

A-Engrossed
House Bill 2382

Ordered by the House May 3
Including House Amendments dated May 3

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SUMMARY

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

[Modifies process for challenging voluntary acknowledgment of paternity.]

Modifies provisions relating to presumptions of paternity, challenge of acknowledgment of paternity and paternity judgments.

A BILL FOR AN ACT

1
2 Relating to paternity; creating new provisions; and amending ORS 107.425, 109.070, 109.103, 109.124,
3 109.125, 109.155, 109.326, 416.443, 419B.819 and 419B.875.

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

5 **SECTION 1.** ORS 109.070, as amended by section 17, chapter 160, Oregon Laws 2005, is
6 amended to read:

7 109.070. (1) The paternity of a person may be established as follows:

8 *[(a) The child of a wife cohabiting with her husband who was not impotent or sterile at the time*
9 *of the conception of the child is conclusively presumed to be the child of her husband, whether or not*
10 *the marriage of the husband and wife may be void.]*

11 *[(b) A child born in wedlock, there being no judgment of separation from bed or board, is presumed*
12 *to be the child of the mother's husband, whether or not the marriage of the husband and wife may be*
13 *void. This is a disputable presumption.]*

14 **(a) A man is rebuttably presumed to be the father of a child born to a woman if he and**
15 **the woman were married to each other at the time of the child's birth, without a judgment**
16 **of separation, regardless of whether the marriage is void.**

17 **(b) A man is rebuttably presumed to be the father of a child born to a woman if he and**
18 **the woman were married to each other and the child is born within 300 days after the mar-**
19 **riage is terminated by death, annulment or dissolution or after entry of a judgment of sep-**
20 **aration.**

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

24 (d) By filiation proceedings.

25 (e) By filing with the State Registrar of the Center for Health Statistics the voluntary ac-
26 knowledgment of paternity form as provided for by ORS 432.287. Except as otherwise provided in
27 subsections [(2) to (4)] **(4) to (7)** of this section, this filing establishes paternity for all purposes.

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

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

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

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

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

11 [(2)] (4)(a) A party to a voluntary acknowledgment of paternity may rescind the acknowledgment
12 within the earlier of:

13 [(a)] (A) Sixty days after filing the acknowledgment; or

14 [(b)] (B) The date of a proceeding relating to the child, including a proceeding to establish a
15 support order, in which the party wishing to rescind the acknowledgment is also a party. For the
16 purposes of this [paragraph] subparagraph, the date of a proceeding is the date on which an order
17 is entered in the proceeding.

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

20 [(3)(a)] (5)(a) A signed voluntary acknowledgment of paternity filed in this state may be chal-
21 lenged **and set aside** in circuit court[:]

22 [(A)] at any time after the 60-day period **referred to in subsection (4) of this section** on the
23 basis of fraud, duress or a material mistake of fact. [*The party bringing the challenge has the burden*
24 *of proof.*]

25 **(b) The challenge may be brought by:**

26 **(A) A party to the acknowledgment;**

27 **(B) The child named in the acknowledgment; or**

28 **(C) The Department of Human Services or the administrator, as defined in ORS 25.010,**
29 **if the child named in the acknowledgment is in the care and custody of the department under**
30 **ORS chapter 419B and the department or the administrator reasonably believes that the ac-**
31 **knowledgment was signed because of fraud, duress or a material mistake of fact.**

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

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

36 [(B) *Within one year after the acknowledgment has been filed, unless the provisions of subsection*
37 *(4)(a) of this section apply. A challenge to the acknowledgment is not allowed more than one year after*
38 *the acknowledgment has been filed, unless the provisions of subparagraph (A) of this paragraph*
39 *apply.*]

40 [(b)] (e) Legal responsibilities arising from [the acknowledgment, including child support obli-
41 gations, may not be suspended during the challenge, except for good cause.

