$100 Question from Family Law

True or False:
The domestic partnership law affects restrictions contained in federal law?

$100 Answer from Family Law

False.

$200 Question from Family Law

Under the new domestic partnership law, how can a domestic partnership be terminated?

$200 Answer from Family Law

Death, judgment of
dissolution, or annulment.

$300 Question from Family Law

According to ORS 653.077, how often must an employer allow a lactating employee rest periods for expressing breastmilk?

$300 Answer from Family Law

30 minutes per four-hour work period

$400 Question from Family Law

Where does the new $10 fee collected at the time of filing of petitions and responses in marital annulment, dissolution, and separation cases go?

$400 Answer from Family Law

Domestic Violence Clinical
Legal Education Account

$500 Question from Family Law

What presumption was substantially weakened by HB 2382?

$500 Answer from Family Law

The presumption that a husband is the father of his wife's children born during their marriage.

IV. Family Law

Question 1: True or False: The domestic partnership law affects restrictions contained in federal law.

Answer: False. See HB 2007.

Question 2: Under the new domestic partnership law, how can a domestic partnership be terminated?

Answer: Death, judgment of dissolution, or annulment. See HB 2007.

Question 3: According to ORS 653.077, how often must an employer allow a lactating employee rest periods for expressing breast milk?

Answer: 30 minutes per four-hour work period. See HB 2372.

Question 4: Where does the new $10 fee collected at the time of filing of petitions and responses in marital annulment, dissolution, and separation cases go?

Answer: Domestic Violence Clinical Legal Education Account. See HB 2961.

Question 5: What presumption was substantially weakened by HB 2382?

Answer: The presumption that a husband is the father of his wife's children born during their marriage.

Enrolled
House Bill 2007

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of Governor's Task Force on Equality)

CHAPTER .....

AN ACT

Relating to same-sex relationships; creating new provisions; and amending ORS 107.615, 192.842, 205.320, 409.300, 432.005, 432.235, 432.405 and 432.408.

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

SECTION 1. Sections 1 to 9 of this 2007 Act may be cited as the Oregon Family Fairness Act.

SECTION 2. The Legislative Assembly finds that:

(1) Section 20, Article I of the Oregon Constitution, has always enshrined the principle that all citizens of this state are to be provided with equal privileges and immunities under the laws of the State. In addition, as provided in ORS 659A.006, it has long been the public policy of this state that discrimination against any of the citizens of this state is a matter of state concern that threatens not only the rights and privileges of the state's inhabitants but menaces the institutions and foundation of a free democratic state. These fundamental principles are integral to Oregon's constitutional form of government, to its guarantees of political and civil rights and to the continued vitality of political and civil society in this state.

(2) The ability to enter into a committed, long-term relationship with another individual that is recognized not only by friends and family, but also by the laws of this state, is a significant and fundamental ability afforded to opposite-sex couples by the marriage laws of this state. Legal recognition of marriage by the state is the primary and, in a number of instances, the exclusive source of numerous rights, benefits and responsibilities available to married individuals under Oregon law. Marriage is limited to the union of one man and one woman by section 5a, Article XV of the Oregon Constitution.

(3) Many gay and lesbian Oregonians have formed lasting, committed, caring and faithful relationships with individuals of the same sex, despite long-standing social and economic discrimination. These couples live together, participate in their communities together and often raise children and care for family members together, just as do couples who are married under Oregon law. Without the ability to obtain some form of legal status for their relationships, same-sex couples face numerous obstacles and hardships in attempting to secure rights, benefits and responsibilities for themselves and their children. Many of the rights, benefits and responsibilities that the families of married couples take for granted cannot be obtained in any way other than through state recognition of committed same-sex partnerships.

(4) This state has a strong interest in promoting stable and lasting families, including the families of same-sex couples and their children. All Oregon families should be provided with the opportunity to obtain necessary legal protections and status and the ability to achieve their fullest potential.

(5) Sections 1 to 9 of this 2007 Act are intended to better align Oregon law with the values embodied in the Constitution and public policy of this state, and to further the state's interest in the promotion of stable and lasting families, by extending benefits, protections and responsibilities to committed same-sex partners and their children that are comparable to those provided to married individuals and their children by the laws of this state.

(6) The establishment of a domestic partnership system will provide legal recognition to same-sex relationships, thereby ensuring more equal treatment of gays and lesbians and their families under Oregon law.

(7) The Legislative Assembly recognizes that the Oregon Constitution limits marriage to the union of one man and one woman. The Legislative Assembly does not seek to alter this definition of marriage in any way through the Oregon Family Fairness Act and recognizes that the Legislative Assembly cannot bestow the status of marriage on partners in a domestic partnership. The Legislative Assembly recognizes that numerous distinctions will exist between these two legally recognized relationships. The Legislative Assembly recognizes that the legal recognition of domestic partnerships under the laws of this state may not be effective beyond the borders of this state and cannot impact restrictions contained in federal law.

(8) Sections 1 to 9 of this 2007 Act do not require the performance of any solemnization ceremony to enter into a binding domestic partnership contract. It is left to the dictates and conscience of partners entering into a domestic partnership to determine whether to seek a ceremony or blessing over the domestic partnership and to the dictates of each religious faith to determine whether to offer or permit a ceremony or blessing of domestic partnerships. Providing recognition to same-sex partnerships through a domestic partnership system in no way interferes with the right of each religious faith to choose freely to whom to grant the religious status, sacrament or blessing of marriage under the rules or practices of that faith.

SECTION 3. As used in sections 1 to 9 of this 2007 Act:

(1) "Domestic partnership" means a civil contract entered into in person between two individuals of the same sex who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon.

(2) "Partner" means an individual joined in a domestic partnership.

SECTION 4. (1) The following domestic partnerships are prohibited and void:

(a) When either party to the domestic partnership had a partner, wife or husband living at the time of the domestic partnership.

(b) When the parties to the domestic partnership are first cousins or any nearer of kin to each other, whether of the whole or half blood, whether by blood or adoption, computing by the rules of the civil law. However, when the parties are first cousins by adoption only, the domestic partnership is not prohibited or void.

(2) When either party to a domestic partnership is incapable of making the civil contract or consenting to the contract for want of legal age or sufficient understanding, or when the consent of either party is obtained by force or fraud, the domestic partnership is void from the time it is so declared by a judgment of a court having jurisdiction of the domestic partnership.

SECTION 5. (1) The Department of Human Services shall prepare forms entitled:

(a) "Declaration of Domestic Partnership" meeting the requirements of section 6 of this 2007 Act; and

(b) "Certificate of Registered Domestic Partnership."

(2) The department shall distribute the forms to each county clerk. The department and each county clerk shall make the Declaration of Domestic Partnership forms available to the public.

SECTION 6. (1) Two individuals wishing to become partners in a domestic partnership may complete and file a Declaration of Domestic Partnership with the county clerk.

(2) In accordance with the requirements of this section, the county clerk shall register the Declaration of Domestic Partnership in a domestic partnership registry and return a copy of the registered form and a Certificate of Registered Domestic Partnership to the partners in person or at the mailing address provided by the partners.

(3) An individual who has filed a Declaration of Domestic Partnership may not file a new Declaration of Domestic Partnership or enter a marriage with someone other than the individual's registered partner unless a judgment of dissolution or annulment of the most recent domestic partnership has been entered. This prohibition does not apply if the previous domestic partnership ended because one of the partners died.

(4) Each person signing a Declaration of Domestic Partnership consents to the jurisdiction of the circuit courts of Oregon for the purpose of an action to obtain a judgment of dissolution or annulment of the domestic partnership, for legal separation of the partners in the domestic partnership or for any other proceeding related to the partners' rights and obligations, even if one or both partners cease to reside in, or to maintain a domicile in, this state. Notwithstanding ORS 107.086, a petition for dissolution or annulment of the domestic partnership, for legal separation of the partners in the domestic partnership or for any other proceeding related to the partners' rights and obligations may be filed in the county in which either the petitioner or respondent last resided.

(5) On the Declaration of Domestic Partnership, each individual who wants to become a partner in a domestic partnership shall:

(a) State that the individual is at least 18 years of age and is otherwise capable to enter into a domestic partnership at the time the individual signs the form;

(b) State whether the individual is a resident of Oregon;

(c) Provide a mailing address;

(d) State that the individual consents to the jurisdiction of the circuit courts of Oregon for the purpose of an action to obtain a judgment of dissolution or annulment of the domestic partnership or for legal separation of the partners in the domestic partnership, or for any other proceeding related to the partners' rights and obligations, even if one or both partners cease to reside in, or to maintain a domicile in, this state;

(e) Sign the form with a declaration that representations made on the form are true, correct and contain no material omissions of fact to the best knowledge and belief of the individual; and

(f) Have a notary public acknowledge the individual's signature.

(6) Both partners' signatures must be affixed to one Declaration of Domestic Partnership form. Filing an intentionally and materially false Declaration of Domestic Partnership is punishable as a misdemeanor.

(7) The county clerk may accept any reasonable proof of an individual's age satisfactory to the clerk. The clerk may require proof of age by affidavit of some individual other than either of the parties seeking to file the Declaration of Domestic Partnership if the clerk deems it necessary in order to determine the age of the individual to the clerk's satisfaction.

(8) The county clerk may not register a Declaration of Domestic Partnership or return a copy of the registered form and a Certificate of Registered Domestic Partnership to the partners until the provisions of this section, section 7 of this 2007 Act and all other legal requirements are complied with.

(9) Notwithstanding ORS 432.121 or any other provision of law, the registry of domestic partnerships maintained by a county clerk is a public record and subject to full disclosure.

SECTION 7. (1) In addition to any other fees provided by law, the county clerk shall collect a fee of $25 for registering a Declaration of Domestic Partnership.

(2) The county clerk shall regularly pay over to the Director of Human Services all moneys collected under subsection (1) of this section to be credited to the Domestic Violence Fund pursuant to ORS 409.300.

SECTION 8. Upon entering into a domestic partnership, either individual may retain the individual's prior surname, and either individual may resume the individual's prior legal name during the domestic partnership.

SECTION 9. (1) Any privilege, immunity, right or benefit granted by statute, administrative or court rule, policy, common law or any other law to an individual because the individual is or was married, or because the individual is or was an in-law in a specified way to another individual, is granted on equivalent terms, substantive and procedural, to an individual because the individual is or was in a domestic partnership or because the individual is or was, based on a domestic partnership, related in a specified way to another individual.

(2) Any responsibility imposed by statute, administrative or court rule, policy, common law or any other law on an individual because the individual is or was married, or because the individual is or was an in-law in a specified way to another individual, is imposed on equivalent terms, substantive and procedural, on an individual because the individual is or was in a domestic partnership or because the individual is or was, based on a domestic partnership, related in a specified way to another individual.

(3) Any privilege, immunity, right, benefit or responsibility granted or imposed by statute, administrative or court rule, policy, common law or any other law to or on a spouse with respect to a child of either of the spouses is granted or imposed on equivalent terms, substantive and procedural, to or on a partner with respect to a child of either of the partners.

(4) Any privilege, immunity, right, benefit or responsibility granted or imposed by statute, administrative or court rule, policy, common law or any other law to or on a former or surviving spouse with respect to a child of either of the spouses is granted or imposed on equivalent terms, substantive and procedural, to or on a former or surviving partner with respect to a child of either of the partners.

(5) Many of the laws of this state are intertwined with federal law, and the Legislative Assembly recognizes that it does not have the jurisdiction to control federal laws or the privileges, immunities, rights, benefits and responsibilities related to federal laws.

(6) Sections 1 to 9 of this 2007 Act do not require or permit the extension of any benefit under ORS chapter 238 or 238A, or under any other retirement, deferred compensation or other employee benefit plan, if the plan administrator reasonably concludes that the extension of benefits would conflict with a condition for tax qualification of the plan, or a condition for other favorable tax treatment of the plan, under the Internal Revenue Code or regulations adopted under the Internal Revenue Code.

(7) Sections 1 to 9 of this 2007 Act do not require the extension of any benefit under any employee benefit plan that is subject to federal regulation under the Employee Retirement Income Security Act of 1974.

(8) For purposes of administering Oregon tax laws, partners in a domestic partnership, surviving partners in a domestic partnership and the children of partners in a domestic partnership have the same privileges, immunities, rights, benefits and responsibilities as are granted to or imposed on spouses in a marriage, surviving spouses and their children.

SECTION 10. Section 11 of this 2007 Act is added to and made a part of ORS chapter 314.

SECTION 11. This chapter applies to partners in a domestic partnership, as defined in section 3 of this 2007 Act, and surviving partners as if federal income tax law recognized a domestic partnership in the same manner as Oregon law.

SECTION 12. ORS 107.615 is amended to read:

107.615. (1) The governing body of any county may impose a fee up to $10 above that prescribed in ORS 205.320 (5) for **issuing** a marriage license **or registering a Declaration of Domestic Partnership.**

(2) In addition to any other funds used therefor, the governing body shall use the proceeds from the fee increase authorized by this section to pay the expenses of conciliation services under ORS 107.510 to 107.610 and mediation services under ORS 107.755 to 107.795. If there are none in the county, the governing body may provide [*such*] **conciliation and mediation** services through other county agencies or may contract with a public or private agency or person to provide [*such*] **conciliation and mediation** services.

(3) The governing body may establish rules of eligibility for conciliation services funded under this section so long as its rules do not conflict with rules of the court adopted under ORS 107.580.

(4) Fees collected under this section shall be collected and deposited in the same manner as other county funds are collected and deposited but shall be maintained in a separate account to be used as provided in this section.

SECTION 13. ORS 192.842 is amended to read:

192.842. (1) A county clerk shall use the actual address of a program participant for voter registration purposes. Except as provided in ORS 192.820 to 192.868, the county clerk may not disclose the actual address.

(2) A county clerk shall use the substitute address of the program participant for purposes of mailing a ballot to an elector under ORS 254.470.

(3) A school district shall use the actual address of a program participant for any purpose related to admission or assignment. The school district shall take such measures as necessary to protect the confidentiality of the actual address of the program participant. Student records created under ORS 326.565 and 326.580 shall use the substitute address of the program participant.

(4) A county clerk shall accept the substitute address of the program participant as the address of the applicant for the purpose of issuing a marriage license under ORS 106.041 **or registering a Declaration of Domestic Partnership under section 6 of this 2007 Act.**

SECTION 14. ORS 205.320 is amended to read:

205.320. In every county there shall be charged and collected in advance by the county clerk, for the benefit of the county, the following fees, and no more, for the following purposes and services:

(1) For filing and making entry when required by law of any instrument required or permitted by law to be filed, when it is not recorded, $5 for each page.

(2) For filing and making entry of the assignment or satisfaction of any filed, but not recorded, instrument, $5 for each page.

(3) For each official certificate, $3.75.

(4)(a) For purposes of this subsection, "page" means one side of a sheet 14 inches, or less, long and 8-1/2 inches, or less, wide.

(b) For recording any instrument required or permitted by law to be recorded, $5 for each page, but the minimum fee shall not be less than $5.

(c) For supplying to private parties copies of records or files, not more than $3.75 for locating a record requested by the party and 25 cents for each page.

(d) For each official certificate, $3.75.

(5) For taking **an** affidavit for and making and issuing **a** marriage license and registering the return [*thereof*] **of the license, or for taking an affidavit for and registering a Declaration of Domestic Partnership,** $25.

(6) For solemnizing a marriage under ORS 106.120, $25. This subsection does not require that the county clerk charge a fee for solemnizing a marriage after normal working hours or on Saturdays or legal holidays. This subsection does not prohibit a county clerk from charging and accepting a personal payment for solemnizing a marriage if otherwise authorized by ORS 106.120.

(7) For taking and certifying acknowledgment or proof of execution of any instrument, the fee established in the schedule adopted by the Secretary of State under ORS 194.164.

(8) For issuing any license required by law, other than a marriage or liquor license, and for which no fee is otherwise provided by law, $5.

(9) For any service the clerk may be required or authorized to perform and for which no fee is provided by law, such fees as may favorably compare with those established by this section for similar services and as may be established by order or rule of the county court or board of county commissioners.

(10) For recording any instrument under ORS 205.130 (2), as required by ordinance pursuant to ORS 203.148.

