

# House Bill 3022

Sponsored by Representative SMITH WARNER

## 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**.

Provides court with discretion to appoint counsel for child or children in hearings related to domestic relations, custody or support, parentage or habeas corpus.

Requires child or children to meet with mental health professional prior to appointment of counsel. Provides for reasonable attorney fees and costs. Permits party to move for removal of appointed counsel.

## A BILL FOR AN ACT

1  
2 Relating to appointment of counsel for children; amending ORS 107.425.

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

4 **SECTION 1.** ORS 107.425 is amended to read:

5 107.425. (1) In suits or proceedings described in subsection (4) of this section in which there are  
6 minor children involved, the court may cause an investigation to be made as to the character, family  
7 relations, past conduct, earning ability and financial worth of the parties for the purpose of pro-  
8 tecting the children's future interest. The court may defer the entry of a general judgment until the  
9 court is satisfied that its judgment in such suit or proceeding will properly protect the welfare of  
10 such children. The investigative findings shall be offered as and subject to all rules of evidence.  
11 Costs of the investigation may be charged against one or more of the parties or as a cost in the  
12 proceedings but shall not be charged against funds appropriated for public defense services.

13 (2) The court, on its own motion or on the motion of a party, may order an independent physical,  
14 psychological, psychiatric or mental health examination of a party or the children and may require  
15 any party and the children to be interviewed, evaluated and tested by an expert or panel of experts.  
16 The court may also authorize the expert or panel of experts to interview other persons and to re-  
17 quest other persons to make available to the expert or panel of experts records deemed by the court  
18 or the expert or panel of experts to be relevant to the evaluation. The court may order the parties  
19 to authorize the disclosure of such records. In the event the parties are unable to stipulate to the  
20 selection of an expert or panel of experts to conduct the examination or evaluation, the court shall  
21 appoint a qualified expert or panel of experts. The court shall direct one or more of the parties to  
22 pay for the examination or evaluation in the absence of an agreement between the parties as to the  
23 responsibility for payment but shall not direct that the expenses be charged against funds appro-  
24 priated for public defense services. If more than one party is directed to pay, the court may deter-  
25 mine the amount that each party will pay based on financial ability.

26 (3)(a) In addition to an investigation, examination or evaluation under subsections (1) and (2)  
27 of this section, the court may appoint an individual or a panel or may designate a program to assist  
28 the court in creating parenting plans or resolving disputes regarding parenting time and to assist  
29 parents in creating and implementing parenting plans. The services provided to the court and to  
30 parents under this section may include:

**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 (A) Gathering information;
- 2 (B) Monitoring compliance with court orders;
- 3 (C) Providing the parents, their attorneys, if any, and the court with recommendations for new
- 4 or modified parenting time provisions; and

5 (D) Providing parents with problem solving, conflict management and parenting time coordi-

6 nation services or other services approved by the court.

7 (b) Services provided under this section may require the provider to possess and utilize medi-

8 ation skills, but the services are not comprised exclusively of mediation services under ORS 107.755

9 to 107.795. If only mediation services are provided, the provisions of ORS 107.755 to 107.795 apply.

10 (c) The court may order one or more of the parties to pay for services provided under this

11 subsection, if the parties are unable to agree on their respective responsibilities for payment. The

12 court may not order that expenses be charged against funds appropriated for public defense services.

13 (d) The presiding judge of each judicial district shall establish qualifications for the appointment

14 and training of individuals and panels and the designation of programs under this section. In estab-

15 lishing qualifications, a presiding judge shall take into consideration any guidelines recommended

16 by the statewide family law advisory committee.

17 (4) The provisions of this section apply when:

- 18 (a) A person files a domestic relations suit, as defined in ORS 107.510;
- 19 (b) A motion to modify an existing judgment in a domestic relations suit is before the court;
- 20 (c) A parent of a child born to a person who is not married initiates a civil proceeding to de-
- 21 termine custody or support under ORS 109.103;
- 22 (d) A person petitions or files a motion for intervention under ORS 109.119;
- 23 (e) A person or the administrator files a petition under ORS 109.125 to establish parentage and
- 24 parentage is established; or
- 25 (f) A habeas corpus proceeding is before the court.

26 (5) Application of the provisions of subsection (1), (2) or (3) of this section to the proceedings

27 under subsection (4) of this section does not prevent initiation, entry or enforcement of an order of

28 support.

29 *[(6) The court, on its own motion or on the motion of a party, may appoint counsel for the children.*

30 *However, if requested to do so by one or more of the children, the court shall appoint counsel for the*

31 *child or children. A reasonable fee for an attorney so appointed may be charged against one or more*

32 *of the parties or as a cost in the proceedings but shall not be charged against funds appropriated for*

33 *public defense services.]*

34 **(6)(a) The court, on its own motion, on the motion of a party or at the request of one**

35 **or more of the children, may appoint counsel for the child or children. Before appointing**

36 **counsel, the child or children must meet with a mental health professional who has been**

37 **agreed upon by all parties and the court. The mental health professional shall:**

- 38 **(A) Evaluate whether the child or children:**
  - 39 **(i) Understand the purpose of the appointment of counsel;**
  - 40 **(ii) Are acting independently; and**
  - 41 **(iii) Are not acting under duress, coercion or undue influence; and**
- 42 **(B) Ascertain the child's or children's preferences, to the extent the child or children,**
- 43 **because of age or other factors, have or are capable of having and communicating prefer-**
- 44 **ences.**

45 **(b)(A) The appointed counsel may charge or incur no more than a reasonable and routine**

1 fee or cost, not to exceed \$200 per hour or exceed in total \$5,000 in a calendar year.

2 (B) For fees or costs that are not routine, the appointed counsel shall submit a written  
3 request to the court and secure from the court preauthorization to incur the fee or cost.  
4 Preauthorization to incur a fee or cost does not guarantee that a fee or cost incurred pur-  
5 suant to the preauthorization will be determined to be necessary or reasonable when the fee  
6 or cost is submitted for payment.

7 (C) The appointed counsel shall consider the financial impact of any fee or cost on one  
8 or more of the parties and may not seek to incur any unnecessary fee or cost.

9 (c)(A) The reasonable fees or costs incurred by the appointed counsel may be charged  
10 against one or more of the parties or as a cost in the proceeding but shall not be charged  
11 against funds appropriated for public defense services.

12 (B) In determining the reasonableness of the fees or costs, the court shall apply the  
13 factors that ORS 20.075 or any other statute or rule requires or permits the court to con-  
14 sider in awarding or denying attorney fees or costs.

15 (d) A party may file a motion for the removal of a child's or children's appointed counsel.  
16 The court shall hold a hearing on the motion within 45 days after the date the motion was  
17 filed. The court, in deciding whether to grant the motion, shall consider whether the ap-  
18 pointed counsel has acted in a manner adverse to the parent-child relationship or in a man-  
19 ner contrary to the policy of this state in ORS 107.101.

20 (7) Prior to the entry of an order, the court on its own motion or on the motion of a party may  
21 take testimony from or confer with the child or children of the marriage and may exclude from the  
22 conference the parents and other persons if the court finds that such action would be likely to be  
23 in the best interests of the child or children. However, the court shall permit an attorney for each  
24 party to attend the conference and question the child, and the conference shall be reported.

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