

House Bill 2398

Sponsored by Representative LEWIS; Representatives CATE, LEVY B, OWENS (at the request of Jess Miller)
(Presession filed.)

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**.

Creates rebuttable presumption that equal parenting time and joint custody are in best interests of child.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to rebuttable presumptions regarding parenting; creating new provisions; amending ORS
3 107.095, 107.101, 107.102, 107.105, 107.137 and 107.149; and prescribing an effective date.

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

5 **SECTION 1.** ORS 107.101 is amended to read:

6 107.101. It is the policy of this state to:

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

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

11 (3) Encourage parents to develop their own parenting plan with the assistance of legal and me-
12 diation professionals, if necessary;

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

14 (5) Consider the best interests of the child and the safety of the parties in developing a parent-
15 ing plan[.]; **and**

16 **(6) Presume, subject to rebuttal, that equal parenting time and joint custody are in the**
17 **best interests of the child.**

18 **SECTION 2.** ORS 107.102 is amended to read:

19 107.102. (1) In any proceeding to establish or modify a judgment providing for parenting time
20 with a child, except for matters filed under ORS 107.700 to 107.735, there shall be developed and
21 filed with the court a parenting plan to be included in the judgment. A parenting plan may be either
22 general or detailed.

23 (2) A general parenting plan may include a general outline of how parental responsibilities and
24 parenting time will be shared and may allow the parents to develop a more detailed agreement on
25 an informal basis. However, a general parenting plan must set forth the minimum amount of par-
26 enting time and access a noncustodial parent is entitled to have.

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

28 (a) Residential schedule;

29 (b) Holiday, birthday and vacation planning;

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

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 (d) Decision-making and responsibility;
- 2 (e) Information sharing and access;
- 3 (f) Relocation of parents;
- 4 (g) Telephone access;
- 5 (h) Transportation; and
- 6 (i) Methods for resolving disputes.

7 (4) In addition to the provisions listed in subsection (3) of this section, a detailed parenting plan
 8 may include one or both of the following requirements:

9 (a) That the custodial parent notify the noncustodial parent regarding specified matters con-
 10 cerning the child.

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

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

14 (A) So requested by either parent; or

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

16 (b) In developing a parenting plan under this subsection, the court may consider only the best
 17 interests of the child and the safety of the parties.

18 (c) *[In developing a parenting plan under this subsection, the court may order equal parenting time.*
 19 *If a parent requests that the court order equal parenting time in the parenting plan, the court may deny*
 20 *the request]* **There is a rebuttable presumption that equal parenting time is in the best inter-**
 21 **ests of the child.** If the court determines, by written findings, that equal parenting time is not in
 22 the best interests of the child or endangers the safety of the parties, **the court must construct a**
 23 **parenting time schedule that maximizes the time each parent has with the child, consistent**
 24 **with ensuring the child's welfare.**

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

26 107.095. (1) After the commencement of a suit for marital annulment, dissolution or separation
 27 and until a general judgment therein, the court may provide as follows:

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

31 (b) For the care, custody, support and maintenance, by one party or jointly, of the minor chil-
 32 dren as described in ORS 107.105 (1)(a) and *[for]* the parenting time rights as described in ORS
 33 107.105 (1)(b) *[of the parent not having custody of such children]*.

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

36 (d) That if minor children reside in the family home and the court considers it necessary for
 37 their best interest to do so, the court may require either party to move out of the home for such
 38 period of time and under such conditions as the court may determine, whether the home is rented,
 39 owned or being purchased by one party or both parties.

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

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

44 (g) That even if no minor children reside in the family home, the court may require one party
 45 to move out of the home for such period of time and under such conditions as the court determines,

1 whether the home is rented, owned or being purchased by one party or both parties if that party
 2 assaults or threatens to assault the other.

3 (2) A limited judgment under ORS chapter 18 may be entered in an action for dissolution or
 4 annulment of a marriage providing for a support award, as defined by ORS 18.005, or other money
 5 award, as defined by ORS 18.005. Notwithstanding ORS 19.255, a limited judgment entered under this
 6 subsection may not be appealed. Any decision of the court in a limited judgment subject to this
 7 subsection may be appealed as otherwise provided by law upon entry of a general judgment.

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

10 (4) In a suit for annulment or dissolution of marriage or for separation, wherein the parties are
 11 copetitioners or the respondent is found by the court to be in default or the respondent having ap-
 12 peared has waived further appearance or the parties stipulate to the entry of a judgment, the court
 13 may, when the cause is otherwise ready for hearing on the merits, in lieu of such hearing, enter a
 14 judgment of annulment or dissolution or for separation based upon a current affidavit or declaration
 15 under penalty of perjury in the form required by ORCP 1 E, executed by the petitioner or
 16 copetitioners, setting forth a prima facie case, and covering such additional matters as the court
 17 may require. If custody of minor children is involved, then the affidavit or declaration under penalty
 18 of perjury must also include the name of the party with whom the children currently reside and the
 19 length of time they have so resided.

