

House Bill 2433

Sponsored by Representative GELSER; Representatives DEMBROW, FREDERICK, GREENLICK, TOMEI (Presession 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**.

Prohibits court from considering party's disability in judgment awarding child custody unless clear and convincing evidence shows awarding custody of child to party with disability is not in child's best interests and welfare.

Prohibits judgment denying parenting time to parent with disability unless court finds by clear and convincing evidence that parenting time would endanger health or safety of child or is not in best interest of child.

A BILL FOR AN ACT

1
2 Relating to parties with disabilities in domestic relations proceedings; creating new provisions; and
3 amending ORS 107.105 and 107.137.

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) Except as provided in subsection [(5)] (6) of this section, in determining custody of
7 a minor child under ORS 107.105 or 107.135, the court shall give primary consideration to the best
8 interests and welfare of the child. In determining the best interests and welfare of the child, the
9 court shall consider the following relevant factors:

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

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

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

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

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

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

21 (2) The best interests and welfare of the child in a custody matter shall not be determined by
22 isolating any one of the relevant factors referred to in subsection (1) of this section, or any other
23 relevant factor, and relying on it to the exclusion of other factors. However, if a parent has com-
24 mitted abuse as defined in ORS 107.705, other than as described in subsection [(5)] (6) of this section,
25 there is a rebuttable presumption that it is not in the best interests and welfare of the child to
26 award sole or joint custody of the child to the parent who committed the abuse.

27 **(3) If a party has a disability as defined by the Americans with Disabilities Act of 1990**
28 **(42 U.S.C. 12101 et seq.), the court may not consider that party's disability in determining the**

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 **best interests and welfare of the child under this section unless it is shown by clear and**
 2 **convincing evidence that it would not be in the best interests and welfare of the child to**
 3 **award sole or joint custody of the child to the party with a disability.**

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

8 [(4)] (5) No preference in custody shall be given to the mother over the father for the sole rea-
 9 son that she is the mother, nor shall any preference be given to the father over the mother for the
 10 sole reason that he is the father.

11 [(5)(a)] (6)(a) The court determining custody of a minor child under ORS 107.105 or 107.135 shall
 12 not award sole or joint custody of the child to a parent if:

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

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

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

18 **SECTION 2.** ORS 107.105 is amended to read:

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

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

27 (b) For parenting time rights of the parent not having custody of such children and for visitation
 28 rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been developed
 29 as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate
 30 the parenting plan into the court's final order. When incorporated into a final order, the parenting
 31 plan is determinative of parenting time rights. If the parents have been unable to develop a par-
 32 enting plan or if either of the parents requests the court to develop a detailed parenting plan, the
 33 court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial
 34 parent sufficient access to the child to provide for appropriate quality parenting time and ensuring
 35 the safety of the parties, if implicated. The court shall deny parenting time to a parent under this
 36 paragraph if the court finds that the parent has been convicted of rape under ORS 163.365 or 163.375
 37 or other comparable law of another jurisdiction and the rape resulted in the conception of the child.
 38 Otherwise, the court may deny parenting time to the noncustodial parent under this subsection only
 39 if the court finds that parenting time would endanger the health or safety of the child. **In the case**
 40 **of a noncustodial parent who has a disability as defined by the Americans with Disabilities**
 41 **Act of 1990 (42 U.S.C. 12101 et seq.), the court may deny parenting time only if it finds by**
 42 **clear and convincing evidence that parenting time would endanger the health or safety of the**
 43 **child or is otherwise not in the best interest of the child.** The court shall recognize the value
 44 of close contact with both parents and encourage, when practicable, joint responsibility for the
 45 welfare of such children and extensive contact between the minor children of the divided marriage

1 and the parties. If the court awards parenting time to a noncustodial parent who has committed
 2 abuse, other than being convicted for rape as described in this paragraph, the court shall make ad-
 3 equate provision for the safety of the child and the other parent in accordance with the provisions
 4 of ORS 107.718 (6).

5 (c) For the support of the children of the marriage by the parties. In ordering child support, the
 6 formula established under ORS 25.275 shall apply. The court may at any time require an accounting
 7 from the custodial parent with reference to the use of the money received as child support. The
 8 court is not required to order support for any minor child who has become self-supporting,
 9 emancipated or married or for any child who has ceased to attend school after becoming 18 years
 10 of age. A general judgment entered under this section may include an amount for support as re-
 11 quested in a petition filed under ORS 107.085 or under a motion for relief made pursuant to ORS
 12 107.095 (1)(b) for which a limited judgment was not entered, payment of which commences no earlier
 13 than the date the petition or motion was served on the nonrequesting party, and the amount shall
 14 be considered a request for relief that has been decided by the general judgment for purposes of
 15 ORS 18.082 (3).

16 (d) For spousal support, an amount of money for a period of time as may be just and equitable
 17 for one party to contribute to the other, in gross or in installments or both. The court may approve
 18 an agreement for the entry of an order for the support of a party. A general judgment entered under
 19 this section may include an amount for support as requested in a petition filed under ORS 107.085
 20 or under a motion for relief made pursuant to ORS 107.095 (1)(b) for which a limited judgment was
 21 not entered, payment of which commences no earlier than the date the petition or motion was served
 22 on the nonrequesting party, and the amount shall be considered a request for relief that has been
 23 decided by the general judgment for purposes of ORS 18.082 (3). In making the spousal support order,
 24 the court shall designate one or more categories of spousal support and shall make findings of the
 25 relevant factors in the decision. The court may order:

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

- 30 (i) The duration of the marriage;
- 31 (ii) A party's training and employment skills;
- 32 (iii) A party's work experience;
- 33 (iv) The financial needs and resources of each party;
- 34 (v) The tax consequences to each party;
- 35 (vi) A party's custodial and child support responsibilities; and
- 36 (vii) Any other factors the court deems just and equitable.

