

37

E-FILED
THURSTON COUNTY, WA
SUPERIOR COURT
07/09/2021 8:01:48 AM
Linda Myhre Enlow
Thurston County Clerk

[] EXPEDITE (If filed within 5 court days of hearing)
[x] Hearing is set: Revised due to Clerk's cancellation
Date: 7-29-21
Time: 10:30am Zoom #: 242-974-5214 Rm:4
Judge/Calendar: Indu Thomas, et al/Motion & Reconsider

21-4-00443-34
OB 87
Objection Opposition
10633621



**Superior Court of Washington
for Thurston County Family &
Juvenile Court**

In re: Emergency Guardianship of
Hazel Belle Ursa Smith

Respondent(s): Minor Child(ren)

No. 21-4-00443-34

**Exhibit 'F' for PRELIMINARY
Objection to Jurisdiction of ex
parte Emergency Guardianship
Order executed in Oregon &
Court's Analysis conflating
UCCJEA cases with this ex
parte emergency case executed
in a foreign state on 5-30-21,
Reliance on Criminal Theft of
Private Property & Surveillance,
as Evidence, & Reconsideration
by John Smith (moving party)**

(Cover Sheet)

TITLE OF DOCUMENT

**Exhibits 'F' for PRELIMINARY Objection to Jurisdiction of ex parte Emergency
Guardianship Order executed in Oregon & Court's analysis conflating UCCJEA
cases w/this ex parte emergency case executed in a foreign State on 5-30-21,
Reliance on Criminal Theft of Private Property & Surveillance as Evidence, &
Declaration by John Smith (moving party)**

**NAME: John Smith, grandfather
Mailing ADDRESS: PO Box 1711
Shelton, WA 98584
PHONE: (360)427-3599**

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

1 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

EXHIBIT 'F'

A court of this state shall accord full faith and credit to an order issued by another state and consistent with ORS 109.701 (Short title) [aka: UCCJEA] to 109.834 (Severability clause) that enforces a child custody determination by a court of another state unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under ORS 109.741 (Initial child custody jurisdiction) to 109.771 (Appearance of parties and child). [1999 c.649 §35] Note: See note under 109.701 (Short title).

[Read all the definitions and subsections from 109.701 – 109.834 carefully!]

ORS 109.701 (Short title) to 109.834 (Severability clause) may be cited as the Uniform Child Custody Jurisdiction and Enforcement Act. [1999 c.649 §1] Note: 109.701 (Short title) to 109.834 (Severability clause) were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 109 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

ORS 109.704

Definitions for ORS 109.701 to 109.834

- Text
- Annotations

As used in ORS 109.701 (Short title) to 109.834 (Severability clause):

(1)

"Abandoned" means left without provision for reasonable and necessary care or supervision. **[BAD! i.e. allegations of abandonment in Brooklawn, NJ on 1-16-21]**

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

2 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

(2)

"Child" means an individual who has not attained 18 years of age.

(3)

"Child custody determination" means a judgment or other order of a court providing for the legal custody, physical custody, parenting time or visitation with respect to a child. "Child custody determination" includes a permanent, temporary, initial and modification order. "Child custody determination" does not include an order relating to child support or other monetary obligation of an individual.

[These definitions are intended for the UCCJEA, a statute whose status may be technically suspect as Oregon Law, i.e. parents or actual guardians engaged in genuine custody battles to discourage forum shopping among litigants and intentional delay, expense and disruption of due process, NOT hopeful grandparents without portfolio or standing intent on using the UCCJEA preemptively as a sword and prior restraint to promote the very forum shopping, denial of meaningful due process—particularly for the poor, indigent, and victims of DV. It was never intended and is not applicable for ex parte emergency petitions guardianship for minors actions filed by hopeful grandparents/guardian without preexisting standing. Due Process must be strictly construed. All the rights and protections of the children and their mother must be carefully preserved with the full weight and sovereign authority of the State wherein they are found to be domiciled and residing for the very reason that an ex parte emergency guardianship order executed in a foreign state without judicial true oversight in that foreign state violates the intent of the UCCJEA itself. Any ambiguities in that or other statutory construction MUST be interpreted in favor of the mother and her children. In the Instant case, no return of service was filed and the attending LEO's unsworn report only indicates giving the mother a copy of the ex parte emergency order issued without jurisdiction in Oregon, not the petition nor the summons, the latter on file being materially defective in any event and subject to strict construction.]

(4)

"Child custody proceeding" means a proceeding in which legal custody, physical custody, parenting time or visitation with respect to a child is an issue. "Child custody proceeding" includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, parentage, termination of parental rights and protection from domestic violence in which the issue may appear. "Child custody proceeding" does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under ORS 109.774 (Definitions for ORS 109.774 to 109.827) to 109.827 (Costs and expenses of district attorney and law enforcement officers).

