

Chapter 109

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PARENT AND CHILD RELATIONSHIP

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

109.020 When child's maintenance and education may be defrayed out of income of own property. If any minor, whose father is living, has property the income of which is sufficient for his maintenance and education in a manner more expensive than the father can reasonably afford, regard being had to the situation of the father's family and to all the circumstances of the case, the expenses of the maintenance and education of such minor may be wholly or partially defrayed out of the income of his own property, as is judged reasonable by the county court. The charges therefor may be allowed accordingly in the settlement of the accounts of his guardian.

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

109.040 [Repealed by 1953 c.650 §4]

109.041 Relationship between adopted child and his natural and adoptive parents. (1) The effect of a decree of adoption heretofore or hereafter granted by a court of this state shall be that the relationship, rights and obligations between an adopted person and his descendants and

(a) his adoptive parents, their descendants and kindred, and

(b) his natural parents, their descendants and kindred shall be the same to all legal intents and purposes after the entry of such decree as if the adopted person had been born in lawful wedlock to his adoptive parents and had not been born to his natural parents.

(2) Where a person has been or shall be adopted in this state by his stepparent, this section shall leave unchanged the relationship, rights and obligations between such adopted person and his descendants and his

natural parent, who is the spouse of the person who adopted him, and the descendants and kindred of such natural parent. [1953 c.650 §1]

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

109.060 to 109.100 [Reserved for expansion]

BASTARDY PROCEEDINGS

109.110 Initiation of proceedings. On complaint being made to any justice of the peace by any unmarried female who is delivered of an illegitimate child or who is pregnant with a child which, if born alive, may be illegitimate, accusing any person of being the father of the child, the justice shall take the complaint in writing under the oath of the female, and shall thereupon issue his warrant against the person accused, directed to the sheriff or any constable in his county, commanding him forthwith to bring the accused before the justice to answer to the complaint.

109.120 Proceedings on return of warrant; removal of action. (1) On the return of the warrant mentioned in ORS 109.110, if the accused is in custody or appears, the justice shall examine the complainant under oath respecting the cause of complaint, and the accused may cross-examine her and put any question necessary for his defense, subject to the rules of evidence provided by the procedural statutes. Witnesses may be examined on behalf of either party. All testimony and proceedings shall be reduced to writing.

(2) The proceedings for cause shown may be adjourned from time to time, not exceeding five days at any one time. On such adjournment the accused may be recognized for his appearance for such examination in a sum not less than \$100 nor more than \$1,000, with sureties to the satisfaction of the justice. In default thereof he shall be committed, pending such examination, to the county jail.

(3) The accused is entitled to a removal of such action as in criminal examination before justices of the peace.

109.130 Payment or security in satisfaction of the wrong; bond to secure county's costs and expenses; discharge of accused. If the accused pays or secures to be paid to the female complaining, such sum of money or other property as she agrees to receive in full satisfaction and as is approved by the judge of the juvenile court of the county wherein such action is pending, of which agreement and approval the justice shall make a memorandum on his docket; gives bond with sufficient sureties to be approved by the justice to the county to secure and indemnify the county from all charges for the maintenance of the child; and pays all expenses incurred by the county for the lying-in and support of the mother, attendance upon her during her confinement and the costs of prosecution, the justice shall discharge the accused.

109.140 Failure to comply with settlement provisions; new complaint after discharge for want of evidence. In case the accused does not comply with the provisions of ORS 109.130 and there is probable cause to believe the accused guilty, the justice shall bind such person in a recognizance, with one or more sureties, to be approved by the justice, in a sum of not less than \$200, nor more than \$2,000, to appear at the next term of the circuit court for the proper county and from time to time thereafter until final judgment, to answer to the complaint and to abide by the order of said court thereon. On the accused's neglect or refusal to find such security, the justice shall cause him to be committed to the county jail, there to be held to answer to the complaint. The justice shall thereupon certify and return the examination and all testimony taken before him, with all process and papers in the case, to the clerk of the circuit court. In case any examination has been had, as provided by law, and the person complained of has been discharged for want of sufficient evidence to raise a probability of his guilt, and the district attorney afterwards finds admissible evidence sufficient, in his judgment, to convict the person discharged, he may, notwithstanding the discharge, cause another complaint to be made before any officer authorized by law to make such examination, and thereupon another arrest and examination shall be had.

