



# The Surrogates





Disclaimer: all characters and events in this skit – even those based on real people – are entirely fictional.

Contestant #1  
Jordan Blitzer



Contestant #2  
Casey Boss



## ORS 432.088

# Mandatory Registration of Births

(8) FOR PURPOSES OF MAKING A REPORT OF LIVE BIRTH AND LIVE BIRTH REGISTRATION, THE WOMAN WHO GIVES LIVE BIRTH IS THE LIVE BIRTH MOTHER. IF A COURT OF COMPETENT JURISDICTION DETERMINES THAT A WOMAN OTHER THAN THE LIVE BIRTH MOTHER IS THE BIOLOGICAL OR GENETIC MOTHER, THE COURT MAY ORDER THE STATE REGISTRAR TO AMEND THE RECORD OF LIVE BIRTH. THE RECORD OF LIVE BIRTH SHALL THEN BE PLACED UNDER SEAL.

(9)(A) IF THE MOTHER IS MARRIED AT THE TIME OF EITHER CONCEPTION OR LIVE BIRTH, OR WITHIN 300 DAYS BEFORE THE LIVE BIRTH, THE NAME OF THE MOTHER'S SPOUSE IN A MARRIAGE SHALL BE ENTERED ON THE REPORT OF LIVE BIRTH AS THE PARENT OF THE CHILD UNLESS PARENTAGE HAS BEEN DETERMINED OTHERWISE BY A COURT OF COMPETENT JURISDICTION.

## ORS 109.239

### Rights of semen donors; rights of children born as a result of artificial insemination

IF THE DONOR OF SEMEN USED IN ARTIFICIAL INSEMINATION IS NOT THE MOTHER'S HUSBAND:

(1) SUCH DONOR SHALL HAVE NO RIGHT, OBLIGATION OR INTEREST WITH RESPECT TO A CHILD BORN AS A RESULT OF THE ARTIFICIAL INSEMINATION; AND

(2) A CHILD BORN AS A RESULT OF THE ARTIFICIAL INSEMINATION SHALL HAVE NO RIGHT, OBLIGATION OR INTEREST WITH RESPECT TO SUCH DONOR

# ORS 112.077 Afterborn heirs; unimplanted embryo; person conceived before death of decedent and born alive thereafter; posthumously conceived children

(1) FOR PURPOSES OF THIS SECTION, AN EMBRYO THAT EXISTS OUTSIDE A PERSON'S BODY IS NOT CONSIDERED TO BE CONCEIVED UNTIL THE EMBRYO IS IMPLANTED INTO A PERSON'S BODY.

(2) EXCEPT AS PROVIDED IN SUBSECTIONS (3) AND (4) OF THIS SECTION, THE RELATIONSHIPS EXISTING AT THE TIME OF THE DEATH OF A DECEDENT GOVERN THE PASSING OF THE DECEDENT'S ESTATE.

(3) A PERSON CONCEIVED BEFORE THE DEATH OF THE DECEDENT AND BORN ALIVE THEREAFTER INHERITS AS THOUGH THE PERSON WAS A CHILD OF THE DECEDENT AND ALIVE AT THE TIME OF THE DEATH OF THE DECEDENT.

(4) A CHILD CONCEIVED FROM THE GENETIC MATERIAL OF A DECEDENT WHO DIED BEFORE THE TRANSFER OF THE DECEDENT'S GENETIC MATERIAL INTO A PERSON'S BODY IS NOT ENTITLED TO AN INTEREST IN THE DECEDENT'S ESTATE UNLESS:

(A) THE DECEDENT'S WILL OR TRUST PROVIDED FOR POSTHUMOUSLY CONCEIVED CHILDREN; AND

(B) THE FOLLOWING CONDITIONS ARE SATISFIED:

(A) THE DECEDENT, IN A WRITING SIGNED BY THE DECEDENT AND DATED, SPECIFIED THAT THE DECEDENT'S GENETIC MATERIAL MAY BE USED FOR THE POSTHUMOUS CONCEPTION OF A CHILD OF THE DECEDENT, AND THE PERSON DESIGNATED BY THE DECEDENT TO CONTROL USE OF THE DECEDENT'S GENETIC MATERIAL GIVES WRITTEN NOTICE TO THE PERSONAL REPRESENTATIVE OF THE DECEDENT'S ESTATE, WITHIN FOUR MONTHS OF THE DATE OF THE APPOINTMENT OF THE PERSONAL REPRESENTATIVE, THAT THE DECEDENT'S GENETIC MATERIAL IS AVAILABLE FOR THE PURPOSE OF POSTHUMOUS CONCEPTION; AND

(B) THE CHILD USING THE DECEDENT'S GENETIC MATERIAL IS IN UTERO WITHIN TWO YEARS AFTER THE DATE OF THE DECEDENT'S DEATH.



Contract  
vs  
“Best Interests of the Child”

WEAVER V. GUINN, 176 OR APP 383  
(2001)

SHINEOVICH V. KEMP, 229 OR APP 670  
(2009)

K.M. V. E.G., 37 CAL 4TH 130 (2005)

D.M.T. V. T.M.H., 129 SO 3D 320 (2013)

## **"AGREEMENT" between Mr. Blitzer and Ms. Boss**

Signed by Ms. Boss on June 2, 2014

Blitzer never signs; claims he "rejected draft agreement" on June 10, 2014

"Blitzer and Boss intend for this Agreement to supplement the [Directed Sperm Donor Consent] Form and [Informed Consent for Egg (Oocyte) Donation . . . [.]

"Notwithstanding anything to the contrary in the Form or Donation, Blitzer hereby relinquishes any claim to or jurisdiction over any female embryos from Boss and any resulting female offspring that might result from the use of Boss's eggs. Boss confirms and acknowledges that Blitzer has full jurisdictional custodial rights over the future disposition of male embryos created from her eggs and she renounces any rights and responsibilities of custody of any male embryo.

"In the event of any conflict or inconsistency between the terms and conditions of the Form or Donation and [ ] this Agreement, the terms and conditions of this Agreement shall prevail."

## **OHSU Donor Consent Forms**

Signed by Ms. Boss on June 6, 2014 as "Egg Donor"

"I understand that I do forever hereafter relinquish any claim to or jurisdiction over the embryos and offspring that might result from the use of my eggs for In Vitro fertilization. I acknowledge that the recipients have full custodial rights over the future disposition of embryos created from my eggs . . . [.]"

# SOME STATUTES THAT DEFINE “PARENT” DIFFERENTLY

- ▶ ORS 97.953(18)
  - ▶ Part of the Anatomical Gift Act
- ▶ ORS 329.007(9)
  - ▶ Part of the Oregon Educational Act for the 21<sup>st</sup> Century
- ▶ ORS 343.035(13)
  - ▶ Part of Special Education
- ▶ ORS 419A.004(19)
  - ▶ Part of the Juvenile Code



# THE 6 BEST INTERESTS OF THE CHILD FACTORS

- ▶ ORS 107.137(1)(a)
  - ▶ The emotional ties between the child and other family members;
- ▶ ORS 107.137(1)(b)
  - ▶ The interest of the parties in and attitude toward the child;
- ▶ ORS 107.137(1)(c)
  - ▶ The desirability of continuing an existing relationship;
- ▶ ORS 107.137(1)(d)
  - ▶ The abuse of one parent by the other;
- ▶ ORS 107.137(1)(e)
  - ▶ The preference for the primary caregiver of the child, if the caregiver is deemed fit by the court; and
- ▶ ORS 107.137(1)(f)
  - ▶ The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.



