

D R A F T

SUMMARY

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

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

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

SECTION 1. ORS 107.101 is amended to read:

107.101. It is the policy of this state to:

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

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

(3) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, if necessary;

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

(5) Consider the best interests of the child and the safety of the parties in developing a parenting plan[.]; **and**

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

SECTION 2. ORS 107.102 is amended to read:

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

6 (2) A general parenting plan may include a general outline of how par-
7 ental responsibilities and parenting time will be shared and may allow the
8 parents to develop a more detailed agreement on an informal basis. However,
9 a general parenting plan must set forth the minimum amount of parenting
10 time and access a noncustodial parent is entitled to have.

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

13 (a) Residential schedule;

14 (b) Holiday, birthday and vacation planning;

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

17 (d) Decision-making and responsibility;

18 (e) Information sharing and access;

19 (f) Relocation of parents;

20 (g) Telephone access;

21 (h) Transportation; and

22 (i) Methods for resolving disputes.

23 (4) In addition to the provisions listed in subsection (3) of this section, a
24 detailed parenting plan may include one or both of the following require-
25 ments:

26 (a) That the custodial parent notify the noncustodial parent regarding
27 specified matters concerning the child.

28 (b) That the custodial parent provide the noncustodial parent with an
29 opportunity to comment regarding specified matters concerning the child.

30 (5)(a) The court shall develop a detailed parenting plan when:

31 (A) So requested by either parent; or

1 (B) The parent or parents are unable to develop a parenting plan.

2 (b) In developing a parenting plan under this subsection[,]:

3 (A) The court may consider only the best interests of the child and the
4 safety of the parties[.]; **and**

5 **(B) It is presumed, unless rebutted by clear and convincing evidence**
6 **by the parent challenging the presumption, that equal parenting time**
7 **is in the best interests of the child.**

8 *[(c) In developing a parenting plan under this subsection, the court may*
9 *order equal parenting time. If a parent requests that the court order equal*
10 *parenting time in the parenting plan, the court may deny the request if the*
11 *court determines, by written findings, that equal parenting time is not in the*
12 *best interests of the child or endangers the safety of the parties.]*

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

14 107.095. (1) After the commencement of a suit for marital annulment,
15 dissolution or separation and until a general judgment therein, the court
16 may provide as follows:

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

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

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

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

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

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

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

12 (2) A limited judgment under ORS chapter 18 may be entered in an action
13 for dissolution or annulment of a marriage providing for a support award,
14 as defined by ORS 18.005, or other money award, as defined by ORS 18.005.
15 Notwithstanding ORS 19.255, a limited judgment entered under this sub-
16 section may not be appealed. Any decision of the court in a limited judgment
17 subject to this subsection may be appealed as otherwise provided by law
18 upon entry of a general judgment.

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

21 (4) In a suit for annulment or dissolution of marriage or for separation,
22 wherein the parties are copetitioners or the respondent is found by the court
23 to be in default or the respondent having appeared has waived further ap-
24 pearance or the parties stipulate to the entry of a judgment, the court may,
25 when the cause is otherwise ready for hearing on the merits, in lieu of such
26 hearing, enter a judgment of annulment or dissolution or for separation
27 based upon a current affidavit or declaration under penalty of perjury in the
28 form required by ORCP 1 E, executed by the petitioner or copetitioners,
29 setting forth a prima facie case, and covering such additional matters as the
30 court may require. If custody of minor children is involved, then the affidavit
31 or declaration under penalty of perjury must also include the name of the

1 party with whom the children currently reside and the length of time they
2 have so resided.

