

D R A F T

SUMMARY

Directs court to take into consideration child's preferences when making best interests determination for purposes of child custody determinations.

A BILL FOR AN ACT

Relating to child's preferences in child custody determinations; creating new provisions; and amending ORS 107.137.

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

SECTION 1. ORS 107.137 is amended to read:

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

- (a) The emotional ties between the child and other family members;
- (b) The interest of the parties in and attitude toward the child;
- (c) The desirability of continuing an existing relationship;
- (d) The abuse of one parent by the other;
- (e) The preference for the primary caregiver of the child, if the caregiver is deemed fit by the court; *[and]*

(f) The preferences of the child, as provided in subsection (7) of this section; and

[(f)] **(g)** The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. However, the court may not consider such willingness and ability

1 if one parent shows that the other parent has sexually assaulted or engaged
2 in a pattern of behavior of abuse against the parent or a child and that a
3 continuing relationship with the other parent will endanger the health or
4 safety of either parent or the child.

5 (2) The best interests and welfare of the child in a custody matter shall
6 not be determined by isolating any one of the relevant factors referred to in
7 subsection (1) of this section, or any other relevant factor, and relying on it
8 to the exclusion of other factors. However, if a parent has committed abuse
9 as defined in ORS 107.705, other than as described in subsection (6) of this
10 section, there is a rebuttable presumption that it is not in the best interests
11 and welfare of the child to award sole or joint custody of the child to the
12 parent who committed the abuse.

13 (3) If a party has a disability as defined by the Americans with Disabili-
14 ties Act of 1990 (42 U.S.C. 12101 et seq.), the court may not consider that
15 party's disability in determining custody unless the court finds that behav-
16 iors or limitations of the party that are related to the party's disability are
17 endangering or will likely endanger the health, safety or welfare of the child.

18 (4) In determining custody of a minor child under ORS 107.105 or 107.135,
19 the court shall consider the conduct, marital status, income, social environ-
20 ment or lifestyle of either party only if it is shown that any of these factors
21 are causing or may cause emotional or physical damage to the child.

22 (5) No preference in custody shall be given to the mother over the father
23 for the sole reason that she is the mother, nor shall any preference be given
24 to the father over the mother for the sole reason that he is the father.

25 (6)(a) The court determining custody of a minor child under ORS 107.105
26 or 107.135 shall not award sole or joint custody of the child to a parent if:

27 (A) The court finds that the parent has been convicted of rape under ORS
28 163.365 or 163.375 or other comparable law of another jurisdiction; and

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

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

1 (7)(a) Unless the court determines that a child's preferences are
2 outweighed by the other factors in subsection (1) of this section:

3 (A) If the court finds that a child who is at least 14 years of age is
4 sufficiently mature and can intelligently and voluntarily express a
5 preference for one parent, the child has the right to select the parent
6 with whom the child will reside and select each parent's parenting
7 time and decision-making responsibilities with respect to the child.

8 (B) If the court finds that a child who is under 14 years of age is
9 sufficiently mature, the court shall give considerable weight to the
10 child's preferences regarding custody, parenting time and parental
11 decision-making responsibilities.

12 (b) The court, on its own motion or on the request of any party or
13 of the child, may take testimony from or confer with the child and
14 may exclude from the conference the parents and other persons if the
15 court finds that such action would be likely to be in the best interests
16 of the child. However, the court shall permit an attorney for each
17 party to attend the conference and question the child, and the con-
18 ference shall be reported.

19 SECTION 2. The amendments to ORS 107.137 by section 1 of this
20 2023 Act apply to custody determinations made on or after the effective
21 date of this 2023 Act in proceedings commenced before, on or after the
22 effective date of this 2023 Act.