



# OREGON CHILD SUPPORT BENCH BOOK



DEVELOPED BY

---

OREGON DEPARTMENT OF JUSTICE

January, 2021

## INTRODUCTION AND ACKNOWLEDGEMENTS

This bench book was created by the Civil Recovery Section of the Oregon Department of Justice, Civil Enforcement Division. It is intended as a guide to assist the courts and members of the bar when creating, modifying, terminating and enforcing child support orders.

Contributors to the bench book include Attorney-in-Charge Claudia Garcia Groberg, Assistant Attorneys General Michael Ritchey, Audrey Hirsch, Jonathan Tucker, Adam Peterson, Shannon Richard, David Pebworth and Darin Tweedt. The AAGs in turn owe a debt of gratitude to the many lead workers and child support case managers who have helped us to better understand the procedures and policies of the DOJ Division of Child Support and Oregon Child Support Program. We are also indebted to the Honorable Maureen McKnight, Senior Judge, and the Honorable Keith R. Raines, Washington County Circuit Court, for allowing us to include the Child Support Primer for Judges. Please note that the primer itself has not been updated as recently as the bench book.

The online version of this bench book is at [oregonchildsupport.gov](http://oregonchildsupport.gov) under Tools for Professionals. It contains links to statutes, administrative rules, and other resources.

Disclaimer: This bench book summarizes statutes and administrative rules, but it is not intended to provide a complete legal analysis of every issue or dispute that may arise in any particular case.



Ellen F. Rosenblum  
Attorney General



Kate Cooper Richardson  
Director, DOJ Division of Child Support &  
Oregon Child Support Program

We welcome feedback on this bench book. Comments may be directed to:

Claudia G. Groberg  
Attorney-in-Charge  
Oregon Department of Justice, Civil Enforcement Division  
975 Oak Street, Suite 200  
Eugene OR 97401  
[claudia.g.groberg@doj.state.or.us](mailto:claudia.g.groberg@doj.state.or.us)

# OREGON CHILD SUPPORT BENCH BOOK

## TABLE OF CONTENTS

### De Novo Appeals

Sec.	1.0	Circuit Court Jurisdiction	1
	1.1	Subject of Hearing	1
	1.2	Parties	2
	1.3	Jurisdiction Issues	2
	1.4	Duty to Support	3
	1.5	Support Orders Must Use First of Month as Due Date	3
	1.6	Support Rights Assigned to State if on Cash or Medical Assistance	4
	1.7	Parentage/Paternity	5
	1.8	Child Support Calculation Formula	6
	1.9	Deviation from Presumed Guideline Amount by Use of Rebuttal	6
	1.10	Deviation from Presumed Amount by Agreement (Consent)	7
	1.11	Medical Support	7
	1.12	Income of Parties	8
	1.13	Adjustments to Income	9
	1.14	Parenting Time Credit	9
	1.15	Child Care Credit	10
	1.16	Social Security and Veterans' Benefits	11
	1.17	Minimum Order	11
	1.18	Presumption of Inability to Pay Child Support When on Cash Assistance or When Incarcerated for at Least 180 Days	12
	1.19	Establishment of Child Support Order (NFR)	13
	1.20	Past Support	13
	1.21	Establishment of Arrears	14
	1.22	Credit for Direct Child Support Payments	15
	1.23	Credit Against Arrears	15
	1.24	Modifications of Child Support Orders	17
	1.25	Modification to Zero—Incarcerated Obligor	18
	1.26	Child Attending School (CAS)	19

### Multiple Child Support Judgments

Sec.	2.0	Child Support Orders/Judgments	22
	2.1	Multiple Child Support Orders	23
	2.2	Governing Child Support Judgments	25

## Uniform Interstate Family Support Act (UIFSA) (ORS 110)

Sec.	3.0	Registration for Enforcement	29
	3.1	Modifications	29
	3.2	Controlling Order Determination	31
	3.3	Long Arm Jurisdiction	31
	3.4	Registration and Enforcement of Convention County Orders	32
	3.5	Additional References	32
	3.6	Oregon Case Law	33

## Garnishments and Income Withholding Orders

Sec.	4.0	Garnishments v. Income Withholding Orders	35
	4.1	Challenging an Income Withholding Order	35
	4.2	Challenging a Writ of Garnishment	36
	4.3	Exemptions	37
	4.4	Joint Bank Accounts	38
	4.5	The Role of Garnishees	39
	4.6	When a Garnishee Does Not Cooperate	40
	4.7	Income Withholding Orders and Uncooperative Employers	41

## Security Intercept/Challenge to Security Intercept

Sec.	5.0	Child Support Program (CSP) Authority to Intercept Returned Security Deposit	42
	5.1	DCS Authority to Intercept Forfeited Security	42
	5.2	Applies to Security Posted by Third Parties	43
	5.3	DCS Process for Security Intercepts	43
	5.4	Certificate of Readiness Not Required for Orders or Judgments in Security Intercept Actions	44

## Contempt Proceedings

Sec.	6.0	Overview	45
	6.1	Remedial Contempt	46
	6.2	Punitive Contempt	49
	6.3	Defenses	51
	6.4	Miscellaneous Issues	52

## State's Appearance

Sec.	7.0	General Information	54
	7.1	State Interests	54
	7.2	Mandatory Notice to the State Where Obligee or Child is Currently on Assistance or the Child is in State Care	55
	7.3	Filing When State Receives Notice of Pending Proceedings	55
	7.4	Filing When State Does Not Receive Notice and Order is Final	55

## Special Protections for Military Personnel

Sec.	8.0	Federal Protections: Servicemembers Civil Relief Act	57
	8.1	Oregon Protections for Deployed Parents	58

## Incarcerated Obligor

Sec.	9.0	Senate Bill 682 – 2017 SB 682 Changes	62
	9.1	Objection to Presumption of Obligor’s Inability to Pay Due to Incarceration	63
	9.2	Suspension of Billing and Arrearage	64
	9.3	Reinstatement of Order	64
	9.4	Notice Following Reinstatement of Order	64
	9.5	Review and Modification of Reinstated Support Order	65
	9.6	Credit and Satisfaction for Support that Accrues During Incarceration	65
	9.7	Orders Previously Modified to Zero Due to Incarceration	66

## Child Support Guidelines 2023

Sec.	10.0	General Provisions	137-050-0700	67
		Calculating Support	137-050-0710	69
		Income	137-050-0715	71
		Adjusted Income	137-050-0720	73
		Basic Support Obligation	137-050-0725	75
		Parenting Time Credit	137-050-0730	77
		Child Care Costs	137-050-0735	79
		Social Security & Veterans’ Benefits	137-050-0740	81
		Self-Support Reserve	137-050-0745	83
		Medical Support	137-050-0750	85
		Minimum Order	137-050-0755	89
		Rebuttals	137-050-0760	91
		Agreed Support Amount	137-050-0765	93

## Child Support Casenotes

Sec.	11.0		94
------	------	--	----

# DE NOVO APPEALS AND OTHER CHILD SUPPORT PROCEEDINGS

## 1.0 Circuit Court Jurisdiction

- A. Administrative orders issued by CSP and orders issued by the Office of Administrative Hearings may be appealed under [ORS 25.513\(6\)](#) to the circuit court in the county where the order was entered under [ORS 25.529](#). Parties have 60 days from the date of entry of the order to request a hearing. Court's review is de novo.
- B. A party may file a de novo appeal of an administrative order establishing paternity, but paternity may not be challenged in a de novo hearing of a later-issued child support order.

## 1.1 Subject of Hearings

- A. A broad range of child support related issues can be appealed to circuit court for de novo review.
- B. May require the court to make findings related to the child support calculation and perform child support calculations.
- C. Some courts make findings and ask the District Attorney or Assistant Attorney General to perform calculations.

- D. Typical hearings issues include the amount of support and how it was calculated and disputes about the fact findings that were used to calculate the administrative order. *See also Child Support Calculation Formula section below.*

## **1.2 Parties**

- A. In any child support proceeding under **ORS 25.501 to 25.556**, the following are parties and must be given notice pursuant to **ORS 25.503**:
1. State of Oregon
  2. Obligee
  3. Obligor
  4. Any other person who has physical custody of a child covered by the order who has been joined as a party.
- B. A child age 18-20 who is a child attending school is a party to any legal proceeding related to the support order. **ORS 107.108(3)**.
- C. A child age 18-20, regardless of whether the child qualifies as a child attending school is a necessary party to any judicial action to establish or modify a support order. **ORS 107.108(4)(b)**.

## **1.3 Jurisdiction Issues**

- A. Jurisdiction is seldom an issue except for cases involving interstate moves of the parties. (Note: See **ORS 110.518** for basis for jurisdiction over a nonresident.

See also [ORS 110.629](#) for requirements that must be met for Oregon to modify a child support order issued in another state.)

- B. Out of State orders: Generally, once a tribunal had established a support order consistent with its state laws, that state acquires CEJ (continuing exclusive jurisdiction). [ORS 110.527](#).
- C. A state continues to have CEJ as long as the obligor, obligee or child continues to reside in the state or until the parties give written consent for another state to assume CEJ.
- D. There is a process to register, enforce and modify foreign order in Oregon courts. [ORS 110.605](#). (See also *Uniform Interstate Family Support Act (UIFSA chapter.)*)

#### **1.4 Duty to Support**

- A. “It is the policy of the State of Oregon that dependent children shall be maintained as much as possible from the resources of both parents” thereby reducing the burden on the state due to public assistance. [ORS 25.502](#).
- B. Provisions of [ORS 25.501 to 25.556](#) augment traditional judicial remedies for establishing and modifying child support.

#### **1.5 Support Orders Must Use First of Month as Due Date**

- A. [ORS 25.166](#) provides that any order for child or spousal support must specify an initial due date that is on the first day of a month, with subsequent payment due on the first day of each subsequent month.



- B. Support payments become delinquent only if not paid in full within one month of the payment due date. If a support obligation is due in two or more installments, the payment becomes delinquent only if not paid in full by the due date for the first installment in the next month.
- C. A support payment that has a due date other than the first of the month is nevertheless fully enforceable by income withholding on the first day the month in which it accrues.

## **1.6 Support Rights Assigned to State if on Cash or Medical Assistance**

- A. Support rights are automatically assigned to the state if a custodial parent receives Temporary Assistance to Needy Families (TANF) benefits or if the children are enrolled in public health care. [ORS 412.024](#), [OAR 461-120-0310](#), [OAR 461-120-0315](#).
- B. Support rights are automatically assigned to the state when DHS has legal custody of a child (Foster Care). [ORS 418.032](#); [ORS 419B.406](#).
- C. Support rights are automatically assigned to the state if child in custody of the Oregon Youth Authority. [ORS 419C.597](#).
- D. In 2014, the CSP stopped receiving medical referrals from the Oregon Health Authority (OHA) because the information was missing critical data or was categorized by OHA as unreliable – and therefore did not meet the criteria for an appropriate referral. As a result, the CSP does not require cash medical support

be included in an order for children on the Oregon Health Plan, and the CSP does not assign any cash medical support to the state.

## 1.7 Parentage/Paternity

- A. Parentage for a child may be established for an individual, regardless of gender, by:
  - 1. Marital presumption regardless of spouse's gender. [ORS 109.070](#).
  - 2. Adoption. [ORS 109.304 to 109.410](#).
  - 3. Marriage to and consent to mother giving birth by assisted reproduction. [ORS 109.243](#).
  
- B. Paternity, for men only, may also be established by:
  - 1. Voluntary acknowledgment. [ORS 109.070](#); [ORS 432.098](#).
  - 2. Judicial filiation judgment. [ORS 109.124](#), et seq.
  - 3. Administrative proceeding. [ORS 25.511](#); [ORS 25.550](#).
  
- C. Challenges to paternity established by administrative order may be heard in a de novo hearing. Depending on the circumstances, it may be appropriate for the court to order paternity testing pursuant to [ORS 109.252](#).
  
- D. If parentage was established due to an un rebutted marital presumption, and the birth mother alleges a father who is not the presumed parent, the CSP will assist the parties in determining parentage. Parentage will be resolved through a three-

party action including the mother, the presumed parent, and the alleged father.  
**OAR 137-055-3020(5) and (6).**

## **1.8 Child Support Calculation Formula**

- A. Child support must be calculated using a formula. **ORS 25.275.**
- B. The formula is contained in the Child Support Guidelines found at **OAR 137-050-0700 to OAR 137-050-0765.**
- C. Guideline amount presumed correct. **ORS 25.280.**
- D. Calculate support for an 18 year old child who is attending high school and living with a parent in the same manner as support for a minor child. **OAR 137-050-0700(4).** When using the support calculator, simply enter that child as a minor rather than as a Child Attending School.

## **1.9 Deviation From Presumed Guideline Amount by Use of Rebuttal**

- A. Presumption in favor of guideline amount may be rebutted. **ORS 25.287, OAR 137-050-0760.** *Matter of Marriage of Petersen*, 132 Or. App. 190, 888 P.2d 23 (1994).
- B. Requires a finding that the guideline amount is unjust or inappropriate. *Rossi and Rossi*, 128 Or. App. 536, 876 P.2d 820 (1994).
- C. May be supported by a calculation showing why the guideline amount is unjust or inappropriate. In such a calculation, factors may be applied to party's income, costs, or bottom-line support amount.

- D. Specific rebuttal factors are set out in [OAR 137-050-0760](#). This list is not exclusive and any other economically based reason may be used. *Matter of Marriage of Petersen*, 132 Or. App. 190, 198, 888 P.2d 23 (1994).

#### **1.10 Deviation From Presumed Amount by Agreement (Consent)**

- A. Parties may agree to a deviation of up to 15% of the presumed amount. [OAR 137-050-0765](#).
- B. Requires parties to waive rights to administrative hearing.

#### **1.11 Medical Support**

- A. All child support orders must include a medical support clause. [ORS 25.323\(1\)](#).
- B. The medical support clause must require one or both parents to provide health care coverage (insurance). If health care coverage is not available, must require health care coverage to be provided when available and require payment of cash medical support or include a finding why not appropriate. [ORS 25.323\(4\)](#).
- C. The medical support clause may require contingent medical support. [ORS 25.323\(3\)](#). For example, an order may require the payment of cash medical support only when not providing health care coverage.
- D. Health insurance must be appropriate and available. [ORS 25.323\(5\) & \(6\)](#).
- E. Medical support clause may not order a parent to pay to provide health care coverage (including contributing to the other parent's cost) or cash medical support if parent's income is equal to or less than the highest Oregon minimum

wage. [ORS 25.323\(7\)](#) and [OAR 137-050-0750\(6\)](#). May order a minimum wage parent to provide health care coverage that is available at no cost. May also order a parent to enroll the children in public health care coverage if private health care coverage is not available.

- F. Under the guidelines, the amount that can be ordered to provide private health care coverage is 4% of the parties' combined adjusted incomes. Income of parent with income at or below Oregon minimum wage is not included. Can exceed 4% to provide health care coverage if compelling factors are found. [OAR 137-050-0750\(7\)](#). If ordered, cash medical support is 4% of the obligor's adjusted income.

## **1.12 Income of Parties**

- A. For purposes of calculation support, a party's income should be determined by using actual income, potential income or both. Actual income should be used unless it is less than the party's potential income, in which case additional potential income should be imputed. [OAR 137-050-0715](#).
- B. Actual income includes earnings and income from any source, including, for example, wages, pensions, bonuses, interest, trust income, annuities, gifts, prizes, self-employment, unemployment, social security, workers' compensation and disability insurance benefits, rent, etc.
- C. Potential income is determined by considering the party's qualifications, work history and the prevailing employment opportunities in the community.

- D. If insufficient information about the parent’s income history is available to make a determination of actual or potential income, the parent’s income is the amount the parent could earn working full-time at the lowest minimum wage in the state in which the parent resides.
- E. Child support, food stamps, Social Security or Veterans’ benefits received on behalf of a child in the household, adoption assistance, guardianship assistance, and foster care subsidies are not considered income for purposes of this calculation.