(11) In addition to and not in lieu of the fees charged under subsection (4) of this section, for each additional municipal assessment lien recorded under ORS 93.643, $5.

(12) In addition to and not in lieu of the fees charged under subsection (4) of this section, for each additional assignment, release or satisfaction of any recorded instrument, $5.

(13) In addition to and not in lieu of the fees charged under subsection (4) of this section, for each additional transaction described under ORS 205.236, $5.

(14) In addition to and not in lieu of the fees charged under subsection (4) of this section, for each additional lien recorded under ORS 311.675, $5.

(15) For preparing and recording the certificate under ORS 517.280, $20 or such other fee that is established by the county governing body.

(16) In addition to and not in lieu of the fees charged under subsection (4) of this section, for each additional claim listed on an affidavit of annual compliance under ORS 517.210, $5.

(17) In addition to and not in lieu of the fees charged under subsection (4) of this section, for each additional name listed on a cooperative contract under ORS 62.360 (2) or for recording the termination of a cooperative contract under ORS 62.360 (4), $5.

(18) Notwithstanding any other law, five percent of any fee or tax that is not collected for the benefit of the county clerk shall be deducted from the fee or tax. The moneys deducted shall be expended for acquiring storage and retrieval systems, payment of expenses incurred in collecting the fee or tax and maintaining and restoring records as authorized by the county clerk. Moneys collected under this subsection shall be deposited in a county clerk records fund established by the county governing body. No moneys shall be deducted under this subsection from:

(a) Fees collected for the Domestic Violence Fund under ORS 106.045.

(b) Fees collected for conciliation services under ORS 107.615.

(c) Real estate transfer taxes enacted prior to January 1, 1998.

(d) Fees collected under ORS 205.323 for the Oregon Land Information System Fund.

SECTION 15. ORS 409.300 is amended to read:

409.300. (1) There is established the Domestic Violence Fund in the Services to Children and Families Account of the General Fund established under ORS 409.260.

(2) All moneys received by the Director of Human Services under ORS 106.045 [*(2)*] **or section 7 of this 2007 Act** and any other funds allocated for expenditure under ORS 409.292 shall be credited to the Domestic Violence Fund.

(3) All moneys credited to the Domestic Violence Fund are continuously appropriated for the purposes of ORS 409.292 to be expended by the director as provided in ORS 409.290 and 409.292. However, the director shall expend not more than 10 percent of such moneys for administrative costs of the Department of Human Services incurred under ORS 409.290 and 409.292.

SECTION 16. ORS 432.005 is amended to read:

432.005. As used in this chapter, unless the context requires otherwise:

(1) "Dead body" means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death occurred.

(2) "Department" means the Department of Human Services.

(3) "Director" means the Director of Human Services.

(4) "Divorce" means dissolution of a marriage.

(5) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy. The death is indicated

by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

(6) "File" means the presentation and acceptance of a vital record or vital report provided for in this chapter by the Center for Health Statistics.

(7) "Final disposition" means the burial, interment, cremation, removal from the state or other authorized disposition of a dead body or fetus, except that when removal from the state is conducted by the holder of a certificate of removal registration issued under ORS 692.270, the final disposition may not be considered complete until the certificate of death is filed.

(8) "Induced termination of pregnancy" means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant and that does not result in a live birth.

(9) "Institution" means any establishment, public or private, that provides inpatient or outpatient medical, surgical or diagnostic care or treatment or nursing, custodial or domiciliary care, or to which persons are committed by law.

(10) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, that, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(11) "Person acting as a funeral service practitioner" means:

(a) A person other than a funeral service practitioner licensed under ORS 692.045, including but not limited to a relative, friend or other interested party, who performs the duties of a funeral service practitioner without payment; or

(b) A funeral service practitioner who files death certificates in another state if the funeral service practitioner is employed by a funeral establishment licensed in another state and registered with the State Mortuary and Cemetery Board under ORS 692.270.

(12) "Physician" means a person authorized or licensed under the laws of this state to practice medicine, osteopathy, chiropractic or naturopathic medicine.

(13) "Registration" means the process by which vital records and vital reports are completed, filed and incorporated into the official records of the Center for Health Statistics.

(14) "State registrar" means the State Registrar of the Center for Health Statistics.

(15) "System of vital statistics" means the registration, collection, preservation, amendment and certification of vital records and vital reports; the collection of other reports required by this chapter, and activities related thereto including the tabulation, analysis, dissemination and publication of vital statistics and training in the use of health data.

(16) "Vital records" means certificates or reports of birth, death, marriage, **declaration of domestic partnership,** dissolution of marriage **or domestic partnership** and data related thereto.

(17) "Vital reports" means reports of fetal death, induced termination of pregnancy, suicide attempts by persons under 18 years of age and survey and questionnaire documents and data related thereto.

(18) "Vital statistics" means the data derived from certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage, **declaration of domestic partnership,** dissolution of marriage, **dissolution of domestic partnership,** suicide attempts by persons under 18 years of age and related reports.

SECTION 17. ORS 432.235 is amended to read:

432.235. (1) A certificate or report registered under this chapter may be amended only in accordance with this chapter and rules adopted by the State Registrar of the Center for Health Statistics to protect the integrity and accuracy of vital records and vital reports.

(2) A certificate or report that is amended under this section shall indicate that it has been amended, except as otherwise provided in ORS 432.230, this section or by rule of the state registrar. A record shall be maintained that identifies the evidence upon which the amendment was based, the

date of the amendment and the identity of the person making the amendment. The state registrar shall prescribe by rule the conditions under which additions or minor corrections may be made to certificates or reports within one year without the certificate or report indicating that it has been amended.

(3) Upon receipt of a certified copy of an order of a court changing the name of a person born in this state and upon request of such person or if the person is a minor or incompetent, the parents, guardian or legal representative of the person, the state registrar shall amend the certificate of birth to show the new name.

(4) Upon receipt of a certified copy of an order of a court of competent jurisdiction indicating that the sex of an individual born in this state has been changed by surgical procedure and whether such individual's name has been changed, the certificate of birth of such individual shall be amended as prescribed by rule of the state registrar.

(5) When an applicant does not submit the minimum documentation required by rule of the state registrar for amending a vital record or when the state registrar has cause to question the validity or adequacy of the applicant's sworn statements or the documentary evidence, and if the deficiencies are not corrected, the state registrar shall not amend the vital record and shall advise the applicant of the reason for this action and shall further advise the applicant of the right of appeal under ORS 183.480 and 183.484.

(6) When a certificate or report is amended under this section by the state registrar, the state registrar shall report the amendment to any other custodian of the vital record and the record of the other custodian shall be amended accordingly.

(7) When an amendment is made to a certificate [*of*] **for a** marriage **or to a Declaration of Domestic Partnership** by the local official issuing the marriage license **or registering the declaration**, copies of the amendment shall be forwarded to the state registrar.

(8)(a) When a party or legal representative proposes to set aside or change any information recorded in a dissolution of marriage judgment **or dissolution of domestic partnership judgment** filed pursuant to ORS 432.408, the party or legal representative seeking the amendment or set aside order shall prepare a summary of the changes in the form prescribed or furnished by the state registrar and shall present the form to the clerk of the court along with the proposed supplemental judgment. In all cases the completed form shall be a prerequisite to the entry of the supplemental judgment.

(b) The clerk of the court shall complete and forward to the Center for Health Statistics the records of each such supplemental judgment in the same manner prescribed by ORS 432.408.

SECTION 18. ORS 432.405 is amended to read:

432.405. (1) A record of each marriage performed **and domestic partnership registered** in this state shall be filed with the Center for Health Statistics and shall be registered if it has been completed and filed in accordance with this section and rules adopted by the State Registrar of the Center for Health Statistics.

(2) The county clerk or county official who issues the marriage license **or registers the Declaration of Domestic Partnership** shall prepare the record in the form prescribed or furnished by the state registrar upon the basis of information obtained from the parties [*to be married*].

(3) Each person who performs a marriage ceremony shall certify the fact of marriage and return the record to the official who issued the license within 10 days after the ceremony.

(4) Every official issuing marriage licenses **or registering Declarations of Domestic Partnership** shall complete and forward to the Center for Health Statistics on or before the 10th day of each calendar month the records of marriages returned to such official during the preceding calendar month **and the records of Declarations of Domestic Partnership registered during the preceding calendar month.**

(5) A marriage **or domestic partnership** record not filed within the time prescribed by this section may be registered in accordance with rules adopted by the state registrar.

SECTION 19. ORS 432.408 is amended to read:

432.408. (1) A record of each dissolution of marriage judgment **or dissolution of domestic partnership judgment** by any court in this state shall be filed by the clerk of the court with the Center for Health Statistics and shall be registered if it has been completed and filed in accordance with this section. The record shall be prepared by the petitioner or a legal representative of the petitioner in the form prescribed or furnished by the State Registrar of the Center for Health Statistics and shall be presented to the clerk of the court with the petition. In all cases the completed record shall be prerequisite to the entry of the judgment. The state registrar shall design the record so that, for judgments or orders issued in proceedings under ORS 107.085 or 107.485, the state registrar, county clerks, county recording officers and state courts may keep Social Security numbers confidential and exempt from public inspection.

(2) The clerk of the court shall complete and forward to the Center for Health Statistics on or before the 10th day of each calendar month the records of each dissolution of marriage judgment **or dissolution of domestic partnership judgment** granted during the preceding calendar month. The clerk shall comply with procedures established under ORS 107.840 to ensure that, in the records completed and forwarded under this subsection, the Social Security numbers of parties to a proceeding under ORS 107.085 or 107.485 are kept confidential and exempt from public inspection.

(3) A dissolution of marriage record **or dissolution of domestic partnership record** not filed within the time prescribed by subsection (2) of this section may be registered in accordance with rules adopted by the state registrar.

Passed by House April 17, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 2, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

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Secretary of State

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Oregon's Domestic Partner Registry

Summary

Oregon's new domestic partner registry law gives same-sex couples, termed "domestic partners," and their children "[a]ny privilege, immunity, right or benefit granted by statute, administrative or court rule, policy, common law or any other law" to married individuals and children of a marriage. HB 2007 § 9. In general, the law extends benefits, protections, and responsibilities to registered domestic partners and their children that are comparable to those provided to married individuals and their children by the laws of Oregon. The Governor signed the bill on May 9, 2007, and the law will be effective on January 1, 2008.

Who Is Covered

Individuals in same-sex relationships can register as domestic partners, but not if either has a "partner, wife or husband"; if the two of them are first cousins or any nearer of kin; or if either is incapable of consent by want of legal age (18) or sufficient understanding. The act creates parentage for children born or adopted during the registration term.

Procedures

Two persons who want to become domestic partners must file a Declaration of Domestic Partnership with the county clerk, who creates a domestic partner registry and issues a Certificate of Registered Domestic Partnership upon payment of a fee. The registry is public. Termination of the domestic partnership may occur in two ways: by the death of a registered partner or by a judgment of dissolution or annulment of the domestic partnership.

What the Law Does Not Do

As HB 2007 explains, the rules adopted by Oregon cannot change federal law and may not be effective in other states. The bill states that "legal recognition of domestic partnerships under the laws of this state may not be effective beyond the borders of this state and cannot impact restrictions contained in federal laws." HB 2007 § 2(7). "Many of the laws of this state are intertwined with federal law, and the Legislative Assembly recognizes that it does not have the jurisdiction to control federal laws or the privileges, immunities, rights, benefits and responsibilities related to federal laws." HB 2007 § 9(5). The law does "not require or permit the extension of any benefit under ORS 238 or 238A [Oregon Public Employee Retirement System], or under any other retirement, deferred compensation or other employee benefit plan, if the plan administrator reasonably concludes that the extension of benefits would conflict with a condition for tax qualification of the plan, or a condition for other favorable tax treatment of the plan, under the Internal Revenue Code or regulations adopted under the Internal Revenue Code." HB 2007 § 9(6). The law does "not require the extension of any benefit under any employee benefit plan that is subject to federal regulation under the Employee Retirement Income Security Act of 1974." HB 2007 § 9(7).

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Incapacity/Illness Planning

Under the new law, if no advance medical directive has been executed by an ill partner, the healthy partner will have priority to make end-of-life medical decisions and priority for appointment as guardian to determine placement, direct medical care, and receive protected health care information.

Practical Suggestion:

To reduce the risk of a costly guardianship, a medical directive is useful for both same-sex couples (registered or not) and opposite-sex couples (married or not). If the partner falls ill outside of Oregon, the legal status of the registered couple will not necessarily be recognized and therefore the medical directive and nomination of guardian are crucial planning documents, despite the new law.

Disposition of Remains

Registered partners will have priority to determine Oregon disposition of a deceased partner's remains, as spouses do, without the need for the formal written Disposition of Remains instruction under ORS 97.130(1).

Practical Suggestion:

What if death occurs outside Oregon, where the registration status may not be recognized? A written Disposition of Remains instruction should be prepared for all same-sex couples, registered or not.

Inheritance

Registered domestic partners will have the same intestate inheritance rights as surviving spouses under Oregon law, and can claim the elective share, support from the estate, and protection against a premarital will.

The children of registered domestic partners will have the same intestate inheritance rights as surviving children under Oregon law. Parents of these children will also inherit under intestacy from a deceased child.

Practical Suggestions:

Because the status of the registered partner will not be recognized in all states, it is critical to protect the partner with a will.

Because the status of a child born after the registration to one member of the same-sex couple will not be recognized in all states, it is critical to protect the child with a will. If one partner was not a legal parent before the registration, the later registration will create the status of stepparent. Lawyers for same-sex couples recommend a second-parent adoption (permitted in Oregon and in many other states) to cement a parental relationship. The second-parent adoption has legal significance independent of the registration, although whether it will be recognized in all jurisdictions for inheritance purposes is not yet clear.

Because the status of the parents will not be recognized in all states, the adult child of the registered couple should protect both parents with a will.

Parents, grandparents, and other relatives of same-sex couples should be asked whether the term "descendants" in their wills and trusts should be drafted to include the same-sex couple's children. Wills specifically addressing that question, by careful drafting, will avoid litigation challenging which state law applies. Oregon law and California law protect the children of registered same-sex couples as descendants, but other states may not recognize the relationship. Some states specifically prohibit second-parent adoption. It is unclear how courts in those states will treat the question of inheritance by children of same-sex couples, registered or not.

Taxes

Income Tax. Domestic partners will be treated like spouses for Oregon tax purposes. ORS chapter 314, Income Taxation, will clarify this point because the House Bill adds the following provision: "This chapter applies to partners in a domestic partnership * * * and surviving partners as if federal income tax law recognized a domestic partnership in the same manner as Oregon law." HB 2007 § 11. Registered same-sex couples will be able to file Oregon returns, commencing in 2009 for tax year 2008, either jointly or as married filing separately. For income and deduction purposes, taxpayers will (as in Massachusetts and New Jersey) prepare pro forma or "dummy" federal joint returns as married and then prepare the state returns for filing.

New Oregon W-4s and income tax return forms adding the status of registered domestic partner ("RDP") will eventually be issued. The federal return must be prepared as though an RDP were single. Some preparers recommend filing the return with an asterisk and explanatory letter saying that this designation is "single" for federal income tax reasons only, if a marriage valid in another country or Massachusetts exists.

Oregon Inheritance Tax. The estate of a deceased RDP with a surviving partner will be allowed a "marital/registered domestic partner deduction" for Oregon inheritance tax. The personal representative of the deceased RDP's estate will show property passing at death to the surviving RDP (including nonprobate survivorship property) on Schedule M. The personal representative can make the QTIP election for qualified property (such as an all-income-to-RDP trust, similar to the QTIP trust used for the marital deduction in federal spousal planning) passing to the surviving RDP. The Oregon inheritance tax can effectively be zeroed out when the first RDP dies; however, the tax on the QTIP portion is only deferred until the second RDP dies, if the second RDP has sufficient assets, either QTIP or other assets, to create a taxable estate.

The Oregon Department of Revenue will eventually issue new inheritance tax forms reflecting the new category of "registered domestic partner." The Oregon marital deduction may now be referred to as the "state marital/registered domestic partner deduction."

