

Enrolled House Bill 2427

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CHAPTER

AN ACT

Relating to domestic relations; creating new provisions; amending ORS 107.105, 107.425, 109.119 and 109.332; repealing ORS 109.121 and 109.123 and sections 101, 101a and 102, chapter _____, Oregon Laws 2001 (Enrolled Senate Bill 145), and sections 1 and 2, chapter _____, Oregon Laws 2001 (Enrolled Senate Bill 167); and declaring an emergency.

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

SECTION 1. ORS 109.119 is amended to read:

109.119. (1) Any person, including but not limited to a related or nonrelated foster parent, stepparent, **grandparent** or relative by blood or marriage, who has established emotional ties creating a child-parent relationship or an ongoing personal relationship with a child[, *or any legal grandparent*] may petition or file a motion for intervention with the court having jurisdiction over the custody, placement, guardianship or wardship of that child, or if no such proceedings are pending, may petition the court for the county in which the [*minor*] child resides, for an order providing for relief under subsection (3) of this section.

(2)(a) In any proceeding under this section, [*the court may cause an investigation to be made under ORS 107.425.*] **there is a presumption that the legal parent acts in the best interest of the child.**

(b) In an order granting relief under this section, the court shall include findings of fact supporting the rebuttal of the presumption described in paragraph (a) of this subsection.

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

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

(b) If the court determines that an ongoing personal relationship exists and if the court determines **that the presumption described in subsection (2)(a) of this section has been rebutted** by clear and convincing evidence [*that visitation or contact rights are appropriate in the case*], the court shall grant visitation or contact rights to the person having the ongoing personal

relationship, if to do so is in the best interest of the child. The court may order temporary visitation or contact rights under this paragraph pending a final order.

(4)(a) In deciding whether the presumption described in subsection (2)(a) of this section has been rebutted and whether to award visitation or contact rights over the objection of the legal parent, the court may consider factors including, but not limited to, the following, which may be shown by the evidence:

- (A) The petitioner or intervenor is or recently has been the child's primary caretaker;**
- (B) Circumstances detrimental to the child exist if relief is denied;**
- (C) The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor;**
- (D) Granting relief would not substantially interfere with the custodial relationship; or**
- (E) The legal parent has unreasonably denied or limited contact between the child and the petitioner or intervenor.**

(b) In deciding whether the presumption described in subsection (2)(a) of this section has been rebutted and whether to award custody, guardianship or other rights over the objection of the legal parent, the court may consider factors including, but not limited to, the following, which may be shown by the evidence:

- (A) The legal parent is unwilling or unable to care adequately for the child;**
- (B) The petitioner or intervenor is or recently has been the child's primary caretaker;**
- (C) Circumstances detrimental to the child exist if relief is denied;**
- (D) The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor; or**
- (E) The legal parent has unreasonably denied or limited contact between the child and the petitioner or intervenor.**

[(4)] (5) In addition to the other rights granted under [subsection (1) or (3) of] this section, a stepparent with a child-parent relationship who is a party in a dissolution proceeding may petition the court having jurisdiction for custody or visitation under this section or may petition the court for the county in which the [minor] child resides for adoption of the child. The stepparent may also file for post decree modification of a decree relating to child custody.

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

(b)(A) A motion for intervention filed under ORS 419B.115 by a person other than a [legal] grandparent may be denied or a petition may be dismissed on the motion of any party or on the court's own motion if the petition does not state a prima facie case of emotional ties creating a child-parent relationship or ongoing personal relationship or does not allege facts that the intervention is in the best [interests] interest of the child.

[(b)] (B) A motion for intervention filed under ORS 419B.115 by a [legal] grandparent may be granted upon a finding by clear and convincing evidence that the intervention is in the best interests of the child.

(c) Costs for the representation of an intervenor under this section or ORS 419B.115 may not be charged against funds appropriated for indigent defense services.

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

- (a) Cause an investigation to be made under ORS 107.425.**
- (b) Assess against a party reasonable attorney fees and costs for the benefit of another party.**

[(6)] (8) As used in this section:

(a) "Child-parent relationship" means a relationship that exists or did exist, in whole or in part, within the six months preceding the filing of an action under this section, and in which relationship a person having physical custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities and provided the child with necessary care, education and discipline, and which relationship continued on a day-to-day basis, through interaction, companionship, interplay and mutuality, that fulfilled the

child's psychological needs for a parent as well as the child's physical needs. However, a relationship between a child and a person who is the nonrelated foster parent of the child is not a child-parent relationship under this section unless the relationship continued over a period exceeding [18] 12 months.