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

1 **(6) Within one year after a voluntary acknowledgment of paternity form is filed in this**
2 **state and if blood tests, as defined in ORS 109.251, have not been completed, a party to the**
3 **acknowledgment, or the department if the child named in the acknowledgment is in the care**
4 **and custody of the department under ORS chapter 419B, may apply to the administrator for**
5 **an order for blood tests in accordance with ORS 416.443.**

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

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

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

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

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

14 **(b) Notwithstanding any provision of subsection (1)(c) or (e) of this section or ORS 432.287**
15 **to the contrary, an acknowledgment signed by a party described in this subsection and filed**
16 **with the State Registrar of the Center for Health Statistics does not establish paternity and**
17 **is void.**

18 *[(4)(a) Within one year after a voluntary acknowledgment of paternity form is filed in this state and*
19 *if blood tests, as defined in ORS 109.251, have not been previously completed, a party to the acknowl-*
20 *edgment or the state, if child support enforcement services are being provided under ORS 25.080, may*
21 *apply to the court or to the administrator, as defined in ORS 25.010, for an order requiring that the*
22 *mother, the child and the male party submit to blood tests as provided in ORS 109.250 to 109.262.]*

23 *[(b) If the results of the tests performed under paragraph (a) of this subsection exclude the male*
24 *party as a possible father of the child, a party or the state, if child support enforcement services are*
25 *being provided under ORS 25.080, may apply to the court for a judgment of nonpaternity. The party*
26 *that applied for the judgment shall send a certified true copy of the judgment to the State Registrar*
27 *of the Center for Health Statistics and to the Department of Justice as the state disbursement unit.*
28 *Upon receipt of a judgment of nonpaternity, the state registrar shall correct any records maintained*
29 *by the state registrar that indicate that the male party is the parent of the child.]*

30 *[(c) The state Child Support Program shall pay any costs for blood tests subject to recovery from*
31 *the party who requested the tests.]*

32 **SECTION 2.** ORS 109.103 is amended to read:

33 109.103. (1) If a child is born *[out of wedlock]* **to an unmarried woman** and paternity has been
34 established **under ORS 109.070, or if a child is born to a married woman by a man other than**
35 **her husband and the man's paternity has been established under ORS 109.070**, either parent
36 may initiate a civil proceeding to determine the custody or support of, **or parenting time with**, the
37 child. The proceeding shall be brought in the circuit court of the county in which the child resides
38 or is found or in the circuit court of the county in which either parent resides. The parents have
39 the same rights and responsibilities regarding the custody and support of, **and parenting time with**,
40 their child that married or divorced parents would have, and the provisions of ORS 107.093 to
41 107.425 that relate to *[the custody or support of children]* **custody, support and parenting time**
42 apply to the proceeding.

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

1 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
2 ceeding involving the child, including one brought under ORS 109.100, 109.165, 125.025, 416.400 to
3 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

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

6 (3) The parent shall include with the petition a certificate regarding any pending support pro-
7 ceeding and any existing support order. The parent shall use a certificate that is in a form estab-
8 lished by court rule and include information required by court rule and subsection (2) of this section.

9 (4) When a parent initiates a proceeding under this section and the child support rights of one
10 of the parents or of the child have been assigned to the state, the parent initiating the proceeding
11 shall serve, by mail or personal delivery, a copy of the petition on the Administrator of the Division
12 of Child Support or on the branch office providing support services to the county in which the suit
13 is filed.

14 **SECTION 3.** ORS 109.124, as amended by section 20, chapter 160, Oregon Laws 2005, is
15 amended to read:

16 109.124. As used in ORS 109.124 to 109.230, unless the context requires otherwise:

17 (1) "Child attending school" has the meaning given that term in ORS 107.108.

18 (2) "Child born out of wedlock" means a child born to an unmarried woman[,] or to a married
19 woman by a man other than her husband[, *if the conclusive presumption in ORS 109.070 (1)(a) does*
20 *not apply*].

21 (3) "Respondent" may include, but is not limited to, one or more persons who may be the father
22 of a child born out of wedlock, the husband of a woman who has or may have a child born out of
23 wedlock, the mother of a child born out of wedlock, the [*female*] **woman** pregnant with a child who
24 may be born out of wedlock, or the duly appointed and acting guardian of the child or conservator
25 of the child's estate.

26 **SECTION 4.** ORS 109.125 is amended to read:

27 109.125. (1) Any of the following may initiate proceedings under this section:

28 (a) A mother of a child born out of wedlock or a [*female*] **woman** pregnant with a child who
29 may be born out of wedlock;

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

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

34 (d) A [*person*] **man** claiming to be the father of a child born out of wedlock or of an unborn child
35 who may be born out of wedlock; or

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

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

39 (a) If the initiating party is one of those specified in subsection [(1)(a) to (c)] **(1)(a), (b), (c) or**
40 **(e)** of this section:

41 (A) The name of the mother of the child born out of wedlock or the [*female*] **woman** pregnant
42 with a child who may be born out of wedlock;

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

45 [(B)] **(C)** Facts showing the petitioner's status to initiate proceedings;

1 [(C)] **(D)** A statement that a respondent is the father;

2 [(D)] **(E)** The probable time or period of time during which conception took place; and

3 [(E)] **(F)** A statement of the specific relief sought.

