

House Bill 3431

Sponsored by Representative BREWER, Senator STARR; Representatives BERGER, DOHERTY, KENNEMER

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**.

Allows court in domestic relations proceeding to consider substantiated evidence of spousal abuse when determining proper amount of child and spousal support and proper division of property. Directs court or administrative law judge in child support proceeding to consider parent's ability to work. Prohibits court or administrative law judge from considering parent's impaired employability if court or administrative law judge finds substantiated evidence of abuse of one parent by other parent. Requires court or administrative law judge to presume that parent committing substantiated abuse earns not less than state minimum wage in child support calculation.

A BILL FOR AN ACT

1
2 Relating to domestic relations proceedings; creating new provisions; and amending ORS 25.280 and
3 107.105.

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

5 **SECTION 1.** ORS 107.105 is amended to read:

6 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or sepa-
7 ration, the court may provide in the judgment:

8 (a) For the future care and custody, by one party or jointly, of all minor children of the parties
9 born, adopted or conceived during the marriage and for minor children born to the parties prior to
10 the marriage, as the court may deem just and proper under ORS 107.137. The court may hold a
11 hearing to decide the custody issue prior to any other issues. When appropriate, the court shall
12 recognize the value of close contact with both parents and encourage joint parental custody and
13 joint responsibility for the welfare of the children.

14 (b) For parenting time rights of the parent not having custody of such children and for visitation
15 rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been developed
16 as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate
17 the parenting plan into the court's *[final order]* **judgment**. When incorporated into a *[final order]*
18 **judgment**, the parenting plan is determinative of parenting time rights. If the parents have been
19 unable to develop a parenting plan or if either of the parents requests the court to develop a de-
20 tailed parenting plan, the court shall develop the parenting plan in the best interest of the child,
21 ensuring the noncustodial parent sufficient access to the child to provide for appropriate quality
22 parenting time and ensuring the safety of the parties, if implicated. The court may deny parenting
23 time to the noncustodial parent under this subsection only if the court finds that parenting time
24 would endanger the health or safety of the child. The court shall recognize the value of close con-
25 tact with both parents and encourage, when practicable, joint responsibility for the welfare of such
26 children and extensive contact between the minor children of the divided marriage and the parties.
27 If the court awards parenting time to a noncustodial parent who has committed abuse, the court
28 shall make adequate provision for the safety of the child and the other parent in accordance with

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 the provisions of ORS 107.718 (6).

2 (c) For the support of the children of the marriage by the parties. In ordering child support, **the**
 3 **court shall apply** the formula established under ORS 25.275 [*shall apply*]. The court may at any time
 4 require an accounting from the custodial parent with reference to the use of the money received as
 5 child support. The court is not required to order support for any minor child who has become self-
 6 supporting, emancipated or married or **for a child** who has ceased to attend school after becoming
 7 18 years of age.

8 (d) For spousal support, an amount of money for a period of time as may be just and equitable
 9 for one party to contribute to the other, in gross or in installments or both. The court may approve
 10 an agreement for the entry of an order for the support of a party. In making the spousal support
 11 order, the court shall designate one or more categories of spousal support and shall make findings
 12 of the relevant factors in the decision. The court may order:

13 (A) Transitional spousal support as needed for a party to attain education and training neces-
 14 sary to allow the party to prepare for reentry into the job market or for advancement therein. The
 15 factors to be considered by the court in awarding transitional spousal support include but are not
 16 limited to:

- 17 (i) The duration of the marriage;
- 18 (ii) A party's training and employment skills;
- 19 (iii) A party's work experience;
- 20 (iv) The financial needs and resources of each party;
- 21 (v) The tax consequences to each party;
- 22 (vi) A party's custodial and child support responsibilities; and
- 23 (vii) Any other factors the court deems just and equitable.

