

House Bill 2863

Sponsored by Representative GILMAN; Representative BRUUN (at the request of Kristin Prince)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that, for purposes of modifying child support order, incarceration of obligor does not constitute substantial change of circumstances. Prohibits reducing child support obligation because of incarceration of obligor. Prohibits administrative modification of child support order because of incarceration of obligor.

A BILL FOR AN ACT

1
2 Relating to child support; creating new provisions; and amending ORS 25.275 and 416.425.

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

4 **SECTION 1. For purposes of modifying a child support order, the incarceration of the**
5 **obligor does not constitute a substantial change of circumstances under any provision of law.**

6 **SECTION 2.** ORS 25.275 is amended to read:

7 25.275. (1) The Division of Child Support of the Department of Justice shall establish by rule a
8 formula for determining child support awards in any judicial or administrative proceeding. In es-
9 tablishing the formula, the division shall take into consideration the following criteria:

10 (a) All earnings, income and resources of each parent, including real and personal property;

11 (b) The earnings history and potential of each parent;

12 (c) The reasonable necessities of each parent;

13 (d) The ability of each parent to borrow;

14 (e) The educational, physical and emotional needs of the child for whom the support is sought;

15 (f) The amount of assistance that would be paid to the child under the full standard of need of
16 the state's IV-A plan;

17 (g) Preexisting support orders and current dependents; and

18 (h) Other reasonable criteria that the division may find to be appropriate.

19 (2) The formula described in subsection (1) of this section must also comply with the following
20 standards:

21 (a) The child is entitled to benefit from the income of both parents to the same extent that the
22 child would have benefited had the family unit remained intact or if there had been an intact family
23 unit consisting of both parents and the child.

24 (b) Both parents should share in the costs of supporting the child in the same proportion as each
25 parent's income bears to the combined income of both parents.

26 (3) The formula described in subsection (1) of this section must be designed to ensure, as a
27 minimum, that the child for whom support is sought benefits from the income and resources of the
28 absent parent on an equitable basis in comparison with any other minor children of the absent
29 parent.

30 (4) The child support obligation to be paid by the obligor and determined under the formula

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 described in subsection (1) of this section:

2 (a) May be reduced or increased in consideration of the costs of a health benefit plan incurred
 3 by the obligor or obligee, as provided in ORS 25.321 to 25.343.

4 (b) May be reduced dollar for dollar in consideration of any Social Security or apportioned
 5 Veterans' benefits paid to the child, or to a representative payee administering the funds for the
 6 child's use and benefit, as a result of the obligor's disability or retirement.

7 (c) Shall be reduced dollar for dollar in consideration of any Survivors' and Dependents' Edu-
 8 cational Assistance under 38 U.S.C. chapter 35 paid to the child, or to a representative payee ad-
 9 ministering the funds for the child's use and benefit, as a result of the obligor's disability or
 10 retirement.

11 **(d) May not be reduced because of the incarceration of the obligor. The child support**
 12 **obligation shall be determined under the formula by applying the criteria to the obligor's**
 13 **circumstances that existed before the incarceration and that potentially will exist after the**
 14 **incarceration.**

15 **SECTION 3.** ORS 416.425 is amended to read:

16 416.425. (1) Any time support enforcement services are being provided under ORS 25.080, the
 17 obligor, the obligee, the party holding the support rights or the administrator may move for the
 18 existing order to be modified under this section. The motion shall be in writing in a form prescribed
 19 by the administrator, shall set out the reasons for modification and shall state the telephone number
 20 and address of the party requesting modification.

21 (2) The moving party shall state in the motion, to the extent known:

22 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
 23 ceeding involving the dependent child, including a proceeding brought under ORS 25.287, 107.085,
 24 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.415, 419B.400 or 419C.590 or ORS
 25 chapter 110; and

26 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
 27 ORS 110.303, involving the dependent child, other than the order the party is moving to modify.

28 (3) The moving party shall include with the motion a certificate regarding any pending support
 29 proceeding and any existing support order other than the order the party is moving to modify. The
 30 party shall use a certificate that is in a form prescribed by the administrator and include informa-
 31 tion required by the administrator and subsection (2) of this section.

32 (4) The moving party shall serve the motion upon the obligor, the obligee, the party holding the
 33 support rights and the administrator, as appropriate. The nonrequesting parties must be served in
 34 the same manner as provided for service of the notice and finding of financial responsibility under
 35 ORS 416.415 (1)(a). Notwithstanding ORS 25.085, the requesting party must be served by first class
 36 mail to the requesting party's last known address. The nonrequesting parties have 30 days to resolve
 37 the matter by stipulated agreement or to serve the moving party by regular mail with a written
 38 response setting forth any objections to the motion and a request for hearing. The hearing shall be
 39 conducted under ORS 416.427.

40 (5) When the moving party is other than the administrator and no objections and request for
 41 hearing have been served within 30 days, the moving party may submit a true copy of the motion
 42 to the administrative law judge as provided in ORS 416.427, except the default may not be construed
 43 to be a contested case as defined in ORS chapter 183. Upon proof of service, the administrative law
 44 judge shall issue an order granting the relief sought.

45 (6) When the moving party is the administrator and no objections and request for hearing have

1 been served within 30 days, the administrator may enter an order granting the relief sought.

2 (7) A motion for modification made under this section does not stay the administrator from en-
 3 forcing and collecting upon the existing order unless so ordered by the court in which the order is
 4 entered.

5 (8) An administrative order filed in accordance with ORS 416.440 is a final judgment as to any
 6 installment or payment of money that has accrued up to the time the nonrequesting party is served
 7 with a motion to set aside, alter or modify the judgment. The administrator may not set aside, alter
 8 or modify any portion of the judgment that provides for any payment of money for minor children
 9 that has accrued before the motion is served. However:

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

14 (b) The administrator may allow a credit against child support arrearages for any Social Secu-
 15 rity or veterans' benefits paid retroactively to the child, or to a representative payee administering
 16 the funds for the child's use and benefit, as a result of a parent's disability or retirement.

17 (9) The party requesting modification has the burden of showing a substantial change of cir-
 18 cumstances or that a modification is appropriate under the provisions of ORS 25.287.

19 (10) An administrative order modifying a court order is not effective until the administrative
 20 order is reviewed and approved by the court that entered the court order. The court shall make a
 21 written finding on the record that the administrative order complies with the formula established
 22 by ORS chapter 25. The court may approve the administrative order at any time after the order is
 23 issued. If upon review the court finds that the administrative order should not be approved, the
 24 court shall set the matter for hearing de novo.

25 (11) The obligee is a party to all proceedings under this section.

26 *[(12) An order entered under this section that modifies a support order because of the incarceration*
 27 *of the obligor is effective only during the period of the obligor's incarceration and for 60 days after the*
 28 *obligor's release from incarceration. The previous support order is reinstated by operation of law on*
 29 *the 61st day after the obligor's release from incarceration. An order that modifies a support order be-*
 30 *cause of the obligor's incarceration must contain a notice that the previous order will be reinstated on*
 31 *the 61st day after the obligor's release from incarceration.]*

32 **(12) A support order may not be modified under this section because of the incarceration**
 33 **of the obligor.**

34 **SECTION 4. Section 1 of this 2007 Act and the amendments to ORS 25.275 and 416.425 by**
 35 **sections 2 and 3 of this 2007 Act apply only to support orders established or modified on or**
 36 **after the effective date of this 2007 Act.**