4 (b) If the initiating party is a [person] **man** specified in subsection (1)(d) of this section:

5 (A) The name of the mother of the child born out of wedlock or the [female] **woman** pregnant
6 with a child who may be born out of wedlock;

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

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

12 [(C)] **(D)** The probable time or period of time during which conception took place; and

13 [(D)] **(E)** A statement of the specific relief sought.

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

16 (4) When a proceeding is initiated under this section and the child support rights of one of the
17 parties or of the child at issue have been assigned to the state, a true copy of the petition shall be
18 served by mail or personal delivery on the Administrator of the Division of Child Support of the
19 Department of Justice or on the branch office providing support services to the county in which the
20 suit is filed.

21 **(5) A man whose paternity of a child has been established under ORS 109.070 is a neces-**
22 **sary party to proceedings initiated under this section unless the paternity has been dises-**
23 **tablished before the proceedings are initiated.**

24 **SECTION 5.** ORS 109.155 is amended to read:

25 109.155. (1) The court, in a private hearing, shall first determine the issue of paternity. If the
26 respondent admits the paternity, [such] **the** admission shall be reduced to writing, verified by the
27 respondent and filed with the court. If the paternity is denied, corroborating evidence, in addition
28 to the testimony of the parent or expectant parent, shall be required.

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

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

37 (4) The court [shall have the power to] **may** order either parent to pay such sum as [it] **the court**
38 deems appropriate for the past and future support and maintenance of the child during [its] **the**
39 **child's** minority and while the child is attending school, as defined in ORS 107.108, and the rea-
40 sonable and necessary expenses incurred or to be incurred in connection with prenatal care, ex-
41 penses attendant with the birth and postnatal care. The court may grant the prevailing party
42 reasonable costs of suit, which may include expert witness fees, and reasonable attorney fees at trial
43 and on appeal. The provisions of ORS 107.108 apply to an order entered under this section for the
44 support of a child attending school.

45 (5) An affidavit certifying the authenticity of documents substantiating expenses set forth in

1 subsection (4) of this section is prima facie evidence to establish the authenticity of [such] the
2 documents.

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

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

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

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

11 (A) As contract terms using contract remedies;

12 (B) By imposing any remedy available to enforce a judgment, including but not limited to con-
13 tempt; or

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

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

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

23 **(7) If a man's paternity of a child has been established under ORS 109.070 and the**
24 **paternity has not been disestablished before proceedings are initiated under ORS 109.125, the**
25 **court may not render a judgment under ORS 109.124 to 109.230 establishing another man's**
26 **paternity of the child unless the judgment also disestablishes the paternity established under**
27 **ORS 109.070.**

28 **SECTION 6.** ORS 109.326, as amended by section 22, chapter 160, Oregon Laws 2005, is
29 amended to read:

30 109.326. (1) If the mother of a child was married at the time of the conception or birth of the
31 child, and it has been determined pursuant to ORS 109.070 or judicially determined that her husband
32 at such time or times was not the father of the child, the husband's authorization or waiver is not
33 required in adoption, juvenile court or other proceedings concerning the custody of the child.

34 (2) If paternity of the child has not been determined, a determination of nonpaternity may be
35 made by any court having adoption, divorce or juvenile court jurisdiction. The testimony or affidavit
36 of the mother or the husband or another person with knowledge of the facts filed in the proceeding
37 constitutes competent evidence before the court making the determination.

38 (3) Before making the determination of nonpaternity, the petitioner shall serve on the husband
39 a summons and a true copy of a motion and order to show cause why [*the husband's parental rights*
40 *should not be terminated*] **a judgment of nonpaternity should not be entered** if:

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

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

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

45 (4) When the petitioner is required to serve the husband with a summons and a motion and order

1 to show cause under subsection (3) of this section, service must be made in the manner provided in
2 ORCP 7 D and E, except as provided in subsection (6) of this section. Service must be proved as
3 required in ORCP 7 F. The summons and the motion and order to show cause need not contain the
4 names of the adoptive parents.

