



OREGON LAW COMMISSION

245 WINTER STREET SE
SALEM, OREGON 97301

PHONE 503-370-6973
FAX 503-370-3158
www.willamette.edu/wucl/olc

COMMISSIONERS

Lane P. Shetterly, Chair
Prof. Bernard F. Vail,
Vice-Chair
Chief Justice Thomas A. Balmer
Judge Stephen K. Bushong
Mark B. Comstock
John DiLorenzo, Jr.
Rep. Chris Garrett
Prof. Susan N. Gary
Chief Judge Rick T. Haselton
Julie H. McFarlane
Hardy Myers
Sen. Floyd Prozanski
Attorney General Ellen Rosenblum
Scott Shorr
Prof. Symeon C. Symeonides

STAFF

Prof. Jeffrey C. Dobbins
Executive Director

Wendy J. Johnson
*Deputy Director
and General Counsel*

Lisa Ehlers
Legal Assistant

Dexter Johnson
Legislative Counsel

David W. Heynderickx
*Special Counsel to
Legislative Counsel*

Adoption Records

Work Group Report

SB 623

Prepared by:

Wendy J. Johnson

Willamette University College of Law

Deputy Director and General Counsel, Oregon Law Commission

From the Offices of the Executive Director

Jeffrey C. Dobbins and

Deputy Director and General Counsel

Wendy J. Johnson

Approved by the Oregon Law Commission

March 20, 2013



*The Oregon Law Commission
is housed at the Willamette
University College of Law,
which also provides executive,
administrative and research
support for the Commission.*

I. Introduction

A child may only have one set of legal parents at a time. An adoption proceeding is the court proceeding by which one new parent or set of new parents are legally substituted for a former parent or set of parents. In an adoption proceeding, a new prospective parent petitions the court for a judgment holding that the minor child is adopted and by all legal intents and purposes, the same as if born to the new parent. Adoption procedure essentially requires two steps—the termination of one parent-child relationship and the creation of a new one. The different types and circumstances of each adoption make the law complex:

“Adoptions may be characterized according to the kind of individuals being adopted-- minors or adults, born in this country or foreign born, with or without special needs, with or without siblings. They may also be characterized according to the kind of individuals who are adopting -- married couples, single individuals, stepparents, individuals previously related or unrelated to an adoptee. Another way to characterize adoptions is according to the type of placement -- direct placement by a birth parent with an adoptive parent selected by the birth parent with or without the assistance of a lawyer or an agency, or placement by a public or private agency that has acquired custody of a minor from a birth parent through a voluntary relinquishment or an involuntary termination of parental rights. A fourth way to characterize adoptions is by the nature of the proceeding -- contested or uncontested.”¹

With this complexity in the law, the court records filed in adoption cases also necessarily vary significantly. Oregon’s statutes prescribing adoption case filing requirements and regulating access to the adoption court file have not been reviewed and revised for decades. Technology and the public’s perception of adoption have also been changing dramatically over this time. This law reform project recommends amendments to Oregon’s adoption laws to improve filing requirements and court file access rules as well as make a variety of needed procedural and substantive adoption clarifications and changes.

¹ Uniform Adoption Act Report, National Conference of Commissioners on Uniform State Laws, at 2 (1994).

II. Background Information

Oregon Adoption Law Sources and History

Adoption was not recognized at common law. Thus, adoption proceedings in Oregon are exclusively statutory. Oregon's adoption statutes are found primarily in a series in ORS Chapter 109. ORS 109.305 to ORS 109.410 provides the adoption case filing requirements, as well as the substantive and procedural rules. The state's Voluntary Adoption Registry follows this series at ORS 109.425 to ORS 109.507. The Voluntary Adoption Registry was created in 1983 to assist adoptees, birth parents, biological siblings, and other eligible persons in learning more about an adoption that was finalized in Oregon. DHS's Adoption Services Unit is responsible for maintaining records on all adoptions going back to the early 1920's. Adoptees become eligible to use the registry when they are adults, i.e. at age 18. DHS and licensed adoption agencies maintain and operate the registry. See ORS 109.450. When there is a match, information is exchanged. ORS Chapter 418 regulates adoption agencies and provides for the care and placement of dependent children. Namely, the Department of Human Services is provided power to protect and care for homeless, dependent, and neglected children, and is given administrative authority for adoptions in Oregon. Lastly, ORS Chapter 419B provides statutory provisions relating to termination of parental rights and provides that after terminating the rights of a parent, the court may place the minor in the legal custody of a public or private institution or agency that is authorized to consent to the adoption of the minor.

In the November 1998 General Election, Ballot Measure 58, a citizen's initiative was passed by Oregon voters. The measure restored the right of adoptees who were born in Oregon to access their original birth certificates at age 21. (Adult adoptees had the right to access their original birth certificates under previous Oregon law from 1941 to 1957.) The measure was immediately challenged by several birth mothers who had put children up for adoption, which delayed instituting the measure for a year and a half. The courts upheld the legality and constitutionality of the measure and the measure remains codified in the Vital Statistics chapter of Oregon's statutes at ORS 432.240(1).² See Does 1-7 v. State, 164 Or. App. 543 (1999), rev. den. 330 Or. 138 (2000).

