

Chapter 109

2007 EDITION

Parent and Child Rights and Relationships

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PARENT AND CHILD RIGHTS AND RELATIONSHIPS

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Note: Definitions in 25.010 and 25.011 apply to ORS chapter 109.

PARENT AND CHILD RELATIONSHIP

109.001 Breast-feeding in public place.

A woman may breast-feed her child in a public place. [1999 c.306 §1]

Note: 109.001 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.003 Attorney fees; intervenor. In any proceeding brought under this chapter, an authorization of attorney fees to a party also authorizes an award of attorney fees to or against any person who has appeared or intervened in the proceeding. [1997 c.90 §4; 2005 c.22 §84]

109.010 Duty of support. Parents are bound to maintain their children who are poor and unable to work to maintain themselves; and children are bound to maintain their parents in like circumstances.

109.012 Liability of parents for expenses and education of children. (1)(a) The expenses of a minor child and the education of the minor child are chargeable upon the property of either or both parents who have not married each other. The parents may be sued jointly or separately for the expenses and education of the minor child.

(b) This subsection applies to a man who is asserted to be a parent of the minor child only when:

(A) A voluntary acknowledgment of paternity form has been filed in this or another state and the period for rescinding or challenging the voluntary acknowledgment on grounds other than fraud, duress or material mistake of fact has expired; or

(B) Paternity has been established pursuant to an order or judgment entered under ORS 109.124 to 109.230 or 416.430.

(c) As used in this subsection, “expenses of a minor child” includes only expenses incurred for the benefit of a minor child.

(2) Notwithstanding subsection (1) of this section, a parent is not responsible for debts contracted by the other parent after the separation of one parent from the other parent, except for debts incurred for maintenance, support and education of the minor child of the parents.

(3) For the purposes of subsection (2) of this section, parents are considered separated if they are living in separate residences without intention of reconciliation at the time the debt is incurred. The court may consider the following factors in determining whether the parents are separated, in addition to other relevant factors:

(a) Whether the parents subsequently reconciled.

(b) The number of separations and reconciliations of the parents.

(c) The length of time the parents lived apart.

(d) Whether the parents intend to reconcile.

(4) An action under this section must be commenced within the period otherwise provided by law. [2005 c.732 §2]

109.015 Proceedings for child support if child receives public assistance. If public assistance, as defined in ORS 416.400, is provided for any dependent child, the administrator, as defined in ORS 25.010, may initiate proceedings under ORS chapter 18, 107, 108, 109, 110 or 125 or ORS 25.010 to 25.243, 25.378, 25.402, 416.400 to 416.465, 419B.400 or 419C.590 to obtain support for the child from one or both parents or from any other person legally responsible for the support of the child, including a guardian or conservator. In any proceeding under any statute cited in this section, the obligee is a party. [1983 c.767 §2; 1985 c.671 §44c; 1991 c.67 §22; 1993 c.33 §371; 1993 c.596 §19; 1993 c.798 §45; 1995 c.608 §36; 1997 c.249 §37; 2003 c.73 §54; 2003 c.572 §14; 2003 c.576 §577b; 2007 c.643 §2]

109.020 When child’s maintenance and education may be defrayed out of income of own property. If any minor, whose parent is living, has property the income of which is sufficient for the maintenance and education of the minor in a manner more expensive than the parent can reasonably afford, regard being had to the situation of the parent’s family and to all the circumstances of the case, the expenses of the maintenance and education of the minor may be wholly or partially defrayed out of the income of the property of the minor, as is judged reasonable by the court having probate jurisdiction. The charges therefor may be allowed accordingly in the settlement of the accounts of the guardian or the conservator of the minor of the estate of the minor. [Amended by 1973 c.823 §104; 2007 c.22 §6]

109.030 Equality in rights and responsibilities of parents. The rights and responsibilities of the parents, in the absence of misconduct, are equal, and the mother is as fully entitled to the custody and control of the children and their earnings as the father. In case of the father’s death, the mother shall come into as full and complete control of the children and their estate as the father does in case of the mother’s death.

109.035 Security required before foreign travel with child. (1) As used in this section:

(a) "Custody order" includes any order or judgment establishing or modifying custody of, or parenting time or visitation with, a minor child as described in ORS 107.095, 107.105 (1), 107.135 or 109.103.

(b) "Foreign country" means any country that:

(A) Is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction;

(B) Does not provide for the extradition to the United States of a parental abductor and minor child;

(C) Has local laws or practices that would restrict the other parent of the minor child from freely traveling to or exiting from the country because of the gender, race or religion of the other parent;

(D) Has local laws or practices that would restrict the ability of the minor child from legally leaving the country after the child reaches the age of majority because of the gender, race or religion of the child; or

(E) Poses a significant risk that the physical health or safety of the minor child would be endangered in the country because of war, human rights violations or specific circumstances related to the needs of the child.

(2) A court that finds by clear and convincing evidence a risk of international abduction of a minor child may issue a court order requiring a parent who is subject to a custody order and who plans to travel with a minor child to a foreign country to provide security, bond or other guarantee as described in subsection (4) of this section.

(3) In determining whether a risk of international abduction of a minor child exists, a court shall consider the following factors involving a parent who is subject to a custody order:

(a) The parent has taken or retained, attempted to take or retain or threatened to take or retain a minor child in violation of state law or a valid custody order and the parent is unable to present clear and convincing evidence that the parent believed in good faith that the conduct was necessary to avoid imminent harm to the parent or the child;

(b) The parent has recently engaged in a pattern of activities that indicates the parent is planning to abduct the minor child from this country;

(c) The parent has strong familial, emotional or cultural connections to this country or another country, regardless of citizenship or residency status; and

(d) Any other relevant factors.

(4) A security, bond or other guarantee required by a court under this section may include, but is not limited to, any of the following:

(a) A bond or security deposit in an amount that is sufficient to offset the cost of recovering the minor child if the child is abducted;

(b) Supervised parenting time; or

(c) Passport and travel controls, including but not limited to controls that:

(A) Prohibit the parent from removing the minor child from this state or this country;

(B) Require the parent to surrender a passport or an international travel visa that is issued in the name of the minor child or jointly in the names of the parent and the child;

(C) Prohibit the parent from applying for a new or replacement passport or international travel visa on behalf of the minor child; and

(D) Require the parent to provide to a relevant embassy or consulate and to the Office of Children's Issues in the United States Department of State the following documents:

(i) Written notice of passport and travel controls required under this paragraph; and

(ii) A certified copy of a court order issued under this section.

(5) After considering the factors under subsection (3) of this section and requiring a security, bond or other guarantee under this section, the court shall issue a written determination supported by findings of fact and conclusions of law.

(6) Nothing in this section is intended to limit the inherent power of a court in matters relating to children. [2003 c.532 §1; 2005 c.22 §85]

Note: The amendments to 109.035 by section 17, chapter 100, Oregon Laws 2007, are the subject of a referendum petition that may be filed with the Secretary of State not later than September 26, 2007. If the referendum petition is filed with the required number of signatures of electors, chapter 100, Oregon Laws 2007, will be submitted to the people for their approval or rejection at the regular general election held on November 4, 2008. If approved by the people at the general election, chapter 100, Oregon Laws 2007, takes effect December 4, 2008. If the referendum petition is not filed with the Secretary of State or does not contain the required number of signatures of electors, the amendments to 109.035 by section 17, chapter 100, Oregon Laws 2007, take effect January 1, 2008. 109.035, as amended by section 17, chapter 100, Oregon Laws 2007, is set forth for the user's convenience.

109.035. (1) As used in this section:

(a) "Custody order" includes any order or judgment establishing or modifying custody of, or parenting time or visitation with, a minor child as described in ORS 107.095, 107.105 (1), 107.135 or 109.103.

(b) "Foreign country" means any country that:

(A) Is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction;

(B) Does not provide for the extradition to the United States of a parental abductor and minor child;

(C) Has local laws or practices that would restrict the other parent of the minor child from freely traveling to or exiting from the country because of the race, religion, sex or sexual orientation of the other parent;

(D) Has local laws or practices that would restrict the ability of the minor child from legally leaving the country after the child reaches the age of majority because of the race, religion, sex or sexual orientation of the child; or

(E) Poses a significant risk that the physical health or safety of the minor child would be endangered in the country because of war, human rights violations or specific circumstances related to the needs of the child.

(2) A court that finds by clear and convincing evidence a risk of international abduction of a minor child may issue a court order requiring a parent who is subject to a custody order and who plans to travel with a minor child to a foreign country to provide security, bond or other guarantee as described in subsection (4) of this section.

(3) In determining whether a risk of international abduction of a minor child exists, a court shall consider the following factors involving a parent who is subject to a custody order:

(a) The parent has taken or retained, attempted to take or retain or threatened to take or retain a minor child in violation of state law or a valid custody order and the parent is unable to present clear and convincing evidence that the parent believed in good faith that the conduct was necessary to avoid imminent harm to the parent or the child;

(b) The parent has recently engaged in a pattern of activities that indicates the parent is planning to abduct the minor child from this country;

(c) The parent has strong familial, emotional or cultural connections to this country or another country, regardless of citizenship or residency status; and

(d) Any other relevant factors.

(4) A security, bond or other guarantee required by a court under this section may include, but is not limited to, any of the following:

(a) A bond or security deposit in an amount that is sufficient to offset the cost of recovering the minor child if the child is abducted;

(b) Supervised parenting time; or

(c) Passport and travel controls, including but not limited to controls that:

(A) Prohibit the parent from removing the minor child from this state or this country;

(B) Require the parent to surrender a passport or an international travel visa that is issued in the name of the minor child or jointly in the names of the parent and the child;

(C) Prohibit the parent from applying for a new or replacement passport or international travel visa on behalf of the minor child; and

(D) Require the parent to provide to a relevant embassy or consulate and to the Office of Children's Issues in the United States Department of State the following documents:

(i) Written notice of passport and travel controls required under this paragraph; and

(ii) A certified copy of a court order issued under this section.

(5) After considering the factors under subsection (3) of this section and requiring a security, bond or

other guarantee under this section, the court shall issue a written determination supported by findings of fact and conclusions of law.

(6) Nothing in this section is intended to limit the inherent power of a court in matters relating to children.

Note: 109.035 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.040 [Repealed by 1953 c.650 §4]

109.041 Relationship between adopted child and natural and adoptive parents.

(1) The effect of a judgment of adoption heretofore or hereafter granted by a court of this state shall be that the relationship, rights and obligations between an adopted person and the descendants of the adopted person and

(a) The adoptive parents of the adopted person, their descendants and kindred, and

(b) The natural parents of the adopted person, their descendants and kindred

shall be the same to all legal intents and purposes after the entry of such judgment as if the adopted person had been born in lawful wedlock to the adoptive parents and had not been born to the natural parents.

(2) When a person has been or shall be adopted in this state by a stepparent, this section shall leave unchanged the relationship, rights and obligations between such adopted person and descendants of the adopted person and natural parent of the adopted person, who is the spouse of the person who adopted the person, and the descendants and kindred of such natural parent. [1953 c.650 §1; 2003 c.576 §134]

109.050 Relation of adopted child to adoptive parents.

An adopted child bears the same relation to adoptive parents and their kindred in every respect pertaining to the relation of parent and child as the adopted child would if the adopted child were the natural child of such parents.

109.053 [1979 c.266 §1; 1981 c.614 §1; 1997 c.704 §55; 2003 c.576 §135; renumbered 108.045 in 2005]

109.055 [1971 c.703 §1; 1973 c.827 §12e; repealed by 1979 c.266 §3]

109.056 Delegation of certain powers by parent or guardian; delegation during period of military service.

(1) Except as provided in subsection (2) or (3) of this section, a parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of the powers of the parent or guardian regarding care, custody or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.

(2) A parent or guardian of a minor child may delegate the powers designated in subsection (1) of this section to a school administrator for a period not exceeding 12 months.

(3)(a) As used in this subsection, "servicemember-parent" means a parent or guardian:

(A) Who is a member of the organized militia of this state or a member of the Reserves of the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States; and

(B) Who is required to enter and serve in the active military service of the United States under a call or order by the President of the United States or to serve on active state duty as defined in ORS 398.002.

(b) A servicemember-parent of a minor child may delegate the powers designated in subsection (1) of this section for a period not exceeding the term of active duty service plus 30 days.

(c) Except as provided in paragraph (d) of this subsection, if the minor child is living with the child's other parent, a delegation under paragraph (b) of this subsection must be to the parent with whom the minor child is living unless a court finds that the delegation would not be in the best interests of the minor child.

(d) When the servicemember-parent has joint custody of the minor child with the child's other parent or another individual, and the servicemember-parent is married to an individual other than the child's other parent, the servicemember-parent may delegate the powers designated in subsection (1) of this section to the spouse of the servicemember-parent for a period not exceeding the term of active duty service plus 30 days, unless a court finds that the delegation would not be in the best interests of the minor child. [Formerly 126.030; 2005 c.79 §4; 2007 c.250 §1]

109.060 Legal status and legal relationships when parents not married. The legal status and legal relationships and the rights and obligations between a person and the descendants of the person, and between a person and parents of the person, their descendants and kindred, are the same for all persons, whether or not the parents have been married. [1957 c.411 §1]

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

(a) A man is rebuttably presumed to be the father of a child born to a woman if he and the woman were married to each other at the time of the child's birth, without a

judgment of separation, regardless of whether the marriage is void.

(b) A man is rebuttably presumed to be the father of a child born to a woman if he and the woman were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment or dissolution or after entry of a judgment of separation.

(c) By the marriage of the parents of a child after the birth of the child, and the parents filing with the State Registrar of the Center for Health Statistics the voluntary acknowledgment of paternity form as provided for by ORS 432.287.

(d) By filiation proceedings.

(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 (4) to (7) of this section, this filing establishes paternity for all purposes.

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

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

(2) The paternity of a child established under subsection (1)(a) or (c) of this section may be challenged in an action or proceeding by the husband or wife. The paternity may not be challenged by a person other than the husband or wife as long as the husband and wife are married and cohabiting, unless the husband and wife consent to the challenge.

(3) If the court finds that it is just and equitable, giving consideration to the interests of the parties and the child, the court shall admit evidence offered to rebut the presumption of paternity in subsection (1)(a) or (b) of this section.

(4)(a) 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 subparagraph, the date of a proceeding is the date on which an order is entered in the proceeding.

(b) To rescind the acknowledgment, the party shall sign and file with the State Registrar of the Center for Health Statistics a written document declaring the rescission.

(5)(a) A signed voluntary acknowledgment of paternity filed in this state may be

challenged and set aside in circuit court at any time after the 60-day period referred to in subsection (4) of this section on the basis of fraud, duress or a material mistake of fact.

(b) The challenge may be brought by:

(A) A party to the acknowledgment;

(B) The child named in the acknowledgment; or

(C) 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 signed because of fraud, duress or a material mistake of fact.

(c) The challenge shall be initiated by filing a petition with the circuit court. Unless otherwise specifically provided by law, the challenge shall be conducted pursuant to the Oregon Rules of Civil Procedure.

(d) The party bringing the challenge has the burden of proof.

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

(f) If the court finds by a preponderance of the evidence that the acknowledgment was signed because of fraud, duress or material mistake of fact, the court shall set aside the acknowledgment unless, giving consideration to the interests of the parties and the child, the court finds that setting aside the acknowledgment would be substantially inequitable.

(6) 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 completed, a party to the acknowledgment, or the department if the child named in the acknowledgment is in the care and custody of the department under ORS chapter 419B, may apply to the administrator for an order for blood tests in accordance with ORS 416.443.

(7)(a) A voluntary acknowledgment of paternity is not valid if, before the party signed the acknowledgment:

(A) The party signed a consent to the adoption of the child by another individual;

(B) The party signed a document relinquishing the child to a public or private child-caring agency;

(C) The party's parental rights were terminated by a court; or

(D) In an adjudication, the party was determined not to be the biological parent of the child.

(b) Notwithstanding any provision of subsection (1)(c) or (e) of this section or ORS 432.287 to the contrary, an acknowledgment signed by a party described in this subsection and filed with the State Registrar of the Center for Health Statistics does not establish paternity and is void. [1957 c.411 §2; 1969 c.619 §11; 1971 c.127 §2; 1975 c.640 §3; 1983 c.709 §37; 1995 c.79 §37; 1995 c.514 §7; 1999 c.80 §20; 2001 c.455 §17; 2003 c.576 §136; 2005 c.160 §§11,17; 2007 c.454 §1]

109.072 Petition to vacate or set aside paternity determination. (1) As used in this section:

(a) "Blood tests" has the meaning given that term in ORS 109.251.

(b) "Paternity judgment" means a judgment or administrative order that:

(A) Expressly or by inference determines the paternity of a child, or that imposes a child support obligation based on the paternity of a child; and

(B) Resulted from a proceeding in which blood tests were not performed and the issue of paternity was not challenged.

(c) "Petition" means a petition or motion filed under this section.

(d) "Petitioner" means the person filing a petition or motion under this section.

(2)(a) The following may file in circuit court a petition to vacate or set aside the paternity determination of a paternity judgment, including any child support obligations established in the paternity judgment, and for a judgment of nonpaternity:

(A) A party to the paternity judgment.

(B) The Department of Human Services if the child is in the care and custody of the Department of Human Services under ORS chapter 419B.

(C) The Division of Child Support of the Department of Justice if the child support rights of the child or of one of the parties to the paternity judgment have been assigned to the state.

(b) The petitioner may file the petition in the circuit court proceeding in which the paternity judgment was entered, in a related proceeding or in a separate action. The petitioner shall attach a copy of the paternity judgment to the petition.

(c) If the ground for the petition is that the paternity determination was obtained by or was the result of mistake, inadvertence, surprise or excusable neglect, the petitioner may not file the petition more than one year after entry of the paternity judgment.

(d) If the ground for the petition is that the paternity determination was obtained by or was the result of fraud, misrepresentation or other misconduct of an adverse party, the petitioner may not file the petition more

than one year after the petitioner discovers the fraud, misrepresentation or other misconduct.