### **1.13 Adjustments to Income**

- A. A party’s income is adjusted upward for spousal support received. A party’s income is adjusted downward for union dues paid, spousal support paid, non-joint children and the portion of a health insurance premium that is paid to enroll the parent, regardless of whether the children will be enrolled. [OAR 137-050-0720](#).
- B. To qualify as a non-joint child, the minor child must reside with the parent or the parent must be ordered to pay support for the child. [OAR 137-050-0720\(2\)](#).
- C. A child aged 18-20 who is attending school qualifies as a non-joint child only if the parent is ordered to pay support for that child. [OAR 137-050-0720\(2\)](#).

### **1.14 Parenting Time Credit**

- A. If a child spends one or more overnights with a parent, the parent is entitled to a parenting time credit. [OAR 137-050-0730](#).

- B. Generally, parenting time is calculated using average number of overnights for a two-year period.
- C. The rule does provide for an alternate method of calculation when overnights may not be an appropriate measure.
- D. Parenting time credit is applied in the child support calculator.
- E. Parenting time is based on the minor child(ren) only. This includes an 18 year-old attending high school and living with a parent. The amount of the credit is based on only the minors' portion of the support obligation but it reduces the total support obligation. Because a CAS receives a proportionate share of the total support in a class order, the parenting time credit indirectly reduces the CAS' share. [OAR 137-050-0730](#).

### **1.15 Child Care Credit**

- A. A support calculation can be adjusted for child-care costs incurred for a child under the age of 13 or for a child of any age who is disabled. [OAR 137-050-0735](#).
- B. Child-care costs can be incurred by either parent, but must be related to the parent's employment, job search, or training or education necessary to obtain a job.

- C. Child-care costs must be reasonable and are capped depending on the parent's geographic location. [OAR 137-050-0735](#) has a chart and a link to a comprehensive list of zip codes and associated child-care caps.
- D. Do not include child-care subsidies paid by the government for the parent.

### **1.16 Social Security and Veterans' Benefits**

- A. Amount of support obligation must be reduced for certain types of social security and veterans' benefits paid to a child or a child's representative payee on behalf of obligated parent who is disabled or retired. [OAR 137-050-0740](#).
- B. See *Lawhorn and Lawhorn*, 119 Or. App. 225, 850 P.2d 1126 (1993).

### **1.17 Minimum Order**

- A. It is rebuttably presumed that a parent can pay at least \$100 per month as support. [OAR 137-050-0755](#).
- B. Presumption does not apply when:
  - 1. Each parent has exactly 50% parenting time;
  - 2. The order is for medical support only;
  - 3. The obligated parent is an incarcerated obligor as defined in [OAR 137-055-3300](#);
  - 4. The obligated parent has disability benefits as the sole source of income;or



5. The obligated parent receives public benefits as defined by [ORS 25.245](#).

### **1.18 Presumption of Inability to Pay Child Support When on Cash Assistance or When Incarcerated for at Least 180 Days**

- A. A parent who is receiving SSI or public assistance benefits from Oregon or another state or tribe is presumed unable to pay child support. [ORS 25.245](#).
- B. A parent who is incarcerated for at least 180 days is presumed unable to pay child support. [ORS 25.247](#). (*See Incarcerated Obligors chapter for more information.*)
- C. CSP must send notice of presumption to parties.
- D. May object to presumption within 30 days of service of notice.
- E. [ORS 25.245\(1\)](#), which (rebuttably) presumes that a parent receiving cash assistance is unable to pay support, is to be strictly construed. Cash payments must be under one of four programs: (1) Title IV-A of the Social Security Act, (2) General Assistance Program, (3) Oregon Supplemental Security Income Program, or (4) Supplemental Security Income Program. *Amiotte v. Woods*, 179 Or. App. 179, 39 P.3d 268 (2002).
- F. Reinstatement of Suspended Order: An order that is suspended due to obligor's receipt of public assistance is automatically reinstated when obligor stops receiving assistance. An order that is suspended due to obligor's incarceration is

automatically reinstated at 50% of the previous amount after obligor has been released for 120 days.

### **1.19 Establishment of Child Support Order (NFR)**

- A. To establish a parent’s support obligation, CSP issues a Notice and Finding of Financial Responsibility and a proposed order establishing a support obligation. **ORS 25.511.**
- B. A NFR is served on the alleged obligated parent by mail, return receipt requested, or by any other mail service with delivery confirmation. **ORS 25.511(1).**
- C. A NFR may establish paternity. A NFR alleging paternity must be personally served. **ORS 25.511(1).**
- D. A NFR sets forth the amount of cash child support, the type and amount of medical support and an amount of past support.

### **1.20 Past Support**

- A. “Past support” means the amount of support that is ordered for a period prior to the support order becoming effective, during which the obligor was not supporting the child. **ORS 25.501(8).**
- B. Under **ORS 25.515**, past support may not be ordered for any period prior to the later of:
  - 1. Date of application for IV-D services (application for services provided by the CSP) that resulted in the child support case opening.

2. Date of mandatory referral based on receipt of public assistance that resulted in the child support case opening.
- C. If a NFR alleges past support, but is not finalized because it is discovered that a court action is pending for the same parties, the CSP may certify the past support issue to court. The court may order past support in the same manner as the child support program. [ORS 25.515\(2\)](#).
  - D. If the matter of past support is not certified and the court does not address past support, the CSP may subsequently establish a past support obligation. [ORS 25.515\(3\)](#).
  - E. Administrative orders will not order past support for any time prior to the first day of the month the proposed child support order was created and sent out to be served on the parties. [OAR 137-055-3220\(7\)](#).

### **1.21 Establishment of Arrears**

- A. Pursuant to [ORS 25.540](#), the CSP may establish and enforce child support arrears.
- B. Statute sets out the requirements for the notice of intent to establish and enforce arrears.
- C. State may pursue any other enforcement remedies at any time, notwithstanding the arrears establishment proceeding under [ORS 25.540](#).
- D. There is also a court process to establish arrears under [ORS 25.167](#).

- E. Interest Establishment: The CSP no longer establishes the amount of interest that has accrued on a judgment but will enforce interest that has been established by a court order. [OAR 137-055-5080](#).

## **1.22 Credit for Direct Child Support Payments**

- A. Party may not receive credit for direct payments not made to DOJ except as provided in [ORS 25.020\(11\) to \(14\)](#).
- B. When payments not assigned to state, party may get credit if obligor and obligee sign statements that payments were made and should be credited. The credit is limited to the arrears owed to the party that received the direct payments. [ORS 25.020\(12\)](#) (as revised by 2017 SB 517.).
- C. Child Attending School must also agree to credits.
- D. DOJ may also give credits for judicially determined direct payment or satisfaction. [ORS 25.020\(14\)](#).

## **1.23 Credit Against Arrears**

- A. Credit balances. Per DCS program rules, a credit for physical custody, Social Security benefits or Veterans' benefits may not exceed total arrears owed on the case. In other words, a party may not receive a credit that will create a credit balance on the party's support account. [OAR 137-055-5510\(4\)](#) and [137-055-5520\(9\)](#). A credit for direct payment cannot be used to satisfy arrears that are

owed to anyone other than the person who received the payments. [OAR 137-055-5240\(5\)\(b\)](#).

B. In the context of a modification, an obligor may be given credit against arrears. [ORS 25.527\(8\)](#).

C. Obligor may also receive credit independent of a modification. [OAR 137-055-5510](#).

D. Obligor may receive a credit for periods of time he/she had physical custody of the child or children covered by the order with knowledge and consent of the other party. Does not include periods of reasonable parenting time. [OAR 137-055-5510](#).

1. Physical custody must have lasted at least 30 consecutive days or the entire month for which credit is sought.
2. No credit will be allowed for physical custody of a child attending school. [OAR 137-055-5510\(6\)](#).
3. As part of a modification, credit for physical custody can be allowed for the period immediately prior to the modification and no time limit on length of credit as long as physical custody of all children has been continuously with the obligor. In an independent action, credit for physical custody will only be allowed for a time period within 2 years of the date of the request.

4. Only basis for objection is that the party did not have physical custody or that physical custody was not with the knowledge and consent of the other party
- E. Obligor may receive credit for any Social Security or Veterans' benefits paid retroactively to or for a child's use and benefit as a result of the parent's disability or retirement. [OAR 137-055-5520](#).

#### **1.24 Modifications of Child Support Orders**

- A. To qualify for modification when the order is less than three years old, party must show that there has been a substantial change in circumstances and that the existing order is not in substantial compliance with child support guidelines. [ORS 25.287](#), [ORS 25.527](#), [OAR 137-055-3420](#), [OAR 137-055-3430](#).
- B. Substantial compliance means the existing order amount is within the lesser of \$50 or 15% of the new calculated amount.
- C. There are exceptions to the 15%/\$50 substantial compliance standard. [OAR 137-055-3430\(5\)\(b\)](#).
  1. The order is more than three years old.
  2. Need to add or change medial support provisions.
  3. Change in physical custody of a minor child.
  4. Need to add a subsequent child or remove a child of the parties.

5. Tiered provisions for a child attending school pursuant to [ORS 107.108](#) must be added, removed or changed.
  6. The proposed new amount resulted from a calculation that:
    - a. includes a deviation by consent of the parties
    - b. includes the application of rebuttals
    - c. includes compelling factors to exceed the normal 4% cap on medical support
    - d. is for a modification to allow credit for receipt of Social Security or Veterans' Benefits.
- D. If existing order is at least three years old, no need to show substantial change of circumstances. [ORS 25.287](#).
- E. Modification is effective on or after the date the last non-requesting party is served with the motion. [ORS 25.527\(8\)](#); [OAR 137-055-3440](#).

### **1.25 Modification to Zero—Incarcerated Obligor**

- A. Beginning January 1, 2018, child support orders will no longer be modified to zero during a period of obligor's incarceration. Instead, the order will be suspended as provided in [ORS 25.247](#). An order that was modified to zero prior to January 1, 2018 will automatically reinstate on the 61<sup>st</sup> day following obligor's release from incarceration as provided by the order. (*See also Section 1.1, above and Incarcerated Obligor chapter.*)

## 1.26 Child Attending School (CAS)

- A. Support for children age 18-20 is addressed by [ORS 107.108](#), [OAR 137-055-3485](#), [OAR 137-055-5110](#), and [OAR 137-055-5120](#).
- B. [ORS 107.108\(2\)](#) provides that a support order may require one or both parents to pay support to a “child attending school.”
- C. A child age 18-20 who is making a satisfactory academic progress while attending at least ½ of a full load (as defined by the education institution) is known as a “child attending school” (CAS).
- D. A child age 18-20 who is not attending school on at least a half-time basis is an “adult child.”
- E. If an order provides for support for a CAS, support must be paid during regularly scheduled school breaks.
- F. 18, 19 and 20-year-old children are necessary parties to any proceeding to establish or modify a support obligation. [ORS 107.108\(4\)](#).
- G. For support to be paid to the child after turning 18, the child must submit before turning 18, written notice of intent to go to continue in school after turning 18.
- H. CAS must submit written consent for school to release academic record to the obligor.



- I. Support for a CAS is suspended when the obligor objects to paying support and the CAS fails within 30 days to submit documents proving he or she still qualifies as a child attending school. **ORS 107.108(8)**.
- J. If an obligation is suspended, support is reinstated when the CAS submits documents proving he or she qualifies. **ORS 107.108(9)**.
- K. Unless the child support order is a per child order, the CAS's portion of the support is prorated. When a CAS is receiving a prorated share and support is suspended, the support that would otherwise be paid to the CAS is to be paid to the obligee.
- L. CAS case law:
  - 1. *Crocker and Crocker*, 332 Or. 42, 22 P.3d 759 (2001): **ORS 107.108**, authorizing a support order against a parent who is divorced or separated from the other parent, but not against a married parent, to be paid to a child attending school does not violate the Equal Protection clause of either the US or Oregon Constitution.
  - 2. *Marriage of McGinley*, 172 Or. App. 717, 19 P.3d 954 (2001): Divorced parents of children attending school are not a suspect class for purposes of the Equal Protection Clause and **ORS 107.108** should not, therefore, be subject to heightened scrutiny on the basis that it discriminates against a suspect class.

3. *Sandlin and Sandlin*, 113 Or. App. 48, 831 P.2d 64 (1992): Child continued to meet **ORS 107.108** requirements for support for a child attending school to continue, when the child, who was not married was sharing a household in a relationship resembling marriage.
4. *Eusterman and Eusterman*, 41 Or. App. 717, 598 P.2d 1274 (1979).  
Interpreting an early version of **ORS 107.108**, the court held:
  - a. The original decree should indicate that child support will continue between the age of 18 to 21 if the child or children attend school within the meaning of **ORS 107.108** since that statute authorizes the court to extend the duty to support beyond what is otherwise statutory majority; it does not create a separate support obligation.
  - b. Courts have jurisdiction and authority to modify to provide for post-18 support at any time until the child reaches age 21.
  - c. Beginning to attend school within the meaning of **ORS 107.108** (or being accepted to attend plus intending to attend) is a change of circumstances.
  - d. Where the question of support for an 18 to 20 year old child was not fully litigated at the time of the original decree, the change-of-circumstances rule is not applicable in subsequent modification proceeding to extend child support in accordance with **ORS 107.108**.

Hearing Date:

**De Novo Review Findings**

Court:

Case No

CSP#

**Judge:**

Chld: O atty: OE atty:	Non-Custodial Parent Name:	Custodial Parent Name:	Applicable OAR
<b>Gross income</b>			137-050-0715
<b>Mandatory union dues</b>			137-050-0720 (1)(a)
<b>Cost for parent to enroll or maintain ins: Self/child</b>			137-050-0720 (1)(b)
Deduct parent's <b>spousal support obligation</b> , whether ordered in the same or a different proceeding, to this or a different party & whether paid or not			137-050-0720 (1)(c)
Add amount of court-ordered monetary <b>spousal support owed to the parent</b> , whether ordered in the same or a different proceeding, by this or a different party and whether paid or not.			137-050-0720 (1)(d)
<b>Add'tl child:</b> a child who is not the child of both parties; must reside in the parent's household or the parent must be ordered to pay ongoing support for that child.			137-050-0720 (2)
<b>Parenting time credit</b>			137-050-0730
<b>Child care costs-</b> ch < 13 or disabled, care necessary for parent's employment, job search, or training necessary to obtain a job. Allowed only if cost is documented .			137-050-0735
<b>Credit for Social Security or veterans' benefits</b> pd to child on behalf of the parent.			137-050-0740
<b>Is there an exception to minimum order rule?</b> Disabled/incarcerated/or on public assistance			137-050-0755
<b>Rebuttal factors</b> apply? Describe			137-050-0760
<b>Parties agree</b> to a c/s ord w/in 15% of guideline amount?			137-050-0765
<b>Past Support Beginning</b>			137-055-3220 ORS 25.515
<b>Effective date of new order</b>			137-055-3440 ORS 25.527
All other provisions in underlying order are affirmed.			

## MULTIPLE CHILD SUPPORT JUDGMENTS

### 2.0 Child Support Orders/Judgments

- A. Child Support Orders/Judgments may begin by administrative or judicial process.
  - 1. Upon entry in the court's registry, an administrative child support order has the same force and effect as a circuit court judgment. **ORS 25.529(3)**.
  - 2. Later-issued child support judgments: **ORS 25.095** provides that a court-issued child support judgment terminates the monetary support terms of an earlier administrative child support order under certain circumstances.
- B. A "child support order" may cover monetary child support and/or medical support as defined in **ORS 25.321**.
  - 1. "Child support order" means a judgment or administrative order that creates child support rights and that is entered or issued under **ORS 25.501 to 25.556, 419B.400 or 419C.590** or this chapter or **ORS chapter 107, 108, 109 or 110**. **ORS 25.321(2)**.
  - 2. "Medical support" means cash medical support and health care coverage. **ORS 25.321(7)**.
- C. A child support order may include an order for past support and/or ongoing child support.
  - 1. "Past support" means the amount of child support that could have been ordered based on the Oregon Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time

during which the child was not being supported by the parent and no support order was in effect. [OAR 137-055-3220\(1\)\(a\)](#). DCS may establish a child support order that includes past support for the period beginning with the date of the most recent mandatory referral from DHS and ending the month before the beginning pay date of the new order. For this reason, only the initial administrative order includes a lump sum award for “past support.”