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

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

11 (b) A statement that:

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

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

20 _____

21
22 IN THE CIRCUIT COURT OF
23 THE STATE OF OREGON
24 FOR THE COUNTY OF _____

25 _____,)
26 Petitioner,) NO. _____
27)
28) ANSWER
29 and)
30)
31 _____,)
32 Respondent.)

33 [] I consent to the [*termination of any parental rights that I may have*] **entry of a judgment**
34 **of nonpaternity.**

35 [] I do not consent to the [*termination of my parental rights. The court should not order the*
36 *termination of my parental rights*] **entry of a judgment of nonpaternity. The court should not**
37 **enter a judgment of nonpaternity** for the following reasons:

38 _____
39 _____
40 _____
41 _____
42 _____
43 _____
44 _____

1 _____

2 _____

3 _____

4 Signature

5 DATE: _____

6 ADDRESS OR CONTACT ADDRESS:

7 _____

8 _____

9 TELEPHONE OR CONTACT TELEPHONE:

10 _____

11 _____

12

(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:

21 _____

22

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.

28

29

(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

45

1 the husband at the address provided by the husband, shall:

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

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

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

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

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

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

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

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

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

25 (11) Notwithstanding *[the provision of]* ORS 109.070 *[(1)(b)]* **(1)(a)**, service of a summons and a
26 motion and order to show cause on the husband under subsection (3) of this section is not required
27 and the husband's consent, authorization or waiver is not required in adoption proceedings con-
28 cerning the child unless the husband has met the requirements of subsection (3)(a), (b) or (c) of this
29 section.

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

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

37 **SECTION 7.** ORS 416.443 is amended to read:

38 416.443. **(1) As used in this section, "blood tests" has the meaning given that term in ORS**
39 **109.251.**

40 *[(1)]* **(2) No later than one year after an order establishing paternity is entered under ORS**
41 **416.440 and if *[no genetic parentage test has]* blood tests have not been completed, a party may**
42 **apply to the administrator to have the issue of paternity reopened and for an order for blood**
43 **tests.**

44 **(3) No later than one year after a voluntary acknowledgment of paternity is filed in this**
45 **state and if blood tests have not been completed, a party to the acknowledgment, or the**

1 **Department of Human Services if the child named in the acknowledgment is in the care and**
2 **custody of the department under ORS chapter 419B, may apply to the administrator for**
3 **services under ORS 25.080 and for an order for blood tests.**

4 (4) Upon receipt of a timely application, the administrator shall order:

5 (a) The mother and the male party to submit to *[parentage]* **blood tests**; and

6 (b) The person having physical custody of the child to submit the child to *[a parentage test]*
7 **blood tests.**

8 [(2)] (5) If a party refuses to comply with an order under subsection [(1)] (4) of this section, the
9 issue of paternity shall, **upon the motion of the administrator**, be resolved against that party by
10 an *[appropriate]* order of the court *[upon the motion of the administrator.]* **either affirming or set-**
11 **ting aside the order establishing paternity or the voluntary acknowledgement of paternity.**

12 (6) **If the results of the blood tests exclude the male party as the biological father of the**
13 **child, the administrator may file a motion with the court for an order setting aside the order**
14 **establishing paternity or the voluntary acknowledgement of paternity and for a judgment of**
15 **nonpaternity.**

16 (7) Support paid before an order *[is vacated]* **establishing paternity or a voluntary acknowl-**
17 **edgment of paternity is set aside** under this section *[shall]* **may not be returned to the payer.**

18 (8) **The administrator shall send a court-certified true copy of a judgment of nonpaternity**
19 **to the State Registrar of the Center for Health Statistics. Upon receipt of the judgment, the**
20 **state registrar shall correct any records maintained by the state registrar that indicate that**
21 **the male party is the parent of the child.**

22 (9) **The Child Support Program shall pay any state registrar fees and any costs for blood**
23 **tests ordered under this section, subject to recovery from the party who requested the tests.**
24 **SECTION 8. Section 9 of this 2007 Act is added to and made a part of ORS chapter 109.**

25 **SECTION 9. (1) As used in this section:**

26 (a) **“Blood tests”** has the meaning given that term in ORS 109.251.

27 (b) **“Paternity judgment”** means a judgment or administrative order that:

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

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

32 (c) **“Petition”** means a petition or motion filed under this section.