(3) In the petition, the petitioner shall:

(a) Designate as parties:

(A) All persons who were parties to the paternity judgment;

(B) The child if the child is a child attending school, as defined in ORS 107.108;

(C) The Department of Human Services if the child is in the care and custody of the Department of Human Services under ORS chapter 419B; and

(D) The Administrator of the Division of Child Support of the Department of Justice if the child support rights of the child or of one of the parties to the paternity judgment have been assigned to the state.

(b) Provide the full name and date of birth of the child whose paternity was determined by the paternity judgment.

(c) Allege the facts and circumstances that resulted in the entry of the paternity judgment and explain why the issue of paternity was not contested.

(4) After filing a petition under this section, the petitioner shall serve a summons and a true copy of the petition on all parties as provided in ORCP 7.

(5) The court, on its own motion or on the motion of a party, may appoint counsel for the child. However, if requested to do so by the child, the court shall appoint counsel for the child. A reasonable fee for an attorney so appointed may be charged against one or more of the parties or as a cost in the proceeding, but may not be charged against funds appropriated for public defense services.

(6) The court may order the mother, the child and the man whose paternity of the child was determined by the paternity judgment to submit to blood tests. In deciding whether to order blood tests, the court shall consider the interests of the parties and the child and, if it is just and equitable to do so, may deny a request for blood tests. If the court orders blood tests under this subsection, the court shall order the petitioner to pay the costs of the blood tests.

(7) Unless the court finds, giving consideration to the interests of the parties and the child, that to do so would be substantially inequitable, the court shall vacate or set aside the paternity determination of the paternity judgment, including provisions imposing child support obligations, and enter a judgment of nonpaternity if the court finds by a preponderance of the evidence that:

(a) The paternity determination was obtained by or was the result of:

(A) Mistake, inadvertence, surprise or excusable neglect; or

(B) Fraud, misrepresentation or other misconduct of an adverse party;

(b) The mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation or other misconduct was discovered by the petitioner after the entry of the paternity judgment; and

(c) Blood tests establish that the man is not the biological father of the child.

(8) If the court finds that the paternity determination of a paternity judgment was obtained by or was the result of fraud, the court may vacate or set aside the paternity determination regardless of whether the fraud was intrinsic or extrinsic.

(9) If the court finds, based on blood test evidence, that the man may be the biological father of the child and that the cumulative paternity index based on the blood test evidence is 99 or greater, the court shall deny the petition.

(10) The court may grant the relief authorized by this section upon a party's default, or by consent or stipulation of the parties, without blood test evidence.

(11) A judgment entered under this section vacating or setting aside the paternity determination of a paternity judgment and determining nonpaternity:

(a) Shall contain the full name and date of birth of the child whose paternity was established or declared by the paternity judgment.

(b) Shall vacate and terminate any ongoing and future child support obligations arising from or based on the paternity judgment.

(c) May vacate or deem as satisfied, in whole or in part, unpaid child support obligations arising from or based on the paternity judgment.

(d) May not order restitution from the state for any sums paid to or collected by the state for the benefit of the child.

(12) If the court vacates or sets aside the paternity determination of a paternity judgment under this section and enters a judgment of nonpaternity, the petitioner shall send a court-certified true copy of the judgment entered under this section to the State Registrar of the Center for Health Statistics and to the Department of Justice as the state disbursement unit. Upon receipt of the court-certified true copy of the judgment entered under this section, the state registrar shall correct any records maintained by the state registrar that indicate that the male

party to the paternity judgment is the father of the child.

(13) The court may award to the prevailing party a judgment for reasonable attorney fees and costs, including the cost of any blood tests ordered by the court and paid by the prevailing party.

(14) A judgment entered under this section vacating or setting aside the paternity determination of a paternity judgment and determining nonpaternity is not a bar to further proceedings to determine paternity, as otherwise allowed by law.

(15) If a man whose paternity of a child has been determined by a paternity judgment has died, an action under this section may not be initiated by or on behalf of the estate of the man.

(16) This section does not limit the authority of the court to vacate or set aside a judgment under ORCP 71, to modify a judgment within a reasonable period, to entertain an independent action to relieve a party from a judgment, to vacate or set aside a judgment for fraud upon the court or to render a declaratory judgment under ORS chapter 28.

(17) This section shall be liberally construed to the end of achieving substantial justice. [2007 c.454 §9]

Note: Section 10, chapter 454, Oregon Laws 2007, provides:

Sec. 10. Section 9 of this 2007 Act [109.072] applies to all paternity judgments, as defined in section 9 of this 2007 Act, entered before, on or after the effective date of this 2007 Act [January 1, 2008]. [2007 c.454 §10]

Note: 109.072 was added to and made a part of ORS chapter 109 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

109.073 Social Security number of parent in paternity order. 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)(d), (e), (f) or (g) or 416.400 to 416.465 shall be included in the order, judgment or other declaration establishing paternity. [1997 c.746 §123; 1999 c.80 §94; 2005 c.160 §§12,18]

Note: 109.073 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.080 [1957 c.411 §4; 1959 c.432 §64; repealed by 1975 c.640 §18]

109.090 Interpretation of ORS 109.060 to 109.090. (1) The provisions of ORS 109.060 to 109.090 shall apply to all persons, irrespective of whether they are born before or after August 20, 1957. ORS 109.060 to 109.090 shall not be construed to affect a decree of distribution entered, or any probate proceeding closed, prior to August 20, 1957.

(2) ORS 109.060 to 109.090 shall be liberally construed, with the view of effectuating their objects, notwithstanding the rule of common law that statutes in derogation thereof are to be strictly construed. [1957 c.411 §§5,6; 1983 c.740 §11]

109.092 Establishing paternity by acknowledgment; mother surrendering child for adoption. 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) 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. [1975 c.640 §2; 1995 c.514 §17; 2005 c.160 §§13,19]

109.094 Rights of father when paternity established; procedure when paternity established. Upon the paternity of a child being established in the proceedings, the father shall have the same rights as a father who is or was married to the mother of the child. The clerk of the court shall certify the fact of paternity to the Center for Health Statistics of the Department of Human Services, and the Center for Health Statistics shall prepare a new birth certificate for the child. [1975 c.640 §6; 1983 c.709 §38]

109.096 Notice to putative father when paternity not established. (1) When the paternity of a child has not been established under ORS 109.070, the putative father is entitled to reasonable notice in adoption 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, is sufficient proof to enable the court to grant the relief sought without notice to the putative father.

(3) The putative father 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 is barred from contesting the adoption proceeding.

(4) Except as otherwise provided in subsection (3) of this section, the putative father is entitled to reasonable notice in 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 proceedings.

(5) Notice under this section is not required to be given to a putative father who was a party to filiation proceedings under ORS 109.125 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. [1975 c.640 §7; 1979 c.491 §1; 1983 c.709 §39; 1995 c.90 §1; 2003 c.576 §137; 2005 c.160 §5]

109.098 Objection of putative father in proceeding referred to in ORS 109.096; effect of failure to appear and object. (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 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. [1975 c.640 §8; 1995 c.90 §2; 2005 c.160 §6]

109.100 Petition for support; effect of judgment; parties. (1) Any minor child or the administrator may, in accordance with ORCP 27 A, apply to the circuit court in the county in which the child resides, or in which the natural or adoptive father or mother of the child may be found, for an order upon the child's father or mother, or both, to provide for the child's support. The child or the administrator may apply for the order by filing in the county a petition setting forth the facts and circumstances relied upon for the order. If satisfied that a just cause exists, the court shall direct that the father or mother appear at a time set by the court to show cause why an order of support should not be entered in the matter.

(2) The petitioner shall state in the petition, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the minor child, including a proceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.103, 109.165, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the minor child.

(3) The petitioner shall include with the petition a certificate regarding any pending support proceeding and any existing support order. The petitioner shall use a certificate that is in a form established by court rule and include information required by court rule and subsection (2) of this section.

(4) The judgment of a court under subsection (1) of this section is final as to any installment or payment of money that has accrued up to the time either party makes a motion to set aside, alter or modify the judgment, and the court may not set aside, alter or modify the judgment, or any portion thereof, that provides for any payment of money that has accrued prior to the filing of the motion.

(5) The provisions of ORS 108.120 and 108.130 apply to proceedings under subsection (1) of this section.

(6) In any proceeding under this section, both the child's physical and legal custodians are parties to the action. [1963 c.497 §2; 1975 c.458

§14; 1979 c.90 §2; 1979 c.284 §100; 1989 c.812 §7; 1993 c.596 §20; 2003 c.73 §55a; 2003 c.116 §8; 2003 c.576 §244]

109.103 Proceeding to determine custody or support of child. (1) If a child is born to an unmarried woman and paternity has been established under ORS 109.070, or if a child is born to a married woman by a man other than her husband and the man's paternity has been established under ORS 109.070, either parent may initiate a civil proceeding to determine the custody or support of, or parenting time with, the child. The proceeding shall be brought in the circuit court of the county in which the child resides or is found or in the circuit court of the county in which either parent resides. The parents have the same rights and responsibilities regarding the custody and support of, and parenting time with, their child that married or divorced parents would have, and the provisions of ORS 107.093 to 107.425 that relate to custody, support and parenting time apply to the proceeding.

(2) A parent may initiate the proceeding by filing with the court a petition setting forth the facts and circumstances upon which the parent relies. The parent shall state in the petition, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the child, including one brought under ORS 109.100, 109.165, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the child.

(3) The parent shall include with the petition a certificate regarding any pending support proceeding and any existing support order. The parent shall use a certificate that is in a form established by court rule and include information required by court rule and subsection (2) of this section.

(4) When a parent initiates a proceeding under this section and the child support rights of one of the parents or of the child have been assigned to the state, the parent initiating the proceeding shall serve, by mail or personal delivery, a copy of the petition on the Administrator of the Division of Child Support or on the branch office providing support services to the county in which the suit is filed. [1975 c.640 §9; 2003 c.116 §9; 2003 c.572 §15; 2007 c.454 §2]

109.105 [1969 c.461 §1; renumbered 109.610]

109.110 [Amended by 1961 c.338 §1; 1967 c.534 §14; repealed by 1969 c.619 §15]

109.112 Mother, father or putative father deemed to have attained majority. The mother, father or putative father of a child shall be deemed to have attained majority and, regardless of age, may give au-

thorizations, releases or waivers, or enter into agreements, in adoption, juvenile court, filiation or other proceedings concerning the care or custody of the child. [1975 c.640 §10]

109.115 [1969 c.271 §2; renumbered 109.620]

109.116 Validity of putative father's authorization, release or waiver. Any authorization, release or waiver given by the putative father with reference to the custody or adoption of the child or the termination of parental rights shall be valid even if given prior to the child's birth. [1975 c.640 §11]

109.118 Validity of decrees or orders entered prior to July 3, 1975, concerning custody, adoption or permanent commitment of child. All decrees or orders heretofore entered in any court of this state concerning the custody, adoption or permanent commitment of a child are hereby declared valid upon the expiration of 30 days after July 3, 1975, notwithstanding that notice was not given to the putative father of the child. [1975 c.640 §13]

109.119 Rights of person who establishes emotional ties creating child-parent relationship or ongoing personal relationship; presumption regarding legal parent; motion for intervention. (1) Except as otherwise provided in subsection (9) of this section, any person, including but not limited to a related or nonrelated foster parent, stepparent, grandparent or relative by blood or marriage, who has established emotional ties creating a child-parent relationship or an ongoing personal relationship with a child may petition or file a motion for intervention with the court having jurisdiction over the custody, placement or guardianship of that child, or if no such proceedings are pending, may petition the court for the county in which the child resides, for an order providing for relief under subsection (3) of this section.

(2)(a) In any proceeding under this section, there is a presumption that the legal parent acts in the best interest of the child.

(b) In an order granting relief under this section, the court shall include findings of fact supporting the rebuttal of the presumption described in paragraph (a) of this subsection.

(c) The presumption described in paragraph (a) of this subsection does not apply in a proceeding to modify an order granting relief under this section.

(3)(a) If the court determines that a child-parent relationship exists and if the court determines that the presumption described in subsection (2)(a) of this section has been rebutted by a preponderance of the evidence, the court shall grant custody,

guardianship, right of visitation or other right to the person having the child-parent relationship, if to do so is in the best interest of the child. The court may determine temporary custody of the child or temporary visitation rights under this paragraph pending a final order.

(b) If the court determines that an ongoing personal relationship exists and if the court determines that the presumption described in subsection (2)(a) of this section has been rebutted by clear and convincing evidence, the court shall grant visitation or contact rights to the person having the ongoing personal relationship, if to do so is in the best interest of the child. The court may order temporary visitation or contact rights under this paragraph pending a final order.

(4)(a) In deciding whether the presumption described in subsection (2)(a) of this section has been rebutted and whether to award visitation or contact rights over the objection of the legal parent, the court may consider factors including, but not limited to, the following, which may be shown by the evidence:

(A) The petitioner or intervenor is or recently has been the child's primary caretaker;

(B) Circumstances detrimental to the child exist if relief is denied;

(C) The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor;

(D) Granting relief would not substantially interfere with the custodial relationship; or

(E) The legal parent has unreasonably denied or limited contact between the child and the petitioner or intervenor.

(b) In deciding whether the presumption described in subsection (2)(a) of this section has been rebutted and whether to award custody, guardianship or other rights over the objection of the legal parent, the court may consider factors including, but not limited to, the following, which may be shown by the evidence:

(A) The legal parent is unwilling or unable to care adequately for the child;

(B) The petitioner or intervenor is or recently has been the child's primary caretaker;

(C) Circumstances detrimental to the child exist if relief is denied;

(D) The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor; or

(E) The legal parent has unreasonably denied or limited contact between the child and the petitioner or intervenor.

(5) In addition to the other rights granted under this section, a stepparent with a child-parent relationship who is a party in a dissolution proceeding may petition the court having jurisdiction for custody or visitation under this section or may petition the court for the county in which the child resides for adoption of the child. The stepparent may also file for post-judgment modification of a judgment relating to child custody.

(6)(a) A motion for intervention filed under this section shall comply with ORCP 33 and state the grounds for relief under this section.

(b) Costs for the representation of an intervenor under this section may not be charged against funds appropriated for public defense services.

(7) In a proceeding under this section, the court may:

(a) 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 the parties in creating and implementing parenting plans under ORS 107.425 (3).

(b) Assess against a party reasonable attorney fees and costs for the benefit of another party.

(8) When a petition or motion to intervene is filed under this section seeking guardianship or custody of a child who is a foreign national, the petitioner or intervenor shall serve a copy of the petition or motion on the consulate for the child's country.

(9) This section does not apply to proceedings under ORS chapter 419B.

(10) As used in this section:

(a) "Child-parent relationship" means a relationship that exists or did exist, in whole or in part, within the six months preceding the filing of an action under this section, and in which relationship a person having physical custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities and provided the child with necessary care, education and discipline, and which relationship continued on a day-to-day basis, through interaction, companionship, interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs. However, a relationship between a child and a person who is the nonrelated foster parent of the child is not a

child-parent relationship under this section unless the relationship continued over a period exceeding 12 months.

(b) "Circumstances detrimental to the child" includes but is not limited to circumstances that may cause psychological, emotional or physical harm to a child.

(c) "Grandparent" means the legal parent of the child's legal parent.

(d) "Legal parent" means a parent as defined in ORS 419A.004 whose rights have not been terminated under ORS 419B.500 to 419B.524.

(e) "Ongoing personal relationship" means a relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality. [1985 c.516 §2; 1987 c.810 §1; 1993 c.372 §1; 1997 c.92 §1; 1997 c.479 §1; 1997 c.873 §20; 1999 c.569 §6; 2001 c.873 §§1,1a,1e; 2003 c.143 §§1,2; 2003 c.231 §§4,5; 2003 c.576 §§138,139]

109.120 [Repealed by 1969 c.619 §15]

109.121 [1979 c.776 §2; 1983 c.369 §2; 1987 c.810 §2; 1993 c.33 §291; 1999 c.477 §1; 1999 c.569 §7; repealed by 2001 c.873 §2]

109.123 [1979 c.776 §3; repealed by 2001 c.873 §2]

FILIAION PROCEEDINGS

109.124 Definitions for ORS 109.124 to 109.230. 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.

(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 woman 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. [1979 c.246 §4; 1983 c.762 §1; 1995 c.79 §38; 1995 c.343 §24; 1995 c.514 §18; 1997 c.704 §56; 2005 c.160 §§14,20; 2007 c.454 §3]

109.125 Who may initiate proceedings; petition; parties. (1) Any of the following may initiate proceedings under this section:

(a) A mother of a child born out of wedlock or a woman pregnant with a child who may be born out of wedlock;

(b) The duly appointed and acting guardian of the child, conservator of the child's estate or a guardian ad litem, if the guardian or conservator has the physical custody of the child or is providing support for the child;

(c) The administrator, as defined in ORS 25.010;

(d) A man claiming to be the father of a child born out of wedlock or of an unborn child who may be born out of wedlock; or

(e) The minor child by a guardian ad litem.

(2) Proceedings shall be initiated by the filing of a duly verified petition of the initiating party. The petition shall contain:

(a) If the initiating party is one of those specified in subsection (1)(a), (b), (c) or (e) of this section:

(A) The name of the mother of the child born out of wedlock or the woman pregnant with a child who may be born out of wedlock;

(B) The name of the mother's husband if the child is alleged to be a child born to a married woman by a man other than her husband;

(C) Facts showing the petitioner's status to initiate proceedings;

(D) A statement that a respondent is the father;

(E) The probable time or period of time during which conception took place; and

(F) A statement of the specific relief sought.

(b) If the initiating party is a man specified in subsection (1)(d) of this section:

(A) The name of the mother of the child born out of wedlock or the woman pregnant with a child who may be born out of wedlock;

(B) The name of the mother's husband if the child is alleged to be a child born to a married woman by a man other than her husband;

(C) A statement that the initiating party is the father of the child and accepts the same responsibility for the support and education of the child and for all pregnancy-related expenses that he would have if the child were born to him in lawful wedlock;

(D) The probable time or period of time during which conception took place; and

(E) A statement of the specific relief sought.

