



OREGON LAW COMMISSION

Adoption Records

Work Group Report

HB 2365-2

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I. Introduction

Since adoption is not recognized at common law, Oregon's adoption statutes are found primarily in ORS Chapter 109. Oregon's law and public policy favors the adoptive parents in an adoption proceeding. This is true of most states. Many groups and individuals brought their concerns regarding the need to update Oregon's adoption statutes to the Oregon Law Commission. This update included considering the balance between the adoptive parents' and birth parents' rights in an adoption proceeding. The OLC has worked on many projects in the past involving juvenile rights including the Uniform Paternity Act Work Group (2007) and the Putative Father Work Group (2005). The concerns brought to the OLC regarding adoption provisions such as putative father rights, re-adoption, and the role of the Department of Human Services in independent adoptions is a natural extension to the OLC's previous work in this area of law. The goal of this project had been to revise and update adoption statutes to provide clarification and consistency in this area of Oregon law.

II. History of the Project

The Oregon Judicial Department (OJD) requested the Oregon Law Commission review of ORS 7.211 in July 2010. The specific request was to consider the issue of access to the court's adoption files. In 2012, the Adoption Work Group was formed to address adoption records as well as other substantive issues. In 2013, SB 623 passed as a result of the Work Group's recommendation regarding adoption records. SB 623 (2013) went into effect on January 1, 2014. The Work Group supported HB 1536 (2014), which was proposed by OJD to clear up some issues related to birth parents' access to adoption records arising from SB 623 (2013). In August 2014, the Work Group began meeting to continue its work on other substantive areas of adoption law. The Work Group focused their efforts on housekeeping changes needed in response to the implementation of HB 1536 (2014) and SB 623 (2013), and much needed changes, clarifications and updates to the re-adoption provisions in ORS Chapter 109. The Work Group members have been dedicated to make the changes necessary to improve access to adoption records and improve other aspects of Oregon adoption law.

The Work Group was chaired by Oregon Law Commissioner John DiLorenzo, Jr. The Work Group was made up of several representatives from the State of Oregon: Judge Rita Cobb, Washington County Circuit Court; Caroline Burnell, Oregon Department of Human Services; Lois Day, Oregon Department of Human Services; Kathy Prouty, Oregon Department of Human Services; Gail Schelle, Oregon Department of Human Services; Carla Crane, Oregon Department of Human Services; Megan Hassen, Oregon Judicial Department; Leola McKenzie, Oregon Judicial Department; Cynthia Bidnick, Oregon Judicial Department; Carol Reis, Oregon Judicial Department Appellate Records Office; Carmen Brady-Wright, Oregon Department of Justice; Joanne Southery, Oregon Department of Justice. There were

also private attorneys represented: John Chally, Bouneff & Chally; Jane Edwards; Whitney Hill, Youth, Rights & Justice; Susan Moffet, Dexter & Moffet; Robin Pope; John Wittwer, John Wittwer Lawyers. Adoption agency/services were represented by Shari Levine, Open Adoption and Family Services, Robin Neal, Catholic Charities Pregnancy Support and Adoption Services, and David Slansky, Journeys of the Heart. Public members of the Work Group were Melissa Busch, Ansley J. Dennison-Bernatz, Michele Greco, and David Tilchin. The Work Group's interested parties were Representative Margaret Doherty; Susan Gary, Oregon State Bar; Professor Leslie Harris, University of Oregon School of Law; Sunny Moore; Ron Morgan; Tamera Slack; Mickey Serice, Oregon Department of Human Services; and Brian Hefner, Law Student, Willamette University College of Law. The Work Group staff included Professor Jeff Dobbins, Oregon Law Commission, Wendy Johnson, Oregon Law Commission, Philip Schradle, Oregon Law Commission, and Bealisa Sydlik, Deputy Legislative Counsel.

The Work Group met five times between August 2014 and February 2015. If authorized, the Work Group will continue after the 2015 session to address other substantive issues with adoption laws for recommendation to the 2016 and/or 2017 legislative sessions. These issues include matters regarding birth parent consent, putative fathers and a putative father registry, and advertisement/solicitation prohibitions.

III. Statement of the Problem

Technology is changing the way the court filing system operates. With the implementation of eCourt, it is necessary to ensure that statutes are up to date with this new filing system without creating a substantial burden on the court's administrators. The issue of adoption records was addressed primarily in SB 623 (2013) and HB 1536 (2014). However, once these two bills went into effect, key players affected by the changes and updates to the adoption statutes recognized the need to clean up and clarify certain provisions. The housekeeping provisions developed by the Work Group are needed in order to further the Work Group's goal to update and clarify Oregon's adoption statutes.