33 (d) **“Petitioner”** means the person filing a petition or motion under this section.

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

37 (A) **A party to the paternity judgment.**

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

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

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

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

4 (d) If the ground for the petition is that the paternity determination was obtained by or
5 was the result of fraud, misrepresentation or other misconduct of an adverse party, the
6 petitioner may not file the petition more than one year after the petitioner discovers the
7 fraud, misrepresentation or other misconduct.

8 (3) In the petition, the petitioner shall:

9 (a) Designate as parties:

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

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

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

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

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

19 (c) Allege the facts and circumstances that resulted in the entry of the paternity judg-
20 ment and explain why the issue of paternity was not contested.

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

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

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

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

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

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

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

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

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

1 (8) If the court finds that the paternity determination of a paternity judgment was ob-
2 tained by or was the result of fraud, the court may vacate or set aside the paternity deter-
3 mination regardless of whether the fraud was intrinsic or extrinsic.

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

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

9 (11) A judgment entered under this section vacating or setting aside the paternity de-
10 termination of a paternity judgment and determining nonpaternity:

11 (a) Shall contain the full name and date of birth of the child whose paternity was estab-
12 lished or declared by the paternity judgment.

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

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

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

19 (12) If the court vacates or sets aside the paternity determination of a paternity judg-
20 ment under this section and enters a judgment of nonpaternity, the petitioner shall send a
21 court-certified true copy of the judgment entered under this section to the State Registrar
22 of the Center for Health Statistics and to the Department of Justice as the state disburse-
23 ment unit. Upon receipt of the court-certified true copy of the judgment entered under this
24 section, the state registrar shall correct any records maintained by the state registrar that
25 indicate that the male party to the paternity judgment is the father of the child.

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

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

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

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

39 (17) This section shall be liberally construed to the end of achieving substantial justice.

40 **SECTION 10.** Section 9 of this 2007 Act applies to all paternity judgments, as defined in
41 section 9 of this 2007 Act, entered before, on or after the effective date of this 2007 Act.

42 **SECTION 11.** ORS 419B.875 is amended to read:

43 419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500
44 are:

45 (A) The child or ward;

- 1 (B) The parents or guardian of the child or ward;
- 2 (C) A putative father of the child or ward who has demonstrated a direct and significant com-
3 mitment to the child or ward by assuming, or attempting to assume, responsibilities normally asso-
4 ciated with parenthood, including but not limited to:
- 5 (i) Residing with the child or ward;
- 6 (ii) Contributing to the financial support of the child or ward; or
- 7 (iii) Establishing psychological ties with the child or ward;
- 8 (D) The state;
- 9 (E) The juvenile department;
- 10 (F) A court appointed special advocate, if appointed;
- 11 (G) The Department of Human Services or other child-caring agency if the agency has temporary
12 custody of the child or ward; and
- 13 (H) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pur-
14 suant to the Indian Child Welfare Act.
- 15 (b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding
16 under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS
17 419B.500.
- 18 (2) The rights of the parties include, but are not limited to:
- 19 (a) The right to notice of the proceeding and copies of the petitions, answers, motions and other
20 papers;
- 21 (b) The right to appear with counsel and, except for intervenors under subsection (1)(b) of this
22 section, to have counsel appointed as otherwise provided by law;
- 23 (c) The right to call witnesses, cross-examine witnesses and participate in hearings;
- 24 (d) The right of appeal; and
- 25 (e) The right to request a hearing.
- 26 (3) A putative father who satisfies the criteria set out in subsection (1)(a)(C) of this section shall
27 be treated as a parent, as that term is used in this chapter and ORS chapters 419A and 419C, until
28 the court confirms his paternity or finds that he is not the legal **or biological** father of the child
29 or ward.
- 30 (4) If no appeal from the judgment or order is pending, a putative father whom a court of com-
31 petent jurisdiction has found not to be the child or ward's legal **or biological** father or who has filed
32 a petition for filiation that was dismissed is not a party under subsection (1) of this section.
- 33 (5)(a) A person granted rights of limited participation under ORS 419B.116 is not a party to a
34 proceeding under ORS 419B.100 or 419B.500 but has only those rights specified in the order granting
35 rights of limited participation.
- 36 (b) Persons moving for or granted rights of limited participation are not entitled to appointed
37 counsel but may appear with retained counsel.
- 38 (6) If a foster parent, preadoptive parent or relative is currently providing care for a child or
39 ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative
40 notice of a hearing concerning the child or ward and the court shall give the person an opportunity
41 to be heard. Except when allowed to intervene, the foster parent, preadoptive parent or relative
42 providing care for the child or ward is not considered a party to the juvenile court proceeding solely
43 because of notice and an opportunity to be heard.
- 44 (7) When a legal grandparent of a child or ward requests in writing and provides a mailing ad-
45 dress, the Department of Human Services shall give the legal grandparent notice of a hearing con-