2. “Arrears” means past due, unpaid child support owed by the non-custodial parent. “Past support” becomes an arrearage when it is not paid by the second billing cycle.

## **2.1 Multiple Child Support Orders**

- A. Multiple child support orders exist when two or more child support judgments exist and
  1. Neither modifies the other, and
  2. They involve the same obligor and same child, and
  3. Cover the same period of time.
- B. If there is an existing Oregon child support order or judgment between the same obligor and child, the court has three choices: enforce the existing child support judgment, modify the existing child support judgment or set aside the existing child support judgment. [ORS 25.089\(3\)\(a\)](#).
- C. Grounds to modify or set aside existing Oregon order:

1. A court may modify or set aside a child support judgment issued in this state when:
  - a. The child support judgment was issued without prior notice to the issuing court, Child Support Program (CSP) or administrative law judge that:
    - (i). There was pending in this state or any other jurisdiction any type of support proceeding involving the child; or
    - (ii). There existed in this state or any other jurisdiction another child support judgment involving the child; or
    - (iii). The child support judgment was issued after another child support judgment, and the later judgment did not enforce, modify or set aside the earlier judgment. **ORS 25.089(6)**.
  - b. See also **ORCP 71** for other reasons to modify or set aside a judgment.
2. When modifying a child support judgment, the court, CSP or administrative law judge shall specify in judgment the effects of the modification on the child support judgment being modified. **ORS 25.089(7)**.
3. Multiple counties. When multiple judgments are in different counties, the court may cause the records from the original proceedings to be transmitted to the court. **ORS 25.100**.
4. Multiple interstate orders: When one of multiple child support judgments was issued by another state, **ORS Chapter 110** (the Uniform Interstate

Family Support Act (“UIFSA”) applies. See [ORS 110.632](#) and [110.636](#) re: modification of another state’s order. ORS 110.533 describes the criteria to be used to determine the controlling child support order.

5. No retroactive modification or set aside of arrears: A judgment is final as to any installment or payment of money that has accrued up to the time the nonmoving party, other than the state, is served with a motion to set aside, alter or modify the judgment. The court may not set aside, alter or modify any portion of the judgment that provides for any payment of money, for minor children or for the support of a party that has accrued before the motion is served. [ORS 107.135\(7\)](#); [ORS 108.120\(3\)](#); [ORS 109.100\(4\)](#); [ORS 25.527\(8\)](#).
6. Credit against arrears for physical custody: Although arrears cannot be retroactively modified, the obligor may be awarded a credit against arrears for:
  - a. the period of time s/he had physical custody of the child with the consent of the obligee or pursuant to court order; or
  - b. Social Security or Veterans’ benefits paid retroactively to the child.

## 2.2 Governing Child Support Judgments

- A. Multiple child support judgments for the same obligor, child and period of time may be resolved by a Governing Child Support Judgment (GCSJ). [ORS 25.091](#).
- B. “Governing child support judgment” means a child support judgment issued in this state that addresses child support, including medical support as defined in

**ORS 25.321**, and is entitled to exclusive prospective enforcement or modification with respect to any earlier child support judgment issued in this state. **ORS 25.091(1)(b)**.

- C. Who may request a GCSJ?
1. Any party or the CSP may petition the court for a GCSJ.
  2. When the court finds that two or more child support judgments exist, the court on its own motion, and after notice to all affected parties, may determine the controlling terms and issue a GCSJ. **ORS 25.091(3)**.
- D. Rebuttable Presumption that latest judgment controls: There is a rebuttable presumption that the terms of the last-issued child support judgment are the controlling terms and terminate contrary terms of each earlier-issued child support judgment. **ORS 25.091(4)(a)**.
- E. How is Presumption rebutted? A party may rebut the presumptions by showing that:
1. The last-issued child support judgment should be set aside under the provisions of **ORCP 71**;
  2. The last-issued child support child support judgment was issued without prior notice to the issuing court, CSP or administrative law judge that:
    - a. There was pending in this state or any other jurisdiction any type of support proceeding involving the child; or
    - b. There existed in this state or any other jurisdiction another child support judgment involving the child; or



- c. The last-issued child support judgment was issued after an earlier child support judgment and did not enforce, modify or set aside the earlier child support judgment in accordance with **ORS 25.089**.  
**ORS 25.091(5)**.

F. Contents of Governing Child Support Judgment.

1. A GCSJ must include:
  - a. A reference to each child support judgment and a copy of the judgment;
  - b. A determination of which terms regarding child support and medical support are controlling and which judgment or judgments contain those terms;
  - c. An affirmation, termination or modification of the terms regarding child support and medical support in each of the child support judgments;
  - d. A reconciliation of any child support arrears or credits under all of the child support judgments; and
  - e. The effective date of each controlling term and the termination date of each non-controlling term. In determining these dates, the court may apply the following:
    - (i) A controlling term is effective on the date specified in the judgment containing that term, or if no date is specified, the date that judgment was entered.

- (ii) A noncontrolling term is terminated on the date the GCSJ is entered.
- 2. Note: A GCSJ must include a reconciliation of child support arrears or credits under all of the child support judgments unless the court orders the parties to reconcile arrears or credits under all of the child support judgments in a separate proceeding under **ORS 25.167** or **ORS 25.540**.
  - a. A GCSJ does not affect arrears accrued before the GCSJ is entered, except that arrears are reconciled. **ORS 25.091(10) and (11)**.
  - b. Crediting amounts paid. In reconciling arrears accrued during a period when both judgments were being enforced, amounts paid under one order or judgment must be credited against arrears accrued during the same period under the other judgment.
- 3. Copy of GCSJ: A party designated by the court or the petitioner must file, not sooner than 30 days nor more than 60 days after entry of the GCSJ, a copy of the GCSJ with each court or the administrator (CSP) that issued an earlier child support judgment. Failure to do so may result in monetary sanctions, **ORS 25.091(12)**, but a failure to file the copy does not affect the validity of the GCSJ.

## UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA) (ORS 110)

### 3.0 Registration for Enforcement

- A. A support order or income withholding orders issued in another state may be registered in Oregon for enforcement. [ORS 110.605](#).
- B. [ORS 110.607](#) covers the documents and information required as part of registration of another state's child support order in Oregon.
- C. 20 days to object: A nonregistering party seeking to contest the validity or enforcement of a registered support order has 20 days after the date of receiving notice from the court of the registration to request a court hearing. [ORS 110.614](#).
- D. [ORS 110.620](#) covers defenses to registration or enforcement of another state's order and [ORS 110.623](#) covers the effect of confirmation of a registered order.

### 3.1 Modifications

- A. Continuing Exclusive Jurisdiction (CEJ) is required to modify a support order issued in Oregon or another state. Under UIFSA, the principle of continuing, exclusive jurisdiction aims, so far as possible, to recognize that only one valid support order may be effective at any one time.<sup>1</sup> A state issuing a support order has CEJ (ability to modify) a support order:
  - 1. If the obligor, obligee or child continue to reside in the issuing state; or

---

<sup>1</sup> Source: UIFSA 1996 with Commentary, see reference below

2. If the parties file written consents or consent in open court that the issuing state may continue to exercise jurisdiction to modify its order. **ORS 110.527.**
- B. Oregon modification of another state’s child support order is permitted when:
1. Modification is part of a proceeding to register another state’s order; all of the parties who are individuals reside in Oregon; and the child does not reside in the issuing state (**ORS 110.636**); or
  2. **ORS 110.636** does not apply and
    - a. The child, the obligee and the obligor do not reside in the issuing state;
    - b. A petitioner who is a nonresident of this state seeks modification; and the respondent is subject to personal jurisdiction in Oregon; or
    - c. The child or a party who is an individual is subject to personal jurisdiction in Oregon and all of the parties who are individuals have filed a written consent in the issuing state’s court (or other tribunal) for Oregon to modify the order and assume CEJ. **ORS 110.632.**
- C. Oregon may only modify those aspects of another state’s child support order that may be modified in the other state. **ORS 110.632(3).**
1. For example: A child’s age of majority under the law of the issuing state cannot be modified in Oregon to extend to age 21 under **ORS 107.108.**
  2. See also **ORS 110.611**, Choice of Law provisions.

### **3.2 Controlling Order Determination**

- A. **ORS 110.533** covers the process for determining which order controls and must be enforced when two or more child support orders have been issued by multiple states, looking at whether one or more states have CEJ and where the parties and child(ren) reside.
- B. **ORS 110.533** and **ORS 110.537** require arrears to be consolidated and payments made under any child support order for the same child to be credited against amounts owed for the same period under any of the other child support orders.

### **3.3 Long Arm Jurisdiction**

- A. **ORS 110.518** provides the following bases for Oregon to exercise personal jurisdiction over a nonresident in a proceeding to establish, enforce or modify a support order or to determine parentage:
  - 1. The individual is personally served with notice in Oregon;
  - 2. The individual submits to Oregon jurisdiction by consent:
    - a. In a record;
    - b. By entering a general appearance; or
    - c. By filing a responsive document having the effect of waiving any contest to personal jurisdiction;
  - 3. The individual resided with the child in this state;
  - 4. The individual resided in this state and provided prenatal expenses or support for the child;

5. The child resides in this state as a result of the acts or directives of the individual;
6. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or
7. There is any other basis consistent with the Constitutions of Oregon and the U.S. for the exercise of personal jurisdiction.

### **3.4 Registration and Enforcement of Convention Country Orders**

- A. In 2016, the United States became a party to the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.
- B. The Convention mandates a uniform process for registering and enforcing orders issued by countries that have signed the Convention.
- C. **ORS 110.645 to 110.669** contain the statutes related to Convention orders.

### **3.5 Additional References:**

- A. Full Faith and Credit For Child Support Orders Act (FFCCSOA), U.S. Code Title 28 Part V Chapter 115 Sec. 1738B  
[http://www.acf.hhs.gov/programs/cse/pubs/mirror/usc28\\_v\\_115\\_1738b.html](http://www.acf.hhs.gov/programs/cse/pubs/mirror/usc28_v_115_1738b.html)
- B. UIFSA 2008 with Commentary (NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS)  
<http://www.law.upenn.edu/bll/archives/ulc/uifsa/famsuul6.htm>

- C. Commentary to Uniform Interstate Family Support Act (1996) (UIFSA Commentary), reprinted in 32 Family LQ 385 (1998).

### 3.6 Oregon Case Law:

- A. Age of Majority
  - 1. Oregon court does not have the authority to modify a California decree of dissolution providing for support for children beyond age 18, even if the child is attending school, if that support modification could not have been imposed under California Law. *Matter of Marriage of Tavares*, 293 Or 484, 651 P2d 133 (1982).
  - 2. Oregon court does not have authority to extend the duration of a child support order beyond the age set by the original issuing state. *Cooney and Cooney*, 150 Or App 323, 327-328, 946 P2d 305 (1997).
- B. Multiple Support Orders and CEJ
  - 1. UIFSA requires that a registered child support order remains enforceable as to arrearages accruing up to the time that another order is declared to be the controlling order. *State of Oregon DCS v. Anderson*, 189 Or App 162, 74 P3d 1149 (2003).
  - 2. When there are multiple support orders in different states, UIFSA provides the procedure for determining which order is the controlling order. Under the statute, the determination must be made whether more than one tribunal would have “continuing exclusive jurisdiction” over support. If so, then the order issued by the tribunal in the current home state of the child

controls, if such an order exists. *Cohen v. Powers*, 180 Or App 409, 43 P.3d 1150 (2002).

3. To the extent a state retains continuing, exclusive jurisdiction over the child support matter, that state's order is the only support order entitled to enforcement under UIFSA. In addition, that state's law controls accrual of arrearages and interest. *Marriage of Calvert*, 191 Or App 361, 82 P.3d 1056 (2004).



## **CHILD SUPPORT GARNISHMENTS<sup>2</sup> AND INCOME WITHHOLDING ORDERS**

### **4.0 Garnishments v. Income Withholding Orders**

- A. The Child Support Program may issue writs of garnishment to collect past due support. [ORS 18.645](#).
- B. The Child Support Program may issue “income withholding orders” to collect past due support and current support. [ORS 25.372](#) & [ORS 25.378](#).
- C. Income withholding orders are typically used to collect from an obligor’s wages, workers’ compensation benefits, and Social Security benefits.
- D. The Child Support Program uses garnishments to collect from bank accounts, inheritances, and insurance settlements.

### **4.1 Challenging an Income Withholding Order**

- A. Timing: An obligor only has 30 days to challenge an income withholding order. The “clock” runs from the time income is first withheld under the order. [ORS 25.405\(1\)](#).
- B. Limited Defenses: The only defense to an income withholding order is a mistake of fact relating to the amount of support, the amount of arrears, or the identity of the obligor. [ORS 25.405\(2\)](#).

---

<sup>2</sup> The rules involving child support garnishments and garnishments in other contexts (e.g., garnishments by state agencies, private attorneys, etc.) significantly overlap. However, there are many important distinctions. This section focuses on child support garnishments only. Rules, exemptions, and processes that do not apply to child support garnishments will not be discussed.

- C. Where Challenge May be Heard: The forum for the challenge depends on who issued the income withholding order:
1. If the income withholding order was issued by the Division of Child Support, the challenge should be directed to the Division of Child Support. Similarly, if the order was issued by the District Attorney, the challenge should be directed to the District Attorney's office. An obligor can appeal a Division of Child Support / District Attorney decision on the challenge to the circuit court. [ORS 25.405\(5\)](#).
  2. If the income withholding order was issued by the court, the proper forum is the court that issued the order. [ORS 25.405\(3\)](#).
  3. Special rules apply if the income withholding order was issued by another state. [ORS 25.405\(4\)](#).

## 4.2 Challenging a Writ of Garnishment

- A. Timing: An obligor has a limited amount of time to challenge a garnishment: Generally speaking, a challenge must be filed within 30 days after the date the writ of garnishment was delivered to obligor. [ORS 18.700\(2\)\(b\)](#).
- B. Limited Scope: A challenge to garnishment may be used only to:
1. Assert that the amount specified in the writ of garnishment as being subject to garnishment is greater than the total amount owed;
  2. Assert that the garnished property is not garnishable property; and
  3. To claim exemptions from garnishment as permitted by law. [ORS 18.700\(1\), \(5\)](#).

- C. Who May File: A challenge to garnishment may be filed by the obligor, or by others who assert an interest in a garnished piece of property (e.g., a joint bank account holder). **ORS 18.725**.
- D. Multiple Cases, One Garnishment: The Child Support Program may issue a single garnishment for multiple child support cases, even if the cases are in different counties. **ORS 18.645(3)**. An obligor is not required to challenge the garnishment in every county. Rather, the obligor may file a single challenge in any county where a child support judgment was entered and garnished.

### 4.3 Exemptions

- A. Property exempt from garnishment is set forth in **ORS 18.345** et seq. Some of the most common exemptions include:
  - 1. The first \$3,000 of a vehicle, including a car, truck, trailer, and other motor vehicles. **ORS 18.345(1)(d)**.
  - 2. 50% of the debtor's interest in a personal injury settlement or judgment, up to a maximum of \$7500. **ORS 18.345(4)**.
  - 3. 50% of a debtor's unemployment or workers' compensation benefits. **ORS 18.345(4)**.
  - 4. \$400 in miscellaneous personal property. **ORS 18.345(1)(p)**.
  - 5. Veteran's benefits & loans. **ORS 18.345(1)(m)**.
  - 6. Federal earned income tax credit. **ORS 18.345(1)(n)**.
  - 7. Funds exempt under federal law that have been deposited into a bank account. **ORS 18.348(3)**.