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

3 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

[All the above are normal proceedings replete with a full complement of due process and original service, discovery, production of witnesses, depositions, cross examinations, interrogatories and rules of evidence. An ex parte emergency guardianship order executed in a foreign state after midnight and/or extrajudicial opinion in the middle of the night from a rent-a-prosecuting-attorney is not due process or judicial oversight, but merely the opinion of yet another attorney devoid of appeal rights or review with no more extrajudicial authority than the next incompetent lawyer who graduated from law school and passed the bar.]

(5)

"Commencement" means the filing of the first pleading in a proceeding.

[i.e. 5-27-21, the ex parte emergency petition for guardianship filed in Thurston.

Note: Commissioner Thomas reflected on the petition for a parenting plan filed by James Wells while observing a return of service had not been filed and there was no indication original process had been completed, thus failing to establish in personam jurisdiction over the mother by the court, thus giving it no weight as a court of original or concurrent jurisdiction. The door remains open to file a petition for Habeas Corpus in Oregon along with a petition to exclude the Stokers as temporary guardians and name the mother as the custodian/guardian of the children.]

(6)

"Court" means an entity authorized under the law of a state to establish, enforce or modify a child custody determination.

[These statutes re of an entirely different construction than the ex parte emergency petition for guardianship of minors and MUST NOT be conflated with the normal proceedings replete with truly adequate due process and original service.]

(7)

"Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six **consecutive** months **immediately before the commencement** of a child custody proceeding. In the case of a child less than six months of age, "home state" means the state in which the child lived from birth with any of the persons mentioned. Any temporary absence of any of the mentioned persons is part of the period.

[Again, this refers to normal custody conflict litigation, NOT ex parte emergency guardianship for minors orders executed out-of-state by those with no standing. Even if one was to ignore this blunt bright line boundary to Washington exercising unbridled authority over the citizens of sister states in such proceedings, this definition refers to 6 CONSECUTIVE months IMMEDIATELY BEFORE THE COMMENCEMENT of a child custody

proceeding. The children left Washington State entirely lawfully in their mother's custody on 11-21-21. Even if one were to ignore the period the children and mother were out of Washington State prior to 1-21-21, she left with her children very shortly thereafter and established her domicile and residence in Oregon, thus defeating the necessary six **consecutive months immediately before the commencement for Washington to claim jurisdiction under Oregon's** implementation of its version of the UCCJEA which not incidentally furnished rights to the indigent, victims of DV, **and those burdened by an inconvenient jurisdiction/venue.** Courts must be vigilant not to conflate the UCCJEA with the entirely different statutory construction of ex parte emergency petitions for guardianship of minors action such as this with wholly irregular and deficient original process and failure to establish proper jurisdiction in a foreign state—a virtual oxymoron for an ex parte emergency order to seize children after midnight (5-30-21) for guardianship] **in a foreign jurisdiction where no verifiable immediate risk of harm to the children was in evidence or demonstrated when the ex parte order was issued.]**

(8)

"Initial determination" means the first child custody determination concerning a particular child.

[e.g. Hazel and the existing order in Colorado of a parenting plan and visitation. It's likely the Colorado Court will agree to granting jurisdiction to Washington State, but you should object that an ex parte emergency petition for guardianship of minors, one executed in a foreign state, no less, does not fall under the purview of a UCCJEA conference. It is entirely a very temporary emergency order until the emergency/crisis has passed. Object repeatedly, and resist Colorado giving Washington jurisdiction for what took place in Oregon without proper jurisdiction by Washington even there.]

(9)

"Issuing court" means the court that makes a child custody determination for which enforcement is sought under ORS 109.701 (Short title) to 109.834 (Severability clause).

[No court has or can make a child custody determination under Washington's ex parte emergency guardianship for minors statute. Indu Thomas effectively said as much from the bench.

(10)

"Issuing state" means the state in which a child custody determination is made.

[No state (except Colorado) has issued a child custody determination unless you count the WA DV court which gave you custody of the children and prohibited James Wells from trying to interfere with your legal custody of them. He;s on record in Indu Thomas' courtroom as doing exactly that.]

(11)

"Modification" means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

[Again, this refers to normal custody disputes replete with fill due process that fall within the parameters of the UCCJEA.]

(12)

"Person" means an individual, corporation, public corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government or a governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

[I'm uncertain what they intend here—maybe an orphanage or religious order can apply for guardianship of minors?]

(13)

"Person acting as a parent" means a person, other than a parent, who:

(a)

Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

[The Stokers might be able to argue this one if they can roll the clock back 1 year from 5-27-21. However, can a babysitter claim to have had custody even if the sitter is a grandparent? Moreover, you can argue the children were let in the care of their father while you were temporarily absent, But the Stokers could rationally argue a babysitter does not cover the medical bills and surgeries they did for Hazel. You should argue those were gifts and not a contract or tantamount to giving up custody else you'd never have accepted the gifts and, for this reason, want none of their 'gifts' (Trojan Horse) now.]

(b)

Has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

6 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

[Notably, this condition was definitely not untrue on 5-28-21, especially in Oregon.]

(14)

"Physical custody" means the physical care and supervision of a child.

[Every babysitter meets this definition. Thus the condition as stated is empty and rhetorical.]

(15)

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[This applies to those cases covered by the UCCJEA, not ex parte emergency orders for guardianship of minors executed after midnight in a foreign state.]

