

Senate Bill 735

Sponsored by Senator HASS

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**.

Deletes provisions that allow court to order support for child 18 years of age or older and under 21 years of age if child is attending school. Voids that part of any existing judgment or order that requires payment of support for child attending school.

A BILL FOR AN ACT

1
2 Relating to child support; creating new provisions; amending ORS 25.080, 25.164, 107.105, 107.135,
3 107.485, 108.045, 108.110, 109.072, 109.124, 109.155, 109.165, 416.400, 416.415, 419B.400 and
4 419C.590; and repealing ORS 107.108.

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

6 **SECTION 1. ORS 107.108 is repealed.**

7 **SECTION 2.** ORS 107.105 is amended to read:

8 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or sepa-
9 ration, the court may provide in the judgment:

10 (a) For the future care and custody, by one party or jointly, of all minor children of the parties
11 born, adopted or conceived during the marriage and for minor children born to the parties prior to
12 the marriage, as the court may deem just and proper under ORS 107.137. The court may hold a
13 hearing to decide the custody issue prior to any other issues. When appropriate, the court shall
14 recognize the value of close contact with both parents and encourage joint parental custody and
15 joint responsibility for the welfare of the children.

16 (b) For parenting time rights of the parent not having custody of such children and for visitation
17 rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been developed
18 as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate
19 the parenting plan into the court's final order. When incorporated into a final order, the parenting
20 plan is determinative of parenting time rights. If the parents have been unable to develop a par-
21 enting plan or if either of the parents requests the court to develop a detailed parenting plan, the
22 court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial
23 parent sufficient access to the child to provide for appropriate quality parenting time and ensuring
24 the safety of the parties, if implicated. The court may deny parenting time to the noncustodial par-
25 ent under this subsection only if the court finds that parenting time would endanger the health or
26 safety of the child. The court shall recognize the value of close contact with both parents and en-
27 courage, when practicable, joint responsibility for the welfare of such children and extensive contact
28 between the minor children of the divided marriage and the parties. If the court awards parenting
29 time to a noncustodial parent who has committed abuse, the court shall make adequate provision for
30 the safety of the child and the other parent in accordance with the provisions of ORS 107.718 (6).

31 (c) For the support of the children of the marriage by the parties. In ordering child support, the

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 formula established under ORS 25.275 shall apply. The court may at any time require an accounting
2 from the custodial parent with reference to the use of the money received as child support. The
3 court is not required to order support for any minor child who has become self-supporting,
4 emancipated or married [*or who has ceased to attend school after becoming 18 years of age*].

5 (d) For spousal support, an amount of money for a period of time as may be just and equitable
6 for one party to contribute to the other, in gross or in installments or both. The court may approve
7 an agreement for the entry of an order for the support of a party. In making the spousal support
8 order, the court shall designate one or more categories of spousal support and shall make findings
9 of the relevant factors in the decision. The court may order:

10 (A) Transitional spousal support as needed for a party to attain education and training neces-
11 sary to allow the party to prepare for reentry into the job market or for advancement therein. The
12 factors to be considered by the court in awarding transitional spousal support include but are not
13 limited to:

- 14 (i) The duration of the marriage;
- 15 (ii) A party's training and employment skills;
- 16 (iii) A party's work experience;
- 17 (iv) The financial needs and resources of each party;
- 18 (v) The tax consequences to each party;
- 19 (vi) A party's custodial and child support responsibilities; and
- 20 (vii) Any other factors the court deems just and equitable.

21 (B) Compensatory spousal support when there has been a significant financial or other contri-
22 bution by one party to the education, training, vocational skills, career or earning capacity of the
23 other party and when an order for compensatory spousal support is otherwise just and equitable in
24 all of the circumstances. The factors to be considered by the court in awarding compensatory
25 spousal support include but are not limited to:

- 26 (i) The amount, duration and nature of the contribution;
- 27 (ii) The duration of the marriage;
- 28 (iii) The relative earning capacity of the parties;
- 29 (iv) The extent to which the marital estate has already benefited from the contribution;
- 30 (v) The tax consequences to each party; and
- 31 (vi) Any other factors the court deems just and equitable.