8. 75% of retirement accounts. **ORS 18.358.**
  9. \$40,000 of the proceeds of the sale of a debtor's homestead, if the proceeds are held for less than one year with the intention of buying another homestead. **ORS 18.395(1), (2).** But note: In child support cases, the court may deny the debtor the use of the homestead exemption. **ORS 18.398.**
- B. For certain types of funds, only the first \$7,500 is exempt. **ORS 18.348(2).**
  - C. Exempt property may retain its exempt status even after it is commingled with non-exempt funds. **ORS 18.348(4).**

#### **4.4 Joint Bank Accounts**

- A. **ORS 708A.465:** "A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent."
- B. **ORS 708A.490:** "Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded...."
- C. *Greenwood v. Beeson*, 253 Or 318, 324, 545 P.2d 633 (1969): "[W]here both parties make deposits into the account the provision of the deposit agreement that the account shall be 'jointly owned' probably would in most cases express their intent to create a present concurrent interest of some kind in the account. Evidence should be freely admissible to show what the parties intended with respect to their respective interests in the account. However, when all of the funds

in the account are deposited by only one of the signatories the recitation in the deposit agreement that the account is ‘jointly owned’ should not be treated as conclusively establishing the intent of the parties. To do so would be to give to the deposit agreement an effect which is normally not intended by those who open such accounts. Where the evidence shows that all of the funds in the account were deposited by only one of the signatories, the other signatory is to be deemed a trustee of the donor's power to withdraw from the account unless the intent to create some other legal relationship is proven.”

#### **4.5 The Role of Garnishees**

- A. GARNISHEE DEFINED: “a person to whom a writ of garnishment has been delivered.” [ORS 18.600\(9\)](#).
- B. GARNISHEE DUTIES:
  - 1. Complete a garnishee response form. A garnishee must deliver a completed garnishee response form to the creditor. [ORS 18.680](#). The form to be used is statutory, and the creditor must provide a copy of the form to the garnishee at the time the writ of garnishment is delivered. *See* [ORS 18.650](#); [18.685](#); [18.835](#).
  - 2. Deliver garnishable property. A garnishee must immediately take steps to hold garnishable property upon receiving a writ of garnishment. The property may then be delivered to the creditor or to the court. *See* [ORS 18.685](#); [18.668](#).

3. TIMING: A garnishee must deliver a garnishee response within 7 days of receiving the garnishment. **ORS 18.680(1)**. A garnishee is usually required to deliver the garnished property at the same time. **ORS 18.685(4)**. However, there are exceptions to that rule. For example:
  - a. A personal representative may wait until a probate case is completed to turn over garnished funds. **ORS 18.672**.
  - b. A garnishee who owes money to the debtor has no duty to turn over the money until the due date previously negotiated with the debtor. **ORS 18.685(5),(6)**.

#### **4.6 When a Garnishee Does Not Cooperate:**

- A. If a garnishee fails to respond to a garnishment—or if a creditor is unsatisfied with a response—a creditor may:
  1. Obtain a court order requiring the garnishee appear for an examination. **ORS 18.778(1)**.
  2. Obtain a court order requiring the garnishee appear for a hearing to determine whether a judgment should be entered against the garnishee. **ORS 18.778(1); ORS 18.775**.
- B. A non-complying garnishee may be held responsible for:
  1. The lesser of the amount required to satisfy the garnishment or the amount of garnishable property in the hands of the garnishee at the time of the garnishment;
  2. The creditor's costs, as determined by **ORCP 68**.

#### **4.7 Income Withholding Orders and Uncooperative Employers:**

- A. If an employer or other entity subject to an income withholding order does not timely and properly pay the amounts owed under an income withholding order, an action may be brought against that employer/ entity. **ORS 25.424(4)**.
- B. The action may be brought by the obligor, by the obligee, or by the Child Support Program. **ORS 25.424(4)**.
- C. Failure to properly comply with the income withholding order can result in a judgment against the employer/ entity for:
  - 1. All amounts that were not withheld or paid; **ORS 25.424(2)(a)**.
  - 2. Any damages suffered by the obligee or obligor as a result of the failure to withhold, or pay or to timely withhold; **ORS 25.424(2)(b),(c)**.
- D. If the failure to comply was willful or grossly negligent, the employer/ entity shall also be held responsible for:
  - 1. A penalty not to exceed \$250 for each failed withholding or payment;
  - 2. Attorney fees incurred by the plaintiff. **ORS 25.424(5)**.
- E. If a withholding order was issued by a court, a non-complying employer/ entity may also be found in contempt of court. *See* **ORS 25.424(7)**.

## SECURITY INTERCEPT/CHALLENGE TO SECURITY INTERCEPT

### 5.0 Child Support Program (CSP) Authority to Intercept Returned Security Deposit

- A. **ORS 25.715(1)** authorizes a court to order that the portion of a security deposit paid under **ORS 135.265** that would otherwise be returned to the person who posted the security or the amount of arrearages, whichever is less, be paid the obligee or the Division of Child Support of the Department of Justice (DCS) to satisfy child support arrears.
- B. Required elements (**ORS 25.715(1)**):
1. Defendant must be an obligor who owes child support arrearages;
  2. The administrator or obligee must file a motion;
  3. Motion must be served on defendant;
  4. Defendant has an opportunity to respond and request hearing; and
  5. Court must determine that such an order is appropriate.
- C. Amount taken may not exceed the amount of the arrears.
- D. Statute does not require that the motion be served on the surety who posted security on behalf of defendant.

- 5.1 **DCS Authority to Intercept Forfeited Security:** **ORS 25.715(2)** authorizes the court to order that a portion of a security deposit forfeited under **ORS 135.280** (Arrest warrant) be paid to DCS to satisfy child support arrears and to provide security for future payment per **ORS 25.230** (Court authorized to require security for support payments).



- A. Required Elements:
1. The defendant is an obligor who owes child support;
  2. The administrator has filed a motion;
  3. The motion specifies the amount to be applied to the child support judgment under **ORS 135.280** (Arrest warrant); and
  4. The court determines that such an order is appropriate.

## 5.2 Applies to Security Posted by Third Parties

- A. In the recent case of *State v. Morales*, 367 Or 222 (2020), a defendant’s parents posted security for their son. The trial court ordered that the security be retained pursuant to **ORS 135.265** to pay court ordered fees. The Supreme Court held that because **ORS 135.265** provides that a security deposit be returned to the person who paid it and not to the defendant, Oregon law no longer includes a presumption that those funds belong to the defendant. However, intercepting security deposits for child support is governed by **ORS 25.715** rather than **ORS 135.265**. In sharp contrast to **ORS 135.265**, **ORS 25.715** does explicitly apply to security deposits posted by third parties.

“(1) The court may order that **the portion of a security deposit made under ORS 135.265 that would otherwise be returned to the person who made the deposit** or the amount of child support arrearages, whichever is less, be paid to an obligee or the Division of Child Support of the Department of Justice...” (emphasis added).

Consequently, the Morales case does not limit or preclude the court’s authority to order that security posted by a third party be paid to the Division of Child Support to pay past due support.

### 5.3 DCS process for Security Intercepts

- A. DCS files a motion, affidavit and proposed Order Holding Security Pending Disposition in the criminal action in which the security is posted. The motion asks that the security be held until the motion is decided or the security has been forfeited. If the court agrees to hold the security pending resolution of the underlying motion, the court should immediately sign the Order Holding Security Pending Disposition. The legal authority for the Order Holding Security Pending Disposition is derived from the court's duty under **ORS 135.280(3)** to ensure that funds posted under **ORS 135.265** are available for a reasonable period of time to allow for disposition of a motion under **ORS 25.715(2)**. The motion also asks that any security that is forfeited or otherwise returned to the defendant be paid to the DCS for child support arrears. The motion specifies that there is a 30-day period to object to the State's Motion.
- B. DCS serves a copy of the motion, affidavit, proposed Order Holding Security Pending Disposition and proposed Order Applying Security Posted to Child Support Judgment on the Defendant.
- C. After 30 days DCS submits the Order Applying Security Posted to Child Support Judgment unless defendant objects and requests a hearing.
- D. The court schedules a hearing if an objection is filed with the court.

## 5.4 Certificate of Readiness Not Required for Orders or Judgments in Security

### Intercept Actions

- A. The notice and certificate of readiness requirements of **UTCRC 5.100** do not apply to security intercept motions because they are filed in a criminal case. *See* UTCRC 5.100, REPORTER'S NOTE (08/01/2016). The defendant nevertheless receives an opportunity to object to the form of the proposed Order Applying Security Posted to Child Support Judgment because the order is served on Defendant at least 30 days prior to submission to court with a written explanation that the order will be submitted if there is no objection filed.

## CONTEMPT PROCEEDINGS

### 6.0 Overview

- A. Statutory Authority: **ORS 33.015 to 33.155** govern contempt proceedings. Also see **UTCRC 19**.
- B. The power of a court to impose a remedial or punitive sanction for contempt of court is an inherent judicial power. **ORS 33.025**.
- C. Definition: In the context of child support proceedings, “contempt of court” means the willful disobedience or resistance to or obstruction of court’s authority, process, orders or judgments. **ORS 33.015(2)(b)**.
- D. “Willful disobedience” of a court order to pay child support, is established by showing that a party, aware of a court order to pay, neither has complied with nor sought modification of the order. *State ex rel Mikkelson v. Hill*, 315 Or. 452, 847 P.2d 402 (1993). A trial court need not make separate findings regarding “willfulness” and “bad intent” to support a judgment of contempt. *Barrett and Barrett*, 320 Or. 372, 377 (1994); *Douthit and Swift*, 125 Or. App. 466, 470 (1993); and *Couey and Couey*, 312 Or. 302, 305-306 (1991) (“These cases demonstrate that this court never intended to make ‘bad intent’ an element separate from the requirement of ‘willfulness.’”).
- E. Prima Facie Case: Proof of three elements establishes a prima facie case of contempt:
  - 1. Existence of a valid court order.
  - 2. Respondent’s knowledge of the order.
  - 3. Willful noncompliance (no payment and no request for modification during the relevant timeframe).
- F. Types of contempt sanctions: Court may impose remedial or punitive sanctions for contempt. **ORS 33.045(1)**. Significant to the determination of whether a proceeding is remedial (civil) or punitive (criminal) in nature, is the type of sanction sought to be imposed.

## 6.1 Remedial Contempt

- A. A remedial sanction is imposed to terminate a continuing contempt of court or to compensate for injury, damage, or costs resulting from a past or continuing contempt of court. **ORS 33.015(4)**.
1. In January 2017, the Office of Child Support Enforcement (OCSE) codified the Supreme Court’s new mandate of “additional safeguards” in 45 CFR 303.6(c)(4). See *Turner v. Rogers*, 564 U.S. 431 (2011).
    - a. 45 CFR 303.6(c)(4) requires Child Support Programs using civil contempt to establish guidelines requiring the agency to:
      - (i) Screen the case regarding ability to pay,
      - (ii) provide the court with information regarding obligor’s ability to pay, and
      - (iii) provide clear notice to the obligor that ability to pay will be the critical inquiry in the contempt proceeding.
- B. Authorized remedial sanctions include:
1. An amount not to exceed \$500 or one percent of the defendant’s annual gross income, whichever is greater, for each day the contempt of court continues. May be imposed as a fine (payable to the court), or to compensate a party for the effects of the continuing contempt. **ORS 33.105(1)(c)**.
  2. An order designed to ensure compliance with an order of the court, including probation. **ORS 33.105(1)(d)**.
  3. Confinement for so long as the contempt continues, or six months, whichever is shorter. **ORS 33.105(1)(b)**. Period of incarceration or probation must include provision for respondent to be able to purge or escape the contempt, i.e. “six months or until the arrears are paid in full.”
    - a. The Oregon Court of Appeals recently reiterated in *State v. Gardner* the requirement that any remedial contempt case must refrain from imposing a determinative sanction. *State v. Gardner*, 287 Or. App. 225 (2017). In that case, the trial court imposed a

determinate term of probation that the court of appeals subsequently reversed in accordance with a line of cases with similar holding. See *State v. Austin*, 276 Or. App. 648 (2016); *Altenhofen v. Vanden-Busch*, 271 Or. App. 57 (2015); and *Miller and Miller*, 204 Or. App. 82 (2006).

4. Attorney fees. **ORS 33.105(1)(e)**.
  5. Any other sanction the court determines would be an effective remedy. **ORS 33.105(1)(f)**.
- C. Persons who may initiate remedial contempt action, **ORS 33.055(2)**:
1. A party aggrieved by the alleged contempt.
  2. A district attorney.
  3. A city attorney.
  4. The Attorney General.
- D. How initiated:
1. A remedial contempt case is initiated by motion requesting the court to order respondent to appear. **ORS 33.055(3)**; **UTCRCR 19** *et. seq.*
  2. **ORS 33.055(3)** was revised by SB 489 in 2017 to require a motion to initiate remedial contempt to be filed in accordance with rules adopted by the Supreme Court. In response, the Supreme Court amended **UTCRCR 19.020(2)** to mandate that the initial pleading in a remedial contempt case must be filed in a related case if one exists. For purposes of the court electronic filing system, the trial court administrator will treat the contempt proceeding as a separate case and any subsequent filing must include both case numbers with the contempt appearing first.
  3. The motion must be supported by supporting documentation or affidavits sufficient to give respondent notice of the specific acts alleged to constitute contempt. **ORS 33.055(4)**.
  4. The initiation instrument must state:
    - a. The maximum sanctions sought. **UTCRCR 19.020(1)(b)(i)**;

- b. Whether the party seeks a sanction of confinement. **UTCRC 19.020(1)(b)(ii)**; and
    - c. As to each sanction sought, whether the party seeking the sanction considers the sanction remedial or punitive. **UTCRC 19.020(1)(b)(iii)**.
  - 5. A court shall not impose a remedial sanction of confinement unless, before the hearing is held, the defendant is:
    - a. Informed that such sanction may be imposed; and
    - b. Afforded the same right to appointed counsel required in proceedings for the imposition of an equivalent punitive sanction of confinement. **ORS 33.055(8)**.
- E. Standard of proof: In a remedial contempt case, the standard of proof is clear and convincing evidence, except that if confinement is sought, the standard is beyond a reasonable doubt. **ORS 33.055(11)**.
- F. Service of motion and order to appear may be made by:
  - 1. Personal service as provided in **ORCP 7 and 9**.
  - 2. Warrant or alternate method. Upon motion and supporting affidavit, if the court finds that defendant cannot be personally served, the court may issue a warrant or order an alternate method of service. **ORS 33.055(5)(a)-(b)**.
- G. Failure to appear: If a person served with an order to appear fails to appear at the time and place specified in the order, the court may issue any order or warrant necessary to compel the appearance of the defendant. **ORS 33.075(1)**.
- H. Trial or stipulation.
  - 1. The court may impose a remedial sanction only after affording the defendant opportunity for a hearing tried to the court. **ORS 33.055(6)**.
  - 2. The defendant may waive the opportunity for a hearing by stipulated order filed with the court. **ORS 33.055(6)**.

3. Defendant has no right to a jury trial and, except if confinement sought, has only those rights accorded to a defendant in a civil action. **ORS 33.055(7)**.

I. Submission of proposed Orders and Judgments.

1. Proposed orders or judgments submitted to the court in remedial contempt cases are subject to **UTCRC 5.100**, which requires advance notice to each affected party and a signed certificate, with certain exceptions.

## 6.2 Punitive Contempt

A. Punitive sanctions are those imposed to punish a past contempt of court. **ORS 33.015(3)**.

B. Punitive Sanctions Authorized. **ORS 33.105(2), ORS 33.065(8)-(9)**.

1. Fine up to \$500 or 1% of Respondent's annual gross income, whichever is greater.

2. Forfeiture of any proceeds or profit obtained through the contempt.

3. Confinement for up to 6 months.

4. Probation or community service.

C. The court may impose a remedial sanction in addition to or in lieu of a punitive sanction. **ORS 33.065(8)**.

D. Persons who may initiate an action seeking punitive sanctions, **ORS 33.065(2)**:

1. A city attorney.

2. A district attorney.

3. The Attorney General.

4. Appointed prosecutor. If a city attorney, district attorney or Attorney General declines to prosecute a punitive contempt, and the court determines that remedial sanctions would not provide an effective alternative remedy, the court may appoint an attorney who is not counsel for an interested party, to prosecute the contempt. **ORS 33.065(3)**.



