

## HOUSE AMENDMENTS TO HOUSE BILL 2382

By COMMITTEE ON JUDICIARY

May 3

1 On page 1 of the printed bill, line 2, delete “amending ORS 109.070.” and insert “creating new  
2 provisions; and amending ORS 107.425, 109.070, 109.103, 109.124, 109.125, 109.155, 109.326, 416.443,  
3 419B.819 and 419B.875.”.

4 Delete lines 4 through 31 and delete page 2 and insert:

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 pre-*  
12 *sumed to be the child of the mother’s husband, whether or not the marriage of the husband and wife*  
13 *may be 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**  
22 **filing with the State Registrar of the Center for Health Statistics the voluntary acknowl-**  
23 **edgment 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.**

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

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

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

35 **“(3) If the court finds that it is just and equitable, giving consideration to the interests**

1 **of the parties and the child, the court shall admit evidence offered to rebut the presumption**  
2 **of paternity in subsection (1)(a) or (b) of this section.**

3 “[2] (4)(a) A party to a voluntary acknowledgment of paternity may rescind the acknowledg-  
4 ment within the earlier of:

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

6 “[b] (B) The date of a proceeding relating to the child, including a proceeding to establish a  
7 support order, in which the party wishing to rescind the acknowledgment is also a party. For the  
8 purposes of this [paragraph] **subparagraph**, the date of a proceeding is the date on which an order  
9 is entered in the proceeding.

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

12 “[3](a) (5)(a) A signed voluntary acknowledgment of paternity filed in this state may be chal-  
13 lenged **and set aside** in circuit court[:]

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

17 **“(b) The challenge may be brought by:**

18 **“(A) A party to the acknowledgment;**

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

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

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

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

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

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

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

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

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

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

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

3       “(C) The party’s parental rights were terminated by a court; or

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

6       “(b) Notwithstanding any provision of subsection (1)(c) or (e) of this section or ORS  
7 432.287 to the contrary, an acknowledgment signed by a party described in this subsection  
8 and filed with the State Registrar of the Center for Health Statistics does not establish  
9 paternity and is void.

10       “[(4)(a) Within one year after a voluntary acknowledgment of paternity form is filed in this state  
11 and if blood tests, as defined in ORS 109.251, have not been previously completed, a party to the ac-  
12 knowledgment or the state, if child support enforcement services are being provided under ORS 25.080,  
13 may apply to the court or to the administrator, as defined in ORS 25.010, for an order requiring that  
14 the mother, the child and the male party submit to blood tests as provided in ORS 109.250 to  
15 109.262.]

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

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

25       “**SECTION 2.** ORS 109.103 is amended to read:

26       “109.103. (1) If a child is born [out of wedlock] **to an unmarried woman** and paternity has been  
27 established **under ORS 109.070, or if a child is born to a married woman by a man other than**  
28 **her husband and the man’s paternity has been established under ORS 109.070**, either parent  
29 may initiate a civil proceeding to determine the custody or support of, **or parenting time with**, the  
30 child. The proceeding shall be brought in the circuit court of the county in which the child resides  
31 or is found or in the circuit court of the county in which either parent resides. The parents have  
32 the same rights and responsibilities regarding the custody and support of, **and parenting time with**,  
33 their child that married or divorced parents would have, and the provisions of ORS 107.093 to  
34 107.425 that relate to [the custody or support of children] **custody, support and parenting time**  
35 apply to the proceeding.

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

39       “(a) Whether there is pending in this state or any other jurisdiction any type of support pro-  
40 ceeding involving the child, including one brought under ORS 109.100, 109.165, 125.025, 416.400 to  
41 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

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

44       “(3) The parent shall include with the petition a certificate regarding any pending support pro-  
45 ceeding and any existing support order. The parent shall use a certificate that is in a form estab-

1 lished by court rule and include information required by court rule and subsection (2) of this section.

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

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

9 “109.124. As used in ORS 109.124 to 109.230, unless the context requires otherwise:

10 “(1) ‘Child attending school’ has the meaning given that term in ORS 107.108.

11 “(2) ‘Child born out of wedlock’ means a child born to an unmarried woman[,] or to a married  
12 woman by a man other than her husband[, *if the conclusive presumption in ORS 109.070 (1)(a) does*  
13 *not apply*].