(16)

"Tribe" means an Indian tribe or band, or Alaskan Native village, that is recognized by federal law or formally acknowledged by a state.

[This simply recognizes the sovereignty of First Nation Peoples' treaty rights which include sovereignty over tribal lands just as each of the 50 states has sovereignty over its land and people within its boundaries. E.g. The federal government cannot execute a U.S. citizen for crimes he/she committed within their home state when that state has abolished the death penalty despite the fact the capital crime conviction took place in a federal court. States rights are not helpless before the doctrine of full faith and credit.]

(17)

"Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child. [1999 c.649 §2; 2003 c.576 §159; 2017 c.651 §34] Note: See note under 109.701 (Short title).

[But is the warrant lawful and issued by a court with proper jurisdiction and adhering to proper original process, including valid service of both the petition AND a properly conformed Summons?]

ORS 109.701 (Short title) to 109.834 (Severability clause) [UCCJEA] do not govern a proceeding pertaining to the authorization of emergency medical care for a child. [1999 c.649 §3]

ORS 109.714

International application of ORS 109.701 to 109.834

- [Text](#)
 - [Annotations](#)
-

(1)

A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying ORS 109.701 (Short title) to 109.771 (Appearance of parties and child).

(2)

Except as otherwise provided in subsection (3) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of ORS 109.701 (Short title) to 109.834 (Severability clause) must be recognized and enforced under ORS 109.774 (Definitions for ORS 109.774 to 109.827) to 109.827 (Costs and expenses of district attorney and law enforcement officers).

(3)

A court of this state need not apply ORS 109.701 (Short title) to 109.834 (Severability clause) if the child custody law of a foreign country violates fundamental principles of human rights. [1999 c.649 §5]

ORS 109.717

Effect of child custody determination

- [Text](#)
 - [Annotations](#)
-

A child custody determination made by a court of this state that has jurisdiction under ORS 109.701 (Short title) to 109.834 (Severability clause) binds all persons who have been served in accordance with the laws of this state or notified in accordance with ORS 109.724 (Notice to persons outside state) or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to

those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified. [1999 c.649 §6]

[This, of course, pertains to normal custody/guardianship cases covered by the UCCJEA, not the ex parte emergency petition for guardianship of minors order executed in a foreign state such as Oregon when a Washington court issued the relevant order on 5-28-21, executed after midnight on 5-30-21 in Oakridge, OR.]

ORS 109.721

Priority

- [Text](#)
- [Annotations](#)

If a question of existence or exercise of jurisdiction under [ORS 109.701 \(Short title\)](#) to [109.834 \(Severability clause\)](#) is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously. [1999 c.649 §7]

[YES!]

ORS 109.724

Notice to persons outside state

- [Text](#)
- [Annotations](#)

(1)

Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(2)

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

9 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made. If service is made by mail, proof of service may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(3)

Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court. [1999 c.649 §8]

[Do NOT get bit by #3! You must renew your continuing objection in every document and pleading you file, plainly stating you do not concede jurisdiction merely by appearance and reserving your continuing objection to jurisdiction at every hearing, filing, and pleading/declaration submitted to the court, else you will be deemed to have waived it. You must do this to preserve the objection for appeal just as you must dispute every false allegation.

ORS 109.727

Appearance and limited immunity

- [Text](#)
 - [Annotations](#)
-

(1)

A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

(2)

A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(3)

The immunity granted by subsection (1) of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under ORS 109.701 (Short title) to 109.834 (Severability clause) committed by an individual while present in this state. [1999 c.649 §9]

ORS 109.731

Communication between courts

- Text [NOT applicable to ex parte emergency guardianships, but only those under UCCJEA]
 - Annotations
-

(1)

A court of this state may communicate with a court in another state concerning a proceeding arising under ORS 109.701 (Short title) to 109.834 (Severability clause).

(2)

The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(3)

Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of the communication.

(4)

Except as otherwise provided in subsection (3) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(5)

For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. [1999 c.649 §10]

ORS 109.734

Taking testimony in another state

- Text [Pertinent to UCCJEA cases, NOT ex parte emergency guardianship of minors cases]
 - Annotations
-

(1)

In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

11 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

- (2) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.
- (3) Documentary evidence transmitted from another state to a court of this state by technological means that does not produce an original writing may not be excluded from evidence on an objection based on the means of transmission. [1999 c.649 §11]

ORS 109.737

Cooperation between courts

- **preservation of records**
 - Text [Pertinent to UCCJEA cases only, NOT ex parte emergency guardianship of minors orders]
 - Annotations
-

- (1) A court of this state may request the appropriate court of another state to:
- (a) Hold an evidentiary hearing;
- (b) Order a person to produce or give evidence pursuant to procedures of that state;
- (c) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (d) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented and any evaluation prepared in compliance with the request; and
- (e) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.
- (2) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (1) of this section.

(3)

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

12 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

Travel and other necessary and reasonable expenses incurred under subsections (1) and (2) of this section may be assessed against the parties according to the law of this state.

