

Senate Bill 318

Sponsored by Senator THATCHER; Senator MANNING JR (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**.

Creates rebuttable presumption that equal parenting time is in best interests of child. Requires rebuttal of presumption by clear and convincing evidence.

A BILL FOR AN ACT

1
2 Relating to parenting time in family law proceedings; creating new provisions; and amending ORS
3 107.095, 107.101, 107.102, 107.105 and 107.149.

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

5 **SECTION 1.** ORS 107.101 is amended to read:

6 107.101. It is the policy of this state to:

7 (1) Assure minor children of frequent and continuing contact with parents who have shown the
8 ability to act in the best interests of the child;

9 (2) Encourage such parents to share in the rights and responsibilities of raising their children
10 after the parents have separated or dissolved their marriage;

11 (3) Encourage parents to develop their own parenting plan with the assistance of legal and me-
12 diation professionals, if necessary;

13 (4) Grant parents and courts the widest discretion in developing a parenting plan; [*and*]

14 (5) Consider the best interests of the child and the safety of the parties in developing a parent-
15 ing plan[.]; **and**

16 **(6) Presume, subject to rebuttal, that equal parenting time is in the best interests of the**
17 **child.**

18 **SECTION 2.** ORS 107.102 is amended to read:

19 107.102. (1) In any proceeding to establish or modify a judgment providing for parenting time
20 with a child, except for matters filed under ORS 107.700 to 107.735, there shall be developed and
21 filed with the court a parenting plan to be included in the judgment. A parenting plan may be either
22 general or detailed.

23 (2) A general parenting plan may include a general outline of how parental responsibilities and
24 parenting time will be shared and may allow the parents to develop a more detailed agreement on
25 an informal basis. However, a general parenting plan must set forth the minimum amount of par-
26 enting time and access a noncustodial parent is entitled to have.

27 (3) A detailed parenting plan may include, but need not be limited to, provisions relating to:

28 (a) Residential schedule;

29 (b) Holiday, birthday and vacation planning;

30 (c) Weekends, including holidays, and school in-service days preceding or following weekends;

31 (d) Decision-making and responsibility;

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 (e) Information sharing and access;
- 2 (f) Relocation of parents;
- 3 (g) Telephone access;
- 4 (h) Transportation; and
- 5 (i) Methods for resolving disputes.
- 6 (4)(a) The court shall develop a detailed parenting plan when:
- 7 (A) So requested by either parent; or
- 8 (B) The parent or parents are unable to develop a parenting plan.
- 9 (b) In developing a parenting plan under this subsection[,]:
- 10 (A) The court may consider only the best interests of the child and the safety of the parties[.];

11 **and**

12 **(B) It is presumed, unless rebutted by clear and convincing evidence by the parent chal-**
 13 **lenging the presumption, that equal parenting time is in the best interests of the child.**

14 **SECTION 3.** ORS 107.095 is amended to read:

15 107.095. (1) After the commencement of a suit for marital annulment, dissolution or separation
 16 and until a general judgment therein, the court may provide as follows:

17 (a) That a party pay to the other party such amount of money as may be necessary to enable
 18 the other party to prosecute or defend the suit, including costs of expert witnesses, and also such
 19 amount of money to the other party as may be necessary to support and maintain the other party.

20 (b) For the care, custody, support and maintenance, by one party or jointly, of the minor chil-
 21 dren as described in ORS 107.105 (1)(a) and for *[the]* parenting time rights as described in ORS
 22 107.105 (1)(b) *[of the parent not having custody of such children]*.

23 (c) For the restraint of a party from molesting or interfering in any manner with the other party
 24 or the minor children.

25 (d) That if minor children reside in the family home and the court considers it necessary for
 26 their best interest to do so, the court may require either party to move out of the home for such
 27 period of time and under such conditions as the court may determine, whether the home is rented,
 28 owned or being purchased by one party or both parties.

29 (e) Restraining and enjoining either party or both from encumbering or disposing of any of the
 30 real or personal property of either or both of the parties, except as ordered by the court.

31 (f) For the temporary use, possession and control of the real or personal property of the parties
 32 or either of them and the payment of installment liens and encumbrances thereon.

