

# Chapter 109

1993 EDITION

## Rights and Relationships of Parent and Child

### PARENT AND CHILD RELATIONSHIP

- 109.010 Duty of support
- 109.015 Proceedings for child support if child receives public assistance
- 109.020 When child's maintenance and education may be defrayed out of income of own property
- 109.030 Equality in rights and responsibilities of parents
- 109.041 Relationship between adopted child and natural and adoptive parents
- 109.060 Relation of adopted child to adoptive parents
- 109.053 Responsibility of stepparent for expenses of stepchild
- 109.060 Legal status and legal relationships where parents not married
- 109.070 Establishing paternity
- 109.090 Interpretation of ORS 109.060 to 109.090
- 109.092 Establishing paternity by acknowledgment; mother surrendering child for adoption
- 109.094 Rights of father where paternity established; procedure when paternity established
- 109.096 Notice to putative father where paternity not established
- 109.098 Objection of putative father in proceeding referred to in ORS 109.096; effect of failure to appear and object
- 109.100 Petition for support; effect of order; parties
- 109.103 Proceeding to determine custody or support of child
- 109.112 Mother, father or putative father deemed to have attained majority
- 109.116 Validity of putative father's authorization, release or waiver
- 109.118 Validity of decrees or orders entered prior to July 3, 1975, concerning custody, adoption or permanent commitment of child
- 109.119 Rights of person who establishes emotional ties creating child-parent relationship; costs for intervenor representation

### VISITATION RIGHTS OF GRANDPARENTS

- 109.121 Procedure whereby grandparents may establish visitation rights with grandchildren
- 109.123 Power to grant visitation rights discretionary; effect on care and custody orders

### FILIATION PROCEEDINGS

- 109.124 Definitions for ORS 109.124 to 109.230
- 109.125 Initiation of proceedings; parties
- 109.135 Circuit court jurisdiction; equity suit; trial by jury on paternity; place of commencement
- 109.145 Court may proceed despite failure to appear; evidence required
- 109.155 Conduct of trial; postponement; orders

- 109.165 Power of court to set aside or modify decree
- 109.175 Determination of legal custody after paternity established
- 109.225 Notice to Vital Statistics Unit after petition filed; filing notice
- 109.230 Legality of contract between mother and father of child born out of wedlock
- 109.231 Records open to public
- 109.235 Court may preserve confidentiality of petitioners
- 109.237 Award of attorney fees authorized

### ARTIFICIAL INSEMINATION

- 109.239 Rights and obligations of children resulting from artificial insemination; rights and obligations of donor of semen
- 109.243 Relationship of child resulting from artificial insemination to mother's husband
- 109.247 Application of law to children resulting from artificial insemination

### UNIFORM ACT ON BLOOD TESTS TO DETERMINE PATERNITY

- 109.250 Short title
- 109.251 Definition for ORS 109.250 to 109.262
- 109.252 Authority for blood test; effect of refusal to submit to test
- 109.254 Selection of experts to make tests; use of expert's affidavit
- 109.256 Compensation of experts
- 109.258 Effect of test results
- 109.260 Applicability to criminal actions
- 109.262 Uniformity of interpretation
- 109.264 Parties

### ADOPTION

- 109.304 Definitions for ORS 109.305 to 109.410
- 109.306 Interpretation of adoption laws; agreement for continuing contact
- 109.307 Court required to act within six months of filing of petition for adoption; duty of clerk
- 109.309 Petition for leave to adopt and for change of name; where filed; venue; notice; placement report; fee
- 109.311 Financial disclosure statement to be filed with petition; placement report required; exception; prohibited fees
- 109.312 Consent to adoption
- 109.314 Consent where custody of child has been awarded in divorce proceedings
- 109.316 Consent by Children's Services Division or an approved child-caring agency of this state
- 109.318 Consent by organization located outside Oregon
- 109.322 Consent where parent mentally ill, mentally deficient or imprisoned

## DOMESTIC RELATIONS

- 109.324 Consent where parent has deserted or neglected child
- 109.328 Consent where husband not father
- 109.328 Child 14 years of age or older must also consent
- 109.329 Consent where person to be adopted has reached age of majority
- 109.330 Notice to nonconsenting parent; notice where child has no parent, guardian or next of kin
- 109.332 Stepparent adoption; grandparent visitation; findings required
- 109.335 Appointment of guardian pending further adoption proceedings
- 109.342 Medical history of child and biological parents required; content; delivery to adoptive parent and to adoptee on majority
- 109.350 Decree of adoption
- 109.360 Change of adopted child's name
- 109.381 Effect of decree of adoption
- 109.385 Certain adoptions in foreign nations recognized; evidence
- 109.390 Authority of Children's Services Division or child-caring agency in adoption proceedings
- 109.400 Adoption report form
- 109.410 Certificate of adoption; form; fee; persons eligible to receive copy; status
- VOLUNTARY ADOPTION REGISTRY**
- 109.425 Definitions for ORS 109.425 to 109.507
- 109.430 Policy for ORS 109.425 to 109.507
- 109.435 Adoption records to be permanently maintained
- 109.440 Information confidential; exceptions
- 109.445 Information of registry confidential
- 109.450 Child placement agency to maintain registry; Children's Services Division duties
- 109.455 Persons eligible to use registry
- 109.460 Persons eligible to register
- 109.465 Content of affidavit; notice of change in information
- 109.470 Continuing registration by birth parent
- 109.475 Processing affidavits
- 109.480 Counseling of registrant
- 109.485 Registry information to be maintained permanently
- 109.490 Limits on releasing information
- 109.495 Registrant fee
- 109.500 Genetic, social and health history; availability; fee
- 109.502 Search for birth parents or genetic siblings; who may initiate; information required
- 109.503 Search organization; access to adoption records; duties of search organization
- 109.504 Effect on subsequent searches when person sought in initial search refuses contact
- 109.505 Support services; adoption and reunion issues
- 109.506 Rulemaking; fees
- 109.507 Access to Children's Services Division records required; access to private agency records discretionary
- AGE OF MAJORITY**
- 109.510 Age of majority
- 109.520 Majority of married persons
- RIGHTS OF MINORS**
- 109.610 Right to treatment for venereal disease without parental consent
- 109.640 Right to medical or dental treatment without parental consent; physicians may provide birth control information to any person
- 109.650 Disclosure without minor's consent and without liability
- 109.660 Construction
- 109.670 Right to donate blood
- 109.672 Certain persons immune from liability for providing care to minor; consent of one parent required
- 109.675 Right to diagnosis or treatment for mental or emotional disorder or chemical dependency without parental consent
- 109.680 Disclosure without minor's consent and without liability
- 109.685 Person providing treatment or diagnosis not subject to civil liability for providing treatment or diagnosis without consent of parent or guardian
- 109.690 Parent or guardian not liable for payment under ORS 109.675
- 109.695 Rules for implementation of ORS 109.675 to 109.695
- 109.697 Right to contract for dwelling unit and utilities without parental consent
- UNIFORM CHILD CUSTODY JURISDICTION ACT**
- 109.700 Citation of ORS 109.700 to 109.930
- 109.710 Definitions for ORS 109.700 to 109.930
- 109.720 General purposes; application
- 109.730 Jurisdiction over child custody determination
- 109.740 Notice and opportunity of hearing required
- 109.750 Method of notice
- 109.760 Effect of proceedings pending elsewhere
- 109.770 Finding of court on inconvenient forum
- 109.780 Effect of wrongful conduct of petitioner
- 109.790 Information required
- 109.800 Joinder of other persons as parties
- 109.810 Authority to order appearance of others; payment of expenses
- 109.820 Effect of decree
- 109.830 Enforcement of decree of another state
- 109.840 Modification of decree of another state
- 109.850 Filing of decree of another state; effect of violation
- 109.860 Clerk's registry
- 109.870 Certification of decree; copies
- 109.880 Depositions
- 109.890 Hearing in another state
- 109.900 Ordering appearance in another state; payment of expenses
- 109.910 Preservation of record; copies to other courts

## RIGHTS AND RELATIONSHIPS OF PARENT AND CHILD

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- 109.920 Obtaining transcript from another state
- 109.930 Calendar priority

### PENALTY

- 109.990 Penalty

### CROSS REFERENCES

- Action for injury or death of child, 30.010
- Address defined, 25.011
- Admissibility of Department of Human Resources computer printout reflecting payment of public assistance, 25.220
- Adoption record with State Registrar, 432.415
- Child support, formula for determining amount, 25.270 to 25.287
- Child support orders, health insurance, 25.255
- Child welfare, Ch 418
- Children's Ombudsman, dedication of fee, 417.825
- Child's welfare, endangering, 163.575
- Conservator, preferences in appointment, 126.233
- Contempt proceeding, personal service, waiver, 107.835
- Delegation of certain powers by parent or guardian, 126.030
- Discrimination, race, color, sex, marital status, religion or national origin, 659.033
- Enforcement of duty to support dependents, 110.005 to 110.291
- Expenses of parent or guardian included in damages recoverable by child, 30.810
- Family restorative services provided by Department of Human Resources, 409.210
- Gifts to minors, 126.805 to 126.886
- Guardians, parents preferred for appointment as, 126.035
- Guardianships, termination upon marriage or adoption of minor, ward, 126.085
- Inapplicability of judgment satisfaction procedure, 18.400
- Incapacity due to immaturity, criminal liability of child under 14, 161.290
- Infant death, concealing, 167.820
- Inheritance and gift tax, transfers to children 21 years or over at time of adoption, 118.005, 119.005
- Intestate succession, 112.045
- Juvenile and family-related matters, circuit court jurisdiction, 3.250 to 3.280
- Juvenile court, transfer of certain proceedings involving children, 419B.124, 419C.050
- Legitimation of issue of certain imperfect marriages, 106.190, 106.210
- Marriages validated, 107.142
- Matters assigned to family court departments in circuit court, 3.408
- Parental tort liability for tort of child, 30.765
- Support enforcement, Support Enforcement Division to represent obligee, 25.080
- Support payment to Department of Human Resources, 25.020, 25.320
- Support pending settlement of estate of deceased parent, 114.015
- Workers' Compensation Law, coverage of minors, 656.132