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

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

13 107.105. (1) Whenever the court renders a judgment of marital annulment,
14 dissolution or separation, the court may provide in the judgment:

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

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

26 **(A) In determining parenting time rights under this section, there**
27 **is a rebuttable presumption that equal parenting time is in the best**
28 **interests of the child. In determining whether the presumption under**
29 **this subparagraph has been rebutted, the court shall consider all rel-**
30 **evant factors, including, but not limited to, the factors listed in ORS**
31 **107.137 (1). The burden of rebutting the presumption is on the parent**

1 **challenging the presumption. The presumption must be rebutted by**
2 **clear and convincing evidence that equal parenting time is not in the**
3 **best interests of the child and the other parent's lack or inability with**
4 **respect to the child will cause substantial risk of harm to the child's**
5 **health or safety.**

6 (B) When a parenting plan has been developed as required by ORS
7 107.102, the court shall review the parenting plan and, if approved, incorpo-
8 rate the parenting plan into the court's final order. When incorporated into
9 a final order, the parenting plan is determinative of parenting time rights.
10 If the parents have been unable to develop a parenting plan or if either of
11 the parents requests the court to develop a detailed parenting plan, the court
12 shall develop the parenting plan [*in the best interest of the child, ensuring the*
13 *noncustodial parent sufficient access to the child to provide for appropriate*
14 *quality parenting time and ensuring the safety of the parties, if implicated.*]
15 **as provided in ORS 107.102.**

16 (C) The court shall deny parenting time to a parent under this paragraph
17 if the court finds that the parent has been convicted of rape under ORS
18 163.365 or 163.375 or other comparable law of another jurisdiction and the
19 rape resulted in the conception of the child. Otherwise, the court may deny
20 parenting time to the noncustodial parent under this subsection only if the
21 court finds that parenting time would endanger the health or safety of the
22 child.

23 (D) In the case of a noncustodial parent who has a disability as defined
24 by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), the
25 court may consider the noncustodial parent's disability in determining par-
26 enting time only if the court finds that behaviors or limitations related to
27 the noncustodial parent's disability are endangering or will likely endanger
28 the health, safety or welfare of the child.

29 (E) The court shall recognize the value of close contact with both parents
30 and encourage, when practicable, joint responsibility for the welfare of such
31 children and extensive contact between the minor children of the divided

1 marriage and the parties.

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

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

21 (d) For spousal support, an amount of money for a period of time as may
22 be just and equitable for one party to contribute to the other, in gross or in
23 installments or both. Unless otherwise expressly provided in the judgment
24 and except for any unpaid balance of previously ordered spousal support, li-
25 ability for the payment of spousal support shall terminate on the death of
26 either party, and there shall be no liability for either the payment of spousal
27 support or for any payment in cash or property as a substitute for the pay-
28 ment of spousal support after the death of either party. The court may ap-
29 prove an agreement for the entry of an order for the support of a party. A
30 general judgment entered under this section may include an amount for
31 support as requested in a petition filed under ORS 107.085 or under a motion

1 for relief made pursuant to ORS 107.095 (1)(b) for which a limited judgment
2 was not entered, payment of which commences no earlier than the date the
3 petition or motion was served on the nonrequesting party, and the amount
4 shall be considered a request for relief that has been decided by the general
5 judgment for purposes of ORS 18.082 (3). In making the spousal support or-
6 der, the court shall designate one or more categories of spousal support and
7 shall make findings of the relevant factors in the decision. The court may
8 order:

9 (A) Transitional spousal support as needed for a party to attain education
10 and training necessary to allow the party to prepare for reentry into the job
11 market or for advancement therein. The factors to be considered by the court
12 in awarding transitional spousal support include but are not limited to:

- 13 (i) The duration of the marriage;
- 14 (ii) A party's training and employment skills;
- 15 (iii) A party's work experience;
- 16 (iv) The financial needs and resources of each party;
- 17 (v) The tax consequences to each party;
- 18 (vi) A party's custodial and child support responsibilities; and
- 19 (vii) Any other factors the court deems just and equitable.

20 (B) Compensatory spousal support when there has been a significant fi-
21 nancial or other contribution by one party to the education, training, voca-
22 tional skills, career or earning capacity of the other party and when an order
23 for compensatory spousal support is otherwise just and equitable in all of the
24 circumstances. The factors to be considered by the court in awarding
25 compensatory spousal support include but are not limited to:

- 26 (i) The amount, duration and nature of the contribution;
- 27 (ii) The duration of the marriage;
- 28 (iii) The relative earning capacity of the parties;
- 29 (iv) The extent to which the marital estate has already benefited from the
30 contribution;
- 31 (v) The tax consequences to each party; and

1 (vi) Any other factors the court deems just and equitable.