24 (B) Compensatory spousal support when there has been a significant financial or other contri-
 25 bution by one party to the education, training, vocational skills, career or earning capacity of the
 26 other party and when an order for compensatory spousal support is otherwise just and equitable in
 27 all of the circumstances. The factors to be considered by the court in awarding compensatory
 28 spousal support include but are not limited to:

- 29 (i) The amount, duration and nature of the contribution;
- 30 (ii) The duration of the marriage;
- 31 (iii) The relative earning capacity of the parties;
- 32 (iv) The extent to which the marital estate has already benefited from the contribution;
- 33 (v) The tax consequences to each party; and
- 34 (vi) Any other factors the court deems just and equitable.

35 (C) Spousal maintenance as a contribution by one spouse to the support of the other for either
 36 a specified or an indefinite period. The factors to be considered by the court in awarding spousal
 37 maintenance include but are not limited to:

- 38 (i) The duration of the marriage;
- 39 (ii) The age of the parties;
- 40 (iii) The health of the parties, including their physical, mental and emotional condition;
- 41 (iv) The standard of living established during the marriage;
- 42 (v) The relative income and earning capacity of the parties, recognizing that the wage earner's
 43 continuing income may be a basis for support distinct from the income that the supported spouse
 44 may receive from the distribution of marital property;
- 45 (vi) A party's training and employment skills;

- 1 (vii) A party's work experience;
- 2 (viii) The financial needs and resources of each party;
- 3 (ix) The tax consequences to each party;
- 4 (x) A party's custodial and child support responsibilities; and
- 5 (xi) Any other factors the court deems just and equitable.

6 (e) For the delivery to one party of [*such*] **that** party's personal property in the possession or
 7 control of the other **party** at the time of the giving of the judgment.

8 (f) For the division or other disposition between the parties of the real or personal property, or
 9 both, of either or both of the parties as may be just and proper in all the circumstances. A retire-
 10 ment plan or pension or an interest therein shall be considered as property. The court shall consider
 11 the contribution of a spouse as a homemaker as a contribution to the acquisition of marital assets.
 12 There is a rebuttable presumption that both spouses have contributed equally to the acquisition of
 13 property during the marriage, whether such property is jointly or separately held. Subsequent to the
 14 filing of a petition for annulment or dissolution of marriage or separation, the rights of the parties
 15 in the marital assets shall be considered a species of co-ownership, and a transfer of marital assets
 16 under a judgment of annulment or dissolution of marriage or of separation entered on or after Oc-
 17 tober 4, 1977, shall be considered a partitioning of jointly owned property. The court shall require
 18 full disclosure of all assets by the parties in arriving at a just property division. In arriving at a
 19 just and proper division of property, the court shall consider reasonable costs of sale of assets, taxes
 20 and any other costs reasonably anticipated by the parties. If a spouse has been awarded spousal
 21 support in lieu of a share of property, the court shall so state on the record and shall order the
 22 obligor to provide for and maintain life insurance in an amount commensurate with the obligation
 23 and designating the obligee as beneficiary for the duration of the obligation. If the obligor dies prior
 24 to the termination of [*such*] **the spousal** support and [*such*] **life** insurance is not in force, the court
 25 may modify the method of payment of spousal support under the judgment or order of support from
 26 installments to a lump sum payment to the obligee from the estate of the obligor in an amount
 27 commensurate with the present value of the spousal support at the time of death. The obligee or
 28 attorney of the obligee shall cause a certified copy of the judgment to be delivered to the life in-
 29 surance company or companies. If the obligee or the attorney of the obligee delivers a true copy of
 30 the judgment to the life insurance company or companies, identifying the policies involved and re-
 31 questing [*such*] notification under this section, the company or companies shall notify the obligee,
 32 as beneficiary of the insurance policy, whenever the policyholder takes any action that will change
 33 the beneficiary or reduce the benefits of the policy. Either party may request notification by the
 34 insurer when premium payments have not been made. If the obligor is ordered to provide for and
 35 maintain life insurance, the obligor shall provide to the obligee a true copy of the policy. The
 36 obligor shall also provide to the obligee written notice of any action that will reduce the benefits
 37 or change the designation of the beneficiaries under the policy.

