

House Bill 3444

Sponsored by Representative WINGARD (at the request of Theresa Ohollaren)

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**.

Requires court to award custody to parent that child 14 years of age or older indicates preference to reside with unless not in best interests or welfare of child. Requires court to consider desires and educational needs of child at least 11 years of age and not older than 14 years of age in making custody determination. Provides that preference or desire of child does not constitute change of circumstances unless child's preference or desire would cause change in custody from existing judgment or order.

A BILL FOR AN ACT

1
2 Relating to child custody determinations; creating new provisions; and amending ORS 107.137 and
3 416.425.

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

5 **SECTION 1.** ORS 107.137 is amended to read:

6 107.137. (1) In determining custody of a minor child under ORS 107.105 or 107.135, the court
7 shall give primary consideration to the best interests and welfare of the child. In determining the
8 best interests and welfare of the child, the court shall consider the following relevant factors:

9 (a) The emotional ties between the child and other family members;

10 (b) The interest of the parties in and attitude toward the child;

11 (c) The desirability of continuing an existing relationship;

12 (d) The abuse of one parent by the other;

13 (e) The preference for the primary caregiver of the child, if the caregiver is deemed fit by the
14 court; and

15 (f) The willingness and ability of each parent to facilitate and encourage a close and continuing
16 relationship between the other parent and the child. However, the court may not consider such
17 willingness and ability if one parent shows that the other parent has sexually assaulted or engaged
18 in a pattern of behavior of abuse against the parent or a child and that a continuing relationship
19 with the other parent will endanger the health or safety of either parent or the child.

20 (2) The best interests and welfare of the child in a custody matter shall not be determined by
21 isolating any one of the relevant factors referred to in subsection (1) of this section, or any other
22 relevant factor, and relying on it to the exclusion of other factors. However, if a parent has com-
23 mitted abuse, as defined in ORS 107.705, there is a rebuttable presumption that it is not in the best
24 interests and welfare of the child to award sole or joint custody of the child to the parent who
25 committed the abuse.

26 (3) In determining custody of a minor child under ORS 107.105 or 107.135, the court shall con-
27 sider the conduct, marital status, income, social environment or [*life style*] **lifestyle** of either party
28 only if it is shown that any of these factors are causing or may cause emotional or physical damage
29 to the child.

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 (4) No preference in custody shall be given to the mother over the father for the sole reason
 2 that she is the mother, nor shall any preference be given to the father over the mother for the sole
 3 reason that he is the father.

4 **(5)(a) Notwithstanding any other provision of this section, in determining custody of a**
 5 **minor child who is 14 years of age or older, the court shall award custody to the parent that**
 6 **the child indicates a preference to reside with a majority of the time unless the court finds**
 7 **that it is not in the best interests and welfare of the child to do so.**

8 **(b) Notwithstanding any other provision of this section, in determining custody of a mi-**
 9 **nor child who is at least 11 years of age and not older than 14 years of age, the court shall**
 10 **consider the desires, if any, and the educational needs of the child.**

11 **(c) In making a custody determination under paragraph (a) or (b) of this subsection, the**
 12 **court may issue a temporary order for custody for a trial period not to exceed six months.**

13 **(d) The preference or desire of a child under paragraph (a) or (b) of this subsection does**
 14 **not constitute a change of circumstances sufficient to modify a custody judgment or order**
 15 **pursuant to ORS 107.135, but does constitute a change of circumstances sufficient for a court**
 16 **or the administrator as defined in ORS 25.010 to reconsider and modify the child support**
 17 **provisions of an existing judgment or order pursuant to ORS 107.135 or 416.425 if the child's**
 18 **preference or desire would cause a change in custody from the existing judgment or order.**

19 **SECTION 2.** ORS 416.425 is amended to read:

20 416.425. (1) Any time support enforcement services are being provided under ORS 25.080, the
 21 obligor, the obligee, the party holding the support rights or the administrator may move for the
 22 existing order to be modified under this section. The motion shall be in writing in a form prescribed
 23 by the administrator, shall set out the reasons for modification and shall state the telephone number
 24 and address of the party requesting modification.

