

# Enrolled House Bill 2190

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CHAPTER .....

## AN ACT

Relating to custody of children; creating new provisions; and amending ORS 107.135, 418.016, 419A.116, 419A.255, 419B.343, 419B.443, 419B.449, 419B.476, 419B.875 and 419B.918.

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

**SECTION 1.** ORS 418.016 is amended to read:

418.016. (1) To protect the health and safety of children who are in the custody of the Department of Human Services and who may be placed in a foster home or adoptive home or with a relative caregiver, the department shall adopt rules pursuant to ORS 181.534 and ORS chapter 418 to require that criminal records checks be conducted under ORS 181.534 on:

- (a) All persons who seek to be foster parents, adoptive parents or relative caregivers; and
- (b) Other individuals over 18 years of age who will be in the household of the foster parent, adoptive parent or relative caregiver.

(2) Rules adopted under subsection (1) of this section shall include:

- (a) A list of crimes for which a conviction disqualifies a person from becoming a foster parent, adoptive parent or relative caregiver;
- (b) A requirement that persons who have been convicted of crimes listed in the rules are disqualified from becoming a foster parent, adoptive parent or relative caregiver; and
- (c) A provision that the department may approve a person who has been convicted of certain crimes listed in the rules if the person demonstrates to the department that:

(A) The person possesses the qualifications to be a foster parent or adoptive parent regardless of having been convicted of a listed crime; or

(B) The disqualification would create emotional harm to the child for whom the person is seeking to become a foster parent, adoptive parent or relative caregiver and placement of the child with the person would be a safe placement that is in the best interests of the child.

*[(3) In accordance with 42 U.S.C. 671(a)(20)(B), the Legislative Assembly elects to make the provisions related to criminal records checks set forth in 42 U.S.C. 671(a)(20)(A) inapplicable to this state.]*

**SECTION 2. The amendments to ORS 418.016 by section 1 of this 2007 Act become operative on October 1, 2008.**

**SECTION 3.** ORS 419A.116 is amended to read:

419A.116. (1) After reviewing each case, the local citizen review board shall make written findings and recommendations with respect to:

- (a) Whether reasonable efforts were made prior to the placement, to prevent or eliminate the need for removal of the child or ward from the home;

(b) If the case plan at the time of the review is to reunify the family, whether the Department of Human Services has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to make it possible for the child or ward to safely return home and whether the parent has made sufficient progress to make it possible for the child or ward to safely return home;

(c) If the case plan at the time of the review is something other than to reunify the family, whether the department has made reasonable efforts to place the child or ward in a timely manner in accordance with the case plan, **including, if appropriate, placement of the child or ward through an interstate placement**, and to complete the steps necessary to finalize the permanent placement of the child or ward;

(d) The continuing need for and appropriateness of the placement;

(e) Compliance with the case plan;

(f) The progress which has been made toward alleviating the need for placement;

(g) A likely date by which the child or ward may be returned home or placed for adoption;

(h) Other problems, solutions or alternatives the board determines should be explored; and

(i) Whether the court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child or ward under ORS 419B.195.

(2) The local citizen review board may, if the case plan has changed during the period since the last review by a local citizen review board or court hearing, make written findings and recommendations with respect to:

(a) Whether the Department of Human Services has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to make it possible for the child or ward to safely return home and whether the parent has made sufficient progress to make it possible for the child or ward to safely return home, if a plan to reunify the family was in effect for any part of the period since the last review or hearing; or

(b) Whether the department has made reasonable efforts to place the child or ward in a timely manner in accordance with the case plan, **including, if appropriate, placement of the child or ward through an interstate placement**, and to complete the steps necessary to finalize the permanent placement of the child or ward, if a case plan other than to reunify the family was in effect for any part of the period since the last review or hearing.

(3) In determining whether the Department of Human Services has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to make it possible for the child or ward to safely return home, the local citizen review board shall consider the child or ward's health and safety the paramount concerns.

(4) No later than 10 days after receiving the findings and recommendations of the local citizen review board, a party adversely affected by the findings and recommendations may request judicial review.

**SECTION 4.** ORS 419A.255 is amended to read:

419A.255. (1) The clerk of the court shall keep a record of each case, including therein the summons and other process, the petition and all other papers in the nature of pleadings, motions, orders of the court and other papers filed with the court, but excluding reports and other material relating to the child, ward, youth or youth offender's history and prognosis. The record of the case shall be withheld from public inspection but is open to inspection by the child, ward, youth, youth offender, parent, guardian, court appointed special advocate, surrogate or a person allowed to intervene in a proceeding involving the child, ward, youth or youth offender, and their attorneys. The attorneys are entitled to copies of the record of the case.