### 109.010

- Abandonment, child under 15, 163.535
  - Child committed to state training school, support by parent, 419B.404, 419C.595
  - Child neglect, 163.545, 163.547
  - Criminal nonsupport, child under 18, 163.555
  - Decree for annulment or dissolution of marriage, or separation, provisions for support of children, 107.105
  - Duty to support minor or adopted children, 108.110
  - Guardians, conservators, duties and powers, 126.080, 126.137, 126.317
  - Juvenile Compact Administrator, recovery of expenses, 417.060
  - Juvenile court:
    - Jurisdiction based on failure of parents to support child, 419B.100
    - Obligation to support child within jurisdiction, 419B.373, 419C.550
  - Parent's liability for family expenses and education of children, 108.040
  - Support Enforcement Division, powers with respect to enforcement of support, 180.320 to 180.370
- ### 109.060
- Succession where parents not married, 112.105
- ### 109.125
- Evidence of paternity, criminal paternity, 163.565
- ### 109.155
- Support payment to clerk of court, 25.040
- ### 109.307
- Juvenile and family-related matters, circuit court jurisdiction, 3.250 to 3.280
- ### 109.309
- Effect of adoption on intestate succession, 112.175
  - Effect on adoption proceeding of order by juvenile court terminating parental rights, 419B.426
  - Probate jurisdiction, 3.130, 46.092
  - Records in adoption cases, 7.211
- ### 109.312
- Consent to adoption of child committed to child-caring agency which is guardian of child, 418.270, 418.275
  - Delegation of certain powers by parent or guardian, power to consent to marriage or adoption prohibited, 126.030
- ### 109.324
- Termination of parental rights by juvenile court, grounds, 419B.502, 419B.504, 419B.506, 419B.508
- ### 109.326
- Juvenile courts, 5.020, 46.092
- ### 109.330
- Summons, service in civil action, ORCP 7
  - Termination of parental rights by juvenile court, grounds, 419B.502, 419B.504, 419B.506, 419B.508
- ### 109.360
- Payments to adoptive parents by Children's Services Division, 418.330
  - Sealing and inspection of adoption records, 7.211

## **DOMESTIC RELATIONS**

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**109.360**

Certificate supplemental to adopted person's birth certificate, 432.415

**109.400**

Recording adoptions, 432.415

**109.510**

Conservatorship, effect of majority, 126 333, 126 387

Employment of minors, regulation, 653.305

Misrepresentation of age by minor, 165 805

Negotiation of commercial paper by infant, 73.0202

Obscene materials, furnishing to minors, 167.065, 167.075, 167 080

**109.520**

Indorsement by infant, 73.0202

Will, execution of, 112.225

**109.610 to 109.660**

Jury service, 10.030

Sale or delivery of poison to minor without written order prohibited, 453.085

**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.

**109.015 Proceedings for child support if child receives public assistance.** If public assistance, as defined in ORS 416.400, is provided for any dependent child, the Department of Human Resources may initiate proceedings under ORS chapter 23, 107, 108, 109 or 126 or ORS 25.010 to 25.240, 25.311, 25.314, 110.005 to 110.291, 416.400 to 416.470, 419B.400 or 419C.590 to obtain support for such child from either or both parents or from any other person legally responsible for the support of the child, including a guardian or conservator. In any proceeding under any statute cited in this section, the obligee is a party. [1983 c.767 §2; 1985 c.671 §44c; 1991 c.67 §22, 1993 c.33 §371; 1993 c.596 §19; 1993 c.798 §45]

**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 the maintenance and education of the minor 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 the minor may be wholly or partially defrayed out of the income of the property of the minor, as is judged reasonable by the court having probate jurisdiction. The charges therefor may be allowed accordingly in the settlement of the accounts of the guardian or the conservator of the minor of the estate of the minor. (Amended by 1973 c.823 §104)

**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 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 the descendants of the adopted person and

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

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

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

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

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

**109.053 Responsibility of stepparent for expenses of stepchild.** (1) The expenses of the family and the education of minor children, including stepchildren, are chargeable upon the property of both husband and wife, or either of them. However, with regard to stepchildren, the obligation shall cease upon entry of a decree of dissolution.

(2) As used in this section "stepchild" means a child under the age of 18, or between the ages of 18 and 21 if attending school as defined in ORS 107.108 who is in the custody of one biological or adoptive parent who is married to and not legally separated from a person other than the second biological or adoptive parent of such child.

(3) Notwithstanding subsection (1) of this section, the legal duty of a parent to provide support for a child, as otherwise required by law, shall not be affected. [1979 c.266 §1, 1981 c.614 §1]

Note: 109.053 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**109.065** [1971 c.703 §1, 1973 c.827 §12c, repealed by 1979 c.266 §3]

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

**109.070 Establishing paternity.** The paternity of a person may be established as follows:

(1) The child of a wife cohabiting with her husband who was not impotent or sterile at the time of the conception of the child, shall be conclusively presumed to be the child of her husband, whether or not the marriage of the husband and wife may be void.

(2) A child born in wedlock, there being no decree of separation from bed or board, shall be presumed to be the child of the mother's husband, whether or not the marriage of the husband and wife may be void. This shall be a disputable presumption.

(3) By the marriage of the parents of a child after birth of the child.

(4) By filiation proceedings.

(5) By joint declaration of paternity filed with the Vital Statistics Unit of the Health Division of the Department of Human Resources in the form approved by the state registrar and with the fee prescribed in ORS 432.146. The Vital Statistics Unit shall prepare a new birth certificate under the procedure established by ORS 432.420.

(6) By paternity being established or declared by other provision of law. [1957 c.411 §2, 1969 c.619 §11; 1971 c.127 §2; 1975 c.640 §3; 1983 c.709 §37]

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

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

(2) ORS 109.060 to 109.090 shall be liberally construed, with the view of effectuating their objects, notwithstanding the rule of common law that statutes in derogation thereof are to be strictly construed. [1957 c.411 §55.6, 1983 c.740 §11]

**109.092 Establishing paternity by acknowledgment; mother surrendering child for adoption.** When it is determined that a woman is pregnant with a child, the woman and any man to whom she is not married and with whom she engaged in sexual intercourse at approximately the time of conception have an obligation to recognize that the man may be the other person responsible for the conception. During the months of pregnancy, the man may join the woman in acknowledging paternity and assuming the rights and duties of expectant parenthood. If the man acknowledges paternity of the expected child and the

woman denies that he is the father or refuses to join him in acknowledging paternity, the man may seek relief under ORS 109.125. If the woman wants the man to join her in acknowledging his paternity of the expected child and the man denies that he is the father or refuses to join her in acknowledging paternity, the woman may seek relief under ORS 109.125. If after the birth of the child the mother decides to surrender the child for adoption and paternity has not been acknowledged as provided in ORS 109.070 (5) or the putative father has not asserted his rights in filiation proceedings, the mother has the right without the consent of the father to surrender the child as provided in ORS 418.270 or to consent to the child's adoption. [1975 c.640 §2]

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

**109.096 Notice to putative father where paternity not established.** (1) When the paternity of a child has not been established under ORS 109.070, the putative father shall be entitled to reasonable notice in adoption, juvenile court, or other court proceedings concerning the custody of the child if the petitioner knows, or by the exercise of ordinary diligence should have known:

(a) That the child resided with the putative father at any time during the 60 days immediately preceding the initiation of the proceeding, or at any time since the child's birth if the child is less than 60 days old when the proceeding is initiated; or

(b) That the putative father repeatedly has contributed or tried to contribute to the support of the child during the year immediately preceding the initiation of the proceeding, or during the period since the child's birth if the child is less than one year old when the proceeding is initiated.

(2) Except as provided in subsection (3) or (4) of this section, a verified statement of the mother of the child or of the petitioner, or an affidavit of another person with knowledge of the facts, filed in the proceeding and asserting that the child has not resided with the putative father, as provided in subsection (1)(a) of this section, and that the putative father has not contributed or tried to contribute to the support of the child, as pro-

vided in subsection (1)(b) of this section, shall be sufficient proof to enable the court to grant the relief sought without notice to the putative father.

(3) The putative father shall be entitled to reasonable notice in a proceeding for the adoption of the child if notice of the initiation of filiation proceedings as required by ORS 109.225 was on file with the Vital Statistics Unit of the Health Division of the Department of Human Resources prior to the child's being placed by an authorized agency in the physical custody of a person or persons for the purpose of adoption by them. If the notice of the initiation of filiation proceedings was not on file at the time of the placement, the father shall be barred from contesting the adoption proceeding.

(4) The putative father shall be entitled to reasonable notice in juvenile court or other court proceedings if notice of the initiation of filiation proceedings as required by ORS 109.225 was on file with the Vital Statistics Unit prior to the initiation of the juvenile court or other court proceedings.

(5) Notice under this section shall not be required to be given to a putative father who was a party to filiation proceedings under ORS 109.125 which either were dismissed or resulted in a finding that he was not the father of the child.

(6) The notice required under this section shall be given in the manner provided in ORS 109.330.

(7) No notice given under this section need disclose the name of the mother of the child.