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

[*(b)*] **(c)** "[*Legal*] Grandparent" means the legal parent of the child's legal parent.

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

[*(d)*] **(e)** "Ongoing personal relationship" means a relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality.

[*(7)*] *In no event shall costs for the representation of an intervenor under this section be charged against funds appropriated for indigent defense services.*

[*(8)*] *In a proceeding under this section, the court may assess against any party a reasonable attorney fee and costs for the benefit of any other party.*

SECTION 1a. If Senate Bill 167 becomes law, section 2, chapter _____, Oregon Laws 2001 (Enrolled Senate Bill 167) (amending ORS 109.119), is repealed and ORS 109.119, as amended by section 1 of this 2001 Act, is amended to read:

109.119. (1) Any person, including but not limited to a related or nonrelated foster parent, stepparent, grandparent or relative by blood or marriage, who has established emotional ties creating a child-parent relationship or an ongoing personal relationship with a child may petition or file a motion for intervention with the court having jurisdiction over the custody, placement, guardianship or wardship of that child, or if no such proceedings are pending, may petition the court for the county in which the child resides, for an order providing for relief under subsection (3) of this section.

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

(b) In an order granting relief under this section, the court shall include findings of fact supporting the rebuttal of the presumption described in paragraph (a) of this subsection.

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

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

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

(4)(a) In deciding whether the presumption described in subsection (2)(a) of this section has been rebutted and whether to award visitation or contact rights over the objection of the legal parent, the court may consider factors including, but not limited to, the following, which may be shown by the evidence:

(A) The petitioner or intervenor is or recently has been the child's primary caretaker;

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

(C) The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor;

(D) Granting relief would not substantially interfere with the custodial relationship; or

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

(b) In deciding whether the presumption described in subsection (2)(a) of this section has been rebutted and whether to award custody, guardianship or other rights over the objection of the legal parent, the court may consider factors including, but not limited to, the following, which may be shown by the evidence:

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

(B) The petitioner or intervenor is or recently has been the child's primary caretaker;

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

(D) The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor; or

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

(5) In addition to the other rights granted under this section, a stepparent with a child-parent relationship who is a party in a dissolution proceeding may petition the court having jurisdiction for custody or visitation under this section or may petition the court for the county in which the child resides for adoption of the child. The stepparent may also file for post decree modification of a decree relating to child custody.

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

(b)(A) A motion for intervention filed under ORS 419B.115 by a person other than a grandparent may be denied or a petition may be dismissed on the motion of any party or on the court's own motion if the petition does not state a prima facie case of emotional ties creating a child-parent relationship or ongoing personal relationship or does not allege facts that the intervention is in the best interest of the child.

(B) A motion for intervention filed under ORS 419B.115 by a grandparent may be granted upon a finding by clear and convincing evidence that the intervention is in the best interests of the child.

(c) Costs for the representation of an intervenor under this section or ORS 419B.115 may not be charged against funds appropriated for indigent defense services.

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

(a) Cause an investigation, **examination or evaluation** to be made under ORS 107.425 **or may appoint an individual or a panel or may designate a program to assist the court in creating parenting plans or resolving disputes regarding parenting time and to assist the parties in creating and implementing parenting plans under ORS 107.425 (3).**

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

(8) As used in this section:

(a) "Child-parent relationship" means a relationship that exists or did exist, in whole or in part, within the six months preceding the filing of an action under this section, and in which relationship a person having physical custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities and provided the child with necessary care, education and discipline, and which relationship continued on a day-to-day basis, through interaction, companionship, interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs. However, a relationship between a child and a person who is the nonrelated foster parent of the child is not a child-parent relationship under this section unless the relationship continued over a period exceeding 12 months.

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

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

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

(e) "Ongoing personal relationship" means a relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality.

SECTION 1b. The amendments to ORS 109.119 by section 1a of this 2001 Act become operative on January 1, 2002.