IV. Objectives of the Proposal

The Work Group recommends HB 2365-2 to the 2015 Legislative Assembly. The proposal is primarily a housekeeping clean-up of the adoption open records provisions that passed the legislature in 2013 and 2014. It also clarifies and updates the requirements for re-adoptions in Oregon, as there is little guidance in the current statutes. The main objective of the Work Group's proposal is to update and clarify certain provisions in ORS Chapter 109. The proposal especially focuses on the re-adoption portion of ORS Chapter 109.

V. Review of legal solutions existing or proposed elsewhere

The Work Group reviewed and discussed existing practice in Oregon after the implementation of SB 623 (2013) and HB 1536 (2014), then worked to resolve the concerns and questions that arose from the new provisions. The variety in membership of the Work Group brought many important perspectives and insights that allowed the Work Group to work through the issues and reach consensus on legal solutions.

VI. The Proposal

The Work Group’s recommendations are reflected in HB 2365-2. A section-by-section explanation of the bill and recommendations follows:

Section 1

This section amends ORS 109.315, slightly amending and clarifying some of the requirements of the adoption petition.

Currently subsection (1)(L) only requires the inclusion of the name and relationship to the minor child of all persons who have signed and attested to a certificate of irrevocability and waiver under ORS 109.321(2). The work group felt it was important to clarify that the same information needed to be included when a release or surrender is obtained under ORS 418.270(4). ORS 418.270(4) governs surrender of a child to a private child-caring agency for purposes of adoption. This change will provide for consistent treatment of independent and agency adoptions on this issue.

This section changes “sex” to “gender” under subsection (1)(f).

Subsection (1)(h) is amended to more clearly indicate when a statement is needed under the Indian Child Welfare Act.

Adoption petitions are currently required to be notarized. The section modifies that requirement to only require a declaration made under penalty of perjury that the information in the adoption petition is correct. This change was prompted by an effort to make the filing of a petition easier for the filer. Requiring a declaration, rather than a notarization, is one less step for a filer. Language from ORCP 1E is the basis for new subsection (1)(u). Amendments are made throughout the adoption statutes for consistency with this change.

Section 2

This section amends ORS 109.317, changing some of the requirements for the Adoption Summary and Segregated Information Statement (ASSIS), which is now filed with every adoption petition. The ASSIS came into being through SB 623. The proposed changes reflect the various stakeholders' experience with the ASSIS and will improve the use of this procedure.

ORS 109.317(1)(e) requires a petition for adoption to include the information required by the Uniform Child Custody and Jurisdiction and Enforcement Act (UCCJEA) to aid the court in determining whether jurisdiction is proper. One of the UCCJEA requirements is information on the child's whereabouts for the five years prior to filing the adoption petition. However, ORS 418.642 requires that information about foster parents remain confidential. The conflict between these two provisions needs to be resolved. In this section, subsection (1)(e) is modified to conform to the requirements of ORS 418.642 by protecting foster parents' confidentiality when the adoption of a foster-child is pending, while still requiring information about the child's county and state of residence. This will allow for compliance with the UCCJEA's jurisdictional information requirements while maintaining the confidentiality of foster parents.

Subsection (1)(h)(C) is modified to reflect the language ("re-adoption") introduced in Subsection 9.

The work group felt that the requirement to file a full ASSIS when any required information changed was unnecessarily burdensome. Accordingly, subsection (4) is amended to allow a petitioner and their attorney more flexibility in how they keep the court informed. This amendment reflects the language used in ORS 109.767(4). This section does not change the requirement that the petitioner keep the court informed but simply makes it easier for the petitioner to do so.

Section 3

This section modifies ORS 109.319 with a number of small changes to make it clear that the courts are not the only location adoption records are kept.

"Presiding judge" has also been added in various places within the statute to make it clear that presiding judges have authority to access adoption records. "That are maintained" has been added in various places within the statutes to clarify that this statute addresses access to the court's record of the adoption case, and not the records maintained by DHS or any other agencies, entities, or individuals.

Subsection (2) is modified to make it clear that the courts are not the only entity that must keep adoption records sealed.

Modifications are made throughout this section to allow access to written evidence that a home study was approved. Written evidence that a home study has been approved is not always submitted in a separate document; instead, it can be incorporated into the petition or another document. As it was written, the statute suggested that court staff might need to redact such information from the petition or other filings. The original concern was that the home study is not disclosed. The Work Group never intended that evidence of the home study's approval should be confidential. References to "evidence of a home study" throughout the statute have been removed to make it clear that evidence as to whether a home study was completed is not confidential.