(3) When proceedings are initiated by the administrator, as defined in ORS 25.010, the state and the child's mother and putative father are parties.

(4) When a proceeding is initiated under this section and the child support rights of one of the parties or of the child at issue have been assigned to the state, a true copy of the petition shall be served by mail or personal delivery on the Administrator of the

Division of Child Support of the Department of Justice or on the branch office providing support services to the county in which the suit is filed.

(5) A man whose paternity of a child has been established under ORS 109.070 is a necessary party to proceedings initiated under this section unless the paternity has been disestablished before the proceedings are initiated. [1969 c.619 §1; 1971 c.191 §1; 1971 c.401 §3; 1971 c.779 §79; 1973 c.823 §105; 1975 c.458 §15a; 1975 c.640 §4a; 1979 c.90 §3; 1979 c.246 §5; 1983 c.762 §2; 1993 c.596 §21; 2001 c.334 §6; 2003 c.73 §56; 2007 c.454 §4]

109.130 [Amended by 1967 c.534 §15; repealed by 1969 c.619 §15]

109.133 [1989 c.479 §2; renumbered 109.672 in 1991]

109.135 Circuit court jurisdiction; equity suit; place of commencement. (1) All filiation proceedings shall be commenced in the circuit court and shall for all purposes be deemed suits in equity. Unless otherwise specifically provided by statute, the proceedings shall be conducted pursuant to the Oregon Rules of Civil Procedure.

(2) All filiation proceedings shall be commenced and tried in the county where either the initiating party or the child resides. [1969 c.619 §§2,3,7; 1971 c.191 §2; 1979 c.246 §6; 1981 s.s. c.3 §104; 1983 c.762 §3; 1999 c.80 §22]

109.140 [Amended by 1959 c.638 §10; repealed by 1969 c.619 §15]

109.145 Court may proceed despite failure to appear; evidence required. If a respondent fails to answer or fails to appear at trial, the court shall have the power to proceed accordingly. In such case, the court may make a determination of paternity and may impose such obligations on the respondent as it deems reasonable. In all such cases corroborating evidence in addition to the testimony of the parent or expectant parent shall be required to establish paternity and the court may, in its discretion, order such investigation or the production of such evidence as it deems appropriate to establish a proper basis for relief. The testimony of the parent or expectant parent and the corroborating evidence may be presented by affidavit. [1969 c.619 §4; 1975 c.640 §14; 1983 c.762 §4]

109.150 [Amended by 1961 c.338 §2; 1967 c.534 §16; repealed by 1969 c.619 §15]

109.153 [1973 c.827 §12g; 1981 c.669 §3; repealed by 1983 c.762 §10]

109.155 Hearing; order for payment for support of child and other costs; policy regarding settlement; enforcement of settlement terms; remedies. (1) The court, in a private hearing, shall first determine the issue of paternity. If the respondent admits the paternity, the admission shall be reduced to writing, verified by the respondent and filed with the court. If the paternity is denied, corroborating evidence, in addition to

the testimony of the parent or expectant parent, shall be required.

(2) If the court finds, from a preponderance of the evidence, that the petitioner or the respondent is the father of the child who has been, or who may be born out of wedlock, the court shall then proceed to a determination of the appropriate relief to be granted. The court may approve any settlement agreement reached between the parties and incorporate the agreement into any judgment rendered, and the court may order such investigation or the production of such evidence as the court deems appropriate to establish a proper basis for relief.

(3) The court, in its discretion, may postpone the hearing from time to time to facilitate any investigation or the production of such evidence as it deems appropriate.

(4) The court may order either parent to pay such sum as the court deems appropriate for the past and future support and maintenance of the child during the child's minority and while the child is attending school, as defined in ORS 107.108, and the reasonable and necessary expenses incurred or to be incurred in connection with prenatal care, expenses attendant with the birth and postnatal care. The court may grant the prevailing party reasonable costs of suit, which may include expert witness fees, and reasonable attorney fees at trial and on appeal. The provisions of ORS 107.108 apply to an order entered under this section for the support of a child attending school.

(5) An affidavit certifying the authenticity of documents substantiating expenses set forth in subsection (4) of this section is prima facie evidence to establish the authenticity of the documents.

(6)(a) It is the policy of this state:

(A) To encourage the settlement of cases brought under this section; and

(B) For courts to enforce the terms of settlements described in paragraph (b) of this subsection to the fullest extent possible, except when to do so would violate the law or would clearly contravene public policy.

(b) In a proceeding under this section, the court may enforce the terms set forth in a stipulated judgment of paternity signed by the parties, a judgment of paternity resulting from a settlement on the record or a judgment of paternity incorporating a settlement agreement:

(A) As contract terms using contract remedies;

(B) By imposing any remedy available to enforce a judgment, including but not limited to contempt; or

(C) By any combination of the provisions of subparagraphs (A) and (B) of this paragraph.

(c) A party may seek to enforce an agreement and obtain remedies described in paragraph (b) of this subsection by filing a motion, serving notice on the other party in the manner provided by ORCP 7 and, if a remedy under paragraph (b)(B) of this subsection is sought, complying with the statutory requirements for that remedy. All claims for relief arising out of the same acts or omissions must be joined in the same proceeding.

(d) Nothing in paragraph (b) or (c) of this subsection limits a party's ability, in a separate proceeding, to file a motion to set aside, alter or modify a judgment under ORS 109.165 or to seek enforcement of an ancillary agreement to the judgment.

(7) If a man's paternity of a child has been established under ORS 109.070 and the paternity has not been disestablished before proceedings are initiated under ORS 109.125, the court may not render a judgment under ORS 109.124 to 109.230 establishing another man's paternity of the child unless the judgment also disestablishes the paternity established under ORS 109.070. [1969 c.619 §5; 1971 c.137 §1; 1971 c.191 §3; 1973 c.827 §12h; 1975 c.640 §15; 1981 c.897 §33; 1983 c.762 §5; 1989 c.417 §2; 1997 c.704 §57; 1999 c.80 §23; 2001 c.203 §6; 2003 c.576 §140; 2007 c.454 §5]

109.160 [Repealed by 1969 c.619 §15]

109.165 Vacation or modification of judgment; policy regarding settlement; enforcement of settlement terms; remedies.

(1) Upon motion of either party, the court may set aside, alter or modify any portion of the judgment that provides for the support of the minor child or child attending school, as defined in ORS 107.108. As to any installment or payment of money that has accrued up to the time the nonmoving party, other than the state, is served with a motion to set aside, alter or modify the judgment, the judgment is final and the court may not change it. However, the court may allow a credit against child support arrearages for periods of time, excluding reasonable parenting time unless otherwise provided by order or judgment, during which the obligor, with the knowledge and consent of the obligee or pursuant to court order, has physical custody of the child. A child attending school is a party for purposes of this section.

(2) The moving party shall state in the motion, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the child, including a proceeding brought under ORS 25.287,

109.100, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving the child, other than the judgment the party is moving to set aside, alter or modify.

(3) The moving party shall include with the motion a certificate regarding any pending support proceeding and any existing support order other than the judgment the party is moving to set aside, alter or modify. The party shall use a certificate that is in a form established by court rule and include information required by court rule and subsection (2) of this section.

(4)(a) It is the policy of this state:

(A) To encourage the settlement of cases brought under this section; and

(B) For courts to enforce the terms of settlements described in paragraph (b) of this subsection to the fullest extent possible, except when to do so would violate the law or would clearly contravene public policy.

(b) In a proceeding under subsection (1) of this section, the court may enforce the terms set forth in a stipulated order or judgment signed by the parties, an order or judgment resulting from a settlement on the record or an order or judgment incorporating a settlement agreement:

(A) As contract terms using contract remedies;

(B) By imposing any remedy available to enforce an order or judgment, including but not limited to contempt; or

(C) By any combination of the provisions of subparagraphs (A) and (B) of this paragraph.

(c) A party may seek to enforce an agreement and obtain remedies described in paragraph (b) of this subsection by filing a motion, serving notice on the other party in the manner provided by ORCP 7 and, if a remedy under paragraph (b)(B) of this subsection is sought, complying with the statutory requirements for that remedy. All claims for relief arising out of the same acts or omissions must be joined in the same proceeding.

(d) Nothing in paragraph (b) or (c) of this subsection limits a party's ability, in a separate proceeding, to file a motion to modify an order or judgment under subsection (1) of this section or to seek enforcement of an ancillary agreement to the order or judgment. [1969 c.619 §6; 1973 c.827 §12i; 1989 c.812 §8; 1997 c.704 §58; 1997 c.707 §22; 2001 c.203 §8; 2003 c.116 §10; 2003 c.419 §3; 2003 c.576 §141]

109.170 [Repealed by 1969 c.619 §15]

109.175 Determination of legal custody after paternity established. (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 416.465, or if paternity is established by the filing of a voluntary acknowledgment of paternity as provided by ORS 109.070 (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). [1983 c.761 §11; 1985 c.671 §42; 1995 c.608 §4; 1999 c.59 §25; 1999 c.569 §8; 2001 c.833 §3; 2005 c.160 §§15,21]

109.180 [Repealed by 1969 c.619 §15]

109.190 [Amended by 1961 c.338 §3; repealed by 1969 c.619 §15]

109.200 [Amended by 1961 c.338 §4; repealed by 1969 c.619 §15]

109.210 [Repealed by 1969 c.619 §15]

109.220 [Amended by 1961 c.338 §5; 1969 c.619 §12; repealed by 1979 c.87 §1]

109.225 Notice to Center for Health Statistics after petition filed; filing notice. (1) After filing the petition, the petitioner shall cause the Center for Health Statistics of the Department of Human Services to be served by mail with a notice setting forth the court in which the petition was filed, the date of the filing therein, the case number, the full name and address of the child, the date and place of the child's birth, or if the child is not yet born, the date and place of the child's conception and the probable date of the child's birth, the full names and addresses of the child's alleged parents, and the names and addresses of the petitioner and of the respondents in the proceedings.

(2) The Center for Health Statistics shall file immediately the notice, or a copy thereof, with the record of the birth of the child or in the same manner as its filing of

records of birth if the center does not have a record of the birth. The center shall only provide the information contained in the notice to persons whose names appear in the notice or to persons or agencies showing a legitimate interest in the parent-child relationship including, but not limited to, parties to adoption, juvenile court or heirship proceedings. [1975 c.640 §5; 1983 c.709 §40; 1983 c.762 §6; 1991 c.484 §1]

109.230 Legality of contract between mother and father of child born out of wedlock. Any contract between the mother and father of a child born out of wedlock is a legal contract, and the admission by the father of his fatherhood of the child is sufficient consideration to support the contract. [Amended by 1961 c.338 §6]

109.231 Records open to public. Records of filiation proceedings filed in circuit court shall be open for inspection by any person without order of the court. [1993 c.138 §2]

Note: 109.231 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.235 [1975 c.640 §12; renumbered 109.308 in 2001]

109.237 Attorney fees. In any proceeding brought to modify or compel compliance with an order of the court issued under ORS 109.124 to 109.230, the court may render judgment awarding to a party, or directly to the party's attorney, a sum of money determined to be reasonable as an attorney fee and costs and expenses of suit, which judgment may include expert witness fees, in preparation for and at trial and on appeal. [1989 c.417 §1]

Note: 109.237 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ARTIFICIAL INSEMINATION

109.239 Rights and obligations of children resulting from artificial insemination; rights and obligations of donor of semen. If the donor of semen used in artificial insemination is not the mother's husband:

(1) Such donor shall have no right, obligation or interest with respect to a child born as a result of the artificial insemination; and

(2) A child born as a result of the artificial insemination shall have no right, obligation or interest with respect to such donor. [1977 c.686 §5]

Note: 109.239 to 109.247 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 109 or any series therein by leg-

islative action. See Preface to Oregon Revised Statutes for further explanation.

109.243 Relationship of child resulting from artificial insemination to mother's husband. The relationship, rights and obligation between a child born as a result of artificial insemination and the mother's husband shall be the same to all legal intents and purposes as if the child had been naturally and legitimately conceived by the mother and the mother's husband if the husband consented to the performance of artificial insemination. [1977 c.686 §6]

Note: See note under 109.239.

109.247 Application of law to children resulting from artificial insemination. Except as may be otherwise provided by a judicial decree entered in any action filed before October 4, 1977, the provisions of ORS 109.239 to 109.247, 677.355 to 677.365 and 677.990 (3) apply to all persons conceived as a result of artificial insemination. [1977 c.686 §7]

Note: See note under 109.239.

UNIFORM ACT ON BLOOD TESTS TO DETERMINE PATERNITY

109.250 Short title. ORS 109.250 to 109.262 may be cited as the Uniform Act on Blood Tests to Determine Paternity. [1953 c.628 §7]

109.251 "Blood tests" defined. As used in ORS 109.250 to 109.262, "blood tests" includes any test for genetic markers to determine paternity of a type generally acknowledged as reliable by accreditation bodies designated by the Department of Human Services in compliance with the United States Secretary of Health and Human Services, and performed by a laboratory approved by such accreditation body. "Blood tests" includes but is not limited to the Human Leucocyte Antigen Test, the deoxyribonucleic acid test and any test that extracts genetic material from any human tissue. [1981 c.401 §2; 1995 c.608 §5; 1999 c.80 §24]

109.252 Authority for blood test; effect of refusal to submit to test; payment for test. (1) Unless the court or administrator finds good cause not to proceed in a proceeding under ORS 109.125 to 109.230 and 416.400 to 416.465, in which paternity is a relevant fact, the court or administrator, as defined in ORS 25.010, upon the court's or administrator's own initiative or upon suggestion made by or on behalf of any person whose blood is involved may, or upon motion of any party to the action made at a time so as not to delay the proceedings unduly shall, order the mother, child, alleged father and any other named respondent who may be the father to submit to blood tests. If any person refuses to submit to such tests, the court or

administrator may resolve the question of paternity against such person or enforce the court's or administrator's order if the rights of others and the interests of justice so require.

(2) When child support enforcement services are being provided under ORS 25.080, the Child Support Program shall pay any costs for blood tests subject to recovery from the party who requested the tests. If the original test result is contested prior to the entry of an order establishing paternity, the court or administrator shall order additional testing upon request and advance payment by the party making the request. [1953 c.628 §1; 1969 c.619 §13; 1983 c.762 §7; 1985 c.671 §43; 1999 c.80 §25; 2001 c.455 §18; 2007 c.71 §28]

109.254 Selection of experts to make tests; admissible evidence. (1) The tests shall be made by experts qualified as examiners of genetic markers who shall be appointed by the court or administrator, as defined in ORS 25.010. Any party or person at whose suggestion the tests have been ordered may demand that other experts, qualified as examiners of genetic markers, perform independent tests under order of the court or administrator, the results of which may be offered in evidence. The number and qualifications of such experts shall be determined by the court or administrator.

(2) The blood test results and the conclusions and explanations of the blood test experts are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless a written challenge to the testing procedure or the results of the blood test has been filed with the court and delivered to opposing counsel at least 10 days before any hearing set to determine the issue of paternity. Failure to make such timely challenge constitutes a waiver of the right to have the experts appear in person and is not grounds for a continuance of the hearing to determine paternity. A copy of the results, conclusions and explanations must be furnished to both parties or their counsel at least 20 days before the date of the hearing for this subsection to apply. The court for good cause or the parties may waive the time limits established by this subsection.

(3) An affidavit documenting the chain of custody of the specimens is prima facie evidence to establish the chain of custody. [1953 c.628 §2; 1981 c.401 §3; 1985 c.671 §44; 1999 c.80 §26; 2001 c.455 §19]

109.256 Compensation of experts. (1) The compensation of each expert witness appointed by the court or administrator shall be fixed at a reasonable amount. It shall be paid as the court or administrator shall order. The court or administrator may order

that the costs of blood tests be paid by the parties in such proportions and at such times as it shall prescribe, or that the proportion of any party be paid by the county in which the proceedings are had, and that, after payment by the parties or such county or both, all or part or none of it be taxed as costs in the action.

(2) The fee of an expert witness called by a party but not appointed by the court or administrator shall be paid by the party calling the witness but shall not be taxed as costs in the action. [1953 c.628 §3; 1983 c.762 §8; 1985 c.671 §44a]

109.258 Effect of test results. A disputable presumption of paternity is created if one or more blood tests result in a cumulative paternity index of 99 or greater. If the court or administrator finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, are that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly. If the experts disagree in their findings or conclusions, the question shall be submitted upon all the evidence. [1953 c.628 §4; 1985 c.671 §44b; 1999 c.80 §27]

109.259 Temporary child support pending determination of paternity. Notwithstanding the objections of a party to an order that seeks to establish paternity, if the blood tests conducted under ORS 109.250 to 109.262 result in a cumulative paternity index of 99 or greater, the evidence of the blood tests together with the testimony of a parent is a sufficient basis upon which to presume paternity for establishing temporary support. Upon the motion of a party, the court shall enter a temporary order requiring the alleged father to provide support pending the determination of parentage by the court. In determining the amount of support, the court shall use the formula established under ORS 25.275. [1997 c.746 §24b; 1999 c.80 §88]

Note: 109.259 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.260 Applicability to criminal actions. ORS 109.250 to 109.262 shall apply to criminal cases subject to the following limitations and provisions:

(1) An order for the tests shall be made only upon application of a party or on the court's initiative.

(2) The compensation of the experts shall be paid by the county in which the proceedings are had under order of court.

(3) The court may direct a verdict of acquittal upon the conclusions of all the experts under the provisions of ORS 109.258,

otherwise the case shall be submitted for determination upon all evidence. [1953 c.628 §5]

109.262 Uniformity of interpretation.

The Uniform Act on Blood Tests to Determine Paternity shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1953 c.628 §6]

109.264 Parties. In any action under ORS 109.250 to 109.262, the mother, putative father and the state are parties. [1993 c.596 §23]

ADOPTION

109.304 Definitions for ORS 109.305 to 109.410; information in placement report. As used in ORS 109.305 to 109.410, unless the context requires otherwise:

(1) "Home study" means an investigation conducted by the Department of Human Services or by an Oregon licensed adoption agency that:

(a) Provides information to a prospective adoptive parent about adoption;

(b) Includes investigation and study by the department or by an Oregon licensed adoption agency concerning a prospective parent's suitability to adopt;

(c) Includes a written report concerning the prospective parent's suitability to adopt; and

(d) Is completed before the petition for adoption is filed.

