

House Bill 3064

Sponsored by Representative WINGARD (at the request of Matt Minahan)

SUMMARY

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

Establishes automatic joint custody and parenting time order upon filing and service of petition in marital annulment, separation and dissolution proceedings.

A BILL FOR AN ACT

1
2 Relating to orders for care of children in family law proceedings; creating new provisions; and
3 amending ORS 107.095, 107.722 and 109.035.

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

5 **SECTION 1. (1) After a petition for marital annulment, dissolution or separation is filed**
6 **and upon service of summons and petition upon the respondent as provided in ORCP 7, an**
7 **order is in effect that the parties shall jointly share the care, custody, support and mainte-**
8 **nance of the minor children, if any, as described in ORS 107.105 (1)(a) and the parenting time**
9 **rights as described in ORS 107.105 (1)(b).**

10 **(2) The order issued under this section shall remain in effect until a final judgment is**
11 **issued, until the petition for marital annulment, separation or dissolution is dismissed or**
12 **until further order of the court.**

13 **(3) Either party subject to the order issued under this section may apply to the court for**
14 **further temporary orders, including modification or revocation of the order issued under this**
15 **section.**

16 **(4) A copy of the order issued under this section shall be attached to the summons.**

17 **(5) A party who violates a term of an order issued under this section is subject to im-**
18 **position of remedial sanctions under ORS 33.055 based on the violation, but is not subject to:**

19 **(a) Criminal prosecution based on the violation; or**

20 **(b) Imposition of punitive sanctions under ORS 33.065 based on the violation.**

21 **(6) Forms shall be established by court rule for the order issued under this section.**

22 **SECTION 2. ORS 107.095 is amended to read:**

23 107.095. (1) After the commencement of a suit for marital annulment, dissolution or separation
24 and until a general judgment therein, the court may provide as follows:

25 (a) That a party pay to the clerk of the court such amount of money as may be necessary to
26 enable the other party to prosecute or defend the suit, including costs of expert witnesses, and also
27 such amount of money to the Department of Justice, court clerk or court administrator, whichever
28 is appropriate, as may be necessary to support and maintain the other party.

29 (b) [*For the care, custody, support and maintenance, by one party or jointly, of the minor children*
30 *as described in ORS 107.105 (1)(a) and for the parenting time rights as described in ORS 107.105 (1)(b)*
31 *of the parent not having custody of such children*] **For modification or revocation of the order**

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

1 **issued under section 1 of this 2011 Act.**

2 (c) For the restraint of a party from molesting or interfering in any manner with the other party
3 or the minor children.

4 (d) That if minor children reside in the family home and the court considers it necessary for
5 their best interest to do so, the court may require either party to move out of the home for such
6 period of time and under such conditions as the court may determine, whether the home is rented,
7 owned or being purchased by one party or both parties.

8 (e) Restraining and enjoining either party or both from encumbering or disposing of any of the
9 real or personal property of either or both of the parties, except as ordered by the court.

10 (f) For the temporary use, possession and control of the real or personal property of the parties
11 or either of them and the payment of installment liens and encumbrances thereon.

12 (g) That even if no minor children reside in the family home, the court may require one party
13 to move out of the home for such period of time and under such conditions as the court determines,
14 whether the home is rented, owned or being purchased by one party or both parties if that party
15 assaults or threatens to assault the other.

16 (2) A limited judgment under ORS chapter 18 may be entered in an action for dissolution or
17 annulment of a marriage providing for a support award, as defined by ORS 18.005, or other money
18 award, as defined by ORS 18.005. Notwithstanding ORS 19.255, a limited judgment entered under this
19 subsection may not be appealed. Any decision of the court in a limited judgment subject to this
20 subsection may be appealed as otherwise provided by law upon entry of a general judgment.

21 (3) The court shall not require an undertaking in case of the issuance of an order under sub-
22 section (1)(c), (d), (e), (f) or (g) of this section.

23 (4) In a suit for annulment or dissolution of marriage or for separation, wherein the parties are
24 copetitioners or the respondent is found by the court to be in default or the respondent having ap-
25 peared has waived further appearance or the parties stipulate to the entry of a judgment, the court
26 may, when the cause is otherwise ready for hearing on the merits, in lieu of such hearing, enter a
27 judgment of annulment or dissolution or for separation based upon a current affidavit of the
28 petitioner or copetitioners, setting forth a prima facie case, and covering such additional matters
29 as the court may require. If child support or custody of minor children is involved, then the affidavit
30 also shall include:

31 (a) The gross monthly income of each party, to the best of the affiant's knowledge; and

32 (b) The name of the party with whom the children currently reside and the length of time they
33 have so resided.

34 (5) When a court orders relief under subsection (1)(c) or (d) of this section, the court may in-
35 clude in its order an expiration date for the order to allow entry of the order into the Law
36 Enforcement Data System and the databases of the National Crime Information Center of the United
37 States Department of Justice as provided in ORS 107.720. If the person being restrained was pro-
38 vided notice and an opportunity to be heard, the court shall also include in the order, when appro-
39 priate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) or (g)(8) to affect the person's ability
40 to possess firearms and ammunition or engage in activities involving firearms.