Oregon does not impose a state gift tax. Lifetime nonexempt transfers made before registration will be shown on line 4 of the Oregon IT-1 (2006) as taxable gifts made inter vivos. Whether transfers made after registration should be reflected on line 4 is not clear. The Oregon inheritance tax form requires reporting of all joint tenancy property with nonspouses (page 2, Part 4, #7 of the IT-1, 2006). When the survivorship asset was owned by both RDPs, it will be reported in Oregon as Schedule M property. If joint property or entireties property is included in the deceased RDP's gross estate, it will be washed out with the Schedule M deduction listing bequests to the surviving RDP.

Practical Suggestion:

A same-sex couple with Oregon transfer tax exposure should strongly consider registration to prevent Oregon state inheritance tax being imposed on the estate of the first partner to die. Should the couple move to another state, however, they cannot rely on recognition of the new legal status to eliminate that new state's death tax. Same-sex couples with taxable estates may have arranged their affairs with a relationship agreement and good planning, and they may want their prior arrangement to continue, despite registration. These couples might consider reaffirming their relationship agreement in light of the new RDP status, by preregistration or postregistration agreement directly dealing with the property, inheritance, and support aspects of the new law.

Federal Gift and Estate Tax. The new Oregon law does not change federal gift tax: inter vivos nonexempt transfers to the RDP and others will be subject to federal gift tax, and soak up the donor's $1 million lifetime gift credit. A federal Form 709 should be filed for nonexempt gifts to the RDP, before or after registration. The new law does not change the federal estate tax: transfers effective at death of more than the federal death tax exemption equivalent ($2 million in 2008; $3.5 million in 2009) will be subject to federal estate tax. Federal gift and estate tax planning will continue to be crucial for same-sex couples.

Wrongful-Death and Loss-of-Consortium Claims

When incapacity or illness of the partner results from the wrongful act of another, the RDP will have the common-law claim of loss of consortium.

When the death of an RDP, child, or stepchild results from the wrongful act of another, the surviving RDP, child, stepchild, or stepparent will have rights to an allocation from any wrongful-death award or settlement, in the same manner as a spouse, child, stepchild, or stepparent under ORS 30.010.100. See the definition of stepchild-stepparent relationship in ORS 30.020(3). Damages include pecuniary loss and "loss of the society, companionship and services of the decedent." ORS 30.020(2)(d).

If an auto accident occurred in Idaho, could one file the action in Oregon to obtain the benefit of the expansion of wrongful death to the Oregon RDP and the children, and to avoid the Idaho lawyer's defensive crouch denying Oregon's family protection? These issues will probably have to be litigated. As HB 2007 predicts, the rights of a registered couple are not guaranteed to be portable. But some states with expansive domestic partner or civil union laws, such as California, will recognize the wrongful-death claim of an RDP and children. Washington's new 2007 domestic partner registry law grants wrongful-death statutory rights only to the registered domestic partner.

Practical Suggestion:

When an RDP or child from a domestic partnership dies as a result of a wrongful act outside of Oregon, clue the personal injury lawyer into the choice of venue and possible conflict of laws problem early, so that the lawyer can choose the forum and preempt the likely status challenge.

Wills in Contemplation of Registration; Revocation of Preregistration Will

Marriage automatically revokes a prior will, unless the will expressly states that it was entered into in contemplation of that marriage. Protection from a premarital will is one of the privileges of a spouse. The RDP should also be protected from a preregistration will, which will be revoked by registration. The preregistration will can express the intent to remain in effect despite registration or civil union or other later changes in status. Wills made in contemplation of the change of registration or other changes in status will remain effective after registration. ORS 112.305(1).

Practical Suggestion:

A lawyer should consider whether a will for a same-sex couple should explicitly state that the document will stay in effect after any later marriage to, registry as domestic partners with, or civil union with a named person and that the will is executed in contemplation of that possible event.

Real Property Survivorship

Unregistered domestic partners who want survivorship rights will continue to use Ericksen deeds: mutual life estate with cross-contingent remainders. ORS 93.180. RDPs will be able to take title to real property as "tenants by the entireties," a survivorship form of deed with creditor protection. Both Ericksen and entireties deeds will continue to be used by domestic partners, registered or not, depending on their circumstances. The tenancy-in-common deed will be used in some situations as well, when the partners, registered or not, want to direct their estates to different beneficiaries at death, keep assets separate for estate tax purposes, or avoid 100 percent inclusion in the gross estate of the first to die (with its IRC § 2040 proof of contribution problem).

Practical Suggestion:

Same-sex couples, registered or not, should exercise caution before creating a right of survivorship by deed. Each partner's contribution to the property should be calculated to determine whether a gift is being made. If a sole-owner RDP places the other partner on the deed,

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a Form 709 federal gift tax return should be filed if the value of the interest exceeds the annual exclusion. One hundred percent of survivorship property, whether created by Ericksen deed or entireties deed, is included in the federal gross taxable estate of the deceased RDP. IRC § 2040. Although Oregon will allow the "marital/registered domestic partner deduction" at death for Oregon inheritance tax purposes, the federal government will force the surviving partner, registered or not, to prove contribution to avoid 100 percent inclusion.

Cynthia L. Barrett
Portland, Oregon

Enrolled
House Bill 2372

Sponsored by Representatives BERGER, ROSENBAUM, Senator BURDICK (Presession filed.)

CHAPTER .....

AN ACT

Relating to breast-feeding; creating new provisions; and amending ORS 243.650, 653.077 and 653.256.

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

SECTION 1. ORS 653.077 is amended to read:

653.077. **(1) As used in this section:**

(a) "Reasonable efforts" means efforts that do not impose an undue hardship on the operation of an employer's business.

(b) "Undue hardship" means significant difficulty or expense when considered in relation to the size, financial resources, nature or structure of the employer's business.

[*(1)*] **(2)(a)** An employer [*may*] **shall** provide reasonable unpaid rest periods to accommodate an employee who needs to express milk for her child.

(b) The employee shall [*notify*] **provide reasonable notice to** the employer that the employee intends to express milk upon returning to work. [*The employee shall, if feasible, take the rest periods to express milk at the same time as rest periods that are otherwise provided to the employee. The employer may provide the employee up to 60 minutes in rest periods per eight-hour shift to express milk.*]

(c) Unless otherwise agreed to by the employer and the employee, the employer shall provide the employee a 30-minute rest period to express milk during each four-hour work period, or the major part of a four-hour work period, to be taken by the employee approximately in the middle of the work period.

(d) The employee shall, if feasible, take the rest periods to express milk at the same time as the rest periods or meal periods that are otherwise provided to the employee.

(e) If the employer is required by law or contract to provide the employee with paid rest periods, the employer shall treat the rest periods used by the employee for expressing milk as paid rest periods, up to the amount of time the employer is required to provide as paid rest periods. If an employee takes unpaid rest periods, the employer may allow the employee to work before or after her normal shift to make up the amount of time used during the unpaid rest periods. If the employee does not work to make up the amount of time used during the unpaid rest periods, the employer is not required to compensate the employee for that time.

(3) When an employer's contribution to an employee's health insurance is influenced by the number of hours the employee works, the employer shall treat any unpaid rest periods used by the employee to express milk as paid work time for the purpose of measuring the number of hours the employee works.

(4) An employer is not required to provide rest periods under this section if to do so would impose an undue hardship on the operation of the employer's business.

[*(2)(a)*] **(5)(a)** An employer [*may*] **shall make reasonable efforts to** provide a [*room or other*] location, other than a public restroom or toilet stall, in close proximity to the employee's work area for the employee to express milk in private.

(b) The [*room or other*] location may include**, but is not limited to**:

(A) The employee's work area if the work area meets the requirements of paragraph (a) of this subsection; [*or*]

(B) A room connected to a public restroom, such as a lounge, if the room allows the employee to express milk in private; or

[*(B)*] **(C)** A child care facility in close proximity to the employee's work location where the employee can express milk in private.

[*(3)*] **(6)** An employer may allow an employee to temporarily change job duties if the employee's regular job duties do not allow her to express milk.

[*(4)*] **(7)** This section applies only to an employer whose employee is expressing milk for [*a*] **her** child 18 months of age or younger.

[*(5)*] **(8)** This section applies only to employers who employ 25 or more employees in the State of Oregon for each working day during each of 20 or more calendar workweeks in the year in which the rest periods are to be taken or in the year immediately preceding the year in which the rest periods are to be taken.

(9) Notwithstanding ORS 653.020 (3), this section applies to individuals engaged in administrative, executive or professional work as described in ORS 653.020 (3).

(10)(a) In addition to, and not in lieu of, any other requirement under this section, each school district board shall adopt a policy regarding breast-feeding in the workplace to accommodate an employee who needs to express milk for her child.

(b) Each policy must, at a minimum, designate a location at the school facility, other than a public restroom or toilet stall, in close proximity to the employee's work area for the employee to express milk in private.

(c) A policy adopted under this subsection, including the designated locations where an employee may express milk, must be published in an employee handbook. In addition, a list of the designated locations must be readily available, upon request, in the central office of each school facility and in the central administrative office for each school district.

(11) The Commissioner of the Bureau of Labor and Industries shall adopt rules to implement and enforce this section.

SECTION 2. ORS 653.256 is amended to read:

653.256. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed $1,000 against any person who willfully violates ORS 653.025, 653.030, 653.045, 653.050, 653.060 or 653.261 or any rule adopted thereunder.

(2) In addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed $1,000 against any person who intentionally violates ORS 653.077 or any rule adopted thereunder.

[*(2)*] **(3)** Civil penalties authorized by this section shall be imposed in the manner provided in ORS 183.745.

[*(3)*] **(4)(a)** All sums collected as penalties under this section shall be first applied toward reimbursement of costs incurred in determining the violations, conducting hearings under this section and addressing and collecting [*such*] **the** penalties.

(b) The remainder, if any, of the sums collected as penalties under **subsection (1) of** this section shall be paid over by the commissioner to the Department of State Lands for the benefit of the Common School Fund of this state. The department shall issue a receipt for the money to the commissioner.

(c) The remainder, if any, of the sums collected as penalties under subsection (2) of this section shall be paid over by the commissioner to the Department of Human Services for the

benefit of the Breastfeeding Mother Friendly Employer Project. The department shall issue a receipt for the moneys to the commissioner.

SECTION 3. ORS 243.650 is amended to read:

243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

(1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board or voluntarily recognized by the public employer to be appropriate for collective bargaining. However, an appropriate bargaining unit [*cannot*] **may not** include both academically licensed and unlicensed or nonacademically licensed school employees. Academically licensed units may include but are not limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and similar positions. This limitation [*shall*] **does** not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.

(2) "Board" means the Employment Relations Board.

(3) "Certification" means official recognition by the board that a labor organization is the exclusive representative for all of the employees in the appropriate bargaining unit.

(4) "Collective bargaining" means the performance of the mutual obligation of a public employer and the representative of its employees to meet at reasonable times and confer in good faith with respect to employment relations for the purpose of negotiations concerning mandatory subjects of bargaining, to meet and confer in good faith in accordance with law with respect to any dispute concerning the interpretation or application of a collective bargaining agreement, and to execute written contracts incorporating agreements that have been reached on behalf of the public employer and the employees in the bargaining unit covered by such negotiations. The obligation to meet and negotiate does not compel either party to agree to a proposal or require the making of a concession. [*Nothing in*] This subsection [*shall*] **may not** be construed to prohibit a public employer and a certified or recognized representative of its employees from discussing or executing written agreements regarding matters other than mandatory subjects of bargaining that are not prohibited by law, so long as there is mutual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

(5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute are required by law to submit their differences to a third party for a final and binding decision.

(6) "Confidential employee" means one who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.

(7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment.

(b) "Employment relations" does not include subjects determined to be permissive, nonmandatory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

(c) After June 6, 1995, "employment relations" [*shall*] **does** not include subjects which the Employment Relations Board determines to have a greater impact on management's prerogative than on employee wages, hours, or other terms and conditions of employment.

(d) "Employment relations" [*shall*] **does** not include subjects that have an insubstantial or de minimis effect on public employee wages, hours, and other terms and conditions of employment.

(e) For school district bargaining, "employment relations" [*shall expressly exclude*] **excludes** class size, the school or educational calendar, standards of performance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking, gum chewing and similar matters of personal conduct, the standards and procedures for student discipline, the time between student classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS 329.704, **requirements for expressing milk under ORS 653.077,** and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

(f) For all other employee bargaining except school districts, "employment relations" [*expressly*] excludes staffing levels and safety issues (except those staffing levels and safety issues

which have a direct and substantial effect on the on-the-job safety of public employees), scheduling of services provided to the public, determination of the minimum qualifications necessary for any position, criteria for evaluation or performance appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar matters of personal conduct at work, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

(8) "Exclusive representative" means the labor organization that, as a result of certification by the board or recognition by the employer, has the right to be the collective bargaining agent of all employees in an appropriate bargaining unit.

(9) "Fact-finding" means identification of the major issues in a particular labor dispute by one or more impartial individuals who review the positions of the parties, resolve factual differences and make recommendations for settlement of the dispute.

(10) "Fair-share agreement" means an agreement between the public employer and the recognized or certified bargaining representative of public employees whereby employees who are not members of the employee organization are required to make an in-lieu-of-dues payment to an employee organization except as provided in ORS 243.666. Upon the filing with the board of a petition by 30 percent or more of the employees in an appropriate bargaining unit covered by such union security agreement declaring they desire that such agreement be rescinded, the board shall take a secret ballot of the employees in such unit and certify the results thereof to the recognized or certified bargaining representative and to the public employer. Unless a majority of the votes cast in an election favor such union security agreement, the board shall certify deauthorization thereof. A petition for deauthorization of a union security agreement must be filed not more than 90 calendar days after the collective bargaining agreement is executed. Only one such election [*shall*] **may** be conducted in any appropriate bargaining unit during the term of a collective bargaining agreement between a public employer and the recognized or certified bargaining representative.

(11) "Final offer" means the proposed contract language and cost summary submitted to the mediator within seven days of the declaration of impasse.

(12) "Labor dispute" means any controversy concerning employment relations or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment relations, regardless of whether the disputants stand in the proximate relation of employer and employee.

(13) "Labor organization" means any organization that has as one of its purposes representing employees in their employment relations with public employers.

(14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior to the date scheduled for an interest arbitration hearing.

(15) "Legislative body" means the Legislative Assembly, the city council, the county commission and any other board or commission empowered to levy taxes.

(16) "Managerial employee" means an employee of the State of Oregon who possesses authority to formulate and carry out management decisions or who represents management's interest by taking or effectively recommending discretionary actions that control or implement employer policy, and who has discretion in the performance of these management responsibilities beyond the routine discharge of duties. A "managerial employee" need not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection, "managerial employee" [*shall not be construed to*] **does not** include faculty members at a community college, college or university.

(17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute between the public employer and the exclusive representative regarding employment relations.

(18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclusive representative in negotiations and contract administration of all persons in an appropriate bargaining unit who are not members of the organization serving as exclusive representative of the employees. The payment [*shall*] **must** be equivalent to regular union dues and assessments, if any, or [*shall*] **must** be an amount agreed upon by the public employer and the exclusive representative of the employees.

(19) "Public employee" means an employee of a public employer but does not include elected officials, persons appointed to serve on boards or commissions, incarcerated persons working under section 41, Article I of the Oregon Constitution, or persons who are confidential employees, supervisory employees or managerial employees.

(20) "Public employer" means the State of Oregon, and the following political subdivisions: Cities, counties, community colleges, school districts, special districts, mass transit districts, metropolitan service districts, public service corporations or municipal corporations and public and quasi-public corporations.

(21) "Public employer representative" includes any individual or individuals specifically designated by the public employer to act in its interests in all matters dealing with employee representation, collective bargaining and related issues.

(22) "Strike" means a public employee's refusal in concerted action with others to report for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his or her absence in whole or in part from the full, faithful or proper performance of his or her duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employee to lawfully express or communicate a complaint or opinion on any matter related to the conditions of employment.

(23) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment. Failure to assert supervisory status in any Employment Relations Board proceeding or in negotiations for any collective bargaining agreement [*shall*] **does** not thereafter prevent assertion of supervisory status in any subsequent board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, [*no*] **a** nurse, charge nurse or similar nursing position [*shall*] **may not** be deemed to be supervisory unless [*such*] **that** position has traditionally been classified as supervisory.