- E. How initiated: by an accusatory instrument. **ORS 33.065(4)**.
1. After the accusatory instrument is filed, the court may issue any order or warrant necessary to compel defendant's appearance. **ORS 33.065(4)**. Or the prosecutor may issue a citation to appear in lieu of custody as provided in **ORS 133.055**. See **ORS 33.075(2)**. If the prosecutor issues a citation in lieu of custody, defendant must be personally served with a copy of the citation.
  2. Except as otherwise provided, the accusatory instrument is subject to the same requirements and laws applicable to an accusatory instrument in a criminal proceeding. All proceedings on the accusatory instrument shall be conducted in the manner prescribed for criminal proceedings. **ORS 33.065(5)**.
- F. Failure to appear
1. Citation: The defendant in a punitive contempt proceeding may be cited to appear in lieu of custody as provided in **ORS 133.055**. (Criminal citation to appear by peace officer.) If the person fails to appear at the time and place specified in the citation, the court may issue any order or warrant necessary to compel the defendant's appearance. **ORS 33.075(2)**.
  2. Security: When the court issues a warrant for contempt, the court shall specify a security amount. Unless the defendant pays the security amount upon arrest, the sheriff shall keep the defendant in custody until either a release decision is made by the court or until disposition of the contempt proceedings. **ORS 33.075(3)**.
  3. Release agreement: The defendant shall be discharged from arrest upon executing and delivering to the sheriff, at any time before the return day of the warrant, a security release or a release agreement as provided in **ORS 135.230 to 135.290**, to the effect that the defendant will appear on the return day and abide by the order or judgment of the court or officer or pay, as may be directed, the sum specified in the warrant. **ORS 33.075(4)**.
  4. Return of warrant and security: The sheriff shall return the warrant and the security deposit, if any, given to the sheriff by the defendant by the return day specified in the warrant. **ORS 33.075(5)**.

5. Failure to appear on return date: If defendant fails to appear on the return day, the court may do either or both of the following:
  - a. Issue another warrant. **ORS 33.075(6)**.
  - b. Proceed against the security deposited upon the arrest.
    - (i) If the court proceeds against the security and the sum specified is recovered, the court may award to any party to the action any or all of the money recovered as remedial damages. **ORS 33.075(7)**.
- G. Prima Facie Case: Proof of three elements establishes a prima facie case:
  1. Existence of a valid court order;
  2. Respondent's knowledge of the order; and
  3. Willful non-compliance.
- H. Standard of Proof: Before imposing punitive sanctions, court must find proof of contempt beyond a reasonable doubt. **ORS 33.065(9)**.
- I. Statutory & Constitutional Protections: Except for the right to a jury trial, the defendant is entitled to the constitutional and statutory protections, including the right to appointed counsel, that a defendant would be entitled to in a criminal proceeding in which the fine or term of imprisonment that could be imposed is equivalent to the punitive sanctions sought in the contempt proceeding. **ORS 33.065(6)**.

### **6.3 Defenses**

- A. Inability to comply with the order, including inability to pay is an affirmative defense in both a remedial contempt case, **ORS 33.055(10)**, and a punitive contempt case, **ORS 33.065(7)**.
  1. In a punitive contempt case, if defendant proposes to rely in any way on evidence of inability to comply, the defendant shall, not less than five days before the trial, file and serve upon the prosecutor written notice of intent to offer that evidence. **ORS 33.065(7)**.

2. If defendant fails to file and serve notice of this defense, the court shall not allow defendant to introduce evidence of inability to comply, unless the court finds that there is just cause for failure to file. **ORS 33.065(7)**.
  3. The defendant must establish the affirmative defense by a preponderance of evidence. *State ex rel Mikkelson v. Hill*, 315 Or 452, 459 n. 6 (1993).
- B. Ten-year Statute of limitations: Action must be filed within 10 years from the failure to pay a support obligation. **ORS 33.135(5)**.

#### **6.4 Miscellaneous Issues**

- A. Compelling witnesses. **ORS 33.085**. Upon motion of the person initiating the proceeding, court may compel the testimony of a witness as provided under **ORS 136.617**.<sup>1</sup>
1. In any case where the person initiating the proceeding is not represented by the district attorney, county counsel or Attorney General, the person initiating the proceeding shall serve a notice of intent to compel testimony on the district attorney of the county where the contempt proceeding is pending and on the Attorney General. The notice shall be served not less than 14 calendar days before any hearing on the motion to compel testimony. **ORS 33.085(2)**.
  2. Notice must include:
    - a. Identity of witness,
    - b. If known, the witness' name, date of birth, residence address and Social Security number and other pending proceedings or criminal charges involving the witness,
    - c. Case name and number of the contempt proceeding, and
    - d. Date, time and place set for any hearing scheduled as provided in **ORS 136.617; ORS 33.085(3)**.
  3. Notice must be served on the district attorney and attorney general no later than 14 days before the hearing so that those offices may object. If notice is not served as required, the court shall grant a continuance for not less than 14 days from the date notice is served. **ORS 33.085(4)**.

4. At a hearing on a motion to compel testimony, the district attorney and the Attorney General each may appear to present evidence or arguments to support or oppose the motion. **ORS 33.085(5)**.
  5. In lieu of compelling testimony under this section, the court may continue the contempt proceeding until disposition of any criminal action that is pending against the witness whose testimony is sought and that charges the witness with a crime. **ORS 33.085(6)**.
- B. Admissibility of certified computer print-outs of the child support program: Extrinsic evidence of authenticity is not required as a condition precedent to the admission of certain types of certified computer printouts of the child support program. Such records constitute prima facie evidence of the facts stated therein. **ORS 25.220**.
- C. Referral to another judge: A judge may be disqualified from a contempt proceeding as provided for in other cases under ORS **14.210 to 14.270**. **ORS 14.260(3)**<sup>3</sup> shall not apply to a motion to disqualify a judge in a contempt proceeding. The judge to whom the contempt is referred shall assume authority over and conduct any further proceedings relating to the contempt. **ORS 33.115**.

---

<sup>2</sup> **14.260 (3)** No motion to disqualify a judge shall be made after the judge has ruled upon any petition, demurrer or motion other than a motion to extend time in the cause, matter or proceeding. No motion to disqualify a judge or a judge pro tem, assigned by the Chief Justice of the Supreme Court to serve in a county other than the county in which the judge or judge pro tem resides shall be filed more than five days after the party or attorney appearing in the cause receives notice of the assignment.\*\*\*

## STATE'S APPEARANCE

### 7.0 General Information

- A. The State files a State's Appearance when a party, other than the State, initiates a legal action in court which affects paternity or the establishment, modification or termination of child support, and the State has an interest in the action.

### 7.1 State Interests

- A. The State may wish to address one or more of the following interests:
1. Determining paternity.
  2. Child support or medical support issues, primarily when support is assigned to the State based on a parent receiving public assistance benefits on behalf of the parties' child(ren) [ORS 412.024\(1\)](#).
  3. An existing administrative order or court judgment covering the same parties and children.
  4. A party has recently applied for Child Support services.
  5. Calculation of child support and medical support in accordance with the guidelines. [ORS 25.280](#).
    - a. All child or spousal support orders must use the first day of the month as the due date for the initial payment and all subsequent payments. *See* [ORS 25.166](#).

**7.2 Mandatory Notice to the State Where Obligee or Child is Currently on Assistance or the Child is in State Care.**

- A. If child support rights have been assigned to the State, Oregon law requires that the CSP be served with notice of the legal action that involves child support or paternity. See [ORS 107.087](#), [ORS 107.135\(9\)](#), [ORS 107.431\(1\)\(c\)](#), [ORS 109.103\(4\)](#) and [ORS 109.125\(4\)](#). Support is assigned to the state when a family is receiving public assistance.

**7.3 Filing When State Receives Notice of Pending Proceedings**

- A. If the State receives notice while proceedings are pending, it may file a State's Appearance.
1. If the State determines its interest is minimal, the State takes no position, files a State's Appearance within the pending proceedings for informational purposes only, and waives further appearance.
  2. If the State determines its interest is significant, the State takes a position, and files a State's Appearance within the pending proceedings along with a supporting affidavit. The State may choose to appear for additional oral argument or waive further appearance.

**7.4 Filing When State Does Not Receive Notice and Order is Final**

- A. If the State does not receive notice, the State may later become aware of a final order affecting paternity or the establishment, modification or termination of child

support. Rather than file a State's Appearance, the State has the following options:

1. When multiple orders exist, a Governing Child Support Judgment may resolve the conflict. **ORS 25.091; 25.531**. See Ch. 2 Multiple Orders.
2. When the State is not a party to the action and the State has a significant interest, the State may file a motion to join the State as a party and to set aside provisions affecting support or paternity. **ORCP 29; ORCP 71**.
  - a. Set aside may be appropriate if a judicial court judgment is entered that does not enforce, modify or set aside the existing child support judgment. **ORS 25.089(3) and (6); 25.091(5)(a)**.

## SPECIAL PROTECTION FOR SERVICE MEMBERS

### 8.0 Federal Protections: Servicemembers Civil Relief Act

A. If any party to a case is a service member on active duty, courts must comply with the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. § 501 *et seq*;

**ORCP 69.** SCRA issues to be aware of in the child support context include:

1. The court may be required to stay proceedings unless the service member affirmatively waives his/her appearance.
2. No default judgment may be entered against an active service member without first obtaining a waiver or appointing an attorney for the service member.
3. If a judgment has been entered against the service member during his/her period of military service, the court may be required to re-open the judgment to allow the service member to defend.

B. Any motion for order of default must be accompanied by an affidavit addressing whether or not the party against whom the order is sought is a member of the military. **ORCP 69(C)(1)(e).** If a party is a servicemember, the affidavit must contain sufficient facts to ensure compliance with the SCRA. **ORCP**

**69(C)(2)(b).** *Note:* SCRA requires the use of affidavits and does not provide for declarations.



- C. Further Federal SCRA resources can be found at:

The Office of Child Support Enforcement: Child Support and the Judiciary,  
Applying the Servicemembers Civil Relief Act

A Judge's Guide to the Servicemembers Civil Relief Act, by Judge Mark E.  
Sullivan

## 8.1 Oregon Protections for Deployed Parents

- A. Deployed parent means “a parent of a minor child whose parental rights have not been terminated who is deployed with the Armed Forces of the United States, National Guard or other reserve component.” [ORS 107.145\(1\)](#).
- B. Deployment means “military service in compliance with written orders received by an active duty or reserve member of the Armed Forces of the United States, National Guard or other reserve component to report for combat operations, contingency operations, peacekeeping operations, temporary duty, a remote tour of duty or other active military service.” The time that a person is considered deployed includes:
  - 1. The time from which the deployed parent receives and is subject to written orders to deploy to the time of actual deployment.
  - 2. Any period of time the deployed parent is awaiting travel to or from a deployment destination.
  - 3. Any period of time the deployed parent remains deployed because of sickness, wounds, leave or other lawful cause.
- C. Restriction on Modifying Judgment with Deployed Parent as Party, [ORS 107.145\(3\)](#).

1. Except as set out in sections (C)(2) and (D) below, a court may not set aside, alter or modify any portion of a judgment of annulment, separation or dissolution of marriage that provides for the support and welfare of a minor child of a deployed parent until 90 days after the completion of the deployed parent's deployment. This restriction applies equally to judgments involving unmarried parents pursuant to **ORS 109.103**.
2. The exception to this general rule is where such a motion was heard and decided before the commencement of the deployed parent's deployment.

D. Temporarily Modifying Judgment with Deployed Parent as Party, **ORS 107.145(4)**.

1. A court may reasonably accommodate the circumstances of the deployed parent's deployment in the best interests of the child by entering a temporary order modifying the terms of a preexisting judgment of annulment, separation or dissolution of marriage that provides for the support of a minor child of a deployed parent.
2. Any motion for such a temporary order must be served upon the Administrator of the Division of Child Support of the Department of Justice or the branch office providing support services.
3. The non-deployed parent bears the burden of proof that the provisions of a temporary order are not in the best interests of the child. **ORS 107.145(4)(a)**.
4. A temporary order must include provisions regarding:

- a. Parenting time for the deployed parent during periods of approved leave in the best interests of the child;
- b. Parenting time for the deployed parent during periods of deployment in the best interests of the child including but not limited to contact by telephone, electronic mail and other electronic means such as video and visual imaging;
- c. Modification of the child support provisions of the preexisting judgment to reflect the changed circumstances of the parents and the child during the period of deployment;
- d. A requirement that the non-deployed parent provide the court and the deployed parent with written notice 30 days prior to a change of address or telephone number during the period of deployment;
- e. **ORS 107.105(4)(b)(E)** provides: “That the temporary order entered under this subsection terminates by operation of law upon completion of deployment and that the provisions of the preexisting judgment that have been modified by the temporary order are automatically reinstated unless a request is made and granted under subsection (7) of this section”;
- f. That all other provisions of the preexisting judgment not modified by the temporary order remain in effect; and
- g. That deployment is considered completed for purposes of reinstating the provisions of the preexisting judgment that have been modified by the temporary order 10 days after the date on

which the deployed parent serves the non-deployed parent and provides to the court and to the Administrator of the Division of Child Support of the Department of Justice or the branch office providing support services to the county in which the motion is filed copies of written orders or other official notification that the deployed parent is no longer deployed or in active military service.

- E. Expedited hearings, [ORS 107.146](#).
1. The court must hold an expedited hearing, upon motion by a deployed parent or parent whose deployment is imminent, in:
    - a. Any proceeding in a suit for marital annulment, dissolution, separation, modification, status quo orders and temporary support modifications.
    - b. Any proceedings under [ORS 107.103](#), [107.135](#), [107.138](#) and [107.139](#) where a deployed parent or a parent whose deployment is imminent is a party; and
    - c. A proceeding under [ORS 107.145\(4\)](#).
  2. The court must make reasonable accommodations to allow a deployed parent, or a parent whose deployment is imminent, to provide video, electronic or Internet testimony if the proceeding involves the custody, parenting time, visitation, support and welfare of the parent's child and where the deployed parent or the parent whose deployment is imminent cannot personally appear.

## INCARCERATED OBLIGORS

### 9.0 Senate Bill 682 - 2017 SB 682 Made a Number of Changes to the Way Incarcerated Obligor's Child Support Obligations are Treated. See [ORS 25.247](#).

- A. Rebuttable Presumption of Inability to Pay Child Support While Incarcerated
  - 1. There is a rebuttable presumption that an obligor who is incarcerated or expected to be incarcerated for a period of 180 or more consecutive days is unable to pay child support. A child support obligation does not accrue for the duration of the incarceration unless the presumption is rebutted as provided by [ORS 25.247](#). [ORS 25.247\(1\)](#).
  
- B. Notice of Presumption of Inability to Pay Due to Incarceration is Required
  - 1. Within 30 days following identification of an incarcerated obligor, the entity responsible for support enforcement services under [ORS 25.080](#) shall provide note of the presumption to the obligee, obligor and any other parties to the support order. [ORS 25.247\(3\)](#).
  
  - 2. The notice shall state that unless a party objects in the manner provided by [ORS 25.247\(4\)](#), child support shall cease accruing beginning with the first day of the first month that follows the obligor becoming incarcerated for a period of at least 180 consecutive days and continuing through the support payment due in the last month prior to reinstatement of the support order as provided in [ORS 25.247\(6\)](#). [ORS 25.247\(3\)](#).

