the court[; but]. However, unless the noncustodial parent [not having custody] consents to the adoption, the petitioner, in accordance with ORS 109.330, shall serve on the noncustodial parent a [citation] summons and a motion and order to show cause why the proposed adoption [shall not be made shall be served in accordance with ORS 109.330 upon the parent not having the custody] should not be ordered without the noncustodial parent's consent, and the objections of [such] the noncustodial parent shall be heard if appearance is made.

(2) This section does not apply *[where]* **when** consent is given in loco parentis under ORS 109.316 or 109.318.

SECTION 5. ORS 109.322 is amended to read:

109.322. (1) If *[either]* a parent has been adjudged mentally ill or mentally deficient and remains so at the time of the adoption proceedings, or **if a parent** is imprisoned in a state or federal prison under a sentence for a term of not less than three years and has actually served three years, *[there shall be served upon such]* **the petitioner, in accordance with ORS 109.330, shall serve on the parent, if the parent has not consented in writing to the adoption, a** *[citation in accordance with ORS 109.330]* **summons and a motion and order** to show cause why the adoption of the child should not be ordered **without the parent's consent**.

(2) In the case of a *[person]* **parent** adjudged mentally ill or mentally deficient, the *[citation shall also be served]* **petitioner shall also serve the summons and the motion and order to show cause** upon the guardian of the *[person]* **parent**. *[or,]* If the parent has no guardian *[of the person]*, the court shall appoint a guardian ad litem to appear for the *[person]* **parent** in the adoption proceedings.

(3) Upon hearing *[being had]*, if the court finds that the *[welfare of the child will be best promoted through the]* adoption **is in the best interests** of the child, the consent of the mentally ill, mentally deficient or imprisoned parent is not required, and the court *[shall have authority to]* **may** proceed regardless of the objection of *[such]* **the parent**.

(4) This section does not apply *[where]* **when** consent is given in loco parentis under ORS 109.316 or 109.318.

SECTION 6. ORS 109.324 is amended to read:

109.324. (1) If *[either]* a parent is believed to have willfully deserted the child or neglected without just and sufficient cause to provide proper care and maintenance for the child for one year next preceding the filing of the petition for adoption, and *[such]* **if the parent** does not consent in writing to the adoption, *[there shall be served upon such parent a citation]* **the petitioner, in accordance with ORS 109.330, shall serve on the parent a summons and a motion and order** to show cause why the adoption of the child should not be ordered **without the parent's consent**.

(2) Upon hearing *[being had]* **or when the parent has failed to file a written answer as required in ORS 109.330 (3)**, if the court finds that *[such]* **the parent** has willfully deserted the child or neglected without just and sufficient cause to provide proper care and maintenance for the child for one year next preceding the filing of the petition for adoption, the consent of *[such]* **the parent** at the discretion of the court is not required and, if the court determines that *[such]* **the parent's** consent is not required, the court may proceed regardless of the objection of *[such]* **the parent**.

[2)] (3) In determining whether the parent has willfully deserted the child or neglected without just and sufficient cause to provide proper care and maintenance for the child, the court may:

(a) Disregard incidental visitations, communications and contributions; **and** *[.]*

[3)] (b) *[In determining whether the parent has willfully deserted the child or neglected without just and sufficient cause to provide proper care and maintenance for the child, the court may]* Consider, among other factors the court finds relevant, whether the custodial parent has attempted, without good cause shown, to prevent or to impede contact between the child and the parent whose parental rights would be terminated in an action under this section.

(4) This section does not apply *[where]* **when** consent is given in loco parentis under ORS 109.316 or 109.318.

SECTION 7. 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]* **is not** 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] **constitutes** competent evidence before the court making the determination.

(3) Before making the determination of nonpaternity, [citation] **the petitioner shall serve on the husband a summons and a true copy of a motion and order** to show cause why [such] the 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) **When the petitioner is required to serve the husband with a summons and a motion and order to show cause under subsection (3) of this section, service must be made in the manner provided in ORCP 7 D and E, except as provided in subsection (6) of this section. Service must be proved as required in ORCP 7 F. The summons and the motion and order to show cause need not contain the names of the adoptive parents.**

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

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

(b) **A statement that:**

(A) **The husband must 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 or posting under ORCP 7 D(6), within 30 days from the date of last publication or posting.**

(B) **In the answer, the husband must inform the court and the petitioner of the husband's telephone number or contact telephone number and the husband's current residence, mailing or contact address in the same state as the husband's home. The answer may be in substantially the following form:**

**IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____**

_____,)
Petitioner,) NO. _____
))
) ANSWER
and)
)
_____,)
Respondent.)

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

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

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 or posting under ORCP 7 D(6), within 30 days from the date of last publication or posting. 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. The court may not substitute one appointed counsel for another except pursuant to the policies, procedures, standards and guidelines adopted under ORS 151.216.
- (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 person or mailed to the husband at the address provided by the husband, shall:
 - (a) Inform the husband of the time, place and purpose of the next hearing or hearings related to the motion and order to show cause or the adoption petition;
 - (b) Require the husband to appear personally at the next hearing or hearings related to the motion and order to show cause or the adoption petition; and

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

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

[(4)] (10) 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)] (11) Notwithstanding the provision of ORS 109.070 (1)(b), [notice to the husband pursuant to ORS 109.330 shall not be] **service of a summons and a motion and order to show cause on the husband under subsection (3) of this section is not** required and the husband's consent, authorization or waiver [shall not be] **is not** required in adoption proceedings concerning the child unless the husband has met the requirements [for notice in] **of** subsection (3)(a), (b) or (c) of this section.

[(6)] (12) 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)] (13) 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] **order or general judgment, as defined in ORS 18.005**, fraud on the part of the petitioner with respect to the matters specified in subsection [(4)(a)] (10)(a), (b), (c) or (d) of this section.

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

Passed by Senate March 24, 2005

Repassed by Senate June 16, 2005

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Secretary of Senate

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President of Senate

Passed by House June 13, 2005

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Speaker of House

Received by Governor:

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

Approved:

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

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Governor

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

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Secretary of State