32 (C) Spousal maintenance as a contribution by one spouse to the support of the other for either
33 a specified or an indefinite period. The factors to be considered by the court in awarding spousal
34 maintenance include but are not limited to:

- 35 (i) The duration of the marriage;
- 36 (ii) The age of the parties;
- 37 (iii) The health of the parties, including their physical, mental and emotional condition;
- 38 (iv) The standard of living established during the marriage;
- 39 (v) The relative income and earning capacity of the parties, recognizing that the wage earner's
40 continuing income may be a basis for support distinct from the income that the supported spouse
41 may receive from the distribution of marital property;
- 42 (vi) A party's training and employment skills;
- 43 (vii) A party's work experience;
- 44 (viii) The financial needs and resources of each party;
- 45 (ix) The tax consequences to each party;

1 (x) A party's custodial and child support responsibilities; and

2 (xi) Any other factors the court deems just and equitable.

3 (e) For the delivery to one party of such party's personal property in the possession or control
4 of the other at the time of the giving of the judgment.

5 (f) For the division or other disposition between the parties of the real or personal property, or
6 both, of either or both of the parties as may be just and proper in all the circumstances. A retire-
7 ment plan or pension or an interest therein shall be considered as property. The court shall consider
8 the contribution of a spouse as a homemaker as a contribution to the acquisition of marital assets.
9 There is a rebuttable presumption that both spouses have contributed equally to the acquisition of
10 property during the marriage, whether such property is jointly or separately held. Subsequent to the
11 filing of a petition for annulment or dissolution of marriage or separation, the rights of the parties
12 in the marital assets shall be considered a species of co-ownership, and a transfer of marital assets
13 under a judgment of annulment or dissolution of marriage or of separation entered on or after Oc-
14 tober 4, 1977, shall be considered a partitioning of jointly owned property. The court shall require
15 full disclosure of all assets by the parties in arriving at a just property division. In arriving at a
16 just and proper division of property, the court shall consider reasonable costs of sale of assets, taxes
17 and any other costs reasonably anticipated by the parties. If a spouse has been awarded spousal
18 support in lieu of a share of property, the court shall so state on the record and shall order the
19 obligor to provide for and maintain life insurance in an amount commensurate with the obligation
20 and designating the obligee as beneficiary for the duration of the obligation. If the obligor dies prior
21 to the termination of such support and such insurance is not in force, the court may modify the
22 method of payment of spousal support under the judgment or order of support from installments to
23 a lump sum payment to the obligee from the estate of the obligor in an amount commensurate with
24 the present value of the spousal support at the time of death. The obligee or attorney of the obligee
25 shall cause a certified copy of the judgment to be delivered to the life insurance company or com-
26 panies. If the obligee or the attorney of the obligee delivers a true copy of the judgment to the life
27 insurance company or companies, identifying the policies involved and requesting such notification
28 under this section, the company or companies shall notify the obligee, as beneficiary of the insur-
29 ance policy, whenever the policyholder takes any action that will change the beneficiary or reduce
30 the benefits of the policy. Either party may request notification by the insurer when premium
31 payments have not been made. If the obligor is ordered to provide for and maintain life insurance,
32 the obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to
33 the obligee written notice of any action that will reduce the benefits or change the designation of
34 the beneficiaries under the policy.

35 (g) For the creation of trusts as follows:

36 (A) For the appointment of one or more trustees to hold, control and manage for the benefit of
37 the children of the parties, of the marriage or otherwise such of the real or personal property of
38 either or both of the parties, as the court may order to be allocated or appropriated to their support
39 and welfare, and to collect, receive, expend, manage or invest any sum of money awarded for the
40 support and welfare of minor children of the parties.

41 (B) For the appointment of one or more trustees to hold, manage and control such amount of
42 money or such real or personal property of either or both of the parties, as may be set aside, allo-
43 cated or appropriated for the support of a party.

44 (C) For the establishment of the terms of the trust and provisions for the disposition or distrib-
45 ution of such money or property to or between the parties, their successors, heirs and assigns after

1 the purpose of the trust has been accomplished. Upon petition of a party or a person having an in-
2 terest in the trust showing a change of circumstances warranting a change in the terms of the trust,
3 the court may make and direct reasonable modifications in its terms.

4 (h) To change the name of either spouse to a name the spouse held before the marriage. The
5 court shall order a change if it is requested by the affected party.

6 (i) For a money award for any sums of money found to be then remaining unpaid upon any order
7 or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS
8 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the
9 limited judgment unless those amounts are included in the money award made by the general judg-
10 ment.

11 (j) For an award of reasonable attorney fees and costs and expenses reasonably incurred in the
12 action in favor of a party or in favor of a party's attorney.

13 (2) In determining the proper amount of support and the proper division of property under sub-
14 section (1)(c), (d) and (f) of this section, the court may consider evidence of the tax consequences
15 on the parties of its proposed judgment.