(2) "Placement report" means a written report prepared by the department or by an Oregon licensed adoption agency after the petition for adoption has been filed that includes the department's or the agency's recommendation to the court concerning whether the court should grant the petition for adoption based upon the department's or the agency's evaluation of:

(a) The status and adjustment of the child; and

(b) The status and adjustment of the child's prospective adoptive parent.

(3) Information gathered by the department or by an Oregon licensed adoption agency during the preparation of the placement report may include information concerning the child's social, medical and genetic history and the birth parent's history as may be required by ORS 109.312 or 109.342. [1993 c.717 §8]

109.305 Interpretation of adoption laws; agreement for continuing contact.

(1) The rule that statutes in derogation of common law are to be strictly construed does not apply to the adoption laws of this state.

(2) An adoptive parent and a birth parent may enter into a written agreement, ap-

proved by the court, to permit continuing contact between the birth relatives and the child or adoptive parents.

(3) If the child is within the jurisdiction of the juvenile court under ORS 419B.100, an adoptive parent and a birth relative may enter into a written agreement, approved by the court, to permit continuing contact between the birth relatives and the child or adoptive parents. A birth relative that enters into an agreement under this subsection must have established emotional ties creating an ongoing personal relationship, as defined in ORS 109.119, with the child. If the child is under one year of age, the ongoing personal relationship between the birth relative and the child must have continued for at least half of the child's life.

(4) If the child is 14 years of age or older, an agreement made under this section may not be entered into without the consent of the child.

(5) As used in this section, "birth relative" includes a birth parent, grandparent, sibling and other member of the child's birth family.

(6) The court may show approval of an agreement made under this section by incorporating the agreement by reference and indicating the court's approval of the agreement in the adoption judgment.

(7) Failure to comply with the terms of an agreement made under this section is not grounds for setting aside an adoption judgment or revocation of a written consent to an adoption.

(8)(a) An agreement made under this section may be enforced by a civil action. However, before a court may enter an order requiring compliance with the agreement, the court must find that the party seeking enforcement participated, or attempted to participate, in good faith in mediating the dispute giving rise to the action prior to filing the civil action.

(b) The court may modify an agreement made under this section if the court finds that the modification is necessary to serve the best interests of the adopted child, that the party seeking modification participated, or attempted to participate, in good faith in mediation prior to seeking modification of the agreement and that:

(A) The modification is agreed to by all parties to the original agreement; or

(B) Exceptional circumstances have arisen since the parties entered into the agreement that justify modification of the agreement.

(9) The Department of Human Services is not responsible for any costs associated with

an agreement described in subsection (3) of this section. [1957 c.710 §15; subsections (2), (3) and (4) of 1993 Edition enacted as 1993 c.401 §1; 2003 c.576 §142; 2007 c.720 §1]

Note: 109.305 (7) and (8) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.307 Court required to act within six months of filing of petition for adoption; duty of clerk. (1) Not earlier than provided in ORS 109.309 and not later than six months from the date on which the petition for leave to adopt another is filed under ORS 109.309, the court before which the petition is pending shall hold a hearing and shall:

- (a) Enter a judgment under ORS 109.350;
- (b) Continue the guardianship or legal custodial status of the child;
- (c) Waive the child to a court having jurisdiction under ORS 419B.100 or 419C.005; or
- (d) Take such other action as the court considers necessary.

(2) The court before which the petition is pending, on its own motion, may take testimony from or confer with the child to be adopted and may exclude from the conference the parents or guardians of the child, the proposed adoptive parents and other persons if the court finds that such action would be likely to be in the best interests of the child. However, the court shall permit an attorney for each party to attend the conference, and the conference shall be reported.

(3) The clerk of the court before which petitions for leave to adopt another are pending shall periodically notify the court and the Department of Human Services of all such petitions which have been pending before the court for more than six months without final disposition pursuant to subsection (1) of this section.

(4) The clerk of the court before which a petition is filed for leave to adopt a minor child shall provide to the Director of Human Services a copy of the court's order of disposition of the petition. [1965 c.188 §2; 1983 c.369 §3; 1987 c.814 §2; 1993 c.33 §292; 1993 c.546 §117; 2003 c.576 §143]

109.308 Confidentiality of petitioners. In an adoption proceeding that is contested or in which 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 the court finds that to do so is in the best interests of the child. [Formerly 109.235; 2005 c.369 §2]

109.309 Petition for adoption; residency requirement; where filed; venue; notice; placement report; fee; rules. (1) Any person may petition the circuit court for leave to adopt another person and, if desired, for a change of the other person's name. One petitioner, the child, one parent or the person, who is not an adoption agency, consenting to the adoption as required under ORS 109.312 (1) must be a resident of this state. As used in this subsection, "resident" means a person who has resided in this state continuously for a period of six months prior to the date of the petition.

(2) Except as provided in subsection (3) of this section, when the petition is for the adoption of a minor child, the adoption is governed by the Uniform Child Custody Jurisdiction and Enforcement Act, ORS 109.701 to 109.834.

(3)(a) Notwithstanding ORS 109.741 and 109.744, a court of this state has jurisdiction over the adoption of a minor child if, immediately prior to the filing of a petition for adoption:

(A) The minor child resided in this state for at least six consecutive months including periods of temporary absence;

(B) One parent or another person, who is not an adoption agency, consenting to the adoption as required under ORS 109.312 (1) resided in this state for at least six consecutive months including periods of temporary absence;

(C) The prospective adoptive parent resided in this state for at least six consecutive months including periods of temporary absence and substantial evidence is available in this state concerning the present or future care of the minor child;

(D) It appears that no court of another state would have jurisdiction under circumstances substantially in accordance with subparagraphs (A) to (C) of this paragraph; or

(E) A court of another state has declined to exercise jurisdiction on the grounds that this state is a more appropriate forum to hear a petition for adoption of the minor child and it is in the best interests of the minor child that a court of this state assume jurisdiction.

(b) As used in paragraph (a) of this subsection, "periods of temporary absence" means periods of absence of not more than a total of 30 days in the prior six consecutive months.

(4) The petition to adopt a person 18 years of age or older may be filed in the county where the petitioner, the person to be adopted or the person who consents to the adoption resides.

(5) In a petition to adopt a minor child, venue lies in the Oregon county with which the child has the most significant connection or in the Oregon county in which the licensed adoption agency is located.

(6)(a) When the petition is for the adoption of a minor child, the petitioner shall also file at the time of filing the petition:

(A) A written statement containing the full names and permanent addresses of:

- (i) The child;
- (ii) The petitioner;

(iii) All persons whose consent to the adoption is required under ORS 109.312 when such names are either known or may be readily ascertained by the petitioner;

(iv) The persons with whom the child has lived during the last five years and the places where the child has lived during that period, if the names and addresses may be readily ascertained by the petitioner;

(v) If known to the petitioner, any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or parenting time or visitation with, the child; and

(vi) The Oregon licensed adoption agency, if any, or the relative or person that privately placed the child for adoption.

(B) The documents demonstrating consent under ORS 109.312 to the adoption of the minor child.

(C) Written evidence documenting a current home study that has been approved by either the Department of Human Services or an Oregon licensed adoption agency submitted for the purpose of demonstrating that the petitioner meets the minimum standards for adoptive homes as set forth in the department's administrative rules.

(b) A relative who qualifies under the department administrative rules for a waiver of the department's home study requirements described in paragraph (a)(C) of this subsection may file the request for waiver along with the petition for adoption.

(c) The department, upon request by the petitioner, may waive the home study requirements described in paragraph (a)(C) of this subsection in an adoption in which one of the child's biological or adoptive parents retains parental rights. The department shall waive post-placement reports in an adoption in which one of the child's biological or adoptive parents retains parental rights.

(7)(a) The petitioner shall cause copies of the documents required to be filed with the court under subsection (6) of this section to be served upon the Director of Human Services, by either registered or certified mail

with return receipt or personal service, within 30 days after the documents have been filed with the court.

(b) In the case of an adoption described in subsection (6)(c) of this section, the petitioner shall also serve the petition, by either registered or certified mail with return receipt or personal service:

(A) On all persons whose consent to the adoption is required under ORS 109.312 unless the person's written consent is filed with the court; and

(B) On the parents of the party whose parental rights would be terminated, if the names and addresses are known or may be readily ascertained by the petitioner. Service required by this subparagraph may be waived by the court for good cause.

(c) When a parent of the child is deceased or incapacitated, the petitioner shall also serve the petition on the parents of the deceased or incapacitated parent, if the names and addresses are known or may be readily ascertained by the petitioner. Service required by this paragraph may be waived by the court for good cause. As used in this paragraph:

(A) "Incapacitated" means a condition in which a person's ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that the person lacks the capacity to meet the essential requirements for the person's physical health or safety.

(B) "Meet the essential requirements for the person's physical health or safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

(d) The court may not rule upon the petition until at least 90 days after the date that the documents were served upon the director. However, the department may waive the 90-day period.

(8)(a) Within 90 days after the service on the director, the department shall investigate and file for the consideration of the judge before whom the petition for adoption is pending a placement report containing information regarding the status of the child and evidence concerning the suitability of the proposed adoption. The department may designate an Oregon licensed adoption agency to investigate and report to the court. If the department designates an Oregon licensed adoption agency to investigate and report to the court, the department shall make the designation and provide all necessary information and materials to the Oregon licensed adoption agency no later than 30 days after the service on the director. How-

ever, the department may waive the placement report requirement.

(b) Upon receipt of a written request by the petitioner's attorney, the department shall furnish to that attorney copies of any information that the department has filed with the court.

(c) The department may charge the petitioner a fee for investigating a proposed nonagency adoption and preparing the home study report described in subsection (6)(a)(C) of this section and the placement report described in paragraph (a) of this subsection. The petitioner shall report the fee amount to the court. The court granting the adoption shall make a finding as to whether the fee is necessary and reasonable. Any fee charged may not exceed reasonable costs for investigation, home study and placement report preparation. The department shall prescribe by rule the procedure for computing the investigation, home study and placement report preparation fee. The rules shall provide a waiver of either part or all of the fee based upon the petitioner's ability to pay.

(9) The amounts of any fees collected under subsection (8) of this section are continuously appropriated to the department for use in preparing the home study and placement reports required under subsections (6)(a)(C) and (8)(a) of this section.

(10)(a) Except as provided in paragraph (b) of this subsection, a court may not grant a judgment for the adoption of a minor child unless the petitioner has filed with the court the documents described in subsections (6) and (8)(a) of this section.

(b) A person is not required to file a home study or a placement report with the court when the department has granted the person a waiver under department rules.

(11) The adoption shall comply with the Indian Child Welfare Act (25 U.S.C. 1901 et seq.), if applicable. Every adoption petition involving the Indian Child Welfare Act shall include the following:

(a) A statement of the efforts to notify the appropriate Indian tribe or tribes of the adoption; and

(b) A statement of the efforts to comply with the placement preferences of the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) or the placement preferences of the appropriate Indian tribe. [1993 c.717 §2 (enacted in lieu of 109.310); 1993 c.717 §9; 1995 c.90 §3; 1995 c.730 §2; 1997 c.470 §1; 1999 c.160 §2; 1999 c.649 §52; 2003 c.258 §1; 2003 c.576 §144; 2005 c.475 §1]

109.310 [Amended by 1953 c.368 §2; 1957 c.403 §5; 1959 c.430 §3; 1963 c.188 §1; 1967 c.534 §17; 1969 c.441 §1; 1971 c.401 §4; 1977 c.252 §1; 1983 c.302 §1; 1983 c.396 §1; 1985 c.403 §3; 1991 c.249 §14; repealed by 1993 c.717 §1 (109.309 enacted in lieu of 109.310)]

109.311 Financial disclosure statement to be filed with petition; placement report required; exception; prohibited fees; advertising. (1) Each adoption petition filed pursuant to ORS 109.309 seeking adoption of a minor child shall be accompanied by a written disclosure statement containing an itemized accounting of all moneys paid or estimated to be paid by the petitioner for fees, costs and expenses related to the adoption, including all legal, medical, living and travel expenses. The form of the disclosure statement shall be prescribed by the Department of Human Services after consultation with approved Oregon licensed adoption agencies.

(2) A court may not grant a judgment for an adoption of a minor child in the absence of a placement report by the department or an Oregon licensed adoption agency unless the filing of such report has been waived by the department. A court may not grant a judgment for an adoption of a minor child in the absence of a written disclosure statement as described in subsection (1) of this section or in the absence of a verified statement by the petitioner that, to the best of the petitioner's knowledge, no charges, except those reported in the disclosure statement, have been or will be paid in connection with the adoption.

(3) A person may not charge, accept or pay or offer to charge, accept or pay a fee for locating a minor child for adoption or for locating another person to adopt a minor child, except that Oregon licensed adoption agencies licensed under ORS 412.001 to 412.161 and 412.991 and ORS chapter 418 may charge reasonable fees for services provided by them.

(4)(a) It is unlawful for any person to advertise:

(A) A child offered or wanted for adoption; or

(B) That the person is able to place, locate, dispose of or receive a child for adoption.

(b) The provisions of paragraph (a) of this subsection do not apply to:

(A) The department or a licensed Oregon adoption agency or an agent, employee or person with whom the department or adoption agency has a contract authorizing such actions; or

(B) A person who has completed a home study as required by ORS 109.309 (6)(a)(C) and has received a favorable recommendation regarding the fitness of the person to be an adoptive parent or the person's attorney or uncompensated agent. A written declaration by the person who prepared the home study is sufficient verification of compliance with

this subparagraph. The person's attorney must be licensed to practice in Oregon.

(c) Nothing in this subsection prohibits an attorney licensed to practice in Oregon from advertising the attorney's availability to provide services related to the adoption of children.

(d) As used in this subsection, unless the context requires otherwise, "advertise" means to communicate by newspaper, radio, television, handbills, placards or other print, broadcast or electronic medium that originates within this state. [1985 c.403 §2 (1) to (3); 1987 c.367 §1; 1993 c.717 §4; 1995 c.730 §3; 2003 c.258 §2; 2003 c.576 §145]

109.312 Consent to adoption. (1) Except as provided in ORS 109.314 to 109.329, consent in writing to the adoption under ORS 109.309 of a child shall be given by:

(a) The parents of the child, or the survivor of them.

(b) The guardian of the child, if the child has no living parent.

(c) The next of kin in this state, if the child has no living parent and no guardian.

(d) Some suitable person appointed by the court to act in the proceeding as next friend of the child to give or withhold consent, if the child has no living parent and no guardian or next of kin qualified to consent.

(2)(a) A person who gives consent to adoption under subsection (1) of this section may agree concurrently or subsequently to the giving of such consent that the consent shall be or become irrevocable, and may waive such person's right to a personal appearance in court, by a duly signed and attested certificate. The certificate of irrevocability and waiver shall be in effect when the following are completed:

(A) The child is placed for the purpose of adoption in the physical custody of the person or persons to whom the consent is given;

(B) The person or persons to whom consent for adoption is given have filed a petition to adopt the child in a court of competent jurisdiction;

(C) The court has entered an order appointing the petitioner or some other suitable person as guardian of the child pursuant to ORS 109.335;

(D) The Department of Human Services, an Oregon licensed adoption agency or an attorney who is representing the adoptive parents has filed either a department or an Oregon licensed adoption agency home study with the court approving the petitioner or petitioners as potential adoptive parents or the department has notified the court that the filing of such study has been waived;

(E) Information about the child's social, medical and genetic history required in ORS 109.342 has been provided to an attorney or the department or an Oregon licensed adoption agency by the person giving consent to the adoption; and

(F) The person signing the certificate of irrevocability and waiver has been given an explanation by an attorney who represents the person and who does not also represent the adoptive family, by the department or by an Oregon licensed adoption agency of the consequences of signing the certificate.

(b) Upon the fulfillment of the conditions in paragraph (a) of this subsection, the consent for adoption may not be revoked unless fraud or duress is proved with respect to any material fact.

(3) Consent to the adoption of a child subject to the Indian Child Welfare Act shall not be valid unless the requirements of the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) are met. In accordance with the Indian Child Welfare Act a certificate of irrevocability is not valid for a child who is subject to the Indian Child Welfare Act. [1957 c.710 §2 (109.312 to 109.329 enacted in lieu of 109.320); 1973 c.823 §106; 1983 c.302 §2; 1985 c.565 §10; 1987 c.814 §1; 1991 c.553 §1; 1993 c.717 §6]

109.314 Consent when custody of child has been awarded in divorce proceedings.

(1) If the legal custody of the child has been awarded in 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. However, unless the noncustodial parent consents to the adoption, the petitioner, in accordance with ORS 109.330, shall serve on the noncustodial parent a summons and a motion and order to show cause why the proposed adoption should not be ordered without the noncustodial parent's consent, and the objections of the noncustodial parent shall be heard if appearance is made.

(2) This section does not apply when consent is given in loco parentis under ORS 109.316 or 109.318. [1957 c.710 §3 (109.312 to 109.329 enacted in lieu of 109.320); 2005 c.369 §4]

109.316 Consent by Department of Human Services or approved child-caring agency of this state. (1) The Department of Human Services or an approved child-caring agency of this state, acting in loco parentis, may consent to the adoption of a child who has been:

(a) Surrendered to it for the purpose of adoption under ORS 418.270 if compliance is had with the provisions of that section;

(b) Permanently committed to it by order of a court of competent jurisdiction; or

(c) Surrendered to it for the purpose of adoption under ORS 418.270 by one parent if compliance is had with the provisions of that section and permanently committed to it by a court of competent jurisdiction having jurisdiction of the other parent.

(2) The department may consent to the adoption of a child over whom the department has been made guardian under ORS chapter 125.

(3) When consent is given under this section, no other consent is required.