(24) "Unfair labor practice" means the commission of an act designated an unfair labor practice in ORS 243.672.

(25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute mutually agree to submit their differences to a third party for a final and binding decision.

SECTION 3a. If Senate Bill 400 becomes law, section 3 of this 2007 Act (amending ORS 243.650) is repealed and ORS 243.650, as amended by section 1, chapter _____, Oregon Laws 2007 (Enrolled Senate Bill 400), is amended to read:

243.650. As used in ORS 243.650 to 243.782, unless the context requires otherwise:

(1) "Appropriate bargaining unit" means the unit designated by the Employment Relations Board or voluntarily recognized by the public employer to be appropriate for collective bargaining. However, an appropriate bargaining unit [*cannot*] **may not** include both academically licensed and unlicensed or nonacademically licensed school employees. Academically licensed units may include but are not limited to teachers, nurses, counselors, therapists, psychologists, child development specialists and similar positions. This limitation does not apply to any bargaining unit certified or recognized prior to June 6, 1995, or to any school district with fewer than 50 employees.

(2) "Board" means the Employment Relations Board.

(3) "Certification" means official recognition by the board that a labor organization is the exclusive representative for all of the employees in the appropriate bargaining unit.

(4) "Collective bargaining" means the performance of the mutual obligation of a public employer and the representative of its employees to meet at reasonable times and confer in good faith with respect to employment relations for the purpose of negotiations concerning mandatory subjects of bargaining, to meet and confer in good faith in accordance with law with respect to any dispute concerning the interpretation or application of a collective bargaining agreement, and to execute written contracts incorporating agreements that have been reached on behalf of the public employer

and the employees in the bargaining unit covered by such negotiations. The obligation to meet and negotiate does not compel either party to agree to a proposal or require the making of a concession. This subsection may not be construed to prohibit a public employer and a certified or recognized representative of its employees from discussing or executing written agreements regarding matters other than mandatory subjects of bargaining that are not prohibited by law as long as there is mutual agreement of the parties to discuss these matters, which are permissive subjects of bargaining.

(5) "Compulsory arbitration" means the procedure whereby parties involved in a labor dispute are required by law to submit their differences to a third party for a final and binding decision.

(6) "Confidential employee" means one who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.

(7)(a) "Employment relations" includes, but is not limited to, matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures and other conditions of employment.

(b) "Employment relations" does not include subjects determined to be permissive, nonmandatory subjects of bargaining by the Employment Relations Board prior to June 6, 1995.

(c) After June 6, 1995, "employment relations" does not include subjects that the Employment Relations Board determines to have a greater impact on management's prerogative than on employee wages, hours, or other terms and conditions of employment.

(d) "Employment relations" does not include subjects that have an insubstantial or de minimis effect on public employee wages, hours, and other terms and conditions of employment.

(e) For school district bargaining, "employment relations" does not include class size, the school or educational calendar, standards of performance or criteria for evaluation of teachers, the school curriculum, reasonable dress, grooming and at-work personal conduct requirements respecting smoking, gum chewing and similar matters of personal conduct, the standards and procedures for student discipline, the time between student classes, the selection, agendas and decisions of 21st Century Schools Councils established under ORS 329.704, **requirements for expressing milk under ORS 653.077,** and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

(f) For employee bargaining involving employees covered by ORS 243.736, "employment relations" includes safety and staffing only as they relate to on-the-job safety.

(g) For all other employee bargaining except school district bargaining and except as provided in paragraph (f) of this subsection, "employment relations" does not include staffing levels and safety issues (except those staffing levels and safety issues that have a direct and substantial effect on the on-the-job safety of public employees), scheduling of services provided to the public, determination of the minimum qualifications necessary for any position, criteria for evaluation or performance appraisal, assignment of duties, workload when the effect on duties is insubstantial, reasonable dress, grooming, and at-work personal conduct requirements respecting smoking, gum chewing, and similar matters of personal conduct at work, and any other subject proposed that is permissive under paragraphs (b), (c) and (d) of this subsection.

(8) "Exclusive representative" means the labor organization that, as a result of certification by the board or recognition by the employer, has the right to be the collective bargaining agent of all employees in an appropriate bargaining unit.

(9) "Fact-finding" means identification of the major issues in a particular labor dispute by one or more impartial individuals who review the positions of the parties, resolve factual differences and make recommendations for settlement of the dispute.

(10) "Fair-share agreement" means an agreement between the public employer and the recognized or certified bargaining representative of public employees whereby employees who are not members of the employee organization are required to make an in-lieu-of-dues payment to an employee organization except as provided in ORS 243.666. Upon the filing with the board of a petition by 30 percent or more of the employees in an appropriate bargaining unit covered by such union security agreement declaring they desire that the agreement be rescinded, the board shall take a

secret ballot of the employees in the unit and certify the results thereof to the recognized or certified bargaining representative and to the public employer. Unless a majority of the votes cast in an election favor the union security agreement, the board shall certify deauthorization of the agreement. A petition for deauthorization of a union security agreement must be filed not more than 90 calendar days after the collective bargaining agreement is executed. Only one such election *[shall]* **may** be conducted in any appropriate bargaining unit during the term of a collective bargaining agreement between a public employer and the recognized or certified bargaining representative.

(11) "Final offer" means the proposed contract language and cost summary submitted to the mediator within seven days of the declaration of impasse.

(12) "Labor dispute" means any controversy concerning employment relations or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment relations, regardless of whether the disputants stand in the proximate relation of employer and employee.

(13) "Labor organization" means any organization that has as one of its purposes representing employees in their employment relations with public employers.

(14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior to the date scheduled for an interest arbitration hearing.

(15) "Legislative body" means the Legislative Assembly, the city council, the county commission and any other board or commission empowered to levy taxes.

(16) "Managerial employee" means an employee of the State of Oregon who possesses authority to formulate and carry out management decisions or who represents management's interest by taking or effectively recommending discretionary actions that control or implement employer policy, and who has discretion in the performance of these management responsibilities beyond the routine discharge of duties. A "managerial employee" need not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection, "managerial employee" *[may not be construed to]* **does not** include faculty members at a community college, college or university.

(17) "Mediation" means assistance by an impartial third party in reconciling a labor dispute between the public employer and the exclusive representative regarding employment relations.

(18) "Payment-in-lieu-of-dues" means an assessment to defray the cost for services by the exclusive representative in negotiations and contract administration of all persons in an appropriate bargaining unit who are not members of the organization serving as exclusive representative of the employees. The payment *[shall]* **must** be equivalent to regular union dues and assessments, if any, or *[shall]* **must** be an amount agreed upon by the public employer and the exclusive representative of the employees.

(19) "Public employee" means an employee of a public employer but does not include elected officials, persons appointed to serve on boards or commissions, incarcerated persons working under section 41, Article I of the Oregon Constitution, or persons who are confidential employees, supervisory employees or managerial employees.

(20) "Public employer" means the State of Oregon, and the following political subdivisions: Cities, counties, community colleges, school districts, special districts, mass transit districts, metropolitan service districts, public service corporations or municipal corporations and public and quasi-public corporations.

(21) "Public employer representative" includes any individual or individuals specifically designated by the public employer to act in its interests in all matters dealing with employee representation, collective bargaining and related issues.

(22) "Strike" means a public employee's refusal in concerted action with others to report for duty, or his or her willful absence from his or her position, or his or her stoppage of work, or his or her absence in whole or in part from the full, faithful or proper performance of his or her duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of public employment; however, nothing shall limit or impair the right of any public employee to lawfully express or communicate a complaint or opinion on any matter related to the conditions of employment.

(23) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment. Failure to assert supervisory status in any Employment Relations Board proceeding or in negotiations for any collective bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent board proceeding or contract negotiation. Notwithstanding the provisions of this subsection, *[no]* **a** nurse, charge nurse or similar nursing position *[shall]* **may not** be deemed to be supervisory unless *[the]* **that** position has traditionally been classified as supervisory.

(24) "Unfair labor practice" means the commission of an act designated an unfair labor practice in ORS 243.672.

(25) "Voluntary arbitration" means the procedure whereby parties involved in a labor dispute mutually agree to submit their differences to a third party for a final and binding decision.

SECTION 4. (1) The Commissioner of the Bureau of Labor and Industries shall appoint an advisory committee. The advisory committee must include equal representation of members from labor and management.

(2) Upon request by a particular industry or profession, the advisory committee shall:

(a) Determine when the ordinary course of the requesting industry or profession makes compliance with ORS 653.077 difficult for an employer in that industry or profession; and

(b) Submit to the commissioner recommendations for rules that address compliance difficulties in that industry or profession.

(3) The commissioner shall determine the terms and organization of the advisory committee.

(4) All agencies of state government, as defined in ORS 174.111, are directed to assist the advisory committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the advisory committee consider necessary to perform their duties.

SECTION 5. ORS 653.075 and 653.077 are added to and made a part of ORS 653.010 to 653.261.

SECTION 6. The amendments to ORS 243.650, 653.077 and 653.256 by sections 1 to 3 of this 2007 Act apply to conduct occurring on or after the effective date of this 2007 Act.

SECTION 6a. If Senate Bill 400 becomes law, section 6 of this 2007 Act is amended to read:

Sec. 6. The amendments to ORS 243.650, 653.077 and 653.256 by sections 1, **2 and 3a** *[to 3]* of this 2007 Act apply to conduct occurring on or after the effective date of this 2007 Act.

SECTION 7. Notwithstanding section 6 of this 2007 Act, ORS 653.077 (10) first applies to the 2008-2009 school year.

Passed by House March 29, 2007

Repassed by House May 8, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate May 4, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State

Enrolled
House Bill 2961

Sponsored by Representative HOLVEY, Senator PROZANSKI; Representatives BARKER, BARNHART, BEYER, BONAMICI, BOQUIST, CANNON, ESQUIVEL, GALIZIO, GARRARD, GELSER, KOTEK, KRIEGER, MORGAN, NOLAN, OLSON, READ, ROBLAN, ROSENBAUM, SHIELDS, TOMEI, WITT, Senators BROWN, BURDICK, NELSON, WALKER

CHAPTER .....

AN ACT

Relating to domestic violence; creating new provisions; amending ORS 21.111; appropriating money; and providing for revenue raising that requires approval by a three-fifths majority.

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

SECTION 1. ORS 21.111, as amended by section 15, chapter 702, Oregon Laws 2005, is amended to read:

21.111. (1) In the proceedings specified in subsection (2) of this section, the clerk of the circuit court shall collect the sum of $99 as a flat and uniform filing fee from the petitioner at the time the petition is filed, and shall collect the sum of $51 as a flat and uniform filing fee from the respondent upon the respondent making an appearance.

(2) The filing fee established by subsection (1) of this section shall be collected by the clerk in the following proceedings:

(a) Proceedings for dissolution of marriage, annulment of marriage or separation.

(b) Filiation proceedings under ORS 109.124 to 109.230.

(c) Proceedings to determine custody or support of a child under ORS 109.103.

(3) In addition to all other fees collected, the clerk of the circuit court shall collect from the moving party a fee of $50 at the time of the filing of a motion after entry of a judgment of marital annulment, dissolution or separation. A fee of $35 shall be charged to the responding party at the time a response is filed to the motion. The fee provided for in this subsection does not apply to any pleading under ORCP 68, 69 or 71.

(4) In addition to all other fees collected, the clerk of the circuit court shall collect from the petitioner a fee of $10 at the time of the filing of a petition for marital annulment, dissolution or separation. A fee of $10 shall be charged to the respondent upon the respondent making an appearance. Fees collected under this subsection shall be paid into the Domestic Violence Clinical Legal Education Account established under section 3 of this 2007 Act.

[(4)] **(5)** A paper or pleading shall be filed by the clerk only if the fee required under this section is paid or if a request for a fee waiver or deferral is granted by the court. No part of any such filing fee shall be refunded to any party. The uniform fee shall cover all services to be performed by the court or clerk in any of the proceedings, except where additional fees are specially authorized by law.

[*(5)*] **(6)** Any petitioner or respondent that files a petition or appearance that is subject to the filing fees established under subsection (1) of this section must include in the caption of the pleading the following words: "Domestic relations case subject to fee under ORS 21.111."

[*(6)*] **(7)** The fees described in this section shall not be charged to a district attorney or to the Division of Child Support of the Department of Justice for the filing of any case, motion, document, stipulated order, process or other document relating to the provision of support enforcement services as described in ORS 25.080.

SECTION 2. The amendments to ORS 21.111 by section 1 of this 2007 Act apply only to filings made in circuit court on or after the effective date of this 2007 Act.

SECTION 3. The Domestic Violence Clinical Legal Education Account is created within the General Fund. The account shall consist of moneys paid into the account under ORS 21.111 (4). Moneys credited to the account are continuously appropriated to the Department of Higher Education, and may be used only for the purpose of funding clinical legal education programs at accredited institutions of higher education that provide civil legal services to victims of domestic violence, stalking or sexual assault. The department may provide funding to a program from the account only if the program operates in conjunction with at least one nonprofit service provider to victims of domestic violence, stalking or sexual assault, and as part of the program the provider performs victim counseling services and student training. The department shall distribute moneys from the account to programs in amounts that are proportional to the number of victims of domestic violence, stalking or sexual assault served by the program in the preceding year as compared to the number of victims of domestic violence, stalking or sexual assault served by all programs in the preceding year.

Passed by House May 16, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 14, 2007

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President of Senate

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Secretary of State

Uniform Parentage Act Work Group

ESTABLISHING, DISESTABLISHING AND CHALLENGING LEGAL PATERNITY

HB 2382
(-1 Amendments)

Prepared by Prof. Leslie Harris
University of Oregon School of Law

From the Offices of the Executive Director
David R. Kenagy
and
Deputy Director
Wendy J. Johnson

Report Approved at
Oregon Law Commission Meeting on
January 18, 2007

ESTABLISHING, DISESTABLISHING AND CHALLENGING LEGAL PATERNITY

I. Introduction

Oregon's paternity law is based on the 1973 Uniform Parentage Act, which was promulgated a short time after the Supreme Court first held in *Stanley v. Illinois*, 405 U.S. 645 (1972), that at least some unmarried fathers have constitutionally protected rights regarding the custody and rearing of their children. The Oregon laws have been amended over the years, but the legislature has not comprehensively reexamined the paternity issue for more than 30 years.

Laws and social practices affected by the law of paternity have changed significantly since the 1970s. Among the most important forces of change are the availability of genetic testing that can identify a child's parents with certainty and the development of a sophisticated and complex federal-state program for establishing paternity and collecting child support. Perhaps of greatest significance in the long-run are major changes in family forms and mores. Compared to 30 years ago, many more children are born to unmarried women, and many more children spend portions of their lives living in households with a parent and the parent's partner who is not the child's biological parent but who may function as a parent and to whom the parent may or may not be married.

These changes are not confined to Oregon, but are occurring across the country. The laws from the mid-twentieth century regarding legal parentage sometimes deal inadequately with new problems that arise because of these changes or do not address them at all. The most prominent issues concern the circumstances under which legal paternity can be challenged on the basis that the legal father is not the child's biological father. This report proposes how Oregon law should be revised in light of these social and technical changes.

II. History of the project

In 2004, the Oregon Child Support Program asked the Oregon Law Commission to convene a work group to examine the law of paternity, particularly but not exclusively the circumstances in which paternity may be challenged or disestablished. The Program asked the Commission to undertake this project because of the potentially far-reaching impact of amending paternity laws and the large number of stakeholders with an interest in these issues. The Program identified as a possible model for reform the 2002 Uniform Parentage Act (UPA), promulgated by the National Conference of Commissioners on Uniform State Laws and approved by the ABA in 2003. Seven states, including Washington, have revised their parentage statutes based on the 2002 UPA.

The Commission agreed to the Child Support Program's proposal and appointed a work group charged with examining all provisions of the UPA except Articles 7 and 8 (related to assisted reproduction and gestational agreements) in relation to current Oregon law and determining whether the UPA should be adopted in whole or in part. The group was not limited to making recommendations about the UPA but was instructed to propose law reforms in this area.