38 (g) For the creation of trusts as follows:

39 (A) For the appointment of one or more trustees to hold, control and manage for the benefit of
 40 the children of the parties, of the marriage or otherwise such of the real or personal property of
 41 either or both of the parties[,] as the court may order to be allocated or appropriated to their sup-
 42 port and welfare, and to collect, receive, expend, manage or invest any sum of money awarded for
 43 the support and welfare of minor children of the parties.

44 (B) For the appointment of one or more trustees to hold, manage and control such amount of
 45 money or such real or personal property of either or both of the parties, as may be set aside, allo-

1 cated or appropriated for the support of a party.

2 (C) For the establishment of the terms of the trust and provisions for the disposition or distrib-
 3 ution of such money or property to or between the parties, their successors, heirs and assigns after
 4 the purpose of the trust has been accomplished. Upon petition of a party or a person having an inter-
 5 est in the trust showing a change of circumstances warranting a change in the terms of the trust,
 6 the court may make and direct reasonable modifications in its terms.

7 (h) To change the name of either spouse to a name the spouse held before the marriage. The
 8 court shall order a change if it is requested by the affected party.

9 (i) For a money award for any sums of money found to be then remaining unpaid upon any order
 10 or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS
 11 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the
 12 limited judgment unless those amounts are included in the money award made by the general judg-
 13 ment.

14 (j) For an award of reasonable attorney fees and costs and expenses reasonably incurred in the
 15 action in favor of a party or in favor of a party's attorney.

16 (2)(a) In determining the proper amount of support and the proper division of property under
 17 subsection (1)(c), (d) and (f) of this section, the court may consider evidence of the tax consequences
 18 on the parties of its proposed judgment **and any substantiated evidence of abuse of a spouse by**
 19 **the other spouse.**

20 **(b) Substantiated evidence of abuse of a spouse by the other spouse may include:**

21 **(A) A conviction of an offense that constitutes domestic violence, as defined in ORS**
 22 **135.230;**

23 **(B) Demonstrated chemical addiction of the alleged abuser;**

24 **(C) A history of calls to police from the spouse or another family member reporting**
 25 **abuse by the alleged abuser;**

26 **(D) A history of psychological counseling of either spouse;**

27 **(E) Testimony of a witness to acts of abuse by the alleged abuser;**

28 **(F) Records of the Department of Human Services reporting abuse by the alleged abuser;**

29 **or**

30 **(G) A history of suicide attempts by either spouse.**

31 **(c) If the court finds substantiated evidence of abuse, the court may consider the evi-**
 32 **dence:**

33 **(A) As a factor to rebut the presumption that the amount of child support determined**
 34 **by the formula established under ORS 25.275 is correct;**

35 **(B) To award compensatory spousal support to the spouse who suffered the abuse; and**

36 **(C) As a factor to rebut the presumption that both spouses contributed equally to the**
 37 **acquisition of property during the marriage.**

38 (3) Upon the filing of the judgment, the property division ordered shall be deemed effective for
 39 all purposes. This transfer by judgment, which [*shall affect*] **affects** solely owned property trans-
 40 ferred to the other spouse as well as commonly owned property in the same manner as would a
 41 declaration of a resulting trust in favor of the spouse to whom the property is awarded, is not a
 42 taxable sale or exchange.

43 (4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of separa-
 44 tion or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to
 45 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610,

1 the court rendering the judgment may provide in a supplemental judgment for any relief provided
 2 for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only
 3 during the pendency of the appeal. A supplemental judgment under this subsection may be enforced
 4 as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this sub-
 5 section may be appealed in the same manner as provided for supplemental judgments modifying a
 6 domestic relations judgment under ORS 19.275.

7 (5) If an appeal is taken from the judgment or other appealable order in a suit for annulment
 8 or dissolution of a marriage or for separation and the appellate court awards costs and disburse-
 9 ments to a party, the court may also award to that party, as part of the costs, *[such]* **an** additional
 10 sum of money as *[it]* **the court** may adjudge reasonable as an attorney fee on the appeal.