(2) Reports and other material relating to the child, ward, youth or youth offender's history and prognosis are privileged and, except at the request of the child, ward, youth or youth offender, may not be disclosed directly or indirectly to anyone other than the judge of the juvenile court, those acting under the judge's direction, service providers in the case and the attorneys of record for the child, ward, youth or youth offender or the child, ward, youth or youth offender's parent, guardian, court appointed special advocate, surrogate or person allowed to intervene in a proceeding involving the child, ward, youth or youth offender. Reports and other material relating to a youth offender's

history and prognosis in cases under ORS 419C.005 may be disclosed to the superintendent of the school district in which the youth offender resides. The service providers in the case, school superintendents and attorneys are entitled to examine and obtain copies of any reports or other material relating to the child, ward, youth or youth offender's history and prognosis. Any service provider in the case, school superintendent or attorney who examines or obtains copies of such reports or materials is responsible for preserving their confidentiality. A service provider or school superintendent who obtains copies of such reports or materials shall return the copies to the court upon the conclusion of the service provider's or superintendent's involvement in the case.

(3) Except as otherwise provided in subsection (7) of this section, no information appearing in the record of the case or in reports or other material relating to the child, ward, youth or youth offender's history or prognosis may be disclosed to any person not described in subsection (2) of this section without the consent of the court, except for purposes of evaluating the child, ward, youth or youth offender's eligibility for special education as provided in ORS chapter 343, and no such information may be used in evidence in any proceeding to establish criminal or civil liability against the child, ward, youth or youth offender, whether such proceeding occurs after the child, ward, youth or youth offender has reached 18 years of age or otherwise, except for the following purposes:

(a) In connection with a presentence investigation after guilt has been admitted or established in a criminal court.

(b) In connection with a proceeding in another juvenile court concerning the child, ward, youth or youth offender or an appeal from the juvenile court.

(4) If the court finds that the child, ward, youth, youth offender or parent is without financial means to purchase all or a necessary part of the transcript of the evidence or proceedings, the court shall order upon motion the transcript or part thereof to be furnished. The transcript or part thereof furnished under this subsection shall be paid for in the same manner as furnished transcripts are paid for in criminal cases.

(5) Notwithstanding any other provision of law, the following are not confidential and not exempt from disclosure:

(a) The name and date of birth of the youth or youth offender;

(b) The basis for the juvenile court's jurisdiction over the youth or youth offender;

(c) The date, time and place of any juvenile court proceeding in which the youth or youth offender is involved;

(d) The act alleged in the petition that if committed by an adult would constitute a crime if jurisdiction is based on ORS 419C.005;

(e) That portion of the juvenile court order providing for the legal disposition of the youth or youth offender when jurisdiction is based on ORS 419C.005;

(f) The names and addresses of the youth or youth offender's parents or guardians; and

(g) The register described in ORS 7.020 when jurisdiction is based on ORS 419C.005.

(6) Notwithstanding any other provision of law, when a youth has been taken into custody under ORS 419C.080, the following information shall be disclosed unless, and only for so long as, there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim:

(a) The youth's name and age and whether the youth is employed or in school;

(b) The youth offense for which the youth was taken into custody;

(c) The name and age of the adult complaining party and the adult victim, unless the disclosure of such information is otherwise prohibited or restricted;

(d) The identity of the investigating and arresting agency; and

(e) The time and place that the youth was taken into custody and whether there was resistance, pursuit or a weapon used in taking the youth into custody.

(7)(a) Information contained in reports and other materials relating to a child, ward, youth or youth offender's history and prognosis that, in the professional judgment of the juvenile counselor, caseworker, school superintendent, teacher or detention worker to whom the information for the reports or other materials has been provided, indicates a clear and immediate danger to another

person or to society shall be disclosed to the appropriate authority and the person or entity who is in danger from the child, ward, youth or youth offender.

(b) An agency or a person who discloses information under paragraph (a) of this subsection has immunity from any liability, civil or criminal, that might otherwise be incurred or imposed for making the disclosure.

(c) Nothing in this subsection affects the provisions of ORS 146.750, 146.760, 419B.035, 419B.040 and 419B.045. The disclosure of information under this section does not make the information admissible in any court or administrative proceeding if it is not otherwise admissible.