2 (C) Spousal maintenance as a contribution by one spouse to the support
3 of the other for either a specified or an indefinite period. The factors to be
4 considered by the court in awarding spousal maintenance include but are not
5 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 emo-
9 tional condition;

10 (iv) The standard of living established during the marriage;

11 (v) The relative income and earning capacity of the parties, recognizing
12 that the wage earner's continuing income may be a basis for support distinct
13 from the income that the supported spouse may receive from the distribution
14 of marital property;

15 (vi) A party's training and employment skills;

16 (vii) A party's work experience;

17 (viii) The financial needs and resources of each party;

18 (ix) The tax consequences to each party;

19 (x) A party's custodial and child support responsibilities; and

20 (xi) Any other factors the court deems just and equitable.

21 (e) For the delivery to one party of such party's personal property in the
22 possession or control of the other at the time of the giving of the judgment.

23 (f) For the division or other disposition between the parties of the real
24 or personal property, or both, of either or both of the parties as may be just
25 and proper in all the circumstances. In determining the division of property
26 under this paragraph, the following apply:

27 (A) A retirement plan or pension or an interest therein shall be consid-
28 ered as property.

29 (B) The court shall consider the contribution of a party as a homemaker
30 as a contribution to the acquisition of marital assets.

31 (C) Except as provided in subparagraph (D) of this paragraph, there is a

1 rebuttable presumption that both parties have contributed equally to the
2 acquisition of property during the marriage, whether such property is jointly
3 or separately held.

4 (D)(i) Property acquired by gift to one party during the marriage and
5 separately held by that party on a continuing basis from the time of receipt
6 is not subject to a presumption of equal contribution under subparagraph (C)
7 of this paragraph.

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

11 (E) Subsequent to the filing of a petition for annulment or dissolution of
12 marriage or separation, the rights of the parties in the marital assets shall
13 be considered a species of co-ownership, and a transfer of marital assets un-
14 der a judgment of annulment or dissolution of marriage or of separation en-
15 tered on or after October 4, 1977, shall be considered a partitioning of jointly
16 owned property.

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

19 (G) In arriving at a just and proper division of property, the court shall
20 consider reasonable costs of sale of assets, taxes and any other costs rea-
21 sonably anticipated by the parties.

22 (H)(i) If a party has been awarded spousal support in lieu of a share of
23 property, the court shall so state on the record and shall order the obligor
24 to provide for and maintain life insurance in an amount commensurate with
25 the obligation and designating the obligee as beneficiary for the duration of
26 the obligation.

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

29 (iii) If the obligee or the attorney of the obligee delivers a true copy of
30 the judgment to the life insurance company or companies, identifying the
31 policies involved and requesting such notification under this section, the

1 company or companies shall notify the obligee, as beneficiary of the insur-
2 ance policy, whenever the policyholder takes any action that will change the
3 beneficiary or reduce the benefits of the policy. Either party may request
4 notification by the insurer when premium payments have not been made. If
5 the obligor is ordered to provide for and maintain life insurance, the obligor
6 shall provide to the obligee a true copy of the policy. The obligor shall also
7 provide to the obligee written notice of any action that will reduce the
8 benefits or change the designation of the beneficiaries under the policy.

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

10 (A) For the appointment of one or more trustees to hold, control and
11 manage for the benefit of the children of the parties, of the marriage or
12 otherwise such of the real or personal property of either or both of the par-
13 ties, as the court may order to be allocated or appropriated to their support
14 and welfare, and to collect, receive, expend, manage or invest any sum of
15 money awarded for the support and welfare of minor children of the parties.

16 (B) For the appointment of one or more trustees to hold, manage and
17 control such amount of money or such real or personal property of either
18 or both of the parties, as may be set aside, allocated or appropriated for the
19 support of a party.