The work group was large because the paternity law potentially affects so many areas, including private custody and child support, adoption, the federal-state child support enforcement program, and juvenile court dependency proceedings. Its members, who were the voting members when formal votes were taken, were Karen Berkowitz, Oregon Law Center;

Paula Brownhill, Clatsop County Circuit Court Judge;[1] Emily Cohen, Oregon State Bar (OSB) Juvenile Law Section; Gil Feibleman, OSB Family Law Section; Summer Gleason, Clackamas County District Attorney; Lawrence Gorin, OSB Family Law Section; Professor Kathy Graham, Willamette School of Law; Sandra Hansberger, Executive Director Campaign for Equal Justice; Professor Leslie Harris, University of Oregon School of Law; Russell Lipetzky, OSB Family Law Section; Matt Minahan, D.A.D.S. of America; Maureen McKnight, Multnomah County Circuit Court Judge; Robin Pope, OSB Family Law Section; Mickey Serice, Deputy Director Department of Human Services (DHS) Children, Adults, and Families; Ronelle Shankle, Department of Justice (DOJ) Policy, Projects, & Legislative Coordinator; BeaLisa Sydlik, Oregon Judicial Department (OJD) Court Programs and Services Division; and Angelica Vega, Marion-Polk Legal Aid Service. The chair of the work group was Oregon Law Commission member Sandra Hansberger. Staff attorney assistance was provided by Samuel Sears, Oregon Law Commission; Susan Grabe, OSB; and Doug McKean, Legislative Counsel. Leslie Harris was the reporter.

Advisors to the work group, who participated in meetings, were Scott Adams, OSB Family Law Section; Kevin Anselm, Office of Administrative Hearings; Tim Brewer, OSB Family Law Section; John Chally, OSB Family Law Section; Stacey Daeschner, DHS Children, Adults, and Families; David Gannett, OSB Family Law Section; Carmen Brady-Wright, DOJ Family Law Section; Sybil Hebb, Oregon Law Center; David Koch, Multnomah County Juvenile Services Division; Shari Levine, Executive Director Open Adoption & Family Services; Vicki Tungate, DOJ Division of Child Support; and Jennifer Woodward, DHS Center for Health Statistics.

Interested persons who were advised of the group's activities and some of whom participated in work group sessions included Deb Carnaghi, DHS Children, Adults, and Families; Jean Fogarty, DOJ General Counsel; Thomas Hedberg, DOJ Division of Child Support; Audrey Hirsch, DOJ Family Law Section; Nancy Keeling, DHS Children, Adults, and Families; Tim Loewen, Yamhill County Juvenile Department; Kim Mosier, DOJ Family Law; Gail Schelle, DHS Children, Adults, and Families; Amy Sevdy, DHS Children, Adults, and Families; Catherine Stelzer, DHS Foster Care; Kathie Stocker, Holt International Children Services; Ingrid Swenson, Office of Public Defense Services; William Taylor, Staff Counsel Judiciary Committee; and Patrick Teague, DOJ Division of Child Support.

To prepare for this project, the work group familiarized itself with the following materials in addition to the 2002 UPA:

1) Cases from the United States Supreme Court on the rights of unwed biological fathers;

2) Oregon statutes and cases from the Oregon Supreme Court and Court of Appeals concerning the establishment of legal paternity;

3) Provisions of federal law with which Oregon must comply as a condition of participating in the federal-state child support enforcement program; and

4) Newspaper and legal journal articles and technical reports about trends in the law regarding paternity disestablishment across the country and specific provisions of several states' laws.

In fashioning this proposed legislation, the work group also reviewed the work of the 2005 OLC Putative Fathers Work Group, which drafted amendments to Chapters 109 and 419B that were enacted as SB 234 in 2005.

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[1] Judge Brownhill had to resign from the work group in the fall of 2006.

III. The problems that this proposal addresses

In the 1970s, about 90 per cent of all children were born to married women, and their paternity was resolved by the legal presumption that a married woman's husband is the father of her children.[2] In a number of states, including Oregon, legal rules prohibited the admission of evidence to rebut the presumption[3] or precluded parents from testifying so as to "bastardize" their child. Even in states where the presumption could be rebutted, blood tests then available were so primitive that they were unlikely to exclude a man as the biological father even if he were not.[4] As a result of these conditions, the legal father of most children was also the social father, the man who functioned as their father – their mother's husband. This man was usually also their biological father, but even when he was not, few people were likely to know for sure. Children born to unmarried mothers typically did not have a social father, but they also did not have legal fathers because paternity was often not legally established. In these circumstances, the law simply did not need to choose between children's biological and social fathers for purposes of determining their legal fathers. For all practical purposes, social fathers were legal fathers.

Legal and social changes have brought sharp challenges to this approach to legal paternity. The most important issue, the one that underlies most of the problems that this proposal deals with, is the relative importance of social and biological paternity in determining legal paternity when a child's legal father and biological father are not the same. This issue arises both for legal fathers who are not and have never been married to the children's mothers and for husbands who are presumed to be the legal fathers of their wives' children.

Changes in the number and legal position of children born to unmarried women make it much more likely today that men will have the legal responsibilities of fatherhood without being the children's social fathers. Today about a third of all children are born to unmarried women, about a quarter to a half of whom live with the child's father at birth.[5] All states, including Oregon, now aggressively seek to determine the biological paternity of children born to unmarried mothers for purposes of imposing child support obligations on these men. The result is that many unmarried legal fathers have never functioned as their children's social father.

In addition, the legal methods for establishing paternity create risks that the men identified as fathers may not actually be biological fathers. The federal-state child support enforcement program encourages unmarried mothers and men believed to be fathers to establish legal paternity voluntarily; all states, including Oregon, allow mothers and alleged fathers to do this by signing a voluntary acknowledgment identifying the man as the legal father and filing it with the state.[6] This has become the most common way that legal paternity of children born to

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[2] Center for Disease Control and Prevention, 48 (16) *National Center for Health Statistics Report* 17 (table 1) (Oct. 18, 2000).

[3] ORS 109.070 creates a conclusive presumption that a married woman's husband is the legal father of her children if he is not impotent or sterile and was living with the mother at the time of conception.

[4] Ira Mark Ellman & David Kaye, *Probabilities and Proof: Can HLA and Blood Group Testing Prove Paternity?* 54 N.Y.U. L. REV. 1131, 1135 (1970).

[5] Mary Parke, *Who are "Fragile Families" and What Do We Know About Them?* (Center for Law & Social Pol'y Policy Brief Jan. 2004); Larry Bumpass et al, *The Changing Character of Stepfamilies: Implications of Cohabitation and Nonmarital Childbearing*, DEMOGRAPHY 425, 436 (1995); Jason Fields & Lynne Casper, *America's Families and Living Arrangements, Current Population Reports P20-537* at 12-14 (2001).

[6] The federal requirements are set out in 42 U.S.C. § 666(a)(5). The state statutes are discussed in this report.

unmarried mothers is established.[7] Most of the voluntary acknowledgments are signed at the time of birth at the hospital or other birthing facility. A voluntary acknowledgment can be signed without genetic testing having been done; indeed, federal law provides that states may not require blood testing as a precondition to signing a voluntary acknowledgment of paternity.[8] The second most common way that paternity of children born to unmarried mothers in Oregon is through an administrative process that establishes legal judgments of paternity.[9] Blood testing is available, but orders are not infrequently entered when testing has not been done because the man alleged to be the father does not contest the action, believing that he is the father, or because he does not respond and a default order is entered.

Today when someone becomes suspicious that a child's legal father may not be the biological father, genetic testing can readily resolve the question. In the last 30 years, tests have been developed that can identify a child's biological parents with certainty in most cases. These tests are not prohibitively expensive for most individuals and are easy to administer, and they are being used with increasing frequency.

Recent studies show that almost always the man identified as a child's legal father is the biological father. The most comprehensive data analysis concluded that in the U.S., 98 percent of the men raising children they believe to be their biological children are correct and that only 30 percent of the men who seek blood tests to confirm paternity are not the biological father.[10] Data from the Vital Records section of the Oregon Health Division and the Child Support Program show that in less than one per cent of all cases in which paternity was established by voluntary acknowledgment were judicial orders later entered finding that the man was not the biological father. In fiscal years 2004, 2005 and through March of 2006, of the 27,536 cases in which paternity was established by voluntary acknowledgment, a party filed a request with the state to reopen the paternity findings in 79 cases. In 22 percent of these 79 cases, the man identified as the legal father was found not to be the biological father.[11]

Nevertheless, when genetic testing does show that a child's legal father is not the biological father, someone – most often the mother or the legal father – may want to obtain a legal order that the man is not the legal father. Oregon law addresses the possibility of such challenges, but the results it provides have come under criticism. Each of the ways that paternity can be established – by presumption, by voluntary acknowledgment, and by administrative or court order – has come under scrutiny.

A. Presumptions that husbands are the legal fathers of their wives' children

ORS 109.070(1)(a) provides that a husband is conclusively presumed to be the father of

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[7] According to data from the Oregon Vital Records office and Child Support Program, in fiscal years 2004, 2005 and through March of 2006, paternity was established for 31,866 children in the state; of these, 27,536 or more than 86 per cent of the total, were by voluntary acknowledgment. These figures were provided to the work group by representatives from the Vital Records Office and Child Support Program who participated in the group.

[8] 45 CFR 302.70(a)(5)(vii).

[9] *See* ORS 416.400 to 416.465.

[10] Kermyt G. Anderson, *How Well Does Paternity Confidence Match Actual Paternity? Results from Worldwide Nonpaternity Rates*, 48 (3) CURRENT ANTHROPOLOGY 511 (2006), discussed *at Nearly All Paternity Tests Back Dad's Biological Claim*, FORBES MAGAZINE, (Apr. 17, 2006), www.forbes.com/forbeslife/health/feeds/hscout/2006/04/17/hscout532176.html and U. S. D.H.H.S. HEALTHDAY REPORTER (Apr. 17, 2006), http://www.healthfinder.gov/news/newsstory.asp?docID=532176.

[11] These figures were provided to the work group by representatives from the Vital Records Office and Child Support Program who participated in the group.

his wife's children if he is not impotent or sterile and the couple was cohabiting at the time of conception.[12] The effect of the conclusive presumption is to define the husband as the legal father of his wife's children, regardless of biological reality, if the facts of cohabitation and fertility are proven. *See Matter of Marriage of Hodge*, 301 Or. 433, 722 P.2d 1235 (1986). The only other state with a conclusive presumption allows husbands and wives to challenge it under some circumstances. Cal. Fam, Code §§ 7540, 7541.

The conclusive presumption is no longer justified by lack of reliable evidence about biological parentage, but it does protect married couples who are raising children who are not the husband's biological offspring from outsiders to the marriage who want to establish the husband's nonpaternity. The most common challenge would be from the biological father of a child who wanted to establish a legal relationship with the child over the objection of the mother and her husband. The conclusive presumption of paternity can constitutionally be invoked to preclude a biological father from establishing his own paternity in such a case. *Michael H. v. Gerald D.*, 499 U.S. 937 (1989).

The problem, then, is determining whether to retain the conclusive presumption and, if it is abolished, whether to allow third parties to challenge a husband's paternity when he and the mother object.

B. Rescinding and challenging voluntary acknowledgments of paternity

The federal child support enforcement laws require state law to create a voluntary acknowledgment of paternity process and to provide that a valid, unrescinded voluntary acknowledgment is legally equivalent to a judgment of paternity. State law may permit a voluntary acknowledgment to be challenged only on the basis of fraud, duress or material mistake of fact. 42 U.S.C. § 666(a)(5).

Oregon statutes comply with these requirements. Under ORS 109.070(2), a party to a voluntary acknowledgment of paternity may rescind it within the earlier of 1) sixty days after the acknowledgment was filed or 2) the date an order in a proceeding relating to the child, including a proceeding to establish a support order, was entered. Under ORS 109.070(3), a voluntary acknowledgment may be challenged in circuit court on the basis of fraud, duress or material mistake of fact at any time by a party to the acknowledgment, the child or the Department of Human Services or the administrator of the child support enforcement program if the child is in the care and custody of DHS as a dependent child under ORS 419B and the department or the administrator reasonably believes that the acknowledgment was obtained through fraud, duress or a material mistake of fact. Subsection (3) also allows a challenge to be brought in circuit court for up to one year, unless ORS 109.070(4)(a). Subsection (4)(a), in turn, allows a party or the state, if child support enforcement services are being provided and if blood testing has not been done, to apply to the child support administrator or the court for an order for blood testing for up to one year after the acknowledgment was signed. If the blood tests exclude the man as the child's biological father, a party or the state may apply to the court for a judgment of nonpaternity. The paternity that receives this judgment must send it to the state office of vital records so that the child's birth records can be corrected.

The principal problems with this section are 1) the lack of a clear procedure for exercising the rights to rescind or challenge a voluntary acknowledgment, 2) whether a court should have discretion to refuse to set aside a voluntary acknowledgment to achieve justice and

[12] SB 234, which was passed by the legislature in 2005, removed the conclusive presumption from Oregon law. That provision, however, sunsets effective January 2, 2008.

equity for the parties and the child, and 3) whether blood test evidence showing that the man who signed the voluntary acknowledgment is not the biological father should automatically result in an order setting aside the acknowledgment on the basis of fraud or mistake if either of the parties was unaware that the man was not the biological father.

A fourth problem, particularly important in adoption cases, is that mothers and alleged fathers may sign acknowledgments of paternity at any time, even after the mother has relinquished a child for adoption after identifying another man as the father. If this happens, the adoption may not go forward or may be delayed until the man's parental rights are terminated.

C. Challenging administrative orders of paternity

ORS 416.443 provides that if paternity was established administratively through the Child Support Program, a party may petition to reopen the matter for up to one year if no genetic tests were done before the finding of paternity was made. This section does not fully set out the procedure for handling such petitions, and it does not make the process available when paternity is established by voluntary acknowledgment because it was enacted before the statutes establishing the voluntary acknowledgment process. However, ORS 109.070(4), as discussed above, does allow a party and, in some cases the state child support enforcement agency, to use this process for up to one year when paternity was established by acknowledgment and blood testing was not done.

D. Challenging judicial orders of paternity

The Oregon statutes do not establish a specific process for challenging a judicial order of paternity. The main issues presented to the work group were whether the Oregon statutes should set out a process for challenging orders of paternity or leave the process to be governed by ORCP 71, and whether the case law that has developed regarding challenges to orders of legal paternity on the basis that the legal father is not the biological father applies rules that are consistent with current policy.

Under existing Oregon law, a judgment of paternity is *res judicata* as to parties to the proceeding. ORCP 71 provides that a judgment procured by fraud is an exception, but if the father does not contest the proceeding, he cannot successfully claim that he was defrauded if later blood testing shows that he is not the biological father. *Watson v. State,* 71 Or. App. 734, 694 P.2d 560 (1985). If a husband does not contest that he is the father of a child during a divorce proceeding, and he later learns that the mother lied to him about this, he does not have a claim to set aside the judgment under ORCP 71. *McClain v. McClain,* 155 Or, App. 258, 958 P.2d 909 (1998).

E. Rights of putative fathers in proceedings under ORS Chapter 109

SB 234, proposed by the Law Commission and enacted by the 2005 legislature, redefined which putative fathers (alleged fathers whose paternity has not been resolved) are entitled to procedural and substantive protection in juvenile court proceedings regarding the custody of their children to bring the law into line with constitutional requirements and express sound policy. ORS 419B.875. The work group that proposed this legislation recognized that ORS 109.096 deals with the same issue of putative fathers' rights when adoption or custody proceedings are brought under Chapter 109. However, the work group did not recommend amendments to ORS 109.096 because its members believed that all the groups with an interest in actions under Chapter 109 were not adequately represented on the group. This issue was referred to the UPA

work group. However, this proposal does not address this contested issue because the work group simply ran out of time to do so.

IV. The objectives of the proposal

The proposed legislation addresses the problem areas identified above as well as an issue that is common to all methods of establishing paternity.

A. Amendments regarding the presumption that the husband is the child's father

1) Abolish the conclusive presumption of paternity but retain a rebuttable presumption

The work group unanimously concluded that, given the availability of relatively inexpensive, reliable genetic testing, the absolute rule that a husband is father of his wife's children no longer expresses sound public policy and that only the rebuttable presumption should continue to be part of Oregon law. The work group considered a proposal to impose a time limit on challenges by the parents, as does California law. Cal. Fam, Code §7541. The Uniform Parentage Act also requires that challenges to a presumption that a man is the father of a child be brought within two years of the child's birth. UPA § 607(a). While the work group was divided on this issue, those who favored a time limit agreed not to impose one in the spirit of compromise with those who believed strongly that a husband should be able to challenge the presumption at any time.