109.150 Conduct of trial; judgment; appeal; corroborative evidence. (1) The judge may exclude the general public from the trial

in bastardy proceedings, and shall do so at the request of either party. The issue at such a trial is whether the accused is guilty or not. If the mother of the child is dead, her examination taken before the justice may be read in evidence, and in all cases it shall be read when demanded by the accused.

(2) If the accused is found guilty or admits the truth of the accusation, he shall be adjudged to be the father of the child and shall be chargeable with its future maintenance in such sum and in such manner as the court directs, with all expenses incurred by the county or by the mother of the child for the lying-in and attendance of the mother during her confinement, with the care and support of the child since its birth and with the costs of the prosecution. All such matters shall be ascertained and fixed by the court, and shall be inserted in the judgment; provided, however, that the judgment of the court providing for the maintenance of the child by the father shall be in a yearly sum of not less than \$100 nor more than \$350 for the first two years, and not less than \$150 nor more than \$500 for each year succeeding until the child reaches the age of 14 years.

(3) The defendant has the right of trial by jury and of appeal, as provided in civil actions.

(4) No conviction shall be had upon the uncorroborated testimony of the complaining female.

109.160 Bond for performance of judgment; discharge thereon; commitment on failure to give bond. If the person adjudged under ORS 106.050 to be the father of the child gives a bond to the proper person in such sum and with such sureties as the court approves, conditioned upon the performance of the judgment and the payment of all sums ordered paid as therein directed, and pays the costs of prosecution and any sums adjudged then to be paid, he shall be discharged; otherwise he shall be committed to the county jail until he complies with and performs the judgment or is otherwise discharged according to law. In counties maintaining a house of correction or workhouse, the commitment may be to either of these rather than to the county jail.

109.170 Discharge from imprisonment; recommitment. Any person imprisoned for 90 days pursuant to ORS 109.160 may apply for his discharge from imprisonment to the

court having jurisdiction of the action. Notice of the application for discharge shall be given to the complainant, if living, within the state and to the district attorney for the county at least 15 days before such application is made. Any such person may be re-committed as provided in ORS 109.160 within 30 days after such discharge.

109.180 Execution. The court, upon motion by the mother of the child or by any person interested, may, from time to time, order execution to issue against the defendant and his sureties in any bond given as provided in ORS 109.160 to secure the performance of any such judgment, or against a defendant who has been discharged under ORS 109.170 for such sum as at any time becomes due on the judgment and remains unpaid.

109.190 Failure of the mother to prosecute. When the mother of an illegitimate child commences any proceedings authorized by ORS 109.110 and fails to prosecute the same, the proper officers of the county or any person interested in the support of the child may prosecute the proceedings commenced by the mother to final judgment.

109.200 Proceedings at instance of public officer. If any unmarried female is delivered of an illegitimate child which is, or is likely to become a public charge, or if the female is pregnant with a child likely to be born illegitimate and become a public charge, any public officer duly authorized to make or cause arrests may, if he deems it proper, apply to some justice of the peace of the county in which the female resides who shall thereupon examine her in respect of the identity of the father of the child, when and where it was begotten, and as to such other circumstances as he may deem necessary. The justice shall reduce the examination to writing and shall thereupon issue his warrant, without further or formal complaint, to apprehend the putative father, and the same proceeding shall be had thereon and with like effect as is in ORS 109.120 to 109.180 provided in cases of complaint made by the female.

109.210 Execution of warrant in any part of state; attendance and testimony of the female. Any warrant issued under ORS 109.110, 109.140 or 109.200 may be executed in any part of this state; and in all cases the county officers and the accused may compel the female to attend and testify the same as witnesses in other cases.

109.220 Power of judge to compromise with the father and discharge him. The judge of the juvenile court of the county in which the female referred to in ORS 109.110 resides may make such compromise or arrangement with the putative father of any illegitimate child relative to the support of the child as the judge deems equitable and just, and thereupon may discharge the putative father from all liability for the support of the child.

109.230 Legality of contract between mother and father of illegitimate child. Any contract between the mother and father of an illegitimate child is a legal contract, and the admission by the father of his fatherhood of the child is sufficient consideration to support the contract.