Insert map slide



ORS 14.110(1)



ORS 112.077



ORS 20.105

ORS 109.237



ORS 109.119

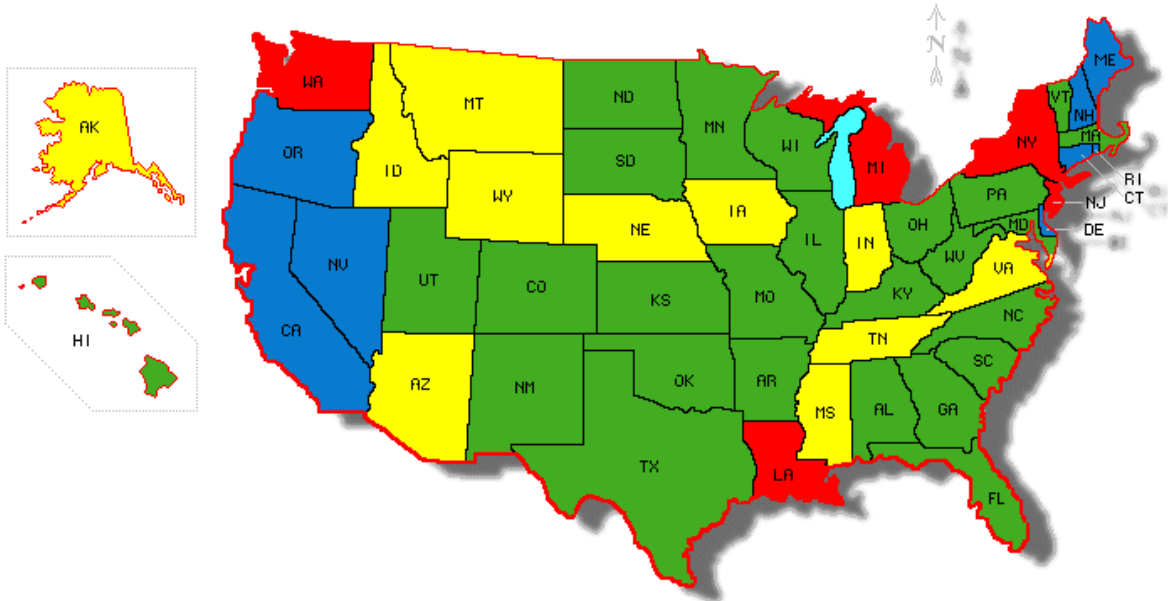


Who wins?



## Places To Travel

- - Already seen
- - Visiting soon
- - Maybe next year
- - Not interested



Source: diymaps.net (c)

## Oregon Surrogacy Contracts: Payment to Surrogate

In Oregon, it's a felony to buy or sell a person under 18 years of age. However, exempt from this law is paying fees for services in an adoption pursuant to a surrogacy agreement.

My client's surrogacy contract makes it clear that she is paid for *services rendered*, not for the child itself. It also makes it clear that she has no right to the child.

A standard surrogacy contract pays the surrogate around \$30k, plus about another \$20k for surrogate expenses. The compensation is not taxed as income; it's considered payment for pain and suffering. (That could change: In January, the U.S. Tax Court ruled in [Perez v. Commissioner](#) that the Internal Revenue Service could tax an egg donor's \$20,000 compensation as income because the donor was paid for services rendered.).

Surrogate expenses can include: \$200/month expense allowance for one year, \$500 for maternity clothing, medical expenses, one year of life insurance, \$1,500 for c-section, \$300/week for breast milk, \$1k for counseling, lost wages, travel expenses.

The surrogacy contracts also outlines my client's obligations. For example: She has to undergo several medical tests and agree to the exercise and diet dictates of her physician. She's subject to random drug, alcohol and nicotine testing. She can't clean a litter box, get a tattoo or expose herself to x-rays, at a dentist's appointment, for example.

Vancouver:

Oregon surrogacy contracts state that the surrogate cannot go to Washington state during their pregnancy, or at least in the last trimester, because paid surrogacy is illegal there. In Washington, surrogates can be compensated only for indirect expenses like legal or medical bills, but cannot be paid for their time, energy, or the emotion toll it takes on woman and her family when she is pregnant.

(in 2011 the legislature attempted but failed to pass a bill that would have made compensating surrogates legal).

But don't worry, there are all sorts of fun places we can go for vacation:

*Blue states:* I've already visited these states because surrogacy is expressly permitted, either through statute or case law. Pre-birth orders are granted throughout the state, and both intended parents can be named on the birth certificate. [CA](#), [CT](#), [DE](#), [ME](#), [NH](#), [NV](#), [OR](#), [RI](#)

*Green states:* Places that I'd like to go and that I don't have to worry about. Surrogacy is either expressly permitted but results depend on various factors or venue, or only a post-birth parentage order is available. In some of these states additional post-birth legal procedure may be required. For example, SD has no law that prohibits compensated surrogacy, so that's why I made it a green state. Most states fall into this category, so we have lots of options.