14 “(3) ‘Respondent’ may include, but is not limited to, one or more persons who may be the father  
15 of a child born out of wedlock, the husband of a woman who has or may have a child born out of  
16 wedlock, the mother of a child born out of wedlock, the [*female*] **woman** pregnant with a child who  
17 may be born out of wedlock, or the duly appointed and acting guardian of the child or conservator  
18 of the child’s estate.

19 “**SECTION 4.** ORS 109.125 is amended to read:

20 “109.125. (1) Any of the following may initiate proceedings under this section:

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

23 “(b) The duly appointed and acting guardian of the child, conservator of the child’s estate or a  
24 guardian ad litem, if the guardian or conservator has the physical custody of the child or is pro-  
25 viding support for the child;

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

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

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

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

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

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

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

38 “[*B*] **(C)** Facts showing the petitioner’s status to initiate proceedings;

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

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

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

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

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

45 “**(B) The name of the mother’s husband if the child is alleged to be a child born to a**

1 **married woman by a man other than her husband;**

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

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

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

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

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

14 “(5) **A man whose paternity of a child has been established under ORS 109.070 is a nec-**  
15 **essary party to proceedings initiated under this section unless the paternity has been dises-**  
16 **tablished before the proceedings are initiated.**

17 “**SECTION 5.** ORS 109.155 is amended to read:

18 “109.155. (1) The court, in a private hearing, shall first determine the issue of paternity. If the  
19 respondent admits the paternity, [*such*] **the** admission shall be reduced to writing, verified by the  
20 respondent and filed with the court. If the paternity is denied, corroborating evidence, in addition  
21 to the testimony of the parent or expectant parent, shall be required.

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

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

30 “(4) The court [*shall have the power to*] **may** order either parent to pay such sum as [*it*] **the**  
31 **court** deems appropriate for the past and future support and maintenance of the child during [*its*]  
32 **the child’s** minority and while the child is attending school, as defined in ORS 107.108, and the  
33 reasonable and necessary expenses incurred or to be incurred in connection with prenatal care,  
34 expenses attendant with the birth and postnatal care. The court may grant the prevailing party  
35 reasonable costs of suit, which may include expert witness fees, and reasonable attorney fees at trial  
36 and on appeal. The provisions of ORS 107.108 apply to an order entered under this section for the  
37 support of a child attending school.

38 “(5) An affidavit certifying the authenticity of documents substantiating expenses set forth in  
39 subsection (4) of this section is prima facie evidence to establish the authenticity of [*such*] **the**  
40 documents.

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

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

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

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

4 “(A) As contract terms using contract remedies;

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

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

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

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

16 “(7) **If a man’s paternity of a child has been established under ORS 109.070 and the**  
17 **paternity has not been disestablished before proceedings are initiated under ORS 109.125, the**  
18 **court may not render a judgment under ORS 109.124 to 109.230 establishing another man’s**  
19 **paternity of the child unless the judgment also disestablishes the paternity established under**  
20 **ORS 109.070.**

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

23 “109.326. (1) If the mother of a child was married at the time of the conception or birth of the  
24 child, and it has been determined pursuant to ORS 109.070 or judicially determined that her husband  
25 at such time or times was not the father of the child, the husband’s authorization or waiver is not  
26 required in adoption, juvenile court or other proceedings concerning the custody of the child.

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

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

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

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

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

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

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

44 “(a) A statement that if the husband fails to file a written answer to the motion and order to  
45 show cause within the time provided, the court, without further notice and in the husband’s absence,

1 may take any action that is authorized by law, including but not limited to *[terminating the hus-*  
2 *band's parental rights and]* entering a judgment of nonpaternity on the date the answer is required  
3 or on a future date.