cerning the child or ward and the court shall give the legal grandparent an opportunity to be heard. Except when allowed to intervene, a legal grandparent is not considered a party to the juvenile court proceeding solely because of notice and an opportunity to be heard.

(8) Interpreters for parties and persons granted rights of limited participation shall be appointed in the manner specified by ORS 45.275 and 45.285.

SECTION 12. ORS 107.425 is amended to read:

107.425. (1) In suits or proceedings described in subsection (4) of this section in which there are minor children involved, the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability and financial worth of the parties for the purpose of protecting the children's future interest. The court may defer the entry of a general judgment until the court is satisfied that its judgment in such suit or proceeding will properly protect the welfare of such children. The investigative findings shall be offered as and subject to all rules of evidence. Costs of the investigation may be charged against one or more of the parties or as a cost in the proceedings but shall not be charged against funds appropriated for public defense services.

(2) The court, on its own motion or on the motion of a party, may order an independent physical, psychological, psychiatric or mental health examination of a party or the children and may require any party and the children to be interviewed, evaluated and tested by an expert or panel of experts. The court may also authorize the expert or panel of experts to interview other persons and to request other persons to make available to the expert or panel of experts records deemed by the court or the expert or panel of experts to be relevant to the evaluation. The court may order the parties to authorize the disclosure of such records. In the event the parties are unable to stipulate to the selection of an expert or panel of experts to conduct the examination or evaluation, the court shall appoint a qualified expert or panel of experts. The court shall direct one or more of the parties to pay for the examination or evaluation in the absence of an agreement between the parties as to the responsibility for payment but shall not direct that the expenses be charged against funds appropriated for public defense services. If more than one party is directed to pay, the court may determine the amount that each party will pay based on financial ability.

(3)(a) In addition to an investigation, examination or evaluation under subsections (1) and (2) of this section, the court 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. The services provided to the court and to parents under this section may include:

(A) Gathering information;

(B) Monitoring compliance with court orders;

(C) Providing the parents, their attorneys, if any, and the court with recommendations for new or modified parenting time provisions; and

(D) Providing parents with problem solving, conflict management and parenting time coordination services or other services approved by the court.

(b) Services provided under this section may require the provider to possess and utilize mediation skills, but the services are not comprised exclusively of mediation services under ORS 107.755 to 107.795. If only mediation services are provided, the provisions of ORS 107.755 to 107.795 apply.

(c) The court may order one or more of the parties to pay for services provided under this subsection, if the parties are unable to agree on their respective responsibilities for payment. The court may not order that expenses be charged against funds appropriated for public defense services.

(d) The presiding judge of each judicial district shall establish qualifications for the appointment

1 and training of individuals and panels and the designation of programs under this section. In estab-
2 lishing qualifications, a presiding judge shall take into consideration any guidelines recommended
3 by the statewide family law advisory committee.

4 (4) The provisions of this section apply when:

5 (a) A person files a domestic relations suit, as defined in ORS 107.510;

6 (b) A motion to modify an existing judgment in a domestic relations suit is before the court;

7 (c) A parent of a child born *[out of wedlock]* **to an unmarried woman** initiates a civil pro-
8 ceeding to determine custody or support under ORS 109.103;

9 (d) A person petitions or files a motion for intervention under ORS 109.119;

10 (e) A person or the administrator files a petition under ORS 109.125 to establish paternity and
11 paternity is established; or

12 (f) A habeas corpus proceeding is before the court.

13 (5) Application of the provisions of subsection (1), (2) or (3) of this section to the proceedings
14 under subsection (4) of this section does not prevent initiation, entry or enforcement of an order of
15 support.

16 (6) The court, on its own motion or on the motion of a party, may appoint counsel for the chil-
17 dren. However, if requested to do so by one or more of the children, the court shall appoint counsel
18 for the child or children. A reasonable fee for an attorney so appointed may be charged against one
19 or more of the parties or as a cost in the proceedings but shall not be charged against funds ap-
20 propriated for public defense services.