33 (g) That even if no minor children reside in the family home, the court may require one party
 34 to move out of the home for such period of time and under such conditions as the court determines,
 35 whether the home is rented, owned or being purchased by one party or both parties if that party
 36 assaults or threatens to assault the other.

37 (2) A limited judgment under ORS chapter 18 may be entered in an action for dissolution or
 38 annulment of a marriage providing for a support award, as defined by ORS 18.005, or other money
 39 award, as defined by ORS 18.005. Notwithstanding ORS 19.255, a limited judgment entered under this
 40 subsection may not be appealed. Any decision of the court in a limited judgment subject to this
 41 subsection may be appealed as otherwise provided by law upon entry of a general judgment.

42 (3) The court shall not require an undertaking in case of the issuance of an order under sub-
 43 section (1)(c), (d), (e), (f) or (g) of this section.

44 (4) In a suit for annulment or dissolution of marriage or for separation, wherein the parties are
 45 copetitioners or the respondent is found by the court to be in default or the respondent having ap-

1 peared has waived further appearance or the parties stipulate to the entry of a judgment, the court
 2 may, when the cause is otherwise ready for hearing on the merits, in lieu of such hearing, enter a
 3 judgment of annulment or dissolution or for separation based upon a current affidavit or declaration
 4 under penalty of perjury in the form required by ORCP 1 E, executed by the petitioner or
 5 copetitioners, setting forth a prima facie case, and covering such additional matters as the court
 6 may require. If custody of minor children is involved, then the affidavit or declaration under penalty
 7 of perjury must also include the name of the party with whom the children currently reside and the
 8 length of time they have so resided.

9 (5) When a court orders relief under subsection (1)(c) or (d) of this section, the court may in-
 10 clude in its order an expiration date for the order to allow entry of the order into the Law
 11 Enforcement Data System and the databases of the National Crime Information Center of the United
 12 States Department of Justice as provided in ORS 107.720. If the person being restrained was pro-
 13 vided notice and an opportunity to be heard, the court shall also include in the order, when appro-
 14 priate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) or (g)(8) to affect the person's ability
 15 to possess firearms and ammunition or engage in activities involving firearms.

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

17 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or sepa-
 18 ration, the court may provide in the judgment:

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

25 (b) For parenting time rights of the *[parent not having custody of such children]* **parties** and for
 26 visitation rights pursuant to a petition filed under ORS 109.119[.] **as follows:**

27 **(A) In determining parenting time rights under this section, there is a rebuttable**
 28 **presumption that equal parenting time is in the best interests of the child. In determining**
 29 **whether the presumption under this subparagraph has been rebutted, the court shall con-**
 30 **sider all relevant factors, including, but not limited to, the factors listed in ORS 107.137 (1).**
 31 **The burden of rebutting the presumption is on the parent challenging the presumption. The**
 32 **presumption must be rebutted by clear and convincing evidence that equal parenting time is**
 33 **not in the best interests of the child and the other parent's lack or inability with respect to**
 34 **the child will cause substantial risk of harm to the child's health or safety.**

35 **(B)** When a parenting plan has been developed as required by ORS 107.102, the court shall re-
 36 view the parenting plan and, if approved, incorporate the parenting plan into the court's final order.
 37 When incorporated into a final order, the parenting plan is determinative of parenting time rights.
 38 If the parents have been unable to develop a parenting plan or if either of the parents requests the
 39 court to develop a detailed parenting plan, the court shall develop the parenting plan *[in the best*
 40 *interest of the child, ensuring the noncustodial parent sufficient access to the child to provide for ap-*
 41 *propriate quality parenting time and ensuring the safety of the parties, if implicated.] as provided in*
 42 **ORS 107.102.**

43 **(C)** The court shall deny parenting time to a parent under this paragraph if the court finds that
 44 the parent has been convicted of rape under ORS 163.365 or 163.375 or other comparable law of
 45 another jurisdiction and the rape resulted in the conception of the child. Otherwise, the court may

1 deny parenting time to the noncustodial parent under this subsection only if the court finds that
2 parenting time would endanger the health or safety of the child.

3 **(D)** In the case of a noncustodial parent who has a disability as defined by the Americans with
4 Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), the court may consider the noncustodial parent's
5 disability in determining parenting time only if the court finds that behaviors or limitations related
6 to the noncustodial parent's disability are endangering or will likely endanger the health, safety or
7 welfare of the child.