SECTION 1c. If Senate Bill 145 becomes law and Senate Bill 167 does not become law, section 102, chapter _____, Oregon Laws 2001 (Enrolled Senate Bill 145) (amending ORS 109.119), is repealed and ORS 109.119, as amended by section 1 of this 2001 Act, is amended to read:

109.119. (1) Any person, including but not limited to a related or nonrelated foster parent, stepparent, grandparent or relative by blood or marriage, who has established emotional ties creating a child-parent relationship or an ongoing personal relationship with a child may petition or file a motion for intervention with the court having jurisdiction over the custody, placement, guardianship or wardship of that child, or if no such proceedings are pending, may petition the court for the county in which the child resides, for an order providing for relief under subsection (3) of this section.

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

(b) In an order granting relief under this section, the court shall include findings of fact supporting the rebuttal of the presumption described in paragraph (a) of this subsection.

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

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

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

(4)(a) In deciding whether the presumption described in subsection (2)(a) of this section has been rebutted and whether to award visitation or contact rights over the objection of the legal parent, the court may consider factors including, but not limited to, the following, which may be shown by the evidence:

- (A) The petitioner or intervenor is or recently has been the child's primary caretaker;
- (B) Circumstances detrimental to the child exist if relief is denied;
- (C) The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor;
- (D) Granting relief would not substantially interfere with the custodial relationship; or
- (E) The legal parent has unreasonably denied or limited contact between the child and the petitioner or intervenor.

(b) In deciding whether the presumption described in subsection (2)(a) of this section has been rebutted and whether to award custody, guardianship or other rights over the objection of the legal parent, the court may consider factors including, but not limited to, the following, which may be shown by the evidence:

- (A) The legal parent is unwilling or unable to care adequately for the child;
- (B) The petitioner or intervenor is or recently has been the child's primary caretaker;
- (C) Circumstances detrimental to the child exist if relief is denied;
- (D) The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor; or

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

(5) In addition to the other rights granted under this section, a stepparent with a child-parent relationship who is a party in a dissolution proceeding may petition the court having jurisdiction for custody or visitation under this section or may petition the court for the county in which the child resides for adoption of the child. The stepparent may also file for post decree modification of a decree relating to child custody.

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

(b)(A) A motion for intervention filed under ORS 419B.115 by a person other than a grandparent may be denied or a petition may be dismissed on the motion of any party or on the court's own motion if the petition does not state a prima facie case of emotional ties creating a child-parent relationship or ongoing personal relationship or does not allege facts that the intervention is in the best interest of the child.

(B) A motion for intervention filed under ORS 419B.115 by a grandparent may be granted upon a finding by clear and convincing evidence that the intervention is in the best interests of the child.

(c) Costs for the representation of an intervenor under this section or ORS 419B.115 may not be charged against funds appropriated for [*indigent*] **public** defense services.

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

(a) Cause an investigation to be made under ORS 107.425.

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

(8) As used in this section:

(a) "Child-parent relationship" means a relationship that exists or did exist, in whole or in part, within the six months preceding the filing of an action under this section, and in which relationship a person having physical custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities and provided the child with necessary care, education and discipline, and which relationship continued on a day-to-day basis, through interaction, companionship, interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs. However, a relationship between a child and a person who is the nonrelated foster parent of the child is not a child-parent relationship under this section unless the relationship continued over a period exceeding 12 months.

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

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

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

(e) "Ongoing personal relationship" means a relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality.

SECTION 1d. The amendments to ORS 109.119 by section 1c of this 2001 Act become operative on October 1, 2003.

SECTION 1e. If both Senate Bill 145 and Senate Bill 167 become law, section 102, chapter _____, Oregon Laws 2001 (Enrolled Senate Bill 145) (amending ORS 109.119), is repealed and ORS 109.119, as amended by sections 1 and 1a of this 2001 Act, is amended to read:

109.119. (1) Any person, including but not limited to a related or nonrelated foster parent, stepparent, grandparent or relative by blood or marriage, who has established emotional ties creating a child-parent relationship or an ongoing personal relationship with a child may petition or file a motion for intervention with the court having jurisdiction over the custody, placement, guardianship or wardship of that child, or if no such proceedings are pending, may petition the court for the county in which the child resides, for an order providing for relief under subsection (3) of this section.

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

(b) In an order granting relief under this section, the court shall include findings of fact supporting the rebuttal of the presumption described in paragraph (a) of this subsection.