² "Upon receipt of a written application to the state registrar, any adopted person 21 years of age and older born in the State of Oregon shall be issued a certified copy of his/her unaltered, original and unamended certificate of birth in the custody of the state registrar, with procedures, filing fees, and waiting periods identical to those imposed upon nonadopted citizens of the State of Oregon pursuant to ORS 432.121 and 432.146. Contains no exceptions."

History of the Project:

In July 2010, the Oregon Judicial Department (OJD) referred review of ORS 7.211 to the Oregon Law Commission. ORS 7.211 is the main statute relating to adoption case court records; it provides that adoption records are to be sealed and cannot be accessed except pursuant to court order. Specifically, OJD and the State Court Administrator asked the Commission to consider whether to permit limited access to adoption files without a court order. That consideration “would include circumstances in which party access may be appropriate; whether lawyer access should be permitted, including to facilitate access on appeal; and whether, regarding access by parties or lawyers of record, a distinction should be made between pleadings and reports.” The request noted that consideration would require a detailed study of the various contextual circumstances in adoption cases.

OJD’s referral came from recommendations of a Law and Policy Work Group created as part of OJD’s Oregon eCourt Program. That Work Group had several smaller groups focusing on various substantive law areas; the Domestic Relations Group identified the adoption court file issue. As part of the Oregon eCourt Program, the Oregon circuit courts are transitioning to an updated case management system, electronic documents and case files, electronic filing, and, eventually, some remote electronic access by external system users to certain case file documents. The new case management system and electronic document repository has been installed as of this writing in three judicial districts, with pilot electronic filing operating in one district. Installation in several additional districts, together with full electronic filing capabilities in those districts, is planned for 2013; the remaining courts will follow on a rolling schedule through 2016. The remote electronic access component remains in the planning stages; in general, OJD has worked to verify the access rules for various court documents in various case types, so that system programming is not inconsistent with state law.

In December 2011, the Oregon Law Commission accepted OJD’s request and approved formation of an Adoption Work Group to address adoption records as well as other substantive adoption issues. The records issues were to be addressed in time for recommendations to be presented to the 2013 Legislative Assembly to provide clarity in the law to later assist with the statewide Oregon eCourt transitions. The Work Group was authorized to continue after the 2013 session to address other substantive issues for recommendation to the 2014 and/or 2015 legislative sessions. The Work Group was formed in September 2012 and included members with a

variety of viewpoints and adoption experience.³ The Work Group met five times from September 2012 to February 2013.

III. Statement of the Problem

Current Oregon statutes can be read to preclude judges and staff from reviewing a court adoption file without a court order. In addition, parties in an adoption case and their lawyers of record clearly cannot review their own court case file, absent a court order, due to ORS 7.211. Such preclusions are inefficient and incompatible with normal court procedure in pending cases (pre-judgment). As circuit courts move to electronic court files, this inefficiency will be even more apparent and cumbersome. Certain reports and information, however, should continue to be restricted in certain circumstances; clear rules and procedures are needed to direct courts, clerks, parties, and lawyers. Care must be taken to codify access rules that address safety and privacy concerns in adoption cases and continue to appropriately restrict certain documents and information. Lastly, post-judgment court file access restrictions in present law unnecessarily impede appeals and continued adoption services. In short, appropriate access to an adoption court file should be permitted in statute; present law does not provide access short of a court order.

³ Work Group members included the Chair and Oregon Law Commissioner, John DiLorenzo, Jr. There were members representing the various interests of the State of Oregon: Judge Rita Cobb, Washington Co. Circuit Court; Cynthia Bidnick, Oregon Judicial Department; Carmen Brady-Wright, Oregon Dept. of Justice; Caroline Burnell, Oregon Dept. of Human Services; Lois Day, Oregon Dept. of Human Services; Lisa Norris-Lampe, Oregon Supreme Court; Becky Osborne, Oregon Judicial Dept.; Kathy Prouty, Oregon Dept. of Human Services; Gail Schelle, Oregon Dept. Of Human Services and Joanne Southey, Oregon Dept. of Justice. Membership also included the following private attorneys: John Chally, Bouneff & Chally; Jane Edwards; Whitney Hill, Youth, Rights & Justice; Susan Moffet, Dexter & Moffet; Robin Pope, Attorney at Law and John Wittwer, John Wittwer Lawyers. The following members represented Adoption Agency/Services: Shari Levine, Open Adoption and Family Services; Robin Neal, Catholic Charities, Pregnancy Support and Adoption Services; David Slansky, Journeys of the Heart. The Work Group also included the following members of the public: Melissa Busch; Ansley J. Dennison Flores; Michele Greco and David Tilchin. The following people followed the Work Group as interested parties: Rep. Margaret Doherty, Oregon State Representative; Susan Grabe, Oregon State Bar; Professor Leslie Harris, Univ. of Oregon School of Law; Sunny Moore, Public Participant; Ron Morgan, Public Participant; David Nebel, Oregon State Bar; Mickey Serice, Dept. of Human Services and Tamera Slack, Public Participant. The public participants included adoptees, adoptive parents, and birth parents. Staff included MaeLee Browning, Willamette University College of Law, law clerk; Professor Jeff Dobbins, Oregon Law Commission; Wendy Johnson, Oregon Law Commission and BeaLisa Sydlík, Deputy Legislative Counsel.