(4)

A court of this state shall preserve the pleadings, orders, judgments, records of hearings, evaluations and other pertinent records with respect to a child custody proceeding for the time required by the retention schedule adopted under ORS 8.125 (Duties to assist Chief Justice and other courts) (11). The retention schedule shall require retention at least until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records. [1999 c.649 §12; 2003 c.576 §160]

ORS 109.741

Initial child custody jurisdiction

- [Text](#) [UCCJEA cases only, not ex parte emergency guardianship order cases]
- [Annotations](#)

(1)

Except as otherwise provided in [ORS 109.751 \(Temporary emergency jurisdiction\)](#), a court of this state has jurisdiction to make an initial child custody determination only if:

(a)

This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b)

A court of another state does not have jurisdiction under subsection (1)(a) of this section, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under [ORS 109.761 \(Inconvenient forum\)](#) or [109.764 \(Jurisdiction declined by reason of conduct\)](#), and:
[Inconvenient forum for the indigent parent must be weighed for UCCJEA cases]

(A)

The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

13 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

[This UCCJEA standard doesn't cover grandparents acting as baby sitters or ex parte emergency guardianship orders executed in a foreign state.]

(B)

Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships;

(c)

All courts having jurisdiction under subsection (1)(a) or (b) of this section have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under ORS 109.761 (Inconvenient forum) or 109.764 (Jurisdiction declined by reason of conduct); or

(d)

No court of any other state would have jurisdiction under the criteria specified in subsection (1)(a), (b) or (c) of this section.

(2)

Subsection (1) of this section is the exclusive jurisdictional basis for making a **child custody determination** by a court of this state. [Doesn't apply to ex parte emergency guardianship orders executed out-of-state, only UCCJEA cases]

(3)

Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination. [1999 c.649 §13]

[Pertains to UCCJEA cases, not ex parte emergency guardianship orders executed out-of-state]

ORS 109.744

Exclusive, continuing jurisdiction

- Text [Pertains to UCCJEA cases, not ex parte emergency guardianship orders done out-of-state]
- Annotations

(1)

Except as otherwise provided in ORS 109.751 (Temporary emergency jurisdiction), a court of this state that has made a child custody determination consistent with ORS

109.741 (Initial child custody jurisdiction) or 109.747 (Jurisdiction to modify determination) has exclusive, continuing jurisdiction over the determination until:

(a)

A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training and personal relationships; or

(b)

A court of this state or a court of another state determines that the child, the child's parents and any person acting as a parent do not presently reside in this state.

(2)

A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if the court has jurisdiction to make an initial determination under ORS 109.741 (Initial child custody jurisdiction). [1999 c.649 §14]

ORS 109.747

Jurisdiction to modify determination

- Text [Pertain to UCCJEA cases, not ex parte emergency guardianship out-of-state orders]
- Annotations

Except as otherwise provided in ORS 109.751 (Temporary emergency jurisdiction), a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under ORS 109.741 (Initial child custody jurisdiction) (1)(a) or (b) and:

(1)

The court of the other state determines that it no longer has exclusive, continuing jurisdiction under ORS 109.744 (Exclusive, continuing jurisdiction) or that a court of this state would be a more convenient forum under ORS 109.761 (Inconvenient forum); or

(2)

A court of this state or a court of the other state determines that the child, the child's parents and any person acting as a parent do not presently reside in the other state. [1999 c.649 §15]

ORS 109.751

Temporary emergency jurisdiction

- [Text](#)
 - [Annotations](#)
-

(1)

A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(2)

If there is no previous **child custody determination** [not an ex parte emergency guardianship out-of-state order] that is entitled to be enforced under [ORS 109.701 \(Short title\) to 109.834 \(Severability clause\)](#) and a child custody proceeding has not been commenced in a court of a state having jurisdiction under [ORS 109.741 \(Initial child custody jurisdiction\) to 109.747 \(Jurisdiction to modify determination\)](#), a **child custody determination** [not an ex parte emergency guardianship out-of-state order] made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under [ORS 109.741 \(Initial child custody jurisdiction\) to 109.747 \(Jurisdiction to modify determination\)](#). If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under [ORS 109.741 \(Initial child custody jurisdiction\) to 109.747 \(Jurisdiction to modify determination\)](#), a child custody determination made under this section becomes a final determination if the determination so provides and this state becomes the home state of the child.