(8) A putative father has the primary responsibility to protect his rights, and nothing in this section shall be used to set aside an act of a permanent nature including, but not limited to, adoption or termination of parental rights, unless the father establishes within one year after the entry of the final decree or order fraud on the part of a petitioner in the proceeding with respect to matters specified in subsections (1) to (5) of this section. [1975 c.640 §7; 1979 c.491 §1; 1983 c.709 §39]

**109.098 Objection of putative father in proceeding referred to in ORS 109.096; effect of failure to appear and object.** (1) If a putative father of a child by due appearance objects to the relief sought in a proceeding of which he is entitled to notice under ORS 109.096, the court:

(a) May abate the proceeding if filiation proceedings are pending to await the outcome of the filiation proceedings

(b) Shall, if filiation proceedings are not pending, inquire as to the paternity of the

child, the putative father's past endeavors to fulfill his obligation to support the child and to contribute to the pregnancy-related medical expenses, the period that the child has lived with the putative father, the putative father's fitness to care for and rear the child and whether the putative father is willing to be declared the father of the child and to assume the responsibilities of a father.

(2) If after inquiry under subsection (1)(b) of this section the court finds:

(a) That the putative father is the father of the child and is fit and willing to assume the responsibilities of a father, it shall have the power:

(A) Upon the request of the putative father, to declare his paternity and to certify the fact of paternity in the manner provided in ORS 109.094; and

(B) To award custody of the child to the mother or the father as may be in the best interests of the child, or to take any other action which the court may take if the parents are or were married to each other.

(b) That the putative father is not the father of the child, it may grant the relief sought in the proceeding without the putative father's consent

(c) That the putative father is the natural father of the child but is not fit or willing to assume the responsibilities of a father, it may grant the relief sought in the proceeding or any other relief that the court deems to be in the best interests of the child, notwithstanding the father's objection.

(3) If a putative father of a child is given the notice of a proceeding required by ORS 109.096 and he fails to enter due appearance and to object to the relief sought therein within the time specified in the notice, the court may grant the relief sought without the putative father's consent. [1975 c.640 §8]

**109.100 Petition for support; effect of order; parties.** (1) Any minor child or state agency on behalf of that minor child may, in accordance with ORCP 27 A, apply to the circuit court in the county in which the child resides, or in which the natural or adoptive father or mother of the child may be found, for an order upon such child's father or mother, or both, to provide for the child's support. The minor child or state agency may apply for the order by filing in such county a petition setting forth the facts and circumstances relied upon for such order. If satisfied that a just cause exists, the court shall direct that the father or mother appear at a time set by the court to show cause why an order of support should not be entered in the matter. If it appears to the satisfaction of the court that such child is without funds to employ counsel, the court

may make an order directing the district attorney to prepare such petition and order to show cause.

(2) The order is a final judgment as to any installment or payment of money which has accrued up to the time either party makes a motion to set aside, alter or modify the order, and the court does not have the power to set aside, alter or modify such order, or any portion thereof, which provides for any payment of money which has accrued prior to the filing of such motion.

(3) The provisions of ORS 108.110 (3), 108.120 and 108.130 shall apply to proceedings under subsection (1) of this section.

(4) In any proceeding under this section, both the child's physical and legal custodians are parties to the action. [1963 c.497 §2; 1975 c.458 §14; 1979 c.90 §2; 1979 c.284 §100; 1989 c.812 §7; 1993 c.596 §20]

**109.103 Proceeding to determine custody or support of child.** If a child is born out of wedlock and paternity has been established, either parent may initiate a civil proceeding to determine the custody or support of the child. The proceeding shall be brought in the circuit court of the county in which the child resides or is found or in the circuit court of the county in which either parent resides. The parents shall have the same rights and responsibilities regarding the custody and support of their child that married or divorced parents would have, and the provisions of ORS 107.095 to 107.425 that relate to the custody or support of children shall be applicable to the proceeding. [1975 c.640 §9]

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

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

**109.112 Mother, father or putative father deemed to have attained majority.** The mother, father or putative father of a child shall be deemed to have attained majority and, regardless of age, may give authorizations, releases or waivers, or enter into agreements, in adoption, juvenile court, filiation or other proceedings concerning the care or custody of the child. [1975 c.640 §10]

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

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

**109.118 Validity of decrees or orders entered prior to July 3, 1975, concerning custody, adoption or permanent commitment of child.** All decrees or orders heretofore entered in any court of this state concerning the custody, adoption or perma-

nent commitment of a child are hereby declared valid upon the expiration of 30 days after July 3, 1975, notwithstanding that notice was not given to the putative father of the child. [1975 c.640 §13]

**109.119 Rights of person who establishes emotional ties creating child-parent relationship; costs for intervenor representation.** (1) Any person including but not limited to a related or nonrelated foster parent, stepparent, grandparent or relative by blood or marriage who has established emotional ties creating a child-parent relationship with a child may petition or file a motion for intervention with the court having jurisdiction over the custody, placement, guardianship or wardship of that child, or if no such proceedings are pending, may petition the court for the county in which the minor child resides for an order providing for custody or placement of the child or visitation rights or other generally recognized rights of a parent or person in loco parentis. If the court determines that custody, guardianship, right of visitation, or other generally recognized right of a parent or person in loco parentis, is appropriate in the case, the court shall grant such custody, guardianship, right of visitation or other right to the person having the child-parent relationship, if to do so is in the best interest of the child. The court may determine temporary custody of the child under this section pending a final order.

(2) In addition to the rights granted under subsection (1) of this section, a stepparent with a child-parent relationship, as defined in subsection (4) of this section, who is a party in a dissolution proceeding may petition the court having jurisdiction for custody or visitation or may petition the court for the county in which the minor child resides for adoption of the child. The stepparent may also file for post decree modification of a decree relating to child custody.

(3) A motion for intervention may be denied or a petition may be dismissed on the motion of any party or on the court's own motion if the petition does not state a prima facie case of emotional ties creating a child-parent relationship or does not allege facts that the intervention is in the best interests of the child.

(4) As used in this section "child-parent relationship" means a relationship that exists or did exist, in whole or in part, within the six months preceding the filing of an action under this section, and in which relationship a person having physical custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter and inci-

dental necessities and provided the child with necessary care, education and discipline, and which relationship continued on a day-to-day basis, through interaction, companionship, interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs. However, a relationship between a child and a person who is the nonrelated foster parent of the child is not a child-parent relationship under this section unless the relationship continued over a period exceeding 18 months.

(5) Notwithstanding subsection (1) of this section, a person who has maintained an ongoing personal relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality may petition the court having jurisdiction over the custody, placement, guardianship or wardship of that child, or if no such proceedings are pending, may petition the court for the county in which the minor child resides, for an order providing for reasonable visitation rights. If the court determines from clear and convincing evidence that visitation is in the best interests of the child and is otherwise appropriate in the case, the court shall grant visitation to the person having the relationship described in this subsection.

(6) In no event shall costs for the representation of an intervenor under this section be charged against funds appropriated for indigent defense services. (1985 c.516 §2, 1987 c.810 §1; 1993 c.372 §1)

109.120 [Repealed by 1969 c.619 §15]

### VISITATION RIGHTS OF GRANDPARENTS

**109.121 Procedure whereby grandparents may establish visitation rights with grandchildren.** (1)(a) A child's grandparent may, upon petition to the circuit court, be granted an order establishing reasonable rights of visitation between the grandparent and the child if:

(A) The grandparent has established or has attempted to establish ongoing personal contact with the child; and

(B) The custodian of the child has denied the grandparent reasonable opportunity to visit the child.

(b) After the commencement of a domestic relations suit, as defined in ORS 107.510, or a proceeding under ORS 108.110, 109.100, 109.103, 109.125, 419B.400 or 419C.590, and before a decree or final order dissolving the marriage of the parties, any grandparent of the minor children of the parties therein may petition the court for an order providing for reasonable rights of visitation between the grandparent and the child.

(c) After a decree or final order is entered dissolving the marriage of the child's parents, the grandparent may petition the court only if:

(A) The grandparent did not file a petition during the pendency of the dissolution proceedings; or

(B) There has been a change in circumstances relating to the custodial parent or the minor child such as is required to allow the court to reconsider the provisions of the decree that provide for the future custody, support and welfare of the minor child.

(2) A petition filed with a court under subsection (1) of this section shall state the following:

(a) The names of the petitioners.

(b) The names, addresses and dates of birth of all the minor children to whom the petitioners seek visitation rights.

(c) The names and addresses of the parents or other custodians of the minor children.

(d) When the petition is filed under subsection (1)(b) or (c) of this section, the relationship of the petitioners to the parties in the proceeding.

(e) When the petition is filed under subsection (1)(c) of this section, if the petitioner is asserting a change in circumstances as justification for the petition, the facts constituting the asserted change in circumstances.

(3) When a petition is filed with a court under this section, notice of the filing and a copy of the petition shall be served on the parents or other custodians of the minor children named in the petition in the manner provided by law for service of a summons.

(4) When a petition is filed under this section, if it appears from the petition that the petitioners may seek visitation rights under this section, the court shall conduct a hearing to determine whether an order creating visitation rights will be issued. The court shall cause notice of the time and place of the hearing to be given to the parents or other custodians of the minor children named in the petition. The court may require the attendance of the parents or other custodians and of witnesses as in other civil cases. When the petition has been filed under subsection (1)(b) of this section, the court may conduct the hearing on the petition as part of the proceeding or as a separate proceeding, and the order creating visitation rights, if one is issued, may be incorporated in and made a part of the decree or final order. The court, prior to the entry of a decree or order and upon its own motion or upon the motion of a party, may take tes-

timony from or confer with the child or children of the marriage and may exclude from the conference the parents, grandparents and other persons if the court finds that such action would be likely to be in the best interests of the child or children. However, the court shall permit an attorney for each party to attend the conference, and the conference shall be reported.

(5) Any order creating visitation rights under this section shall be according to the court's best judgment of the facts of the case and shall include such conditions and limitations as it deems reasonable. In making or modifying such an order, the court shall be guided by the best interests and welfare of the child.