2) Create a presumption regarding the paternity of children born soon after the end of a marriage

The work group also decided to recommend enactment of a new rebuttable presumption – that a child born to a formerly married woman within 300 days of the ending of the marriage is the child of the former husband. This presumption derives from UPA § 204(a)(2). Without this provision, a child born to a woman after her husband dies, they divorce, or the marriage is otherwise terminated has no presumptive father, even though it may be very likely that the former husband is the father. The work group was informed that, when a child is born under these circumstances and the parties have no reason to doubt the husband's paternity, Oregon practitioners sometimes proceed as if this presumption existed.

The provision produced some controversy in the work group because it requires that a former husband (or a former wife who objects to her former husband being the legal father) take steps to rebut the presumption. One member of the group was particularly concerned about the difficulties of rebutting the presumption if the marriage ended by death. A majority of the work group voted 8-2 to create the presumption, concluding that it codifies current practice in many situations and expresses sound policy. Members of the work group observed that in the situation where the husband of the child has died and his paternity is challenged, if it is not possible to do genetic testing, the presumption can be rebutted by other evidence. It is also possible in such a situation that no one would invoke the rebuttable presumption in the first place.

3) Limit the ability of third parties to challenge a husband's paternity

The work group unanimously concluded that public policy favors protecting married couples raising children from challenges to paternity by outsiders to the family for so long as a couple wishes to remain together and raise the children together. Allowing a third party to raise a paternity challenge would violate the parents' right to family and marital privacy and would not

serve the interests of the children. However, if the parents are no longer married and living together, their claim to privacy and the assumption that the interests of the children are served by allowing the parents to raise them without interference are not so strong. Therefore, the work group recommends that for so long as the mother and her husband are married and living together, only one of them may introduce evidence in any legal proceeding to challenge the husband's paternity. This provision is similar to California Family Code §§ 7540, 7541. The group discussed what term properly describes the family that is protected and decided to use "married and cohabiting" with the understanding that the term is not to be interpreted narrowly but covers all intact families. Thus, a family in which one spouse was away for an extended period, but the husband and wife were still together as a couple would be protected by the provision.

B. Procedures and standing for challenges to voluntary acknowledgments of paternity

1) Failure to give adequate advice about the legal effect of acknowledgments

The work group discussed whether hospitals are following recommendations from the Department of Justice to give information about the legal effects of voluntary acknowledgments to mothers and putative fathers before they sign these documents. Work group members expressed concern that often hospital staff do not show videos or give adequate warnings regarding the consequences of signing an acknowledgment and recommended greater efforts to educate attorneys, the public, and hospital staff about signing and challenging voluntary acknowledgments.

2) Create a process for challenging voluntary acknowledgments

The work group voted 9 to 1 to establish an explicit statutory process to challenge voluntary acknowledgments, with 2 abstentions. The limited resistance to this proposal was based on the belief that a detailed procedure was not necessary. The majority of the work group accepted arguments from the Child Support Program that a significant number of people who want to rescind or challenge voluntary acknowledgments are proceeding *pro se* and need statutory guidance.

3) Challenges to voluntary acknowledgments based on blood test evidence

The work group discussed at length whether the law should explicitly provide that a person who is not a biological parent may not sign a voluntary acknowledgment and whether a purported acknowledgment from such a person should be *per se* invalid. Ultimately the group decided not to impose these requirements. Federal legislation and the history of the federal legislation indicate that there is not a federal requirement that the man who signed the voluntary acknowledgment be the biological father. Moreover, the federal and state laws that allow an acknowledgment to be challenged after 60 days for fraud, duress or material mistake of fact is inconsistent with the idea that a voluntary acknowledgment should automatically be set side upon submission of blood test evidence showing that the man who signed the acknowledgment is not the biological father. Cases from other states reach inconsistent conclusions about whether lack of biological parentage is enough to support a finding of material mistake of fact, and the group decided not to propose legislation on this issue but to leave it for judicial development.

4) Define fraud for purposes of this statute

The group rejected a proposal to define "fraud" for purposes of this section. The group

concludes that fraud is adequately described in case law and that further definition might create confusion rather than clarity.

5) Prohibit parents whose rights have been eliminated from filing acknowledgments

The group also agreed to prohibit parents who have already relinquished children for adoption or whose parental rights had been terminated from signing voluntary acknowledgments that would have the effect of delaying the adoption or other permanent placement of the children. This provision was not controversial.

C. Allow petitions for blood testing when a voluntary acknowledgment was signed without testing having been done and clarify the process when a petition is filed

Under existing law, if blood tests were not performed before an administrative order of paternity is entered, a party to the proceeding may file an administrative petition to reopen the issue for up to one year. ORS 416.443. A party to a voluntary acknowledgment or the state, if child support enforcement services are being provided, may seek an order from the court or from the administrator for blood testing for up to one year after the acknowledgment was signed if blood tests were not done. ORS 109.070(4)(a). The work group agreed to extend this option to the state if the child is in state custody under the dependency provisions of ORS Chapter 418B.

ORS 416.443 implicitly contemplates that if blood testing shows that the legal father is not the biological father, the administrator may seek a court order of nonpaternity, but the section does not state this clearly. The work group agreed to propose language that will make this explicit.

D. Create an explicit process for challenging judicial orders of legal paternity on the basis that the legal father is not the biological father

The work group was divided about whether the Oregon statutes should be amended to create a specific process for challenging orders of paternity. Several lawyers argued that this was unnecessary because ORCP 71,governing motions to set aside judgments, is entirely sufficient for the purpose. However, representatives from the Child Support Program argued that a statutory process is needed because a number of people who wish to make challenges proceed *pro se* and do not understand how the rules of civil procedure could relate to their problem. The work group agreed to set out a procedure that is as parallel as possible to ORCP 71. The group also agreed that the substantive rules here should be the same as the substantive rules applicable to challenges to voluntary acknowledgments unless an explicit reason for treating the two kinds of paternity findings differently exists.

1) Standing to file a petition

Standing to file a petition to challenge an order of paternity is extended to the same persons and entities that can file a challenge to a voluntary acknowledgment: the parties, DHS if the child is in the custody of DHS as a dependent child under ORS Chapter 419B, and the Division of Child Support if support rights have been assigned to the state. However, the estate of a legal father who has died may not bring an action under this statute. The work group intentionally decided to limit access to this procedure to those most likely to raise challenges, while recognizing that it is possible that others may have interests that are affected by a finding of legal paternity and wish to challenge it. Such actions would be governed by the rules of civil

procedure and generally applicable Oregon statutes.

2) Time limits on challenges

Challenges based on mistake, inadvertence, surprise or excusable neglect must be filed within one year. This provision is parallel to ORCP 71. A challenge based on fraud, misrepresentation or other misconduct must be brought within one year from the date of discovery.

3) Specifics of the petition

The work group agreed that the petition must state "the facts and circumstances that resulted in the entry of the paternity judgment and explain why the issue of paternity was not contested" to avoid having petitioners plead the language of the statute in conclusory terms.

The petitioner must designate as parties everyone who was a party to the original paternity proceeding, the child if he or she is "a child attending school" under Oregon law, DHS if the child is in DHS custody under the dependency provisions of ORS Chapter 419B, and the Division of Child Support if child support rights have been assigned to the state. Others may have interests that are affected by the proceeding, but in the interests of simplicity, the work group decided not to require that they be made parties. However, a proceeding under this section does not bar anyone who has an interest affected by a finding regarding the child's legal paternity from bringing an action based on that interest. For example, a child may not bring an action under these amendments, and minor children are not parties to actions brought by others, but children's interests are obviously affected by orders under this section. If a child wishes to bring an action regarding his or her paternity at a later date, due process would require that he or she be permitted to do so.

4) Representation of children's interests

If the child is older than 18 and is a "child attending school" under Oregon law, he or she must be made a party. The work group decided that minor children should not be made parties, but the court on its own motion or the motion of a party may appoint counsel for the child and must appoint counsel on the child's request. This provision parallels the requirements of ORS 107.425(2).

5) Effect of finding of nonpaternity on past and future child support

If a judge enters an order vacating or setting aside a finding that the man was the child's legal father, he or she must enter an order that future support is not due and may enter an order providing that unpaid child support is excused or satisfied in whole or in part. The judge may not order the state to repay any child support that it collected before the finding of nonpaternity was made. These provisions are consistent with existing law regarding findings of nonpaternity when paternity was based on a voluntary acknowledgment.

6) Technical provisions

Even if blood tests have not been done, a judge may enter an order if a party defaults or if the parties agree. After a court sets aside or vacates a paternity determination, the petitioner must send a copy of the order to the state vital records office so that the child's birth records can be corrected. The court may award reasonable attorney fees and costs to the prevailing party.

NOTE: Attorney members of the work group observed that under current law, family law

practitioners may not consider that a divorce decree that identifies children as "children of the marriage" is a judicial order establishing paternity because the conclusive presumption of paternity did not allow this issue to be contested. Since the conclusive presumption is being abolished, divorce is a logical time that the rebuttable presumption would be challenged. Practitioners need to be made aware of this and to recognize that practice needs to change in response to this change in the law.

E. Allow judges discretion to deny requests for blood tests and challenges to paternity based on justice and equity

Under current Oregon law, a court may refuse to allow the presumption of paternity to be challenged or to set aside the order because the petitioner is equitably estopped from denying paternity. *Johns v. Johns,* 42 Or App 439, 601 P.2d 475 (1979); *Hodge and Hodge,* 84 Or App 62, 733 P.2d 458 (1987). The work group discussed at great length whether to retain this discretion.

A minority of the work group believed that the biological fact of paternity should always determine legal paternity and objected to giving judges any discretion that could result in a finding that a husband, former husband, or other man identified as a legal father was still the legal father even though evidence showed him not to be a child's biological father. The people taking this view framed the issue as one of fairness between the mother and the man and particularly focused on child support obligations. They argue that a man who can establish his biological nonpaternity has been defrauded by the mother's unfaithfulness and simply should not be obliged to pay support under any circumstances. Some of this group would support allowing the judge to deny a challenge to paternity based upon a showing that the party making the challenge should be estopped from denying paternity because he knew the child was not his and still assumed the paternal role (or because she had represented that the child was the husband's) and the other party had relied on this representation. However, these members of the group opposed allowing the judge to consider the child's best interests in making the decision, believing that the matter should simply be an issue of equity between the adults.

A majority of the work group believe that the circumstances in which a presumption or rule establishing legal paternity might be challenged are so variable that judges should have discretion to determine whether the facts of a particular case are sufficiently unusual that justice to the parties and the child require that the legal relationship between the man and the child not be severed. For example, the presumption might be challenged by a mother who wanted to cut off the relationship between the child and her soon-to-be-former husband even though the husband and the child had a loving relationship and the husband wished to continue to act as a father to the child. If the rule were that biological paternity was absolutely determinative, the judge could not act to preserve the legal parent-child relationship, even if the judge found that the mother should be estopped from denying her husband's paternity or that maintaining the parent-child relationship was in the child's best interests. Similarly, a husband or man who has had both a social and legal relationship to the child for many years may seek to terminate the relationship because of the results of paternity tests and a desire not to pay child support. In this case, a judge would consider the emotional ties between the legal father and the child, as well as

the legal father's conduct toward the child. In other circumstances, especially where the child is very young, disestablishment is very likely to be the appropriate result.[13]

The majority concluded that society has a legitimate interest in protecting children from harm, especially in situations where the legal father has also had a social relationship with the child. Although we cannot legislate that fathers have continuing social relationships with their children, social policy does not and law should not condone severing these relationships. The work group decided that it would not be feasible to draft a statute that would be flexible enough to appropriately respond to the variety of fact scenarios that are likely to arise and that judicial discretion is an appropriate solution.

Some of the opponents who wanted biology to control argued that the judge could protect the husband and child with a developed relationship under the psychological parent statute, ORS 109.119. However, the conditions under which a nonparent can be awarded custody or visitation under ORS 109.119 are very limited, and as a constitutional matter, the position of a nonparent with rights under ORS 109.119 is far more tenuous that that of a legal parent. *See Troxel v. Granville*, 530 U.S. 57 (2000).

The work group voted 10-2 (with one abstention) to grant judges discretion to deny a motion to set aside a judgment of paternity when the evidence shows that the man is not the child's biological father and later voted to extend this discretion to situations where paternity was established by voluntary acknowledgment or marital presumption. Some of the work group wanted the statute to state explicitly that the judge could consider the child's best interests in making the determination because they fear that if the "best interests" language is omitted, judges will believe that they may consider only the interests of the parties and not the interests of the child. Opponents of this view argued that if the "best interests" language were included, some judges would take it as a signal to deny most petitions on the theory the best interests of the child is not usually served by disestablishing paternity. The work group settled on the language "just and equitable to the parties and the child" as best expressing that judges should consider both the conduct of the parties and the interest of the child in exercising this discretion.[14]

By way of comparison, The Uniform Parentage Act allows judges to deny a motion for genetic testing, the first step in rebutting a presumption of paternity under that Act, when the facts show that the party offering the evidence should be estopped from denying the father-child relationship or when the best interests of the child are served by denying the motion. UPA § 608. The UPA includes a list of factors to guide the judge in exercising the discretion granted under the "best interests" provision, and some of the members of the work group favored including such a list in the Oregon statute, but a majority did not support this approach.

The vote on whether to extend judicial discretion to paternity established by voluntary acknowledgment was 4-3 in favor of granting discretion, with a number of members absent. Some of those voting against judicial discretion believed that the federal law which allows challenges to voluntary acknowledgments only on the basis of fraud, duress or material mistake of fact, does not allow judicial discretion. The majority believed that judicial discretion was

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[13] As previously noted, the UPA allows challenges only during the first two years of the child's life. The work group recommends that challenges be permitted beyond this time, provided that courts retain discretion to consider all of the facts of the case.

[14] The majority concluded that the same standard of judicial discretion should apply to disestablishing paternity where paternity was established by presumption, voluntary acknowledgment or judgment because legal rules should not vary simply because the decision-making forum differs.

allowed. [15]

F. Clean-up provisions

The work group recommends amendments to other statutory sections to make them consistent with the substantive changes made by the bill, and, as a courtesy, recommend amendments to correct omissions and mistakes from last year's SB 234. The specific changes are discussed in the section-by-section analysis below.

V. Review of legal solutions existing or proposed elsewhere

The work group spent much of the summer of 2006 working through the UPA to determine whether it should be enacted in Oregon. The group quickly agreed not to recommend that the UPA be enacted without changes because of disagreement over some policy issues. The group then considered whether to propose that the UPA be enacted with amendments to reflect these differences. However, the UPA is structured differently from existing Oregon law and does not address a number of issues that are covered in Chapter 109, making it quite difficult to fit the UPA and existing law together. Therefore, the group decided to consider the issues and policy choices expressed in the UPA but not to use it directly as the basis for proposed amendments.

The 2005 legislature amended SB 234, the bill regarding paternity in juvenile court that was developed by the OLC, to include changes regarding paternity disestablishment. These changes are effective only through January 2, 2008, because the legislature knew that this work group was going to reexamine the issues. The work group considered simply recommending that the changes be made permanent but decided to rethink the issues instead.

VI. The proposal

A. Provisions relating to the presumption that a husband is the father of children born to his wife

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

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[15] It appears that states may limit the ability of parties to raise challenges, at least so long as the challenges are the kind that the state permits to be made to judgments. The Uniform Parentage Act, which was drafted by a team of experts from around the country, allows courts to disallow a challenge to a voluntary acknowledgment based on principles of estoppel. UPA § 609(c). *See also* State ex rel. W. Va. Dep't of Health & Human Res., Child Support Enforcement Div. v. Michael George K., 531 S.E.2d 669, 677 (W. Va. 2000) (challenge to voluntary acknowledgment after the sixty-day period based on fraud, duress, or material mistake of fact is simply a threshold matter which does not require that the affidavit be set aside. Rather, once the threshold is met, the court must determine whether setting the affidavit aside is in the child's best interest.); In re Paternity of Cheryl, 746 N.E.2d 488 (Mass.2001)(where father voluntarily acknowledged child and judgment was entered accordingly and he moved to set aside five and a half years later, motion to vacate was not filed within a reasonable time, father was not entitled to relief from judgment under catchall provision of rule allowing for relief from judgment; and mother's alleged failure to disclose that father was not child's biological father did not constitute fraud upon the court.). The California voluntary acknowledgment statute allows a court to set aside an acknowledgment based on genetic testing showing that the man is not the biological father if in the best interests of the child and lists factors for the court to consider in making this determination. Cal. Fam. Code § 7575(b).

