

107.137 Factors considered in determining custody of child

107.137 Factors considered in determining custody of child. (1) Except as provided in subsection (6) of this section, in determining custody of a minor child under ORS 107.105 or 107.135, the court shall give primary consideration to the best interests and welfare of the child. In determining the best interests and welfare of the child, the court shall consider the following relevant factors:

- (a) The emotional ties between the child and other family members;
- (b) The interest of the parties in and attitude toward the child;
- (c) The desirability of continuing an existing relationship;
- (d) The abuse of one parent by the other;
- (e) The preference for the primary caregiver of the child, if the caregiver is deemed fit by the court; and

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

(2) The best interests and welfare of the child in a custody matter shall not be determined by isolating any one of the relevant factors referred to in subsection (1) of this section, or any other relevant factor, and relying on it to the exclusion of other factors. However, if a parent has committed abuse as defined in ORS 107.705, other than as described in subsection (6) of this section, there is a rebuttable presumption that it is not in the best interests and welfare of the child to award sole or joint custody of the child to the parent who committed the abuse.

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

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

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

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sole reason that he is the father.

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

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

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

(b) A denial of custody under this subsection does not relieve the parent of any obligation to pay child support. [1975 c.722 §2; 1987 c.795 §14; 1997 c.707 §35; 1999 c.762 §2; 2011 c.438 §3; 2013 c.72 §1]

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