(8) A county juvenile department is the agency responsible for disclosing youth and youth offender records if the records are subject to disclosure.

(9) A petition filed under ORS 419B.851 alleging that a child who is a foreign national is within the jurisdiction of the court, or a motion requesting an implementation plan other than return of a ward to the ward's parent, is subject to disclosure to the consulate for the child or ward's country as provided under ORS 419B.851 (3).

(10) Nothing in this section prohibits a guardian appointed under ORS 419B.365 or 419B.366 from disclosing or providing copies of letters of guardianship when so required to fulfill the duties of a guardian.

**(11) The court shall cooperate in the sharing of information with a court in another state to facilitate an interstate placement of a child or ward.**

**SECTION 5.** ORS 419B.343 is amended to read:

419B.343. (1) To ensure effective planning for wards, the Department of Human Services shall take into consideration recommendations and information provided by the committing court before placement in any facility. The department shall ensure that the case planning in any case:

(a) For the reunification of the family bears a rational relationship to the jurisdictional findings that brought the ward within the court's jurisdiction under ORS 419B.100;

(b) Incorporates the perspective of the ward and the family and, whenever possible, allows the family to assist in designing its own service programs, based on an assessment of the family's needs and the family's solutions and resources for change; and

(c) Is integrated with other agencies in cooperation with the caseworkers.

(2) Except in cases when the plan is something other than to reunify the family, the department shall include in the case plan:

(a) Appropriate services to allow the parent the opportunity to adjust the parent's circumstances, conduct or conditions to make it possible for the ward to safely return home within a reasonable time; and

(b) A concurrent permanent plan to be implemented if the parent is unable or unwilling to adjust the parent's circumstances, conduct or conditions in such a way as to make it possible for the ward to safely return home within a reasonable time.

(3) Any time after a ward attains 14 years of age, if the department determines that it is appropriate, but in no case later than the date the ward attains 16 years of age, the department shall ensure that the case planning in the case addresses the ward's needs and goals for a successful transition to independent living, including needs and goals related to housing, physical and mental health, education, employment, community connections and supportive relationships.

**(4) The case plan for a ward in substitute care must include the health and education records of the ward, including the most recent information available regarding:**

**(a) The names and addresses of the ward's health and education providers;**

**(b) The grade level of the ward's academic performance;**

**(c) The ward's school record;**

**(d) Whether the ward's placement takes into account proximity to the school in which the ward is enrolled at the time of placement;**

**(e) The ward's immunizations;**

**(f) Any known medical problems of the ward;**

**(g) The ward's medications; and**

**(h) Any other relevant health and education information concerning the ward that the department determines is appropriate to include in the records.**

**SECTION 6.** ORS 419B.443 is amended to read:

419B.443. (1) The agency shall file the reports required by ORS 419B.440 (2) and (3) at the end of the initial six-month period and no less frequently than each six months thereafter. The agency shall file reports more frequently if the court so orders. The reports shall include, but not be limited to:

(a) A description of the problems or offenses that necessitated the placement of the child or ward with the agency;

(b) A description of the type and an analysis of the effectiveness of the care, treatment and supervision that the agency has provided for the child or ward, together with a list of all placements made since the child or ward has been in the guardianship or legal custody of an agency and the length of time the child or ward has spent in each placement;

(c) A description of agency efforts to return the child or ward to the parental home or find permanent placement for the child or ward, including, when applicable, efforts to assist the parents in remedying factors which contributed to the removal of the child or ward from the home;

(d) A proposed treatment plan or proposed continuation or modification of an existing treatment plan, including, when applicable, terms of visitation to be allowed and expected of parents and a description of efforts expected of the child or ward and the parents to remedy factors that have prevented the child or ward from safely returning home within a reasonable time; *[and]*

(e) If continued substitute care is recommended, a proposed timetable for the child or ward's return home or other permanent placement or a justification of why extended substitute care is necessary[.]; **and**

**(f) If the child or ward has been placed in foster care outside the state, whether the child or ward has been visited not less frequently than every six months by a state or private agency.**

(2) Notwithstanding the requirements of subsection (1) of this section, reports following the initial report need not contain information contained in prior reports.