20 (5) When a court orders relief under subsection (1)(c) or (d) of this section, the court may in-
 21 clude in its order an expiration date for the order to allow entry of the order into the Law
 22 Enforcement Data System and the databases of the National Crime Information Center of the United
 23 States Department of Justice as provided in ORS 107.720. If the person being restrained was pro-
 24 vided notice and an opportunity to be heard, the court shall also include in the order, when appro-
 25 priate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) or (g)(8) to affect the person's ability
 26 to possess firearms and ammunition or engage in activities involving firearms.

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

28 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or sepa-
 29 ration, the court may provide in the judgment:

30 (a) For the future care and custody, by one party or jointly, of all minor children of the parties
 31 born, adopted or conceived during the marriage and for minor children born to the parties prior to
 32 the marriage, as the court may deem just and proper under ORS 107.137. The court may hold a
 33 hearing to decide the custody issue prior to any other issues. When appropriate, the court shall
 34 recognize the value of close contact with both parents and encourage joint parental custody and
 35 joint responsibility for the welfare of the children.

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

38 **(A) In determining parenting time rights under this section, there is a rebuttable**
 39 **presumption that equal parenting time is in the best interests of the child.**

40 **(B)** When a parenting plan has been developed as required by ORS 107.102, the court shall re-
 41 view the parenting plan and, if approved, incorporate the parenting plan into the court's final order.
 42 When incorporated into a final order, the parenting plan is determinative of parenting time rights.
 43 If the parents have been unable to develop a parenting plan or if either of the parents requests the
 44 court to develop a detailed parenting plan, the court shall develop the parenting plan [*in the best*
 45 *interest of the child, ensuring the noncustodial parent sufficient access to the child to provide for ap-*

1 *appropriate quality parenting time and ensuring the safety of the parties, if implicated.] as provided in*
 2 **ORS 107.102.**

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

8 (D) In the case of a noncustodial parent who has a disability as defined by the Americans with
 9 Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), the court may consider the noncustodial parent's
 10 disability in determining parenting time only if the court finds that behaviors or limitations related
 11 to the noncustodial parent's disability are endangering or will likely endanger the health, safety or
 12 welfare of the child.

13 (E) The court shall recognize the value of close contact with both parents and encourage, when
 14 practicable, joint responsibility for the welfare of such children and extensive contact between the
 15 minor children of the divided marriage and the parties.

16 (F) If the court awards parenting time to a noncustodial parent who has committed abuse, other
 17 than being convicted for rape as described in this paragraph, the court shall make adequate pro-
 18 vision for the safety of the child and the other parent in accordance with the provisions of ORS
 19 107.718 (6).

20 (c) For the support of the children of the marriage by the parties. In ordering child support, the
 21 formula established under ORS 25.275 shall apply. The court may at any time require an accounting
 22 from the custodial parent with reference to the use of the money received as child support. The
 23 court is not required to order support for any minor child who has become self-supporting,
 24 emancipated or married or for any child who has ceased to attend school after becoming 18 years
 25 of age. A general judgment entered under this section may include an amount for support as re-
 26 quested in a petition filed under ORS 107.085 or under a motion for relief made pursuant to ORS
 27 107.095 (1)(b) for which a limited judgment was not entered, payment of which commences no earlier
 28 than the date the petition or motion was served on the nonrequesting party, and the amount shall
 29 be considered a request for relief that has been decided by the general judgment for purposes of
 30 ORS 18.082 (3).

31 (d) For spousal support, an amount of money for a period of time as may be just and equitable
 32 for one party to contribute to the other, in gross or in installments or both. Unless otherwise ex-
 33 pressly provided in the judgment and except for any unpaid balance of previously ordered spousal
 34 support, liability for the payment of spousal support shall terminate on the death of either party,
 35 and there shall be no liability for either the payment of spousal support or for any payment in cash
 36 or property as a substitute for the payment of spousal support after the death of either party. The
 37 court may approve an agreement for the entry of an order for the support of a party. A general
 38 judgment entered under this section may include an amount for support as requested in a petition
 39 filed under ORS 107.085 or under a motion for relief made pursuant to ORS 107.095 (1)(b) for which
 40 a limited judgment was not entered, payment of which commences no earlier than the date the pe-
 41 tition or motion was served on the nonrequesting party, and the amount shall be considered a re-
 42 quest for relief that has been decided by the general judgment for purposes of ORS 18.082 (3). In
 43 making the spousal support order, the court shall designate one or more categories of spousal sup-
 44 port and shall make findings of the relevant factors in the decision. The court may order:

