

Senate Bill 1561

Sponsored by Senator STEINER HAYWARD (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**.

Requires court to consider requiring, and authorizes court to order, person to provide or contribute to financial support of child if court grants custody, guardianship, right of visitation, visitation, contact rights or other rights to person.

Permits motion to set aside or modify order granting custody, guardianship, right of visitation, visitation, contact rights or other rights without showing substantial change of circumstances and to establish, set aside or modify order for financial support.

A BILL FOR AN ACT

1
2 Relating to court orders in certain parent-child-type relationships; creating new provisions; and
3 amending ORS 109.119.

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

5 **SECTION 1.** ORS 109.119 is amended to read:

6 109.119. (1) Except as otherwise provided in subsection (9) of this section, any person, including
7 but not limited to a related or nonrelated foster parent, stepparent, grandparent or relative by blood
8 or marriage, who has established emotional ties creating a child-parent relationship or an ongoing
9 personal relationship with a child may petition or file a motion for intervention with the court
10 having jurisdiction over the custody, placement or guardianship of that child, or if no such pro-
11 ceedings are pending, may petition the court for the county in which the child resides, for an order
12 providing for relief under subsection (3) of this section.

13 (2)(a) In any proceeding under this section, there is a presumption that the legal parent acts in
14 the best interest of the child.

15 (b) In an order granting relief under this section, the court shall include findings of fact sup-
16 porting the rebuttal of the presumption described in paragraph (a) of this subsection.

17 (c) The presumption described in paragraph (a) of this subsection does not apply in a proceeding
18 to modify an order granting relief under this section.

19 (3)(a) If the court determines that a child-parent relationship exists and if the court determines
20 that the presumption described in subsection (2)(a) of this section has been rebutted by a prepon-
21 derance of the evidence, the court shall grant custody, guardianship, right of visitation or other
22 [*right*] **rights** to the person having the child-parent relationship, if to do so is in the best interest
23 of the child. The court may determine temporary custody of the child or temporary visitation rights
24 under this paragraph pending a final order.

25 (b) If the court determines that an ongoing personal relationship exists and if the court deter-
26 mines that the presumption described in subsection (2)(a) of this section has been rebutted by clear
27 and convincing evidence, the court shall grant visitation or contact rights to the person having the
28 ongoing personal relationship, if to do so is in the best interest of the child. The court may order
29 temporary visitation or contact rights under this paragraph pending a final order.

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 (c) If the court has granted custody, guardianship, right of visitation, visitation, contact
 2 rights or other rights to a person under paragraph (a) or (b) of this subsection, the court
 3 shall consider requiring, and may order, the person to provide for or contribute to the fi-
 4 nancial support of the child, taking into consideration the nature and extent of the contact
 5 allowed by the order.

6 (d) Upon motion filed by a party to the proceeding, the court may set aside or modify an
 7 order entered under paragraph (a) or (b) of this subsection without a showing of substantial
 8 change of circumstances and may establish, set aside or modify an order for financial sup-
 9 port under paragraph (c) of this subsection.

10 (4)(a) In deciding whether the presumption described in subsection (2)(a) of this section has been
 11 rebutted and whether to award visitation or contact rights **pursuant to subsection (3)(a) or (b)**
 12 **of this section** over the objection of the legal parent, the court may consider factors including, but
 13 not limited to, the following, which may be shown by the evidence:

14 (A) The petitioner or intervenor is or recently has been the child's primary caretaker;

15 (B) Circumstances detrimental to the child exist if relief is denied;

16 (C) The legal parent has fostered, encouraged or consented to the relationship between the child
 17 and the petitioner or intervenor;

18 (D) Granting relief would not substantially interfere with the custodial relationship; *[or]* **and**

19 (E) The legal parent has unreasonably denied or limited contact between the child and the
 20 petitioner or intervenor.

21 (b) In deciding whether the presumption described in subsection (2)(a) of this section has been
 22 rebutted and whether to award custody, guardianship or other rights **pursuant to subsection (3)(a)**
 23 **of this section** over the objection of the legal parent, the court may consider factors including, but
 24 not limited to, the following, which may be shown by the evidence:

25 (A) The legal parent is unwilling or unable to care adequately for the child;

26 (B) The petitioner or intervenor is or recently has been the child's primary caretaker;

27 (C) Circumstances detrimental to the child exist if relief is denied;

28 (D) The legal parent has fostered, encouraged or consented to the relationship between the child
 29 and the petitioner or intervenor; *[or]* **and**

30 (E) The legal parent has unreasonably denied or limited contact between the child and the
 31 petitioner or intervenor.

32 (5) In addition to the other rights granted under this section, a stepparent with a child-parent
 33 relationship who is a party in a dissolution proceeding may petition the court having jurisdiction for
 34 custody or visitation under this section or may petition the court for the county in which the child
 35 resides for adoption of the child. The stepparent may also file for post-judgment modification of a
 36 judgment relating to child custody.

37 (6)(a) A motion for intervention filed under this section shall comply with ORCP 33 and state
 38 the grounds for relief under this section.

39 (b) Costs for the representation of an intervenor under this section may not be charged against
 40 funds appropriated for public defense services.

41 (7) In a proceeding under this section, the court may:

42 (a) Cause an investigation, examination or evaluation to be made under ORS 107.425 or may
 43 appoint an individual or a panel or may designate a program to assist the court in creating par-
 44 enting plans or resolving disputes regarding parenting time and to assist the parties in creating and
 45 implementing parenting plans under ORS 107.425 (3).

1 (b) Assess against a party reasonable attorney fees and costs for the benefit of another party.

2 (8) When a petition or motion to intervene is filed under this section seeking guardianship or
3 custody of a child who is a foreign national, the petitioner or intervenor shall serve a copy of the
4 petition or motion on the consulate for the child's country.

5 (9) This section does not apply to proceedings under ORS chapter 419B.

6 (10) As used in this section:

7 (a) "Child-parent relationship" means a relationship that exists or did exist, in whole or in part,
8 within the six months preceding the filing of an action under this section, and in which relationship
9 a person having physical custody of a child or residing in the same household as the child supplied,
10 or otherwise made available to the child, food, clothing, shelter and incidental necessities and pro-
11 vided the child with necessary care, education and discipline, and which relationship continued on
12 a day-to-day basis, through interaction, companionship, interplay and mutuality, that fulfilled the
13 child's psychological needs for a parent as well as the child's physical needs. However, a relation-
14 ship between a child and a person who is the nonrelated foster parent of the child is not a child-
15 parent relationship under this section unless the relationship continued over a period exceeding 12
16 months.

17 (b) "Circumstances detrimental to the child" includes but is not limited to circumstances that
18 may cause psychological, emotional or physical harm to a child.

19 (c) "Grandparent" means the legal parent of the child's legal parent.

20 (d) "Legal parent" means a parent as defined in ORS 419A.004 whose rights have not been ter-
21 minated under ORS 419B.500 to 419B.524.

22 (e) "Ongoing personal relationship" means a relationship with substantial continuity for at least
23 one year, through interaction, companionship, interplay and mutuality.

24 **SECTION 2. The amendments to ORS 109.119 by section 1 of this 2016 Act apply to orders**
25 **entered, and proceedings commenced, pursuant to ORS 109.119 before, on or after the effec-**
26 **tive date of this 2016 Act.**