

Senate Bill 921

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

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**.

Requires petitioner for adoption to serve summons and motion and order to show cause on certain parents who do not consent to adoption. Removes requirement that court serve citation to show cause on those parents. Specifies contents of summons and methods of service. Requires court to appoint counsel for nonconsenting parent in certain circumstances. Permits court to take any action authorized by law, without further notice to nonconsenting parent and in parent's absence, if parent fails to answer or appear at hearing.

A BILL FOR AN ACT

1
2 Relating to nonconsenting parent in adoption proceeding; creating new provisions; and amending
3 ORS 109.308, 109.314, 109.322, 109.324, 109.326 and 109.330.

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

5 **SECTION 1.** ORS 109.330 is amended to read:

6 109.330. (1) In the cases provided for in ORS 109.314, 109.322 and 109.324, [*where*] **when** a parent
7 does not consent to the adoption of the child, [*the court shall order citation to be served on the parent*
8 *personally, if found in the state, and if not found in the state, then a copy of the citation to be published*
9 *or served in the manner provided for the service of summons in a civil action in a circuit court by*
10 *publication or personal service outside the state, and a copy of the citation to be deposited forthwith*
11 *in the post office, directed to such parent at the place of residence of the parent, unless it appears that*
12 *such residence is neither known to nor can with reasonable diligence be ascertained by the petitioner.*
13 *The citation so served*] **the petitioner shall serve the parent with a summons and a true copy**
14 **of a motion and order to show cause why the proposed adoption should not be ordered**
15 **without the parent's consent. Except as provided in subsection (2)(b) of this section, service**
16 **must be made in the manner provided in ORCP 7 D and E. Service must be proved as re-**
17 **quired in ORCP 7 F. The summons and the motion and order to show cause need not contain**
18 the names of the adoptive parents.

19 **(2) A summons under this section must contain:**

20 **(a) A statement that an adoption petition has been filed and that, if the parent fails to**
21 **file a written answer to the motion and order to show cause within the time provided, the**
22 **court, without further notice and in the parent's absence, may take any action that is au-**
23 **thorized by law, including but not limited to entering a judgment of adoption of the child**
24 **without the consent of the parent if the court finds, on the date the answer is required or**
25 **on a future date, the action to be in the child's best interests.**

26 **(b) A statement that:**

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

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 **publication.**

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

5 _____

6
7 **IN THE CIRCUIT COURT OF**
8 **THE STATE OF OREGON**
9 **FOR THE COUNTY OF _____**

10 _____,)
11 **Petitioner,**) **NO.**_____

12)
13) **ANSWER**

14 **and**)

15)

16 _____,)

17 **Respondent.**)

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

20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____
28 _____.

30 _____
31 **Signature**

32 **DATE:**_____

33 **ADDRESS:**_____

34 _____
35 **TELEPHONE:**_____

36 _____
37
38 (c) A notice that, if the parent answers the motion and order to show cause, the court:

39 (A) Will schedule a hearing to address the motion and order to show cause and, if ap-
40 propriate, the adoption petition;

41 (B) Will order the parent to appear personally; and

42 (C) May schedule other hearings related to the petition and may order the parent to ap-
43 pear personally.

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

1
2
3 **You have a right to be represented by an attorney. If you wish to be represented by an**
4 **attorney, please retain one as soon as possible to represent you in this proceeding. If you**
5 **meet the state's financial guidelines, you are entitled to have an attorney appointed for you**
6 **at state expense. To request appointment of an attorney to represent you at state expense,**
7 **you must contact the circuit court immediately. Phone _____ for further information.**
8
9

10 **(e) A statement that the parent has the responsibility to maintain contact with the par-**
11 **ent's attorney and to keep the attorney advised of the parent's whereabouts.**

12 **(3) A parent who is served with a summons and a motion and order to show cause under**
13 **this section shall file with the court a written answer to the motion and order to show cause**
14 **within 30 days after the date on which the parent is served with the summons or, if service**
15 **is made by publication under ORCP 7 D(6), within 30 days from the date of last publication.**
16 **In the answer, the parent shall inform the court and the petitioner of the parent's telephone**
17 **number and current address, as defined in ORS 25.011. The answer may be in substantially**
18 **the form described in subsection (2) of this section.**

19 **(4) The court shall appoint counsel for the parent when due process so requires and the**
20 **court determines that the parent is eligible to receive appointed counsel under the standard**
21 **in ORS 135.050 or the policies, procedures, standards and guidelines adopted under ORS**
22 **151.216. The court may not substitute one appointed counsel for another except pursuant to**
23 **the policies, procedures, standards and guidelines adopted under ORS 151.216.**

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

27 **(a) Inform the parent of the time, place and purpose of the next hearing or hearings re-**
28 **lated to the motion and order to show cause or the adoption petition;**

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

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

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

43 **[(2)] (7) If the child has no living parent and no guardian or next of kin in this state qualified**
44 **to appear in behalf of the child, the court may order such notice, if any, to be given as [it] the court**
45 **deems necessary or proper.**

1 **SECTION 2.** ORS 109.308 is amended to read:

2 109.308. In *[any]* **an** adoption proceeding that is contested or in which *[citation]* **a summons** is
3 required to be served, the court may preserve the confidentiality of the names and addresses of the
4 petitioners for the adoption if *[it]* **the court** finds that to do so is in the best interests of the child.