8 **(E)** The court shall recognize the value of close contact with both parents and encourage, when
9 practicable, joint responsibility for the welfare of such children and extensive contact between the
10 minor children of the divided marriage and the parties.

11 **(F)** If the court awards parenting time to a noncustodial parent who has committed abuse, other
12 than being convicted for rape as described in this paragraph, the court shall make adequate pro-
13 vision for the safety of the child and the other parent in accordance with the provisions of ORS
14 107.718 (6).

15 (c) For the support of the children of the marriage by the parties. In ordering child support, the
16 formula established under ORS 25.275 shall apply. The court may at any time require an accounting
17 from the custodial parent with reference to the use of the money received as child support. The
18 court is not required to order support for any minor child who has become self-supporting,
19 emancipated or married or for any child who has ceased to attend school after becoming 18 years
20 of age. A general judgment entered under this section may include an amount for support as re-
21 quested in a petition filed under ORS 107.085 or under a motion for relief made pursuant to ORS
22 107.095 (1)(b) for which a limited judgment was not entered, payment of which commences no earlier
23 than the date the petition or motion was served on the nonrequesting party, and the amount shall
24 be considered a request for relief that has been decided by the general judgment for purposes of
25 ORS 18.082 (3).

26 (d) For spousal support, an amount of money for a period of time as may be just and equitable
27 for one party to contribute to the other, in gross or in installments or both. Unless otherwise ex-
28 pressly provided in the judgment and except for any unpaid balance of previously ordered spousal
29 support, liability for the payment of spousal support shall terminate on the death of either party,
30 and there shall be no liability for either the payment of spousal support or for any payment in cash
31 or property as a substitute for the payment of spousal support after the death of either party. The
32 court may approve an agreement for the entry of an order for the support of a party. A general
33 judgment entered under this section may include an amount for support as requested in a petition
34 filed under ORS 107.085 or under a motion for relief made pursuant to ORS 107.095 (1)(b) for which
35 a limited judgment was not entered, payment of which commences no earlier than the date the pe-
36 tition or motion was served on the nonrequesting party, and the amount shall be considered a re-
37 quest for relief that has been decided by the general judgment for purposes of ORS 18.082 (3). In
38 making the spousal support order, the court shall designate one or more categories of spousal sup-
39 port and shall make findings of the relevant factors in the decision. The court may order:

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

- 44 (i) The duration of the marriage;
45 (ii) A party's training and employment skills;

- 1 (iii) A party's work experience;
- 2 (iv) The financial needs and resources of each party;
- 3 (v) The tax consequences to each party;
- 4 (vi) A party's custodial and child support responsibilities; and
- 5 (vii) Any other factors the court deems just and equitable.
- 6 (B) Compensatory spousal support when there has been a significant financial or other contri-
- 7 bution by one party to the education, training, vocational skills, career or earning capacity of the
- 8 other party and when an order for compensatory spousal support is otherwise just and equitable in
- 9 all of the circumstances. The factors to be considered by the court in awarding compensatory
- 10 spousal support include but are not limited to:
- 11 (i) The amount, duration and nature of the contribution;
- 12 (ii) The duration of the marriage;
- 13 (iii) The relative earning capacity of the parties;
- 14 (iv) The extent to which the marital estate has already benefited from the contribution;
- 15 (v) The tax consequences to each party; and
- 16 (vi) Any other factors the court deems just and equitable.
- 17 (C) Spousal maintenance as a contribution by one spouse to the support of the other for either
- 18 a specified or an indefinite period. The factors to be considered by the court in awarding spousal
- 19 maintenance include but are not limited to:
- 20 (i) The duration of the marriage;
- 21 (ii) The age of the parties;
- 22 (iii) The health of the parties, including their physical, mental and emotional condition;
- 23 (iv) The standard of living established during the marriage;
- 24 (v) The relative income and earning capacity of the parties, recognizing that the wage earner's
- 25 continuing income may be a basis for support distinct from the income that the supported spouse
- 26 may receive from the distribution of marital property;
- 27 (vi) A party's training and employment skills;
- 28 (vii) A party's work experience;
- 29 (viii) The financial needs and resources of each party;
- 30 (ix) The tax consequences to each party;
- 31 (x) A party's custodial and child support responsibilities; and
- 32 (xi) Any other factors the court deems just and equitable.
- 33 (e) For the delivery to one party of such party's personal property in the possession or control
- 34 of the other at the time of the giving of the judgment.
- 35 (f) For the division or other disposition between the parties of the real or personal property, or
- 36 both, of either or both of the parties as may be just and proper in all the circumstances. In deter-
- 37 mining the division of property under this paragraph, the following apply:
- 38 (A) A retirement plan or pension or an interest therein shall be considered as property.
- 39 (B) The court shall consider the contribution of a party as a homemaker as a contribution to
- 40 the acquisition of marital assets.
- 41 (C) Except as provided in subparagraph (D) of this paragraph, there is a rebuttable presumption
- 42 that both parties have contributed equally to the acquisition of property during the marriage,
- 43 whether such property is jointly or separately held.
- 44 (D)(i) Property acquired by gift to one party during the marriage and separately held by that
- 45 party on a continuing basis from the time of receipt is not subject to a presumption of equal con-