4 “(b) A statement that:

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

9 “(B) In the answer, the husband must inform the court and the petitioner of the husband’s tele-  
10 phone number or contact telephone number and the husband’s current residence, mailing or contact  
11 address in the same state as the husband’s home. The answer may be in substantially the following  
12 form:

13 “ \_\_\_\_\_

14  
15 IN THE CIRCUIT COURT OF  
16 THE STATE OF OREGON  
17 FOR THE COUNTY OF \_\_\_\_\_

18 \_\_\_\_\_, )  
19 Petitioner, ) NO. \_\_\_\_\_  
20 )  
21 ) ANSWER  
22 and )  
23 )  
24 \_\_\_\_\_, )  
25 Respondent. )

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

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

31 \_\_\_\_\_  
32 \_\_\_\_\_  
33 \_\_\_\_\_  
34 \_\_\_\_\_  
35 \_\_\_\_\_  
36 \_\_\_\_\_  
37 \_\_\_\_\_  
38 \_\_\_\_\_  
39 \_\_\_\_\_  
40 \_\_\_\_\_  
41 \_\_\_\_\_

42 Signature  
43 DATE: \_\_\_\_\_  
44 ADDRESS OR CONTACT ADDRESS:  
45 \_\_\_\_\_

1 \_\_\_\_\_  
2 TELEPHONE OR CONTACT TELEPHONE:  
3 \_\_\_\_\_  
4 “ \_\_\_\_\_  
5

6 “(c) A notice that, if the husband answers the motion and order to show cause, the court:

7 “(A) Will schedule a hearing to address the motion and order to show cause and, if appropriate,  
8 the adoption petition;

9 “(B) Will order the husband to appear personally; and

10 “(C) May schedule other hearings related to the petition and may order the husband to appear  
11 personally.

12 “(d) A notice that the husband has the right to be represented by an attorney. The notice must  
13 be in substantially the following form:

14 “ \_\_\_\_\_  
15

16 You have a right to be represented by an attorney. If you wish to be represented by an attorney,  
17 please retain one as soon as possible to represent you in this proceeding. If you meet the state’s  
18 financial guidelines, you are entitled to have an attorney appointed for you at state expense. To  
19 request appointment of an attorney to represent you at state expense, you must contact the circuit  
20 court immediately. Phone \_\_\_\_\_ for further information.  
21 “ \_\_\_\_\_  
22

23 “(e) A statement that the husband has the responsibility to maintain contact with the husband’s  
24 attorney and to keep the attorney advised of the husband’s whereabouts.

25 “(6) A husband who is served with a summons and a motion and order to show cause under this  
26 section shall file with the court a written answer to the motion and order to show cause within 30  
27 days after the date on which the husband is served with the summons or, if service is made by  
28 publication or posting under ORCP 7 D(6), within 30 days from the date of last publication or post-  
29 ing. In the answer, the husband shall inform the court and the petitioner of the husband’s telephone  
30 number or contact telephone number and current address, as defined in ORS 25.011. The answer  
31 may be in substantially the form described in subsection (5) of this section.

32 “(7) If the husband requests the assistance of appointed counsel and the court determines that  
33 the husband is financially eligible, the court shall appoint an attorney to represent the husband at  
34 state expense. Appointment of counsel under this subsection is subject to ORS 135.055, 151.216 and  
35 151.219. The court may not substitute one appointed counsel for another except pursuant to the  
36 policies, procedures, standards and guidelines adopted under ORS 151.216.

37 “(8) If the husband files an answer as required under subsection (6) of this section, the court,  
38 by oral order made on the record or by written order provided to the husband in person or mailed  
39 to the husband at the address provided by the husband, shall:

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

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

44 “(c) Inform the husband that, if the husband fails to appear as ordered for any hearing related  
45 to the motion and order to show cause or the adoption petition, the court, without further notice



1 and in the husband's absence, may take any action that is authorized by law, including but not  
2 limited to *[terminating the husband's parental rights and]* entering a judgment of nonpaternity on the  
3 date specified in the order or on a future date, without the consent of the husband.

4 "(9) If a husband fails to file a written answer as required in subsection (6) of this section or  
5 fails to appear for a hearing related to the motion and order to show cause or the petition as di-  
6 rected by court order under this section, the court, without further notice to the husband and in the  
7 husband's absence, may take any action that is authorized by law, including but not limited to *[ter-*  
8 *minating the husband's parental rights and]* entering a judgment of nonpaternity.

