

**Testimony before the Senate Judiciary Committee
SB 1011
On behalf of the OSB Family Law Section**

March 21, 2019

Dear Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

My name is Ryan Carty. I am an attorney in private practice limited to family law. I am the legislative liaison for the Family Law Section of the Oregon State Bar for the current legislative session and am currently serving as Chair of the Family Law Section's Legislative Subcommittee. I appear today in that capacity. The Family Law Section was originally formed in 1978, and today is made up of over 1,000 attorneys who practice family law throughout Oregon. We have members from 30 different Oregon counties, representing a wide variety of clients each with their own unique problems and concerns. Our Executive Committee is comprised of 12 members from 7 different counties, spanning from the lively streets of Pendleton, through the fertile fields of the Willamette Valley, and down to the heart of the Rogue River in Grants Pass.

After reviewing Senate Bill 1011, the Executive Committee of the Family Law Section has reservations about the proposed legislation. SB 1011 would create unintended consequences by removing judicial discretion from a small subset of spousal support cases that are inherently difficult fact scenarios.

What the Bill Does

The proposed legislation would make an obligee spouse's (i.e., the person receiving support) conviction for attempted murder or conspiracy to commit murder of the obligor spouse (i.e., the person paying support) a mandatory bar for any initial request for spousal support and an automatic termination for any ongoing spousal support obligation.

The bill also makes such convictions a change of circumstances for purposes of triggering a spousal support modification.

The -1 amendments to the bill bar the person receiving support from receiving any insurance benefit, specifically including any beneficiary designation on a life insurance policy, following any such conviction.

Spousal Support & Judicial Discretion

Oregon courts are granted broad discretion to take particular factors in individual cases into consideration when awarding, modifying, or terminating spousal support. This is a positive aspect of spousal support law in Oregon because many of these cases present factual scenarios without an obvious answer. And while the Executive Committee of the Family Law Section is united in its stand against domestic violence, it is easy to imagine a scenario where SB 1011 would work injustice by outright barring an otherwise deserving spouse from any opportunity for an award of spousal support in the first place.

Take, for example, a case involving one spouse who walks in on another spouse having an affair and “loses it.” It is easy to imagine such a scenario spiraling out of control. The issue is whether this type of dynamic should operate to automatically bar or terminate spousal support.

Divorces are highly emotional and there are higher than normal incidences of mental health issues prevalent among litigants in the domestic relations arena. This creates situations where individuals are not thinking clearly or acting rationally. Judges should have the discretion to fashion appropriate consequences and relief in these extremely difficult cases.

Spousal Support Modification

ORS 107.135 provides generally that a spouse seeking to modify or terminate a spousal support award must demonstrate a substantial change in economic circumstances. Failure to do so is a bar to any change in the underlying support award. As a practical matter, a conviction for attempted murder or conspiracy to commit murder is not in and of itself a substantial change in economic circumstances. That means the spouse paying support would have no basis to return to court to modify the support award even if the spouse receiving support had been convicted of either attempted murder or a conspiracy to commit murder.

It is appropriate for the court to have discretion to consider whether a modification or termination of spousal support is appropriate in the aftermath of a conviction for attempted murder or conspiracy to commit murder.

Conclusion

The Family Law Section of the Oregon State Bar welcomes the opportunity to work with Legislative Counsel to amend SB 1011 so the court may address convictions for attempted murder and conspiracy to commit murder in a spousal support modification proceeding. But the bill should not remove the judicial discretion to determine how to address spousal support in the wake of such convictions.

We appreciate the committee taking the time to thoughtfully consider this issue, and I will be happy to answer any questions you might have.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Carty". The signature is stylized with a large "R" and a cursive "Carty".

Ryan Carty | Attorney
ryan@cartylawpc.com
(503) 991-5142