

**Testimony before the Senate Judiciary Committee  
SB 1561  
On behalf of the OSB Family Law Section**

February 3, 2016

Dear Chair Prozanski and Members of the Committee:

My name is Ryan Carty. I am an attorney in private practice limited to family law. I am the legislative liaison for the Family Law Section of the Oregon State Bar for the current legislative session and am currently serving as Chair of the Family Law Section's Legislative Subcommittee. I appear today in that capacity. The Family Law Section was originally formed in 1978, and today is made up of over 1,000 attorneys who practice family law throughout Oregon. We have members from 30 different Oregon counties, representing a wide variety of clients each with their own unique problems and concerns. Our executive committee is comprised of 12 members from 7 different counties, spanning from Eastern Oregon, through Central Oregon, and throughout the Willamette Valley.

After reviewing Senate Bill 1561, the Executive Committee of the Family Law Section has significant reservations about the proposed legislation. SB 1561 would create two new subsections in ORS 109.119(3), impacting both financial obligations and modification standards in cases involving non-biological parents.

**Modification Standards**

The proposed legislation set forth in subsection (d) of the bill has the potential to impose a significant burden on the courts, by allowing an unchecked number of motions for a change in custody without any showing of a substantial change of circumstances. The modification standard for custody determinations in Oregon is a substantial change in circumstances, which is materially different than the "best interests" standard for modifying parenting time.

Once the court has made an initial determination of custody based on the best interests of the child, the party seeking to modify (even if a parent) must show that a substantial change of circumstances has subsequently occurred. Allowing parents (or individuals standing in the shoes of parents) to litigate custody without showing a change of circumstances could subject the child, the child's custodian, and the court to endless relitigation of the issue. *Lear and Lear*, 124 Or App 524, 527 (1993).

It is important to recognize that parenting time modifications are not subject to this same high standard, and that no substantial change of circumstances is required before an inquiry into the child's best interests when modifying a parenting time order, even in a nonparent case. *Meader and Meader*, 194 Or App 31, 45 (2004).

It is unclear why a substantial change of circumstances should no longer be required in nonparent cases. If parenting abilities have not changed, there is no reason for the court to re-address the issue of custody. SB 1561 appears to create an avenue for a party to re-litigate an issue simply because he or she did not like the previous result.

### **Child Support**

The new subsection (c) created in ORS 109.119(3) is likewise problematic. Oregon has a well-defined policy of separating the issues of parenting time and child support. ORS 109.010 provides that parents have a statutory duty to support their children. But parenting time is not provided as a *quid pro quo* for payment of child support. Instead, both issues are determined by distinct criteria – parenting time by a best interests standard and child support by a guidelines formula. ORS 107.106 confirms this distinction by stating that:

*The terms of child support and parenting time (visitation) are designed for the child's benefit and not the parents' benefit. You must pay support even if you are not receiving visitation. You must comply with visitation orders even if you are not receiving child support.*

There are a whole host of reasons why it may be appropriate for a court to award parenting time to a nonparent (e.g., to continue an important existing relationship that the natural parent will likely not prioritize) without mandating a support obligation. In practice, judges expect a party exercising parenting time to provide for the child's basic needs while in that party's care. However, this issue is separate from a support obligation. Statutorily intertwining these two issues suggests a policy that Oregon has never before supported.

We appreciate the committee taking the time to thoughtfully consider this issue, and I will be happy to answer any questions you might have.

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