

Senate Bill 313

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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**.

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

1
2 Relating to child's preferences in child custody determinations; creating new provisions; and
3 amending ORS 107.137.

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

5 **SECTION 1.** ORS 107.137 is amended to read:

6 107.137. (1) Except as provided in subsection (6) of this section, in determining custody of a mi-
7 nor child under ORS 107.105 or 107.135, the court shall give primary consideration to the best in-
8 terests and welfare of the child. In determining the best interests and welfare of the child, the court
9 shall consider the following relevant factors:

10 (a) The emotional ties between the child and other family members;

11 (b) The interest of the parties in and attitude toward the child;

12 (c) The desirability of continuing an existing relationship;

13 (d) The abuse of one parent by the other;

14 (e) The preference for the primary caregiver of the child, if the caregiver is deemed fit by the
15 court; *[and]*

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

17 *[(f)]* **(g)** The willingness and ability of each parent to facilitate and encourage a close and con-
18 tinuing relationship between the other parent and the child. However, the court may not consider
19 such willingness and ability if one parent shows that the other parent has sexually assaulted or
20 engaged in a pattern of behavior of abuse against the parent or a child and that a continuing re-
21 lationship with the other parent will endanger the health or safety of either parent or the child.

22 (2) The best interests and welfare of the child in a custody matter shall not be determined by
23 isolating any one of the relevant factors referred to in subsection (1) of this section, or any other
24 relevant factor, and relying on it to the exclusion of other factors. However, if a parent has com-
25 mitted abuse as defined in ORS 107.705, other than as described in subsection (6) of this section,
26 there is a rebuttable presumption that it is not in the best interests and welfare of the child to
27 award sole or joint custody of the child to the parent who committed the abuse.

28 (3) If a party has a disability as defined by the Americans with Disabilities Act of 1990 (42
29 U.S.C. 12101 et seq.), the court may not consider that party's disability in determining custody unless
30 the court finds that behaviors or limitations of the party that are related to the party's disability

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 are endangering or will likely endanger the health, safety or welfare of the child.

2 (4) In determining custody of a minor child under ORS 107.105 or 107.135, the court shall con-
3 sider the conduct, marital status, income, social environment or lifestyle of either party only if it is
4 shown that any of these factors are causing or may cause emotional or physical damage to the child.

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

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

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

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

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

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

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

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

24 **(b) The court, on its own motion or on the request of any party or of the child, may take**
25 **testimony from or confer with the child and may exclude from the conference the parents**
26 **and other persons if the court finds that such action would be likely to be in the best inter-**
27 **ests of the child. However, the court shall permit an attorney for each party to attend the**
28 **conference and question the child, and the conference shall be reported.**

29 **SECTION 2. The amendments to ORS 107.137 by section 1 of this 2023 Act apply to cus-**
30 **tody determinations made on or after the effective date of this 2023 Act in proceedings**
31 **commenced before, on or after the effective date of this 2023 Act.**

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