

Enrolled
House Bill 2276

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

CHAPTER

AN ACT

Relating to child support enforcement services; creating new provisions; and amending ORS 25.020, 25.080, 25.160, 25.164 and 25.167.

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

SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 25.

SECTION 2. (1) The administrator may provide support enforcement services as described in ORS 25.080 only if support rights have been assigned to the state or if a person has provided a written application to the administrator that:

- (a) Is signed by the person;**
- (b) Includes the last-known addresses of the obligor and the obligee; and**
- (c) Indicates that the person is applying for child support services.**

(2) Any support judgment that provides for payment to the Department of Justice under ORS 25.020 must have an application incorporated in the judgment.

SECTION 3. ORS 25.020 is amended to read:

25.020. (1) Support payments for or on behalf of any person that are ordered, registered or filed under this chapter or ORS chapter 107, 108, 109, 110, 416, 419B or 419C, unless otherwise authorized by ORS 25.030, shall be made to the Department of Justice as the state disbursement unit:

(a) During periods for which support is assigned under ORS 412.024, 418.032, 419B.406 or 419C.597;

(b) As provided by rules adopted under ORS 180.345, when public assistance is provided to a person who receives or has a right to receive support payments on the person's own behalf or on behalf of another person;

(c) After the assignment of support terminates for as long as amounts assigned remain owing;

(d) For any period during which support enforcement services are provided under ORS 25.080;

(e) When ordered by the court under ORS 419B.400;

(f) When a support order that is entered or modified on or after January 1, 1994, includes a provision requiring the obligor to pay support by income withholding; or

(g) When ordered by the court under any other applicable provision of law.

(2)(a) The Department of Justice shall disburse payments, after lawful deduction of fees and in accordance with applicable statutes and rules, to those persons and entities that are lawfully entitled to receive such payments.

(b) During a period for which support is assigned under ORS 412.024, for an obligee described in subsection (1)(b) of this section, the department shall *[distribute]* **disburse** to the obligee, from child support collected each month, \$50 for each child up to a maximum of \$200 per family.

(3)(a) When the administrator is providing support enforcement services under ORS 25.080, the obligee may enter into an agreement with a collection agency, as defined in ORS 697.005, for assistance in collecting child support payments.

(b) The Department of Justice:

(A) Shall disburse support payments, to which the obligee is legally entitled, to the collection agency if the obligee submits the completed form referred to in paragraph (c)(A) of this subsection to the department;

(B) May reinstate disbursements to the obligee if:

(i) The obligee requests that disbursements be made directly to the obligee;

(ii) The collection agency violates any provision of this subsection; or

(iii) The Department of Consumer and Business Services notifies the Department of Justice that the collection agency is in violation of the rules adopted under ORS 697.086;

(C) Shall credit the obligor's account for the full amount of each support payment received by the department and disbursed to the collection agency; and

(D) Shall develop the form referred to in paragraph (c)(A) of this subsection, which shall include a notice to the obligee printed in type size equal to at least 12-point type that the obligee may be eligible for support enforcement services from the department or the district attorney without paying the interest or fee that is typically charged by a collection agency.

(c) The obligee shall:

(A) Provide to the department, on a form approved by the department, information about the agreement with the collection agency; and

(B) Promptly notify the department when the agreement is terminated.

(d) The collection agency:

(A) May provide investigative and location services to the obligee and disclose relevant information from those services to the administrator for purposes of providing support enforcement services under ORS 25.080;

(B) May not charge interest or a fee for its services exceeding 29 percent of each support payment received unless the collection agency, if allowed by the terms of the agreement between the collection agency and the obligee, hires an attorney to perform legal services on behalf of the obligee;

(C) May not initiate, without written authorization from the administrator, any enforcement action relating to support payments on which support enforcement services are provided by the administrator under ORS 25.080; and

(D) Shall include in the agreement with the obligee a notice printed in type size equal to at least 12-point type that provides information on the fees, penalties, termination and duration of the agreement.

(e) The administrator may use information disclosed by the collection agency to provide support enforcement services under ORS 25.080.

(4) The Department of Justice may immediately transmit to the obligee payments received from any obligor without waiting for payment or clearance of the check or instrument received if the obligor has not previously tendered any payment by a check or instrument that was not paid or was dishonored.