109.240 [Reserved for expansion]

UNIFORM ACT ON BLOOD TESTS TO DETERMINE PATERNITY

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

109.252 Authority for blood test; effect of refusal to submit to test. In a civil action under ORS 109.110 to 109.230, in which paternity is a relevant fact, the court, upon its own initiative or upon suggestion made by or on behalf of any person whose blood is involved may, or upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child and alleged father to submit to blood tests. If any party refuses to submit to such tests, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require. [1953 c.628 §1]

109.254 Selection of experts to make tests; examination of experts. The tests shall be made by experts qualified as examiners of blood types who shall be appointed by the court. The experts shall be called by the court as witnesses to testify to their findings and shall be subject to cross-examination by the parties. Any party or person at whose suggestion the tests have been ordered may demand that other experts, qualified as examiners of blood types, perform independent tests under order of court, the results of which may be offered in evidence. The

number and qualifications of such experts shall be determined by the court. [1953 c.628 §2]

109.264 to 109.300 [Reserved for expansion]

109.256 Compensation of experts. (1)

The compensation of each expert witness appointed by the court shall be fixed at a reasonable amount. It shall be paid as the court shall order. The court may order that it be paid by the parties in such proportions and at such times as it shall prescribe, or that the proportion of any party be paid by the county in which the proceedings are had, and that, after payment by the parties or such county or both, all or part or none of it be taxed as costs in the action.

(2) The fee of an expert witness called by a party but not appointed by the court shall be paid by the party calling him but shall not be taxed as costs in the action. [1953 c.628 §3]

109.258 Effect of test results. If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests, are that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly. If the experts disagree in their findings or conclusions, the question shall be submitted upon all the evidence. If the experts conclude that the blood tests show the possibility of the alleged father's paternity, admission of this evidence is within the discretion of the court, depending upon the infrequency of the blood type. [1953 c.628 §4]

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

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

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

(3) The court may direct a verdict of acquittal upon the conclusions of all the experts under the provisions of ORS 109.258, otherwise the case shall be submitted for determination upon all evidence. [1953 c.628 §5]

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

ADOPTION

109.310 Petition for leave to adopt and for change of name. (1) Any person may petition a county court or other court of competent jurisdiction for leave to adopt another and, if desired, for a change of the other's name; but the prayer of the petition by a married person shall not be granted unless the petitioner's spouse joins therein.

(2) The petition may be filed in the county where the petitioner resides, if he is a resident of this state; in the county where the parent or guardian of the other resides, if the other is a child; or, if the petition is for the adoption of a child committed to any institution incorporated under the laws of this state to care for dependent or delinquent children, in the county where the institution is situated.

(3) Such petition shall include the full names and permanent address of the petitioners, the age, color or race, birthplace and occupation of the adoptive father, and the maiden name, age, color or race, birthplace and residence of the adoptive mother, all as of the date of the adopted child's birth. If such petition is for the adoption of a minor child, a copy thereof shall be served on the administrator of the State Public Welfare Commission by registered mail or personally; and no petition for adoption of such child shall be granted by any court until the expiration of 30 days from the filing of the petition, unless the running of such time is waived by the commission.

(4) Within the time and in the manner provided in this section, the commission may file for the consideration of the judge before whom the petition for adoption is pending such information regarding the status of the child and evidence as to the suitability of the proposed foster home as the commission desires to submit. Upon written request of the attorney for the petitioner, the State Public Welfare Commission shall furnish to him a copy of such information as is filed with the court. [Amended by 1953 c.368 §2]

109.320 Consent to adoption. (1) The parents of the child, or the survivor of them, shall, except as provided in subsections (1), (2), (3), (6) and (7) of this section and in ORS 109.330, consent in writing to the adoption of the child. If neither parent is living,

the guardian of the child may give such consent; if there is no guardian, the next of kin in this state may do so; and if there is no such next of kin, the court may appoint some suitable person to act in the proceedings as next friend of the child to give or withhold such consent; provided, that in case the child is illegitimate, the consent of the mother is sufficient; and in case the mother is dead or unknown, the provisions above mentioned applicable in case neither parent is living, apply.

(2) In case the legal custody of the child has been awarded in divorce proceedings, the consent of the person to whom custody of the child has been awarded may be held by the court sufficient, but a citation to show cause why the proposed adoption shall not be made shall be served upon the parent not having the custody in the manner provided by law for the service of citation in probate matters, and the objections of such parent shall be heard, if appearance is made.

(3) Subsections (1) and (2) of this section do not limit or qualify the provisions of ORS 419.128.