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

6 **SECTION 4.** ORS 109.314 is amended to read:

7 109.314. (1) If the legal custody of the child has been awarded in *[divorce]* **marital dissolution**
8 proceedings, the written consent of the person to whom custody of the child has been awarded may
9 be held sufficient by the court; *but*. **However**, unless the **noncustodial** parent *[not having*
10 *custody]* consents to the adoption, **the petitioner, in accordance with ORS 109.330, shall serve**
11 **on the noncustodial parent** a *[citation]* **summons and a motion and order** to show cause why the
12 proposed adoption *[shall not be made shall be served in accordance with ORS 109.330 upon the parent*
13 *not having the custody]* **should not be ordered without the noncustodial parent's consent**, and
14 the objections of *[such]* **the noncustodial** parent shall be heard if appearance is made.

15 (2) This section does not apply *[where]* **when** consent is given in loco parentis under ORS
16 109.316 or 109.318.

17 **SECTION 5.** ORS 109.322 is amended to read:

18 109.322. (1) If *[either]* **a** parent has been adjudged mentally ill or mentally deficient and remains
19 so at the time of the adoption proceedings, or **if a parent** is imprisoned in a state or federal prison
20 under a sentence for a term of not less than three years and has actually served three years, *[there*
21 *shall be served upon such]* **the petitioner, in accordance with ORS 109.330, shall serve on the**
22 parent, if the parent has not consented in writing to the adoption, a *[citation in accordance with ORS*
23 *109.330]* **summons and a motion and order** to show cause why the adoption of the child should
24 not be ordered **without the parent's consent**.

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

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

34 (4) This section does not apply *[where]* **when** consent is given in loco parentis under ORS
35 109.316 or 109.318.

36 **SECTION 6.** ORS 109.324 is amended to read:

37 109.324. (1) If *[either]* **a** parent is believed to have willfully deserted the child or neglected
38 without just and sufficient cause to provide proper care and maintenance for the child for one year
39 next preceding the filing of the petition for adoption, and *[such]* **if the** parent does not consent in
40 writing to the adoption, *[there shall be served upon such parent a citation]* **the petitioner**, in ac-
41 cordance with ORS 109.330, **shall serve on the parent a summons and a motion and order** to
42 show cause why the adoption of the child should not be ordered **without the parent's consent**.

43 (2) Upon hearing *[being had]*, if the court finds that *[such]* **the** parent has willfully deserted the
44 child or neglected without just and sufficient cause to provide proper care and maintenance for the
45 child for one year next preceding the filing of the petition for adoption, the consent of *[such]* **the**

1 parent at the discretion of the court is not required and, if the court determines that *[such]* **the**
 2 **parent's** consent is not required, the court may proceed regardless of the objection of *[such]* **the**
 3 parent.

4 [(2)] (3) In determining whether the parent has willfully deserted the child or neglected without
 5 just and sufficient cause to provide proper care and maintenance for the child, the court may:

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

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

12 (4) This section does not apply *[where]* **when** consent is given in loco parentis under ORS
 13 109.316 or 109.318.

14 **SECTION 7.** ORS 109.326 is amended to read:

15 109.326. (1) If the mother of a child was married at the time of the conception or birth of the
 16 child, and it has been determined pursuant to ORS 109.070 or judicially determined that her husband
 17 at such time or times was not the father of the child, the husband's authorization or waiver may
 18 not be required in adoption, juvenile court or other proceedings concerning the custody of the child.

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

23 (3) Before making the determination of nonpaternity, *[citation]* **the petitioner, in accordance**
 24 **with ORS 109.330, shall serve on the husband a summons and a motion and order** to show
 25 cause why *[such]* **the** husband's parental rights should not be terminated *[shall be served on him in*
 26 *the manner provided by ORS 109.330]* if:

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

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

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

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

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

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

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

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

40 (5) Notwithstanding the provision of ORS 109.070 (1)(b), notice to the husband pursuant to ORS
 41 109.330 *[shall not be]* **is not** required and the husband's consent, authorization or waiver *[shall not*
 42 *be]* **is not** required in adoption proceedings concerning the child unless the husband has met the
 43 requirements for notice in subsection (3)(a), (b) or (c) of this section.

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

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

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

8