25 (2) The moving party shall state in the motion, to the extent known:

26 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
 27 ceeding involving the dependent child, including a proceeding brought under ORS 25.287, 107.085,
 28 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.415, 419B.400 or 419C.590 or ORS
 29 chapter 110; and

30 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
 31 ORS 110.303, involving the dependent child, other than the order the party is moving to modify.

32 (3) The moving party shall include with the motion a certificate regarding any pending support
 33 proceeding and any existing support order other than the order the party is moving to modify. The
 34 party shall use a certificate that is in a form prescribed by the administrator and include informa-
 35 tion required by the administrator and subsection (2) of this section.

36 (4) The moving party shall serve the motion upon the obligor, the obligee, the party holding the
 37 support rights and the administrator, as appropriate. The nonrequesting parties must be served in
 38 the same manner as provided for service of the notice and finding of financial responsibility under
 39 ORS 416.415 (1)(a). Notwithstanding ORS 25.085, the requesting party must be served by first class
 40 mail to the requesting party's last known address. The nonrequesting parties have 30 days to resolve
 41 the matter by stipulated agreement or to serve the moving party by regular mail with a written
 42 response setting forth any objections to the motion and a request for hearing. The hearing shall be
 43 conducted under ORS 416.427.

44 (5) When the moving party is other than the administrator and no objections and request for
 45 hearing have been served within 30 days, the moving party may submit a true copy of the motion

1 to the administrative law judge as provided in ORS 416.427, except the default may not be construed
2 to be a contested case as defined in ORS chapter 183. Upon proof of service, the administrative law
3 judge shall issue an order granting the relief sought.

4 (6) When the moving party is the administrator and no objections and request for hearing have
5 been served within 30 days, the administrator may enter an order granting the relief sought.

6 (7) A motion for modification made under this section does not stay the administrator from en-
7 forcing and collecting upon the existing order unless so ordered by the court in which the order is
8 entered.

9 (8) An administrative order filed in accordance with ORS 416.440 is a final judgment as to any
10 installment or payment of money that has accrued up to the time the nonrequesting party is served
11 with a motion to set aside, alter or modify the judgment. The administrator may not set aside, alter
12 or modify any portion of the judgment that provides for any payment of money for minor children
13 that has accrued before the motion is served. However:

14 (a) The administrator may allow a credit against child support arrearages for periods of time,
15 excluding reasonable parenting time unless otherwise provided by order or judgment, during which
16 the obligor, with the knowledge and consent of the obligee or pursuant to court order, has physical
17 custody of the child; and

18 (b) The administrator may allow a credit against child support arrearages for any Social Secu-
19 rity or veterans' benefits paid retroactively to the child, or to a representative payee administering
20 the funds for the child's use and benefit, as a result of a parent's disability or retirement.

21 (9) The party requesting modification has the burden of showing a substantial change of cir-
22 cumstances or that a modification is appropriate under the provisions of ORS 25.287 **or 107.137**
23 **(5)**.

24 (10) An administrative order modifying a court order is not effective until the administrative
25 order is reviewed and approved by the court that entered the court order. The court shall make a
26 written finding on the record that the administrative order complies with the formula established
27 by ORS chapter 25. The court may approve the administrative order at any time after the order is
28 issued. If upon review the court finds that the administrative order should not be approved, the
29 court shall set the matter for hearing de novo.

30 (11) The obligee is a party to all proceedings under this section.

31 (12) An order entered under this section that modifies a support order because of the
32 incarceration of the obligor is effective only during the period of the obligor's incarceration and for
33 60 days after the obligor's release from incarceration. The previous support order is reinstated by
34 operation of law on the 61st day after the obligor's release from incarceration. An order that mod-
35 ifies a support order because of the obligor's incarceration must contain a notice that the previous
36 order will be reinstated on the 61st day after the obligor's release from incarceration.

37 (13)(a) Notwithstanding subsections (1) to (12) of this section, any time support enforcement
38 services are being provided under ORS 25.080, upon request of a party to a support order or judg-
39 ment or on the administrator's own motion, the administrator may move to suspend the order or
40 judgment and issue a temporary modification order under this subsection when:

41 (A) There is a period of significant unemployment as that term is described in paragraph (b) of
42 this subsection; and

43 (B) A party to the support order or judgment experiences an employment-related change of in-
44 come as defined by rule in ORS 416.455.