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

- 42 (i) The amount, duration and nature of the contribution;
- 43 (ii) The duration of the marriage;
- 44 (iii) The relative earning capacity of the parties;
- 45 (iv) The extent to which the marital estate has already benefited from the contribution;

- 1 (v) The tax consequences to each party; and
 2 (vi) Any other factors the court deems just and equitable.
- 3 (C) Spousal maintenance as a contribution by one spouse to the support of the other for either
 4 a specified or an indefinite period. The factors to be considered by the court in awarding spousal
 5 maintenance include but are not limited to:
- 6 (i) The duration of the marriage;
 7 (ii) The age of the parties;
 8 (iii) The health of the parties, including their physical, mental and emotional condition;
 9 (iv) The standard of living established during the marriage;
 10 (v) The relative income and earning capacity of the parties, recognizing that the wage earner's
 11 continuing income may be a basis for support distinct from the income that the supported spouse
 12 may receive from the distribution of marital property;
- 13 (vi) A party's training and employment skills;
 14 (vii) A party's work experience;
 15 (viii) The financial needs and resources of each party;
 16 (ix) The tax consequences to each party;
 17 (x) A party's custodial and child support responsibilities; and
 18 (xi) Any other factors the court deems just and equitable.
- 19 (e) For the delivery to one party of such party's personal property in the possession or control
 20 of the other at the time of the giving of the judgment.
- 21 (f) For the division or other disposition between the parties of the real or personal property, or
 22 both, of either or both of the parties as may be just and proper in all the circumstances. In deter-
 23 mining the division of property under this paragraph, the following apply:
- 24 (A) A retirement plan or pension or an interest therein shall be considered as property.
 25 (B) The court shall consider the contribution of a party as a homemaker as a contribution to
 26 the acquisition of marital assets.
- 27 (C) Except as provided in subparagraph (D) of this paragraph, there is a rebuttable presumption
 28 that both parties have contributed equally to the acquisition of property during the marriage,
 29 whether such property is jointly or separately held.
- 30 (D)(i) Property acquired by gift to one party during the marriage and separately held by that
 31 party on a continuing basis from the time of receipt is not subject to a presumption of equal con-
 32 tribution under subparagraph (C) of this paragraph.
- 33 (ii) For purposes of this subparagraph, "property acquired by gift" means property acquired by
 34 one party through gift, devise, bequest, operation of law, beneficiary designation or inheritance.
- 35 (E) Subsequent to the filing of a petition for annulment or dissolution of marriage or separation,
 36 the rights of the parties in the marital assets shall be considered a species of co-ownership, and a
 37 transfer of marital assets under a judgment of annulment or dissolution of marriage or of separation
 38 entered on or after October 4, 1977, shall be considered a partitioning of jointly owned property.
- 39 (F) The court shall require full disclosure of all assets by the parties in arriving at a just
 40 property division.
- 41 (G) In arriving at a just and proper division of property, the court shall consider reasonable
 42 costs of sale of assets, taxes and any other costs reasonably anticipated by the parties.
- 43 (H)(i) If a party has been awarded spousal support in lieu of a share of property, the court shall
 44 so state on the record and shall order the obligor to provide for and maintain life insurance in an
 45 amount commensurate with the obligation and designating the obligee as beneficiary for the dura-

1 tion of the obligation.

2 (ii) If the obligor dies prior to the termination of spousal support and life insurance is not in
 3 force as provided in sub-subparagraph (i) of this subparagraph, the court may modify the method of
 4 payment of spousal support under the judgment or order of support from installments to a lump sum
 5 payment to the obligee from the estate of the obligor in an amount commensurate with the present
 6 value of the spousal support at the time of death.

7 (iii) The obligee or attorney of the obligee shall cause a certified copy of the judgment to be
 8 delivered to the life insurance company or companies.

9 (iv) If the obligee or the attorney of the obligee delivers a true copy of the judgment to the life
 10 insurance company or companies, identifying the policies involved and requesting such notification
 11 under this section, the company or companies shall notify the obligee, as beneficiary of the insur-
 12 ance policy, whenever the policyholder takes any action that will change the beneficiary or reduce
 13 the benefits of the policy. Either party may request notification by the insurer when premium pay-
 14 ments have not been made. If the obligor is ordered to provide for and maintain life insurance, the
 15 obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to the
 16 obligee written notice of any action that will reduce the benefits or change the designation of the
 17 beneficiaries under the policy.

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

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

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

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

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

34 (i) For a money award for any sums of money found to be then remaining unpaid upon any order
 35 or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS
 36 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the
 37 limited judgment unless those amounts are included in the money award made by the general judg-
 38 ment.

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

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

44 (3) Upon the filing of the judgment, the property division ordered shall be deemed effective for
 45 all purposes. This transfer by judgment, which shall affect solely owned property transferred to the

1 other spouse as well as commonly owned property in the same manner as would a declaration of a
 2 resulting trust in favor of the spouse to whom the property is awarded, is not a taxable sale or ex-
 3 change.

4 (4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of sepa-
 5 ration or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to
 6 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610,
 7 the court rendering the judgment may provide in a supplemental judgment for any relief provided
 8 for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only
 9 during the pendency of the appeal. A supplemental judgment under this subsection may be enforced
 10 as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this sub-
 11 section may be appealed in the same manner as provided for supplemental judgments modifying a
 12 domestic relations judgment under ORS 19.275.

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

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

27 **SECTION 3. The amendments to ORS 107.105 and 107.137 by sections 1 and 2 of this 2013**
 28 **Act apply to child custody and parenting time proceedings commenced on or after the ef-**
 29 **fective date of this 2013 Act.**

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