(6) Filing fees for proceedings under this section shall be those set forth in ORS 21.110.

(7) As used in this section:

(a) "Grandparent" does not include a stepgrandparent

(b) "Minor child" means a natural minor child, provided the paternity of such child has been established under ORS 109.070 or acknowledged under ORS 109.092.

(8) The provisions of this section shall not apply if paternity of the minor child is or has been denied throughout a contested proceeding. [1979 c.776 §2, 1983 c.369 §2; 1987 c.810 §2; 1993 c.33 §291]

**109.123 Power to grant visitation rights discretionary; effect on care and custody orders.** (1) The power of a court under ORS 109.121 and this section to grant visitation rights to grandparents is discretionary and shall be exercised only when the court determines that it would be in the best interests and welfare of the minor children involved.

(2) Nothing in ORS 109.121 and this section shall be construed to affect the power of a court under ORS chapter 107 to provide for the future care and custody of the minor children of a marriage, or to allow grandparents of minor children to contest such custody decisions of the court. [1979 c.776 §3]

Note: 109.123 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

### FILIATION PROCEEDINGS

**109.124 Definitions for ORS 109.124 to 109.230.** As used in ORS 109.124 to 109.230, unless the context requires otherwise:

(1) "Child attending school" means a person who is unmarried, is 18 years of age or older and under 21 years of age and is a

student regularly attending a school, community college, college or university, or regularly attending a course of vocational or technical training designed to fit the child for gainful employment. A child enrolled in an educational course load of less than one-half that determined by the educational facility to constitute full-time enrollment is not a "child attending school."

(2) "Child born out of wedlock" means a child born to an unmarried woman, or to a married woman by a man other than her husband, if the conclusive presumption in ORS 41.350 (6) (1979 Replacement Part) and 109.070 (1) does not apply.

(3) "Respondent" may include, but is not limited to, one or more persons who may be the father of a child born out of wedlock, the husband of a woman who has or may have a child born out of wedlock, the mother of a child born out of wedlock, the female pregnant with a child who may be born out of wedlock, or the duly appointed and acting guardian of the child or conservator of the child's estate. [1979 c.246 §4, 1983 c.762 §1]

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

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

(b) Any state agency, if furnishing support to the mother for the benefit of the child or if furnishing services or assistance of any kind because of the birth, or impending birth, of the child;

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

(d) The Support Enforcement Division of the Department of Justice;

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

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

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

(a) If the initiating party is one of those specified in subsection (1)(a) to (d) of this section:

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

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

(C) A statement that a respondent is the father,

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

(E) A statement of the specific relief sought.

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

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

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

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

(D) A statement of the specific relief sought.

(3) The proceedings may be commenced by the district attorney when requested by any person named in subsection (1) of this section.

(4) When proceedings are initiated by a state agency, the state and the child's mother and putative father are parties. [1969 c.619 §1; 1971 c.191 §1; 1971 c.401 §3; 1971 c.779 §79; 1973 c.823 §105; 1975 c.458 §15a; 1975 c.640 §4a, 1979 c.90 §3; 1979 c.246 §5; 1983 c.762 §2; 1993 c.596 §21]

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

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

**109.135 Circuit court jurisdiction; equity suit; trial by jury on paternity; place of commencement.** (1) All filiation proceedings shall be commenced in the circuit court and shall for all purposes be deemed suits in equity, but either party shall have the right to trial by jury on the issue of paternity. Unless otherwise specifically provided by statute, the proceedings shall be conducted pursuant to the Oregon Rules of Civil Procedure.

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

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

**109.145 Court may proceed despite failure to appear; evidence required.** If a respondent fails to answer or fails to appear at trial, the court shall have the power to proceed accordingly. In such case, the court may make a determination of paternity and

may impose such obligations on the respondent as it deems reasonable. In all such cases corroborating evidence in addition to the testimony of the parent or expectant parent shall be required to establish paternity and the court may, in its discretion, order such investigation or the production of such evidence as it deems appropriate to establish a proper basis for relief. The testimony of the parent or expectant parent and the corroborating evidence may be presented by affidavit. [1969 c.619 §4; 1975 c.640 §14; 1983 c.762 §4]

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

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

**109.155 Conduct of trial; postponement; orders.** (1) The court or the jury, in a private hearing, shall first determine the issue of paternity. If the respondent admits the paternity, such admission shall be reduced to writing, verified by the respondent and filed with the court. If the paternity is denied, corroborating evidence, in addition to the testimony of the parent or expectant parent, shall be required.

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

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

(4) The court shall have the power to order either parent to pay such sum as it deems appropriate for the past and future support and maintenance of the child during its minority and while the child is attending school and the reasonable and necessary expenses incurred or to be incurred in connection with prenatal care, expenses attendant with the birth and postnatal care. The court may grant the prevailing party reasonable costs of suit, which may include expert witness fees, and reasonable attorney fees at trial and on appeal. [1969 c.619 §5, 1971 c.137 §1; 1971 c.191 §3; 1973 c.827 §12h, 1975 c.640 §15; 1981 c.897 §33; 1983 c.762 §6, 1989 c.417 §2]

109.160 [Repealed by 1969 c.619 §15]

**109.165 Power of court to set aside or modify decree.** Upon motion of either party the court may set aside, alter or modify so much of the decree as may provide for the

support of the minor child or child attending school. As to any installment or payment of money which has accrued up to the time either party files a motion to set aside, alter or modify the decree, the decree is final and the court does not have power to change it. However, the court may allow a credit against child support arrearages for periods of time, excluding reasonable visitation unless otherwise provided by order or decree, during which the obligated parent has physical custody of the child with the knowledge and consent of the custodial parent. A child attending school is a party for purposes of this section. (1969 c.619 §6, 1973 c.827 §12i, 1989 c.812 §8)

109.170 [Repealed by 1969 c.619 §15]

**109.175 Determination of legal custody after paternity established.** If paternity of a child born out of wedlock is established pursuant to a petition filed under ORS 109.125 or an order or judgment entered pursuant to ORS 109.124 to 109.230 or ORS 416.400 to 416.470, the parent with physical custody at the time of filing of the petition or the notice under ORS 416.415 has sole legal custody until a court specifically orders otherwise. The first time the court determines who should have legal custody, neither parent shall have the burden of proving a change of circumstances. The court shall give primary consideration to the best interests and welfare of the child and shall consider all the standards set out in ORS 107.137. (1983 c.761 §11; 1985 c.671 §42)

109.180 [Repealed by 1969 c.619 §15]

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

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

109.210 [Repealed by 1969 c.619 §15]

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

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

(2) The Vital Statistics Unit shall file immediately the notice, or a copy thereof, with the record of the birth of the child or

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

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

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

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

Note: Section 3, chapter 138, Oregon Laws 1993, provides:

Sec. 3. Section 2 of this Act [109.231] applies to all records of filiation proceedings, whether filed before, on or after the effective date of this Act [November 4, 1993]. (1993 c.138 §3)

**109.235 Court may preserve confidentiality of petitioners.** In any adoption proceeding that is contested or in which citation is required to be served, the court may preserve the confidentiality of the names and addresses of the petitioners for the adoption if it finds that to do so is in the best interests of the child. (1975 c.640 §12)

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

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

## ARTIFICIAL INSEMINATION

**109.239 Rights and obligations of children resulting from artificial insemination; rights and obligations of donor of semen.** If the donor of semen used in artifi-

cial insemination is not the mother's husband:

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

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

Note: 109.239 to 109.247 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

Note: See note under 109.239.

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

Note: See note under 109.239.

### UNIFORM ACT ON BLOOD TESTS TO DETERMINE PATERNITY

**109.250 Short title.** ORS 109.250 to 109.262 may be cited as the Uniform Act on Blood Tests to Determine Paternity. [1963 c.628 §7]

**109.251 Definition for ORS 109.250 to 109.262.** As used in ORS 109.250 to 109.262, "blood tests" includes any test for genetic markers to determine paternity, including but not limited to Human Leucocyte Antigen Test. [1981 c.401 §2]

**109.252 Authority for blood test; effect of refusal to submit to test.** In a proceeding under ORS 109.125 to 109.230 and 416.400 to 416.470, in which paternity is a relevant fact, the court or administrator, as defined in ORS 416.400, upon his or her own initiative or upon suggestion made by or on behalf of any person whose blood is involved may, or upon motion of any party to the action made at a time so as not to delay the proceedings unduly, shall order the mother, child, alleged father and any other named respondent who

may be the father to submit to blood tests. If any person refuses to submit to such tests, the court or administrator may resolve the question of paternity against such person or enforce its order if the rights of others and the interests of justice so require. [1953 c.628 §1; 1969 c.619 §13; 1983 c.762 §7; 1985 c.671 §43]

**109.254 Selection of experts to make tests; use of expert's affidavit.** (1) The tests shall be made by experts qualified as examiners of genetic markers who shall be appointed by the court or administrator, as defined in ORS 416.400. Any party or person at whose suggestion the tests have been ordered may demand that other experts, qualified as examiners of genetic markers, perform independent tests under order of the court or administrator, the results of which may be offered in evidence. The number and qualifications of such experts shall be determined by the court or administrator.

(2) The blood test results and the conclusions and explanations of the blood test experts may be introduced into evidence at trial by affidavit, unless a written challenge to the testing procedure or the results of the blood test has been filed with the court and delivered to opposing counsel at least 10 days before any hearing set to determine the issue of paternity. Failure to make such timely challenge constitutes a waiver of the right to have the experts appear in person and is not grounds for a continuance of the hearing to determine paternity. A copy of the affidavit, including results, conclusions and explanations, must be furnished to both parties or their counsel at least 20 days before the date of the hearing for this subsection to apply. The court for good cause or the parties may waive the time limits established by this subsection.