IV. Objectives of the Proposal

The Work Group recommends SB 623 to the 2013 Legislative Assembly. The bill provides clear rules for accessing adoption case court records. To accomplish this objective, ORS 7.211 is repealed and replaced with a new section – Section 6 of the proposed bill – to provide revised court record access rules. This new section will be placed in the ORS Chapter 109 adoption law series. (See Section 3 making the section part of the series.) This new section continues the practice of sealing adoption case court records from the general public, but spells out court, petitioner, DHS, adoptee, and consenting persons (usually birth parents) access rules. A court order will no longer always be necessary to inspect and copy records in all circumstances as new exceptions are provided in Section 6. This new section will provide clarity, efficiency, and consistency for the courts, parties, and practitioners. When a court order is required for access, a person may continue to file a motion with the court requesting to inspect and copy sealed records.

V. Review of Legal Solutions Existing or Proposed Elsewhere

The Work Group reviewed and discussed existing practice in Oregon and worked to codify best practices. The Oregon State Bar’s Family Law CLE⁴ contains an Adoption Chapter that was reviewed extensively by staff. In addition, the Work Group considered portions of the Uniform Adoption Act of 1994 proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

VI. The Proposal

The Work Group’s recommendations are reflected in SB 623. A section-by-section explanation of the bill and recommendations follows:

Section 1

This section amends ORS 109.304, the definitions section for the adoption series in ORS Chapter 109. The definition of “home study” is revised to make it clear that home studies can be completed by DHS, Oregon licenses adoption agencies, adoption agencies in other states, and other public agencies. The revised definition also is consistent with DHS’ administrative rules. See OAR 413-120-0010(2). A new defined phrase was added that is used throughout the bill, “records, papers and files.” This new phrase is defined to capture all documents, writings, information, exhibits,

⁴ Oregon State Bar Family Law CLE, Volume 3, Chapter 17: Adoption; Assisted Reproduction, John Chally and Sandra L. Hodgson, 2002 and 2008 supp.

and other filings in the record of the case for an adoption proceeding. The main documents in the record are the Adoption Summary and Segregated Information Statement and exhibits that accompany the Statement as well as the petition and exhibits attached to the petition. Those filings are expressly mentioned in the definition as are motions and the judgment.

Section 2

This section amends ORS 109.309. This statute will now be focused on jurisdiction, venue, and the basic filing requirements for an adoption.

Subsection (4) is deleted because it relates to adult adoptions and the rest of the statute is focused on adoption of a minor child. The provision is also unneeded as it is repeated in ORS 109.329, which is the adult adoption provision. Existing subsections (6) and (7) are deleted from this statute and instead these detailed petition requirements are folded into a new separate provision in Section 4 that lists the petition requirements. The new subsection (6) refers to the petition requirements described in Section 4. The requirement for a home study that used to be in ORS 109.309(6)(a)(C) now appears in amended ORS 109.309(7); the authority to waive the home study is also clarified and moved from (6)(a) to new (7). Subsection (8) is amended to clarify and consolidate the placement report requirements; subsection (6)(c) is moved over to (8)(a) and ORS 109.304(3) is moved over to (8)(c). New subsection (10) is moved over from existing (7)(d). New subsection (12) lists in detail the filings that are required before a court may grant a judgment of adoption rather than simply listing cross-references. Paragraphs in the new (13) are deleted in this provision and instead moved over to the petition provision in Section 4(1)(h). Thus, required Indian Child Welfare Act statements must be included within the adoption petition; this move is in conformity with present practice.

Section 3

This section simply makes the new sections of law, Sections 4 to 6, part of the adoption series in ORS Chapter 109.

Section 4

This new section of law consolidates and organizes the requirements regarding the petition for an adoption. This new section will help make court processing functions easier for court clerks as the petition and the attachments to the petition will now be consistent for registry entry, and separate documents will be minimized. Presently many statements and documents are filed separately. While not a form, this section will make petitions more uniform. The bill requires notarization of the petition as this often is done in practice but more importantly the UCCJEA (Uniform Child

Custody Jurisdiction And Enforcement Act) requires a verified statement or affidavit. Oregon and 49 other states have adopted the UCCJEA. See ORS 109.701 et seq. The work group wanted to avoid repetition of materials and information and thus the notarization is required.

Subsection (1) of this section lists the content requirements for a petition for adoption. Subsection (2) lists the requests that must be made to the court in the petition (i.e. these items are placed in the prayer for relief section of the petition). Subsection (3) lists the exhibits that must be attached to the petition. Subsection (4) provides that the petition and documents attached as exhibits to the petition are confidential. Subsection (5) provides the service requirements for the petition for adoption, exhibits, and materials required under new Section 5. DHS must be served with copies of the petition, the Adoption Summary and Segregated Information Statement, and the respective exhibits attached to them. In the case of an adoption in which one of the child's biological or adoptive parents retains parental rights, additional persons may also require service. The text of subsection (5) is taken largely from language in ORS 109.309(7) that was simply moved over to consolidate the petition provisions in this new section.