(5) The Department of Justice shall notify each obligor and obligee by mail when support payments shall be made to the department and when the obligation to make payments in this manner shall cease.

(6)(a) The administrator shall provide information about a child support account directly to a party to the support order regardless of whether the party is represented by an attorney. As used in this subsection, "information about a child support account" means the:

(A) Date of issuance of the support order.

(B) Amount of the support order.

(C) Dates and amounts of payments.

(D) Dates and amounts of disbursements.

- (E) Payee of any disbursements.
- (F) Amount of any arrearage.
- (G) Source of any collection, **to the extent allowed by federal law.**

(b) Nothing in this subsection limits the information the administrator may provide by law to a party who is not represented by an attorney.

(7) Any pleading for the entry or modification of a support order must contain a statement that payment of support under a new or modified order will be by income withholding unless an exception to payment by income withholding is granted under ORS 25.396.

(8)(a) Except as provided in paragraphs (d) and (e) of this subsection, a judgment or order establishing paternity or including a provision concerning support must contain:

(A) The residence, mailing or contact address, Social Security number, telephone number and driver license number of each party;

(B) The name, address and telephone number of all employers of each party;

(C) The names and dates of birth of the joint children of the parties; and

(D) Any other information required by rule adopted by the Chief Justice of the Supreme Court under ORS 1.002.

(b) The judgment or order shall also include notice that the obligor and obligee:

(A) Must inform the court and the administrator in writing of any change in the information required by this subsection within 10 days after the change; and

(B) May request that the administrator review the amount of support ordered after three years, or such shorter cycle as determined by rule of the Department of Justice, or at any time upon a substantial change of circumstances.

(c) The administrator may require of the parties any additional information that is necessary for the provision of support enforcement services under ORS 25.080.

(d)(A) Upon a finding, which may be made ex parte, that the health, safety or liberty of a party or child would unreasonably be put at risk by the disclosure of information specified in this subsection or by the disclosure of other information concerning a child or party to a paternity or support proceeding or if an existing order so requires, a court or administrator or administrative law judge, when the proceeding is administrative, shall order that the information not be contained in any document provided to another party or otherwise disclosed to a party other than the state.

(B) The Department of Justice shall adopt rules providing for similar confidentiality for information described in subparagraph (A) of this paragraph that is maintained by an entity providing support enforcement services under ORS 25.080.

(e) The Chief Justice of the Supreme Court may, in consultation with the Department of Justice, adopt rules under ORS 1.002 to designate information specified in this subsection as confidential and require that the information be submitted through an alternate procedure to ensure that the information is exempt from public disclosure under ORS 192.502.

(9)(a) Except as otherwise provided in paragraph (b) of this subsection, in any subsequent child support enforcement action, the court or administrator, upon a showing of diligent effort made to locate the obligor or obligee, may deem due process requirements to be met by mailing notice to the last-known residential, mailing or employer address or contact address as provided in ORS 25.085.

(b) Service of an order directing an obligor to appear in a contempt proceeding is subject to ORS 33.015 to 33.155.

(10) Subject to ORS 25.030, this section, to the extent it imposes any duty or function upon the Department of Justice, shall be deemed to supersede any provisions of ORS chapters 107, 108, 109, 110, 416, 419A, 419B and 419C that would otherwise impose the same duties or functions upon the county clerk or the Department of Human Services.

(11) Except as provided for in subsections (12), (13) and (14) of this section, credit may not be given for payments not made to the Department of Justice as required under subsection (1) of this section.

(12) The Department of Justice shall give credit for payments not made to the department:

(a) When payments are not assigned to this or another state and the obligee and obligor agree in writing that specific payments were made and should be credited;

(b) When payments are assigned to the State of Oregon, the obligor and obligee make sworn written statements that specific payments were made, canceled checks or other substantial evidence is presented to corroborate their statements and the obligee has been given prior written notice of any potential criminal or civil liability that may attach to an admission of the receipt of assigned support;

(c) When payments are assigned to another state and that state verifies that payments not paid to the department were received by the other state; or

(d) As provided by rule adopted under ORS 180.345.

