

D R A F T

SUMMARY

Requires court to consider requiring, and authorizes court to order, person to provide or contribute to financial support of child if court grants custody, guardianship, right of visitation, visitation, contact rights or other rights to person.

Permits motion to set aside or modify order granting custody, guardianship, right of visitation, visitation, contact rights or other rights without showing substantial change of circumstances and to establish, set aside or modify order for financial support.

A BILL FOR AN ACT

1
2 Relating to court orders in certain parent-child-type relationships; creating
3 new provisions; and amending ORS 109.119.

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

5 **SECTION 1.** ORS 109.119 is amended to read:

6 109.119. (1) Except as otherwise provided in subsection (9) of this section,
7 any person, including but not limited to a related or nonrelated foster par-
8 ent, stepparent, grandparent or relative by blood or marriage, who has es-
9 tablished emotional ties creating a child-parent relationship or an ongoing
10 personal relationship with a child may petition or file a motion for inter-
11 vention with the court having jurisdiction over the custody, placement or
12 guardianship of that child, or if no such proceedings are pending, may peti-
13 tion the court for the county in which the child resides, for an order pro-
14 viding for relief under subsection (3) of this section.

15 (2)(a) In any proceeding under this section, there is a presumption that
16 the legal parent acts in the best interest of the child.

17 (b) In an order granting relief under this section, the court shall include

1 findings of fact supporting the rebuttal of the presumption described in par-
2 agraph (a) of this subsection.

3 (c) The presumption described in paragraph (a) of this subsection does not
4 apply in a proceeding to modify an order granting relief under this section.

5 (3)(a) If the court determines that a child-parent relationship exists and
6 if the court determines that the presumption described in subsection (2)(a)
7 of this section has been rebutted by a preponderance of the evidence, the
8 court shall grant custody, guardianship, right of visitation or other [*right*]
9 **rights** to the person having the child-parent relationship, if to do so is in
10 the best interest of the child. The court may determine temporary custody
11 of the child or temporary visitation rights under this paragraph pending a
12 final order.

13 (b) If the court determines that an ongoing personal relationship exists
14 and if the court determines that the presumption described in subsection
15 (2)(a) of this section has been rebutted by clear and convincing evidence, the
16 court shall grant visitation or contact rights to the person having the on-
17 going personal relationship, if to do so is in the best interest of the child.
18 The court may order temporary visitation or contact rights under this para-
19 graph pending a final order.

20 **(c) If the court has granted custody, guardianship, right of**
21 **visitation, visitation, contact rights or other rights to a person under**
22 **paragraph (a) or (b) of this subsection, the court shall consider re-**
23 **quiring, and may order, the person to provide for or contribute to the**
24 **financial support of the child, taking into consideration the nature and**
25 **extent of the contact allowed by the order.**

26 **(d) Upon motion filed by a party to the proceeding, the court may**
27 **set aside or modify an order entered under paragraph (a) or (b) of this**
28 **subsection without a showing of substantial change of circumstances**
29 **and may establish, set aside or modify an order for financial support**
30 **under paragraph (c) of this subsection.**

31 (4)(a) In deciding whether the presumption described in subsection (2)(a)

1 of this section has been rebutted and whether to award visitation or contact
2 rights **pursuant to subsection (3)(a) or (b) of this section** over the ob-
3 jection of the legal parent, the court may consider factors including, but not
4 limited to, the following, which may be shown by the evidence:

5 (A) The petitioner or intervenor is or recently has been the child's pri-
6 mary caretaker;

7 (B) Circumstances detrimental to the child exist if relief is denied;

8 (C) The legal parent has fostered, encouraged or consented to the re-
9 lationship between the child and the petitioner or intervenor;

10 (D) Granting relief would not substantially interfere with the custodial
11 relationship; *[or]* **and**

12 (E) The legal parent has unreasonably denied or limited contact between
13 the child and the petitioner or intervenor.

14 (b) In deciding whether the presumption described in subsection (2)(a) of
15 this section has been rebutted and whether to award custody, guardianship
16 or other rights **pursuant to subsection (3)(a) of this section** over the ob-
17 jection of the legal parent, the court may consider factors including, but not
18 limited to, the following, which may be shown by the evidence:

19 (A) The legal parent is unwilling or unable to care adequately for the
20 child;

21 (B) The petitioner or intervenor is or recently has been the child's pri-
22 mary caretaker;

23 (C) Circumstances detrimental to the child exist if relief is denied;

24 (D) The legal parent has fostered, encouraged or consented to the re-
25 lationship between the child and the petitioner or intervenor; *[or]* **and**

26 (E) The legal parent has unreasonably denied or limited contact between
27 the child and the petitioner or intervenor.

28 (5) In addition to the other rights granted under this section, a stepparent
29 with a child-parent relationship who is a party in a dissolution proceeding
30 may petition the court having jurisdiction for custody or visitation under
31 this section or may petition the court for the county in which the child re-

1 sides for adoption of the child. The stepparent may also file for post-
2 judgment modification of a judgment relating to child custody.

3 (6)(a) A motion for intervention filed under this section shall comply with
4 ORCP 33 and state the grounds for relief under this section.

5 (b) Costs for the representation of an intervenor under this section may
6 not be charged against funds appropriated for public defense services.

7 (7) In a proceeding under this section, the court may:

8 (a) Cause an investigation, examination or evaluation to be made under
9 ORS 107.425 or may appoint an individual or a panel or may designate a
10 program to assist the court in creating parenting plans or resolving disputes
11 regarding parenting time and to assist the parties in creating and imple-
12 menting parenting plans under ORS 107.425 (3).

13 (b) Assess against a party reasonable attorney fees and costs for the
14 benefit of another party.

15 (8) When a petition or motion to intervene is filed under this section
16 seeking guardianship or custody of a child who is a foreign national, the
17 petitioner or intervenor shall serve a copy of the petition or motion on the
18 consulate for the child's country.

19 (9) This section does not apply to proceedings under ORS chapter 419B.

20 (10) As used in this section:

21 (a) "Child-parent relationship" means a relationship that exists or did
22 exist, in whole or in part, within the six months preceding the filing of an
23 action under this section, and in which relationship a person having physical
24 custody of a child or residing in the same household as the child supplied,
25 or otherwise made available to the child, food, clothing, shelter and inci-
26 dental necessities and provided the child with necessary care, education and
27 discipline, and which relationship continued on a day-to-day basis, through
28 interaction, companionship, interplay and mutuality, that fulfilled the child's
29 psychological needs for a parent as well as the child's physical needs. How-
30 ever, a relationship between a child and a person who is the nonrelated
31 foster parent of the child is not a child-parent relationship under this section

1 unless the relationship continued over a period exceeding 12 months.

2 (b) "Circumstances detrimental to the child" includes but is not limited
3 to circumstances that may cause psychological, emotional or physical harm
4 to a child.

5 (c) "Grandparent" means the legal parent of the child's legal parent.

6 (d) "Legal parent" means a parent as defined in ORS 419A.004 whose
7 rights have not been terminated under ORS 419B.500 to 419B.524.

8 (e) "Ongoing personal relationship" means a relationship with substantial
9 continuity for at least one year, through interaction, companionship, inter-
10 play and mutuality.

11 **SECTION 2. The amendments to ORS 109.119 by section 1 of this**
12 **2016 Act apply to orders entered, and proceedings commenced, pursu-**
13 **ant to ORS 109.119 before, on or after the effective date of this 2016**
14 **Act.**

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