In writing Section 4, the Work Group and staff reviewed the Family Law CLE Adoption Chapter, focusing on the provided forms and sample filings. The Work Group also looked at forms and samples of documents provided by attorneys in the Work Group. The requirements codified in this section thus reflect accepted practice for items to include in the petition among most adoption attorneys. Tweaks were made to existing law to provide consistency in terms and provide best practice.

Rather than have parties file many different forms, exhibits, and statements at different times with the court, with this bill section the work group has consolidated most of the adoption filing requirements into the petition, thereby minimizing the register activity required by the clerk. Prior to this bill, the law has been unclear as to what must be in the actual petition and what just must be provided at the same time the petition was filed. See e.g. ORS 109.309(6)(a) (existing law providing that petitioner "shall also file at the time of filing the petition" listed items). Section 4 contains clear cross-references to various statement and document requirements that have long existed throughout Oregon's adoption law series; they are now organized in a list of requirements that must be provided to the court in the actual petition or as an attachment to the petition.

A select group of requirements and information, however, expressly shall NOT be included in the petition or attached to the petition. Instead, the group recommends

segregating the most personal and confidential required information and exhibits relating to the birth and adoptive parents and the adoptee be filed with the court via a new Adoption Summary and Segregated Information Statement and as attachments to the Statement. Section 5 provides for those requirements. The goal was to provide an organizational tool for parties, DHS, and the courts to use, to provide both a summary in one location of the key information in the case as well a segregated packet of the most sensitive information in the case. The Section 5 segregated material should be given the most protection and when deciding motions to grant access to adoption records; courts should be particularly circumspect with allowing access to Section 5 segregated material. In addition, Section 6(5) provides that an individual whose consent for the adoption is required under ORS 109.312 (most often this is the birth parent), should be granted access to the court file except for good cause. However, Section 6(5) provides that such individuals shall be excluded from inspecting and copying segregated records provided for in Section 5.

Section 5

This section provides that when an adoption petition is filed, a separate Adoption Summary and Segregated Information Statement (ASSIS) shall also be filed concurrently. This new statement is akin to the “Facesheet” document that is already required to be filed with Oregon’s Department of Human Services. See DHS Form 213. It is also similar to the CIF (confidential information form) that is a segregated form required in Oregon domestic relations cases. See UTCR 2.130. Petitioners have not been required to file the Facesheet with the court (although some do), but the group determined that such a summary document would be helpful to all, and would segregate names and contact information of the parties that may not be included in the petition and can be highly confidential—particularly in closed adoption proceedings. Much of this information is presently required in the petition. See ORS 109.309(6). With the reworking of the petition requirements and this new Statement, a great deal of duplication is avoided. In addition, with this section, other more sensitive adoption exhibits must now be attached to the ASSIS as segregated documents, rather than filed with the petition or filed separately. In short, the Adoption Summary and Segregated Information Statement with the required attached exhibits described in this section will segregate the most sensitive adoption information and documents and provide an organizational tool to court clerks, the court, and the parties to control inspection and copy access to the court record.

The documents and information required by this section were viewed by the work group as the most sensitive and in need of the most restricted access. In addition to the summary information that is listed out in requirements of subsection (1), three exhibits must be attached to the summary. The three exhibits are listed in subsection

(2) and include the following: a) a home study or written evidence regarding a home study; b) the adoption report (this is the form used by the Center for Health Statistics to create a new birth certificate); and c) the medical history. The group discussed confidentiality needs at length, including the right to information and the needs of safety and privacy. The group determined that these three required exhibits (which are important adoption requirements today), should be handled differently than other records as they include financial information, detailed family background information (including information regarding third parties), medical history (including psychological, social, and physical), and contact information. Section 6 provides the inspection and copying access rules; specified persons are excluded from access to the information contained in the ASSIS and information attached to the ASSIS (for cases filed before the Act, the same documents are also excluded). In addition, courts continue to have discretion to provide court orders allowing access, but the segregated ASSIS provides the court with a means of permitting access to other materials excluding the ASSIS information and attachments, if the court thinks that such limited disclosure appropriate.

Subsection (3) provides that a home study need not be attached if the requirement has been waived. This in conformance with existing law; the home study requirements are now detailed in Section 2(7) of the bill. Note that if a home study requirement is not waived, the home study itself is never required to be attached. This has been existing law but some courts have nonetheless required the actual home study. The bill strives to clear up this issue by consistently using the phrase “home study or written evidence that a home study has been approved” to describe the requirement. The “written evidence” generally is a summary, noting the date of the study, the findings, etc.

Subsection (4) requires the petitioner to update the ASSIS when information changes or becomes known.

Lastly, subsection (5) provides that the ASSIS and exhibits submitted with it are confidential and may not otherwise be inspected or copied except as provided in the two enumerated adoption law statute series. The main exceptions are enumerated in Section 6. In addition, subsection (5) provides that the ASSIS and exhibits submitted with it must be segregated in the court record. The bill does not provide for how this segregation will be done but the work group's understanding is that the Oregon eCourt Program has tools for designating documents as subject to heightened access restrictions.