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

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

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

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

(b) A man is rebuttably presumed to be the father of a child born to a woman if he and the woman were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment or dissolution or after entry of a judgment of separation.

* * *

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

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

COMMENT: The proposed amendments to subsections (1) (a) and (b) abolish the conclusive presumption that a husband who is not impotent or sterile and who was living with his wife at the time of conception is the father, retain the rebuttable presumption that a husband is the father of children born to his wife during the marriage, and establish a new presumption that a child born to a woman who is unmarried at the child's birth but who was married within 300 days of the birth is the child of her former husband.

Old subsection (1)(b), which will be renumbered (1)(a) retains the traditional rule that a husband is rebuttably presumed to be the father of children born to his wife during marriage. The language changes in this subsection update terminology to make the rule clearer and do not change substantive law.

New subsection (1)(b) creates a new rebuttable presumption, that a child born to a woman within 300 days after her marriage ended is the child of her former husband.

Subsection (1)(c)

Subsection (2) authorizes the husband or wife to offer evidence to rebut the presumption with no time limit. The subsection also provides that for so long as the husband and wife are married and cohabiting no other person may challenge the presumption without the consent of both the husband and the wife.

Subsection (3) gives the judge discretion to exclude evidence offered to rebut the presumption of paternity established in subsection (1) upon a finding that to do so is "just and equitable to the parties and the child." This language is intended to allow judges to invoke traditional principles of estoppel and laches to preclude challenges when the facts warrant, as well as to conclude that on balance, the best interests of the child and justice and fairness to the adults will be best served by this ruling.

B. Provisions relating to voluntary acknowledgements of paternity

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

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

* * *

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

* * *

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

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

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

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

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

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

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

(b) The challenge may be brought by:

(A) A party to the acknowledgment;

(B) The child named in the acknowledgment; or

(C) The Department of Human Services or the administrator, as defined in ORS 25.010, if the child named in the acknowledgment is in the care and custody of the department under ORS chapter 419B and the department or the administrator reasonably believes that the acknowledgment was obtained through fraud, duress or a material mistake of fact.

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

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

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

[(b)] **(e)** Legal responsibilities arising from the acknowledgment, including child support obligations, may not be suspended during the challenge, except for good cause.

(f) The court may set aside the acknowledgment if the court finds that it is just and

equitable to the parties and the child to do so and finds by a preponderance of the evidence that the acknowledgment was signed because of fraud, duress or a material mistake of fact.

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

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

(A) The party signed a document consenting to the adoption of the child by another individual;

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

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

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

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

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

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

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

COMMENT: Subsection (1) (e) restates the existing requirements for establishing paternity by voluntary acknowledgment when the mother and alleged father are not married to each other.

Subsection (1)(c) amends former subsection (1)(c) by requiring that parents who marry after a child is born also file a voluntary acknowledgment of paternity to establish the husband's legal paternity. This provision is taken from UPA § 204(a)(4) and clarifies that all stepfathers do not automatically become the legal fathers of their wives'.

Subsection (4)(b) establishes a process for a party to rescind a voluntary acknowledgment.

Subsection (5)(b)-(d) creates the process for challenging a voluntary acknowledgment outside the 60-day rescission period, prescribes who may file such a challenge, and allocates the burden of proof. Some of these provisions were part of SB 234, proposed by the Oregon Law

Commission and enacted by the legislature in 2005, and were inadvertently made subject to sunset provisions in that legislation. This provision makes those terms permanent.

Subsection (5)(f) grants the judge discretion to decline to set aside the voluntary acknowledgment upon a finding that to do so is "just and equitable to the parties and the child." This language is intended to allow judges to invoke traditional principles of estoppel and laches to preclude challenges when the facts warrant, as well as to conclude that on balance, the best interests of the child and justice and fairness to the adults will be best served by this ruling.

Subsection (6) allows a party or the state if the child is in the custody of DHS pursuant to a dependency proceeding brought under ORS Chapter 419B to use existing administrative procedures to seek blood tests to determine paternity for up to one year after the voluntary acknowledgment was filed if blood tests were not previously done. These administrative proceedings are governed by ORS 416.443, which is described in the next section.

Subsection (7) makes invalid a voluntary acknowledgment signed by a parent or alleged parent after that parent or alleged parent consented to adoption of the child or permanently relinquished the child to a child caring agency, after the parent's rights were terminated by a court or after a court found that the alleged parent was not the child's legal parent.

C. Provision related to administrative proceedings to challenge paternity

SECTION 7. ORS 416.443 is amended to read:

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

[(1)] **(2)** No later than one year after an order establishing paternity is entered under ORS 416.440 and if no *[genetic parentage test has]* **blood tests have** been completed, a party may apply to the administrator to have the issue of paternity reopened **and for an order for blood tests.**

(3) No later than one year after a voluntary acknowledgment of paternity is filed in this state and if no blood tests have been completed, a party to the acknowledgment, or the Department of Human Services if the child named in the acknowledgment is in the care and custody of the department under ORS chapter 419B, may apply to the administrator for services under ORS 25.080 and for an order for blood tests.

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

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

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

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

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

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

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

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

COMMENT: ORS 416.443 has been part of the Oregon code since 1979, when the legislature created the administrative process for establishing paternity and child support obligations. As currently written, this section allows a party to an administrative proceeding to petition to reopen the issue of paternity if genetic testing was not done before the paternity order was entered. The petition must be filed within one year after the order was entered. The most important change to this section extends this option to parties who established paternity by signing a voluntary acknowledgment. The other changes are technical.

Administrative reopening of voluntary acknowledgments of paternity Section 3 extends the option of petitioning the agency that administers the child support enforcement program to reopen paternity findings to parties who signed a voluntary acknowledgment if genetic testing was not done before the acknowledgment was signed. The petition to reopen must be filed within a year of filing the acknowledgment. This amendment also allows DHS to file such a petition when the child is in the custody of DHS as a dependent child under ORS 419B. This provision is consistent with other amendments to Chapter 109 enacted in 2005 and proposed by this bill that in some cases allow DHS to challenge the legal paternity of children in its custody.

Technical changes Throughout this section the term "genetic parentage test" is changed to "blood test" because the latter term is defined and used elsewhere in the Oregon Code to refer to blood/genetic testing in disputed paternity cases. Under ORS 109.251, the term "blood tests" includes any accredited test for genetic markers to determine paternity, including HLA and DNA testing.

The amendments in former subsection (2), now subsection (5), make clear that if a party refuses to comply with blood testing as ordered by the administrator, the administrator may ask the court to enter an order against the party. This section is similar to ORS 109.252, which allows a court to enter an order against a party who refuses to comply with a court order for blood testing. However, section 109.252, unlike this section, does not require the court to enter a judgment against the party who fails to comply. It provides, instead, that the court "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."

Subsection (6) is added to clarify that if blood tests show that the man identified as the legal father is not the biological father, the administrator may seek a court order setting aside the order establishing paternity or the voluntary acknowledgment. This authority has been implicit in this section; this amendment makes it explicit.

Subsection (7) amends the last sentence of former subsection (2) for clarity. The meaning of the section is not changed.

Subsection (8) requires the administrator to send a copy of the judgment of nonpaternity to the state vital records office so that official records regarding the child's paternity can be corrected.

Subsection (9) provides that the state will pay testing and filing fees for actions undertaken under this section and that it may seek to recoup these costs from the party that requested the tests.

D. Provisions related to judicial proceedings to establish paternity or to challenge orders establishing paternity

SECTION 4. ORS 109.125 is amended to read:

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

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

(b) 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;

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

(d) A *[person]* **man** 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

(e) 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 (c)]* **(1)(a), (b), (c) or (e)** of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) A man whose paternity of a child has been established under ORS 109.070 is a necessary party to proceedings initiated under this section unless the paternity has been disestablished before the proceedings are initiated.

COMMENT: ORS 109.125 sets out the initial procedures for filiation (also known as paternity) suits. The changes to this section clean up problems with the existing statute. If the mother has a husband, Subsection (2) requires that the court be apprised of his identity to that it can insure that his interests are protected. This requirement should probably have been in the statute all along but is particularly necessary, given the abolition of the conclusive presumption of paternity. Subsection (5) makes clear that a man whose paternity was previously established by any of the means sets out in ORS 109.070 is a party to the proceedings. Due process requires that he have notice and right to be heard, since his paternity is inherently at stake. This provision also should probably have been in the statute all along.

SECTION 5. ORS 109.155 is amended to read:

109.155. (1) The court, in a private hearing, shall first determine the issue of paternity. If the respondent admits the paternity, *[such]* **the** 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 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]* **agreement** into any judgment rendered, and [~~it~~] **the court** may order such investigation or the production of such evidence as *[it]* **the court** 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]* **may** order either parent to pay such sum as *[it]* **the court** deems appropriate for the past and future support and maintenance of the child during *[its]* **the child's** minority and while the child is attending school, as defined in ORS 107.108, 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. The provisions of ORS 107.108 apply to an order entered under this section for the support of a child attending school.

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

****

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

COMMENT: ORS 109.155 establishes the procedures that governing filiation suit hearings, sets

out the relief that a court may order, and creates mechanisms for enforcing orders under this section. All of the amendments to this section exception the addition of the last subsection clean up and clarify language and do not change the meaning of the statutes.

The new final subsection makes clear that if under ORS 109.070, a man is or is presumed to be a child's legal father, another man's paternity may not be declared in a filiation proceeding under ORS 109.125 unless the court first enters an order disestablishing the first man's legal paternity. Besides eliminating the possibility that different men could simultaneously claim legal paternity under ORS 109.070 and ORS 109.125, this amendment establishes that claims based on ORS 109.070 have priority over filiation proceeding orders and must be resolved before a filiation order can be entered.

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

(a) "Blood tests" has the meaning given that term in ORS 109.251.

(b) "Paternity judgment" means a judgment or administrative order that:

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

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

(c) "Petition" means a petition or motion filed under this section.

(d) "Petitioner" means the person filing a petition or motion under this section.

(2)(a) The following may file in circuit court a petition to vacate or set aside the paternity determination of a paternity judgment, or any child support obligations established in the paternity judgment, and for a judgment of nonpaternity:

(A) A party to the paternity judgment.

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

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

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

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

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

(3) In the petition, the petitioner shall:

(a) Designate as parties:

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

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

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

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

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

(c) Allege the facts and circumstances that resulted in the entry of the paternity judgment and explain why the issue of paternity was not contested.

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

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

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

(7) The court may vacate or set aside the paternity determination of the paternity judgment, including provisions imposing child support obligations, and enter a judgment of nonpaternity if the court finds that it is just and equitable to the parties and the child to do so and finds by a preponderance of the evidence that:

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

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

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

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

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

(8) If the court finds that the paternity determination of a paternity judgment was obtained by or was the result of fraud, the court may vacate or set aside the paternity determination regardless of whether the fraud was intrinsic or extrinsic.

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

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

(11) A judgment entered under this section vacating or setting aside the paternity determination of a paternity judgment and determining nonpaternity:

(a) Shall contain the full name and date of birth of the child whose paternity was established or declared by the paternity judgment.

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

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

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

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

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

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

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

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

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

COMMENT: This new section creates a procedure for petitioning to set aside a judicial order establishing paternity, defines the substantive grounds for granting such an order, and prescribes how orders will be implemented.

Subsection (1) defines terms used in the rest of the statute.

Subsection (2) prescribes who has standing to file a petition under this section. While this subsection limits standing to the parties to the challenged judgment and to DHS and DCS under certain circumstances, others may still be able to challenge paternity judgments in other kinds of proceedings, as subsections 14 and 16 explicitly recognize.

Subsection (3) prescribes who must be designated as parties and what the petition must contain.

Subsection (4) provides for service of process according to the usual procedures of ORCP 7.

Subsection (5), which is parallel to ORS 107.425(2), allows the court to appoint counsel for the child on its own motion or the motion of any party and requires appointment on the request of the child. Note that minor children are not parties to actions under this section, which is also the case for custody actions under ORS Chapter 107.

Subsection (6) allows the court to require the mother, child and man whose paternity is at issue to submit to blood tests. However, the judge has discretion to deny a request for blood tests upon a finding that to do so is "just and equitable" to the parties and the child. This language is intended to allow judges to invoke traditional principles of estoppel and laches to preclude challenges when the facts warrant, as well as to conclude that on balance, the best interests of the

child and justice and fairness to the adults will be best served by this ruling.

Subsection (7) allows the judge to vacate or set aside the paternity determination if blood tests establish that the man is not the biological father and the court finds that the paternity judgment was procured by mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation or other misconduct of a adverse party that the petitioner discovered after the judgment was entered. However, the judge has discretion to refuse to set aside or vacate the judgment upon a finding that to do so is "just and equitable" to the parties and the child. This language is intended to allow judges to invoke traditional principles of estoppel and laches to preclude challenges when the facts warrant, as well as to conclude that on balance, the best interests of the child and justice and fairness to the adults will be best served by this ruling.

Subsection (8) eliminates the distinction between intrinsic and extrinsic fraud for purposes of this section.

Subsection (9) makes clear that if the blood tests confirm the man's biological paternity, the court must deny the petition.

Subsection (10) allows the court to grant the relief authorized by this section if a party defaults or if the parties consent, without requiring blood tests.

Subsection (11) requires the court to vacate and terminate future child support obligations if it enters a judgment vacating or setting aside the paternity finding. It grants the judge discretion to excuse the nonpayment of past due child support in whole or in part, and it precludes the court from ordering the state to repay any child support collected before the finding of nonpaternity was entered.

Subsection (12) requires the petitioner to send a copy of the judgment of nonpaternity to the state vital records office so that official records regarding the child's paternity can be corrected.

Subsection (13) allows the judge to award the prevailing party attorney fees and costs, including the costs of blood tests ordered by the court if the prevailing party previously paid them.

Subsection (15) prevents the estate of a legal father from filing an action under this section to set aside or vacate findings about his paternity.

Section 10 of the Act provides that the amendments in Section 9 apply to all paternity judgments, including those entered before or on the effective date of the Act.

E. Technical provisions to give effect to or clarify effect of provisions discussed above

SECTION 2. ORS 109.103 is amended to read:

109.103. (1) If a child is born *[out of wedlock]* **to an unmarried woman** and paternity has been established **under ORS 109.070, or if a child is born to a married woman by a man other than her husband and the man's paternity has been established under ORS 109.070,** either parent may initiate a civil proceeding to determine the custody or support of**, or parenting time with,** 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 have the same rights and responsibilities regarding the custody and support of**, and parenting time with,** their child that married or divorced parents would have, and the provisions of ORS 107.093 to 107.425 that relate to *[the custody or support of children]* **custody, support and parenting time** apply to the proceeding.

* * *

COMMENT: The changes in this section are intended to make clear that a man whose paternity is established by any means may bring an action for support, custody or parenting time. The change from "out of wedlock" to "to an unmarried woman" expresses the concept more clearly and does not change the substantive meaning. The addition of references to "parenting time" clarifies that these rules apply when a parent seeks parenting time rather than custody.

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

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

* * *

(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 109.070 (1)(a) does not apply]*.

* * *

COMMENT: This is a technical amendment to remove the reference to the conclusive presumption, which is abolished by Section 1.

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

109.326.

* * *

(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 constitutes competent evidence before the court making the determination.

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

* * *

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

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

* * *

(b) A statement that:

(A) The husband must file with the court a written answer to the motion and order to show cause within 30 days after the date on which the husband is served with the summons or, if

service is made by publication or posting under ORCP 7 D(6), within 30 days from the date of last publication or posting.