20 (C) For the establishment of the terms of the trust and provisions for the
21 disposition or distribution of such money or property to or between the
22 parties, their successors, heirs and assigns after the purpose of the trust has
23 been accomplished. Upon petition of a party or a person having an interest
24 in the trust showing a change of circumstances warranting a change in the
25 terms of the trust, the court may make and direct reasonable modifications
26 in its terms.

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

30 (i) For a money award for any sums of money found to be then remaining
31 unpaid upon any order or limited judgment entered under ORS 107.095. If a

1 limited judgment was entered under ORS 107.095, the limited judgment shall
2 continue to be enforceable for any amounts not paid under the limited
3 judgment unless those amounts are included in the money award made by the
4 general judgment.

5 (j) For an award of reasonable attorney fees and costs and expenses rea-
6 sonably incurred in the action in favor of a party or in favor of a party's
7 attorney.

8 (2) In determining the proper amount of support and the proper division
9 of property under subsection (1)(c), (d) and (f) of this section, the court may
10 consider evidence of the tax consequences on the parties of its proposed
11 judgment.

12 (3) Upon the filing of the judgment, the property division ordered shall
13 be deemed effective for all purposes. This transfer by judgment, which shall
14 affect solely owned property transferred to the other spouse as well as com-
15 monly owned property in the same manner as would a declaration of a re-
16 sulting trust in favor of the spouse to whom the property is awarded, is not
17 a taxable sale or exchange.

18 (4) If an appeal is taken from a judgment of annulment or dissolution of
19 marriage or of separation or from any part of a judgment rendered in
20 pursuance of the provisions of ORS 107.005 to 107.086, 107.095, 107.105,
21 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610, the
22 court rendering the judgment may provide in a supplemental judgment for
23 any relief provided for in ORS 107.095 and shall provide that the relief
24 granted in the judgment is to be in effect only during the pendency of the
25 appeal. A supplemental judgment under this subsection may be enforced as
26 provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judg-
27 ment under this subsection may be appealed in the same manner as provided
28 for supplemental judgments modifying a domestic relations judgment under
29 ORS 19.275.

30 (5) If an appeal is taken from the judgment or other appealable order in
31 a suit for annulment or dissolution of a marriage or for separation and the

1 appellate court awards costs and disbursements to a party, the court may
 2 also award to that party, as part of the costs, such additional sum of money
 3 as it may adjudge reasonable as an attorney fee on the appeal.

4 (6) If, as a result of a suit for the annulment or dissolution of a marriage
 5 or for separation, the parties to such suit become owners of an undivided
 6 interest in any real or personal property, or both, either party may maintain
 7 supplemental proceedings by filing a petition in such suit for the partition
 8 of such real or personal property, or both, within two years from the entry
 9 of the judgment, showing among other things that the original parties to the
 10 judgment and their joint or several creditors having a lien upon any such
 11 real or personal property, if any there be, constitute the sole and only nec-
 12 essary parties to such supplemental proceedings. The procedure in the sup-
 13 plemental proceedings, so far as applicable, shall be the procedure provided
 14 in ORS 105.405 for the partition of real property, and the court granting the
 15 judgment shall have in the first instance and retain jurisdiction in equity
 16 therefor.

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

18 107.149. It is the policy of this state to assure minor children of frequent
 19 and continuing contact with parents who have shown the ability to act in
 20 the best interest of the child and to encourage parents to share in the rights
 21 and responsibilities of raising their children after the parents have separated
 22 or dissolved their marriage. **For purposes of this section, there is a**
 23 **rebuttable presumption that equal parenting time is in the best inter-**
 24 **ests of the child.**

25 **SECTION 6.** The amendments to ORS 107.095, 107.101, 107.102, 107.105
 26 and 107.149 by sections 1 to 5 of this 2023 Act apply to proceedings to
 27 establish or modify parenting time commencing on or after the effec-
 28 tive date of this 2023 Act.

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