**SECTION 7.** ORS 419B.449 is amended to read:

419B.449. (1) Upon receiving any report required by ORS 419B.440 *[and 419B.443]*, the court may hold a hearing to review the child or ward's condition and circumstances and to determine if the court should continue jurisdiction and wardship or order modifications in the care, placement and supervision of the child or ward. The court shall hold a hearing:

(a) In all cases under ORS 419B.440 (3) when the parents' rights have been terminated; or

(b) If requested by the child or ward, the attorney for the child or ward, if any, the parents or the public or private agency having guardianship or legal custody of the child or ward within 30 days of receipt of the notice provided in ORS 419B.452.

(2) The court shall conduct a hearing provided in subsection (1) of this section in the manner provided in ORS 419B.310, except that the court may receive testimony and reports as provided in ORS 419B.325. At the conclusion of the hearing, the court shall enter findings of fact if the decision is to continue the child or ward in substitute care. Such findings shall specifically state:

(a) Why continued care is necessary as opposed to returning the child or ward home or taking prompt action to secure another permanent placement; or

(b) The expected timetable for return or other permanent placement.

(3) In making the findings under subsection (2) of this section, the court shall consider the efforts made to develop the concurrent case plan, including, but not limited to, **identification of appropriate permanent placement options for the child or ward both inside and outside this state and, if adoption is the concurrent case plan**, identification and selection of a suitable adoptive placement for the child or ward *[when adoption is the concurrent case plan]*.

(4) In addition to findings of fact required by subsection (2) of this section, the court may order the Department of Human Services to consider additional information in developing the case plan or concurrent case plan.

(5) Any final decision of the court made pursuant to the hearing provided in subsection (1) of this section is appealable under ORS 419A.200.

**SECTION 8.** ORS 419B.476 is amended to read:

419B.476. (1) A permanency hearing shall be conducted in the manner provided in ORS 418.312, 419B.310, 419B.812 to 419B.839 and 419B.908, except that the court may receive testimony and reports as provided in ORS 419B.325.

(2) At a permanency hearing the court shall:

(a) If the case plan at the time of the hearing is to reunify the family, determine whether the Department of Human Services has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to make it possible for the ward to safely return home and whether the parent has made sufficient progress to make it possible for the ward to safely return home. In making its determination, the court shall consider the ward's health and safety the paramount concerns.

(b) If the case plan at the time of the hearing is something other than to reunify the family, determine whether the department has made reasonable efforts to place the ward in a timely manner in accordance with the plan, **including, if appropriate, reasonable efforts to place the ward through an interstate placement**, and to complete the steps necessary to finalize the permanent placement.

**(c) If the case plan at the time of the hearing is something other than to reunify the family, determine whether the department has considered permanent placement options for the ward, including, if appropriate, whether the department has considered both permanent in-state placement options and permanent interstate placement options for the ward.**

(3)(a) In the circumstances described in paragraph (b) of this subsection, in addition to making the determination required by subsection (2)(a) or (b) of this section, at a permanency hearing the court shall review the comprehensive plan for the ward's transition to independent living and determine and make findings as to:

(A) Whether the plan is adequate to ensure the ward's successful transition to independent living;

(B) Whether the department has offered appropriate services pursuant to the plan; and

(C) Whether the department has involved the ward in the development of the plan.

(b) The requirements of paragraph (a) of this subsection apply when:

(A) The ward is 16 years of age or older; or

(B) The ward is 14 years of age or older and there is a comprehensive plan for the ward's transition to independent living.

(4) At a permanency hearing the court may:

(a) If the case plan changed during the period since the last review by a local citizen review board or court hearing and a plan to reunify the family was in effect for any part of that period, determine whether the department has made reasonable efforts or, if the Indian Child Welfare Act applies, active efforts to make it possible for the ward to safely return home. In making its determination, the court shall consider the ward's health and safety the paramount concerns;

(b) If the case plan changed during the period since the last review by a local citizen review board or court hearing and a plan other than to reunify the family was in effect for any part of that period, determine whether the department has made reasonable efforts to place the ward in a timely manner in accordance with the plan, **including, if appropriate, placement of the ward through an interstate placement**, and to complete the steps necessary to finalize the permanent placement;

(c) If the court determines that further efforts will make it possible for the ward to safely return home within a reasonable time, order that the parents participate in specific services for a specific period of time and make specific progress within that period of time;

(d) Determine the adequacy and compliance with the case plan and the case progress report;

(e) Review the efforts made by the department to develop the concurrent permanent plan, including but not limited to[, **identification of appropriate permanent in-state placement options and appropriate permanent interstate placement options and, if adoption is the concurrent case plan**, identification and selection of a suitable adoptive placement for the ward;

(f) Order the department to develop or expand the case plan or concurrent permanent plan and provide a case progress report to the court and other parties within 10 days after the permanency hearing;

(g) Order the department or agency to modify the care, placement and supervision of the ward;

(h) Order the local citizen review board to review the status of the ward prior to the next court hearing; or

(i) Set another court hearing at a later date.