(4) When consent is given under this section, there shall be filed in the adoption proceeding:

(a) A certified copy of an order of a court of competent jurisdiction formally and permanently assigning the guardianship of the child to the department or the child-caring agency, or a copy of the surrender of the child from its parent or parents or guardian, or both, as the case may be; and

(b) Written formal consent by the department or the child-caring agency, as the case may be, to the proposed adoption, showing that sufficient and satisfactory investigation of the adopting parties has been made and recommending that the adoption be granted. The consent of the department or the child-caring agency to the proposed adoption may be given by one of its officers, executives or employees who has been authorized or designated by it for that purpose. [1957 c.710 §4 (109.312 to 109.329 enacted in lieu of 109.320); 1971 c.401 §5; 1987 c.466 §3; 1995 c.664 §82; 2005 c.22 §86]

109.318 Consent by organization located outside Oregon. (1) An agency or other organization, public or private, located entirely outside of this state, or an authorized officer or executive thereof, acting in loco parentis, may consent to the adoption of a child under the custody, control or guardianship of such agency or organization or officer or executive thereof, if such agency or organization or officer or executive thereof is licensed or otherwise has authority in the jurisdiction in which such agency or other organization is located to consent to adoptions in loco parentis. When consent is given under this section, no other consent is required. The license or other authority to consent to adoption in loco parentis shall be conclusively presumed upon the filing with the court of a duly certified statement from an appropriate governmental agency of such other state that such agency or organization or officer or executive is licensed or otherwise has authority in such state to consent to adoptions in loco parentis.

(2) When consent is given under this section, there shall be filed in the adoption proceeding:

(a) A certified copy of the court order, or the written authorization from the parent, parents or other person, or both a court order and such written authorization, as the case may be, that enables consent to be given in loco parentis under the law of such other jurisdiction; and

(b) Written formal consent by the agency or other organization, or the officer or executive thereof, to the proposed adoption, showing that sufficient and satisfactory investigation of the adopting parties has been made and recommending that the adoption be granted. [1957 c.710 §5 (109.312 to 109.329 enacted in lieu of 109.320); 1973 c.823 §107; 2005 c.22 §87]

109.320 [Repealed by 1957 c.710 §1 (109.312 to 109.329 enacted in lieu of 109.320)]

109.322 Consent when parent mentally ill, mentally retarded or imprisoned. (1) If a parent has been adjudged mentally ill or mentally retarded 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, 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 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 parent adjudged mentally ill or mentally retarded, the petitioner shall also serve the summons and the motion and order to show cause upon the guardian of the parent. If the parent has no guardian, the court shall appoint a guardian ad litem to appear for the parent in the adoption proceedings.

(3) Upon hearing, if the court finds that the adoption is in the best interests of the child, the consent of the parent who is imprisoned or adjudged mentally ill or mentally retarded is not required, and the court may proceed regardless of the objection of the parent.

(4) This section does not apply when consent is given in loco parentis under ORS 109.316 or 109.318. [1957 c.710 §6 (109.312 to 109.329 enacted in lieu of 109.320); 1975 c.711 §1; 2003 c.576 §146; 2005 c.369 §5; 2007 c.70 §22]

109.324 Consent when parent has deserted or neglected child. (1) If 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 if the parent does not consent in writing to the adoption, 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 or when the parent has failed to file a written answer as required in ORS 109.330 (3), if the court finds that 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 the parent at the discretion of the court is not required and, if the court determines that the parent's consent is not required, the court may proceed regardless of the objection of the parent.

(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

(b) 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 when consent is given in loco parentis under ORS 109.316 or 109.318. [1957 c.710 §7 (109.312 to 109.329 enacted in lieu of 109.320); 2003 c.576 §147; 2003 c.579 §1; 2005 c.369 §6]

109.326 Consent when husband not father. (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 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 constitutes competent evidence before the court making the determination.

(3) Before making the determination of nonpaternity, the petitioner shall serve on the husband a summons and a true copy of a motion and order to show cause why a judgment of nonpaternity should not be entered 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 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 entry of a judgment of nonpaternity.

[] I do not consent to the entry of a judgment of nonpaternity. The court should not enter a judgment of nonpaternity 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 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 entering a judgment of nonpaternity.

(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.

(11) Notwithstanding ORS 109.070 (1)(a), 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 is not required in adoption proceedings concerning the child unless the husband has met the requirements of subsection (3)(a), (b) or (c) of this section.

(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.

(13) Nothing in this section shall be used to set aside an act of a permanent nature, including but not limited to adoption, unless the father establishes, within one year after the entry of the 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 (10)(a), (b), (c) or (d) of this section. [1957 c.710 §8 (109.312 to 109.329 enacted in lieu of 109.320); 1959 c.609 §1; 1967 c.385 §1; 1969 c.591 §287; 1975 c.640 §16; 1989 c.907 §1; 1995 c.514 §19; 2003 c.576 §148; 2005 c.160 §§16,22; 2005 c.369 §7; 2007 c.454 §6]

109.328 Consent of child 14 years of age or older. If the child is 14 years of age or older, the adoption shall not be made without the consent of the child. The consent required by this section is in addition to, and not in lieu of, the consent otherwise required by law. [1957 c.710 §9 (109.312 to 109.329 enacted in lieu of 109.320)]

109.329 Adoption of person 18 years of age or older or legally married. (1) Subject to subsection (2) of this section, any person may petition the circuit court for leave to adopt a person who is 18 years of age or older or who is legally married. The petition shall be accompanied by the written consent of each petitioner and the written consent of the person to be adopted. The written consents shall be filed with the petition.

(2) In addition to the written consents required under subsection (1) of this section, an adoption of a person who is 18 years of age or older or who is legally married is governed by the following:

(a) One petitioner or the person to be adopted must have resided in this state con-

tinuously for a period of six months prior to the filing of the petition; and

(b) The petition must be filed in the county in which one petitioner or the person to be adopted resides.

(3) The court may grant the petition if the court finds, from the allegations set forth in the petition and an attached affidavit, that each petitioner:

(a) Understands the significance and ramifications of the adoption; and

(b) Is not acting under duress, coercion or undue influence.

(4) In a proceeding under this section, the court may:

(a) Appoint counsel for each petitioner or for the person to be adopted or both or appoint a visitor, as provided in ORS 125.150. If the court appoints counsel or a visitor or both under this paragraph, the court shall apportion the costs among each petitioner and the person being adopted.

(b) Hold a hearing.

(c) On the court's own motion, take testimony from or hold a conference with each petitioner and the person to be adopted. The court may hold a conference with one party and exclude the other party from the conference. In such a case, the court shall allow the attorney for the excluded party to attend the conference.

(d) Require that notice of the proceeding be provided by each petitioner to any or all of the following:

(A) The spouse of each petitioner.

(B) A person cohabiting with a petitioner who is interested in the affairs and welfare of the petitioner.

(C) The adult children of each petitioner.

(5) If, upon a petition for adoption presented and consented to in writing by each petitioner and the person to be adopted, the court is satisfied as to the identity and relations of each petitioner and the person to be adopted, that each petitioner understands the significance and ramifications of the adoption, that each petitioner is not acting under duress, coercion or undue influence and that it is fit and proper that the adoption be effected, a judgment shall be made setting forth the facts and ordering that from the date of the judgment, the person to be adopted, for all legal intents and purposes, is the child of the petitioner or petitioners.

(6) The provisions of ORS 109.308, 109.309, 109.342 and 109.353 do not apply to an adoption under this section. [1957 c.710 §10 (109.312 to 109.329 enacted in lieu of 109.320); 1973 c.827 §13; 2003 c.579 §2]

109.330 Notice to nonconsenting parent; notice when child has no parent, guardian or next of kin. (1) In the cases provided for in ORS 109.314, 109.322 and 109.324, when a parent does not consent to the adoption of the child, 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.

(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 the court deems necessary or proper. [Amended by 1957 c.710 §11; 1967 c.385 §2; 1969 c.591 §288; 1975 c.640 §17; 1979 c.284 §101; 2005 c.369 §1]

109.332 Grandparent visitation in stepparent adoption. (1) When a petition has been filed under ORS 109.309 concerning the adoption by a stepparent of a child, a grandparent served with a copy of the petition under ORS 109.309 (7) may file a motion with the court asking the court to award a grandparent the right to regular visitation with the child after the adoption. A motion under this subsection must be filed no later than 30 days after service of the petition.

(2) The court shall award a grandparent visitation rights only if the court finds by clear and convincing evidence that:

(a) Establishing visitation rights is in the best interests of the child;

(b) A substantial relationship existed prior to the adoption between the child and the grandparent seeking visitation rights; and

(c) Establishing visitation rights does not substantially interfere with the relationship between the child and the adoptive family.

(3) As used in this section, "grandparent" includes a grandparent who has established custody, visitation or other rights under ORS 109.119. [1993 c.689 §2; 1993 c.717 §10; 1995 c.90 §4; 2001 c.873 §7; 2003 c.258 §3; 2005 c.22 §88]

Note: 109.332 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.335 Appointment of guardian pending further adoption proceedings.

Notwithstanding the provisions of ORS chapter 125 that relate to the appointment of a guardian, when a petition is filed pursuant to ORS 109.309 for leave to adopt a minor child and the required consent thereto has been filed, the court before which the petition is pending may on its own motion enter an order appointing the petitioner or some other suitable person guardian of the minor child pending further order of the court or entry of a judgment under ORS 109.350. [1965 c.187 §1; 1967 c.231 §1; 1973 c.823 §108; 1995 c.664 §83; 2003 c.576 §149]

109.340 [Repealed by 1957 c.412 §2 (7.211 enacted in lieu of 109.340)]

109.342 Medical history of child and biological parents required; content; delivery to adoptive parent and to adoptee on majority. (1) Before any judgment of adoption of a minor is entered, the court shall be provided a medical history of the child and of the biological parents as complete as possible under the circumstances.

(2) When possible, the medical history shall include, but need not be limited to:

(a) A medical history of the adoptee from birth up to the time of adoption, including disease, disability, congenital or birth defects, and records of medical examinations of the child, if any;

(b) Physical characteristics of the biological parents, including age at the time of the adoptee's birth, height, weight, and color of eyes, hair and skin;

(c) A gynecologic and obstetric history of the biological mother;

(d) A record of potentially inheritable genetic or physical traits or tendencies of the biological parents or their families; and

(e) Any other useful or unusual biological information that the biological parents are willing to provide.

(3) The names of the biological parents shall not be included in the medical history.

(4) The court shall give the history to the adoptive parents at the time the judgment is entered and shall give the history to the adoptee, upon request, after the adoptee attains the age of majority.

(5) Subsection (1) of this section does not apply when a person is adopted by a stepparent.

(6) The Department of Human Services shall prescribe a form for the compilation of the medical history. [1979 c.493 §2; 2003 c.576 §150]

109.345 [1961 c.99 §1; 1969 c.198 §56; repealed by 1993 c.717 §11]

109.346 Adoption-related counseling for birth parent. (1) Except as provided in subsection (5) of this section, a birth parent consenting to an adoption shall receive notice of the birth parent's right to payment for three adoption-related counseling sessions prior to surrender or relinquishment of the child for adoption and three sessions of adoption-related counseling after surrender or relinquishment of the child for adoption.

(2) Notice of the right to adoption-related counseling shall be in writing and shall be provided to the consenting birth parent by either the attorney for the birth parent, the agency representative taking the birth parent's consent or the attorney for the prospective adoptive parent. Before entry of a judgment of adoption, the agency or attorney providing the written notice shall submit verification to the court that the notice was given to the consenting birth parent.

(3) The prospective adoptive parent shall pay all uninsured costs of the adoption-related counseling required by this section, provided the counseling is received within one year of the date of surrender or relinquishment of the child for adoption.

(4) Adoption-related counseling under this section, unless otherwise agreed to by the prospective adoptive parent and the consenting birth parent, shall be provided by:

(a) A social worker employed by an Oregon licensed adoption agency other than the social worker assigned to the prospective adoptive parent;

(b) A social worker, counselor or therapist who is working under the supervision of a licensed clinical social worker or a licensed professional counselor and who is knowledgeable about birth parent, adoption and grief and loss issues; or

(c) A social worker, counselor or therapist who:

(A) Has a graduate degree in social work, counseling or psychology; and

(B) Is knowledgeable about birth parent, adoption and grief and loss issues.

(5) The requirements of this section do not apply to:

(a) An adoption in which a birth parent relinquishes parental rights to the Department of Human Services;

(b) An adoption in which one parent retains parental rights;

(c) An adoption in which the child is born in a foreign country and adopted under the laws of that country or readopted in Oregon;

(d) An adoption in which the child is born in a foreign country and subsequently adopted in Oregon and in which the identity or whereabouts of the child's birth parents are unknown; or

(e) An adoption of an adult.

(6) Failure to provide the notice required by this section or failure to pay the uninsured costs of adoption-related counseling required by this section is not grounds for setting aside an adoption judgment or for revocation of a written consent to an adoption or a certificate of irrevocability. [2001 c.586 §2; 2003 c.576 §151]

Note: 109.346 and 109.347 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.347 Civil action for failure to pay for counseling; attorney fees. A birth parent aggrieved by the failure of a prospective adoptive parent or adoptive parent to pay the uninsured costs of adoption-related counseling required by ORS 109.346 may file a civil action in circuit court for payment or reimbursement of the uninsured costs of adoption-related counseling. The court shall award reasonable attorney fees and costs of

the action to a prevailing birth parent. [2001 c.586 §3]

Note: See note under 109.346.

109.350 Judgment of adoption. If, upon a petition for adoption duly presented and consented to, the court is satisfied as to the identity and relations of the persons, that the petitioner is of sufficient ability to bring up the child and furnish suitable nurture and education, having reference to the degree and condition of the parents, that, if applicable, the requirements of the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) have been met, and that it is fit and proper that such adoption be effected, a judgment shall be made setting forth the facts, and ordering that from the date of the judgment the child, to all legal intents and purposes, is the child of the petitioner. In an adoption subject to the Indian Child Welfare Act (25 U.S.C. 1901 et seq.), the state court shall provide to the United States Secretary of the Interior a copy of the judgment together with the other information required by the Indian Child Welfare Act (25 U.S.C. 1901 et seq.). [Amended by 1959 c.430 §4; 1983 c.302 §3; 2003 c.576 §152]

109.353 Notice of voluntary adoption registry required before judgment entered; waiver. Before a judgment of adoption is entered, the agency or organization facilitating the adoption, or the attorney for the adoptive parents in an independent adoption, shall submit verification to the court that the parents of the child and the petitioners have been advised of the voluntary adoption registry established under ORS 109.450 and have been given information on how to access those services. The court may waive this requirement upon a finding of good cause. [1995 c.730 §5; 1999 c.160 §1; 2003 c.576 §153]

Note: 109.353 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.360 Change of adopted child's name. If in a petition for the adoption of a child a change of the child's name is requested, the court, upon entering a judgment granting the adoption, may also provide in the judgment for the change of name without the notices required by ORS 33.420. [Amended by 1997 c.872 §24; 2003 c.576 §154]

109.370 [Amended by 1957 c.403 §7; 1961 c.98 §1; 1969 c.591 §289; repealed by 1993 c.717 §11]

109.380 [Repealed by 1959 c.609 §5]

109.381 Effect of judgment of adoption. (1) A judgment of a court of this state granting an adoption, and the proceedings in such adoption matter, shall in all respects be entitled to the same presumptions and be as conclusive as if rendered by a court of record acting in all respects as a court of general

jurisdiction and not by a court of special or inferior jurisdiction, and jurisdiction over the persons and the cause shall be presumed to exist.

(2) Except for such right of appeal as may be provided by law, judgments of adoption shall be binding and conclusive upon all parties to the proceeding. No party nor anyone claiming by, through or under a party to an adoption proceeding, may for any reason, either by collateral or direct proceedings, question the validity of a judgment of adoption entered by a court of competent jurisdiction of this or any other state.

(3) After the expiration of one year from the entry of a judgment of adoption in this state the validity of the adoption shall be binding on all persons, and it shall be conclusively presumed that the child's natural parents and all other persons who might claim to have any right to, or over the child, have abandoned the child and consented to the entry of such judgment of adoption, and that the child became the lawful child of the adoptive parents or parent at the time when the judgment of adoption was rendered, all irrespective of jurisdictional or other defects in the adoption proceeding. After the expiration of the one-year period no one may question the validity of the adoption for any reason, either through collateral or direct proceedings, and all persons shall be bound thereby. However, the provisions of this subsection shall not affect the right of appeal from a judgment of adoption as may be provided by law. [Subsections (1), (2) and (3) enacted as 1959 c.609 §§2,3,4; subsection (4) derived from 1959 c.609 §6; 2003 c.576 §155; 2005 c.22 §89]

109.385 Certain adoptions in foreign nations recognized; evidence. (1) An adoption in any foreign nation under the laws of such nation of a person who is at the time of the adoption a national of such nation by adoptive parents at least one of whom is a citizen of the United States shall be recognized as a valid and legal adoption for all purposes in the State of Oregon if the adoption is valid and legal in the foreign nation wherein the adoption occurred.

(2) The certificate of a judge of a court of general jurisdiction under the seal of the judge or the seal of the court in any foreign nation with respect to the adoption of a national of such foreign nation by adoptive parents at least one of whom is a citizen of the United States that all pertinent laws of such foreign nation have been complied with and the adoption is in all respects legal and valid shall be prima facie evidence in any court in the State of Oregon in any proceeding that such adoption was in fact legal and valid. Such certificate shall be prima facie evidence even if under the laws of the for-

eign nation the adoption is an administrative procedure and is not within the jurisdiction of the court or the judge making the certificate. [1961 c.95 §§2,3]

109.390 Authority of Department of Human Services or child-caring agency in adoption proceedings. When the Department of Human Services or an approved child-caring agency has the right to consent to the adoption of a child, the department or agency may:

- (1) If it deems the action necessary or proper, become a party to any proceeding for the adoption of the child.
- (2) Appear in court where a proceeding for the adoption of the child is pending.
- (3) Give or withhold consent in loco parentis to the adoption of the child only in accordance with ORS 109.316. [1957 c.710 §14; 1971 c.401 §6; 2005 c.22 §90]

109.400 Adoption report form. (1) When a petition for adoption is filed with a court, the petitioner or the attorney thereof shall file with the petition an adoption report form as provided in ORS 432.415.