[AL](#), [AR](#), [CO](#), [FL](#), [GA](#), [HI](#), [IL](#), [KS](#), [KY](#), [MA](#), [MD](#), [MN](#), [MO](#), [NC](#), [ND](#), [NM](#), [OH](#), [OK](#), [PA](#), [SC](#), [SD](#), [TX](#), [UT](#), [VT](#), [WI](#), [WV](#)

*Yellow states:* I'm hesitant to go on vacation to a yellow state. Surrogacy is practiced, but there are potential legal hurdle or results may be inconsistent because there isn't much legal guidance. For example, in Montana, the legality of even traditional surrogacy (where the egg donor carries the child) is unclear. [AK](#), [AZ](#), [IA](#), [ID](#), [IN](#), [MS](#), [MT](#), [NE](#), [TN](#), [VA](#), [WY](#)

*Red states:* These are places I'm not comfortable visiting while I'm pregnant. Statute or published case law prohibits or voids compensated surrogacy contracts so they are unenforceable, compensated surrogacy is a crime punishable by fines or imprisonment, or the woman who gives birth must be listed as the "birth mother." [DC](#), [LA](#), [MI](#), [NJ](#), [NY](#), [WA](#)

This map is my guide if I'm carrying for a heterosexual couple, but it actually doesn't change much for same-sex couple surrogacy:

Utah and Texas move from blue to green, Mississippi moves from green to yellow

## **Definitions of Parent**

- 97.953
  - Under the Anatomical Gift Act
  - (18)—“Parent” means a parent whose parental rights have not been terminated
- 329.007
  - Oregon Educational Act for the 21<sup>st</sup> Century
  - (9)—“Parents” means parents or guardians of students who are covered by this chapter
- 343.035
  - Special Education
  - (13)—“Parent” means the parent, person acting as a parent or a legal guardian, other than a state agency, of the child or the surrogate parent. “Parent” may be further defined by rules adopted by the State Board of Education.
- 419A.004
  - Juvenile Code
  - (19) “Parent” means the biological or adoptive mother and the legal father of the child, ward, youth or youth offender. As used in this subsection, “legal father” means:
    - (a) A man who has adopted the child, ward, youth or youth offender or whose paternity has been established or declared under ORS 109.070 or 416.400 to 416.465 or by a juvenile court; and
    - (b) In cases in which the Indian Child Welfare Act applies, a man who is a father under applicable tribal law.
  - Cross-referenced in 109.119 (the 3<sup>rd</sup> party custody and visitation statute)
- 432.088
  - Reports on Live Birth
  - (8) For purposes of making a report of live birth and live birth registration, the woman who gives live birth is the live birth mother. If a court of competent jurisdiction determines that a woman other than the live birth mother is the biological or genetic mother, the court may order the state registrar to amend the record of live birth. The record of live birth shall then be placed under seal.

## **Some Relevant and Possibly Relevant Family Law Statutes**

**107.101 Policy regarding parenting.** It is the policy of this state to:

- (1) Assure minor children of frequent and continuing contact with parents who have shown the ability to act in the best interests of the child;
- (2) Encourage such parents to share in the rights and responsibilities of raising their children after the parents have separated or dissolved their marriage;
- (3) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, if necessary;
- (4) Grant parents and courts the widest discretion in developing a parenting plan; and
- (5) Consider the best interests of the child and the safety of the parties in developing a parenting plan.