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

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

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

(4)(a) In deciding whether the presumption described in subsection (2)(a) of this section has been rebutted and whether to award visitation or contact rights over the objection of the legal parent, the court may consider factors including, but not limited to, the following, which may be shown by the evidence:

(A) The petitioner or intervenor is or recently has been the child's primary caretaker;

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

(C) The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor;

(D) Granting relief would not substantially interfere with the custodial relationship; or

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

(b) In deciding whether the presumption described in subsection (2)(a) of this section has been rebutted and whether to award custody, guardianship or other rights over the objection of the legal parent, the court may consider factors including, but not limited to, the following, which may be shown by the evidence:

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

(B) The petitioner or intervenor is or recently has been the child's primary caretaker;

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

(D) The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor; or

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

(5) In addition to the other rights granted under this section, a stepparent with a child-parent relationship who is a party in a dissolution proceeding may petition the court having jurisdiction for custody or visitation under this section or may petition the court for the county in which the child resides for adoption of the child. The stepparent may also file for post decree modification of a decree relating to child custody.

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

(b)(A) A motion for intervention filed under ORS 419B.115 by a person other than a grandparent may be denied or a petition may be dismissed on the motion of any party or on the court's own motion if the petition does not state a prima facie case of emotional ties creating a child-parent relationship or ongoing personal relationship or does not allege facts that the intervention is in the best interest of the child.

(B) A motion for intervention filed under ORS 419B.115 by a grandparent may be granted upon a finding by clear and convincing evidence that the intervention is in the best interests of the child.

(c) Costs for the representation of an intervenor under this section or ORS 419B.115 may not be charged against funds appropriated for [*indigent*] **public** defense services.

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

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

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

(8) As used in this section:

(a) "Child-parent relationship" means a relationship that exists or did exist, in whole or in part, within the six months preceding the filing of an action under this section, and in which relationship a person having physical custody of a child or residing in the same household as the child supplied, or otherwise made available to the child, food, clothing, shelter and incidental necessities and provided the child with necessary care, education and discipline, and which relationship continued on a day-to-day basis, through interaction, companionship, interplay and mutuality, that fulfilled the child's psychological needs for a parent as well as the child's physical needs. However, a relationship between a child and a person who is the nonrelated foster parent of the child is not a child-parent relationship under this section unless the relationship continued over a period exceeding 12 months.

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

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

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

(e) "Ongoing personal relationship" means a relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality.

SECTION 1f. The amendments to ORS 109.119 by section 1e of this 2001 Act become operative on October 1, 2003.

SECTION 2. ORS 109.121 and 109.123 are repealed.

SECTION 3. The amendments to ORS 109.119 by section 1 of this 2001 Act apply to petitions filed under ORS 109.119 or 109.121 before, on or after the effective date of this 2001 Act.

SECTION 4. The amendments to ORS 109.119 by section 1 of this 2001 Act and the repeal of ORS 109.121 and 109.123 by section 2 of this 2001 Act do not constitute a change in circumstances sufficient for the court to reconsider an order or decree.

SECTION 5. ORS 107.105 is amended to read:

107.105. (1) Whenever the court grants a decree of marital annulment, dissolution or separation, it may further decree as follows:

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

(b) For parenting time rights of the parent not having custody of such children, and for visitation rights [*of grandparents*] pursuant to a petition filed under [*ORS 109.121*] **ORS 109.119**. When a parenting plan has been developed as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate the parenting plan into the court's final order. When incorporated into a final order, the parenting plan is determinative of parenting time rights. If the parents have been unable to develop a parenting plan or if either of the parents requests the court

to develop a detailed parenting plan, the court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial parent sufficient access to the child to provide for appropriate quality parenting time and assuring the safety of the parties, if implicated. The court may deny parenting time to the noncustodial parent under this subsection only if the court finds that parenting time would endanger the health or safety of the child. The court shall recognize the value of close contact with both parents and encourage, when practicable, joint responsibility for the welfare of such children and extensive contact between the minor children of the divided marriage and the parties. If the court awards parenting time to a noncustodial parent who has committed abuse, the court shall make adequate provision for the safety of the child and the other parent in accordance with the provisions of ORS 107.718 (4).

(c) For the support of the children of the marriage by the parties. In ordering child support, the formula established by ORS 25.270 to 25.287 shall apply. The court may at any time require an accounting from the custodial parent with reference to the use of the money received as child support. The court is not required to order support for any minor child who has become self-supporting, emancipated or married, or who has ceased to attend school after becoming 18 years of age.