45 (b) Proceedings under this subsection may be initiated only when there is a period of significant

1 unemployment in Oregon. The Attorney General shall determine when a “period of significant un-
 2 employment” exists in Oregon and designate the beginning and ending dates thereof. In making the
 3 determination of when a period of significant unemployment exists in Oregon, the Attorney General
 4 may consider whether there is in effect an “extended benefit period” as that term is defined in ORS
 5 657.321.

6 (c) Except as otherwise provided in this subsection, the provisions of subsections (1) to (12) of
 7 this section apply to a motion for an order of suspension and temporary modification under this
 8 subsection.

9 (d) A party’s employment-related change of income during a period of significant unemployment
 10 is considered a substantial change of circumstances for purposes of proceedings brought under this
 11 section.

12 (e) The motion for an order of suspension and temporary modification must be in writing and
 13 must include, but need not be limited to:

14 (A) The amount of the existing support order or judgment;

15 (B) The amount of the obligor’s and obligee’s income immediately preceding the party’s
 16 employment-related change of income, if known;

17 (C) The reason for the party’s employment-related change of income;

18 (D) How the party’s employment-related change of income affects the party’s employment status,
 19 income and, if applicable, ability to pay support;

20 (E) The obligor’s and the obligee’s current sources of income, if known;

21 (F) The proposed amount of the temporary modification order;

22 (G) A statement that if a party objects to the motion for an order of suspension and temporary
 23 modification, then the party may request a hearing within 14 days of service of the motion as pro-
 24 vided in paragraph (g) of this subsection;

25 (H) A statement that the preexisting support order or judgment will be reinstated as provided
 26 in paragraph (h) of this subsection; and

27 (I) A statement that a party may request a renewal of the order of suspension and temporary
 28 modification prior to its expiration as provided in paragraph (j) of this subsection.

29 (f) The administrator shall serve the motion filed under this subsection upon the parties by
 30 regular first class mail, facsimile or electronic mail unless a party signs a form agreeing to accept
 31 service of the motion.

32 (g) A party may request a hearing within 14 days of service of the motion. If a hearing is re-
 33 quested, the provisions of ORS 416.427 apply. When there has been no request for hearing, the ad-
 34 ministrator may enter an order of suspension and temporary modification under this subsection. The
 35 order must be consistent with the provisions of the motion filed under this subsection and be in
 36 substantial compliance with the formula established under ORS 25.275.

37 (h) An order of suspension and temporary modification issued under this subsection is temporary
 38 and remains in effect for six months from the date the order is filed under ORS 416.440 or until the
 39 date specified in the notice provided under paragraph (i) of this subsection informing of the party’s
 40 reemployment, whichever is earlier, at which time the preexisting support order or judgment be-
 41 comes immediately effective and payable on the first day of the following month unless an order of
 42 renewal is issued under paragraph (j) of this subsection.

43 (i) The administrator may issue a notice of reinstatement at any time during which an order of
 44 suspension and temporary modification is in effect under this subsection when a party obtains em-
 45 ployment and receives income that is sufficient to reinstate support in an amount substantially

1 similar to the amount in the preexisting support order or judgment. The notice shall be served as
 2 provided in paragraph (f) of this subsection and must state that, unless a request for hearing is re-
 3 ceived within 14 days of service of the notice, the administrator will enter an order terminating the
 4 order of suspension and temporary modification and reinstating the amount of the preexisting sup-
 5 port order or judgment effective on a date to be specified in the notice. If a hearing is requested,
 6 the provisions of ORS 416.427 apply. When there is no request for hearing, the administrator may
 7 enter an order terminating the order of suspension and temporary modification and reinstating the
 8 preexisting support order or judgment effective upon the date specified in the notice.

9 (j) Prior to expiration of an order of suspension and temporary modification under this sub-
 10 section and upon request of a party, the administrator may renew the order of suspension and tem-
 11 porary modification for additional six-month periods or until the party obtains employment as
 12 described in paragraph (i) of this subsection, whichever occurs first, if the circumstances under
 13 which the order was originally issued continue to exist unchanged.

14 **SECTION 3. The amendments to ORS 107.137 and 416.425 by sections 1 and 2 of this 2011**
 15 **Act apply to custody determinations made by a court on or after the effective date of this**
 16 **2011 Act.**

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