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

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____	)	
Petitioner,	)	
	)	
	)	ANSWER
and	)	
	)	
_____	)	
Respondent.	)	

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

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

* * *

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

* * *

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

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

* * *

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

* * *

(13) 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 order or general judgment, as defined in ORS 18.005, fraud on the part of the petitioner with respect to the matters specified in subsection (10)(a), (b), (c) or (d) of this section.

COMMENT: ORS 109.326 concerns adoption proceedings when the biological mother was married at the time of birth but her husband is not before the court. This amendment makes clear that a court order that a woman's husband is not the father of a child under this section is not properly called a "termination of parental rights," but rather is a judgment of nonpaternity.

F. Clean-up of juvenile code provision amended by SB 234 in 2005

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

419B.875.

* * *

(3) A putative father who satisfies the criteria set out in subsection (1)(a)(C) of this section shall be treated as a parent, as that term is used in this chapter and ORS chapters 419A and 419C, until the court confirms his paternity or finds that he is not the legal **or biological** father of the child or ward.

* * *

COMMENT: ORS 419B.875 is the section of the Juvenile Code that defines who the parties to a dependency proceeding are. This section was substantially amended during the 2005 Legislative Session on the recommendation of the Oregon Law Commission (juvenile code putative fathers work group). This amendment adds language that was mistakenly omitted from the 2005 bill. It provides that if a juvenile court finds that a putative father is not the child's biological or legal father, he is not entitled to party status in the dependency proceeding.

VII. Conclusion

The proposed bill should be adopted so that Oregon's law regarding paternity will express sound public policy; be accessible to parties proceeding pro se; and treat similar cases similarly, regardless of whether paternity is established by voluntary acknowledgment or administrative or judicial order.

$100 Question from Grab Bag

Under new legislation, is it lawful to convert to one's own use the identity of a deceased person?

$100 Answer from Grab Bag

No.

$200 Question from Grab Bag

Burr is arrested for Identity Theft after being caught using Hamilton's debit card number to purchase an ipod. When the police search Burr's pockets incident to arrest, they find the personal identification of 14 separate other people in Burr's pockets. Under new legislation, what is the maximum period of incarceration that could be imposed on Burr per the crime's classification?

$200 Answer from Grab Bag

10 years (Class B Felony)

$300 Question from Grab Bag

According to the Oregon Supreme Court, who has standing to challenge an administrative rule created by a state agency?

$300 Answer from Grab Bag

Under ORS 183.400(1) "any person" has standing to challenge an administrative rule. The Oregon Constitution does not impose any additional standing requirements.

$400 Question from Grab Bag

How many hours of training in the recognition of mental illnesses are required under new legislation in order to obtain a basic law enforcement certificate from Oregon's Department of Public Safety Standards and Training?

$400 Answer from Grab Bag

24 hours, according to HB 2765 which creates the statutory requirement of 24 hours.

$500 Question from Grab Bag

Even though pigs are not yet licensed to fly, significant recent legislation has granted them of certain important new rights. What are they?

$500 Answer from Grab Bag

For those of you who advise your clients on matters agricultural in nature, you must be aware that SB694 prohibits the confinement of a pregnant pig for more than 12 hours during any 24 hour period.

V. Grab Bag

Question 1: Under new legislation, is it lawful to convert to one's own use the identity of a deceased person?

Answer: No. See SB 447.

Question 2: Burr is arrested for Identity Theft after being caught using Hamilton's debit card number to purchase an ipod. When the police search Burr's pockets incident to arrest, they find the personal identification of 14 separate other people in Burr's pockets. Under new legislation, what is the maximum period of incarceration that could be imposed on Burr per the crime's classification?

Answer: 10 years (Class B Felony). See SB 464.

Question 3: According to the Oregon Supreme Court, who has standing to challenge an administrative rule created by a state agency?

Answer: Under ORS 183.400(1) "any person" has standing to challenge an administrative rule. The Oregon Constitution does not impose any additional standing requirements.

Written explanation:

In the Supreme Court case of Kellas v. Dept. of Corrections et. al., 341 Or 471 (2006), the petitioner challenged the legality and constitutionality of administrative rules created by the Department of Corrections ("DOC") pursuant to ORS 183.400(1). ["The validity of any rule may be determined upon a petition by any person to the Court of Appeals."]. DOC refused to credit the Petitioner's son with time served on house arrest against a subsequent sentence of imprisonment because its administrative rules precluded this type of credit for time served.

The Court of Appeals dismissed the case, *sua sponte*, for lack of standing because the Petitioner did not "demonstrate a personal stake in the outcome of the rule challenge." The Supreme Court reversed the Court of Appeals in the decision below and in its prior holding in Utsey v. Coos County, 176 Or. App. 524 (2001), holding that ORS 183.400(1) does not require a petitioner to demonstrate that the governmental action or the court's decision will have a practical effect on the petitioner's individual rights or interests to establish standing.

The Court further held that the broad standing conferred by ORS 183.400 does not violate any standing requirement required by the Oregon Constitution because the type of relief sought invokes a question of a public right as opposed to a private right. In this context, the real party in interest is the people of the State of Oregon. Therefore, the named litigant is merely acting on their behalf and whether he or she has a legal or special interest in the result is irrelevant. Instead, he or she need only meet the statutory requirement of being "any person" to establish standing in this context.

Although the Court essentially overruled Utsey, it did qualify its holding by stating that it applied "at least within the context of the present controversy." Id. at 142.

Question 4: How many hours of training in the recognition of mental illnesses are required under new legislation in order to obtain a basic law enforcement certificate from Oregon's Department of Public Safety Standards and Training?

Answer: 24 hours, according to HB 2765 which creates the statutory requirement of 24 hours.

Question 5: Even though pigs are not yet licensed to fly, significant recent legislation has granted them certain important new rights. What are they?

Answer: For those of you who advise your clients on matters agricultural in nature, you must be aware that SB694 prohibits the confinement of a pregnant pig for more than 12 hours during any 24-hour period.

Written explanation:

Pig" means a porcine animal of a type maintained as livestock.

Unlawful "confinement" is such as would prevent the pig from reclining and fully extending its limbs or turning around freely.

Pregnant" should not require a separate definition. If it does, please consult your 10th Grade Health Sciences book. The chapter on "The Birds and the Bees" should be helpful.

The offense of Restrictive Confinement of a Pregnant Pig is a Class A Misdemeanor, punishable by one year in prison, a $6250 fine, or both.

The Act applies to confinement of pregnant pigs occurring on or after January 1, 2012. Until then, if you are a pig, it's tough darts.

Senate Bill 447

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Bankers Association)

SUMMARY

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

Broadens scope of crime of identity theft.

A BILL FOR AN ACT

Relating to identity theft; amending ORS 165.800.

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

SECTION 1. ORS 165.800 is amended to read:

165.800. (1) A person commits the crime of identity theft if the person, with the intent to deceive or to defraud, obtains, possesses, transfers, creates, utters or converts to the person's own use the personal identification of another person.

(2) Identity theft is a Class C felony.

(3) It is an affirmative defense to violating subsection (1) of this section that the person charged with the offense:

(a) Was under 21 years of age at the time of committing the offense and the person used the personal identification of another person solely for the purpose of purchasing alcohol;

(b) Was under 18 years of age at the time of committing the offense and the person used the personal identification of another person solely for the purpose of purchasing tobacco products; or

(c) Used the personal identification of another person solely for the purpose of misrepresenting the person's age to gain access to a:

(A) Place the access to which is restricted based on age; or

(B) Benefit based on age.

(4) As used in this section:

(a) "Another person" means a real **person, whether living or deceased,** or **an** imaginary person.

(b) "Personal identification" includes, but is not limited to, any written document or electronic data that does, or purports to, provide information concerning:

(A) A person's name, address or telephone number;

(B) A person's driving privileges;

(C) A person's Social Security number or tax identification number;

(D) A person's citizenship status or alien identification number;

(E) A person's employment status, employer or place of employment;

(F) The identification number assigned to a person by a person's employer;

(G) The maiden name of a person or a person's mother;

(H) The identifying number of a person's depository account at a "financial institution" **or "trust company,"** as **those terms are** defined in ORS 706.008, or a credit card account;

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

(I) A person's signature or a copy of a person's signature;

(J) A person's electronic mail name, electronic mail signature, electronic mail address or electronic mail account;

(K) A person's photograph;

(L) A person's date of birth; and

(M) A person's personal identification number.

"GRAB BAG" TEAM QUESTION

Q: Even though pigs are not yet licensed to fly, significant recent legislation has granted certain of them important new rights. What are they?

A: For those of you who advise your clients on matters agricultural in nature, you must be aware that S.B. 694 prohibits the confinement of a pregnant pig for more than 12 hours during any 24 hour period.

- "Pig" means a porcine animal of a type maintained as livestock.
- Unlawful "confinement" is such as would prevent the pig from reclining and fully extending its limbs or turning around freely.
- "Pregnant" should not require a separate definition. If it does, please consult your 10th Grade Health Sciences book. The chapter on "The Birds and the Bees" should be helpful.
- The offense of Restrictive Confinement of a Pregnant Pig is a Class A Misdemeanor, punishable by one year in prison, a $6250 fine, or both.
- The Act applies to confinement of pregnant pigs occurring on or after January 1, 2012. Until then, if you are a pig, it's tough darts.

A-Engrossed
Senate Bill 464

Ordered by the Senate April 16
Including Senate Amendments dated April 16

Sponsored by COMMITTEE ON JUDICIARY (at the request of Regional Economic Crime Information Center)

SUMMARY

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

Creates crime of aggravated identity theft. Punishes by maximum of 10 years' imprisonment, $250,000, or both. Imposes presumptive term of imprisonment under certain circumstances.

A BILL FOR AN ACT

Relating to crime; creating new provisions; and amending ORS 131.315 and 137.717.

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

SECTION 1. (1) A person commits the crime of aggravated identity theft if:

(a) The person violates ORS 165.800 in 10 or more separate incidents within a 180-day period;

(b) The person violates ORS 165.800 and the person has a previous conviction for aggravated identity theft;

(c) The person violates ORS 165.800 and the losses incurred in a single or aggregate transaction are $10,000 or more within a 180-day period; or

(d) The person violates ORS 165.800 and has in the person's custody, possession or control 10 or more pieces of personal identification from 10 or more different persons.

(2) Aggravated identity theft is a Class B felony.

(3) As used in this section, "previous conviction" includes:

(a) Convictions occurring before, on or after the effective date of this 2007 Act; and

(b) Convictions entered in any other state or federal court for comparable offenses.

(4) The state shall plead in the accusatory instrument and prove beyond a reasonable doubt, as an element of the offense, the previous conviction for aggravated identity theft.

SECTION 2. ORS 137.717 is amended to read:

137.717. (1) When a court sentences a person convicted of:

(a) Aggravated theft in the first degree under ORS 164.057, [*or*] burglary in the first degree under ORS 164.225 **or aggravated identity theft under section 1 of this 2007 Act**, the presumptive sentence is 19 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405, [*or*] robbery in the first degree under ORS 164.415 **or aggravated identity theft under section 1 of this 2007 Act**; or

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

(B) Four previous convictions for any combination of the other crimes listed in subsection (2) of this section.

(b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS 164.135, burglary in the second degree under ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS 164.377, forgery in the first degree under ORS 165.013, identity theft under ORS 165.800, possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310, the presumptive sentence is 13 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has:

(A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unauthorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery in the second degree under ORS 164.405, robbery in the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, *[or]* trafficking in stolen vehicles under ORS 819.310 **or aggravated identity theft under section 1 of this 2007 Act**; or

(B) Four previous convictions for any combination of the other crimes listed in subsection (2) of this section.

(2) The crimes to which subsection (1) of this section applies are:

(a) Theft in the second degree under ORS 164.045;

(b) Theft in the first degree under ORS 164.055;

(c) Aggravated theft in the first degree under ORS 164.057;

(d) Unauthorized use of a vehicle under ORS 164.135;

(e) Burglary in the second degree under ORS 164.215;

(f) Burglary in the first degree under ORS 164.225;

(g) Criminal mischief in the second degree under ORS 164.354;

(h) Criminal mischief in the first degree under ORS 164.365;

(i) Computer crime under ORS 164.377;

(j) Forgery in the second degree under ORS 165.007;

(k) Forgery in the first degree under ORS 165.013;

(L) Criminal possession of a forged instrument in the second degree under ORS 165.017;

(m) Criminal possession of a forged instrument in the first degree under ORS 165.022;

(n) Fraudulent use of a credit card under ORS 165.055;

(o) Identity theft under ORS 165.800;

(p) Possession of a stolen vehicle under ORS 819.300; and

(q) Trafficking in stolen vehicles under ORS 819.310.

(3) The court may impose a sentence other than the sentence provided by subsection (1) of this section if the court imposes:

(a) A longer term of incarceration that is otherwise required or authorized by law; or

(b) A departure sentence authorized by the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons. Unless the law or the rules of the Oregon Criminal Justice Commission allow for imposition of a longer sentence, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) of this section.

(4) As used in this section, "previous conviction" includes:

(a) Convictions occurring before, on or after July 1, 2003; and

(b) Convictions entered in any other state or federal court for comparable offenses.

(5)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(6) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

SECTION 3. ORS 131.315 is amended to read:

131.315. (1) If conduct constituting elements of an offense or results constituting elements of an offense occur in two or more counties, trial of the offense may be held in any of the counties concerned.

(2) If a cause of death is inflicted on a person in one county and the person dies therefrom in another county, trial of the offense may be held in either county.

(3) If the commission of an offense commenced outside this state is consummated within this state, trial of the offense shall be held in the county in which the offense is consummated or the interest protected by the criminal statute in question is impaired.

(4) If an offense is committed on any body of water located in, or adjacent to, two or more counties or forming the boundary between two or more counties, trial of the offense may be held in any nearby county bordering on the body of water.

(5) If an offense is committed in or upon any railroad car, vehicle, aircraft, boat or other conveyance in transit and it cannot readily be determined in which county the offense was committed, trial of the offense may be held in any county through or over which the conveyance passed.

(6) If an offense is committed on the boundary of two or more counties or within one mile thereof, trial of the offense may be held in any of the counties concerned.

(7) A person who commits theft, burglary or robbery may be tried in any county in which the person exerts control over the property that is the subject of the crime.

(8) If the offense is an attempt or solicitation to commit a crime, trial of the offense may be held in any county in which any act that is an element of the offense is committed.

(9) If the offense is criminal conspiracy, trial of the offense may be held in any county in which any act or agreement that is an element of the offense occurs.

(10) A person who in one county commits an inchoate offense that results in the commission of an offense by another person in another county, or who commits the crime of hindering prosecution of the principal offense, may be tried in either county.

(11) A criminal nonsupport action may be tried in any county in which the dependent child is found, irrespective of the domicile of the parent, guardian or other person lawfully charged with support of the child.

(12) If the offense is theft**, forgery or identity theft** and the offense consists of an aggregate transaction involving more than one county, trial of the offense may be held in any county in which one of the acts of theft**, forgery or identity theft** was committed.

(13) When a prosecution is for violation of the Oregon Securities Law, the trial of the offense may be held in the county in which:

(a) The offer to purchase or sell securities took place or where the sale or purchase of securities took place; or

(b) Any act that is an element of the offense occurred.

(14) When a prosecution under ORS 165.692 and 165.990 or 411.675 and 411.990 (2) and (3) involves Medicaid funds, the trial of the offense may be held in the county in which the claim was submitted for payment or in the county in which the claim was paid.

A-Engrossed
House Bill 2765

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

Sponsored by Representatives LIM, OLSON, Senator GORDLY; Representatives BARKER, FLORES, GREENLICK, READ, RILEY, SHIELDS, TOMEI, Senators AVAKIAN, BROWN

SUMMARY

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

Requires training in mental illness recognition prior to obtaining certification as police officer.

A BILL FOR AN ACT

Relating to police officer training; amending ORS 181.641.

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

SECTION 1. ORS 181.641 is amended to read:

181.641. The Department of Public Safety Standards and Training shall include in the minimum training required for basic certification as a police officer under ORS 181.665**:**

(1) The law, theory, policies and practices related to vehicle pursuit driving and, as facilities and funding permit, vehicle pursuit training exercises[.]**; and**

(2) At least 24 hours of training in the recognition of mental illnesses utilizing a crisis intervention training model.

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