(d) For spousal support, an amount of money for a period of time as may be just and equitable for one party to contribute to the other, in gross or in installments or both. The court may approve an agreement for the entry of an order for the support of a party. In making the spousal support order, the court shall designate one or more categories of spousal support and shall make findings of the relevant factors in the decision. The court may order:

(A) Transitional spousal support as needed for a party to attain education and training necessary to allow the party to prepare for reentry into the job market or for advancement therein. The factors to be considered by the court in awarding transitional spousal support include but are not limited to:

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

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

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

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

- (i) The duration of the marriage;
- (ii) The age of the parties;
- (iii) The health of the parties, including their physical, mental and emotional condition;
- (iv) The standard of living established during the marriage;

(v) The relative income and earning capacity of the parties, recognizing that the wage earner's continuing income may be a basis for support distinct from the income that the supported spouse may receive from the distribution of marital property;

- (vi) A party's training and employment skills;
- (vii) A party's work experience;
- (viii) The financial needs and resources of each party;
- (ix) The tax consequences to each party;
- (x) A party's custodial and child support responsibilities; and
- (xi) Any other factors the court deems just and equitable.

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

(f) For the division or other disposition between the parties of the real or personal property, or both, of either or both of the parties as may be just and proper in all the circumstances. A retirement plan or pension or an interest therein shall be considered as property. The court shall consider the contribution of a spouse as a homemaker as a contribution to the acquisition of marital assets. There is a rebuttable presumption that both spouses have contributed equally to the acquisition of property during the marriage, whether such property is jointly or separately held. Subsequent to the filing of a petition for annulment or dissolution of marriage or separation, the rights of the parties in the marital assets shall be considered a species of coownership, and a transfer of marital assets under a decree of annulment or dissolution of marriage or of separation entered on or after October 4, 1977, shall be considered a partitioning of jointly owned property. The court shall require full disclosure of all assets by the parties in arriving at a just property division. In arriving at a just and proper division of property, the court shall consider reasonable costs of sale of assets, taxes and any other costs reasonably anticipated by the parties. If a spouse has been awarded spousal support in lieu of a share of property, the court shall so state on the record, and shall order the obligor to provide for and maintain life insurance in an amount commensurate with the obligation and designating the obligee as beneficiary for the duration of the obligation. If the obligor dies prior to the termination of such support and such insurance is not in force, the court may modify the method of payment of spousal support under the decree or order of support from installments to a lump sum payment to the obligee from the estate of the obligor in an amount commensurate with the present value of the spousal support at the time of death. The obligee or attorney of the obligee shall cause a certified copy of the decree to be delivered to the life insurance company or companies. If the obligee or the attorney of the obligee delivers a true copy of the decree to the life insurance company or companies, identifying the policies involved and requesting such notification under this section, the company or companies shall notify the obligee, as beneficiary of the insurance policy, whenever the policyholder takes any action that will change the beneficiary or reduce the benefits of the policy. Either party may request notification by the insurer when premium payments have not been made. If the obligor is ordered to provide for and maintain life insurance, the obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to the obligee written notice of any action that will reduce the benefits or change the designation of the beneficiaries under the policy.

(g) For the creation of trusts as follows:

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

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

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

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

(i) For a judgment against one party in favor of the other for any sums of money found to be then remaining unpaid upon any enforceable order or orders theretofore duly made and entered in the proceedings under any of the provisions of ORS 107.095, and for a judgment against one party in favor of the other or in favor of the other's attorney for any further sums as additional attorney fees or additional costs and expenses of suit or defense as the court finds reasonably and necessarily incurred by such party; or, in the absence of any such order or orders pendente lite, a like judgment for such amount of money as the court finds was reasonably necessary to enable such party to prosecute or defend the suit. The decree may include a judgment for any arrearage in any sum ordered while litigation was pending, but if such a judgment is not included in the decree, such arrearages shall not be deemed satisfied.

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

(3) Upon the filing of the decree, the property division ordered shall be deemed effective for all purposes. This transfer by decree, which shall effect solely owned property transferred to the other spouse as well as commonly owned property in the same manner as would a declaration of a resulting trust in favor of the spouse to whom the property is awarded, shall not be deemed a taxable sale or exchange.