(5) The court shall enter an order within 20 days after the permanency hearing. In addition to any determinations or orders the court may make under subsection (4) of this section, the order shall include:

(a) The court's determination required under subsections (2) and (3) of this section, including a brief description of the efforts the department has made with regard to the case plan in effect at the time of the permanency hearing;

(b) The court's determination of the permanency plan for the ward that includes whether and, if applicable, when:

(A) The ward will be returned to the parent;

(B) The ward will be placed for adoption, and a petition for termination of parental rights will be filed;

(C) The ward will be referred for establishment of legal guardianship; or

(D) The ward will be placed in another planned permanent living arrangement;

(c) If the court determines that the permanency plan for the ward should be to return home because further efforts will make it possible for the ward to safely return home within a reasonable time, the court's determination of the services in which the parents are required to participate, the progress the parents are required to make and the period of time within which the specified progress must be made;

(d) If the court determines that the permanency plan for the ward should be adoption, the court's determination of whether one of the circumstances in ORS 419B.498 (2) is applicable;

(e) If the court determines that the permanency plan for the ward should be establishment of a legal guardianship or placement with a fit and willing relative, the court's determination of why neither placement with parents nor adoption is appropriate;

(f) If the court determines that the permanency plan for the ward should be a planned permanent living arrangement, the court's determination of a compelling reason, that must be documented by the department, why it would not be in the best interests of the ward to be returned home, placed for adoption, placed with a legal guardian or placed with a fit and willing relative;

(g) If the current placement is not expected to be permanent, the court's projected timetable for return home or for placement in another planned permanent living arrangement. If the timetable set forth by the court is not met, the department shall promptly notify the court and parties; [and]

(h) If an Indian child is involved, the tribal affiliation of the ward[.]; **and**

**(i) If the ward has been placed in an interstate placement, the court's determination of whether the interstate placement continues to be appropriate and in the best interests of the ward.**

(6) If an Indian child is involved, the court shall follow the placement preference established by the Indian Child Welfare Act.

(7) Any final decision of the court made pursuant to the permanency hearing is appealable under ORS 419A.200. On appeal of a final decision of the court under this subsection, the court's finding, if any, under ORS 419B.340 (5) that the department is not required to make reasonable efforts to make it possible for the ward to safely return home is an interlocutory order to which a party may assign error.

**SECTION 9.** ORS 419B.875 is amended to read:

419B.875. (1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500 are:

(A) The child or ward;

- (B) The parents or guardian of the child or ward;
  - (C) A putative father of the child or ward who has demonstrated a direct and significant commitment to the child or ward by assuming, or attempting to assume, responsibilities normally associated with parenthood, including but not limited to:
    - (i) Residing with the child or ward;
    - (ii) Contributing to the financial support of the child or ward; or
    - (iii) Establishing psychological ties with the child or ward;
  - (D) The state;
  - (E) The juvenile department;
  - (F) A court appointed special advocate, if appointed;
  - (G) The Department of Human Services or other child-caring agency if the agency has temporary custody of the child or ward; and
  - (H) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pursuant to the Indian Child Welfare Act.
- (b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS 419B.500.
- (2) The rights of the parties include, but are not limited to:
- (a) The right to notice of the proceeding and copies of the petitions, answers, motions and other papers;
  - (b) The right to appear with counsel and, except for intervenors under subsection (1)(b) of this section, to have counsel appointed as otherwise provided by law;
  - (c) The right to call witnesses, cross-examine witnesses and participate in hearings;
  - (d) The right of appeal; and
  - (e) The right to request a hearing.
- (3) A putative father who satisfies the criteria set out in subsection (1)(a)(C) of this section shall be treated as a parent, as that term is used in this chapter and ORS chapters 419A and 419C, until the court confirms his paternity or finds that he is not the legal father of the child or ward.
- (4) If no appeal from the judgment or order is pending, a putative father whom a court of competent jurisdiction has found not to be the child or ward's legal father or who has filed a petition for filiation that was dismissed is not a party under subsection (1) of this section.
- (5)(a) A person granted rights of limited participation under ORS 419B.116 is not a party to a proceeding under ORS 419B.100 or 419B.500 but has only those rights specified in the order granting rights of limited participation.
- (b) Persons moving for or granted rights of limited participation are not entitled to appointed counsel but may appear with retained counsel.
- (6) If a foster parent, preadoptive parent or relative is currently providing care for a child or ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative notice of a *[hearing]* **proceeding** concerning the child or ward *[and the court shall give the person an opportunity to be heard]*. **A foster parent, preadoptive parent or relative providing care for a child or ward has the right to be heard at the proceeding.** Except when allowed to intervene, the foster parent, preadoptive parent or relative providing care for the child or ward is not considered a party to the juvenile court proceeding solely because of notice and *[an opportunity]* **the right to be heard at the proceeding.**
- (7) When a legal grandparent of a child or ward requests in writing and provides a mailing address, the Department of Human Services shall give the legal grandparent notice of a hearing concerning the child or ward and the court shall give the legal grandparent an opportunity to be heard. Except when allowed to intervene, a legal grandparent is not considered a party to the juvenile court proceeding solely because of notice and an opportunity to be heard.
- (8) Interpreters for parties and persons granted rights of limited participation shall be appointed in the manner specified by ORS 45.275 and 45.285.