Section 6

This section begins in (1) with a statement of existing law (brought over from ORS 7.211) that requires that court records in adoption cases shall be maintained separately from the general records of the court. As explained in the “History of the Project” section of this report, the courts are transitioning to a new case management system as part of the Oregon eCourt program. Adoption records are given heightened security measures in the management system and thus will continue to be maintained “separately” from the general records – albeit in an electronic manner. The bill does not further define this requirement, but instead provides flexibility to OJD to develop its case management system. Subsection (2) goes on to provide that all records in adoption cases are to be “sealed.” Existing law, in ORS 7.211(1) (which will be repealed with this bill), provides that the records are sealed at the time of “entry of the judgment.” Current ORS 7.211(1) also inferentially provides that adoption records are confidential both pre- and post-judgment as it has prohibited the clerk or court administrator from disclosing to any person, without a court order, “any information” in the records. Section 6(2) fixes any ambiguity by providing that all records that are filed with the court, “both prior to entry of judgment and after entry of judgment” are “to be sealed.” The subsection provides that records shall not be unsealed except as otherwise provided in the main adoption law series⁵ (which includes the Section 6 provisions) or the adoption registry series.⁶ The main exceptions to the court order requirement, which are new, follow in subsections (3) to (8) of Section 6.

The group discussed at length who should have access to court adoption file records and what access they should have. In developing rule recommendations, the group resorted to drawing out a matrix with the following individuals/entities: adoptive parents (petitioners), attorneys of record for the petitioners, consenting persons (usually birth parents), DHS, judge/ court staff, the minor adoptee, the adoptee once reaching age of majority, and other persons (relatives, public, etc.).

In the end, the group recommended that the judge/court staff, petitioners, attorneys of record for the petitioners, and DHS would have inspection and copy rights to the full record of an adoption case without a court order at all times—i.e. prior to entry of judgment and after entry of judgment. The group found no reason to restrict access to these individuals and entities. This recommendation is reflected in Section 6(3) and

⁵ ORS 109.305 to ORS 109.410.

⁶⁶ ORS 109.425 to ORS 109.507.

(4). This does reflect a policy change in Oregon, i.e., to not require a court order for such access. However, in practice, these individuals and entities all are provided access to the court file—currently, it just takes extra time and effort.

The group recommends that the minor child in the adoption proceeding (adoptee) also have access to the court file without a court order when they have attained eighteen years of age. See Section 6(4)(b). The group provided one main restriction—that the adoptee would not have access to the home study or evidence of a home study, which is one of the attachments to the ASSIS—except upon motion and order of the court with good cause. The group reasoned that the home study has particularly sensitive information about the adoptive parents, other relatives, finances, etc. To require disclosure of that information could be chilling to future adoptive parents. If an adoptee wants access to court records from their adoption proceeding, present law and practice requires adoptees to file a motion with the court requesting access to their file pursuant to ORS 7.211; some courts routinely allow inspection and copying of the file by granting the court order, while others do not. ORS 7.211 provides no real direction to the courts to make their determinations; instead, judges have full discretion. This leads to inconsistency in practice and consistency is needed. The group recommended that the statutes should provide clear rules when possible and where not possible, judicial discretion should be tempered with more guidance and standards for courts to follow when determining motions. Presently, judges generally review the file before deciding on a motion for access. Judges are essentially reviewing a file to determine if there are “dangers” that the court should protect the adoptee from and if access is in the best interest of the parties. Some complain that some judges today essentially are reviewing the file to see if there is disparaging information, hurtful information, or embarrassing information that perhaps should not be disclosed to protect the adoptee. However, adoptees maintain that when they are adults they should be treated as such, and they assert that such review of their file by the courts continues to infantilize them. They assert that they can handle the information and that they have a need and a right to know their history. While not an easy decision, the work group generally agreed that while protecting a minor child adoptee is important, the role of protector is generally no longer appropriate at the age of majority and thus access should be provided automatically, with the exception of retaining judicial discretion as described regarding the home study.

The Work Group believes that requiring disclosure of records to Oregon’s adoption records to adult adoptees is supported by existing Oregon law and is a logical extension of the law today. First, Oregon’s Constitution provides for open courts and it militates towards providing more access to court proceedings and records. The "open courts" clause of Article I, section 10, of the Oregon Constitution provides, in

part: "No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay[.]" Second, since 1983 Oregon law has allowed release of identifying information necessary for identifying a birth parent, a putative father, an adult adoptee, and an adult genetic sibling through the state's voluntary adoption registry. See ORS 109.460 and ORS 109.490. An adoptee is considered an adult that is eligible to register when they reach age 18. See ORS 109.425(4). That is, at age 18 Oregon adoptees who are matched in the registry already receive the contact information regarding their birth parents. Third, an adoptee, at age 18, has a statutory right to their genetic, social, and health history. See ORS 109.500. The disclosure of this history is presently handled by a public or private organization licensed or authorized under the laws of the state to place children for adoption. See ORS 104.500 and ORS 109.425(5)(defining agency). Indeed, ORS 109.500(2) provides that the medical history report that is disclosed may be in the form prescribed by DHS under ORS 109.342. The medical history required under ORS 109.342 is filed originally with the court. See ORS 109.342(1). It would be consistent to simply allow adoptees to get the original report filed with the court. Fourth, upon reaching age 21, ORS 432.240 provides that adoptees "shall be issued a certified copy of his/her unaltered, original and unamended certificate of birth in the custody of the state registrar." This information provides identifying information that makes it possible for adoptees to find their birth parents. Fifth, existing ORS 7.211 has long provided courts with discretion to release the adoption court file to adoptees.