(4) If an appeal is taken from a decree of annulment or dissolution of marriage or of separation or from any part of a decree rendered in pursuance of the provisions of ORS 107.005 to 107.085, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610, the court making such decree may provide in a separate order for any relief provided for in ORS 107.095 and shall provide that the order is to be in effect only during the pendency of the appeal. A temporary order under this subsection may be enforced as provided in ORS 33.015 to 33.155. On motion of a party the Court of Appeals may review the trial court's disposition of a request for a temporary order. A motion under this subsection must be filed with the Court of Appeals within 14 days after the entry of the temporary order. The Court of Appeals may modify the trial court's order only if the Court of Appeals finds an abuse of discretion by the trial court. Upon such finding, the Court of Appeals may enter a temporary order, affirm, modify or vacate the trial court's order, remand the order to the trial court for reconsideration or impose terms and conditions on the order.

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

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

SECTION 6. ORS 107.425 is amended to read:

107.425. (1) In suits or proceedings described in subsection (2) of this section in which there are minor children involved, the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability and financial worth of the parties for the purpose of protecting the children's future interest. The court may defer the entry of a final judgment until the court is satisfied that its judgment in such suit or proceeding will properly protect the welfare of

such children. The investigative findings shall be offered as and subject to all rules of evidence. Costs of the investigation may be charged against one or more of the parties or as a cost in the proceedings but shall not be charged against funds appropriated for indigent defense services.

(2) The provisions of subsection (1) of this section apply when:

(a) A person files a domestic relations suit, as defined in ORS 107.510;

(b) A motion to modify an existing decree in a domestic relations suit is before the court;

(c) A parent of a child born out of wedlock initiates a civil proceeding to determine custody or support under ORS 109.103;

(d) A person petitions or files a motion for intervention under ORS 109.119;

[(e) A child's grandparent petitions for visitation rights under ORS 109.121;]

[(f)] (e) A person or state agency files a petition under ORS 109.125 to establish paternity and paternity is established; or

[(g)] (f) A habeas corpus proceeding is before the court.

(3) The court, on its own motion or on the motion of a party, may order an independent physical, psychological, psychiatric or mental health examination of a party or the children and may require any party and the children to appear and to testify as witnesses during this investigation and to be interviewed, evaluated and tested by an expert. The court may also authorize the expert to interview other persons and to request other persons to make available to the expert records deemed by the court or the expert to be relevant to the evaluation. The court may order the parties to authorize the disclosure of such records. In the event the parties are unable to stipulate to the selection of the psychologist, psychiatrist or registered clinical social worker to conduct the investigation, the court shall choose such expert from a list of three submitted to the court by each party with a statement of the experts' qualifications and fees for the investigation. The court shall direct one or more of the parties to pay for the investigation in the absence of an agreement between the parties as to the responsibility for payment but shall not direct that the expenses be charged against funds appropriated for indigent defense services. If more than one party is directed to pay, the court may determine the amount that each party will pay based on financial ability.

(4) The court, on its own motion or the motion of a party, may appoint counsel for the children. However, if requested to do so by one or more of the children, the court shall appoint counsel for the child or children. A reasonable fee for an attorney so appointed may be charged against one or more of the parties or as a cost in the proceedings but shall not be charged against funds appropriated for indigent defense services.

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

SECTION 6a. If Senate Bill 167 becomes law, section 1, chapter _____, Oregon Laws 2001 (Enrolled Senate Bill 167) (amending ORS 107.425), is repealed and ORS 107.425, as amended by section 6 of this 2001 Act, is amended to read:

107.425. (1) In suits or proceedings described in subsection [(2)] (4) of this section in which there are minor children involved, the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability and financial worth of the parties for the purpose of protecting the children's future interest. The court may defer the entry of a final judgment until the court is satisfied that its judgment in such suit or proceeding will properly protect the welfare of such children. The investigative findings shall be offered as and subject to all rules of evidence. Costs of the investigation may be charged against one or more of the parties or as a cost in the proceedings but shall not be charged against funds appropriated for indigent defense services.

[(2) The provisions of subsection (1) of this section apply when:]

[(a) A person files a domestic relations suit, as defined in ORS 107.510;]

[(b) A motion to modify an existing decree in a domestic relations suit is before the court;]

[(c) A parent of a child born out of wedlock initiates a civil proceeding to determine custody or support under ORS 109.103;]

[(d) A person petitions or files a motion for intervention under ORS 109.119;]

[(e) A person or state agency files a petition under ORS 109.125 to establish paternity and paternity is established; or]

[(f) A habeas corpus proceeding is before the court.]