Subsection (5)(c)(B)(ii) is modified to allow disclosure of the attorney of record in the adoption file. The intention of the 2013 amendments to the adoption laws was to protect the parties, not the attorneys. Subsection (5) of this statute only applies to adoptions that require approval by DHS, but this modification aligns with the current law in non-DHS adoptions.

Modifications to subsection (6) simply clarify the requirement that the name of the person as well as the signature must be redacted. This is in line with testimony heard before the House on SB 623, which included the explanation that the printed name of a person on a signature line would be redacted as well as the person's signature.

Subsection (7) is amended to clarify that all documents held by DHS or a licensed child-caring agency are to be kept confidential and must be sealed. This change provides consistency in how the records may be accessed, used, and disclosed.

Section 4

This section changes ORS 109.329(3) (relating to the adoption of a person 18 years or older) by removing the requirement that an affidavit be filed with an adoption petition, as the required allegations can be made in the Petition. Requiring a separate affidavit is duplicative and has caused some confusion for the courts and petitioners. This change will clarify the process and eliminate unnecessary documents.

Section 5

This section states that Section 6 of this 2015 Act is added to and made a part of ORS 109.305 to 109.410.

Section 6

This section has been added to require child-caring agencies, in addition to DHS, to disclose the county in which an adoption was finalized, as well as the case number of the adoption proceeding upon request. This will allow adult adoptees, birth parents who have consented to adoption, signed a release and surrender to whose parental rights have been terminated, or a parent or guardian of a minor child who was the subject of an adoption proceeding to request adoption records from the right place the first time. Currently, birth parents or adult adoptees who are searching for information about an adoption, but do not know where the adoption was filed, experience great difficulty finding this information, as they may not know from which county to request the information. Requiring DHS to release the county in which the adoption was finalized and the case number of the adoption proceeding will make the process easier for qualified persons to get adoption records. As access to adoption records by qualified persons was a main goal of the Work Group, this change is important.

Section 7

Subsection (1) is modified to clarify that separate petitions are required for each potential adoptee. Practice in the past was to use a single petition where multiple siblings or children are being considered for adoption by the same petitioners/parents, with payment of one filing fee. However, use of a single petition can lead to the need to redact confidential information when only one sibling later requests records. Thus, subsection (1) has been modified to require a separate petition for each potential adoptee, provided the petitioners are the same in each petition and the petitions are filed concurrently. Section 8 of this bill ensures that petitioners in these circumstances will still only pay one filing fee.

Subsection (8)(d) is added to make it clear that placement reports are confidential and must be separated from the ASSIS and any submitted exhibits.

Section 8

This section modifies ORS 21.135 to ensure that only one filing fee is required in the case where multiple minor children are being adopted concurrently by the same petitioners, in spite of the new requirement to file separate petitions.

Section 9

This section updates and clarifies what Oregon requires for the filing and finalization of a re-adoption. A re-adoption is when petitioners file to re-adopt a child whom they have legally adopted in another country. By virtue of that adoption, petitioners are the legal parents of the

child. The Work Group believes the process in these adoptions should be simpler and clear requirements set out in the statute. Section 9 sets out a step-by-step list of what is required in a re-adoption, thus providing needed guidance to the court, petitioners and attorneys. The Work Group felt this update was necessary due to the current lack of guidance on how to proceed in a re-adoption. Additionally, this section helps create a court record that a child would have access to if they subsequently request information from the court.

Section 10

Changes are similar to changes in Section 1 under ORS 109.115(1)(h). These changes help clarify when the procedures laid out in the Indian Child Welfare Act are to be initiated.

Section 11

This section deletes (4).

Section 12

This section adds “re-adoption,” as adopted in Section 9 of this bill, to ORS 109.350 (provision of the Voluntary Adoption Registry).

Section 13

This section causes the changes contained in the bill to apply both retroactively and prospectively. The Work Group strongly supports application of these changes to all adoptions.

Section 14

This section is the emergency clause of the bill; again, the Work Group strongly supports having this bill go into effective immediately upon signing.

VII. Conclusion

HB 2365-2 provides for clarity and law improvement of Oregon’s adoption and open records laws, and, in particular, provides for a clear and simplified process for re-adoptions. This bill provides technical corrections and revisions to improve the law and make practice consistent. There are few legal proceedings with more impact than that of the adoption of a child. It is crucial that Oregon laws be clear, up to date and consistent.