**107.137 Factors considered in determining custody of child.** (1) Except as provided in subsection (6) of this section, in determining custody of a minor child under ORS 107.105 or 107.135, the court shall give primary consideration to the best interests and welfare of the child. In determining the best interests and welfare of the child, the court shall consider the following relevant factors:

- (a) The emotional ties between the child and other family members;
  - (b) The interest of the parties in and attitude toward the child;
  - (c) The desirability of continuing an existing relationship;
  - (d) The abuse of one parent by the other;
  - (e) The preference for the primary caregiver of the child, if the caregiver is deemed fit by the court; and
  - (f) The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. However, the court may not consider such willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in a pattern of behavior of abuse against the parent or a child and that a continuing relationship with the other parent will endanger the health or safety of either parent or the child.
- (2) The best interests and welfare of the child in a custody matter shall not be determined by isolating any one of the relevant factors referred to in subsection (1) of this section, or any other relevant factor, and relying on it to the exclusion of other factors. However, if a parent has

committed abuse as defined in ORS 107.705, other than as described in subsection (6) of this section, there is a rebuttable presumption that it is not in the best interests and welfare of the child to award sole or joint custody of the child to the parent who committed the abuse.

(3) If a party has a disability as defined by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), the court may not consider that party's disability in determining custody unless the court finds that behaviors or limitations of the party that are related to the party's disability are endangering or will likely endanger the health, safety or welfare of the child.

(4) In determining custody of a minor child under ORS 107.105 or 107.135, the court shall consider the conduct, marital status, income, social environment or lifestyle of either party only if it is shown that any of these factors are causing or may cause emotional or physical damage to the child.

(5) No preference in custody shall be given to the mother over the father for the sole reason that she is the mother, nor shall any preference be given to the father over the mother for the sole reason that he is the father.

(6)(a) The court determining custody of a minor child under ORS 107.105 or 107.135 shall not award sole or joint custody of the child to a parent if:

(A) The court finds that the parent has been convicted of rape under ORS 163.365 or 163.375 or other comparable law of another jurisdiction; and

(B) The rape resulted in the conception of the child.

(b) A denial of custody under this subsection does not relieve the parent of any obligation to pay child support. [1975 c.722 §2; 1987 c.795 §14; 1997 c.707 §35; 1999 c.762 §2; 2011 c.438 §3; 2013 c.72 §1]

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

**109.060 Legal status and legal relationships when parents not married.** The legal status and legal relationships and the rights and obligations between a person and the descendants of the person, and between a person and parents of the person, their descendants and kindred, are the same for all persons, whether or not the parents have been married.

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

(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.

(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 432.098.

(d) By filiation proceedings.

(e) By filing with the State Registrar of the Center for Health Statistics the voluntary acknowledgment of paternity form as provided for by ORS 432.098. Except as otherwise provided in subsections (4) to (7) of this section, this filing establishes paternity for all purposes.

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

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

(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, giving consideration to the interests of 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.

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

(A) Sixty days after filing the acknowledgment; or

(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.

(5)(a) A signed voluntary acknowledgment of paternity filed in this state may be challenged and set aside in circuit court 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.

(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 signed because of 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.

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

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

(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 consent 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 432.098 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. [1957 c.411 §2; 1969 c.619 §11; 1971 c.127 §2; 1975 c.640 §3; 1983 c.709 §37; 1995 c.79 §37; 1995 c.514 §7; 1999 c.80 §20; 2001 c.455 §17; 2003 c.576 §136; 2005 c.160 §§11,17; 2007 c.454 §1]

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

(2) ORS 109.060 to 109.090 shall be liberally construed, with the view of effectuating their objects, notwithstanding the rule of common law that statutes in derogation thereof are to be strictly construed. [1957 c.411 §§5,6; 1983 c.740 §11]

**109.103 Proceeding to determine custody or support of child.** (1) If a child is born 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 107.094 to 107.449 that relate to custody, support and parenting time, the provisions of ORS 107.755 to 107.795 that relate to mediation procedures, and the provisions of ORS 107.810, 107.820 and 107.830 that relate to life insurance, apply to the proceeding.

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

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

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.503, involving the child.

(3) The parent shall include with the petition a certificate regarding any pending support proceeding and any existing support order. The parent shall use a certificate that is in a form established by court rule and include information required by court rule and subsection (2) of this section.