The Work Group discussed whether it should recommend requiring access to the court records when the adoptee reached 18 or 21. The Work Group recognized that Ballot Measure 58 had used 21 for political reasons. The Work Group believed for policy reasons that 18 was more appropriate as the adoptees are adults at 18 and should be treated as such. In addition, it was consistent with other provisions using age 18. Thus, the bill reflects this preference. The Work Group also considered permitting adoptees to destroy or remove items in the court record at age 18—namely their medical history—but in the end decided against including such a provision.

Section 6(5) provides that after a judgment has issued in an adoption proceeding (it is final) and the minor child adoptee has attained eighteen years of age, an individual whose consent for the adoption was required may file a motion with the court to inspect and copy the adoption court record. In most cases, the person whose consent was required would have been the birth mother and if known, the birth father. If the birth parent was not living, a guardian or next of kin would often have consented. In short, this subsection provides that birth parents must file a motion with the court to access adoption case court records. This procedure is the same as that required under existing law at ORS 7.211. However, new Section 6(5)(b) goes on to provide more

direction to the court as it provides that the court shall grant the motion to inspect and copy records to these individuals for good cause shown. That is, the work group believed that the presumption in effect should be that birth parents should be allowed to inspect and copy the court file. And only for good cause should the motion be denied. The good cause standard is meant to continue to give courts discretion in granting or denying requests for access. That is, the court can find good cause (or not) based on what the requestor shows but also based on the court's review of the records and input, if any, from adoptive parents or adult adoptees, if they are provided notice. A good cause standard, coupled with the presumption, provides helpful guidance to the court that is missing in present law. The new section does exclude certain documents from inspection and copying—those most sensitive documents that are segregated in the ASSIS and provided for in Section 5. For cases filed prior to this act, the documents will not have been attached to an ASSIS. Thus, this section expressly excludes the same exhibits, namely the home study, the adoption report, and the medical history that are required by Section 5(2). Note that some will have provided the information for the medical history and signed it and thus they may be able to get a copy under new Section 6(6), described later in this report. It is primarily the home study that the group felt should not be provided. With this new procedure, among other documents, the birth parents will generally be able to inspect and copy the adoption petition, attachments to the petition and the adoption judgment.

Some adoptions are involuntary and include state action. In this situation, DHS or an out of state agency is involved with the adoption case, which is typically preceded by a juvenile court dependency proceeding that includes the termination of parental rights or the release and surrender of parental rights for purposes of adoption under ORS 418.270. Indeed, a parent's parental rights are terminated for the purpose of freeing the minor for adoption. See ORS 419B.500. A parent's rights can be terminated by the state by agreement, or upon various court findings including: a single or recurrent incident of extreme conduct (ORS 419B.502), that the parent is unfit by reason of conduct or condition seriously detrimental to the minor (ORS 419B.504), that the parent has failed or neglected without reasonable or lawful cause to provide for the basic physical and psychological needs of the minor (ORS 419B.506), that the parent abandoned the minor (ORS 419B.508), or that the minor was conceived as the result of an act that lead to the parent's conviction for rape (ORS 419B.510). The listed grounds for termination of parental rights are serious and often involve serious criminal conduct by the parents or situations that presented serious safety issues to the minor. In these cases, upon entry of an order terminating the rights of the parent, the court generally permanently commits the minor to DHS and then DHS (rather than the birth parents) consents to the adoption of the minor. See ORS 419B.527(1)(a) (court may commit minor to institution or agency) and ORS

109.316 (DHS may consent to adoption). Alternatively, parents involved in a juvenile dependency proceeding may choose to release or surrender their parental rights to DHS for purposes of adoption. See ORS 418.270 and ORS 109.316. Largely due to safety reasons, the Work Group unanimously agreed that these DHS adoptions should be treated differently than other adoptions regarding access to the court records. To fulfill their state function, DHS needs willing persons to adopt these children; safeguards to ensure the protection of the child and the new adoptive parents are very important. That is, the group agreed that the presumption should be that identifying information should be protected and not disclosed to the birth parents. In some circumstances, where safety is not an issue, the cases may be very open from the beginning and even include continuing contact agreements. However, the default rule recommended for court records is found in the bill's Section 6(5)(c). It provides that when DHS consented or has the authority to consent to the adoption, a parent may not inspect or copy the ASSIS, exhibits attached to the ASSIS, or materials described under Section 5 (for cases prior to this Act). In addition, for records that the court permits to be disclosed, the name, address or other identifying information of any individual or entity other than the parent filing the motion contained in the records must be redacted or otherwise not disclosed. Parents in these DHS cases may file a motion with the court to inspect or copy court records not excluded. The court may grant the motion for good cause. As explained above, the good cause standard gives the court broad discretion. The court can find good cause (or not) based on the request, the records, and the input of others. In short, this provision is in step with existing law requiring a court order for inspection or copying, except that the bill specifies that for DHS adoptions, listed materials and identifying information may not be disclosed. As explained above, practice has been inconsistent in the counties and it is important to guide the courts in this area.