(3)

If there is a previous child custody determination that is entitled to be enforced under [ORS 109.701 \(Short title\) to 109.834 \(Severability clause\)](#), or a child custody proceeding has been commenced in a court of a state having jurisdiction under [ORS 109.741 \(Initial child custody jurisdiction\) to 109.747 \(Jurisdiction to modify determination\)](#), any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under [ORS 109.741 \(Initial child custody jurisdiction\) to 109.747 \(Jurisdiction to modify determination\)](#). The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

[Petition for Writ of Habeas Corpus to produce children in Oregon Court and Petition for Guardianship/Parenting Plan order, Indu Thomas said as much from the bench on 6-30-21 & 7-6-21]

(4)

A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under ORS 109.741 (Initial child custody jurisdiction) to 109.747 (Jurisdiction to modify determination), shall immediately communicate with the other court. A court of this state that is exercising jurisdiction under ORS 109.741 (Initial child custody jurisdiction) to 109.747 (Jurisdiction to modify determination), upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child and determine a period for the duration of the temporary order. [1999 c.649 §16]

[A UCCJEA type conference for ex parte emergency guardianship orders executed out-of-state]

ORS 109.754

Notice

- **opportunity to be heard**
- **joinder**
- Text [Pertains to UCCJEA cases]
- Annotations

(1)

Before a child custody determination is made under ORS 109.701 (Short title) to 109.834 (Severability clause), notice and an opportunity to be heard in accordance with the standards of ORS 109.724 (Notice to persons outside state) must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

(2)

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

17 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

ORS 109.701 (Short title) to 109.834 (Severability clause) do not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(3)

The obligation to join a party and the right to intervene as a party in a child custody proceeding under ORS 109.701 (Short title) to 109.834 (Severability clause) are governed by the law of this state as in child custody proceedings between residents of this state. [1999 c.649 §17]

ORS 109.757

Simultaneous proceedings

- [Text](#) [Pertinent to UCCJEA cases not ex parte emergency guardianship orders executed out-of-state]
- [Annotations](#)

(1)

Except as otherwise provided in ORS 109.751 (Temporary emergency jurisdiction), a court of this state may not exercise its jurisdiction under ORS 109.741 (Initial child custody jurisdiction) to 109.771 (Appearance of parties and child) if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with ORS 109.701 (Short title) to 109.834 (Severability clause), unless the proceeding has been terminated or is stayed by the court of the other state because a court of **this state is a more convenient forum** under ORS 109.761 (Inconvenient forum).

(2)

Except as otherwise provided in ORS 109.751 (Temporary emergency jurisdiction), a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties under ORS 109.767 (Information to be submitted to court). If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with ORS 109.701 (Short title) to 109.834 (Severability clause), the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with ORS 109.701 (Short title) to 109.834 (Severability clause) does not determine that

the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(3)

In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(a)

Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying or dismissing the proceeding for enforcement;

(b)

Enjoin the parties from continuing with the proceeding for enforcement; or

(c)

Proceed with the modification under conditions it considers appropriate. [1999 c.649 §18]

ORS 109.761

Inconvenient forum

- [Text](#)
- [Annotations](#)

(1)

A court of this state that has jurisdiction under ORS 109.701 (Short title) to 109.834 (Severability clause) to make a child custody determination may decline to exercise its jurisdiction at any time if the court determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the motion of a party, the court's own motion or the request of another court.

(2)

Before determining whether a court of this state is an inconvenient forum, the court shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(a)

Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

19 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

- (b) The length of time the child has resided outside this state;
 - (c) The distance between the court in this state and the court in the state that would assume jurisdiction;
 - (d) The relative financial circumstances of the parties;
 - (e) Any agreement of the parties as to which state should assume jurisdiction;
 - (f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
 - (g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
 - (h) The familiarity of the court of each state with the facts and issues in the pending litigation.
- (3) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.
- (4) A court of this state may decline to exercise its jurisdiction under ORS 109.701 (Short title) to 109.834 (Severability clause) if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding. [1999 c.649 §19]

ORS 109.764

Jurisdiction declined by reason of conduct

- [Text](#)
 - [Annotations](#)
-

(1)

Except as otherwise provided in ORS 109.751 (Temporary emergency jurisdiction) or 419B.100 (Jurisdiction), if a court of this state has jurisdiction under ORS 109.701 (Short title) to 109.834 (Severability clause) because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct to so invoke the jurisdiction, the court shall decline to exercise its jurisdiction unless:

- (a) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;
 - (b) A court of the state otherwise having jurisdiction under ORS 109.741 (Initial child custody jurisdiction) to 109.747 (Jurisdiction to modify determination) determines that this state is a more appropriate forum under ORS 109.761 (Inconvenient forum); or
 - (c) No court of any other state would have jurisdiction under the criteria specified in ORS 109.741 (Initial child custody jurisdiction) to 109.747 (Jurisdiction to modify determination).
- (2) If a court of this state declines to exercise its jurisdiction under subsection (1) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under ORS 109.741 (Initial child custody jurisdiction) to 109.747 (Jurisdiction to modify determination).
- (3) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction under subsection (1) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses and child care expenses during the course of the proceeding unless the party from whom necessary and reasonable expenses are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs or expenses against this state unless authorized by law other than ORS 109.701 (Short title) to 109.834 (Severability clause). [1999 c.649 §20]

ORS 109.767

Information to be submitted to court

- [Text](#)
- [Annotations](#)

- (1) In a child custody proceeding, each party, in its first pleading or in an attached affidavit or declaration under penalty of perjury in the form required by ORCP 1 E, shall give information, if reasonably ascertainable, as to the child's present address or whereabouts, the places where the child has lived during the last five years and the
- Exhibit 'F' In Limine for
pinbalwyz@yahoo.com
- 21 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

names and present addresses of the persons with whom the child has lived during that period. If the information is given in the party's first pleading, the pleading must include an affidavit or a declaration under penalty of perjury. The pleading, or attached affidavit or declaration under penalty of perjury, must state whether the party:

- (a)** Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or parenting time or visitation with the child and, if so, identify the court, the case number and the date of the child custody determination, if any;
 - (b)** Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding; and
 - (c)** Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or parenting time or visitation with, the child and, if so, the names and addresses of those persons.
- (2)** If the information required by subsection (1) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.
- (3)** If the information as to any of the items described in subsection (1) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.
- (4)** Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.
- (5)** If a party alleges in the first pleading, or in an attached affidavit or declaration under penalty of perjury, that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the

disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice. Costs incurred by the court when special notice procedures are made necessary by the nondisclosure of identifying information shall be paid by the parties as deemed appropriate by the court. [1999 c.649 §21; 2015 c.121 §10]

ORS 109.771

Appearance of parties and child

- [Text](#)
 - [Annotations](#)
-

- (1) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.
- (2) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given under [ORS 109.724 \(Notice to persons outside state\)](#) include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.
- (3) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.
- (4) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (2) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party and the child so appearing. [1999 c.649 §22]

ORS 109.774

Definitions for ORS 109.774 to 109.827

- [Text](#)
- [Annotations](#)

As used in ORS 109.774 (Definitions for ORS 109.774 to 109.827) to 109.827 (Costs and expenses of district attorney and law enforcement officers):

(1)

“Petitioner” means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(2)

“Respondent” means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination. [1999 c.649 §23]

ORS 109.777

Enforcement under Hague Convention

- [Text](#)
- [Annotations](#)

Under ORS 109.774 (Definitions for ORS 109.774 to 109.827) to 109.827 (Costs and expenses of district attorney and law enforcement officers), a court of this state may also enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if the order were a child custody determination. [1999 c.649 §24]

ORS 109.781

Duty to enforce

- [Text](#)

- [Annotations](#)
-

(1)

A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with [ORS 109.701 \(Short title\) to 109.834 \(Severability clause\)](#) or the determination was made under factual circumstances meeting the jurisdictional standards of [ORS 109.701 \(Short title\) to 109.834 \(Severability clause\)](#) and the determination has not been modified in accordance with [ORS 109.701 \(Short title\) to 109.834 \(Severability clause\)](#).

(2)

A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The remedies provided in [ORS 109.774 \(Definitions for ORS 109.774 to 109.827\) to 109.827 \(Costs and expenses of district attorney and law enforcement officers\)](#) are cumulative and do not affect the availability of other remedies to enforce a child custody determination. [1999 c.649 §25]

ORS 109.784

Temporary order for parenting time or visitation

- [Text](#)
 - [Annotations](#)
-

In a child custody enforcement proceeding authorized by law:

(1)

A court of this state that does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(a)

A parenting time or visitation schedule made by a court of another state; or

(b)

The visitation or parenting time provisions of a child custody determination of another state that permit visitation or parenting time but do not provide for a specific visitation or parenting time schedule.

(2)

If a court of this state makes an order under subsection (1)(b) of this section, the court shall specify in the order a period that it considers adequate to allow the petitioner to Exhibit 'F' In Limine for pinbalwyz@yahoo.com

25 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

obtain an order from a court having jurisdiction under the criteria specified in ORS 109.741 (Initial child custody jurisdiction) to 109.771 (Appearance of parties and child). The order remains in effect until an order is obtained from the other court or the period expires. [1999 c.649 §26]

ORS 109.787

Registration of child custody determination

- **notice**
- **fee**
- **hearing**
- [Text](#)
- [Annotations](#)

(1)

A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to any circuit court in this state:

(a)

A letter or other document requesting registration;

(b)

The filing fee established under ORS 21.145 (Simple proceeding filing fee);

(c)

Two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(d)

Except as otherwise provided in ORS 109.767 (Information to be submitted to court), the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody, parenting time or visitation in the child custody determination sought to be registered.

- (2) On receipt of the documents required by subsection (1) of this section, the registering court shall cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form.
- (3) The person seeking registration of a child custody determination shall serve notice upon the persons named under subsection (1)(d) of this section notifying them of the opportunity to contest the registration in accordance with this section.
- (4) The notice required by subsection (3) of this section must state that:
- (a) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;
- (b) A hearing to contest the validity of the registered determination must be requested within 21 days after service of notice; and
- (c) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.
- (5) A person seeking to contest the validity of a registered order must request a hearing within 21 days after service of the notice and pay the filing fee established under ORS 21.145 (Simple proceeding filing fee). At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:
- (a) The issuing court did not have jurisdiction under ORS 109.741 (Initial child custody jurisdiction) to 109.771 (Appearance of parties and child);
- (b) The child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so under ORS 109.741 (Initial child custody jurisdiction) to 109.771 (Appearance of parties and child); or
- (c) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of ORS 109.724 (Notice to persons outside state), in the proceedings before the court that issued the order for which registration is sought.