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

**109.256 Compensation of experts.** (1) The compensation of each expert witness appointed by the court or administrator shall be fixed at a reasonable amount. It shall be paid as the court or administrator shall order. The court or administrator may order that the costs of blood tests be paid by the parties in such proportions and at such times as it shall prescribe, or that the proportion of any party be paid by the county in which the proceedings are had, and that, after payment by the parties or such county or both, all or part or none of it be taxed as costs in the action.

(2) The fee of an expert witness called by a party but not appointed by the court or administrator shall be paid by the party calling the witness but shall not be taxed as

costs in the action [1953 c.628 §3, 1983 c.762 §8; 1985 c.671 §44a]

**109.258 Effect of test results.** If the court or administrator finds that the conclusions of all the experts, as disclosed by the evidence based upon the tests are that the alleged father is not the father of the child, the question of paternity shall be resolved accordingly. If the experts disagree in their findings or conclusions, the question shall be submitted upon all the evidence. If the experts conclude that the blood tests show the possibility of the alleged father's paternity, admission of this evidence at trial is within the discretion of the court, depending upon the infrequency of the genetic marker. [1953 c.628 §4, 1985 c.671 §44b]

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

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

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

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

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

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

## ADOPTION

**109.304 Definitions for ORS 109.305 to 109.410.** As used in ORS 109.305 to 109.410, unless the context requires otherwise:

(1) "Home study" means an investigation conducted by the Children's Services Division or by an Oregon licensed adoption agency that:

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

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

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

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

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

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

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

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

**109.305 Interpretation of adoption laws; agreement for continuing contact.**

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

(2) Nothing in the adoption laws of this state shall be construed to prevent the adoptive parents, the birth parents and the child from entering into a written agreement, approved by the court, to permit continuing contact between the birth relatives and the child or the adoptive parents. As used in this subsection, "birth relatives" includes birth parents, grandparents, siblings and other members of the child's birth family.

(3) Failure to comply with the terms of an agreement made under subsection (2) of this section is not grounds for setting aside an adoption decree or revocation of a written consent to an adoption.

(4)(a) An agreement made under subsection (2) of this section may be enforced by a civil action. However, before a court may enter an order requiring compliance with the agreement, the court must find that the party seeking enforcement participated, or attempted to participate, in good faith in mediating the dispute giving rise to the action prior to filing the civil action.

(b) The court may modify an agreement made under subsection (2) of this section if the court finds that the modification is necessary to serve the best interests of the adopted child, that the party seeking modification participated, or attempted to participate, in good faith in mediation prior to seeking modification of the agreement and that:

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

(B) Exceptional circumstances have arisen since the parties entered into the agreement that justify modification of the agreement. [1957 c.710 §15; subsections (2), (3) and (4) enacted as 1993 c.401 §1]

Note: 109.305 (2) to (4) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

(a) Enter a final decree under ORS 109.350;

(b) Continue the guardianship or legal custodial status of the child;

(c) Waive the child to a court having jurisdiction under ORS 419B.100 or 419C.005; or

(d) Take such other action as the court considers necessary.

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

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

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

**109.309 Petition for leave to adopt and for change of name; where filed; venue; notice; placement report; fee.** (1) Any person may petition the circuit court for leave to adopt another person and, if desired, for a change of the other person's name.

(2)(a) Except as provided in paragraph (b) of this subsection, when the petition is for the adoption of a minor child, the adoption shall be governed by the Uniform Child Custody Jurisdiction Act, ORS 109.700 to 109.930.

(b) The joinder provision of the Uniform Child Custody Jurisdiction Act, ORS 109.800, does not apply.

(3) The petition to adopt a person 18 years of age or older may be filed in the county where the petitioner, the person to be adopted or the person who consents to the adoption resides, if any of them is a resident of this state.

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

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

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

(i) The petitioners;

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

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

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

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

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

(6) The petitioner shall cause copies of the documents required to be filed with the court under subsection (5) of this section to be served upon the Assistant Director for Children's Services, by either registered or certified mail with return receipt or personal service, within 30 days after the documents have been filed with the court. In the case of a stepparent adoption, the petition shall

also be served on all persons whose consent to the adoption is required under ORS 109.312 and on the child's grandparents, if the names and addresses are known or may be readily ascertained by the petitioners. The petition shall be served by registered mail, by certified mail with return receipt or personally. Service on the child's grandparents may be waived by the court for good cause. The court shall not rule upon the petition until at least 60 days after the date that the documents were served upon the assistant director. However, the division may waive the 60-day period.

(7)(a) Within 60 days of the service on the assistant director, the Children's Services Division shall investigate and file for the consideration of the judge before whom the petition for adoption is pending a placement report containing information regarding the status of the child and evidence concerning the suitability of the proposed adoption. The division may designate an Oregon licensed adoption agency to investigate and report to the court. However, the division may waive the placement report requirement.

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

(c) The division may charge the petitioner a fee for investigating a proposed non-agency adoption and preparing the home study report described in subsection (5)(a)(C) of this section and the placement report described in paragraph (a) of this subsection. The petitioner shall report the fee amount to the court. The court granting the adoption shall make a finding as to whether the fee is necessary and reasonable. Any fee charged shall not exceed reasonable costs for investigation, home study and placement report preparation. The division shall prescribe by rule the procedure for computing the investigation, home study and placement report preparation fee. The rules shall provide a waiver of either part or all of the fee based upon the petitioner's ability to pay.

(8) The amounts of any fees collected under subsection (7) of this section are continuously appropriated to the Children's Services Division for use in preparing the home study and placement reports required under subsections (5)(a)(C) and (7)(a) of this section.

(9)(a) Except as provided in paragraph (b) of this subsection, a court shall not grant a decree for the adoption of a minor child unless the petitioners have filed with the court the documents described in subsections (5)(a)(A), (B) and (C) and (7)(a) of this section.

(b) A person shall not be required to file a home study or a placement report with the court when the Children's Services Division has granted the person a waiver under division rules.

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

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

(b) A statement of the efforts to comply with the placement preferences of the Indian Child Welfare Act (25 U.S.C. §1901 et seq.) or the placement preferences of the appropriate Indian tribe.

(11) As used in this section and ORS 109.332, "grandparent" includes a grandparent who has established custody, visitation or other rights under ORS 109.119 or visitation rights under ORS 109.121. [1993 c.717 §2 (enacted in lieu of 109.310); 1993 c.717 §9]

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

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

(2) No court shall grant a decree for an adoption of a minor child in the absence of a placement report by the Children's Services Division or an Oregon licensed adoption agency unless the filing of such report has been waived by the Children's Services Division. No court shall grant a decree for an adoption of a minor child in the absence of a written disclosure statement as described in subsection (1) of this section or in the absence of a verified statement by the petitioner that, to the best of the petitioner's knowledge, no charges, except those reported in the disclosure statement, have been or will be paid in connection with the adoption.

(3) No person shall charge, accept or pay or offer to charge, accept or pay a fee for locating a minor child for adoption or for lo-

cating another person to adopt a minor child, except that Oregon licensed adoption agencies licensed under ORS chapter 418 may charge reasonable fees for services provided by them. [1985 c.403 §2 (1) to (3); 1987 c.367 §1; 1993 c.717 §4]

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Consent to the adoption of a child subject to the Indian Child Welfare Act shall not be valid unless the requirements of the Indian Child Welfare Act (25 U.S.C. §1901 et seq.) are met. In accordance with the Indian Child Welfare Act a certificate of irrevocability is not valid for a child who is subject to the Indian Child Welfare Act. [1957 c.710 §2 (109.312 to 109.329 enacted in lieu of 109.320); 1973 c.823 §106, 1983 c.302 §2; 1985 c.566 §10; 1987 c.814 §1; 1991 c.553 §1; 1993 c.717 §6]

**109.314 Consent where custody of child has been awarded in divorce proceedings.** If the legal custody of the child has been awarded in divorce proceedings, the written consent of the person to whom custody of the child has been awarded may be held sufficient by the court; but, unless the parent not having custody consents to the adoption, a citation to show cause why the proposed adoption shall not be made shall be served in accordance with ORS 109.330 upon the parent not having the custody, and the objections of such parent shall be heard if appearance is made. This section does not apply where consent is given in loco parentis under ORS 109.316 or 109.318. [1957 c.710 §3 (109.312 to 109.329 enacted in lieu of 109.320)]

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

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

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

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

(2) The Children's Services Division may consent to the adoption of a child over whom

the division has been made guardian under ORS 126.060 (2).