45 (A) Transitional spousal support as needed for a party to attain education and training neces-

1 sary to allow the party to prepare for reentry into the job market or for advancement therein. The
 2 factors to be considered by the court in awarding transitional spousal support include but are not
 3 limited to:

- 4 (i) The duration of the marriage;
- 5 (ii) A party's training and employment skills;
- 6 (iii) A party's work experience;
- 7 (iv) The financial needs and resources of each party;
- 8 (v) The tax consequences to each party;
- 9 (vi) A party's custodial and child support responsibilities; and
- 10 (vii) Any other factors the court deems just and equitable.

11 (B) Compensatory spousal support when there has been a significant financial or other contri-
 12 bution by one party to the education, training, vocational skills, career or earning capacity of the
 13 other party and when an order for compensatory spousal support is otherwise just and equitable in
 14 all of the circumstances. The factors to be considered by the court in awarding compensatory
 15 spousal support include but are not limited to:

- 16 (i) The amount, duration and nature of the contribution;
- 17 (ii) The duration of the marriage;
- 18 (iii) The relative earning capacity of the parties;
- 19 (iv) The extent to which the marital estate has already benefited from the contribution;
- 20 (v) The tax consequences to each party; and
- 21 (vi) Any other factors the court deems just and equitable.

22 (C) Spousal maintenance as a contribution by one spouse to the support of the other for either
 23 a specified or an indefinite period. The factors to be considered by the court in awarding spousal
 24 maintenance include but are not limited to:

- 25 (i) The duration of the marriage;
- 26 (ii) The age of the parties;
- 27 (iii) The health of the parties, including their physical, mental and emotional condition;
- 28 (iv) The standard of living established during the marriage;
- 29 (v) The relative income and earning capacity of the parties, recognizing that the wage earner's
 30 continuing income may be a basis for support distinct from the income that the supported spouse
 31 may receive from the distribution of marital property;
- 32 (vi) A party's training and employment skills;
- 33 (vii) A party's work experience;
- 34 (viii) The financial needs and resources of each party;
- 35 (ix) The tax consequences to each party;
- 36 (x) A party's custodial and child support responsibilities; and
- 37 (xi) Any other factors the court deems just and equitable.

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

40 (f) For the division or other disposition between the parties of the real or personal property, or
 41 both, of either or both of the parties as may be just and proper in all the circumstances. In deter-
 42 mining the division of property under this paragraph, the following apply:

43 (A) A retirement plan or pension or an interest therein shall be considered as property.

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

1 (C) Except as provided in subparagraph (D) of this paragraph, there is a rebuttable presumption
2 that both parties have contributed equally to the acquisition of property during the marriage,
3 whether such property is jointly or separately held.

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

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

9 (E) Subsequent to the filing of a petition for annulment or dissolution of marriage or separation,
10 the rights of the parties in the marital assets shall be considered a species of co-ownership, and a
11 transfer of marital assets under a judgment of annulment or dissolution of marriage or of separation
12 entered on or after October 4, 1977, shall be considered a partitioning of jointly owned property.

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

15 (G) In arriving at a just and proper division of property, the court shall consider reasonable
16 costs of sale of assets, taxes and any other costs reasonably anticipated by the parties.

17 (H)(i) If a party has been awarded spousal support in lieu of a share of property, the court shall
18 so state on the record and shall order the obligor to provide for and maintain life insurance in an
19 amount commensurate with the obligation and designating the obligee as beneficiary for the dura-
20 tion of the obligation.

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

23 (iii) If the obligee or the attorney of the obligee delivers a true copy of the judgment to the life
24 insurance company or companies, identifying the policies involved and requesting such notification
25 under this section, the company or companies shall notify the obligee, as beneficiary of the insur-
26 ance policy, whenever the policyholder takes any action that will change the beneficiary or reduce
27 the benefits of the policy. Either party may request notification by the insurer when premium pay-
28 ments have not been made. If the obligor is ordered to provide for and maintain life insurance, the
29 obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to the
30 obligee written notice of any action that will reduce the benefits or change the designation of the
31 beneficiaries under the policy.

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

33 (A) For the appointment of one or more trustees to hold, control and manage for the benefit of
34 the children of the parties, of the marriage or otherwise such of the real or personal property of
35 either or both of the parties, as the court may order to be allocated or appropriated to their support
36 and welfare, and to collect, receive, expend, manage or invest any sum of money awarded for the
37 support and welfare of minor children of the parties.