3. The notice shall be served on the obligee in the manner provided for service of summons in a civil action by certified mail, return receipt requested, or by any other mail service with delivery confirmation. **ORS 25.247(3).**
4. The notice shall be served on the obligor by first class mail to the obligor's last-known address. **ORS 25.247(3).**
5. The notice shall specify the month in which the obligor became incarcerated and shall contain a statement that the administrator represents the state and that low-cost legal counsel may be available. **ORS 25.247(3).**

#### **9.1 Objection to Presumption of Obligor's Inability to Pay Due to Incarceration**

- A. A party may object to the presumption that an incarcerated obligor is unable to pay child support by sending an objection to the entity that served them with notice within 30 days after the date of service of the notice. **ORS 25.247(4).**
- B. The objection must describe the resources of the obligor or other evidence that rebuts the presumption of inability to pay child support. **ORS 25.247(4).**
- C. The entity receiving the objection shall cause the case to be set for a hearing before a court or an administrative law judge. **ORS 25.247(4).**
- D. The court or administrative law judge may consider only whether the presumption has been rebutted. **ORS 25.247(4).**

## **9.2 Suspension of Billing and Arrearage**

- A. If no objection is made, or if the court or administrative law judge finds that the presumption has not been rebutted, the administrator shall discontinue billing the obligor as set forth in **ORS 25.247(3)** and no arrearage shall accrue for the period during which the obligor is not billed. **ORS 25.247(5)**.
- B. The entity providing support enforcement services shall file with the circuit court in which the support order or judgment has been entered either a copy of the notice served upon the parties ceasing accrual of support or, if an objection is made and the presumption is not rebutted, a copy of the court's or administrative law judge's order. **ORS 25.247(5)**.

## **9.3 Reinstatement of Order**

- A. An order that has been suspended due to obligor's incarceration shall be automatically reinstated at 50% of the previous support obligation on the first day of the first month that follows the 120<sup>th</sup> day after the obligor's release from incarceration. **ORS 25.247(6)**.

## **9.4 Notice Following Reinstatement of Order**

- A. Within 30 days following reinstatement of the order the Department of Justice shall provide notice to all parties:
  - 1. Specifying the last date on which obligor was incarcerated;

2. Stating that by operation of law, billing and accrual of support resumed on the first day of the first month that follows the 120<sup>th</sup> day after the obligor's release from incarceration; and
  3. Informing the parties that the administrator will review the support order for purposes of modification within 60 days of the reinstatement. **ORS 25.247(7)(a).**
- B. The notice shall include a statement that the Administrator represents the state and that low-cost legal counsel may be available. **ORS 25.247(7)(b).**
  - C. The entity providing child support services shall file a copy of the notice following the reinstatement order with the circuit court in which the support order was entered. **ORS 25.247(7)(c).**

## **9.5 Review and Modification of Reinstated Support Order**

- A. Within 60 days following reinstatement of the order, the administrator shall review the order for purposes of modifying the support order. **ORS 25.247(8).**
- B. An obligor's incarceration or release from incarceration is a substantial change of circumstances for purposes of support modification. **ORS 25.247(9).**

## **9.6 Credit and Satisfaction for Support That Accrues During Incarceration**

- A. Proof of incarceration for at least 180 consecutive days is sufficient cause for the administrator, the court or an administrative law judge to allow a credit and satisfaction against arrears that accrued during the incarceration or that is within



120 days following the obligor's release from incarceration unless the presumption of inability to pay has been rebutted. [ORS 25.247\(10\)](#).

- B. A credit and satisfaction provides a remedy for cases in which the notice of suspension was never issued and support continued accruing.

#### **9.7 Orders Previously Modified to Zero Due to Incarceration**

- A. Orders modified to zero prior to January 1, 2018, remain in force with reinstatement at the full court ordered amount occurring 61 days after the obligor's release. Such orders are not subject to suspension and reinstatement under [ORS 25.247](#). [ORS 25.247\(11\)](#).

## **137-050-0700**

### **General Provisions**

(1) ORS 25.270 through 25.280 require that child support be calculated according to a formula. The formula is known as the "Oregon Child Support Guidelines" ("guidelines" or "guideline") and is contained in OAR 137-050-0700 through 137-050-0765 and in the "Obligation Scale" which is located in the appendix.

(2) Any change to the guidelines applies to all calculations prepared on or after the effective date of the change. The court, administrator, or administrative law judge may issue a final order based on a calculation prepared prior to the guidelines change. However, if support is recalculated after the new guidelines become effective, the calculation must be prepared using the new guidelines.

(3) Changes to these rules do not constitute a substantial change in circumstances for purposes of modifying a support order.

(4) Calculate support for a Child Attending School who is age 18, living with a parent, and attending high school in the same manner as support for a minor child.

**Statutory/Other Authority:** ORS 25.270 - 25.290 & 180.345

**Statutes/Other Implemented:** ORS 25.270 - 25.290

**137-050-0710**  
**Calculating Support**

(1) To calculate the guideline support amount:

(a) Determine each parent's income as provided in OAR 137-050-0715.

(b) Determine each parent's adjusted income and percentage share of adjusted income as provided in OAR 137-050-0720.

(c) Determine each parent's income available for support ("available income") by deducting the self-support reserve from the parent's adjusted income as provided in OAR 137-050-0745.

(d) Determine the basic support obligation and each parent's share, of the basic support obligation as provided in OAR 137-050-0725.

(e) Add to each parent's basic support obligation the parent's share of child care costs as provided in OAR 137-050-0735.

(f) Determine each parent's medical support obligation as provided in OAR 137-050-0750. Add each parent's share of health care coverage costs to the parent's obligation. Round cash medical support, if any, to the nearest dollar.

(g) Determine each parent's parenting time credit as provided in OAR 137-050-0730.

(h) Credit each parent's cash child support obligation for:

(A) parenting time as provided in OAR 137-050-0730,

(B) the parent's allowed out-of-pocket costs for child care as provided in OAR 137-050-0735(1)–(4), and

(C) the parent's out-of-pocket health insurance costs for the child as provided in OAR 137-050-0750.

(i) Determine whether the parent will be ordered to pay cash child support or cash medical support for minor children as follows:

(A) Only the parent with the greater net support obligation for minor children may be ordered to pay cash child support and, if applicable, cash medical support, for the minor children, except as provided in subsection (D).

(B) To determine each parent's net obligation for minor children, determine the minor children's share of the parent's basic support obligation determined in OAR 137-050-0725(6). Add the parent's share of child care costs determined in 137-050-0735(5), and the minor children's share of the parent's health care coverage costs determined in 137-050-0750(14). Subtract each parent's parenting time credit determined in 137-050-0730(7), child care credit determined in section (1)(h)(B) of this rule, and the minor children's share of the health care coverage costs credit determined in section (1)(h)(C) of this rule.

(C) For purposes of determining the minor children's shares under this subsection, each child is allocated an equal share of the total obligation, cost, or credit.

(D) If a minor child lives with a caretaker or is in state care, both parents may be ordered to pay cash child support and, if applicable, cash medical support for minor children.

(j) Determine whether the minimum order applies and apply any necessary increase as provided in OAR 137-050-0755.

(k) Apply any reduction in support for Social Security or Veteran's benefits as determined in OAR 137-050-0740.

(l) If the parent will be ordered to pay cash child support for minor children, determine the amount by dividing each parent's cash child support obligation by the total number of joint children and multiplying the result by the number of joint minor children. Round the result to the nearest dollar.

(m) Determine the cash child support obligation for joint Children Attending School by dividing each parent's cash child support obligation by the total number of joint children and multiplying the result by the number of joint Children Attending School. Round the result to the nearest dollar.

(n) Allocate cash medical support to joint minor children and joint Children Attending School in the same manner provided for cash child support in sections (1)(l) and (1)(m) of this rule.

(2) Round all dollar figures to the nearest penny, except as otherwise provided. Example: \$12.34. Round all percentages to the nearest one-hundredth of one percent. Example: 12.34%.

(3) If all of the minor children for whom support is being calculated live with a caretaker other than a parent or the children are in the care or custody of the state, and the action is determining the support obligation of only one parent, consider only that parent's information. For the second parent in these single-parent calculations, use the same income, spousal support, union dues, parent's own health care coverage cost, and non-joint children as for the parent whose obligation is being calculated. Include the caretaker's child care costs, if any. Do not include any other information for the "other parent".

(4) The obligations to pay cash child support and cash medical support, and to provide health care coverage under this rule together constitute the guideline child support obligation and are presumed just and appropriate, subject to the agreed support amount in OAR 137-050-0765 and rebuttal as provided in OAR 137-050-0760.

**Statutory/Other Authority:** ORS 25.270 - 25.290 & 180.345

**Statutes/Other Implemented:** ORS 25.270 - 25.290

## 137-050-0715

### Income

(1) "Income" means the actual or potential gross income of a parent as determined in this rule. Actual and potential income may be combined when a parent has actual income and is unemployed or employed at less than the parent's potential.

(2) "Actual income" means a parent's gross earnings and income from any source, including those sources listed in section (4), except as provided in section (5).

(3) "Potential income" means the parent's ability to earn based on relevant work history, including hours typically worked by or available to the parent, occupational qualifications, education, physical and mental health, employment potential in light of prevailing job opportunities and earnings levels in the community, and any other relevant factors. A determination of potential income includes potential income from any source described in section 4 of this rule. If a parent residing in Oregon is determined to be able to earn at the minimum wage, the hourly earning amount to be imputed as potential income will be based on the lowest minimum wage provided for in any area of Oregon.

(4) Actual income includes but is not limited to:

(a) Employment-related income including salaries, wages, commissions, advances, bonuses, dividends, recurring overtime pay, severance pay, pensions, and honoraria;

(b) Expense reimbursements, allowances, or in-kind payments to a parent, to the extent they reduce personal living expenses;

(c) Annuities, trust income, including distribution of trust assets, and return on capital, such as interest and dividends;

(d) Income replacement benefit payments including Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, and Department of Veterans Affairs disability benefits;

(e) Inheritances, gifts and prizes, including lottery winnings; and

(f) Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, minus costs of goods sold, minus ordinary and necessary expenses required for self-employment or business operation, including one-half of the parent's self-employment tax, if applicable. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the fact finder to be inappropriate or excessive for determining gross income.

(5) Child support, food stamps, Social Security or Veterans benefits received on behalf of a child in the household, adoption assistance, guardianship assistance, and foster care subsidies are not considered income for purposes of this calculation.

(6) If a parent's actual income is less than the parent's potential income, the court, administrator, or administrative law judge may impute potential income to the parent.

(7) If insufficient information about the parent's income history is available to make a determination of actual or potential income, the parent's income is the amount the parent could earn working full-time at the lowest minimum wage in the state in which the parent resides.

(8) Potential income may not be imputed to:

- (a) A parent unable to work full-time due to a verified disability;
- (b) A parent receiving workers' compensation benefits;
- (c) An incarcerated obligor as defined in OAR 137-055-3300; or
- (d) A parent whose order is being temporarily modified under ORS 25.527(12).

(9) To determine monthly income when the employee is paid:

- (a) Weekly, multiply the weekly earnings by 52 and divide by 12.
- (b) Every two weeks, multiply the bi-weekly earnings by 26 and divide by 12.
- (c) Semimonthly (twice per month), multiply the semimonthly earnings by 2.

(10) Notwithstanding any other provision of this rule, if the parent receives Temporary Assistance for Needy Families, the parent's income is presumed to be the amount which could be earned by full-time work at the lowest minimum wage in the state in which the parent resides. This income presumption is solely for the purposes of the support calculation and not to overcome the rebuttable presumption of inability to pay in ORS 25.245.

(11) As used in this rule, "full-time" means 40 hours of work in a week except in those industries, trades or professions in which most employers, due to custom, practice or agreement, utilize a normal work week of more or less than 40 hours in a week.

**Statutory/Other Authority:** ORS 25.270 - 25.290 & 180.345

**Statutes/Other Implemented:** ORS 25.270 - 25.290

**137-050-0720**

**Adjusted Income**

(1) To determine “adjusted income,” begin with income, as determined in OAR 137-050-0715, and then:

(a) Deduct mandatory contributions to a union or other labor organization;

(b) Deduct the parent's cost for the parent's own health insurance;

(c) Deduct the parent's monetary spousal support obligation to this or a different party, whether ordered in the same or a different proceeding, and whether paid or not;

(d) Add the amount of court-ordered monetary spousal support owed to the parent, whether ordered in the same or a different proceeding, by this or a different party and whether paid or not; and

(e) Subtract the non-joint child deduction described in section (2) of this rule.

(2) A parent is entitled to a non-joint child income deduction when the parent is legally responsible for the support of a child not included in the current calculation.

(a) To qualify for the non-joint child deduction, the minor child must reside in the parent's household or the parent must be ordered to pay ongoing support for that child.

(b) A child attending school, as defined in ORS 107.108 and OAR 137-055-5110, qualifies the parent for the non-joint child deduction only if the parent is ordered to pay ongoing support for the child attending school, or as provided in subsection (c).

(c) A child who has reached the age of 18 but is not yet 19, lives with a parent and attends high school, qualifies that parent for the non-joint child deduction, whether or not the child has qualified as a Child Attending School under ORS 107.108.

(d) A stepchild only qualifies a parent for the non-joint child deduction if the parent is ordered to pay ongoing support for the stepchild.

(e) To calculate a parent's non-joint child deduction:

(A) Apply the adjustments described in subsections 1(a)-1(d) of this rule to the parent's income;

(B) Using the parent's income after the adjustments in section 2(e)(A) of this rule and total number of joint and non-joint children, reference the obligation scale and determine the applicable support amount; and

(C) Divide the result by the total number of the parent's joint and non-joint children and multiply by the number of non-joint children to determine the amount of the non-joint child deduction.

(3) Determine each parent's percentage share of adjusted income by dividing the parent's adjusted income by the parents' combined adjusted income.

**Statutory/Other Authority:** ORS 25.270 - 25.290 & 180.345

**Statutes/Other Implemented:** ORS 25.270 - 25.290

**137-050-0725****Basic Support Obligation**

- (1) The scale of basic child support obligations, found in the appendix to these rules, must be used in every support calculation made under ORS 25.270 to 25.280. The scale is based on national data on childrearing expenditures relative to family income. The scale applies regardless of where the parent resides or works.
- (2) Determine the basic child support obligation by referencing the scale using the number of children for whom support is sought and the combined adjusted income of the parents.
- (3) If the combined adjusted gross income of the parents is more than \$30,000 per month, the basic child support obligation is the same for parents with combined adjusted income of \$30,000 per month.
- (4) The basic child support obligation for more than ten children is the same as for ten children.
- (5) When the parents' combined income falls between two income amounts on the scale, use the lower income amount on the scale to determine the basic child support obligation.
- (6) Determine each parent's share of the basic support obligation by multiplying the combined basic support obligation by the parent's percentage share of adjusted income as provided by OAR 137-050-0720. The basic support amount may not exceed the parent's income available for support as provided in OAR 137-050-0745.

NOTE: Link to the appendix (the scale):

[http://oregonchildsupport.gov/laws/rules/docs/guidelines\\_scale.pdf](http://oregonchildsupport.gov/laws/rules/docs/guidelines_scale.pdf)

[ED. NOTE: Appendix referenced is available from the agency.]

**Statutory/Other Authority:** ORS 25.270 - 25.290 & 180.345

**Statutes/Other Implemented:** ORS 25.270 - 25.290



**137-050-0730**

**Parenting Time Credit**

(1) For the purposes of this rule:

(a) "Primary physical custody" means the parent provides the primary residence for the child and is responsible for the majority of the day-to-day decisions concerning the child.

(b) "Split custody" means that there are two or more children and each parent has at least one child more than 50 percent of the time.

(2) If there is a current written parenting time agreement or court order providing for parenting time, calculate each parent's overnights for the minor children as follows:

(a) Determine the average number of overnights using two consecutive years.

(b) Add the total number of overnights the parent is allowed with each minor child and divide by the total number of minor children.

(c) Notwithstanding the calculation provided in subsections (2)( a) and (2)(b), parenting time may be determined using a method other than overnights if the parents have an alternative parenting time schedule in which a parent has significant time periods where the minor child is in the parent's physical custody but does not stay overnight. For example, in lieu of overnights, 12 continuous hours may be counted as one day. Additionally, blocks of time of four hours up to 12-hours may be counted as half-days, but not in conjunction with overnights. Regardless of the method used, blocks of time may not be used to equal more than one full day per 24-hour period.

(3) If the parents have split custody but no written parenting time agreement, determine each parent's parenting time overnights by dividing the number of minor children with the parent by the total number of children and multiplying by 365.