[(3)] (2) The court, on its own motion or on the motion of a party, may order an independent physical, psychological, psychiatric or mental health examination of a party or the children and may require any party and the children *[to appear and to testify as witnesses during this investigation and]* to be interviewed, evaluated and tested by an expert **or panel of experts**. The court may also authorize the expert **or panel of experts** to interview other persons and to request other persons to make available to the expert **or panel of experts** records deemed by the court or the expert **or panel of experts** to be relevant to the evaluation. The court may order the parties to authorize the disclosure of such records. In the event the parties are unable to stipulate to the selection of *[the psychologist, psychiatrist or registered clinical social worker to conduct the investigation, the court shall choose such expert from a list of three submitted to the court by each party with a statement of the experts' qualifications and fees for the investigation. The court shall direct one or]* **an expert or panel of experts to conduct the examination or evaluation, the court shall appoint a qualified expert or panel of experts. The court shall direct one or more** of the parties to pay for the *[investigation]* **examination or evaluation** in the absence of an agreement between the parties as to the responsibility for payment but shall not direct that the expenses be charged against funds appropriated for indigent defense services. If more than one party is directed to pay, the court may determine the amount that each party will pay based on financial ability.

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

(A) Gathering information;

(B) Monitoring compliance with court orders;

(C) Providing the parents, their attorneys, if any, and the court with recommendations for new or modified parenting time provisions; and

(D) Providing parents with problem solving, conflict management and parenting time coordination services or other services approved by the court.

(b) Services provided under this section may require the provider to possess and utilize mediation skills, but the services are not comprised exclusively of mediation services under ORS 107.755 to 107.785. If only mediation services are provided, the provisions of ORS 107.755 to 107.785 apply.

(c) The court may order one or more of the parties to pay for services provided under this subsection, if the parties are unable to agree on their respective responsibilities for payment. The court may not order that expenses be charged against funds appropriated for indigent defense services.

(d) The presiding judge of each judicial district shall establish qualifications for the appointment and training of individuals and panels and the designation of programs under this section. In establishing qualifications, a presiding judge shall take into consideration any guidelines recommended by the statewide family law advisory committee.

(4) The provisions of this section apply when:

(a) A person files a domestic relations suit, as defined in ORS 107.510;

(b) A motion to modify an existing decree in a domestic relations suit is before the court;

(c) A parent of a child born out of wedlock initiates a civil proceeding to determine custody or support under ORS 109.103;

(d) A person petitions or files a motion for intervention under ORS 109.119;

(e) A person or state agency files a petition under ORS 109.125 to establish paternity and paternity is established; or

(f) A habeas corpus proceeding is before the court.

(5) Application of the provisions of subsection (1), (2) or (3) of this section to the proceedings under subsection (4) of this section does not prevent initiation, entry or enforcement of an order of support.

~~[(4)]~~ **(6)** The court, on its own motion or **on** the motion of a party, may appoint counsel for the children. However, if requested to do so by one or more of the children, the court shall appoint counsel for the child or children. A reasonable fee for an attorney so appointed may be charged against one or more of the parties or as a cost in the proceedings but shall not be charged against funds appropriated for indigent defense services.

~~[(5)]~~ **(7)** Prior to the entry of an order, the court on its own motion or ~~[upon]~~ **on** the motion of a party may take testimony from or confer with the child or children of the marriage and may exclude from the conference the parents and other persons if the court finds that such action would be likely to be in the best interests of the child or children. However, the court shall permit an attorney for each party to attend the conference and question the child, and the conference shall be reported.

SECTION 6b. The amendments to ORS 107.425 by section 6a of this 2001 Act become operative on January 1, 2002.