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

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

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

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

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

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

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

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

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

**109.322 Consent where parent mentally ill, mentally deficient or imprisoned.** If either parent has been adjudged mentally ill or mentally deficient and remains so at the time of the adoption proceedings, or is imprisoned in a state or federal prison under a sentence for a term of not less than three years and has actually served three years, there shall be served upon such parent, if the parent has not consented in writing to the adoption, a citation in accordance with ORS 109.330 to show cause why the adoption of the child should not be decreed. In the case of a person adjudged mentally ill or mentally deficient, the citation shall also be served upon the guardian of the person or, if the parent has no guardian of the person, the court shall appoint a guardian ad litem to appear for the person in the adoption proceedings. Upon hearing being had, if the court finds that the welfare of the child will be best promoted through the adoption of the child, the consent of the mentally ill, mentally deficient or imprisoned parent is not required, and the court shall have authority to proceed regardless of the objection of such parent. This section does not apply where consent is given in loco parentis under ORS 109.316 or 109.318. [1957 c.710 §6 (109.312 to 109.329 enacted in lieu of 109.320), 1975 c.711 §1]

**109.324 Consent where parent has deserted or neglected child.** If either parent is believed to have willfully deserted or neglected without just and sufficient cause to provide proper care and maintenance for the child for one year next preceding the filing of the petition for adoption and such parent does not consent in writing to the adoption, there shall be served upon such parent a citation in accordance with ORS 109.330 to show cause why the adoption of the child should not be decreed. Upon hearing being had, if the court finds that such parent has willfully deserted or neglected without just and sufficient cause to provide proper care and maintenance for the child for one year next preceding the filing of the petition for adoption, the consent of such parent at the discretion of the court is not required and, if the court determines that such consent is not required, the court shall have authority to proceed regardless of the objection of such parent. In determining whether the parent has willfully deserted or neglected without

just and sufficient cause to provide proper care and maintenance for the child, the court may disregard incidental visitations, communications and contributions. This section does not apply where consent is given in loco parentis under ORS 109.316 or 109.318. [1957 c.710 §7 (109.312 to 109.329 enacted in lieu of 109.320)]

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

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

(3) Before making the determination of nonpaternity, citation to show cause why such husband's parental rights should not be terminated shall be served on him in the manner provided by ORS 109.330 if:

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

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

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

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

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

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

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

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

(5) Notwithstanding the provision of ORS 109.070 (2), notice to the husband pursuant to ORS 109.330 shall not be required and the husband's consent, authorization or waiver shall not be required in adoption proceedings concerning the child unless the husband has met the requirements for notice in subsection (3)(a), (b) or (c) of this section.

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

(7) Nothing in this section shall be used to set aside an act of a permanent nature, including but not limited to adoption or termination of parental rights, unless the father establishes within one year after the entry of the final decree or order fraud on the part of the petitioner with respect to the matters specified in subsection (4)(a), (b), (c) or (d) of this section. [1957 c.710 §8 (109.312 to 109.329 enacted in lieu of 109.320); 1959 c.609 §1; 1967 c.385 §1; 1969 c.591 §287; 1975 c.640 §16; 1989 c.907 §1]

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

**109.329 Consent where person to be adopted has reached age of majority.** If the person to be adopted is legally married or is 18 years of age or older, the written consent of the person to be adopted may be held by the court to be sufficient without the necessity for the consent of any other person to the adoption. [1957 c.710 §10 (109.312 to 109.329 enacted in lieu of 109.320); 1973 c.827 §13]

**109.330 Notice to nonconsenting parent; notice where child has no parent, guardian or next of kin.** (1) In the cases provided for in ORS 109.314, 109.322 and 109.324, where a parent does not consent to the adoption of the child, the court shall order citation to be served on the parent 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 for the service of summons in a civil action in a circuit court by publication or personal service outside the state, and a copy of the citation to be deposited forthwith in the post office, directed to such parent at the place of residence of the parent, unless it appears that such residence is neither known to nor can with reasonable diligence be ascertained by the petitioner. The citation so served need not contain the names of the adoptive parents.

(2) If the child has no living parent and no guardian or next of kin in this state

qualified to appear in behalf of the child, the court may order such notice, if any, to be given as it deems necessary or proper. [Amended by 1957 c.710 §11, 1967 c.385 §2; 1969 c.591 §288; 1975 c.640 §17; 1979 c.284 §101]

**109.332 Stepparent adoption; grandparent visitation; findings required.** (1) When a petition has been filed under ORS 109.309 concerning the adoption by a stepparent of a child, a grandparent served with a copy of the petition under ORS 109.309 (6) may file a motion with the court asking the court to award a grandparent the right to regular visitation with the child after the adoption. A motion under this subsection must be filed no later than 30 days after service of the petition.

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

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

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

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

(3) In a stepparent adoption, a grandparent whose visitation rights were terminated as a result of the adoption prior to August 23, 1993, may petition to have the visitation rights restored. The petition must be filed within one year after August 23, 1993. The court shall restore the visitation rights, unless the court finds that restoration of visitation rights is not in the best interests of the child. [1993 c.689 §2, 1993 c.717 §10]

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

**109.335 Appointment of guardian pending further adoption proceedings.** Notwithstanding the provisions of ORS 126.003 to 126.143 that relate to the appointment of a guardian, when a petition is filed pursuant to ORS 109.309 for leave to adopt a minor child and the required consent thereto has been filed, the court before which the petition is pending may on its own motion enter an order appointing the petitioner or some other suitable person guardian of the minor child pending further order of the court or entry of a decree under ORS 109.350. [1965 c.187 §1; 1967 c.231 §1; 1973 c.823 §108]

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

**109.342 Medical history of child and biological parents required; content; de-**

**livery to adoptive parent and to adoptee on majority.** (1) After January 1, 1980, before any final decree of adoption of a minor is entered, the court shall be provided a medical history of the child and of the biological parents as complete as possible under the circumstances.

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

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

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

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

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

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

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

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

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

(6) The Children's Services Division shall prescribe a form for the compilation of the medical history. [1979 c.493 §2]

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

**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, that, if applicable, the requirements of the Indian Child Welfare Act (25 U.S.C. §1901 et seq.) have been met, and that it is fit and proper that such adoption be effected, a decree shall be made setting forth the facts, and ordering that from the date of the decree the child, to all legal intents and purposes, is the child of the petitioner. In an adoption subject to the Indian Child Welfare Act (25 U.S.C. §1901 et seq.), the state court shall provide to the United States Secretary of the Interior a copy of the decree together with the other

information required by the Indian Child Welfare Act (25 U.S.C. §1901 et seq.) [Amended by 1959 c.430 §4; 1983 c.302 §3]

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

**109.380** [Repealed by 1959 c.609 §5]

**109.381 Effect of decree of adoption.** (1) A decree of a court of this state granting an adoption, and the proceedings in such adoption matter, shall in all respects be entitled to the same presumptions and be as conclusive as if rendered by a court of record acting in all respects as a court of general jurisdiction and not by a court of special or inferior jurisdiction, and jurisdiction over the persons and the cause shall be presumed to exist.

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

(3) After the expiration of one year from the entry of a decree of adoption in this state the validity of the adoption shall be binding on all persons, and it shall be conclusively presumed that the child's natural parents and all other persons who might claim to have any right to, or over the child, have abandoned the child and consented to the entry of such decree of adoption, and that the child became the lawful child of the adoptive parents or parent at the time when the decree of adoption was rendered, all irrespective of jurisdictional or other defects in the adoption proceeding; after the expiration of such one-year period no one may question the validity of the adoption for any reason, either through collateral or direct proceedings, and all persons shall be bound thereby; provided, however, the provisions of this subsection shall not affect such right of appeal from a decree of adoption as may be provided by law.

(4) The provisions of this section shall apply to all adoption proceedings instituted in this state after August 5, 1959. This section shall also apply, after the expiration of one year from August 5, 1959, to all adoption

proceedings instituted in this state before August 5, 1959. [Subsections (1), (2) and (3) enacted as 1959 c.609 §§2.3.4; subsection (4) derived from 1959 c.609 §6]

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

(2) The certificate of a judge of a court of general jurisdiction under the seal of the judge or the seal of the court in any foreign nation with respect to the adoption of a national of such foreign nation by adoptive parents at least one of whom is a citizen of the United States that all pertinent laws of such foreign nation have been complied with and the adoption is in all respects legal and valid shall be prima facie evidence in any court in the State of Oregon in any proceeding that such adoption was in fact legal and valid. Such certificate shall be prima facie evidence even if under the laws of the foreign nation the adoption is an administrative procedure and is not within the jurisdiction of the court or the judge making the certificate. [1961 c.95 §2.3]

**109.390 Authority of Children's Services Division or child-caring agency in adoption proceedings.** Where the Children's Services Division or an approved child-caring agency has the right to consent to the adoption of a child, the division or agency may:

(1) Where it deems the action necessary or proper, become a party to any proceeding for the adoption of the child.

(2) Appear in court where a proceeding for the adoption of the child is pending.

(3) Give or withhold consent in loco parentis to the adoption of the child only in accordance with ORS 109.316. [1957 c.710 §14; 1971 c.401 §6]

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

(2) Notwithstanding ORS 7.211, if the court enters a decree of adoption, the clerk of the court shall review the personal particulars filled in on the form, shall fill in the remaining blanks on the form, shall certify the form and mail it to the state registrar as the adoption report as required under ORS 432.415. [1959 c.430 §1; 1983 c.709 §41]

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

CERTIFICATE OF ADOPTION  
IN THE \_\_\_\_\_ COURT  
OF THE STATE OF OREGON  
FOR THE COUNTY OF  
\_\_\_\_\_

In the Matter of the Adoption of:

File No. \_\_\_\_\_

Name after Adoption \_\_\_\_\_

This is to certify that on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, a Decree of Adoption was granted by the Honorable Judge \_\_\_\_\_ decreeing the adoption of the above-named person by \_\_\_\_\_

The adopted person, above named, was born in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Dated at \_\_\_\_\_, Oregon, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Title of the Clerk of the Court)

(SEAL) By \_\_\_\_\_  
Deputy

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

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

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

(b) For additional certificates or for certificates of adoption for persons adopted prior to October 3, 1979, a fee of not more

than \$1 for each certificate may be charged and collected by the clerk of the court.

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

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

**VOLUNTARY ADOPTION REGISTRY**

**109.425 Definitions for ORS 109.425 to 109.507.** As used in this section and ORS 109.435 to 109.507 and 109.990 (3):

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

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

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

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

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

(6) "Birth parent" is:

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

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

(7) "Children's Services Division" is the Children's Services Division of the Department of Human Resources of the State of Oregon.

(8) "Genetic and social history" is a comprehensive report, when obtainable, on the birth parents, siblings to the birth parents, if any, other children of either birth parent, if any, and parents of the birth parents, and contains as much of the following as is available:

(a) Medical history;

(b) Health status;

(c) Cause of and age at death;

- (d) Height, weight, eye and hair color;
- (e) Ethnic origins; and
- (f) Religion, if any.