(2) Notwithstanding ORS 7.211, if the court enters a judgment of adoption, the clerk of the court shall review the personal particulars filled in on the form, shall fill in the remaining blanks on the form, shall certify the form and mail it to the State Registrar of the Center for Health Statistics as the adoption report as required under ORS 432.415. [1959 c.430 §1; 1983 c.709 §41; 1997 c.783 §45; 2003 c.576 §156]

109.410 Certificate of adoption; form; fee; persons eligible to receive copy; status. (1) The clerk of the court having custody of the adoption file shall issue upon request a certificate of adoption to the adopted person, the adoptive parents or parent, their attorney of record, in the proceeding, or to any child-placing agency which gave consent to the adoption. The certificate shall be substantially in the following form:

CERTIFICATE OF ADOPTION
IN THE _____ COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF _____

In the Matter of the Adoption of:

File No. _____

Name after Adoption _____

This is to certify that on the ____ day of _____, 2____, a Judgment of Adoption was granted by the Honorable Judge

_____ granting the adoption of the above-named person by _____.

The adopted person, above named, was born in the City of _____, County of _____, State of _____, on the ____ day of _____, 2____.

Dated at _____, Oregon, this ____ day of _____, 2____.

(Title of the Clerk of the Court)

(SEAL) By _____
Deputy

(2) The certificate of adoption may be issued by the judge who granted the adoption, instead of by the clerk of the court.

(3) The certificate of adoption shall not state the former name of the person adopted, unless the name was not changed by the judgment, and shall not state the name of either biological parent of the person adopted. However, if the adoption was by the adopted person's stepparent, the name of the adopting stepparent's spouse may be set forth in the certificate if requested.

(4)(a) For the issuance of one certificate of adoption for any person who was adopted after October 3, 1979, a fee of not more than \$1 may be charged and collected by the clerk of the court.

(b) For additional certificates or for certificates of adoption for persons adopted prior to October 3, 1979, a fee of not more than \$1 for each certificate may be charged and collected by the clerk of the court.

(5) No certificate of adoption shall be issued to any person other than the persons described in subsection (1) of this section without order of the court.

(6) For all purposes, the certificate of adoption shall constitute legal proof of the facts set forth therein, shall have the same force and effect and the same presumptions of validity as the judgment of adoption, and shall be entitled to full faith and credit. [1979 c.397 §2; 1985 c.496 §24; 2003 c.576 §157]

VOLUNTARY ADOPTION REGISTRY

109.425 Definitions for ORS 109.425 and 109.435 to 109.507. As used in this section and ORS 109.435 to 109.507:

(1) "Adoptee" means a person who has been adopted in the State of Oregon.

(2) "Adoption" means the judicial act of creating the relationship of parent and child where it did not exist previously.

(3) "Adoptive parent" means an adult who has become a parent of a child through adoption.

(4) “Adult” means a person 18 years of age or older.

(5) “Agency” means any public or private organization licensed or authorized under the laws of this state to place children for adoption.

(6) “Birth parent” is:

(a) The man or woman who is legally presumed under the laws of this state to be the father or mother of genetic origin of a child; and

(b) A putative father of the child if the birth mother alleges he is the father and the putative father, by written affidavit or surrender and release executed within three years of the relinquishment of the child by the birth mother or the termination of parental rights of the birth mother, acknowledges being the child’s biological father.

(7) “Department” means the Department of Human Services.

(8)(a) “Genetic and social history” is a comprehensive report, when obtainable, of the health status and medical history of the birth parents and other persons related to the child.

(b) The genetic and social history may contain as much of the following as is available:

- (A) Medical history;
- (B) Health status;
- (C) Cause of and age at death;
- (D) Height, weight, eye and hair color;
- (E) Ethnic origins; and
- (F) Religion, if any.

(c) The genetic and social history may include the health status and medical history of:

- (A) The birth parents;
- (B) A putative father, if any;
- (C) Siblings to the birth parents, if any;
- (D) Siblings to a putative father, if any;
- (E) Other children of either birth parent, if any;
- (F) Other children of a putative father, if any;
- (G) Parents of the birth parents; and
- (H) Parents of a putative father, if any.

(9) “Health history” is a comprehensive report, when obtainable, of the child’s health status and medical history at the time of placement for adoption, including neonatal, psychological, physiological and medical care history.

(10) “Putative father” is a man who, under the laws of this state, is not legally presumed to be the father of genetic origin of a

child, but who claims or is alleged to be the father of genetic origin of the child.

(11) “Registry” is a voluntary adoption registry as established under ORS 109.450.

(12) “Successor agency” is an agency which has the adoption records of another agency because of the merger of the agency and the successor agency or because a former agency has ceased doing business and has given its adoption records to the successor agency as provided in ORS 109.435 (2). [1983 c.672 §2; 1989 c.372 §1; 1993 c.410 §1; 1995 c.79 §39; 1995 c.730 §7; 1997 c.130 §3; 1997 c.442 §1; 2001 c.900 §14]

Note: 109.425 to 109.507 and 109.990 (2) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 109 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.430 Policy and purpose. It is the policy of this state that adoption is based upon the legal termination of parental rights and responsibilities of birth parents and the creation of the legal relationship of parents and child between an adoptee and the adoptive parents. These legal and social premises underlying adoption must be maintained. The state recognizes that some adults who were adopted as children have a strong desire to obtain identifying information about their birth parents or putative father while other such adult adoptees have no such desire. The state further recognizes that some birth parents have a strong desire to obtain identifying information about their biological children who were adopted, while other birth parents have no such desire. The state fully recognizes the right to privacy and confidentiality of birth parents whose children were adopted, the adoptees and the adoptive parents. The purpose of ORS 7.211, 109.425 to 109.507 and 432.420 is to:

(1) Set up a voluntary adoption registry where birth parents, putative fathers and adult adoptees may register their willingness to the release of identifying information to each other;

(2) Provide for the disclosure of identifying information to birth parents and their genetic offspring through a social worker employed by a licensed adoption agency, if a birth parent or parents or putative father and the adult adoptee are registered;

(3) Provide for the transmission of non-identifying health and social and genetic history of the adult adoptees, birth parents, putative fathers and other specified persons; and

(4) Provide for disclosure of specific identifying information to Indian tribes or governmental agencies when needed to establish the adoptee’s eligibility for tribal membership or for benefits or to a person responsible for settling an estate that refers

to the adoptee. [1983 c.672 §1; 1989 c.372 §5; 1995 c.79 §40; 1995 c.730 §8; 1997 c.442 §2]

Note: See note under 109.425.

109.435 Adoption records to be permanently maintained. (1) All records of any adoption finalized in this state shall be permanently maintained by the Department of Human Services or by the agency arranging the adoption.

(2) If an agency which handles adoptions ceases to do business, the agency shall transfer the adoption records to the department or to a successor agency, if the agency gives notice of the transfer to the department. [1983 c.672 §3]

Note: See note under 109.425.

109.440 Information confidential; exceptions. (1) A person or agency may not disclose any confidential information relating to an adoption except as provided in subsection (2) of this section and ORS 109.425 and 109.435 to 109.507 or pursuant to a court order.

(2) The provisions of subsection (1) of this section do not apply when confidential information relating to an international adoption is requested by the adult adoptee. [1983 c.672 §4; 1995 c.79 §41; 1995 c.730 §9; 2001 c.586 §1]

Note: See note under 109.425.

109.445 Information of registry confidential. (1) Notwithstanding any other provision of law, the information acquired by any voluntary adoption registry shall not be disclosed under any freedom of information legislation, rules or practice.

(2) A class action suit shall not be maintained in any court of this state to require the registry to disclose identifying information. [1983 c.672 §5]

Note: See note under 109.425.

109.450 Child placement agency to maintain registry; Department of Human Services duties. (1) A voluntary adoption registry shall be established and maintained by each agency or its successor agency. An agency may delegate or contract with another agency to establish, maintain and operate the registry for the delegating agency.

(2) The Department of Human Services shall establish, maintain and operate the registry for all adoptions not arranged through a licensed agency. The department may contract out the function of establishing, maintaining and operating the registry to another agency. The department may join a voluntary national or international registry and make its records available in the manner authorized by ORS 109.425 to 109.507. However, if the rules of disclosure of such a voluntary organization differ from those prescribed in ORS 109.425 and 109.435 to

109.507, ORS 109.425 and 109.435 to 109.507 shall prevail. [1983 c.672 §6; 1995 c.79 §42; 1995 c.730 §10]

Note: See note under 109.425.

109.455 Persons eligible to use registry. (1) As provided in ORS 109.475 and except as provided in subsection (2) of this section, only a birth parent, adult adoptee, adult genetic sibling of an adoptee, adoptive parent of a deceased adoptee or parents or adult siblings of a deceased birth parent or parents may use the registry for obtaining identifying information about birth parents, putative fathers, adult adoptees and adult adoptee genetic siblings.

(2) An adult adoptee who has a genetic sibling in the adult adoptee's adoptive family who is under the age of 18 may not have access to the registry.

(3) A putative father may not have access to the registry.

(4) Birth parents, adult adoptees, adult genetic siblings of an adoptee, adoptive parent or parents of a deceased adoptee and parents or adult siblings of a deceased birth parent or parents shall work through the agency involved in the adoption, or its successor agency, or the Department of Human Services to receive information concerning the adoption. [1983 c.672 §7; 1989 c.372 §2; 1997 c.442 §3]

Note: See note under 109.425.

109.460 Persons eligible to register. (1) An adult adoptee, each birth parent, a putative father, an adult genetic sibling of an adoptee, an adoptive parent of a deceased adoptee and a parent or adult sibling of a deceased birth parent or parents may register by submitting a signed affidavit to the appropriate registry. The affidavit shall contain the information listed in ORS 109.465 and a statement of the registrant's willingness to be identified to the other relevant persons who register. The affidavit gives authority to the registry to release identifying information related to the registrant to the other relevant persons who register. Each registration shall be accompanied by the birth certificate of the registrant.

(2) An adoptee, or the parent or guardian of an adoptee under 18 years of age, may register to have specific identifying information disclosed to Indian tribes or to governmental agencies in order to establish the adoptee's eligibility for tribal membership or for benefits or to a person settling an estate. The information shall be limited to a true copy of documents that prove the adoptee's lineage. Information disclosed in accordance with this subsection shall not be disclosed to the adoptee or the parent or guardian of the adoptee by the registry or employee or

agency operating a registry nor by the Indian tribe, governmental agency or person receiving the information.

(3) Except as provided in ORS 109.475 (2), if a birth parent or an adoptee fails to file an affidavit with the registry for any reason, including death or disability, identifying information shall not be disclosed to those relevant persons who do register.

(4) Except as otherwise provided in ORS 109.503, a registry or employee or the agency operating a registry shall not contact or in any other way solicit any adoptee or birth parent to register with the registry. [1983 c.672 §8; 1989 c.372 §6; 1993 c.410 §10; 1997 c.442 §4]

Note: See note under 109.425.

109.465 Content of affidavit; notice of change in information. (1) The affidavit required under ORS 109.460 shall contain:

(a) The current name and address of the registrant;

(b) Any previous name by which the registrant was known;

(c) The original or adopted names of the adopted child;

(d) The place and date of birth of the adopted child, if known; and

(e) The name and address of the agency, if known.

(2) The registrant shall notify the registry of any change in name or address which occurs after the registrant registers. Upon registering, the registry shall inform the registrant that the registrant has the responsibility to notify the registry of a change in address. The registry is not required to search for a registrant who fails to notify the registry of a change in address.

(3) A registrant may cancel the registrant's registration at any time by giving the registry written notice of the registrant's desires to so cancel. [1983 c.672 §9]

Note: See note under 109.425.

109.470 Continuing registration by birth parent or putative father. (1) When an adoptee reaches age 18, a birth parent of the adoptee, if the birth parent registered with the registry before the adoptee was age 18, shall notify the registry in writing only if the birth parent does not desire to continue the registration.

(2) When an adoptee reaches age 18, a putative father of the adoptee, if the putative father registered with the registry before the adoptee was age 18, shall notify the registry in writing only if the putative father does not desire to continue the registration.

(3) A registry shall notify a birth parent or putative father of this requirement when the birth parent or putative father initially

registers. [1983 c.672 §10; 1989 c.372 §3; 1997 c.442 §5; 1999 c.650 §1]

Note: See note under 109.425.

109.475 Processing affidavits. (1) Upon receipt of the affidavit under ORS 109.460, the registry shall process each affidavit in an attempt to match the adult adoptee and the birth parents, the putative father, the adult genetic sibling, the adoptive parent of a deceased adoptee or the parents or adult sibling of a deceased birth parent or parents. The processing shall include research from agency records, and if necessary from court records, to determine whether the registrants match.

(2) If the registry determines there is a match and if the relevant persons have registered with the registry and received the counseling required by ORS 109.480, notification of the match may be given by a registry to only:

(a) A birth parent or parents of an adult adoptee and an adult adoptee;

(b) The adult genetic siblings of an adult adoptee if the birth parent or parents are deceased;

(c) Adult adoptee genetic siblings who have been adopted by different adoptive families and have no knowledge of their birth parents;

(d) At the discretion of the agency operating the registry, parents or adult siblings of the birth parent or parents if the birth parent or parents are deceased; or

(e) At the discretion of the agency operating the registry, the adoptive parent or parents of a deceased adoptee.

(3) Notification of a match to the relevant parties shall be made through a direct and confidential contact. [1983 c.672 §11; 1997 c.442 §6]

Note: See note under 109.425.

109.480 Counseling of registrant. (1) Upon the determination of a match but before identifying information is disclosed, the registrant shall, at the discretion of the agency operating the registry, participate in counseling:

(a) With a social worker employed by the registry; or

(b) If the registrant is domiciled outside the state, with a social worker in that state who is selected by the registry.

(2) The counseling required under subsection (1) of this section shall place an emphasis on an evaluation of the need for and the effect of the information or contact on the genetic family members and the relationships within the adoptive family. [1983 c.672 §12]

Note: See note under 109.425.

109.485 Registry information to be maintained permanently. Any affidavits filed and other information collected by a registry shall be permanently maintained. [1983 c.672 §13]

Note: See note under 109.425.

109.490 Limits on releasing information. A registry shall release only information necessary for identifying a birth parent, a putative father, an adult adoptee or an adult genetic sibling, and shall not release information of any kind pertaining to:

- (1) The adoptive parents;
- (2) The siblings to the adult adoptee who are children of the adoptive parents; and
- (3) The income of any person. [1983 c.672 §14; 1997 c.442 §7]

Note: See note under 109.425.

109.495 Registrant fee. Costs of establishing and maintaining a registry may be met through reasonable fees charged to all persons who register. [1983 c.672 §15; 1999 c.650 §2]

Note: See note under 109.425.

109.500 Genetic, social and health history; availability; fee. (1) A genetic and social history and health history which excludes information identifying any birth parent or putative father, member of a birth parent's or putative father's family, the adoptee or the adoptive parents of the adoptee, may be provided, if available, from an agency upon request to the following persons:

- (a) The adoptive parents of the child or the child's guardian;
- (b) The birth parent of the adoptee;
- (c) An adult adoptee; and
- (d) In the event of the death of the adoptee:

(A) The adoptee's spouse if the spouse is the birth parent of the adoptee's child or the guardian of any child of the adoptee; or

(B) Any progeny of the adoptee who is 18 years of age or older.

(2) The medical history part of the report mentioned in subsection (1) of this section may be in the form prescribed by the Department of Human Services under ORS 109.342.

(3) The agency may charge the person requesting the information requested under subsection (1) of this section the actual cost of providing such information. [1983 c.672 §16; 1989 c.372 §4; 1997 c.442 §8]

Note: See note under 109.425.

109.502 Search for birth parents, putative father or genetic siblings; who may initiate; information required; fee. (1)(a) An adult adoptee or the adoptive parent of a

minor or deceased adoptee may request that the Department of Human Services or the Oregon licensed adoption agency that facilitated the adoption conduct a search for the adoptee's birth parents, putative father or, except as otherwise provided in ORS 109.504 (1), for the adoptee's genetic siblings.

(b) A birth parent, an adult genetic sibling of an adoptee or the parent or adult sibling of a deceased birth parent may request the department or the Oregon licensed adoption agency that facilitated the adoption to conduct a search for an adult adoptee whom the birth parent relinquished for adoption.

(c) A person requesting a search under paragraph (a) or (b) of this subsection shall direct the request for the search to the Oregon licensed adoption agency that facilitated the adoption. If the Oregon licensed adoption agency that facilitated the adoption is not conducting searches or has not been authorized by the department to conduct searches, the person shall direct the request to the department.

(2) At the time of a request to conduct a search under this section, the requester shall provide the department or the Oregon licensed adoption agency that facilitated the adoption with such information as the department or the Oregon licensed adoption agency requires. The person requesting the search must be registered with a registry established under ORS 109.450.

(3)(a) If the person has requested the department to conduct a search, upon payment by the requester of a fee established by rule under ORS 109.506, the department shall instruct an Oregon licensed adoption agency to conduct the search.

(b) If the Oregon licensed adoption agency that facilitated the adoption meets the standards established by rule under ORS 109.506, upon payment by the requester of a fee established by rule under ORS 109.506, the Oregon licensed adoption agency shall conduct the search. [1993 c.410 §3; 1995 c.730 §12; 1997 c.442 §9]

Note: See note under 109.425.

109.503 Access to adoption records for search; duties of searcher. (1) When the Department of Human Services or an Oregon licensed adoption agency has been instructed to conduct a search, the department or an Oregon licensed adoption agency may examine adoption records maintained by the department and by private adoption agencies under ORS 109.435. However, the department or an Oregon licensed adoption agency may examine the adoption records of a private adoption agency only if the private adoption agency allows the examination. The depart-

ment or an Oregon licensed adoption agency shall keep the records and information located in the records confidential.