(6)

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

27 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(7)

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. [1999 c.649 §27; 2011 c.595 §34]

ORS 109.791

Enforcement of registered determination

- [Text](#)
 - [Annotations](#)
-

(1)

A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(2)

A court of this state shall recognize and enforce, but may not modify, except in accordance with [ORS 109.741 \(Initial child custody jurisdiction\)](#) to [109.771 \(Appearance of parties and child\)](#), a registered child custody determination of a court of another state. [1999 c.649 §28]

ORS 109.794

Simultaneous proceedings

- [Text](#)
 - [Annotations](#)
-

If a proceeding for enforcement under [ORS 109.774 \(Definitions for ORS 109.774 to 109.827\)](#) to [109.827 \(Costs and expenses of district attorney and law enforcement officers\)](#) is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under [ORS 109.741 \(Initial child custody jurisdiction\)](#) to [109.771 \(Appearance of parties and child\)](#), the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

28 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding. [1999 c.649 §29]

ORS 109.797

Expedited enforcement of child custody determination

- [Text](#)
 - [Annotations](#)
-

(1)

A petition under ORS 109.774 (Definitions for ORS 109.774 to 109.827) to 109.827 (Costs and expenses of district attorney and law enforcement officers) must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(2)

A petition for enforcement of a child custody determination must state:

(a)

Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(b)

Whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under ORS 109.701 (Short title) to 109.834 (Severability clause) and, if so, must identify the court, the case number and the nature of the proceeding;

(c)

Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, must identify the court, the case number and the nature of the proceeding;

(d)

The present physical address of the child and the respondent, if known;

(e)

Whether relief in addition to the immediate physical custody of the child and attorney fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(f) If the child custody determination has been registered and confirmed under ORS 109.787 (Registration of child custody determination), the date and place of registration.

(3) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. If the court issues an order, the order shall be served in the manner the court determines to be appropriate under the circumstances of the case and may include service by the sheriff. The person requesting the order shall pay the costs of service. The court shall hold the hearing as soon as reasonably possible and shall expedite the hearing if it finds an emergency is present.

(4) An order issued under subsection (3) of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and will order the payment of fees, costs and expenses under ORS 109.811 (Costs, fees and expenses), and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(a) The child custody determination has not been registered and confirmed under ORS 109.787 (Registration of child custody determination) and that:

(A) The issuing court did not have jurisdiction under ORS 109.741 (Initial child custody jurisdiction) to 109.771 (Appearance of parties and child);

(B) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under ORS 109.741 (Initial child custody jurisdiction) to 109.771 (Appearance of parties and child); or

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of ORS 109.724 (Notice to persons outside state), in the proceedings before the court that issued the order for which enforcement is sought; or

(b)

The child custody determination for which enforcement is sought was registered and confirmed under ORS 109.787 (Registration of child custody determination), but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under ORS 109.741 (Initial child custody jurisdiction) to 109.771 (Appearance of parties and child). [1999 c.649 §30]

ORS 109.801

Service of petition and order

- [Text](#)
- [Annotations](#)

Except as otherwise provided in ORS 109.807 (Warrant to take physical custody of child), the petition and order for enforcement of a child custody determination must be served by the petitioner, by any method authorized for service of process within this state, upon the respondent and any person who has physical custody of the child. [1999 c.649 §31]

ORS 109.804

Immediate physical custody of child

- **exceptions**
- **spousal privilege in certain proceedings**
- [Text](#)
- [Annotations](#)

(1)

Unless the court issues a temporary emergency order under ORS 109.751 (Temporary emergency jurisdiction), upon a finding that a petitioner is entitled to immediate physical custody of the child under the controlling child custody determination, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(a)

The child custody determination has not been registered and confirmed under ORS 109.787 (Registration of child custody determination) and that:

- (A) The issuing court did not have jurisdiction under ORS 109.741 (Initial child custody jurisdiction) to 109.771 (Appearance of parties and child);
- (B) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under ORS 109.741 (Initial child custody jurisdiction) to 109.771 (Appearance of parties and child); or
- (C) The respondent was entitled to notice, but notice was not given in accordance with the standards of ORS 109.724 (Notice to persons outside state), in the proceedings before the court that issued the order for which enforcement is sought; or
 - (b) The child custody determination for which enforcement is sought was registered and confirmed under ORS 109.787 (Registration of child custody determination), but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under ORS 109.741 (Initial child custody jurisdiction) to 109.771 (Appearance of parties and child).
- (2) The court shall award the fees, costs and expenses authorized under ORS 109.811 (Costs, fees and expenses), may grant additional relief, including a request for the assistance of law enforcement officials, and may set further hearings, if necessary, to determine whether additional relief is appropriate.
- (3) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under ORS 109.774 (Definitions for ORS 109.774 to 109.827) to 109.827 (Costs and expenses of district attorney and law enforcement officers). [1999 c.649 §32]

ORS 109.807

Warrant to take physical custody of child

- Text

• Annotations

- (1)** Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from this state.
- (2)** If the court, upon the testimony of the petitioner or other witness, is satisfied that there is probable cause to believe that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by ORS 109.797 (Expedited enforcement of child custody determination) (2).
- (3)** A warrant to take physical custody of a child must:

 - (a)** Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;
 - (b)** Direct law enforcement officers to take physical custody of the child immediately; and
 - (c)** Provide for the placement of the child pending final relief.
- (4)** The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.
- (5)** A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.
- (6)** The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian. [1999 c.649 §33]

ORS 109.811

Costs, fees and expenses

- [Text](#)
 - [Annotations](#)
-

(1)

The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses and child care expenses during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate. An award may be inappropriate if the award would cause the parent or child to seek public assistance or medical assistance, as defined in [ORS 414.025 \(Definitions for ORS chapters 411, 413 and 414\)](#).