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

(5)(a) After a petition is filed under this section and upon service of summons and petition upon the respondent as provided in ORCP 7, a restraining order is issued and in effect against the petitioner and the respondent until a final judgment is issued, until the petition is dismissed or until further order of the court, restraining the petitioner and the respondent from:

(A) Canceling, modifying, terminating or allowing to lapse for nonpayment of premiums any policy of health insurance that one party maintains to provide coverage for the other party or a minor child of the parties, or any life insurance policy that names either of the parties or a minor child of the parties as a beneficiary; and

(B) Changing beneficiaries or covered parties under any policy of health insurance that one party maintains to provide coverage for a minor child of the parties, or any life insurance policy.

(b) Either party restrained under this subsection may apply to the court for further temporary orders, including modification or revocation of the restraining order issued under this subsection.

(c) The restraining order issued under this subsection shall include a notice that either party may request a hearing on the restraining order by filing a request for hearing with the court.

(d) A copy of the restraining order issued under this subsection must be attached to the summons.

(e) A party who violates a term of a restraining order issued under this subsection is subject to imposition of remedial sanctions under ORS 33.055 based on the violation, but is not subject to:

(A) Criminal prosecution based on the violation; or

(B) Imposition of punitive sanctions under ORS 33.065 based on the violation. [1975 c.640 §9; 2003 c.116 §9; 2003 c.572 §15; 2007 c.454 §2; 2011 c.114 §4; 2013 c.126 §2; 2013 c.127 §2; 2015 c.298 §94]

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

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

(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.

(3) "Respondent" may include, but is not limited to, one or more persons who may be the father of a child born out of wedlock, the husband of a woman who has or may have a child born out of wedlock, the mother of a child born out of wedlock, the woman pregnant with a child who may be born out of wedlock, or the duly appointed and acting guardian of the child or conservator of the child's estate. [1979 c.246 §4; 1983 c.762 §1; 1995 c.79 §38; 1995 c.343 §24; 1995 c.514 §18; 1997 c.704 §56; 2005 c.160 §§14,20; 2007 c.454 §3]

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

(a) A mother of a child born out of wedlock or a 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 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), (b), (c) or (e) of this section:

(A) The name of the mother of the child born out of wedlock or the 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;

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

(D) A statement that a respondent is the father;

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

(F) A statement of the specific relief sought.

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

(A) The name of the mother of the child born out of wedlock or the 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;

(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;

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

(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. [1969 c.619 §1; 1971 c.191 §1; 1971 c.401 §3; 1971 c.779 §79; 1973 c.823 §105; 1975 c.458 §15a; 1975 c.640 §4a; 1979 c.90 §3; 1979 c.246 §5; 1983 c.762 §2; 1993 c.596 §21; 2001 c.334 §6; 2003 c.73 §56; 2007 c.454 §4]

**109.135 Circuit court jurisdiction; equity action; place of commencement.** (1) All filiation proceedings shall be commenced in the circuit court and shall for all purposes be deemed actions in equity. Unless otherwise specifically provided by statute, the proceedings shall be conducted pursuant to the Oregon Rules of Civil Procedure.

(2) All filiation proceedings shall be commenced and tried in the county where either party or the child resides. [1969 c.619 §§2,3,7; 1971 c.191 §2; 1979 c.246 §6; 1981 s.s. c.3 §104; 1983 c.762 §3; 1999 c.80 §22; 2013 c.1 §5; 2013 c.126 §3]

**109.145 Court may proceed despite failure to appear; evidence required.** If a respondent fails to answer or fails to appear at trial, the court shall have the power to proceed accordingly. In such case, the court may make a determination of paternity and may impose such obligations on the respondent as it deems reasonable. In all such cases corroborating evidence in addition to the testimony of the parent or expectant parent shall be required to establish paternity and the court may, in its discretion, order such investigation or the production of such evidence as it deems appropriate to establish a proper basis for relief. The testimony of the parent or expectant parent

and the corroborating evidence may be presented by affidavit. [1969 c.619 §4; 1975 c.640 §14; 1983 c.762 §4]

**109.155 Hearing; order for payment for support of child and other costs; policy regarding settlement; enforcement of settlement terms; remedies.** (1) The court, in a private hearing, shall first determine the issue of paternity. If the respondent admits the paternity, 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 agreement into any judgment rendered, and the court may order such investigation or the production of such evidence as 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 may order either parent to pay such sum as the court deems appropriate for the past and future support and maintenance of the child during 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 the documents.