(4) If there is no current written parenting time agreement or court order providing for parenting time, the parent or party having primary physical custody of the minor child will be treated as having all of the parenting time for that child unless a court or administrative law judge determines actual parenting time.

(5) If the court or administrative law judge determines actual parenting time exercised by a parent is different than what is provided in a written parenting plan or court order, the parenting time overnights may be calculated using the actual parenting time exercised by the parent.

(6) Determine each parent's parenting time credit percentage as follows:  $\text{credit percentage} = 1 / (1 + e^{-(7.14 * ((\text{overnights} / 365) - 0.5)))} - 2.74\% + (2 * 2.74\% * (\text{overnights} / 365))$ . The precisely computed credit percentage is preferred. However, where this is impractical (for example, when calculating support by hand) an approximate credit percentage can be determined by referencing the table at the end of this rule using the parents' average overnights determined in step 2, 3, or 4, rounding up or down to the nearest whole number of overnights.

(7) To determine the amount of each parent's parenting time credit:

(a) Determine the minor children's portion of the combined basic support obligation, as determined in OAR 137-050-0725(2), by dividing the combined basic support obligation by the total number of minor children and children attending school and multiply the result by the number of minor children only.

(b) Multiply the result by each parent's parenting time credit percentage.

**Statutory/Other Authority:** ORS 25.270B - 25.290 & 180.345  
**Statutes/Other Implemented:** ORS 25.270B - 25.290

**137-050-0735**  
**Child Care Costs**

(1) Adjust the support obligation for child care costs paid by either parent or the child's caretaker if the child for whom support is being calculated is disabled or under the age of 13.

(2) Child care costs must be related to the parent's or caretaker's employment, job search, or training or education necessary to obtain a job. Only actual costs paid by a parent or caretaker for child care that can be documented and determined may be used to compute an adjustment under these rules.

(3) Child care costs are allowable only to the extent that they are reasonable and, except as provided in section (4), do not exceed the maximum amounts set out in Table 1. Table 1: Maximum Allowable Child Care Costs by Provider Location

(4) The maximum amounts allowed by the Department of Human Services as shown in the Employment-Related Day Care Allowance tables in OAR 461-155-0150, available on line at [http://arcweb.sos.state.or.us/pages/rules/oars\\_400/oar\\_461/461\\_155.html](http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_461/461_155.html) or <https://apps.state.or.us/cf1/caf/arm/B/461-155-0150.htm>, may be used when those amounts are greater than the amounts in the abbreviated table in section (3).

(5) Each parent's obligation for child care costs is that parent's income share percentage as provided by OAR 137-050-0720 multiplied by the total allowed child care costs. A parent's child care cost obligation may not exceed the parent's available income after deducting the parent's basic support obligation.

(6) As used in section 1 of this rule, "disabled" refers to a child who has a physical or mental disability that substantially limits one or more major life activities (for example, self-care, performing manual tasks, walking, seeing, speaking, hearing, eating, sleeping, standing, lifting, bending, breathing, learning, reading, concentrating, thinking, communicating, and working).

[\[ED. NOTE: To view attachments referenced in rule text, click here for PDF copy.\]](#)

**Statutory/Other Authority:** ORS 25.270 - 25.290 & 180.345

**Statutes/Other Implemented:** ORS 25.270 to 25.290

**137-050-0740**

**Social Security and Veterans Benefits; Dollar-for-Dollar Reduction in Support Obligation**

(1) For the purposes of this rule:

(a) "Apportioned Veterans benefits" means the amount the U.S. Department of Veterans Affairs deducts from an obligated parent's Veterans benefits and disburses to the child or to the child's representative payee; and

(b) "Social Security benefits" refer to those benefits paid on behalf of a disabled or retired obligated parent to a child or a child's representative payee.

(2) The child support obligation may be reduced dollar for dollar in consideration of any Social Security or apportioned Veterans benefits; and

(3) The child support obligation must be reduced dollar for dollar in consideration of any Survivors' and Dependents' Educational Assistance (Veterans benefit) under 38 U.S.C. chapter 35.

(4) A parent is not entitled to a reduction in support for Veterans or Social Security benefits:

(a) That result from the child's own disability,

(b) For which the obligated parent is the representative payee, or

(c) That do not result from the obligated parent's own disability or retirement, or, in the case of subsection (3), from that parent's military service.

**Statutory/Other Authority:** ORS 25.270 – 25.290 & 180.345

**Statutes/Other Implemented:** ORS 25.270 – 25.290

**137-050-0745****Self-Support Reserve**

- (1) The support calculation must leave an obligated parent enough income to meet his or her own basic needs.
- (2) To determine the amount of the parent's income available for support ("available income"), subtract the self-support reserve of \$1241 from the parent's adjusted income.
- (3) The parent's total obligation, including the parent's shares of the basic support obligation, child care costs, health insurance, and cash medical support, may not exceed the parent's available income, except as provided in OAR 137-050-0750(7).
- (4) The limitation on support described in this rule is reflected in the specific provisions of OAR 137-050-0710 (Calculating Support), OAR 137-050-0725 (Basic Support Obligation), OAR 137-050-0735 (Child Care Costs), and OAR 137-050-0750 (Medical Support).
- (5) The amount of the self-support reserve is based on the federal poverty guideline, multiplied by 1.167 to account for estimated taxes, and rounded to the nearest whole dollar. This rule will be reviewed and updated annually to reflect changes in the federal poverty guideline.

**Statutory/Other Authority:** ORS 25.275, 25.280 & 180.345

**Statutes/Other Implemented:** ORS 25.275 & 25.280

**137-050-0750**  
**Medical Support**

(1) The basic support obligation (OAR 137-050-0725) includes ordinary unreimbursed medical costs of \$250 per child per year. These costs represent everyday expenses such as bandages, non-prescription medication, and co-pays for doctor's well visits. The basic support obligation does not account for health care coverage costs or for extraordinary medical expenses.

(2) "Cash medical support", as used in OAR 137-050-0700 through 137-050-0765, has the meaning given in ORS 25.321(1).

(3) For purposes of this rule, "to provide" health care coverage means to apply to enroll the child and pay any costs associated with the enrollment, even if the cost to the parent is zero.

(4) For purposes of ORS 25.323, private health care coverage may be "available" to a parent from any source, including but not limited to an employer, spouse, or domestic partner.

(5) Private health care coverage is reasonable in cost if it costs no more than the total of four percent of each parent's adjusted income as determined in OAR 137-050-0720.

(a) The amount calculated for each parent in this section may not exceed that parent's available income after deducting the parent's shares of basic support obligation and child care costs.

(b) The reasonable cost contribution of a parent whose income is at or below the highest Oregon minimum wage for full-time employment is zero.

(6) A parent with income at or below the highest Oregon minimum wage for full-time employment may be ordered to provide health care coverage only if it is available at no cost.

(7) Compelling factors may support a finding that health care coverage is reasonable in cost at an amount greater than the amount determined in section 5 of this rule so long as the providing parent has income greater than full-time employment at the highest Oregon minimum wage.

(8) In determining the cost of private health care coverage, consider only the cost to the parents of covering the children for whom support is sought. To calculate the amount to be considered:

(a) If there is a known cost for self-only coverage for the providing parent, deduct that cost from the cost of family coverage. Divide the remainder by the total number of people covered, excluding the providing parent. Multiply the result by the number of children for whom coverage is sought in the present calculation.

(b) If there is no self-only coverage option or the cost cannot be determined, divide the total cost of coverage by total number of people covered, including the providing parent. Multiply the result by the number of children for whom coverage is sought in the present calculation.

(9) If only one parent has private health care coverage that is appropriate and available under ORS 25.323, that parent must be ordered to provide it.

(10) If both parents have access to appropriate, available private health care coverage, the parent with the greater share of parenting time as determined in OAR 137-050-0730 (Parenting Time Credit) may select which coverage will be ordered.

(a) If the parent with the greater share of parenting time does not select between the parents' coverage, or each parent has exactly 50% or 182.5 overnights of parenting time and the parents do not agree on which policy should be ordered, the policy with the lower out-of-pocket premium cost will be ordered unless the court, administrator, or administrative law judge makes a finding that the more expensive policy should be ordered.

(b) The parents may agree that both parents will be ordered to provide private coverage if both parents have appropriate coverage available so long as the total coverage to be provided is reasonable in cost under sections 5 or 7 of this rule.

(11) If the child lives with a caretaker, both parents are parties to the action, and both parents have appropriate and available private health care coverage, the caretaker may select which coverage will be ordered. If the caretaker does not select between the parents' coverage, the policy with the lower out-of-pocket premium cost will be ordered unless the court, administrator, or administrative law judge makes a finding that the more expensive policy should be ordered.

(12) If neither parent has access to appropriate, available private health care coverage:

(a) One or both parents must be ordered to provide appropriate private health care coverage at any time whenever it becomes available;

(b) The parent with custody of the child may be ordered to provide public health care coverage for the child; and

(c) Either or both parents who are found to have a cash child support obligation as provided in OAR 137-050-0710(1)(i) must be ordered to pay cash medical support, or the order must include a finding explaining why cash medical support is not ordered. The amount of the cash medical support obligation is the lesser of:

(A) four percent of the parent's adjusted income as determined in OAR 137-050-0720,

(B) the parent's available income after deducting the parent's shares of basic support obligation and child care costs, or

(C) zero, if the parent's income is at or below the highest Oregon minimum wage for full-time employment.

(13) A medical support clause may order an obligor to provide appropriate private health care coverage whenever it is available to the obligor, and to pay cash medical support whenever the obligor does not provide appropriate private health care coverage.

(14) Determine each parent's share of the cost of health care coverage to be ordered under this rule by multiplying the total cost by each parent's percentage share of the parents' combined reasonable in cost limitation, as determined in section 5 of this rule.

(a) If only one parent has income above the highest Oregon minimum wage, that parent is responsible for all health care coverage costs. No share of the cost is apportioned to a parent with income at or below the highest Oregon minimum wage as provided in section 12(c)(C) of this rule.

(15) When enforcing the health insurance provision of a child support judgment entered under this rule, health insurance is reasonable in cost if the premium cost for the child is equal to or less than the amount that was determined reasonable in cost under section 5 of this rule based on both parents' income at the time support was calculated, regardless of whether that cost exceeds either:

(a) The providing parent's individual contribution to the reasonable cost cap, or

(b) The actual cost of insurance allocated to the providing parent under section 14 of this rule.

**Statutory/Other Authority:** ORS 25.270 – 25.290, 25.323 & 180.345

**Statutes/Other Implemented:** ORS 25.270 – 25.290 & 25.321 – 25.343



**137-050-0755**  
**Minimum Order**

(1) Except as provided in OAR 137-050-0740, 137-050-0760, 137-050-0765 and this rule, it is rebuttably presumed that an obligated parent is able to pay at least \$100 per month as child support. If an obligated parent's total support is less than \$100, increase cash child support by the amount needed for total support to equal \$100. For purposes of this rule total support equals cash child support plus the greater of cash medical support or the total out of pocket cost for health care coverage the parent is ordered to provide pursuant to OAR 137-050-0750.

(2) The presumption in this rule does not apply when:

(a) Each parent has exactly 182.5 annual average overnights as determined by OAR 137-050-0730;

(b) The administrator is entering an order which requires only medical support;

(c) A support order is suspended as provided by ORS 25.247; or

(d) The parent from whom support is sought:

(A) Has disability benefits as a sole source of income;

(B) Qualifies as an incarcerated obligor, as defined in OAR 137-055-3300; or

(C) Receives public benefits as defined in ORS 25.245.

**Statutory/Other Authority:** ORS 25.270 to 25.290 & 180.345

**Statutes/Other Implemented:** ORS 25.270 to 25.290

## 137-050-0760

### Rebuttals

(1) The presumption that the guideline support amount as provided in OAR 137-050-0700 through 137-050-0755 is the correct support amount may be rebutted by a finding that sets out the presumed amount, concludes that it is unjust or inappropriate, and sets forth a different amount and a reason it should be ordered. The criteria that may be the basis for rebuttal include but are not limited to:

- (a) Evidence of the other available resources of the parent;
- (b) The reasonable necessities of the parent;
- (c) The net income of the parent remaining after withholding required by law or as a condition of employment;
- (d) A parent's ability to borrow;
- (e) The number and needs of other dependents of a parent;
- (f) The special hardships of a parent affecting the parent's ability to pay support, including, but not limited to, any medical circumstances, extraordinary travel costs related to the exercise of parenting time, or requirements of a reunification plan if the child is in state-financed care;
- (g) The desirability of the custodial parent remaining in the home as a full-time parent or working less than full-time to fulfill the role of parent and homemaker;
- (h) The tax consequences, if any, to both parents resulting from spousal support awarded, the determination of which parent will name the child as a dependent, child tax credits, or the earned income tax credit received by either parent;
- (i) The financial advantage afforded a parent's household by the income of a spouse or domestic partner;
- (j) The financial advantage afforded a parent's household by benefits of employment including, but not limited to, those provided by a family owned corporation or self-employment, such as housing, food, clothing, health benefits and the like, but only if unable to include those benefits as income under OAR 137-050-0715;
- (k) Evidence that a child who is subject to the support order is not living with either parent;
- (L) Findings in a judgment, order, decree or settlement agreement that the existing support award is or was made in consideration of other property, debt or financial awards, and those findings remain relevant;
- (m) The net income of the parent remaining after payment of mutually incurred financial obligations;
- (n) The tax advantage or adverse tax effect of a parent's income or benefits;
- (o) The extraordinary or diminished needs of the child, except:
  - (A) Expenses for extracurricular activities and
  - (B) Social Security benefits paid to a child because of a child's disability;

(p) The return of capital.

(q) The financial costs of supporting a Child Attending School at school, including room, board, tuition and fees, and discretionary expenses, the ability of the Child Attending School to meet those expenses with scholarships, grants and loans, and the ability of a parent to provide support for the Child Attending School, either in kind where a child continues to live in a parent's home or with cash if there are parental resources to provide financial support over and above the amount for a Child Attending School generated by the child support calculator.

(2) A supplemental calculation is not required but may be used in support of the rebuttal.

**Statutory/Other Authority:** ORS 25.270 to 25.290 & 180.345

**Statutes/Other Implemented:** ORS 25.270 to 25.290

**137-050-0765****Agreed Support Amount**

(1) It is in the best interest of children to have support orders reached by agreement of the parents. Entering orders with the parents' consent promotes positive parental involvement and prompt, consistent payment of the support obligation. Parents who enter into agreed support amounts avoid the uncertainty of hearings and possible appeals.

(2) The guideline support amount and rebuttal factors are intended to meet the needs of most families. Likewise, the rebuttal factors in OAR 137-050-0760 address most situations in which the guideline amount is inappropriate. However, there will be families for whom the support amount, even rebutted, is not correct and who value the certainty of agreed support amounts.

(3) In consideration of foregoing administrative hearing rights, the parties may consent to a support amount that is within 15 percent of the amount determined under rules 137-050-0700 through 137-050-0760. The order must be entered with the written consent of the parties.

(4) Apply any change to the support amount under this rule proportionally to cash child support and cash medical support, and to minor children and Children Attending School. Round each result to the nearest dollar.

(5) An agreed support amount entered pursuant to this rule is presumed to be just and appropriate within the meaning of ORS 25.280.

**Statutory/Other Authority:** ORS 25.270 - 25.290 & 180.345

**Statutes/Other Implemented:** ORS 25.270 - 25.290

Disclaimer: These case notes summarize relevant child support cases, but are not intended to be an exhaustive digest of Oregon child support case law. These case notes should not be relied on as an exhaustive authority for child support; they are intended only to be a resource.

## I. ARREARS

### A. Interest on Unpaid Arrears.

1. “Because child support installments are judgment obligations, they accrue postjudgment interest under ORS 82.010(2)(b) as a statutory penalty for the obligor’s failure to pay a judgment when due; such interest is not imposed to compensate the obligee for a prejudgment loss.” *Chase v. Chase*, 354 Or. 776, 788 (2014).
2. “Postjudgment interest on the arrearage judgment . . . accrue[s] on the unpaid child support amounts—but not on previously accrued interest on those amounts—as simple interest under ORS 82.010(2)(b).” *Chase v. Chase*, 354 Or. 776, 789 (2014).