(2)

The court may not assess fees, costs or expenses against a state unless authorized by law other than [ORS 109.701 \(Short title\) to 109.834 \(Severability clause\)](#). [1999 c.649 §34; 2013 c.688 §13]

ORS 109.814

Recognition and enforcement

- [Text](#)
 - [Annotations](#)
-

A court of this state shall accord full faith and credit to an order issued by another state and consistent with [ORS 109.701 \(Short title\) to 109.834 \(Severability clause\)](#) that enforces a child custody determination by a court of another state unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under [ORS 109.741 \(Initial child custody jurisdiction\) to 109.771 \(Appearance of parties and child\)](#). [1999 c.649 §35]

ORS 109.817

Appeals

Exhibit 'F' In Limine for
pinbalwyz@yahoo.com

34 John Smith, grandpa (971) 803-9898
PO Box 1711, Shelton, WA 98584

- [Text](#)
- [Annotations](#)

An appeal may be taken from a final order in a proceeding under ORS 109.774 (Definitions for ORS 109.774 to 109.827) to 109.827 (Costs and expenses of district attorney and law enforcement officers) in accordance with ORS chapter 19. Unless the court enters a temporary emergency order under ORS 109.751 (Temporary emergency jurisdiction), the enforcing court may not stay an order enforcing a child custody determination pending appeal. [1999 c.649 §36]

ORS 109.821

Role of district attorney

- [Text](#)
- [Annotations](#)

(1)

In a case arising under ORS 109.701 (Short title) to 109.834 (Severability clause) or involving the Hague Convention on the Civil Aspects of International Child Abduction, the district attorney may take any lawful action, including resort to a proceeding under ORS 109.774 (Definitions for ORS 109.774 to 109.827) to 109.827 (Costs and expenses of district attorney and law enforcement officers) or any other available civil proceeding, to locate a child, obtain the return of a child or enforce a child custody determination if there is:

(a)

An existing child custody determination;

(b)

A request to do so from a court in a pending child custody proceeding;

(c)

A reasonable belief that a criminal statute has been violated; or

(d)

A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(2)

A district attorney acting under this section acts on behalf of the state to protect the state's interest in the enforcement of ORS 109.701 (Short title) to 109.834 (Severability clause) and may not represent any party. [1999 c.649 §37]

ORS 109.824

Role of law enforcement officer

- [Text](#)
- [Annotations](#)

At the request of a district attorney acting under [ORS 109.821 \(Role of district attorney\)](#), a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a district attorney with responsibilities under [ORS 109.821 \(Role of district attorney\)](#). [1999 c.649 §38]

ORS 109.827

Costs and expenses of district attorney and law enforcement officers

- [Text](#)
- [Annotations](#)

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the district attorney and law enforcement officers under [ORS 109.821 \(Role of district attorney\)](#) or [109.824 \(Role of law enforcement officer\)](#). [1999 c.649 §39]

ORS 109.831

Application and construction

- [Text](#)
- [Annotations](#)

In applying and construing [ORS 109.701 \(Short title\)](#) to [109.834 \(Severability clause\)](#), consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [1999 c.649 §40]

ORS 109.834

Severability clause

- [Text](#)
- [Annotations](#)

If any provision of ORS 109.701 (Short title) to 109.834 (Severability clause) or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of ORS 109.701 (Short title) to 109.834 (Severability clause) that can be given effect without the invalid provision or application, and to this end the provisions of ORS 109.701 (Short title) to 109.834 (Severability clause) are severable. [1999 c.649 §41]

ORS 109.990

Penalty

- [Text](#)
- [Annotations](#)

(1)

A person who violates ORS 109.311 (Financial disclosure statement to be filed with petition) (3) or who submits a false statement under ORS 109.311 (Financial disclosure statement to be filed with petition) (1) commits a Class C felony.

(2)

A person who violates any provision of ORS 109.311 (Financial disclosure statement to be filed with petition) (4) or 109.502 (Search for birth parents, putative father, genetic siblings or county where adoption finalized) to 109.507 (Access to Department of Human Services records required) or any rule adopted pursuant to ORS 109.506 (Rulemaking) commits a Class A misdemeanor. [1985 c.403 §2 (4); 1993 c.717 §5; subsection (3) of 1993 Edition enacted as 1993 c.410 §9; 1995 c.79 §44; 1995 c.730 §4]