Section 6(6) is a new provision that provides another exception to the court order requirement for signors of records. The Work Group reasoned that if a person signed a record, paper, or document that is filed in the case, that person should be able to inspect and obtain a copy of the document, without having to get a court order. The group reasoned that in such a case, the person has necessarily seen the document before and there should not be barriers to getting another copy. The group recognized that occasionally a DHS case record may have both an adoptive parent's and birth parent's signature on the bottom of a document but the adoptive parent signs last. In such case, the DHS provision in (5)(c) governs.

Section 6(7) provides that DHS and other licensed adoption agencies may, without a court order, access, use or disclose information or records, papers, or files in the record of an adoption case that are in their possession for the purpose of providing

adoption services or the administration of child welfare services. This provision was developed due to existing problems with ORS 109.440 which can be read so restrictively as to essentially prevent DHS and adoption agencies from using records to do their legally required job. Moreover, the work group noted concerns that ORS 7.211 could be interpreted to apply to adoption records in the possession of DHS and therefore that DHS was prevented from accessing its own records, without a court order, for purposes of providing adoption services or for the administration of child welfare services. In the end, the work group also recommended repeal of ORS 109.440. See Section 7 discussion.

As discussed above, Section 6 provides rules for inspecting and copying various parts of the court record in an adoption case. These new rules provide that a court order will no longer be required by those most affected by the adoption proceeding in specified circumstances. However, if an individual or entity seeks access to inspect or copy record(s) and doesn't have express authority to access records, a court order will still be required. See Section 6(8). The existing procedure of filing a motion to inspect and copy will continue to be used. See Section 6(8). Note however, that the specified restrictions in Section 6 supersede the more general provisions of Section 6(8) due to the introductory phrase, "except as provided in this section."

The work group expressed particular concern with persons not a part of the adoption proceeding gaining access to the court's adoption records, including newspapers, employers, insurance companies, and "nosy" friends, relatives, and neighbors. Re-disclosures and the posting online of sensitive personal information were of particular concern as some documents are protected by other laws (e.g. HIPAA). Presently practice varies throughout the state—some courts allow access with court orders regarding certain persons, and others do not. The work group agreed it would be best to require notice to the affected persons in such circumstances before any disclosures were made by the court. However, more drafting and discussion is needed to make such a notice requirement procedurally function and address policy concerns. The work group will continue over the interim to address other more substantive adoption issue and will include this issue in their law reform project. The bill thus retains status quo on this issue. Courts will still need to find good cause, and it is hoped that judges will be circumspect. Indeed, the Commission notes that judges should consider contacting parties before disclosure if possible.

Section 6(9) is taken from existing law found in ORS 7.211(1) and expanded to also clearly cover DHS. In short, an adoption judgment is often needed to receive continued adoption services after the case is finished and it is important to emphasize that the clerk or court administrator shall not be prevented from certifying or

providing copies of a judgment of adoption to the petitioner, petitioner's attorney of record and DHS.

Section 6(10) is taken from ORS 7.211(2) and simply clarifies that Section 6 does not affect disclosure that is permitted under the voluntary adoption registry series at ORS 109.425 to 109.507.

Section 6(11) permits the courts to impose and collect fees for copies and services provided under this section. The courts are already reviewing adoption case files and providing copies but this section makes it clear that the court has authority to impose and collect fees. The work group recognized that the issue of court fees and how they are appropriated has been a legislative battle. Still, the work group noted that a continuous appropriation of collected fees to OJD would help offset the costs courts incur servicing requests for disclosure of adoption files.

Section 6(12) provides that when the court grants a motion to inspect, copy or disclose records, the court shall order a prohibition or limitation on re-disclosure unless good cause is shown.

Lastly, Section 6(13) gives authority to the court to establish procedures to verify the identity of those requesting access to court records before disclosure is made.

The chart below summarizes the access rules provided for in Section 6 of the bill:

	Petitioner (e.g. adoptive parent) and Petitioner's Lawyer	Court/ court staff	DHS	Adoptee (child)	Consenting person (e.g. birth parent)	Signor of document (except if contains another's signature)	Others/ public
Prejudgment- without court order	●	●	●			●	
Post- judgment- before adoptee is 18 -without court order	●	●	●			●	
Post- judgment - adoptee is 18 or older- without court order	●	●	●	● (Excluding home study)		●	
Court order – pre or post- judgment				●	● Presumption of access when adoptee is 18, excluding Adoption Summary and Segregation Information Statement, home study, medical history, and adoption report. DHS case exception— presumption of no identifying info provided.		● Good Cause Required Redisclosure prohibition or limitation required unless good cause shown

Section 7

This section repeals both ORS 7.211 and ORS 109.440. ORS 7.211 is replaced by Section 6 in this bill. The Work Group determined that it was better policy to put the court records provision regarding adoption cases in the adoption series in Chapter 109 rather than have it isolated in ORS Chapter 7, which is a chapter that applies to records and files of the courts. Existing ORS 7.211 was difficult to read and highly redundant and the group recommended substantial policy changes to ORS 7.211 as well. See Section 6 discussion above. Still, some of the text of ORS 7.211 remains but it is renumbered in the revised Section 6.