(4) In the adoption of a ward of a private agency, society or institution, to give formal consent to such adoption, the organization must file with the clerk of the court in which the adoption proceedings are pending two documents:

(a) A certified copy of an order of a court of competent jurisdiction formally and permanently assigning the child to its guardianship, or, for the information of the court, a copy of a written surrender of the child from its parent or parents or guardian; and

(b) A written formal consent by the organization to the proposed adoption showing that sufficient and satisfactory investigation of the adopting parties has been made and recommending that the petition for adoption be granted.

(5) When foundlings or other abandoned children whose parentage is unknown and who have not been assigned by a permanent court order to any child-caring organization are presented for adoption, the judge having competent jurisdiction in the county of the residence of the parties desiring to adopt, or the judge in the county where are located the headquarters or institution of the society or institution having the child in care, may record his consent to the adoption in loco parentis.

(6) If either parent is insane or im-

soned in the state prison under a sentence for a term not less than three years or has willfully deserted and neglected to provide proper care and maintenance for the child for one year next preceding the time of filing the petition for adoption, the court shall proceed as if such parent were dead, and in its discretion may appoint some suitable person to act in the proceedings as next friend of the child to give or withhold the consent mentioned in subsection (1) of this section.

(7) If the child is 14 years of age or more, the adoption shall not be made without its consent.

109.330 Notice to nonconsenting parent; notice where child has no parent, guardian or next of kin. If a parent does not consent to the adoption of his child, the court shall order a copy of the petition therefor and citation thereon to be served on him personally, if found in the state, and if not found in the state, then a copy of the citation to be published or served in the manner provided by ORS 116.750 for the service of citation by publication or for personal service outside the state, and a copy of the citation to be deposited forthwith in the postoffice, directed to such parent at his place of residence, unless it appears that such residence is neither known to the petitioner nor can with reasonable diligence be ascertained by him. If the child has no living parent and no guardian or next of kin in this state qualified to appear in its behalf, the court may order such notice to be given as it deems necessary or proper.

109.340 Sealing and filing of family history records in certain adoptions. The court consenting to and consummating the adoption of any foundling or abandoned or illegitimate child at his discretion may require that all papers relating to the personal or family history of such child, if any is of record, be sealed and filed in the county archives, to be unsealed only on judicial order.

109.350 Decree of adoption. If, upon a petition for adoption duly presented and consented to, the court is satisfied as to the identity and relations of the persons, that the petitioner is of sufficient ability to bring up the child and furnish suitable nurture and education, having reference to the degree and condition of the parents, and that it is fit and proper that such adoption be effected, a decree shall be made setting forth the

facts, together with the name, age, color or race, birthplace and occupation of the adoptive father and the maiden name, age, color or race and residence of the adoptive mother, all as of the date of the adopted child's birth, and ordering that from the date of the decree the child, to all legal intents and purposes, is the child of the petitioner.

109.360 Change of adopted child's name. If in a petition for the adoption of a child a change of the child's name is requested, the court, upon decreeing the adoption, may also decree the change of name and grant a certificate thereof without the notices required by ORS 33.420.

109.370 Appeal from decree on a petition for adoption. Any petitioner may appeal to the circuit court from the decree of the county court on a petition for the adoption of another in like manner as appeals may be taken from the other decrees of that court. Any child made the subject of such petition may, by a next friend, appeal in like manner; but no bond shall be required, or costs awarded against such child or next friend.

109.380 Application of parent for reversal of decree. A parent who before the hearing upon a petition for the adoption of his child, has not had personal notice there-

of, may, at any time within one year after actual notice, apply to the circuit court to reverse the decree; which court, after due notice, may in its discretion reverse the decree if it appears that any of the material allegations in the petition were not true.

109.390 to 109.500 [Reserved for expansion]

AGE OF MAJORITY

109.510 Age of majority. Except as provided in ORS 109.520, in this state any person shall be deemed to have arrived at majority at the age of 21 years, and thereafter shall have control of his own actions and business, have all the rights and be subject to all the liabilities of a citizen of full age.

109.520 Majority of married persons and mothers of illegitimate children. Except as provided in ORS 653.105, all persons shall be deemed to have arrived at the age of majority upon their being married according to law or, for the purpose of a female person consenting to the adoption of an illegitimate child, when it is shown in the court in which such adoption proceedings are pending, that the female person is the mother of the illegitimate child. [Amended by 1953 c.343 §2]