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

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

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

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

(A) As contract terms using contract remedies;

(B) By imposing any remedy available to enforce a judgment, including but not limited to contempt; or

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

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

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

(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. [1969 c.619 §5; 1971 c.137 §1; 1971 c.191 §3; 1973 c.827 §12h; 1975 c.640 §15; 1981 c.897 §33; 1983 c.762 §5; 1989 c.417 §2; 1997 c.704 §57; 1999 c.80 §23; 2001 c.203 §6; 2003 c.576 §140; 2007 c.454 §5]

**109.165 Vacation or modification of judgment; policy regarding settlement; enforcement of settlement terms; remedies.** (1) Upon motion of either party, the court may set aside, alter or modify any portion of the judgment that provides for the support of the minor child or child attending school, as defined in ORS 107.108. As to any installment or payment of money that has accrued up to the time the nonmoving party, other than the state, is served with a motion to set aside, alter or modify the judgment, the judgment is final and the court may not change it. However, the court may allow a credit against child support arrearages for periods of time, excluding reasonable parenting time unless otherwise provided by order or judgment, during which the obligor, with the knowledge and consent of the obligee or pursuant to court order, has physical custody of the child. A child attending school is a party for purposes of this section.

(2) The moving party shall state in the motion, to the extent known:

(a) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving the child, including a proceeding brought under ORS 25.287, 109.100, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(b) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.503, involving the child, other than the judgment the party is moving to set aside, alter or modify.

(3) The moving party shall include with the motion a certificate regarding any pending support proceeding and any existing support order other than the judgment the party is moving to set aside, alter or modify. The party shall use a certificate that is in a form established by court rule and include information required by court rule and subsection (2) of this section.

(4)(a) It is the policy of this state:

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

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

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

(A) As contract terms using contract remedies;

(B) By imposing any remedy available to enforce an order or judgment, including but not limited to contempt; or

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

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

(d) Nothing in paragraph (b) or (c) of this subsection limits a party's ability, in a separate proceeding, to file a motion to modify an order or judgment under subsection (1) of this section or to seek enforcement of an ancillary agreement to the order or judgment. [1969 c.619 §6; 1973 c.827 §12i; 1989 c.812 §8; 1997 c.704 §58; 1997 c.707 §22; 2001 c.203 §8; 2003 c.116 §10; 2003 c.419 §3; 2003 c.576 §141; 2015 c.298 §95]

**109.175 Determination of legal custody after paternity established.** (1) If paternity of a child born out of wedlock is established pursuant to a petition filed under ORS 109.125 or an order or judgment entered pursuant to ORS 109.124 to 109.230 or ORS 416.400 to 416.465, or if paternity is established by the filing of a voluntary acknowledgment of paternity as provided by ORS 109.070 (1)(e), the parent with physical custody at the time of filing of the petition or the notice under ORS 416.415, or the parent with physical custody at the time of the filing of the voluntary acknowledgment of paternity, has sole legal custody until a court specifically orders otherwise. The first time the court determines who should have legal custody, neither parent shall

have the burden of proving a change of circumstances. The court shall give primary consideration to the best interests and welfare of the child and shall consider all the standards set out in ORS 107.137.

(2) In any proceeding under this section, the court may cause an investigation, examination or evaluation to be made under ORS 107.425 or may appoint an individual or a panel or may designate a program to assist the court in creating parenting plans or resolving disputes regarding parenting time and to assist parents in creating and implementing parenting plans under ORS 107.425 (3). [1983 c.761 §11; 1985 c.671 §42; 1995 c.608 §4; 1999 c.59 §25; 1999 c.569 §8; 2001 c.833 §3; 2005 c.160 §§15,21]

**109.239 Rights and obligations of children resulting from artificial insemination; rights and obligations of donor of semen.** If the donor of semen used in artificial insemination is not the mother's husband:

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

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

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

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