

Senate Bill 522

Sponsored by Senator STARR (Pre-session filed.)

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**.

Authorizes court to terminate parental rights of parent convicted of rape with respect to child conceived as result of that rape.

Prohibits court from awarding custody or parenting time to parent convicted of rape with respect to child conceived as result of that rape.

A BILL FOR AN ACT

1
2 Relating to parental rights of parent convicted of rape; creating new provisions; and amending ORS
3 107.105 and 107.137.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 419B.502 to**
6 **419B.524.**

7 **SECTION 2. The rights of the parent may be terminated as provided in ORS 419B.500 if**
8 **the court finds that the child or ward was conceived as the result of an act that led to the**
9 **parent's conviction for rape under ORS 163.355, 163.365 or 163.375 or other comparable law**
10 **of another jurisdiction.**

11 **SECTION 3. ORS 107.137 is amended to read:**

12 107.137. (1) **Except as provided in subsection (5) of this section**, in determining custody of
13 a minor child under ORS 107.105 or 107.135, the court shall give primary consideration to the best
14 interests and welfare of the child. In determining the best interests and welfare of the child, the
15 court shall consider the following relevant factors:

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

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

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

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

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

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

27 (2) The best interests and welfare of the child in a custody matter shall not be determined by
28 isolating any one of the relevant factors referred to in subsection (1) of this section, or any other
29 relevant factor, and relying on it to the exclusion of other factors. However, if a parent has com-
30 mitted abuse [,] as defined in ORS 107.705, **other than as described in subsection (5) of this**

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 **section**, there is a rebuttable presumption that it is not in the best interests and welfare of the child
2 to award sole or joint custody of the child to the parent who committed the abuse.

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

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

10 **(5)(a) The court determining custody of a minor child under ORS 107.105 or 107.135 shall**
11 **not award sole or joint custody of the child to a parent if:**

12 **(A) The court finds that the parent has been convicted of rape under ORS 163.355, 163.365**
13 **or 163.375 or other comparable law of another jurisdiction; and**

14 **(B) The rape resulted in the conception of the child.**

15 **(b) A denial of custody under this subsection does not relieve the parent of any obligation**
16 **to pay child support.**

17 **SECTION 4.** ORS 107.105 is amended to read:

18 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or sepa-
19 ration, the court may provide in the judgment:

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

26 (b) For parenting time rights of the parent not having custody of such children and for visitation
27 rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been developed
28 as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate
29 the parenting plan into the court's final order. When incorporated into a final order, the parenting
30 plan is determinative of parenting time rights. If the parents have been unable to develop a par-
31 enting plan or if either of the parents requests the court to develop a detailed parenting plan, the
32 court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial
33 parent sufficient access to the child to provide for appropriate quality parenting time and ensuring
34 the safety of the parties, if implicated. **The court shall deny parenting time to a parent under**
35 **this paragraph if the court finds that the parent has been convicted of rape under ORS**
36 **163.355, 163.365 or 163.375 or other comparable law of another jurisdiction and the rape re-**
37 **sulted in the conception of the child. Otherwise,** the court may deny parenting time to the non-
38 custodial parent under this subsection only if the court finds that parenting time would endanger
39 the health or safety of the child. The court shall recognize the value of close contact with both
40 parents and encourage, when practicable, joint responsibility for the welfare of such children and
41 extensive contact between the minor children of the divided marriage and the parties. If the court
42 awards parenting time to a noncustodial parent who has committed abuse, **other than being con-**
43 **victed for rape as described in this paragraph**, the court shall make adequate provision for the
44 safety of the child and the other parent in accordance with the provisions of ORS 107.718 (6).

45 (c) For the support of the children of the marriage by the parties. In ordering child support, the

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

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

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

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

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

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

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

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

- 1 (ix) The tax consequences to each party;
2 (x) A party's custodial and child support responsibilities; and
3 (xi) Any other factors the court deems just and equitable.

4 (e) For the delivery to one party of such party's personal property in the possession or control
5 of the other at the time of the giving of the judgment.

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

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

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

42 (B) For the appointment of one or more trustees to hold, manage and control such amount of
43 money or such real or personal property of either or both of the parties, as may be set aside, allo-
44 cated or appropriated for the support of a party.

45 (C) For the establishment of the terms of the trust and provisions for the disposition or distrib-

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

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

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

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

14 (2) In determining the proper amount of support and the proper division of property under sub-
15 section (1)(c), (d) and (f) of this section, the court may consider evidence of the tax consequences
16 on the parties of its proposed judgment.

17 (3) Upon the filing of the judgment, the property division ordered shall be deemed effective for
18 all purposes. This transfer by judgment, which shall affect solely owned property transferred to the
19 other spouse as well as commonly owned property in the same manner as would a declaration of a
20 resulting trust in favor of the spouse to whom the property is awarded, is not a taxable sale or ex-
21 change.

22 (4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of separa-
23 tion or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to
24 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610,
25 the court rendering the judgment may provide in a supplemental judgment for any relief provided
26 for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only
27 during the pendency of the appeal. A supplemental judgment under this subsection may be enforced
28 as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this sub-
29 section may be appealed in the same manner as provided for supplemental judgments modifying a
30 domestic relations judgment under ORS 19.275.

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

35 (6) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the
36 parties to such suit become owners of an undivided interest in any real or personal property, or
37 both, either party may maintain supplemental proceedings by filing a petition in such suit for the
38 partition of such real or personal property, or both, within two years from the entry of the judgment,
39 showing among other things that the original parties to the judgment and their joint or several
40 creditors having a lien upon any such real or personal property, if any there be, constitute the sole
41 and only necessary parties to such supplemental proceedings. The procedure in the supplemental
42 proceedings, so far as applicable, shall be the procedure provided in ORS 105.405 for the partition
43 of real property, and the court granting the judgment shall have in the first instance and retain
44 jurisdiction in equity therefor.

45 **SECTION 5. Section 2 of this 2011 Act and the amendments to ORS 107.105 and 107.137**

1 **by sections 3 and 4 of this 2011 Act apply to child custody, parenting time and parental ter-**
2 **mination proceedings filed on or after the effective date of this 2011 Act.**

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