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

(10) "Putative father" is a man who, under the laws of this state, is not legally presumed to be the father of genetic origin of a child, but who claims or is alleged to be the father of genetic origin of the child.

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

(12) "Search organization" is an organization, including, but not limited to, an individual, an adoption agency or a private nonprofit organization, that meets the standards established by the Children's Services Division to conduct searches and examine confidential adoption records pursuant to ORS 109.502 to 109.507 and with whom the Children's Services Division has a contract to conduct such searches.

(13) "Successor agency" is an agency which has the adoption records of another agency because of the merger of the agency and the successor agency or because a former agency has ceased doing business and has given its adoption records to the successor agency as provided in ORS 109.435 (2). [1983 c.672 §2, 1989 c.372 §1, 1993 c.410 §1]

Note: 109.425 to 109.507 and 109.990 (3) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 109 by legislative action. See Preface to Oregon Revised Statutes for further explanation

**109.430 Policy for ORS 109.425 to 109.507.** It is the policy of this state that adoption is based upon the legal termination of parental rights and responsibilities of birth parents and the creation of the legal relationship of parents and child between an adoptee and the adoptive parents. These legal and social premises underlying adoption must be maintained. The state recognizes that some adults who were adopted as children have a strong desire to obtain identifying information about their birth parents while other such adult adoptees have no such desire. The state further recognizes that some birth parents have a strong desire to obtain identifying information about their biological children who were adopted, while other birth parents have no such desire. The state fully recognizes the right to privacy and confidentiality of birth parents whose children were adopted, the adoptees and the adoptive parents. The purpose of ORS 7.211, 109.425 to 109.507, 109.990 (3) and 432.420 is to:

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

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

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

(4) Provide for disclosure of specific identifying information to Indian tribes or governmental agencies when needed to establish the adoptee's eligibility for tribal membership or for benefits or to a person responsible for settling an estate that refers to the adoptee. [1983 c.672 §1; 1989 c.372 §5]

Note: See note under 109.425.

**109.435 Adoption records to be permanently maintained.** (1) All records of any adoption finalized in this state shall be permanently maintained by Children's Services Division or by the agency arranging the adoption.

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

Note: See note under 109.425

**109.440 Information confidential; exceptions.** A person or agency shall not disclose any confidential information relating to an adoption except as provided in ORS 109.425 and 109.435 to 109.507 and 109.990 (3) or pursuant to a court order. [1983 c.672 §4]

Note: See note under 109.425

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

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

Note: See note under 109.425.

**109.450 Child placement agency to maintain registry; Children's Services Division duties.** (1) A voluntary adoption registry shall be established and maintained by each agency or its successor agency. An agency may delegate or contract with an-

other agency to establish, maintain and operate the registry for the delegating agency.

(2) The Children's Services Division shall establish, maintain and operate the registry for all adoptions not arranged through a licensed agency. The Children's Services Division may contract out the function of establishing, maintaining and operating the registry to another agency. The Children's Services Division may join a voluntary national or international registry and make its records available in the manner authorized by ORS 109.425 to 109.507 and 109.990 (3). However, if the rules of disclosure of such a voluntary organization differ from those prescribed in ORS 109.425 and 109.435 to 109.507 and 109.990 (3), ORS 109.425 and 109.435 to 109.507 and 109.990 (3) shall prevail. [1983 c.672 §6]

Note: See note under 109.425

**109.455 Persons eligible to use registry.** (1) As provided in ORS 109.475, only a birth parent, adult adoptee, adult genetic sibling of an adoptee, adoptive parent of a deceased adoptee or parents or adult siblings of a deceased birth parent or parents may use the registry for obtaining identifying information about birth parents, adult adoptees and adult adoptee genetic siblings. However, an adult adoptee who has a genetic sibling in the adult adoptee's adoptive family who is under the age of 18 shall not have access to the registry.

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

Note: See note under 109.425.

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

(2) An adoptee, or the parent or guardian of an adoptee under 18 years of age, may

register to have specific identifying information disclosed to Indian tribes or to governmental agencies in order to establish the adoptee's eligibility for tribal membership or for benefits or to a person settling an estate. The information shall be limited to a true copy of documents that prove the adoptee's lineage. Information disclosed in accordance with this subsection shall not be disclosed to the adoptee or the parent or guardian of the adoptee by the registry or employee or agency operating a registry nor by the Indian tribe, governmental agency or person receiving the information.

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

(4) Except as otherwise provided in ORS 109.503, a registry or employee or the agency operating a registry shall not contact or in any other way solicit any adoptee or birth parent to register with the registry. [1983 c.672 §8, 1989 c.372 §5; 1993 c.410 §10]

Note: See note under 109.425.

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

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

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

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

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

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

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

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

Note: See note under 109.425.

**109.470 Continuing registration by birth parent.** When an adoptee reaches age 18, the birth parent of the adoptee, if the birth parent registered with the registry before the adoptee was age 18, shall notify the registry in writing of the birth parent's de-

sire to continue the registration. A registry shall notify a birth parent of this requirement when the birth parent initially registers. [1983 c.672 §10; 1989 c.372 §3]

Note: See note under 109.425

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

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

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

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

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

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

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

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

Note: See note under 109.425

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

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

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

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

Note: See note under 109.425

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

Note: See note under 109.425.

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

(1) The adoptive parents;

(2) The siblings to the adult adoptee who are children of the adoptive parents; and

(3) The income of any one. [1983 c.672 §14]

Note: See note under 109.425.

**109.495 Registrant fee.** Costs of establishing and maintaining a registry may be met through reasonable fees not to exceed \$50 per registrant charged to all persons who register. [1983 c.672 §15]

Note: See note under 109.425.

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

(a) The adoptive parents of the child or the child's guardian;

(b) The birth parent of the adoptee;

(c) An adult adoptee; and

(d) In the event of the death of the adoptee:

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

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

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

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

Note: See note under 109.425

**109.502 Search for birth parents or genetic siblings; who may initiate; information required.** (1)(a) An adult adoptee or the adoptive parent of a minor or deceased adoptee may request that the Children's

Services Division conduct a search for the adoptee's birth parents or, except as otherwise provided in ORS 109.504 (1), for the adoptee's genetic siblings.

(b) A birth parent, an adult genetic sibling of an adoptee or the parent or adult sibling of a deceased birth parent may request the Children's Services Division to conduct a search for an adult adoptee whom the birth parent relinquished for adoption.

(2) At the time of a request to conduct a search under this section, the requestor shall provide the Children's Services Division with such information as the Children's Services Division requires. The person requesting the search must be registered with a registry established under ORS 109.450. Upon payment by the requestor of a fee established by rule under ORS 109.506, the Children's Services Division shall instruct a search organization to conduct the search. If the agency that placed the adoptee meets the standards established under ORS 109.506, the Children's Services Division shall give that agency the opportunity to conduct the search before requesting any other search organization to conduct the search [1993 c 410 §3]

Note: See note under 109.425.

**109.503 Search organization; access to adoption records; duties of search organization.** (1) When a search organization has been instructed to conduct a search, the search organization may examine adoption records maintained by the Children's Services Division and by private adoption agencies under ORS 109.435. However, the search organization may examine the adoption records of a private adoption agency only if the private adoption agency allows the examination. The search organization shall keep the records and information located in the records confidential.

(2) If the search organization is able to identify and locate the person being sought, the search organization shall make a confidential inquiry of that person to determine whether the person wishes to make contact with the person requesting the search. The search organization shall make the inquiry in person if possible.

(3)(a) If the person being sought wishes to make contact with the person requesting the search, the search organization shall:

(A) Tell the person about the voluntary adoption registry under ORS 109.435 to 109.507 and 109.990 (3) and that any contact will be made through the registry and its provisions and shall give the person any information and forms necessary to register;

(B) Notify the person requesting the search that the person being sought has been identified and located, wishes to make con-

tact and has been given the voluntary adoption registry information;

(C) Notify the voluntary adoption registry that the person being sought has been identified and located and give the registry identifying information about the person, the person's address and the date the confidential inquiry was made; and

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

(b) In making the notification required by paragraph (a)(B) of this subsection, the search organization shall not give the person any identifying information about the person being sought.

(c) If the person being sought has not registered with the voluntary adoption registry within 90 days after the confidential inquiry was made, the Children's Services Division, where practicable, shall cause the person to be contacted to offer forms and materials to register and to determine if the person still intends to register.

(d) The search organization may not contact the person being sought once the confidential inquiry has been made.

(4)(a) If the person being sought does not wish to make contact with the person requesting the search, the search organization shall:

(A) Tell the person about the voluntary adoption registry under ORS 109.435 to 109.507 and 109.990 (3); and

(B) Return all materials and information obtained during the search to the division or agency responsible for maintaining the information

(b) The search organization may not contact the person being sought once the confidential inquiry has been made. [1993 c.410 §4]

Note: See note under 109.425.

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

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

Note: See note under 109.425.

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

(1) By the Children's Services Division to all persons requesting a search under ORS 109.502; and

(2) By the search organization to all persons the search organization identifies and locates as the result of a search under ORS 109.503. [1993 c.410 §6]

Note: See note under 109.425.

**109.506 Rulemaking; fees.** The Children's Services Division by rule shall establish:

(1) Eligibility standards for search organizations;

(2) Standards of conduct for search organizations;

(3) Contracting procedures for search organizations;

(4) Search procedures to be followed by search organizations; and

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

(a) A fee to be paid to the search organization to cover all costs incurred in the search but not to exceed \$300; and

(b) A fee to be paid to the Children's Services Division to cover the administrative costs incurred in administering the search program. [1993 c.410 §7]

Note: See note under 109.425.