**SECTION 10.** ORS 419B.918 is amended to read:



419B.918. (1) Notwithstanding ORS 419B.815, 419B.819 and 419B.820, on timely motion of a person showing good cause, a court may permit the person, instead of appearing personally, to participate in any hearing related to a petition alleging jurisdiction under ORS 419B.100, a petition to establish a permanent guardianship under ORS 419B.365 or a petition seeking termination of parental rights under ORS 419B.500, 419B.502, 419B.504, 419B.506 or 419B.508 in any manner that complies with the requirements of due process including, but not limited to, telephonic or other electronic means.

(2) If a person who is summoned or ordered to appear under ORS 419B.815, 419B.816, 419B.819 or 419B.820 seeks to reschedule any hearing at which the person is required to appear, the person must:

- (a) Appear personally at the time specified in the summons or order to request the change; or
- (b) Include in the person's written motion requesting the change the person's current mailing address, to which the court may send notice of the new date for the hearing if the motion is granted.

**(3) In any proceeding that involves the interstate placement of a child or ward, the court may:**

**(a) Permit a party from outside this state to provide information, testify or otherwise participate in the proceeding in any manner the court designates, provided the party complies with subsection (1) of this section, if applicable;**

**(b) Permit an attorney from outside this state representing any party to participate in the proceeding in any manner the court designates; and**

**(c) Obtain information or testimony in any manner the court designates from a state or private agency located in another state.**

**SECTION 11.** ORS 107.135 is amended to read:

107.135. (1) The court may at any time after a judgment of annulment or dissolution of marriage or of separation is granted, upon the motion of either party and after service of notice on the other party in the manner provided by ORCP 7, and after notice to the Division of Child Support when required under subsection (9) of this section:

(a) Set aside, alter or modify any portion of the judgment that provides for the appointment and duties of trustees, for the custody, parenting time, visitation, support and welfare of the minor children and the children attending school, as defined in ORS 107.108, including any health or life insurance provisions, for the support of a party or for life insurance under ORS 107.820 or 107.830;

(b) Make an order, after service of notice to the other party, providing for the future custody, support and welfare of minor children residing in the state, who, at the time the judgment was given, were not residents of the state, or were unknown to the court or were erroneously omitted from the judgment;

(c) Terminate a duty of support toward any minor child who has become self-supporting, emancipated or married;

(d) After service of notice on the child in the manner provided by law for service of a summons, suspend future support for any child who has ceased to be a child attending school as defined in ORS 107.108; and

(e) Set aside, alter or modify any portion of the judgment that provides for a property award based on the enhanced earning capacity of a party that was awarded before October 23, 1999. A property award may be set aside, altered or modified under this paragraph:

(A) When the person with the enhanced earning capacity makes a good faith career change that results in less income;

(B) When the income of the person with the enhanced earning capacity decreases due to circumstances beyond the person's control; or

(C) Under such other circumstances as the court deems just and proper.

(2) When a party moves to set aside, alter or modify the child support provisions of the judgment:

(a) The party shall state in the motion, to the extent known:

(A) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving children of the marriage, including one brought under ORS 25.287, 107.431, 109.100, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

(B) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.303, involving children of the marriage, other than the judgment the party is moving to set aside, alter or modify.