The group recommended the repeal of ORS 109.440 as well—frankly because no one could articulate its purpose. The provision is focused on the protection of adoption information rather than records. It seems to say that no person or agency can share information regarding an adoption to anyone except as permitted by the voluntary registry or if permitted by court order. This is too broad. This can be read to prohibit parents from talking to their children about their own adoption. It can be read to prohibit agencies from doing their job. In short, it was unanimously viewed as unnecessary and a problem in existing law. Instead, Section 6 is the better vehicle to regulate confidentiality of records and information as well as the redisclosure of information and records.

Section 8

This section revises ORS 419B.529 which is a provision in the juvenile dependency code which provides for an adoption procedure known as a petitionless adoption. The procedure is permitted in limited DHS adoptions. The amendments made in (1)(a) correct existing law as it presently fails to accurately reflect the federal Indian Child Welfare Act requirements for voluntary termination of parental rights. See 25 USC sec. 1913. The amendments made in (2) ensure consistency with the Chapter 109 adoptions and how records are segregated. With this bill, petitionless adoptions will also require the filing of an Adoption Summary and Segregated Information Statement (provided for in Section 5) and require the prescribed exhibits attached to it. Practitioners, courts, and clerks should take careful note of renumbered (5). The work group heard feedback that some counties do not always separate out adoption records from juvenile court records as required by existing law. Section 8(4) is revised to make it clear that the juvenile court may enter a judgment of adoption in a petitionless adoption where the parents released and surrendered their parental rights, and thus there was no order of permanent commitment. Section 8(5) simply continues that separation requirement by referring to Section 6 instead of the repealed

ORS 7.211. Section 6(1) is taken from ORS 7.211 and it continues to provide that the clerk or court administrator “shall keep a separate record of the case for each adoption proceeding filed with the court.” This continued requirement is important to ensure confidentiality and proper protection of the adoption records because juvenile records are afforded different protections and are governed by different disclosure rules.

Section 9

This section corrects cross reference inaccuracies in present law and makes conforming changes.

Section 10

This section makes Legislative Counsel form and style changes to an existing statute in the adoption series.

Section 11

This section modestly amends ORS 109.329, the adult adoption provision. The work group was focused on adoption of minor children and decided not to address adult adoptions at this time. The amendment to (6) simply makes it clear that the new law provided for in this bill is inapplicable to adult adoptions.

Section 12

This section simply makes a citation conforming change to ORS 109.332. Section 4 is the new petition provision and thus it is appropriately substituted in this section.

Section 13

The change in this section to ORS 419B.527 corrects a cross-reference mistake in present law.

Section 14

The changes to ORS 109.400 made in this section include Legislative Counsel form and style changes and a conforming cross-reference change because ORS 7.211 is repealed by the bill.

Section 15

The deletion in ORS 109.430 is of ORS 7.211 as that provision is repealed by the bill.

Section 16

This section contains the operative date provisions for the bill. Section 16(1) provides that certain sections of the bill are prospective only. The listed sections here

have to do with changes to adoption filing requirements. The group agreed that cases that are final or pending should not have different requirements imposed upon them.

However, Section 16(2) provides that the new records disclosure provision, provided for in Section 6, applies both retroactively and prospectively. That is, it will apply to all adoption case court records. The work group discussed at length the policy and political pros and cons with having the new records provisions apply retroactively, as well as the potential impact on the courts. In the end, the work group decided that it was very important to make the changes effective immediately – both prospectively and retroactively. The reasons for the changes are described in detail in Section 6.

VII. Conclusion

SB 623 should be adopted in order to clarify and improve the law surrounding court records in adoption cases. With this bill, numerous technical corrections and revisions are made to improve the law and make adoption practice consistent. The number of documents filed in an adoption case is significantly reduced because the adoption petition requirements have been revised and consolidated to avoid repetition. This bill promotes efficiency by dispensing with the present requirement that all persons or entities must obtain a court order to inspect or copy adoption case court records. Instead, the bill provides for new access rules, utilizing an important organization tool for identifying important summary information and segregating the most sensitive and confidential adoption information and records. Adoptees, upon reaching 18 years of age, are ensured timely access to their court file and birth parents are provided more predictable access as well. Petitioners, practitioners, DHS, and the courts will also have necessary access to court records.

Note: The Senate Judiciary Committee adopted the -2 amendment. That amendment replaced the bill as the Work Group had not finished its work and recommendations before the bill was filed. The -2 amendment is reflected in the description provided by this report as it contains the Work Group's and Commission's collective recommendations.