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

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

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

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

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

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

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

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

30 "**SECTION 7.** ORS 416.443 is amended to read:

31 "416.443. (1) **As used in this section, 'blood tests' has the meaning given that term in ORS**  
32 **109.251.**

33 "*[(1)]* (2) No later than one year after an order establishing paternity is entered under ORS  
34 416.440 and if *[no genetic parentage test has]* **blood tests have not** been completed, a party may  
35 apply to the administrator to have the issue of paternity reopened **and for an order for blood**  
36 **tests.**

37 "**(3) No later than one year after a voluntary acknowledgment of paternity is filed in this**  
38 **state and if blood tests have not been completed, a party to the acknowledgment, or the**  
39 **Department of Human Services if the child named in the acknowledgment is in the care and**  
40 **custody of the department under ORS chapter 419B, may apply to the administrator for**  
41 **services under ORS 25.080 and for an order for blood tests.**

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

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

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

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

5           “(6) If the results of the blood tests exclude the male party as the biological father of the  
6 child, the administrator may file a motion with the court for an order setting aside the order  
7 establishing paternity or the voluntary acknowledgment of paternity and for a judgment of  
8 nonpaternity.

9           “(7) Support paid before an order [is vacated] establishing paternity or a voluntary ac-  
10 **knowledgment of paternity is set aside** under this section [shall] **may not be returned** to the  
11 payer.

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

16           “(9) The Child Support Program shall pay any state registrar fees and any costs for blood  
17 tests ordered under this section, subject to recovery from the party who requested the tests.

18           “**SECTION 8.** Section 9 of this 2007 Act is added to and made a part of ORS chapter 109.

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

20           “(a) ‘Blood tests’ has the meaning given that term in ORS 109.251.

21           “(b) ‘Paternity judgment’ means a judgment or administrative order that:

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

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

26           “(c) ‘Petition’ means a petition or motion filed under this section.

27           “(d) ‘Petitioner’ means the person filing a petition or motion under this section.

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

31           “(A) A party to the paternity judgment.

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

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

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

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

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

1 fraud, misrepresentation or other misconduct.

2 “(3) In the petition, the petitioner shall:

3 “(a) Designate as parties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5       “(a) Shall contain the full name and date of birth of the child whose paternity was es-  
6 tablished or declared by the paternity judgment.

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

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

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

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

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

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

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

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

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

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

36       “SECTION 11. ORS 419B.875 is amended to read:

37       “419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500  
38 are:

39       “(A) The child or ward;

40       “(B) The parents or guardian of the child or ward;

41       “(C) A putative father of the child or ward who has demonstrated a direct and significant com-  
42 mitment to the child or ward by assuming, or attempting to assume, responsibilities normally asso-  
43 ciated with parenthood, including but not limited to:

44       “(i) Residing with the child or ward;

45       “(ii) Contributing to the financial support of the child or ward; or

1       “(iii) Establishing psychological ties with the child or ward;  
2       “(D) The state;  
3       “(E) The juvenile department;  
4       “(F) A court appointed special advocate, if appointed;  
5       “(G) The Department of Human Services or other child-caring agency if the agency has tempo-  
6 rary custody of the child or ward; and  
7       “(H) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pur-  
8 suant to the Indian Child Welfare Act.  
9       “(b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding  
10 under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS  
11 419B.500.  
12       “(2) The rights of the parties include, but are not limited to:  
13       “(a) The right to notice of the proceeding and copies of the petitions, answers, motions and other  
14 papers;  
15       “(b) The right to appear with counsel and, except for intervenors under subsection (1)(b) of this  
16 section, to have counsel appointed as otherwise provided by law;  
17       “(c) The right to call witnesses, cross-examine witnesses and participate in hearings;  
18       “(d) The right of appeal; and  
19       “(e) The right to request a hearing.  
20       “(3) A putative father who satisfies the criteria set out in subsection (1)(a)(C) of this section  
21 shall be treated as a parent, as that term is used in this chapter and ORS chapters 419A and 419C,  
22 until the court confirms his paternity or finds that he is not the legal **or biological** father of the  
23 child or ward.  
24       “(4) If no appeal from the judgment or order is pending, a putative father whom a court of  
25 competent jurisdiction has found not to be the child or ward’s legal **or biological** father or who has  
26 filed a petition for filiation that was dismissed is not a party under subsection (1) of this section.  
27       “(5)(a) A person granted rights of limited participation under ORS 419B.116 is not a party to a  
28 proceeding under ORS 419B.100 or 419B.500 but has only those rights specified in the order granting  
29 rights of limited participation.  
30       “(b) Persons moving for or granted rights of limited participation are not entitled to appointed  
31 counsel but may appear with retained counsel.  
32       “(6) If a foster parent, preadoptive parent or relative is currently providing care for a child or  
33 ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative  
34 notice of a hearing concerning the child or ward and the court shall give the person an opportunity  
35 to be heard. Except when allowed to intervene, the foster parent, preadoptive parent or relative  
36 providing care for the child or ward is not considered a party to the juvenile court proceeding solely  
37 because of notice and an opportunity to be heard.  
38       “(7) When a legal grandparent of a child or ward requests in writing and provides a mailing  
39 address, the Department of Human Services shall give the legal grandparent notice of a hearing  
40 concerning the child or ward and the court shall give the legal grandparent an opportunity to be  
41 heard. Except when allowed to intervene, a legal grandparent is not considered a party to the ju-  
42 venile court proceeding solely because of notice and an opportunity to be heard.  
43       “(8) Interpreters for parties and persons granted rights of limited participation shall be ap-  
44 pointed in the manner specified by ORS 45.275 and 45.285.  
45       “**SECTION 12.** ORS 107.425 is amended to read:

