



Oregon Law Center

Sybil Hebb
503.936.8959
shebb@oregonlawcenter.org

522 SW Fifth Avenue, Suite 812
Portland, OR 97204

To: House Committee on Judiciary, Subcommittee on Civil Law
From: Sybil Hebb, Oregon Law Center
Date: March 3rd, 2021
Re: HB 2948

Chair Power, Vice-Chair Wallan, and members of the committee:

On behalf of the Oregon Law Center, I submit this testimony in opposition to HB 2948. This bill would allow the entry of an order *requiring* parents to engage in joint decision-making about major decisions regarding a child, even if the parents do not agree to this shared responsibility.

The Oregon Law Center (OLC) is a state-wide non-profit law firm whose mission is to achieve justice for low-income communities of Oregon by providing a full range of the highest quality civil legal services. Approximately a third of our cases involve family law matters, where our clients seek assistance to address legal issues related to custody, parenting time, child support, divorce, and separation. Because we do not have the resources to help everyone who qualifies for our services, we prioritize cases in which the safety of a parent or child is at risk. This could be due to substance abuse, domestic violence, mental illness, or other factors. In these cases, the need for safe and stable custody and parenting time provisions are of critical importance, for parents as well as children.

Even in the least complicated families, divorce and custody cases arise in the worst of times. When parents are not at their best, and cannot agree between themselves, a Judge's decision is required to establish custody (decision-making authority) and parenting time parameters for the family. Oregon's statutes have long stood for the nationally recognized principle that a Judge's determination must be made according to the best interests and welfare of the child.¹ In determining best interest and welfare, ORS 107.137 provides that the court will look to a number of relevant factors collectively, including:

- (a) The emotional ties between child and 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 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 if one parent shows that the other parent has sexually assaulted or engaged in a pattern of behavior of abuse against the parent or a

¹ Or. Rev. Stat. §107.137 (2015).

child and that a continuing relationship with the other parent will endanger the health or safety of either parent or the child.

The Judge uses the “best interest of the child” factors to determine custody as well as parenting time arrangements. Often, there is confusion about the difference between custody and parenting time.

- “Custody” is solely about decision-making, and particularly decision making about *major* life decisions, such as residence, education, health care and religious training.
 - *“Joint Custody” means joint decision-making authority about major life decisions.*
- “Parenting time” is solely about the time spent with each parent. Note that day-to-day decisions regarding the child are made by the parent who is with the child during parenting time.
 - *50/50 parenting time means shared time, but does not necessarily mean shared decision making on major life decisions.*

When parents cannot agree, the court must make a determination as to what custody arrangement would be best for the child, and what parenting time arrangement would be best. These are two different assessments. If the court finds that it is in a child’s best interest to spend 50/50 time with each parent, the court has the authority to order that time whether or not the parties agree to this arrangement. In fact, if one party requests 50/50 parenting time, and a Court denies such a request, the Court must make written findings as to why 50/50 parenting time is not in the child’s best interest. This is new legislation from 2019, thanks to the great work of the legislature, after a significant multi-stakeholder workgroup effort chaired by Judiciary Committee counsel.

However, Oregon law has long held that joint decision-making authority (Joint Custody) may not be ordered when the parties disagree. This is out of recognition that when parents cannot agree to share decision-making, they are unlikely to be able to agree to on the very major life decisions at issue. Parents who cannot make cooperative decisions with respect to their children will not develop these skills simply by being ordered to do so.

Forced cooperation between unwilling partners serves only to exacerbate conflict. The consequences to children if their parents cannot agree on major issues can be immense. Health care, education access, and other important issues impacting a child’s life can be stuck in limbo or the source of major conflict, if parents cannot agree. For example, if parents disagree on a therapist for a child, or about whether a child should receive a vaccine, or which school district a child should attend - it is the child who will suffer significant consequences.

Forced joint decision-making can have especially damaging consequences in cases of domestic violence or emotional abuse. When one party is controlling or abusive, there is no “joint” decision-making. If the parties have joint custody, a perpetrator of domestic violence can use the right to be involved in all major-life decisions to continue the contact, control and focus on the victim, leaving the child to suffer the consequences. These cases cannot always be easily identified to the outside observer. Many survivors of domestic violence do not reveal their abuse for fear of their own safety, because of personal shame, concerns of victim-blaming, or because they are worried that they will not be believed.

In closing, our family law lawyers handle hundreds of cases across the state on a yearly basis, most involving parents who cannot agree and have sought our assistance for safety and stability.

We have never encountered a case in which it would have been good policy to order high-conflict parents into joint decision-making authority over major life decisions impacting their children. High levels of conflict negatively impact children. Our court systems ought to reduce conflict and provide stability wherever possible.² Forcing joint decision-making on parents who are not equipped to handle that is bound to fail parents as well as children.

Please allow parents who can already work together continue to do so by agreeing to joint custody. And when that is not an option, please allow the courts to continue to determine which parent will act in the child's best interest on major life decisions in accordance with the analysis of the factors of ORS 107.137.

Thank you for your consideration of this testimony and for your commitment to Oregonians.

² <https://www.psychologytoday.com/us/blog/better-divorce/201912/understanding-the-effects-high-conflict-divorcekids#:~:text=Studies%20have%20concluded%20that%20children,behavioral%20and%20mental%20health%20issues.>