

Enrolled Senate Bill 167

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CHAPTER

AN ACT

Relating to child custody; amending ORS 107.425, 109.119 and 109.175.

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

SECTION 1. ORS 107.425 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 child's grandparent petitions for visitation rights under ORS 109.121;*]

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

[(g) *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 child's grandparent petitions for visitation rights under ORS 109.121;

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

(g) 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 at-

torney for each party to attend the conference and question the child, and the conference shall be reported.

SECTION 2. ORS 109.119 is amended to read:

109.119. (1) Any person, including but not limited to a related or nonrelated foster parent, stepparent 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) In any proceeding under this section, the court may 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).**

(3)(a) If the court determines that a child-parent relationship exists and if the court determines 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, 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 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 rights under this paragraph pending a final order.

(4) In addition to the 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 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) A motion for intervention filed 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 of the child.

(b) A motion for intervention filed 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.

(6) 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 months.

(b) "Legal grandparent" means the legal parent of the child's legal parent.

(c) "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) "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 3. ORS 109.175 is amended to read:

109.175. (1) If paternity of a child born out of wedlock is established pursuant to a petition filed under ORS 109.125 or an order or judgment entered pursuant to ORS 109.124 to 109.230 or ORS 416.400 to 416.470, or if paternity is established by the filing of a voluntary acknowledgment of paternity as provided by ORS 109.070 (1)(e), the parent with physical custody at the time of filing of the petition or the notice under ORS 416.415, or the parent with physical custody at the time of the filing of the voluntary acknowledgment of paternity, has sole legal custody until a court specifically orders otherwise. The first time the court determines who should have legal custody, neither parent shall have the burden of proving a change of circumstances. The court shall give primary consideration to the best interests and welfare of the child and shall consider all the standards set out in ORS 107.137.

(2) In any proceeding under this section, the court may 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 parents in creating and implementing parenting plans under ORS 107.425 (3).**

Passed by Senate April 9, 2001

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Secretary of Senate

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President of Senate

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Speaker of House

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