**109.507 Access to Children's Services Division records required; access to private agency records discretionary.** (1) The Children's Services Division shall allow a search organization to examine confidential adoption records maintained by the division as part of a search conducted under ORS 109.503.

(2) A private adoption agency may allow a search organization to examine confidential adoption records maintained by the agency as part of a search conducted under ORS 109.503. [1993 c.410 §8]

Note: See note under 109.425

## AGE OF MAJORITY

**109.510 Age of majority.** Except as provided in ORS 109.520, in this state any person shall be deemed to have arrived at majority at the age of 18 years, and thereafter shall have control of the own actions and business of the person, have all the rights and be subject to all the liabilities of a citizen of full age. [Amended by 1973 c.827 §14]

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

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

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

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

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

## RIGHTS OF MINORS

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

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

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

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

**109.640 Right to medical or dental treatment without parental consent; physicians may provide birth control information to any person.** Any physician may provide birth control information and services to any person without regard to the age of such person and a minor 15 years of age or older, may give consent to hospital care, medical or surgical diagnosis or treatment by a physician licensed by the Board of Medical Examiners for the State of Oregon, and dental or surgical diagnosis or treatment by a dentist licensed by the Oregon Board of Dentistry, without the consent

of a parent or guardian, except as may be provided by ORS 109.660. [1971 c.381 §1]

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

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

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

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

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

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

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

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

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

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

(3) The immunity created by subsection (1) of this section shall not apply if the parental rights of the parent who gives consent

have been terminated pursuant to ORS 419B.500 to 419B.524.

(4) For the purposes of this section, "health care facility" means a facility as defined in ORS 442.015 or any other entity providing medical service. [Formerly 109.133, 1993 c.33 §296]

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

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

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

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

**109.680 Disclosure without minor's consent and without liability.** A physician, psychologist, nurse practitioner, licensed clinical social worker or community mental health and developmental disabilities program described in ORS 109.675 may advise the parent or parents or legal guardian of any minor described in ORS 109.675 of the diagnosis or treatment whenever the disclosure is clinically appropriate and will serve the best interests of the minor's treatment because the minor's condition has deteriorated or the risk of a suicide attempt has become such that inpatient treatment is necessary, or the minor's condition requires

detoxification in a residential or acute care facility. If such disclosure is made, the physician, psychologist, nurse practitioner, licensed clinical social worker or community mental health and developmental disabilities program shall not be subject to any civil liability for advising the parent, parents or legal guardian without the consent of the minor. [1985 c.525 §2; 1989 c.721 §48]

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

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

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

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

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

(a) Sixteen or 17 years of age;

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

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

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

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

#### UNIFORM CHILD CUSTODY JURISDICTION ACT

**109.700 Citation of ORS 109.700 to 109.930.** ORS 109.700 to 109.930 may be cited as the Uniform Child Custody Jurisdiction Act. [1973 c.375 §25]

**109.710 Definitions for ORS 109.700 to 109.930.** As used in ORS 109.700 to 109.930:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. "Custody determination" does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes child neglect and dependency proceedings.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with the parents of the child, a parent, or a person acting as parent, for at least six consecutive months, and, in the case of a child less than six months old, the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia. [1973 c.375 §2]

#### 109.720 General purposes; application.

(1) The general purposes of ORS 109.700 to 109.930 are to:

(a) Avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) Assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and the family of the child have the closest connection and where significant evidence concerning care, protection, training, and personal relationships of the child is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and the family of the child have a closer connection with another state;

(d) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) Deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) Avoid relitigation of custody decisions of other states in this state in so far as feasible;

(g) Facilitate the enforcement of custody decrees of other states;

(h) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) Make uniform the law of those states which enact it.

(2) ORS 109.700 to 109.930 shall be construed to promote the general purposes stated in this section.

(3) The general policies of ORS 109.700 to 109.930 extend to the international area. The provisions of ORS 109.700 to 109.930 relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody, rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons. [1973 c.375 §§1,23]

**109.730 Jurisdiction over child custody determination.** (1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) This state is the home state of the child at the time of commencement of the proceeding, or had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(b) It is in the best interest of the child that a court of this state assume jurisdiction because the child and the parents of the child, or the child and at least one contestant, have a significant connection with this state, and there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

(c) The child is physically present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

(d) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraph (a), (b) or (c) of this subsection, or another state has declined to exercise jurisdiction on the

ground that this state is the more appropriate forum to determine the custody of the child, and it is in the best interest of the child that this court assume jurisdiction.

(2) Except under subsection (1)(c) and (d) of this section, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine custody of the child. [1973 c.375 §3]

**109.740 Notice and opportunity of hearing required.** Before making a decree under ORS 109.700 to 109.930, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given pursuant to ORS 109.750. [1973 c.375 §4]

**109.750 Method of notice.** (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:

(a) By personal delivery outside this state in the manner prescribed for service of process within this state;

(b) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) By any form of mail addressed to the person to be served and requesting a receipt; or

(d) As directed by the court, including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, delivered or last published at least 20 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, or the order pursuant to which the service is made or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court. [1973 c.375 §5]

**109.760 Effect of proceedings pending elsewhere.** (1) A court of this state shall not

exercise its jurisdiction under ORS 109.700 to 109.930 if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with ORS 109.700 to 109.930, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under ORS 109.790 and shall consult the child custody registry established under ORS 109.860 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with ORS 109.890 to 109.920. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum. [1973 c.375 §6]

**109.770 Finding of court on inconvenient forum.** (1) A court which has jurisdiction under ORS 109.700 to 109.930 to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) If another state is or recently was the child's home state;

(b) If another state has a closer connection with the child and the family of the child or with the child and one or more of the contestants;

(c) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) If the parties have agreed on another forum which is no less appropriate; and

(e) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in ORS 109.720 (1) and (2).

(4) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under ORS 109.700 to 109.930 if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorney fees at trial and on appeal, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this state shall inform the original court of this fact. [1973 c.375 §7; 1981 c.897 §34]

**109.780 Effect of wrongful conduct of petitioner.** (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction if this is just and proper under the circumstances

(2) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney fees at trial and on appeal, incurred by other parties or their witnesses. [1973 c.375 §8, 1981 c.897 §35]

**109.790 Information required.** (1) Every party in a custody proceeding in the first pleading of the party or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during the period. In this pleading or affidavit every party shall further declare under oath whether:

(a) The party has participated, as a party, witness or in any other capacity, in any other litigation concerning the custody of the same child in this or any other state;

(b) The party has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) The party knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the

declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceedings concerning the child in this or any other state of which the party obtained information during this proceeding. [1973 c.375 §9]

**109.800 Joinder of other persons as parties.** If the court learns from information furnished by the parties pursuant to ORS 109.790 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of joinder as a party. If the person joined as a party is outside this state the person shall be served with process or otherwise notified in accordance with ORS 109.750. [1973 c.375 §10]

**109.810 Authority to order appearance of others; payment of expenses.** (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that the party appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under ORS 109.750 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances. [1973 c.375 §11]

**109.820 Effect of decree.** A custody decree rendered by a court of this state which had jurisdiction under ORS 109.730 binds all parties who have been served in this state, or notified in accordance with ORS 109.750 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the

custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of ORS 109.700 to 109.930. [1973 c.375 §12]

**109.830 Enforcement of decree of another state.** The court of this state shall recognize and enforce an initial or modification decree by a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with ORS 109.700 to 109.930 or which was made under factual circumstances meeting the jurisdictional standards of ORS 109.700 to 109.930, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of ORS 109.700 to 109.930. [1973 c.375 §13]

**109.840 Modification of decree of another state.** (1) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with ORS 109.700 to 109.930 or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) of this section and ORS 109.780 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with ORS 109.920. [1973 c.375 §14]

**109.850 Filing of decree of another state; effect of violation.** (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any circuit court of this state. The clerk shall treat the decree in the same manner as a custody decree of the circuit court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorney fees at trial and on appeal, incurred by the party entitled to the custody or witnesses of the party. [1973 c.375 §15, 1981 c.897 §36]

**109.860 Clerk's registry.** The clerk of each circuit court shall maintain a registry in which the clerk shall enter the following:

(1) Certified copies of custody decrees of other states received for filing;

(2) Communications as to the pendency of custody proceedings in other states;

(3) Communications concerning a finding of inconvenient forum by a court of another state; and

(4) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding. [1973 c.375 §16]

**109.870 Certification of decree; copies.** The clerk of a circuit court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person. [1973 c.375 §17]

**109.880 Depositions.** In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony may be taken. [1973 c.375 §18]

**109.890 Hearing in another state.** (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the county or state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid. [1973 c.375 §19]

**109.900 Ordering appearance in another state; payment of expenses.** (1) Upon request of the court of another state, the courts of this state which are competent

to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give testimony or a statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state, a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed. [1973 c.375 §20]

**109.910 Preservation of record; copies to other courts.** In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 21 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all such documents. [1973 c.375 §21]

**109.920 Obtaining transcript from another state.** If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in ORS 109.910. [1973 c.375 §22]

**109.930 Calendar priority.** Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under ORS 109.700 to 109.930, the case shall be given calendar priority and handled expeditiously. [1973 c.375 §24]

## PENALTY

**109.990 Penalty.** (1) A person who violates ORS 109.311 (3) or who submits a false statement under ORS 109.311 (2) commits a Class C felony.

(2) A person who violates ORS 109.311 (4) commits a Class A misdemeanor.

(3) A person who violates any provision of ORS 109.502 to 109.507 or any rule adopted

pursuant to ORS 109.506 commits a Class A misdemeanor. [1985 c.403 §2 (4); 1993 c.717 §5; subsection (3) enacted as 1993 c.410 §9]

Note: See note under 109.425

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**DOMESTIC RELATIONS**

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1993-11-88