(2) If the department or an Oregon licensed adoption agency is able to identify and locate the person being sought, the department or an Oregon licensed adoption agency shall make a confidential inquiry of that person to determine whether the person wishes to make contact with the person requesting the search. The department or an Oregon licensed adoption agency shall make the inquiry in person if possible. If the reason the person is requesting the search is because there is a serious medical condition in the person's immediate family that is, or may be, an inheritable condition and the person being sought is biologically related to the ill person, the department or the Oregon licensed adoption agency shall inform the person being sought of that fact.

(3)(a) If the person being sought wishes to make contact with the person requesting the search, the department or an Oregon licensed adoption agency shall:

(A) Tell the person about the voluntary adoption registry under ORS 109.435 to 109.507 and that any contact will be made through the registry and its provisions and shall give the person any information and forms necessary to register;

(B) Notify the voluntary adoption registry that the person being sought has been identified and located and has indicated that the person wishes to make contact; and

(C) Return all materials and information obtained during the search to the department or agency responsible for maintaining the information.

(b) If the person being sought has indicated a wish to make contact and has not registered with the voluntary adoption registry within 90 days after the confidential inquiry was made, the department or an Oregon licensed adoption agency, where practicable, shall contact the person to offer forms and materials to register and to determine if the person still intends to register.

(4) If the person being sought does not wish to make contact with the person requesting the search, the department or an Oregon licensed adoption agency shall:

(a) Tell the person about the voluntary adoption registry under ORS 109.435 to 109.507;

(b) Notify the voluntary adoption registry that the person being sought has been identified, located and has indicated that the person does not wish to make contact; and

(c) Return all materials and information obtained during the search to the department

or agency responsible for maintaining the information.

(5) If the department or an Oregon licensed adoption agency is unable to identify and locate the person being sought, the department or an Oregon licensed adoption agency shall notify the voluntary adoption registry of that fact.

(6) Upon receiving notice under subsection (3)(a)(B), (4)(b) or (5) of this section, the voluntary adoption registry shall:

(a) Enter the information into its records; and

(b) Notify the person requesting the search only that the person being sought has or has not been located, and either:

(A) Has indicated a wish to make contact and has been given information and forms necessary to register; or

(B) Has indicated a wish not to make contact. [1993 c.410 §4; 1995 c.79 §43; 1995 c.730 §13; 1997 c.442 §10]

Note: See note under 109.425.

109.504 Effect on subsequent searches when person sought in initial search refuses contact.

(1) If an adult adoptee or the adoptive parent of a minor or deceased adoptee has initiated a search under ORS 109.502, the fact that the person being sought in the original search does not wish to make contact does not prevent the adult adoptee or the adoptive parent from requesting another search for a birth parent or putative father not previously contacted. An adult adoptee or the adoptive parent of a minor or deceased adoptee may not request a search for a genetic sibling of the adoptee if there was a previous search for a birth parent of the adoptee and the birth parent did not want to make contact with the adult adoptee or adoptive parent.

(2) The adult adoptee or adoptive parent of a minor or deceased adoptee shall request the search by repeating the process set out in ORS 109.502 and by paying the fees established by the Department of Human Services pursuant to ORS 109.506. [1993 c.410 §5; 1997 c.442 §11]

Note: See note under 109.425.

109.505 Support services; adoption and reunion issues. Information about agency and community resources regarding psychological issues in adoption and reunion shall be provided:

(1) By the Department of Human Services or an Oregon licensed adoption agency to all persons requesting a search under ORS 109.502; and

(2) By the department or an Oregon licensed adoption agency only to those persons the department or an Oregon licensed adop-

tion agency identifies and locates as the result of a search under ORS 109.503 and who express a wish to receive information. [1993 c.410 §6; 1995 c.730 §14]

Note: See note under 109.425.

109.506 Rulemaking; fees. The Department of Human Services by rule shall establish:

(1) Eligibility standards for Oregon licensed adoption agencies that conduct searches under ORS 109.503;

(2) Standards of conduct for Oregon licensed adoption agencies that conduct searches under ORS 109.503;

(3) Contracting procedures for Oregon licensed adoption agencies that conduct searches under ORS 109.503;

(4) Search procedures to be followed by Oregon licensed adoption agencies that conduct searches under ORS 109.503; and

(5) Fees to be paid by persons requesting a search under ORS 109.502. Fees authorized under this section include:

(a) A fee to be paid to the department or an Oregon licensed adoption agency to cover all costs incurred in the search; and

(b) A fee to be paid to the department or an Oregon licensed adoption agency to cover the administrative costs incurred in administering the search program. [1993 c.410 §7; 1995 c.730 §15; 1999 c.650 §3]

Note: See note under 109.425.

109.507 Access to Department of Human Services records required; access to private agency records discretionary. (1) The Department of Human Services shall allow an Oregon licensed adoption agency to examine confidential adoption records maintained by the department as part of a search conducted under ORS 109.503.

(2) A private adoption agency may allow the department or an Oregon licensed adoption agency to examine confidential adoption records maintained by the agency as part of a search conducted under ORS 109.503. [1993 c.410 §8; 1995 c.730 §16]

Note: See note under 109.425.

AGE OF MAJORITY

109.510 Age of majority. Except as provided in ORS 109.520, in this state any person shall be deemed to have arrived at majority at the age of 18 years, and thereafter shall:

(1) Have control of the person's own actions and business; and

(2) Have all the rights and be subject to all the liabilities of a citizen of full age. [Amended by 1973 c.827 §14; 2005 c.22 §91]

109.520 Majority of married persons. Except as provided in ORS 653.010, all persons shall be deemed to have arrived at the age of majority upon their being married according to law. [Amended by 1953 c.343 §2; 1957 c.710 §12; 1973 c.827 §15]

109.550 [1977 c.525 §2; 1993 c.33 §293; repealed by 1993 c.546 §141]

109.555 [1977 c.525 §3; 1979 c.266 §2; 1993 c.33 §294; repealed by 1993 c.546 §141]

109.560 [1977 c.525 §4; 1993 c.33 §295; repealed by 1993 c.546 §141]

109.565 [1977 c.525 §5; repealed by 1993 c.546 §141]

RIGHTS OF MINORS

109.610 Right to treatment for venereal disease without parental consent. (1) Notwithstanding any other provision of law, a minor who may have come into contact with any venereal disease may give consent to the furnishing of hospital, medical or surgical care related to the diagnosis or treatment of such disease, if the disease or condition is one which is required by law or regulation adopted pursuant to law to be reported to the local or state health officer or board. Such consent shall not be subject to disaffirmance because of minority.

(2) The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize such hospital, medical or surgical care and without having given consent the parent, parents, or legal guardian shall not be liable for payment for any such care rendered. [Formerly 109.105; 1977 c.303 §1]

109.620 [Formerly 109.115; repealed by 1973 c.827 §83]

109.630 [1971 c.726 §1; 1973 c.454 §1; repealed by 1973 c.827 §83]

109.640 Right to medical or dental treatment without parental consent; provision of birth control information and services to any person. Any physician or nurse practitioner may provide birth control information and services to any person without regard to the age of the person. A minor 15 years of age or older may give consent to hospital care, medical or surgical diagnosis or treatment by a physician licensed by the Oregon Medical Board, and dental or surgical diagnosis or treatment by a dentist licensed by the Oregon Board of Dentistry, without the consent of a parent or guardian, except as may be provided by ORS 109.660. A minor 15 years of age or older may give consent to diagnosis and treatment by a nurse practitioner who is licensed by the Oregon State Board of Nursing under ORS 678.375 and who is acting within the scope of practice for a nurse practitioner, without the consent of a parent or guardian of the minor. [1971 c.381 §1; 2005 c.471 §7]

109.650 Disclosure without minor's consent and without liability. A hospital or any physician, nurse practitioner or dentist as described in ORS 109.640 may advise the parent or parents or legal guardian of any minor of the care, diagnosis or treatment or the need for any treatment, without the consent of the patient, and any hospital, physician, nurse practitioner or dentist is not liable for advising the parent, parents or legal guardian without the consent of the patient. [1971 c.381 §2; 2005 c.471 §8]

109.660 Construction. The provisions of ORS 109.640, 109.650 and this section do not amend or supersede the provisions of ORS 109.610 or 435.435. [1971 c.381 §3; 1973 c.827 §16]

109.670 Right to donate blood. (1) Any person 16 years of age or over may donate blood to any blood program without obtaining permission of a parent or guardian.

(2) As used in subsection (1) of this section, "blood program" means any voluntary and noncompensatory program for the drawing of blood which is approved by the American Association of Blood Banks or the American Red Cross. [1977 c.533 §1]

Note: 109.670 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.672 Certain persons immune from liability for providing care to minor. (1) No person licensed, certified or registered to practice a health care profession or health care facility shall be liable for damages in any civil action arising out of the failure of the person or facility to obtain the consent of a parent to the giving of medical care or treatment to a minor child of the parent if consent to the care has been given by the other parent of the child.

(2) The immunity provided by subsection (1) of this section shall apply regardless of whether:

(a) The parents are married, unmarried or separated at the time of consent or treatment.

(b) The consenting parent is, or is not, a custodial parent of the minor.

(c) The giving of consent by only one parent is, or is not, in conformance with the terms of any agreement between the parents, any custody order or any judgment of dissolution or separation.

(3) The immunity created by subsection (1) of this section shall not apply if the parental rights of the parent who gives consent have been terminated pursuant to ORS 419B.500 to 419B.524.

(4) For the purposes of this section, "health care facility" means a facility as de-

finied in ORS 442.015 or any other entity providing medical service. [Formerly 109.133; 1993 c.33 §296; 2003 c.576 §158]

109.675 Right to diagnosis or treatment for mental or emotional disorder or chemical dependency without parental consent. (1) A minor 14 years of age or older may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder or a chemical dependency, excluding methadone maintenance, by a physician licensed by the Oregon Medical Board, a psychologist licensed by the State Board of Psychologist Examiners, a nurse practitioner registered by the Oregon State Board of Nursing, a clinical social worker licensed by the State Board of Clinical Social Workers or a community mental health and developmental disabilities program established and operated pursuant to ORS 430.620 when approved to do so by the Department of Human Services pursuant to rule.

(2) However, the person providing treatment shall have the parents of the minor involved before the end of treatment unless the parents refuse or unless there are clear clinical indications to the contrary, which shall be documented in the treatment record. The provisions of this subsection do not apply to:

(a) A minor who has been sexually abused by a parent; or

(b) An emancipated minor, whether emancipated under the provisions of ORS 109.510 and 109.520 or 419B.550 to 419B.558 or, for the purpose of this section only, emancipated by virtue of having lived apart from the parents or legal guardian while being self-sustaining for a period of 90 days prior to obtaining treatment as provided by this section. [1985 c.525 §1; 1989 c.721 §47; 1993 c.546 §137; 1997 c.249 §38]

109.680 Disclosure without minor's consent; civil immunity. A physician, psychologist, nurse practitioner, licensed clinical social worker or community mental health and developmental disabilities program described in ORS 109.675 may advise the parent or parents or legal guardian of any minor described in ORS 109.675 of the diagnosis or treatment whenever the disclosure is clinically appropriate and will serve the best interests of the minor's treatment because the minor's condition has deteriorated or the risk of a suicide attempt has become such that inpatient treatment is necessary, or the minor's condition requires detoxification in a residential or acute care facility. If such disclosure is made, the physician, psychologist, nurse practitioner, licensed clinical social worker or community mental health and developmental disabilities program shall not be subject to any civil li-

ability for advising the parent, parents or legal guardian without the consent of the minor. [1985 c.525 §2; 1989 c.721 §48]

109.685 Person providing treatment or diagnosis not subject to civil liability for providing treatment or diagnosis without consent of parent or guardian. A physician, psychologist, nurse practitioner, licensed clinical social worker or community mental health and developmental disabilities program described in ORS 109.675 who in good faith provides diagnosis or treatment to a minor as authorized by ORS 109.675 shall not be subject to any civil liability for providing such diagnosis or treatment without consent of the parent or legal guardian of the minor. [1985 c.525 §3; 1989 c.721 §49]

109.690 Parent or guardian not liable for payment under ORS 109.675. If diagnosis or treatment services are provided to a minor pursuant to ORS 109.675 without consent of the minor's parent or legal guardian, the parent, parents or legal guardian of the minor shall not be liable for payment for any such services rendered. [1985 c.525 §4]

109.695 Rules for implementation of ORS 109.675 to 109.695. For the purpose of carrying out the policy and intent of ORS 109.675 to 109.695 while taking into account the respective rights of minors at risk of chemical dependency or mental or emotional disorder and the rights and interests of parents or legal guardians of such minors, the Department of Human Services shall adopt rules for the implementation of ORS 109.675 to 109.695 by community mental health and developmental disabilities programs approved to do so. Such rules shall provide for the earliest feasible involvement of the parents or guardians in the treatment plan consistent with clinical requirements of the minor. [1985 c.525 §5]

109.697 Right to contract for dwelling unit and utilities without parental consent. (1) The Legislative Assembly finds that there are in the State of Oregon unemancipated minors who are living apart from their parents and are homeless. Many of these minors are able financially to provide housing and utility services for themselves and their children, but cannot contract for these necessities due to perceived legal limitations affecting contracts with minors. The purpose of this legislation is to address those limitations.

(2) For purposes of this section, "minor" means an unemancipated and unmarried person who is living apart from the person's parent, parents or legal guardian, and who is either:

- (a) Sixteen or 17 years of age;

(b) Under 16 years of age and the parent of a child or children who are living in the physical custody of the person; or

(c) Under 16 years of age, pregnant and expecting the birth of a child who will be living in the physical custody of the person.

(3) Notwithstanding any other provision of law, a minor may contract for the necessities of a residential dwelling unit and for utility services to that unit. Such a contract is binding upon the minor and cannot be voided or disaffirmed by the minor based upon the minor's age or status as a minor.

(4) The consent of the parent or legal guardian of such minor shall not be necessary to contract for a residential dwelling unit or utility services to that unit. The parent or legal guardian of such minor shall not be liable under a contract by that minor for a residential dwelling unit or for utility services to that unit unless the parent or guardian is a party to the minor's contract, or enters another contract, for the purpose of acting as guarantor of the minor's debt. [1993 c.369 §29]

109.700 [1973 c.375 §25; repealed by 1999 c.649 §55]

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (General Provisions)

109.701 Short title. ORS 109.701 to 109.834 may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act. [1999 c.649 §1]

Note: 109.701 to 109.834 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

109.704 Definitions for ORS 109.701 to 109.834. As used in ORS 109.701 to 109.834:

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual who has not attained 18 years of age.

(3) "Child custody determination" means a judgment or other order of a court providing for the legal custody, physical custody, parenting time or visitation with respect to a child. "Child custody determination" includes a permanent, temporary, initial and modification order. "Child custody determination" does not include an order relating to child support or other monetary obligation of an individual.

(4) "Child custody proceeding" means a proceeding in which legal custody, physical custody, parenting time or visitation with respect to a child is an issue. "Child custody proceeding" includes a proceeding for di-

orce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence in which the issue may appear. "Child custody proceeding" does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under ORS 109.774 to 109.827.

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce or modify a child custody determination.

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, "home state" means the state in which the child lived from birth with any of the persons mentioned. Any temporary absence of any of the mentioned persons is part of the period.

(8) "Initial determination" means the first child custody determination concerning a particular child.

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under ORS 109.701 to 109.834.

(10) "Issuing state" means the state in which a child custody determination is made.

(11) "Modification" means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(12) "Person" means an individual, corporation, public corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or a governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(a) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(b) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) "Physical custody" means the physical care and supervision of a child.

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(16) "Tribe" means an Indian tribe or band, or Alaskan Native village, that is recognized by federal law or formally acknowledged by a state.

(17) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child. [1999 c.649 §2; 2003 c.576 §159]

Note: See note under 109.701.

109.707 Proceedings governed by other law. ORS 109.701 to 109.834 do not govern a proceeding pertaining to the authorization of emergency medical care for a child. [1999 c.649 §3]

Note: See note under 109.701.

109.710 [1973 c.375 §2; 1997 c.707 §23; repealed by 1999 c.649 §55]

109.711 Application to Indian tribes.

(1) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act (25 U.S.C. 1901 et seq.), is not subject to ORS 109.701 to 109.834 to the extent that the proceeding is governed by the Indian Child Welfare Act.

(2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying ORS 109.701 to 109.771.

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of ORS 109.701 to 109.834 must be recognized and enforced under ORS 109.774 to 109.827. [1999 c.649 §4]

Note: See note under 109.701.

109.714 International application of ORS 109.701 to 109.834. (1) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying ORS 109.701 to 109.771.

(2) Except as otherwise provided in subsection (3) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of ORS 109.701 to 109.834 must be recognized and enforced under ORS 109.774 to 109.827.

(3) A court of this state need not apply ORS 109.701 to 109.834 if the child custody law of a foreign country violates fundamental principles of human rights. [1999 c.649 §5]

Note: See note under 109.701.

109.717 Effect of child custody determination. A child custody determination made by a court of this state that has jurisdiction under ORS 109.701 to 109.834 binds

all persons who have been served in accordance with the laws of this state or notified in accordance with ORS 109.724 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified. [1999 c.649 §6]

Note: See note under 109.701.

109.720 [1973 c.375 §§1,23; repealed by 1999 c.649 §55]

109.721 Priority. If a question of existence or exercise of jurisdiction under ORS 109.701 to 109.834 is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously. [1999 c.649 §7]

Note: See note under 109.701.

109.724 Notice to persons outside state. (1) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(2) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made. If service is made by mail, proof of service may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(3) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court. [1999 c.649 §8]

Note: See note under 109.701.

109.727 Appearance and limited immunity. (1) A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(2) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(3) The immunity granted by subsection (1) of this section does not extend to civil

litigation based on acts unrelated to the participation in a proceeding under ORS 109.701 to 109.834 committed by an individual while present in this state. [1999 c.649 §9]

Note: See note under 109.701.

109.730 [1973 c.375 §3; repealed by 1999 c.649 §55]

109.731 Communication between courts. (1) A court of this state may communicate with a court in another state concerning a proceeding arising under ORS 109.701 to 109.834.