(13) An obligor may apply to the Department of Justice for credit for payments made other than to the Department of Justice. If the obligee or other state does not provide the agreement, sworn statement or verification required by subsection (12) of this section, credit may be given pursuant to order of an administrative law judge assigned from the Office of Administrative Hearings after notice and opportunity to object and be heard are given to both obligor and obligee. Notice shall be served upon the obligee as provided by ORS 25.085. Notice to the obligor may be by regular mail at the address provided in the application for credit. A hearing conducted under this subsection is a contested case hearing and ORS 183.413 to 183.470 apply. Any party may seek a hearing de novo in the circuit court.

(14) Nothing in this section precludes the Department of Justice from giving credit for payments not made to the department when there has been a judicially determined credit or satisfaction or when there has been a satisfaction of support executed by the person to whom support is owed.

(15) The Department of Justice shall adopt rules that:

(a) Direct how support payments that are made through the department are to be applied and *[distributed]* **disbursed**; and

(b) Are consistent with federal regulations.

SECTION 4. ORS 25.080 is amended to read:

25.080. *[(1) This subsection describes the entity primarily responsible for providing support enforcement services described in subsection (4) of this section for any order or judgment that is or could be entered under ORS chapter 107, 108, 109, 110 or 416 or ORS 419B.400 or 419C.590. The entity shall provide the support enforcement services described in subsection (4) of this section on behalf of the State of Oregon and no other party or either parent. The following entity is primarily responsible:]*

(1) The following entity is primarily responsible for providing the support enforcement services described in subsection (4) of this section when an application as described in section 2 of this 2009 Act is made, or when an assignment of support rights is made to the state:

(a) The Division of Child Support of the Department of Justice:

(A) If support rights are, or were within the past five months, assigned to this or another state; or

(B) In any case where arrearage under a support order is assigned or owed to or the right to recover back support or state debt is held by this state or another state.

(b) Except as provided in subsection (6) of this section, the district attorney in cases other than those described in paragraph (a) of this subsection if **an application as described in section 2 of this 2009 Act is made by the obligee, by the obligor, [beneficiary or] by a person having physical custody of a minor child or by a child attending school, as defined in ORS 107.108 [regarding any support order that has been imposed or could be imposed requests support enforcement services].**

(2) The provisions of this section apply to support enforcement services for any order or judgment that is or could be entered under ORS 419B.400 or 419C.590 or ORS chapter 107, 108, 109, 110 or 416. The entity specified in subsection (1) of this section shall provide the support enforcement services on behalf of the State of Oregon and not on behalf of any other party or on behalf of a parent. The Department of Justice shall adopt rules addressing the provision of

support enforcement services when the purposes of the state in providing those services may be contradictory in individual cases.

(3) Notwithstanding the division of responsibility for providing support enforcement services between the Division of Child Support and the district attorney as described in subsection (1) of this section, provision of support enforcement services may not be challenged on the basis that the entity providing the services in a particular case is not the entity responsible for the case under subsection (1) of this section.

(4) When responsible for providing support enforcement services and there is sufficient evidence available to support the action to be taken, the entity described in subsection (1) of this section:

(a) Shall establish and enforce any child support obligation;

(b) Shall establish paternity;

(c) Shall enforce spousal support when the obligee is living with the obligor's child for whom support enforcement services are being provided and those services are funded in part by federal moneys;

(d) May enforce any other order or judgment for spousal support;

(e) Shall, on behalf of the state, initiate and respond to child support modification proceedings based upon a substantial change of circumstances;

(f) Shall, on behalf of the state, initiate and respond to child support modification proceedings based upon a modification conducted under ORS 25.287 concerning existing child support orders;

(g) Shall establish and enforce obligations to provide medical insurance coverage for dependent children;

(h) Shall ensure compliance with the provisions of 42 U.S.C. 651 to 669 and 45 C.F.R. Chapter III as authorized by state law;

(i) Shall carry out the policy of the State of Oregon regarding child support obligations as expressed in ORS 416.405; and

(j) Shall ensure that child support orders are in compliance with the formula established by this chapter.

(5) In any proceeding under subsection (4) of this section, the parties are those described in ORS 416.407.