SECTION 6c. If both Senate Bill 167 and Senate Bill 145 become law, sections 101 and 101a, chapter _____, Oregon Laws 2001 (Enrolled Senate Bill 145) (both amending ORS 107.425), are repealed and ORS 107.425, as amended by sections 6 and 6a of this 2001 Act, is amended to read:

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

(2) The court, on its own motion or on the motion of a party, may order an independent physical, psychological, psychiatric or mental health examination of a party or the children and may require any party and the children to be interviewed, evaluated and tested by an expert or panel of experts. The court may also authorize the expert or panel of experts to interview other persons and to request other persons to make available to the expert or panel of experts records deemed by the court or the expert or panel of experts to be relevant to the evaluation. The court may order the parties to authorize the disclosure of such records. In the event the parties are unable to stipulate to the selection of an expert or panel of experts to conduct the examination or evaluation, the court shall appoint a qualified expert or panel of experts. The court shall direct one or more of the parties to pay for the examination or evaluation in the absence of an agreement between the parties as to the responsibility for payment but shall not direct that the expenses be charged against funds appropriated for ~~[indigent]~~ **public** defense services. If more than one party is directed to pay, the court may determine the amount that each party will pay based on financial ability.

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

(A) Gathering information;

(B) Monitoring compliance with court orders;

(C) Providing the parents, their attorneys, if any, and the court with recommendations for new or modified parenting time provisions; and

(D) Providing parents with problem solving, conflict management and parenting time coordination services or other services approved by the court.

(b) Services provided under this section may require the provider to possess and utilize mediation skills, but the services are not comprised exclusively of mediation services under ORS 107.755 to 107.785. If only mediation services are provided, the provisions of ORS 107.755 to 107.785 apply.

(c) The court may order one or more of the parties to pay for services provided under this subsection, if the parties are unable to agree on their respective responsibilities for payment. The court may not order that expenses be charged against funds appropriated for [*indigent*] **public** defense services.

(d) The presiding judge of each judicial district shall establish qualifications for the appointment and training of individuals and panels and the designation of programs under this section. In establishing qualifications, a presiding judge shall take into consideration any guidelines recommended by the statewide family law advisory committee.

(4) The provisions of this section apply when:

(a) A person files a domestic relations suit, as defined in ORS 107.510;

(b) A motion to modify an existing decree in a domestic relations suit is before the court;

(c) A parent of a child born out of wedlock initiates a civil proceeding to determine custody or support under ORS 109.103;

(d) A person petitions or files a motion for intervention under ORS 109.119;

(e) A person or state agency files a petition under ORS 109.125 to establish paternity and paternity is established; or

(f) A habeas corpus proceeding is before the court.

(5) Application of the provisions of subsection (1), (2) or (3) of this section to the proceedings under subsection (4) of this section does not prevent initiation, entry or enforcement of an order of support.

(6) The court, on its own motion or on the motion of a party, may appoint counsel for the children. However, if requested to do so by one or more of the children, the court shall appoint counsel for the child or children. A reasonable fee for an attorney so appointed may be charged against one or more of the parties or as a cost in the proceedings but shall not be charged against funds appropriated for [*indigent*] **public** defense services.

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

SECTION 6d. The amendments to ORS 107.425 by section 6c of this 2001 Act become operative on October 1, 2003.

SECTION 7. ORS 109.332 is amended to read:

109.332. (1) When a petition has been filed under ORS 109.309 concerning the adoption by a stepparent of a child, a grandparent served with a copy of the petition under ORS 109.309 (6) may file a motion with the court asking the court to award a grandparent the right to regular visitation with the child after the adoption. A motion under this subsection must be filed no later than 30 days after service of the petition.

(2) The court shall award a grandparent visitation rights only if the court finds by clear and convincing evidence that:

(a) Establishing visitation rights is in the best interests of the child;

(b) A substantial relationship existed prior to the adoption between the child and the grandparent seeking visitation rights; and

(c) Establishing visitation rights does not substantially interfere with the relationship between the child and the adoptive family.

(3) In a stepparent adoption, a grandparent whose visitation rights were terminated as a result of the adoption prior to August 23, 1993, may petition to have the visitation rights restored. The petition must be filed within one year after August 23, 1993. The court shall restore the visitation rights, unless the court finds that restoration of visitation rights is not in the best interests of the child.

(4) As used in this section, "grandparent" includes a grandparent who has established custody, visitation or other rights under ORS 109.119 [or visitation rights under ORS 109.121].

SECTION 8. This 2001 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect on its passage.

Passed by House April 10, 2001

Received by Governor:

Repassed by House July 5, 2001

.....M,....., 2001

Approved:

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Chief Clerk of House

.....M,....., 2001

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Speaker of House

.....
Governor

Passed by Senate July 4, 2001

Filed in Office of Secretary of State:

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President of Senate

.....M,....., 2001

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Secretary of State