11 (6) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the
 12 parties to *[such]* **the** suit become owners of an undivided interest in any real or personal property,
 13 or both, either party may maintain supplemental proceedings by filing a petition in *[such]* **the** suit
 14 for the partition of *[such]* **the** real or personal property, or both, within two years from the entry
 15 of the judgment, showing *[among other things]* that the original parties to the judgment and their
 16 joint or several creditors having a lien upon *[any such]* **the** real or personal property, if any *[there*
 17 *be]*, constitute the sole and only necessary parties to *[such]* **the** supplemental proceedings. The pro-
 18 cedure in the supplemental proceedings, *[so far as applicable,]* shall be the procedure provided in
 19 ORS 105.405 for the partition of real property[,] and the court granting the judgment shall have *[in*
 20 *the first instance]* and retain jurisdiction in equity *[therefor]* **of the proceedings.**

21 **SECTION 2.** ORS 25.280 is amended to read:

22 25.280. In any judicial or administrative proceeding for the establishment or modification of a
 23 child support obligation under ORS chapter 107, 108, 109, 110 or 416 or ORS 419B.400, 419B.923,
 24 419C.590 or 419C.610, the amount of support determined by the formula established under ORS
 25 25.275 is presumed to be the correct amount of the obligation. This is a rebuttable presumption and
 26 a written finding or a specific finding on the record that the application of the formula would be
 27 unjust or inappropriate in a particular case is sufficient to rebut the presumption. The **court or**
 28 **administrative law judge shall consider the** following criteria *[shall be considered]* in making the
 29 finding:

- 30 (1) Evidence of the other available resources of a parent;
- 31 (2) The reasonable necessities of a parent;
- 32 (3) The net income of a parent remaining after withholdings required by law or as a condition
 33 of employment;
- 34 (4) A parent's ability to borrow;
- 35 (5) The number and needs of other dependents of a parent;
- 36 (6) The special hardships of a parent including, but not limited to, any medical circumstances
 37 of a parent affecting the parent's ability to pay child support;
- 38 (7) The needs of the child;
- 39 (8) The desirability of the custodial parent remaining in the home as a full-time parent and
 40 homemaker;
- 41 (9) The tax consequences, if any, to both parents resulting from spousal support awarded and
 42 determination of which parent will name the child as a dependent; *[and]*
- 43 (10) The financial advantage afforded a parent's household by the income of a spouse or another
 44 person with whom the parent lives in a relationship similar to husband and wife; **and**
- 45 (11)(a) **The ability of a parent to work. If the court or administrative law judge has found**

1 substantiated evidence of abuse of a parent by the other parent, the alleged abusive parent
2 is presumed to earn not less than the state minimum wage, and the court or administrative
3 law judge may not consider the parent's impaired employability as a rebuttal to the
4 presumption under this section. If the alleged abusive parent is unemployed, the parent must
5 complete appropriate job training or employment rehabilitation before the court may exempt
6 the parent from providing child support or significantly reduce the parent's obligation to
7 provide child support.

8 (b) Substantiated evidence of abuse of a parent by the other parent may include:

9 (A) A conviction of an offense that constitutes domestic violence, as defined in ORS
10 135.230;

11 (B) Demonstrated chemical addiction of the alleged abuser;

12 (C) A history of calls to police from the parent or another family member reporting abuse
13 by the alleged abuser;

14 (D) A history of psychological counseling of either parent;

15 (E) Testimony of a witness to acts of abuse by the alleged abuser;

16 (F) Records of the Department of Human Services reporting abuse by the alleged abuser;

17 or

18 (G) A history of suicide attempts by either parent.

19 **SECTION 3.** The amendments to ORS 25.280 and 107.105 by sections 1 and 2 of this 2011
20 Act apply to domestic relations proceedings pending on or after the effective date of this 2011
21 Act.