(6) The district attorney of any county and the department may provide by agreement for assumption by the Division of Child Support of the functions of the district attorney under subsection (1) of this section or for redistribution between the district attorney and the Division of Child Support of all or any portion of the duties, responsibilities and functions set forth in subsections (1) and (4) of this section.

(7) All county governing bodies and all district attorneys shall enter into child support cooperative agreements with the department. The following apply to this subsection:

(a) The agreements shall contain appropriate terms and conditions sufficient for the state to comply with all child support enforcement service requirements under federal law; and

(b) If this state loses any federal funds due to the failure of a county governing body or district attorney to either enter into an agreement under this subsection or to provide sufficient support enforcement service, the county shall be liable to the department for, and the liability shall be limited to, the amount of money the state determines it lost because of the failure. The state shall offset the loss from any moneys the state is holding for or owes the county or from any moneys the state would pay to the county for any purpose.

(8) The Department of Justice shall enter into an agreement with the Oregon District Attorneys Association to establish a position or positions to act as a liaison between the Division of Child Support and those district attorneys who provide support enforcement services under this section. The department shall fund the position or positions. The Oregon District Attorneys Association shall administer the liaison position or positions under the agreement. The liaison shall work to:

(a) Enhance the participation and interaction of the district attorneys in the development and implementation of Child Support Program policies and services; and

(b) Increase the effectiveness of child support enforcement services provided by the district attorneys.

(9) The district attorney or the Division of Child Support, whichever is appropriate, shall provide the services specified in subsections (1) and (4) of this section to any *[person requesting them]* **applicant**, but may in their discretion, upon a determination and notice to the *[person requesting the service]* **applicant** that the prospect of successful recovery from the obligor of a portion of the delinquency or future payments is remote, require payment to the district attorney or the Division of Child Support of an application fee, in accordance with an application fee schedule established by rule by the department. If service performed results in the district attorney or the Division of Child Support recovering any support enforcement fees, the fees shall be paid to the applicant in an amount equal to the amount of the application fee.

(10) An obligee may request the Division of Child Support or a district attorney to cease all collection efforts if it is anticipated that physical or emotional harm will be caused to the parent or caretaker relative or the child for whom support was to have been paid. The department, by rule, shall set out the circumstances under which such requests shall be honored.

SECTION 5. ORS 25.160 is amended to read:

25.160. (1) For the purposes of ORS 25.020, 25.030, 25.070, 25.080, 25.085 and 25.130 to 25.160, *[all]* **a child support** *[cases]* **case** shall be referred *[by the district attorney]* to the Department of Justice for provision of collection, accounting and disbursement services *[when a written]* **if an application** *[for enforcement]* **as described in section 2 of this 2009 Act** is made to the district attorney or **to** the Division of Child Support and the case qualifies for support enforcement services under federal regulations and state law.

(2) The Department of Justice shall continue collection, accounting and disbursement services for *[any]* **a case referred to the department** under subsection (1) of this section until notified by the district attorney or the Division of Child Support that enforcement action has been discontinued.

SECTION 6. ORS 25.164 is amended to read:

25.164. *[(1) If the payment method for support payments set forth in the support judgment does not require payments to be made through the Department of Justice, the obligor, obligee, district attorney or Division of Child Support of the Department of Justice may request to have subsequent payments made through the department. All of the following apply to the request:]*

[(a) The request must be in writing;]

[(b) The request must include the last-known addresses of the obligor and the obligee; and]

[(c) The request must be filed with the department.]

[(2) When a request is made under this section, all of the following apply:]

[(a) The existing method of support accounting shall terminate effective the first day of the month following the month the request was filed;]

[(b) The department shall commence support accounting and distribution when the existing method is terminated; and]

[(c) The request constitutes an application for support enforcement services and for the use of state and federal laws, regulations and rules relating to support payments and enforcement of judgments.]

[(3) If there is no appropriate record of support payments for purposes of this section, the department may establish a record of arrearage under ORS 25.167.]

(1) If the payment method for support payments set forth in the support judgment does not require that payments be made through the Department of Justice, an application may be made to the department for support enforcement services under this chapter and under federal laws and regulations relating to support payments and enforcement of judgments. An application under this section may be made by an obligee, by an obligor, by a person having physical custody of a minor child or by a child attending school, as defined in ORS 107.108.