21 (7) Prior to the entry of an order, the court on its own motion or on the motion of a party may
22 take testimony from or confer with the child or children of the marriage and may exclude from the
23 conference the parents and other persons if the court finds that such action would be likely to be
24 in the best interests of the child or children. However, the court shall permit an attorney for each
25 party to attend the conference and question the child, and the conference shall be reported.

26 **SECTION 13.** ORS 419B.819 is amended to read:

27 419B.819. (1) A court may make an order establishing permanent guardianship under ORS
28 419B.365 or terminating parental rights under ORS 419B.500, 419B.502, 419B.504, 419B.506 or
29 419B.508 only after service of summons and a true copy of the petition on the parent, as provided
30 in ORS 419B.812, 419B.823, 419B.824, 419B.827, 419B.830 and 419B.833. A putative father who satis-
31 fies the criteria set out in ORS 419B.839 (1)(d) or 419B.875 (1)(a)(C) also must be served with sum-
32 mons and a true copy of the petition, unless a court of competent jurisdiction has found him not to
33 be the child or ward's legal **or biological** father or he has filed a petition for filiation that was
34 dismissed and no appeal of the judgment or order is pending.

35 (2) A summons under this section must require one of the following:

36 (a) That the parent appear personally before the court at the time and place specified in the
37 summons for a hearing on the allegations of the petition;

38 (b) That the parent appear personally before the court at the time and place specified in the
39 summons to admit or deny the allegations of the petition; or

40 (c) That the parent file a written answer to the petition within 30 days from the date on which
41 the parent is served with the summons.

42 (3) If the court does not direct the type of response to be required by the summons under sub-
43 section (2) of this section, the summons shall require the parent to respond in the manner authorized
44 by subsection (2)(c) of this section.

45 (4) A summons under this section must contain:

1 (a) A statement that the rights of the parent are proposed to be terminated or, if the petition
2 seeks to establish a permanent guardianship, that a permanent guardianship is proposed to be es-
3 tablished.

4 (b) A statement that, if the parent fails to appear at the time and place specified in the summons
5 or in an order under ORS 419B.820 or, if the summons requires the filing of a written answer, fails
6 to file the answer within the time provided, the court may, without further notice and in the parent's
7 absence, terminate the parent's rights or grant the guardianship petition, either on the date specified
8 in the summons or order or on a future date, and may take any other action that is authorized by
9 law.

10 (c) A notice that the parent has the right to be represented by an attorney. The notice must be
11 in substantially the following form:

12 _____
13
14 You have a right to be represented by an attorney. If you wish to be represented by an attorney,
15 please retain one as soon as possible to represent you in this proceeding. If you cannot afford to
16 hire an attorney and you meet the state's financial guidelines, you are entitled to have an attorney
17 appointed for you at state expense. To request appointment of an attorney to represent you at state
18 expense, you must contact the juvenile court immediately. Phone _____ for further infor-
19 mation.
20 _____

21
22 (d) A statement that the parent has the responsibility to maintain contact with the parent's at-
23 torney and to keep the attorney advised of the parent's whereabouts.

24 (5) If the summons requires the parent to appear before the court to admit or deny the
25 allegations of the petition or requires the parent to file a written answer to the petition, the sum-
26 mons must advise the parent that, if the parent contests the petition, the court:

27 (a) Will schedule a hearing on the allegations of the petition and order the parent to appear
28 personally; and

29 (b) May schedule other hearings related to the petition and order the parent to appear per-
30 sonally.

31 (6) At a hearing, when the parent is required to appear personally, or in the parent's written
32 answer to the petition, the parent shall inform the court and the petitioner of the parent's current
33 residence address, mailing address and telephone number.

34 (7) If a parent fails to appear for any hearing related to the petition, or fails to file a written
35 answer, as directed by summons or court order under this section or ORS 419B.820, the court,
36 without further notice and in the parent's absence, may:

37 (a) Terminate the parent's rights or, if the petition seeks to establish a permanent guardianship,
38 grant the guardianship petition either on the date specified in the summons or order or on a future
39 date; and

40 (b) Take any other action that is authorized by law.

41 (8) If a guardian ad litem has been appointed for a parent under ORS 419B.231, a copy of the
42 summons served on the parent under this section must be provided to the guardian ad litem.
43 _____