(2) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(3) Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of the communication.

(4) Except as otherwise provided in subsection (3) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(5) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. [1999 c.649 §10]

Note: See note under 109.701.

109.734 Taking testimony in another state. (1) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(2) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that does not produce an original writing may not be excluded from

evidence on an objection based on the means of transmission. [1999 c.649 §11]

Note: See note under 109.701.

109.737 Cooperation between courts; preservation of records. (1) A court of this state may request the appropriate court of another state to:

- (a) Hold an evidentiary hearing;
- (b) Order a person to produce or give evidence pursuant to procedures of that state;
- (c) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (d) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented and any evaluation prepared in compliance with the request; and
- (e) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(2) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (1) of this section.

(3) Travel and other necessary and reasonable expenses incurred under subsections (1) and (2) of this section may be assessed against the parties according to the law of this state.

(4) A court of this state shall preserve the pleadings, orders, judgments, records of hearings, evaluations and other pertinent records with respect to a child custody proceeding for the time required by the retention schedule adopted under ORS 8.125 (11). The retention schedule shall require retention at least until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records. [1999 c.649 §12; 2003 c.576 §160]

Note: See note under 109.701.

109.740 [1973 c.375 §4; repealed by 1999 c.649 §55]

(Jurisdiction)

109.741 Initial child custody jurisdiction. (1) Except as otherwise provided in ORS 109.751, a court of this state has jurisdiction to make an initial child custody determination only if:

- (a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) A court of another state does not have jurisdiction under subsection (1)(a) of this section, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under ORS 109.761 or 109.764, and:

(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships;

(c) All courts having jurisdiction under subsection (1)(a) or (b) of this section have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under ORS 109.761 or 109.764; or

(d) No court of any other state would have jurisdiction under the criteria specified in subsection (1)(a), (b) or (c) of this section.

(2) Subsection (1) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination. [1999 c.649 §13]

Note: See note under 109.701.

109.744 Exclusive, continuing jurisdiction. (1) Except as otherwise provided in ORS 109.751, a court of this state that has made a child custody determination consistent with ORS 109.741 or 109.747 has exclusive, continuing jurisdiction over the determination until:

(a) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or

(b) A court of this state or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this state.

(2) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if the court has jurisdiction to make an initial determination under ORS 109.741. [1999 c.649 §14]

Note: See note under 109.701.

109.747 Jurisdiction to modify determination. Except as otherwise provided in ORS 109.751, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under ORS 109.741 (1)(a) or (b) and:

(1) The court of the other state determines that it no longer has exclusive, continuing jurisdiction under ORS 109.744 or that a court of this state would be a more convenient forum under ORS 109.761; or

(2) A court of this state or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state. [1999 c.649 §15]

Note: See note under 109.701.

109.750 [1973 c.375 §5; repealed by 1999 c.649 §55]

109.751 Temporary emergency jurisdiction. (1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(2) If there is no previous child custody determination that is entitled to be enforced under ORS 109.701 to 109.834 and a child custody proceeding has not been commenced in a court of a state having jurisdiction under ORS 109.741 to 109.747, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under ORS 109.741 to 109.747. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under ORS 109.741 to 109.747, a child custody determination made under this section becomes a final determination if the determination so provides and this state becomes the home state of the child.

(3) If there is a previous child custody determination that is entitled to be enforced under ORS 109.701 to 109.834, or a child custody proceeding has been commenced in a court of a state having jurisdiction under ORS 109.741 to 109.747, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under ORS 109.741 to 109.747. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(4) A court of this state that has been asked to make a child custody determination

under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under ORS 109.741 to 109.747, shall immediately communicate with the other court. A court of this state that is exercising jurisdiction under ORS 109.741 to 109.747, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order. [1999 c.649 §16]

Note: See note under 109.701.

109.754 Notice; opportunity to be heard; joinder. (1) Before a child custody determination is made under ORS 109.701 to 109.834, notice and an opportunity to be heard in accordance with the standards of ORS 109.724 must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

(2) ORS 109.701 to 109.834 do not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(3) The obligation to join a party and the right to intervene as a party in a child custody proceeding under ORS 109.701 to 109.834 are governed by the law of this state as in child custody proceedings between residents of this state. [1999 c.649 §17]

Note: See note under 109.701.

109.757 Simultaneous proceedings. (1) Except as otherwise provided in ORS 109.751, a court of this state may not exercise its jurisdiction under ORS 109.741 to 109.771 if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with ORS 109.701 to 109.834, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under ORS 109.761.

(2) Except as otherwise provided in ORS 109.751, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties under ORS 109.767. If the court determines that a child custody proceeding has been commenced in a court in

another state having jurisdiction substantially in accordance with ORS 109.701 to 109.834, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with ORS 109.701 to 109.834 does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(3) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(a) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement;

(b) Enjoin the parties from continuing with the proceeding for enforcement; or

(c) Proceed with the modification under conditions it considers appropriate. [1999 c.649 §18]

Note: See note under 109.701.

109.760 [1973 c.375 §6; repealed by 1999 c.649 §55]

109.761 Inconvenient forum. (1) A court of this state that has jurisdiction under ORS 109.701 to 109.834 to make a child custody determination may decline to exercise its jurisdiction at any time if the court determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the motion of a party, the court's own motion or the request of another court.

(2) Before determining whether a court of this state is an inconvenient forum, the court shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(b) The length of time the child has resided outside this state;

(c) The distance between the court in this state and the court in the state that would assume jurisdiction;

(d) The relative financial circumstances of the parties;

(e) Any agreement of the parties as to which state should assume jurisdiction;

(f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(h) The familiarity of the court of each state with the facts and issues in the pending litigation.

(3) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(4) A court of this state may decline to exercise its jurisdiction under ORS 109.701 to 109.834 if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding. [1999 c.649 §19]

Note: See note under 109.701.

109.764 Jurisdiction declined by reason of conduct. (1) Except as otherwise provided in ORS 109.751 or 419B.100, if a court of this state has jurisdiction under ORS 109.701 to 109.834 because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct to so invoke the jurisdiction, the court shall decline to exercise its jurisdiction unless:

(a) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(b) A court of the state otherwise having jurisdiction under ORS 109.741 to 109.747 determines that this state is a more appropriate forum under ORS 109.761; or

(c) No court of any other state would have jurisdiction under the criteria specified in ORS 109.741 to 109.747.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under ORS 109.741 to 109.747.

(3) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction under subsection (1) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney fees, in-

vestigative fees, expenses for witnesses, travel expenses and child care expenses during the course of the proceeding unless the party from whom necessary and reasonable expenses are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs or expenses against this state unless authorized by law other than ORS 109.701 to 109.834. [1999 c.649 §20]

Note: See note under 109.701.

109.767 Information to be submitted to court. (1) In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(a) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or parenting time or visitation with the child and, if so, identify the court, the case number and the date of the child custody determination, if any;

(b) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding; and

(c) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or parenting time or visitation with, the child and, if so, the names and addresses of those persons.

(2) If the information required by subsection (1) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(3) If the declaration as to any of the items described in subsection (1) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(4) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(5) If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice. Costs incurred by the court when special notice procedures are made necessary by the nondisclosure of identifying information shall be paid by the parties as deemed appropriate by the court. [1999 c.649 §21]

Note: See note under 109.701.

109.770 [1973 c.375 §7; 1981 c.897 §34; repealed by 1999 c.649 §55]

109.771 Appearance of parties and child. (1) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(2) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given under ORS 109.724 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(3) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(4) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (2) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party and the child so appearing. [1999 c.649 §22]

Note: See note under 109.701.

(Enforcement)

109.774 Definitions for ORS 109.774 to 109.827. As used in ORS 109.774 to 109.827:

(1) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination. [1999 c.649 §23]

Note: See note under 109.701.

109.777 Enforcement under Hague Convention. Under ORS 109.774 to 109.827, a court of this state may also enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if the order were a child custody determination. [1999 c.649 §24]

Note: See note under 109.701.

109.780 [1973 c.375 §8; 1981 c.897 §35; repealed by 1999 c.649 §55]

109.781 Duty to enforce. (1) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with ORS 109.701 to 109.834 or the determination was made under factual circumstances meeting the jurisdictional standards of ORS 109.701 to 109.834 and the determination has not been modified in accordance with ORS 109.701 to 109.834.

(2) A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in ORS 109.774 to 109.827 are cumulative and do not affect the availability of other remedies to enforce a child custody determination. [1999 c.649 §25]

Note: See note under 109.701.

109.784 Temporary order for parenting time or visitation. In a child custody enforcement proceeding authorized by law:

(1) A court of this state that does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(a) A parenting time or visitation schedule made by a court of another state; or

(b) The visitation or parenting time provisions of a child custody determination of another state that permit visitation or parenting time but do not provide for a specific visitation or parenting time schedule.

(2) If a court of this state makes an order under subsection (1)(b) of this section, the court shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in ORS 109.741 to 109.771. The order remains in effect until an order is obtained from the other court or the period expires. [1999 c.649 §26]

Note: See note under 109.701.

109.787 Registration of child custody determination; notice; hearing. (1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to any circuit court in this state:

(a) A letter or other document requesting registration;

(b) Two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(c) Except as otherwise provided in ORS 109.767, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody, parenting time or visitation in the child custody determination sought to be registered.

(2) On receipt of the documents required by subsection (1) of this section, the registering court shall cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.

(3) The person seeking registration of a child custody determination shall serve notice upon the persons named under subsection (1)(c) of this section notifying them of the opportunity to contest the registration in accordance with this section.

(4) The notice required by subsection (3) of this section must state that:

(a) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(b) A hearing to contest the validity of the registered determination must be requested within 21 days after service of notice; and

(c) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(5) A person seeking to contest the validity of a registered order must request a hearing within 21 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(a) The issuing court did not have jurisdiction under ORS 109.741 to 109.771;

(b) The child custody determination sought to be registered has been vacated,

stayed or modified by a court having jurisdiction to do so under ORS 109.741 to 109.771; or

(c) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of ORS 109.724, in the proceedings before the court that issued the order for which registration is sought.

(6) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(7) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. [1999 c.649 §27]

Note: See note under 109.701.

109.790 [1973 c.375 §9; 1997 c.707 §24; repealed by 1999 c.649 §55]

109.791 Enforcement of registered termination. (1) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(2) A court of this state shall recognize and enforce, but may not modify, except in accordance with ORS 109.741 to 109.771, a registered child custody determination of a court of another state. [1999 c.649 §28]

Note: See note under 109.701.

109.794 Simultaneous proceedings. If a proceeding for enforcement under ORS 109.774 to 109.827 is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under ORS 109.741 to 109.771, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding. [1999 c.649 §29]

Note: See note under 109.701.

109.797 Expedited enforcement of child custody determination. (1) A petition under ORS 109.774 to 109.827 must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(2) A petition for enforcement of a child custody determination must state:

(a) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(b) Whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under ORS 109.701 to 109.834 and, if so, must identify the court, the case number and the nature of the proceeding;

(c) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, must identify the court, the case number and the nature of the proceeding;

(d) The present physical address of the child and the respondent, if known;

(e) Whether relief in addition to the immediate physical custody of the child and attorney fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(f) If the child custody determination has been registered and confirmed under ORS 109.787, the date and place of registration.

(3) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. If the court issues an order, the order shall be served in the manner the court determines to be appropriate under the circumstances of the case and may include service by the sheriff. The person requesting the order shall pay the costs of service. The court shall hold the hearing as soon as reasonably possible and shall expedite the hearing if it finds an emergency is present.

(4) An order issued under subsection (3) of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and will order the payment of fees, costs and expenses under ORS 109.811, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(a) The child custody determination has not been registered and confirmed under ORS 109.787 and that:

(A) The issuing court did not have jurisdiction under ORS 109.741 to 109.771;

(B) The child custody determination for which enforcement is sought has been va-

cated, stayed or modified by a court having jurisdiction to do so under ORS 109.741 to 109.771; or

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of ORS 109.724, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) The child custody determination for which enforcement is sought was registered and confirmed under ORS 109.787, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under ORS 109.741 to 109.771. [1999 c.649 §30]

Note: See note under 109.701.

109.800 [1973 c.375 §10; 1997 c.707 §25; repealed by 1999 c.649 §55]

109.801 Service of petition and order.

Except as otherwise provided in ORS 109.807, the petition and order for enforcement of a child custody determination must be served by the petitioner, by any method authorized for service of process within this state, upon the respondent and any person who has physical custody of the child. [1999 c.649 §31]

Note: See note under 109.701.

109.804 Immediate physical custody of child allowed; exceptions; spousal privilege not allowed in certain proceedings.

(1) Unless the court issues a temporary emergency order under ORS 109.751, upon a finding that a petitioner is entitled to immediate physical custody of the child under the controlling child custody determination, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(a) The child custody determination has not been registered and confirmed under ORS 109.787 and that:

(A) The issuing court did not have jurisdiction under ORS 109.741 to 109.771;

(B) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under ORS 109.741 to 109.771; or

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of ORS 109.724, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) The child custody determination for which enforcement is sought was registered and confirmed under ORS 109.787, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under ORS 109.741 to 109.771.

(2) The court shall award the fees, costs and expenses authorized under ORS 109.811, may grant additional relief, including a re-

quest for the assistance of law enforcement officials, and may set further hearings, if necessary, to determine whether additional relief is appropriate.

(3) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under ORS 109.774 to 109.827. [1999 c.649 §32]

Note: See note under 109.701.

109.807 Warrant to take physical custody of child.

(1) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.

(2) If the court, upon the testimony of the petitioner or other witness, is satisfied that there is probable cause to believe that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by ORS 109.797 (2).

(3) A warrant to take physical custody of a child must:

(a) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(b) Direct law enforcement officers to take physical custody of the child immediately; and

(c) Provide for the placement of the child pending final relief.

(4) The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

(5) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(6) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian. [1999 c.649 §33]

Note: See note under 109.701.

109.810 [1973 c.375 §11; repealed by 1999 c.649 §55]

109.811 Costs, fees and expenses. (1) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses and child care expenses during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate. An award may be inappropriate if the award would cause the parent or child to seek public assistance.

(2) The court may not assess fees, costs or expenses against a state unless authorized by law other than ORS 109.701 to 109.834. [1999 c.649 §34]

Note: See note under 109.701.

109.814 Recognition and enforcement. A court of this state shall accord full faith and credit to an order issued by another state and consistent with ORS 109.701 to 109.834 that enforces a child custody determination by a court of another state unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under ORS 109.741 to 109.771. [1999 c.649 §35]

Note: See note under 109.701.

109.817 Appeals. An appeal may be taken from a final order in a proceeding under ORS 109.774 to 109.827 in accordance with ORS chapter 19. Unless the court enters a temporary emergency order under ORS 109.751, the enforcing court may not stay an order enforcing a child custody determination pending appeal. [1999 c.649 §36]

Note: See note under 109.701.

109.820 [1973 c.375 §12; repealed by 1999 c.649 §55]

109.821 Role of district attorney. (1) In a case arising under ORS 109.701 to 109.834 or involving the Hague Convention on the Civil Aspects of International Child Abduction, the district attorney may take any lawful action, including resort to a proceeding under ORS 109.774 to 109.827 or any other available civil proceeding, to locate a child, obtain the return of a child or enforce a child custody determination if there is:

(a) An existing child custody determination;

(b) A request to do so from a court in a pending child custody proceeding;

(c) A reasonable belief that a criminal statute has been violated; or

(d) A reasonable belief that the child has been wrongfully removed or retained in vio-

lation of the Hague Convention on the Civil Aspects of International Child Abduction.

(2) A district attorney acting under this section acts on behalf of the state to protect the state's interest in the enforcement of ORS 109.701 to 109.834 and may not represent any party. [1999 c.649 §37]

Note: See note under 109.701.

109.824 Role of law enforcement officer. At the request of a district attorney acting under ORS 109.821, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a district attorney with responsibilities under ORS 109.821. [1999 c.649 §38]

Note: See note under 109.701.

109.827 Costs and expenses of district attorney and law enforcement officers. If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the district attorney and law enforcement officers under ORS 109.821 or 109.824. [1999 c.649 §39]

Note: See note under 109.701.

109.830 [1973 c.375 §13; repealed by 1999 c.649 §55]

(Miscellaneous Provisions)

109.831 Application and construction. In applying and construing ORS 109.701 to 109.834, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [1999 c.649 §40]

Note: See note under 109.701.

109.834 Severability clause. If any provision of ORS 109.701 to 109.834 or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of ORS 109.701 to 109.834 that can be given effect without the invalid provision or application, and to this end the provisions of ORS 109.701 to 109.834 are severable. [1999 c.649 §41]

Note: See note under 109.701.

109.840 [1973 c.375 §14; repealed by 1999 c.649 §55]

109.850 [1973 c.375 §15; 1981 c.897 §36; repealed by 1999 c.649 §55]

109.860 [1973 c.375 §16; repealed by 1999 c.649 §55]

109.870 [1973 c.375 §17; repealed by 1999 c.649 §55]

109.880 [1973 c.375 §18; repealed by 1999 c.649 §55]

109.890 [1973 c.375 §19; repealed by 1999 c.649 §55]

109.900 [1973 c.375 §20; repealed by 1999 c.649 §55]

109.910 [1973 c.375 §21; repealed by 1999 c.649 §55]

109.920 [1973 c.375 §22; repealed by 1999 c.649 §55]

109.930 [1973 c.375 §24; repealed by 1999 c.649 §55]

PENALTY

109.990 Penalty. (1) A person who violates ORS 109.311 (3) or who submits a false statement under ORS 109.311 (1) commits a Class C felony.

(2) A person who violates any provision of ORS 109.311 (4) or 109.502 to 109.507 or

any rule adopted pursuant to ORS 109.506 commits a Class A misdemeanor. [1985 c.403 §2 (4); 1993 c.717 §5; subsection (3) of 1993 Edition enacted as 1993 c.410 §9; 1995 c.79 §44; 1995 c.730 §4]

Note: See note under 109.425.

