

Proposed revised Oregon probate code  
ILLEGITIMACY  
2nd Draft  
August 16, 1967

Prepared by  
Stanton Allison

EFFECT OF ILLEGITIMACY ON INTESTATE SUCCESSION

Section 1. Rights of illegitimate child. For all purposes of intestate succession an illegitimate child, unless he has been adopted:

- (1) Shall be treated as the legitimate child of his mother.
- (2) Shall be treated as the legitimate child of the father if, during the lifetime of the child:

(a) The paternity of the child is established under ORS 109.080; or

(b) The father has acknowledged himself to be the father in writing signed by him.

Section 2. Repeal of existing statutes. ORS 111.231 is repealed.

References: Proposal #4

Advisory Committee Minutes  
8/13,14/65, pp. 12 to 15  
9/18/65, p. 7  
5/19/67, p. 9 and 10

ORS 111.231, 109.060, 109.070 and 109.080

[Draftman's Note: Included in Definitions Section will be the following: The phrase "all purposes of intestate succession" as used in this chapter means succession by, through or from a person, both lineal and collateral.]

COMMENTS

This section would replace ORS 111.231. The proposed section, unlike ORS 111.231, requires that the paternity of the child must be determined during the child's lifetime. The proposed section would answer the criticism of ORS 111.231 in Jaureguy and Love, Oregon Probate Law and Practice, section 18.

The requirement that paternity be established during the child's lifetime would tend to eliminate fraudulent claims of the father where the child's estate is substantial.

The phrase "all purposes of intestate succession" is defined in the general definition section to mean succession by, through, or from a person, both lineal and collateral. This language is taken from the 1967 Uniform Probate Code (section 2-110).

The proposed section, in your committees' opinion, does not change present Oregon law, except as noted above. Reference is made to ORS 109.060, 109.070, 109.080 and 109.090. These sections, together with ORS 111.231, made up chapter 411 of the 1957 Session Laws which substantially rewrote the former law respecting inheritance rights and other legal relationships of illegitimate children. For this reason the proposed section refers to and incorporates ORS 109.070, which prescribes how paternity shall be established. The language of reference is that used in the following section ORS 109.080.

In addition to the means of establishing paternity set out in ORS 109.070, paternity may be established if "The father has acknowledged himself to be the father in writing signed by him." This language is taken from the Proposed Uniform Probate Code (section 2-111). We refer to similar provisions of the 1965 Washington Code (section 11.04.081); the 1963 Iowa Code, (section 221.222); the Proposed Wisconsin Probate Code (section 852.05). Your committees agreed that provision should be made for an acknowledgment by the father of his parenthood during the child's lifetime, as contained in all the new codes cited. This would be for the obvious benefit of the child.

Since most illegitimate children are ultimately adopted it should be noted that for inheritance purposes the adopted illegitimate child is treated as the child of the adopting parents and not as the child of its natural parents. Thus his right to inherit from his natural parent is cut off, unless the spouse of the natural parent is the adopting parent. The proposed section therefore makes it clear that it would not be operative if the child had been adopted.

Prepared by  
Mr. Frohnmayer

Proposed revised Oregon probate code  
ILLEGITIMACY  
1st Draft  
May 7, 1967

Final Revised Draft of Proposal #4

Section 1. Inheritance to, through and from an illegitimate child. For the purpose of inheritance to, through and from an illegitimate child:

(1) The child shall be treated as the legitimate child of his mother; and

(2) The child shall also be treated as the legitimate child of the father if, during the lifetime of the child

(a) The father marries the mother;

(b) The father acknowledges in writing that the child is his own; or

(c) A court determines the paternity of the child during the lifetime of the father in a proceeding brought for that purpose.

Section 2. Repeal of existing sections. ORS 111.231 is repealed.

References: Advisory Committee Minutes

8/13,14/65, pp. 12 to 15  
9/18/65 p. 7

ORS 111.231, 109.070 and 109.080

Comments: This is the wording of proposal #4 except for minor revisions of section 1 (2) (c).

Proposed revised Oregon probate code  
ILLEGITIMACY  
1st Draft  
January 11, 1967

This draft is based primarily on Proposal #4 and the action taken by the committee at the August and September meetings in 1965.

Section 1. Inheritance by, through and from an illegitimate child. For the purpose of inheritance by, through and from an illegitimate child:

(1) The child is considered the legitimate child of his mother.

(2) The child is considered the legitimate child of his father if, during the lifetime of the child:

(a) The father marries the mother;

(b) The father acknowledges in writing that the child is his own; or

(c) A court determines the paternity of the child during the lifetime of the father in a proceeding brought for that purpose.

References: Proposal #4

Advisory Committee Minutes:  
8/13,14/65, pp. 12 to 15  
9/18/65, p. 7

ORS 111.231, 109.070 and 109.080

Comment: Compare the sections to ORS 109.070, where the child is considered the child of both parents if they are married, cohabiting, and the husband is not impotent; the parents marry after birth; filiation proceeding as provided in ORS 109.110 to 109.230 and paternity being established by law.

Section 2. Repeal of existing section. ORS 111.231 is repealed.