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

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

22           “(3)(a) In addition to an investigation, examination or evaluation under subsections (1) and (2)  
23 of this section, the court may appoint an individual or a panel or may designate a program to assist  
24 the court in creating parenting plans or resolving disputes regarding parenting time and to assist  
25 parents in creating and implementing parenting plans. The services provided to the court and to  
26 parents under this section may include:

27           “(A) Gathering information;

28           “(B) Monitoring compliance with court orders;

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

31           “(D) Providing parents with problem solving, conflict management and parenting time coordi-  
32 nation services or other services approved by the court.

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

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

39           “(d) The presiding judge of each judicial district shall establish qualifications for the appoint-  
40 ment and training of individuals and panels and the designation of programs under this section. In  
41 establishing qualifications, a presiding judge shall take into consideration any guidelines recom-  
42 mended by the statewide family law advisory committee.

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

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

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

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

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

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

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

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

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

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

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

21 “419B.819. (1) A court may make an order establishing permanent guardianship under ORS  
22 419B.365 or terminating parental rights under ORS 419B.500, 419B.502, 419B.504, 419B.506 or  
23 419B.508 only after service of summons and a true copy of the petition on the parent, as provided  
24 in ORS 419B.812, 419B.823, 419B.824, 419B.827, 419B.830 and 419B.833. A putative father who satis-  
25 fies the criteria set out in ORS 419B.839 (1)(d) or 419B.875 (1)(a)(C) also must be served with sum-  
26 mons and a true copy of the petition, unless a court of competent jurisdiction has found him not to  
27 be the child or ward’s legal **or biological** father or he has filed a petition for filiation that was  
28 dismissed and no appeal of the judgment or order is pending.

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

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

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

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

36 “(3) If the court does not direct the type of response to be required by the summons under  
37 subsection (2) of this section, the summons shall require the parent to respond in the manner au-  
38 thorized by subsection (2)(c) of this section.

39 “(4) A summons under this section must contain:

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

43 “(b) A statement that, if the parent fails to appear at the time and place specified in the sum-  
44 mons or in an order under ORS 419B.820 or, if the summons requires the filing of a written answer,  
45 fails to file the answer within the time provided, the court may, without further notice and in the

1 parent's absence, terminate the parent's rights or grant the guardianship petition, either on the date  
2 specified in the summons or order or on a future date, and may take any other action that is au-  
3 thorized by law.

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

6 " \_\_\_\_\_

7  
8 You have a right to be represented by an attorney. If you wish to be represented by an attorney,  
9 please retain one as soon as possible to represent you in this proceeding. If you cannot afford to  
10 hire an attorney and you meet the state's financial guidelines, you are entitled to have an attorney  
11 appointed for you at state expense. To request appointment of an attorney to represent you at state  
12 expense, you must contact the juvenile court immediately. Phone \_\_\_\_\_ for further infor-  
13 mation.

14 " \_\_\_\_\_

15  
16 "(d) A statement that the parent has the responsibility to maintain contact with the parent's  
17 attorney and to keep the attorney advised of the parent's whereabouts.

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

21 "(a) Will schedule a hearing on the allegations of the petition and order the parent to appear  
22 personally; and

23 "(b) May schedule other hearings related to the petition and order the parent to appear per-  
24 sonally.

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

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

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

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

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

37