41 **SECTION 3.** ORS 107.722 is amended to read:

42 107.722. (1) The provisions of an order or judgment, or of a modification to an order or judgment,
43 issued under ORS 107.095 (1)(b), 107.105, 107.135, 109.103 or 109.155 **or section 1 of this 2011 Act**
44 supersede contrary provisions of a preexisting order issued under ORS 107.700 to 107.735, except
45 that an order issued under ORS 107.095 (1)(b) **or section 1 of this 2011 Act** supersedes a preexisting

1 order issued under ORS 107.700 to 107.735 only if the party requesting temporary relief consolidates
 2 the subsequently filed matter with the preexisting matter filed under ORS 107.700 to 107.735 and
 3 provides the nonmoving party with notice and an opportunity for a hearing.

4 (2)(a) In a proceeding under ORS 107.700 to 107.735, the court may modify the custody or par-
 5 enting time provisions of a preexisting order or judgment issued under ORS 107.095 (1)(b), 107.105,
 6 107.135, 109.103 or 109.155 **or section 1 of this 2011 Act**, or a similar order or judgment issued by
 7 the tribunal of another jurisdiction, if necessary to protect the safety and welfare of the child or the
 8 petitioner.

9 (b) If the court, in an order issued under ORS 107.700 to 107.735, modifies the custody provisions
 10 of a preexisting order or judgment issued under ORS 107.095 (1)(b), 107.105, 107.135, 109.103 or
 11 109.155 **or section 1 of this 2011 Act**, the court shall specify in the order issued under ORS 107.700
 12 to 107.735 a period that the court considers adequate under the circumstances within which the
 13 party seeking relief may obtain a modification of the preexisting order or judgment under controlling
 14 law. Upon the expiration of the period specified by the court, if a modification of the preexisting
 15 order or judgment has not been obtained, the custody and parenting time provisions of the order
 16 issued under ORS 107.700 to 107.735 expire and the custody and parenting time provisions of the
 17 preexisting order or judgment become immediately effective.

18 (c) If the court, in an order issued under ORS 107.700 to 107.735, modifies the custody provisions
 19 of a preexisting order or judgment issued by the tribunal of another jurisdiction, ORS 109.701 to
 20 109.834 apply.

21 **SECTION 4.** ORS 109.035 is amended to read:

22 109.035. (1) As used in this section:

23 (a) “Custody order” includes any order or judgment establishing or modifying custody of, or
 24 parenting time or visitation with, a minor child as described in ORS 107.095, 107.105 (1), 107.135 or
 25 109.103 **or section 1 of this 2011 Act**.

26 (b) “Foreign country” means any country that:

27 (A) Is not a signatory to the Hague Convention on the Civil Aspects of International Child
 28 Abduction;

29 (B) Does not provide for the extradition to the United States of a parental abductor and minor
 30 child;

31 (C) Has local laws or practices that would restrict the other parent of the minor child from
 32 freely traveling to or exiting from the country because of the race, religion, sex or sexual orien-
 33 tation of the other parent;

34 (D) Has local laws or practices that would restrict the ability of the minor child from legally
 35 leaving the country after the child reaches the age of majority because of the race, religion, sex or
 36 sexual orientation of the child; or

37 (E) Poses a significant risk that the physical health or safety of the minor child would be en-
 38 dangered in the country because of war, human rights violations or specific circumstances related
 39 to the needs of the child.

40 (2) A court that finds by clear and convincing evidence a risk of international abduction of a
 41 minor child may issue a court order requiring a parent who is subject to a custody order and who
 42 plans to travel with a minor child to a foreign country to provide security, bond or other guarantee
 43 as described in subsection (4) of this section.

44 (3) In determining whether a risk of international abduction of a minor child exists, a court shall
 45 consider the following factors involving a parent who is subject to a custody order:

1 (a) The parent has taken or retained, attempted to take or retain or threatened to take or retain
2 a minor child in violation of state law or a valid custody order and the parent is unable to present
3 clear and convincing evidence that the parent believed in good faith that the conduct was necessary
4 to avoid imminent harm to the parent or the child;

5 (b) The parent has recently engaged in a pattern of activities that indicates the parent is plan-
6 ning to abduct the minor child from this country;

7 (c) The parent has strong familial, emotional or cultural connections to this country or another
8 country, regardless of citizenship or residency status; and

9 (d) Any other relevant factors.

10 (4) A security, bond or other guarantee required by a court under this section may include, but
11 is not limited to, any of the following:

12 (a) A bond or security deposit in an amount that is sufficient to offset the cost of recovering the
13 minor child if the child is abducted;

14 (b) Supervised parenting time; or

15 (c) Passport and travel controls, including but not limited to controls that:

16 (A) Prohibit the parent from removing the minor child from this state or this country;

17 (B) Require the parent to surrender a passport or an international travel visa that is issued in
18 the name of the minor child or jointly in the names of the parent and the child;

19 (C) Prohibit the parent from applying for a new or replacement passport or international travel
20 visa on behalf of the minor child; and

21 (D) Require the parent to provide to a relevant embassy or consulate and to the Office of
22 Children's Issues in the United States Department of State the following documents:

23 (i) Written notice of passport and travel controls required under this paragraph; and

24 (ii) A certified copy of a court order issued under this section.

25 (5) After considering the factors under subsection (3) of this section and requiring a security,
26 bond or other guarantee under this section, the court shall issue a written determination supported
27 by findings of fact and conclusions of law.

28 (6) Nothing in this section is intended to limit the inherent power of a court in matters relating
29 to children.

30 **SECTION 5. Section 1 of this 2011 Act and the amendments to ORS 107.095, 107.722 and**
31 **109.035 by sections 2 to 4 of this 2011 Act apply to annulment, dissolution and separation**
32 **proceedings filed on or after the effective date of this 2011 Act.**
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