38 (B) For the appointment of one or more trustees to hold, manage and control such amount of
39 money or such real or personal property of either or both of the parties, as may be set aside, allo-
40 cated or appropriated for the support of a party.

41 (C) For the establishment of the terms of the trust and provisions for the disposition or distrib-
42 ution of such money or property to or between the parties, their successors, heirs and assigns after
43 the purpose of the trust has been accomplished. Upon petition of a party or a person having an in-
44 terest in the trust showing a change of circumstances warranting a change in the terms of the trust,
45 the court may make and direct reasonable modifications in its terms.

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

3 (i) For a money award for any sums of money found to be then remaining unpaid upon any order
 4 or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS
 5 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the
 6 limited judgment unless those amounts are included in the money award made by the general judg-
 7 ment.

8 (j) For an award of reasonable attorney fees and costs and expenses reasonably incurred in the
 9 action in favor of a party or in favor of a party's attorney.

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

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

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

27 (5) If an appeal is taken from the judgment or other appealable order in a suit for annulment
 28 or dissolution of a marriage or for separation and the appellate court awards costs and disburse-
 29 ments to a party, the court may also award to that party, as part of the costs, such additional sum
 30 of money as it may adjudge reasonable as an attorney fee on the appeal.

31 (6) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the
 32 parties to such suit become owners of an undivided interest in any real or personal property, or
 33 both, either party may maintain supplemental proceedings by filing a petition in such suit for the
 34 partition of such real or personal property, or both, within two years from the entry of the judgment,
 35 showing among other things that the original parties to the judgment and their joint or several
 36 creditors having a lien upon any such real or personal property, if any there be, constitute the sole
 37 and only necessary parties to such supplemental proceedings. The procedure in the supplemental
 38 proceedings, so far as applicable, shall be the procedure provided in ORS 105.405 for the partition
 39 of real property, and the court granting the judgment shall have in the first instance and retain
 40 jurisdiction in equity therefor.

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

42 107.137. (1) Except as provided in subsection (6) of this section, in determining custody of a mi-
 43 nor child under ORS 107.105 or 107.135, the court shall give primary consideration to the best in-
 44 terests and welfare of the child. In determining the best interests and welfare of the child, the court
 45 shall consider the following relevant factors:

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

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

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

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

5 (e) The preference for the primary caregiver of the child, if the caregiver is deemed fit by the
6 court; and

7 (f) The willingness and ability of each parent to facilitate and encourage a close and continuing
8 relationship between the other parent and the child. However, the court may not consider such
9 willingness and ability if one parent shows that the other parent has sexually assaulted or engaged
10 in a pattern of behavior of abuse against the parent or a child and that a continuing relationship
11 with the other parent will endanger the health or safety of either parent or the child.

12 (2)(a) The best interests and welfare of the child in a custody matter shall not be determined
13 by isolating any one of the relevant factors referred to in subsection (1) of this section, or any other
14 relevant factor, and relying on it to the exclusion of other factors.

15 **(b) There is a rebuttable presumption that equal parenting time and joint custody are in**
16 **the child's best interest.**

17 (c) [However,] If a parent has committed abuse as defined in ORS 107.705, other than as de-
18 scribed in subsection (6) of this section, there is a rebuttable presumption that it is not in the best
19 interests and welfare of the child to award sole or joint custody of the child to the parent who
20 committed the abuse.

21 (3) If a party has a disability as defined by the Americans with Disabilities Act of 1990 (42
22 U.S.C. 12101 et seq.), the court may not consider that party's disability in determining custody unless
23 the court finds that behaviors or limitations of the party that are related to the party's disability
24 are endangering or will likely endanger the health, safety or welfare of the child.

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

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

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

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

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

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

38 **SECTION 6.** ORS 107.149 is amended to read:

39 107.149. It is the policy of this state to assure minor children of frequent and continuing contact
40 with parents who have shown the ability to act in the best interest of the child and to encourage
41 parents to share in the rights and responsibilities of raising their children after the parents have
42 separated or dissolved their marriage. **For purposes of this section, there is a rebuttable**
43 **presumption that equal parenting time and joint custody are in the best interests of the**
44 **child.**

45 **SECTION 7.** The amendments to ORS 107.095, 107.101, 107.102, 107.105, 107.137 and 107.149

1 by sections 1 to 6 of this 2023 Act, apply to parenting time and custody determinations made
2 on or after the effective date of this 2023 Act.

3 SECTION 8. This 2023 Act takes effect on the 91st day after the date on which the 2023
4 regular session of the Eighty-second Legislative Assembly adjourns sine die.

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