### B. Temporary Support Arrearages.

1. A trial court may not adjust temporary support arrears either directly (satisfying arrears) or indirectly (awarding an equalizing judgment). *Matter of Marriage of Binnell*, 153 Or. App. 204 (1998).

## II. CHILD ATTENDING SCHOOL

### A. Constitutionality.

1. The legislature may provide for support of an adult child of unmarried parents without violating equal protection. *In re Marriage of Crocker*, 332 Or. 42 (2001).

### B. Establishing Paternity.

1. A parent can establish paternity even after age eighteen and seek child support under ORS 107.108. *Norton v. McDonald*, 194 Or. App. 174 (2004).

## III. CONTEMPT

### A. Contempt Defense.

1. The defendant must establish the affirmative defense by a preponderance of evidence. *State ex rel. Mikkelson v. Hill*, 315 Or. 452, 459 n. 6 (1993).

### B. Contempt—Mens Rea.

1. A trial court need not make separate findings regarding “willfulness” and “bad intent” to support a judgment of contempt. *Matter of Marriage of Barrett*, 320 Or. 372, 377 (1994).

2. “These cases demonstrate that this court never intended to make ‘bad intent’ an element separate from the requirement of ‘willfulness.’” *Matter of Marriage of Couey*, 312 Or. 302, 305-06 (1991)
- C. Hearsay Declarations.
1. Although official records may contain hearsay declarations, such declarations are not witness statements that offend a defendant's confrontation right if they are confined to matters that the officer is bound by administrative duty to report and do not include investigative or gratuitous facts or opinions. *State v. Copeland*, 353 Or. 816 (2013).
- D. Mootness.
1. When a defendant challenges a punitive sanction for contempt, the served sanction does not render the appeal moot. *State v. Langford*, 260 Or. App. 61 (2013).
- E. Punitive Contempt.
1. In the context of punitive contempt, all the procedures applicable to a criminal proceeding, except the right to a jury trial, apply. That is true whether confinement is ordered or not. *State v. Langford*, 260 Or. App. 61 (2013).
  2. In the context of punitive contempt, the validity of the underlying order is not dispositive. *State v. Graham*, 251 Or. App. 217 (2012).
- F. Remedial Contempt.
1. Any remedial contempt case must refrain from imposing a determinative sanction. *State v. Gardner*, 287 Or. App. 225 (2017).
  2. Where a defendant could not fully comply with a support order, but had some money that he could, but failed to, apply toward his support obligation, that defendant may be held in contempt. *In re Marriage of Altenhofen and Vanden-Busch*, 271 Or. App. 57 (2015).
  3. A trial court may not impose a punitive sanction in a remedial contempt proceeding. *In re Marriage of Miller*, 204 Or. App. 82 (2006).
- G. Sanctions.
1. A determinate term of probation is a punitive sanction. *In re Marriage of Altenhofen and Vanden-Busch*, 271 Or. App. 57 (2015).
- H. Willful Disobedience.
1. “Willful disobedience” of a court order to pay child support, is established by showing that a party, aware of a court order to pay, neither has complied with nor sought modification of the order. *State ex rel. Mikkelson v. Hill*, 315 Or. 452 (1993).

#### IV. CREDIT FOR ARREARS

- A. Discretion.

1. When a child moves to the non-custodial parent, the court has discretion to forgive arrears from that time forward. *In re Marriage of Crook*, 199 Or. App. 260 (2005).
- B. Retroactive Modification.
  1. Obligor could not retroactively modify the child support order despite the trial court's finding that the child support order did not give the obligor credit for parenting time. It is impermissible to do so under statutory law and the obligor failed to contest the amount in a timely manner. *State ex. rel. Dept. of Justice v. Akins*, 285 Or. App. 217 (2017).

## V. DE NOVO REVIEW

- A. Time Frame for Filing.
  1. The 60-day limitation period to file for a de novo review begins to run from the date the order is entered in the trial court's register. *In re Marriage of Wessels*, 214 Or. App. 545 (2007).

## VI. DEVIATION FROM GUIDELINES

- A. Calculation.
  1. In order to deviate, the trial court must first calculate what the guideline amount should be. *In re Marriage of Thanouser*, 198 Or. App. 472 (2005); *In re Marriage of Cain and Gilbert*, 196 Or. App. 28 (2004).
- B. Credibility.
  1. Credibility of a party is not a basis for a deviation although it may help determine a party's income. *In re Marriage of Cain and Gilbert*, 196 Or. App. 28 (2004).
- C. Departure.
  1. The trial court must adequately explain how it arrives at a support amount that deviates from the guideline amount. *In re Marriage of South*, 222 Or. App. 403 (2008).
  2. There must be a specific finding of reasons for the departure based on the child support formula in the guidelines. *In re Marriage of St. Sauver*, 196 Or. App. 175 (2004).
- D. Findings.
  1. The court must justify the basis for a deviation from the guidelines by making written or specific findings on the record. *In re Marriage of Berry*, 196 Or. App. 296 (2004).
- E. Lack of Enforceable Prior Order.
  1. The lack of a prior enforceable support order is not a basis for deviating from the presumed child support amount. *In re Marriage of Cain and Gilbert*, 196 Or. App. 28 (2004).

- F. Payment to Non-custodial Parent.
  - 1. Awarding child support to a parent who does not have legal custody would be poor public policy. *In re Marriage of Cain and Gilbert*, 196 Or. App. 28 (2004).
- G. Potential Departure.
  - 1. The child support guidelines formula to determine child support award has three basic steps: (1) determine the parents' presumed incomes, (2) use parents' presumed incomes to determine their presumed support obligations, and (3) determine if presumed support obligations are unjust or inappropriate. *In re Marriage of Gilmore and Ambrose*, 258 Or. App. 747, 752 (2013).
- H. Private Schooling.
  - 1. The cost of private school may be a basis for deviating from the guidelines. *In re Marriage of Thanouser*, 198 Or. App. 472 (2005).
- I. Tax Exemption.
  - 1. The award of a tax exemption to a non-custodial parent is a deviation factor. *In re Marriage of Cain and Gilbert*, 196 Or. App. 28 (2005).
- J. Underemployment.
  - 1. Underemployment is not a basis for deviation. Finding a party's proper income is a part of the guidelines. *In re Marriage of Cain and Gilbert*, 196 Or. App. 28 (2004).
- K. Unrealized Income.
  - 1. Income that could potentially be earned from reinvesting assets may be a basis for deviation. *In re Marriage of Thanouser*, 198 Or. App. 472 (2005).
- L. Valuing Deviation.
  - 1. The deviation must be assigned a dollar value and be a part of the support calculation. *In re Marriage of Berry*, 196 Or. App. 296 (2004).

## VII. EXEMPTIONS

- A. Dependency Exemption.
  - 1. A trial court may award a dependent child tax exemption to a noncustodial parent. *In re Marriage of Malpass*, 255 Or. App. 233 (2013).
- B. Dependency Exemption.
  - 1. The custodial parent is presumed to receive tax dependency exemptions. A deviation requires findings in writing after considering tax consequences. *Matter of Marriage of Willey*, 155 Or. App. 352 (1998).

## VIII. HEALTH INSURANCE

- A. Payment of Premiums.



1. An obligor is not responsible for reimbursing the obligee for health insurance premiums which have not been incurred. *In re Marriage of Jensen*, 187 Or. App. 196 (2003).

## IX. INABILITY TO PAY PRESUMPTION

### A. Requirements.

1. ORS 25.245(1)'s [disputable] presumption that a parent receiving cash assistance is unable to pay support must be strictly construed. Cash payments must be under one of four programs: (1) Title IV-A of the Social Security Act, (2) General Assistance Program, (3) Oregon Supplemental Security Income Program, or (4) Supplemental Security Income Program. *Amiotte v. Woods*, 179 Or. App. 179 (2002).

## X. INCOME DETERMINATION

### A. Adoption Assistance.

1. There is a rebuttable presumption that adoption assistance payments are not income for purposes of calculating child support. *In re Marriage of Timm*, 200 Or. App. 621 (2005).

### B. Income from Assets.

1. Averaging income is appropriate when obligor's business and rental income vary from year to year. Obligor did not demonstrate a downward trend in income to invalidate the use of the obligor's average income to calculate his gross income. *In re Marriage of Leif*, 246 Or. App. 511 (2011).

### C. Income from Assets.

1. The court cannot infer income from assets which potentially could be altered to obtain higher yields, but it may deviate. *In re Marriage of Thanouser*, 198 Or. App. 472 (2005).

### D. Income from Inheritance.

1. Inheritance that obligor received was equivalent to a gift that could be considered when calculating his gross income to determine his presumptive child support obligation. *In re Marriage of Leif*, 246 Or. App. 511 (2011).

### E. Income from Military.

1. BAH (Basic Allowance for Housing) & BAS (Basic Allowance for Subsistence) are included in income. *In re Marriage Stokes*, 234 Or. App. 566 (2010).

### F. Income from Retirement Contributions.

1. The obligor's income includes voluntary contributions to the obligor's retirement plan. *In re Marriage of Gillis*, 234 Or. App. 50 (2008).

- G. Income Potential.
  - 1. The court used obligor’s probable full-time earnings based on obligor’s work history and occupational qualifications (potential income) rather than actual income from retirement benefits to determine child support obligation because obligor was unemployed due to her voluntary retirement. *In re Marriage of Gilmore and Ambrose*, 258 Or. App. 747 (2013).
  - 2. The court must calculate the income of a less than full time employee by using potential income of at least fulltime minimum wage. If the party rebuts the full time presumption, the court may use actual income. *Matter of Marriage of Wilson*, 152 Or. App. 454 (1998).
- H. Income Presumption.
  - 1. A parent is presumed to be able to work fulltime; the court must find on the record any rebuttal of that presumption. *In re Marriage of Dotson*, 177 Or. App. 450 (2001).
- I. Overcoming Income Presumption (Medical).
  - 1. Obligor had medical evidence sufficient to verify disability that prevented obligor from performing gainful work. The court was required to use obligor’s actual income as opposed to potential income in determining the obligor’s child support obligation. *In re Marriage of Morgan*, 269 Or. App. 156 (2015).
- J. Spousal Support.
  - 1. Spousal support is income for the obligee. *In re Marriage of Timm*, 200 Or. App. 621 (2005).

## XI. JUDGMENT

- A. Separate from Spousal Support.
  - 1. A child support award in a general judgment must be separately stated from spousal support – combined awards are unacceptable. *In re Marriage of Garza*, 201 Or. App. 318 (2005).

## XII. JURISDICTION

- A. Interstate.
  - 1. Parties may waive jurisdiction for modifiable portions of another state’s order, but waiver does not allow modification of nonmodifiable provisions. *In re Marriage of Daly*, 228 Or. App. 134 (2009).
- B. Trial Court Jurisdiction.
  - 1. Obligor received judgment that marriage was void. Judgment based on stipulation did not draw into question the trial court’s personal or subject-

matter jurisdiction to determine custody although the marriage had been shown to be void. *Larkins v. Larkins*, 275 Or. App. 89 (2015).

### **XIII. MODIFICATION**

- A. Agreement not to Modify.
  - 1. Agreements that purport to deprive a court of authority to modify an award of support may not be enforced. *Matter of Marriage of McDonnal*, 293 Or. 772 (1982); *Matter of Marriage of Watson*, 149 Or. App. 598 (1997).
- B. Automatic Modification.
  - 1. The court may not order an automatic future child support award. *In re Marriage of Shlitter*, 188 Or. App. 277 (2003).
- C. Change of Circumstances.
  - 1. The increase in both parties' incomes may be the requisite change in circumstances. The circumstantial change must be substantial and unanticipated. *In re Marriage of Nieth*, 199 Or. App. 330 (2005); *affirmed and clarified*, 200 Or. App. 582 (2005).
  - 2. Wife's inability to establish a permanent residence coupled with husband's wrongful repo of the vehicle she needed to obtain work were unanticipated and substantial changes in circumstances. *In re Marriage of St. Sauver*, 196 Or. App. 175 (2004).
  - 3. If a substantial improvement in mental health was contemplated in the original hearing setting support, then failure to achieve that improvement may constitute a change of circumstances. *In re Marriage of Vandenberg*, 186 Or. App. 592 (2003).
  - 4. A retirement, even though anticipated, may constitute a change of circumstances if the timing of it was speculative at the time of the prior support hearing. *In re Marriage of Wilson*, 186 Or. App. 515 (2003).
  - 5. The court must utilize the statutory standards to determine if there is a change of circumstance. *In re Marriage of Nibler*, 184 Or. App. 23 (2002).
- D. Filing Deadline.
  - 1. Where a termination date for support obligation occurred on a weekend, time for filing petition to modify support obligation was not extended to next business day. *In re Marriage of Goertel*, 209 Or. App. 585 (2006).

### **XIV. PARENTING TIME**

- A. Change in Parenting Time.
  - 1. A change in parenting time permissibility depends solely upon proof that proposed change from status quo better serves interests of child. *In re Marriage of Cooksey*, 203 Or. App. 157 (2005).

- B. Denial of Parenting Time.
  - 1. Obligor’s denied parenting time warranted a review of his continuing obligation to pay support. A sharply divided appeals court did not terminate support on this fact-bound case. *Matter of Marriage of Kempke*, 151 Or. App. 434 (1997).
- C. Deprivation of Parenting Time.
  - 1. To engage in “wrongful deprivation of parenting time,” one party must deprive the other party of parenting time in pursuit of improper motive or by improper means. *State ex rel Maubach v. Sarangi*, 223 Or App 421, (2008).

## **XV. PARTIES**

- A. Determining Parties.
  - 1. The state may bring an action for support; it is not bound by a judgment declaring non-paternity because it is not in privity with the parties. *State ex rel. Moran v. Rushman*, 177 Or. App. 290 (2001).

## **XVI. PAST SUPPORT – FILIATION**

- A. Laches.
  - 1. Obligor may assert a defense of laches against a past support obligation in a filiation case. Mother waited eighteen years to establish support. The court awarded no money. *Norton v. MacDonald*, 194 Or. App. 174 (2004).

## **XVII. PAYMENTS**

- A. Application of Payments.
  - 1. The obligor may not designate the application of support payments between spousal, child, and arrears after payment has been made; but may designate the application of support payments before, or at the time of, payment. The intent may be deduced from acts and circumstances. *Matter of Marriage of Gayer*, 326 Or. 436 (1998).

## **XVIII. TEMPORARY JUDGMENT**

- A. Temporary Judgment.
  - 1. The court may order *pendente lite* child support under ORS 107.095. Additionally, prospective child support may be awarded if the facts sufficiently support an equitable order. *Matter of Marriage of Moore*, 84 Or. App. 182 (1987).

## **XIX. Uniform Interstate Family Support Act (UIFSA)**

- A. Competing Support Orders.

1. Under UIFSA, when a state obtains continuing, exclusive jurisdiction (CEJ) and the child or a party continues to reside in that state, that state's orders will control all competing state support orders absent a written stipulation of the parties to a modification. *State DCS ex rel. State of AK v. Anderson*, 189 Or. App. 162 (2003).
  2. Under UIFSA, if one tribunal has CEJ, that tribunal's orders control. If more than one tribunal has CEJ status, the tribunal in the child's current home state controls. Issuing an order, not merely registering another tribunal's order, confers CEJ status. *Cohen v. Powers*, 180 Or. App. 409 (2002).
- B. Interest.
1. Interest may be included in a UIFSA arrearage case without notice to the obligor if the obligor had the opportunity to contest the underlying arrearage. *In re Marriage of Calvert*, 191 Or. App. 361 (2004).
- C. Judgment.
1. If a UIFSA money judgment conflicts with a judgment from a CEJ state, the money judgment is without legal effect. The CEJ order controls. *In re Marriage of Calvert*, 191 Or. App. 361 (2004).

## XX. WAGE WITHHOLDING

- A. Multiple Employers.
1. An obligor with multiple employers is subject to wage withholding from each employer. *In re Marriage of Morrow*, 191 Or. App. 354 (2004).