(2) An application under subsection (1) of this section must be in the form prescribed by section 2 of this 2009 Act.

(3) If an application is made under subsection (1) of this section, the administrator shall give notice to all parties that the application has been made. All support payments under the judgment that are due after the notice is given must be made through the department.

(4) When an application is made under this section, the method of support accounting previously used for the support judgment terminates on the first day of the month following the month the application is made, and the department shall thereafter provide support accounting for the support judgment and disburse amounts paid under the judgment.

(5) If an application is made under this section and a complete record of support payments does not exist, the department may establish a record of arrearage under ORS 25.167.

SECTION 7. ORS 25.167 is amended to read:

25.167. This section establishes procedures for determining the amount of arrearage and for making a record of arrearage of support payments. All of the following apply to this section:

(1) A record of support payment arrearage may be established by:

(a) Court order;

(b) A governing child support judgment issued under ORS 25.091 or 416.448;

(c) Administrative order issued under ORS 416.427 or 416.429;

(d) Stipulation of the parties; or

(e) The procedures under subsection (2) of this section whenever an existing child or spousal support case enters the Department of Justice records system without a current payment record maintained by any court clerk.

(2) When allowed under subsection (1) of this section, arrearage amounts may be established under this subsection. All of the following apply to this subsection:

(a) The obligee or obligor may execute a certificate in a form acceptable to the Department of Justice that states the total amount owed or the payment history in as much detail as is necessary to demonstrate the periods and amounts of any arrearage.

(b) The person making the certificate shall file the original certificate with the court in which the support judgment was entered. When a governing child support judgment has been issued, the person making the certificate shall file the original certificate with the court that issued the governing child support judgment.

(c) The person making the certificate shall serve a true copy of the certificate upon the other party together with a notice that the certificate will be the basis of a permanent record unless the other party files objections.

(d) For objections to be valid under paragraph (c) of this subsection, the other party must file the objection with the court within 14 days from the date of service of the certificate and must mail or serve true copies of the objections on both the party who filed the certificate and either:

(A) The district attorney; or

(B) If support rights are or have been assigned to the State of Oregon at any time within the last five months or if arrears under the support judgment are so assigned, the Division of Child Support of the Department of Justice.

(e) If objections are filed within the time allowed, the party filing the certificate must file a supplemental certificate that is in a form acceptable to the department and that provides any information concerning the payment history that the department determines necessary.

(f) If objections are filed within the time allowed, the district attorney or the Division of Child Support shall cause the case to be set for a court hearing. At the hearing, the court shall consider the correctness of the certificate but may not consider objections to the merits of the support judgment. The parties may settle the case by written agreement anytime before the court hearing. Notice of the court hearing shall be served upon the party filing the objections as authorized in ORCP 9 B.

(g) If no objections are filed under this subsection within the time allowed, the amount of arrearage stated in the certificate is the amount owed for purposes of any subsequent action. The district attorney or the Division of Child Support shall file with the court a certificate stating the arrearage established under this paragraph.

(3) When [a request for accounting and distribution] **an application for support enforcement** services is made under ORS 25.164, an agency or court may not take or allow any ex parte enforcement action on amounts owed as arrearage from before the time that the Department of Justice commences support accounting and [distribution] **disbursement** until the amount is established under this section. This subsection does not prohibit or limit any enforcement action on support payments that become due subsequent to the department's commencement of support accounting and [distribution] **disbursement** under ORS 25.164.

(4) In any determination under this section, a canceled check, payable to the obligee, indorsed by the obligee or deposited to an account of the obligee, drawn on the account of the obligor and marked as child support shall be prima facie evidence that child support was paid to the obligee in the amount shown on the face of the check. It is immaterial that the check was signed by a person other than the obligor, provided that the person who signed the check was an authorized signatory of checks drawn on the account.

Passed by House February 26, 2009

.....
 Chief Clerk of House

.....
 Speaker of House

Passed by Senate May 21, 2009

.....
 President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

.....
 Governor

Filed in Office of Secretary of State:

.....M,....., 2009

.....
 Secretary of State