1 tribution under subparagraph (C) of this paragraph.

2 (ii) For purposes of this subparagraph, “property acquired by gift” means property acquired by
3 one party through gift, devise, bequest, operation of law, beneficiary designation or inheritance.

4 (E) Subsequent to the filing of a petition for annulment or dissolution of marriage or separation,
5 the rights of the parties in the marital assets shall be considered a species of co-ownership, and a
6 transfer of marital assets under a judgment of annulment or dissolution of marriage or of separation
7 entered on or after October 4, 1977, shall be considered a partitioning of jointly owned property.

8 (F) The court shall require full disclosure of all assets by the parties in arriving at a just
9 property division.

10 (G) In arriving at a just and proper division of property, the court shall consider reasonable
11 costs of sale of assets, taxes and any other costs reasonably anticipated by the parties.

12 (H)(i) If a party has been awarded spousal support in lieu of a share of property, the court shall
13 so state on the record and shall order the obligor to provide for and maintain life insurance in an
14 amount commensurate with the obligation and designating the obligee as beneficiary for the dura-
15 tion of the obligation.

16 (ii) The obligee or attorney of the obligee shall cause a certified copy of the judgment to be
17 delivered to the life insurance company or companies.

18 (iii) If the obligee or the attorney of the obligee delivers a true copy of the judgment to the life
19 insurance company or companies, identifying the policies involved and requesting such notification
20 under this section, the company or companies shall notify the obligee, as beneficiary of the insur-
21 ance policy, whenever the policyholder takes any action that will change the beneficiary or reduce
22 the benefits of the policy. Either party may request notification by the insurer when premium pay-
23 ments have not been made. If the obligor is ordered to provide for and maintain life insurance, the
24 obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to the
25 obligee written notice of any action that will reduce the benefits or change the designation of the
26 beneficiaries under the policy.

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

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

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

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

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

43 (i) For a money award for any sums of money found to be then remaining unpaid upon any order
44 or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS
45 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the

1 limited judgment unless those amounts are included in the money award made by the general judg-
2 ment.

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

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

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

13 (4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of sepa-
14 ration or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to
15 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610,
16 the court rendering the judgment may provide in a supplemental judgment for any relief provided
17 for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only
18 during the pendency of the appeal. A supplemental judgment under this subsection may be enforced
19 as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this sub-
20 section may be appealed in the same manner as provided for supplemental judgments modifying a
21 domestic relations judgment under ORS 19.275.

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

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

36 **SECTION 5.** ORS 107.149 is amended to read:

37 107.149. It is the policy of this state to assure minor children of frequent and continuing contact
38 with parents who have shown the ability to act in the best interest of the child and to encourage
39 parents to share in the rights and responsibilities of raising their children after the parents have
40 separated or dissolved their marriage. **For purposes of this section, there is a rebuttable**
41 **presumption that equal parenting time is in the best interests of the child.**

42 **SECTION 6.** The amendments to ORS 107.095, 107.101, 107.102, 107.105 and 107.149 by
43 sections 1 to 5 of this 2019 Act apply to proceedings commenced on or after the effective date
44 of this 2019 Act.