(b) The party shall include with the motion a certificate regarding any pending support proceeding and any existing support order other than the judgment the party is moving to set aside, alter or modify. The party shall use a certificate that is in a form established by court rule and include information required by court rule and paragraph (a) of this subsection.

(3) In a proceeding under this section to reconsider the spousal or child support provisions of the judgment, the following provisions apply:

(a) A substantial change in economic circumstances of a party, which may include, but is not limited to, a substantial change in the cost of reasonable and necessary expenses to either party, is sufficient for the court to reconsider its order of support, except that an order of compensatory spousal support may only be modified upon a showing of an involuntary, extraordinary and unanticipated change in circumstances that reduces the earning capacity of the paying spouse.

(b) If the judgment provided for a termination or reduction of spousal support at a designated age in anticipation of the commencement of pension, Social Security or other entitlement payments, and if the obligee is unable to obtain the anticipated entitlement payments, that inability is sufficient change in circumstances for the court to reconsider its order of support.

(c) If Social Security is considered in lieu of spousal support or partial spousal support, the court shall determine the amount of Social Security the party is eligible to collect. The court shall take into consideration any pension, retirement or other funds available to either party to effect an equitable distribution between the parties and shall also take into consideration any reduction of entitlement caused by taking early retirement.

(4) In considering under this section whether a change in circumstances exists sufficient for the court to reconsider spousal or child support provisions of a judgment, the following provisions apply:

(a) The court or administrator, as defined in ORS 25.010, shall consider income opportunities and benefits of the respective parties from all sources, including but not limited to:

(A) The reasonable opportunity of each party, the obligor and obligee respectively, to acquire future income and assets.

(B) Retirement benefits available to the obligor and to the obligee.

(C) Other benefits to which the obligor is entitled, such as travel benefits, recreational benefits and medical benefits, contrasted with benefits to which the obligee is similarly entitled.

(D) Social Security benefits paid to a child, or to a representative payee administering the funds for the child's use and benefit, as a result of the obligor's disability or retirement if the benefits:

(i) Were not previously considered in the child support order; or

(ii) Were considered in an action initiated before May 12, 2003.

(E) Apportioned Veterans' benefits or Survivors' and Dependents' Educational Assistance under 38 U.S.C. chapter 35 paid to a child, or to a representative payee administering the funds for the child's use and benefit, as a result of the obligor's disability or retirement if the benefits:

(i) Were not previously considered in the child support order; or

(ii) Were considered in an action initiated before May 12, 2003.

(b) If the motion for modification is one made by the obligor to reduce or terminate support, and if the obligee opposes the motion, the court shall not find a change in circumstances sufficient for reconsideration of support provisions, if the motion is based upon a reduction of the obligor's financial status resulting from the obligor's taking voluntary retirement, partial voluntary retirement or any other voluntary reduction of income or self-imposed curtailment of earning capacity, if it is shown that such action of the obligor was not taken in good faith but was for the primary purpose of avoiding the support obligation. In any subsequent motion for modification, the court shall deny

the motion if the sole basis of the motion for modification is the termination of voluntarily taken retirement benefits and the obligor previously has been found not to have acted in good faith.

(c) The court shall consider the following factors in deciding whether the actions of the obligor were not in "good faith":

(A) Timing of the voluntary retirement or other reduction in financial status to coincide with court action in which the obligee seeks or is granted an increase in spousal support.

(B) Whether all or most of the income producing assets and property were awarded to the obligor, and spousal support in lieu of such property was awarded to the obligee.

(C) Extent of the obligor's dissipation of funds and assets prior to the voluntary retirement or soon after filing for the change of circumstances based on retirement.

(D) If earned income is reduced and absent dissipation of funds or large gifts, whether the obligor has funds and assets from which the spousal support could have been paid.

(E) Whether the obligor has given gifts of substantial value to others, including a current spouse, to the detriment of the obligor's ability to meet the preexisting obligation of spousal support.

(5) Upon terminating a duty of spousal support, a court shall make specific findings of the basis for the termination and shall include the findings in the judgment order.

(6) Any modification of child or spousal support granted because of a change of circumstances may be ordered effective retroactive to the date the motion for modification was served or to any date thereafter.

(7) The 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, either for minor children or for the support of a party, that has accrued before the motion is served. However:

(a) The court may allow a credit against child support arrearages for periods of time, excluding reasonable parenting time unless otherwise provided by order or judgment, during which the obligor, with the knowledge and consent of the obligee or pursuant to court order, has physical custody of the child; and

(b) The court may allow, as provided in the rules of the Child Support Program, a dollar-for-dollar credit against child support arrearages for any lump sum Social Security or Veterans' benefits paid retroactively to the child, or to a representative payee administering the funds for the child's use and benefit, as a result of an obligor's disability or retirement.

(8) In a proceeding under subsection (1) of this section, the court may assess against either party a reasonable attorney fee and costs for the benefit of the other party. If a party is found to have acted in bad faith, the court shall order that party to pay a reasonable attorney fee and costs of the defending party.

(9) Whenever a motion to establish, modify or terminate child support or satisfy or alter support arrearages is filed and the child support rights of one of the parties or of a child of both of the parties have been assigned to the state, a true copy of the motion shall be served by mail or personal delivery on the Administrator of the Division of Child Support of the Department of Justice or on the branch office providing support services to the county in which the motion is filed.

(10)(a) Except as provided in ORS 109.701 to 109.834, the courts of Oregon, having once acquired personal and subject matter jurisdiction in a domestic relations action, retain such jurisdiction regardless of any change of domicile.

(b) The courts of Oregon, in a proceeding to establish, enforce or modify a child support order, shall recognize the provisions of the federal Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B).

(11) In a proceeding under this section to reconsider provisions in a judgment relating to custody or parenting time, the court may consider repeated and unreasonable denial of, or interference with, parenting time to be a substantial change of circumstances.

(12) In a proceeding under this section to reconsider provisions in a judgment relating to parenting time, the court may suspend or terminate a parent's parenting time with a child if the court

finds that the parent has abused a controlled substance and that the parenting time is not in the best interests of the child. If a court has suspended or terminated a parent's parenting time with a child for reasons described in this subsection, the court may not grant the parent future parenting time until the parent has shown that the reasons for the suspension or termination are resolved and that reinstated parenting time is in the best interests of the child. Nothing in this subsection limits the court's authority under subsection (1)(a) of this section.

**(13) In a proceeding under this section to reconsider provisions in a judgment relating to custody, temporary placement of the child by the custodial parent pursuant to ORS 109.056 (3) with the noncustodial parent as a result of military deployment of the custodial parent is not, by itself, a change of circumstances. Any fact relating to the child and the parties occurring subsequent to the last custody judgment, other than the custodial parent's temporary placement of the child pursuant to ORS 109.056 (3) with the noncustodial parent, may be considered by the court when making a change of circumstances determination.**

~~[(13)]~~ (14) Within 30 days after service of notice under subsection (1) of this section, the party served shall file a written response with the court.

~~[(14)(a)]~~ (15)(a) It is the policy of this state:

(A) To encourage the settlement of cases brought under this section; and

(B) For courts to enforce the terms of settlements described in paragraph (b) of this subsection to the fullest extent possible, except when to do so would violate the law or would clearly contravene public policy.

(b) In a proceeding under subsection (1) of this section, the court may enforce the terms set forth in a stipulated order or judgment signed by the parties, an order or judgment resulting from a settlement on the record or an order or judgment incorporating a settlement agreement:

(A) As contract terms using contract remedies;

(B) By imposing any remedy available to enforce an order or judgment, including but not limited to contempt; or

(C) By any combination of the provisions of subparagraphs (A) and (B) of this paragraph.

(c) A party may seek to enforce an agreement and obtain remedies described in paragraph (b) of this subsection by filing a motion, serving notice on the other party in the manner provided by ORCP 7 and, if a remedy under paragraph (b)(B) of this subsection is sought, complying with the statutory requirements for that remedy. All claims for relief arising out of the same acts or omissions must be joined in the same proceeding.

(d) Nothing in paragraph (b) or (c) of this subsection limits a party's ability, in a separate proceeding, to file a motion to modify an order or judgment under subsection (1) of this section or to seek enforcement of an ancillary agreement to the order or judgment.

**SECTION 12. The amendments to ORS 107.135 by section 11 of this 2007 Act apply to motions filed on or after the effective date of this 2007 Act.**

**Passed by House May 7, 2007**

**Repassed by House June 8, 2007**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 6, 2007**

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President of Senate

**Received by Governor:**

.....M,....., 2007

**Approved:**

.....M,....., 2007

.....  
Governor

**Filed in Office of Secretary of State:**

.....M,....., 2007

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Secretary of State