16 (3) Upon the filing of the judgment, the property division ordered shall be deemed effective for
17 all purposes. This transfer by judgment, which shall affect solely owned property transferred to the
18 other spouse as well as commonly owned property in the same manner as would a declaration of a
19 resulting trust in favor of the spouse to whom the property is awarded, is not a taxable sale or ex-
20 change.

21 (4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of sepa-
22 ration or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to
23 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610,
24 the court rendering the judgment may provide in a supplemental judgment for any relief provided
25 for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only
26 during the pendency of the appeal. A supplemental judgment under this subsection may be enforced
27 as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this sub-
28 section may be appealed in the same manner as provided for supplemental judgments modifying a
29 domestic relations judgment under ORS 19.275.

30 (5) If an appeal is taken from the judgment or other appealable order in a suit for annulment
31 or dissolution of a marriage or for separation and the appellate court awards costs and disburse-
32 ments to a party, the court may also award to that party, as part of the costs, such additional sum
33 of money as it may adjudge reasonable as an attorney fee on the appeal.

34 (6) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the
35 parties to such suit become owners of an undivided interest in any real or personal property, or
36 both, either party may maintain supplemental proceedings by filing a petition in such suit for the
37 partition of such real or personal property, or both, within two years from the entry of the judgment,
38 showing among other things that the original parties to the judgment and their joint or several
39 creditors having a lien upon any such real or personal property, if any there be, constitute the sole
40 and only necessary parties to such supplemental proceedings. The procedure in the supplemental
41 proceedings, so far as applicable, shall be the procedure provided in ORS 105.405 for the partition
42 of real property, and the court granting the judgment shall have in the first instance and retain
43 jurisdiction in equity therefor.

44 **SECTION 3.** ORS 107.135 is amended to read:

45 107.135. (1) The court may at any time after a judgment of annulment or dissolution of marriage

1 or of separation is granted, upon the motion of either party and after service of notice on the other
 2 party in the manner provided by ORCP 7, and after notice to the Division of Child Support when
 3 required under subsection (9) of this section:

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

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

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

14 [*(d) After service of notice on the child in the manner provided by law for service of a summons,*
 15 *suspend future support for any child who has ceased to be a child attending school as defined in ORS*
 16 *107.108; and]*

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

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

22 (B) When the income of the person with the enhanced earning capacity decreases due to cir-
 23 cumstances beyond the person's control; or

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

25 (2) When a party moves to set aside, alter or modify the child support provisions of the judg-
 26 ment:

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

28 (A) Whether there is pending in this state or any other jurisdiction any type of support pro-
 29 ceeding involving children of the marriage, including one brought under ORS 25.287, 107.431,
 30 109.100, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

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

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

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

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

45 (b) If the judgment provided for a termination or reduction of spousal support at a designated

1 age in anticipation of the commencement of pension, Social Security or other entitlement payments,
2 and if the obligee is unable to obtain the anticipated entitlement payments, that inability is suffi-
3 cient change in circumstances for the court to reconsider its order of support.

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

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

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

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

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

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

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

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

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

22 (E) Apportioned Veterans' benefits or Survivors' and Dependents' Educational Assistance under
23 38 U.S.C. chapter 35 paid to a child, or to a representative payee administering the funds for the
24 child's use and benefit, as a result of the obligor's disability or retirement if the benefits:

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

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

27 (b) If the motion for modification is one made by the obligor to reduce or terminate support, and
28 if the obligee opposes the motion, the court shall not find a change in circumstances sufficient for
29 reconsideration of support provisions, if the motion is based upon a reduction of the obligor's fi-
30 nancial status resulting from the obligor's taking voluntary retirement, partial voluntary retirement
31 or any other voluntary reduction of income or self-imposed curtailment of earning capacity, if it is
32 shown that such action of the obligor was not taken in good faith but was for the primary purpose
33 of avoiding the support obligation. In any subsequent motion for modification, the court shall deny
34 the motion if the sole basis of the motion for modification is the termination of voluntarily taken
35 retirement benefits and the obligor previously has been found not to have acted in good faith.

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

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

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

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

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

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

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

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

8 (7) The judgment is final as to any installment or payment of money that has accrued up to the
9 time the nonmoving party, other than the state, is served with a motion to set aside, alter or modify
10 the judgment. The court may not set aside, alter or modify any portion of the judgment that provides
11 for any payment of money, either for minor children or for the support of a party, that has accrued
12 before the motion is served. However:

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

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

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

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

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

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

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

39 (12) In a proceeding under this section to reconsider provisions in a judgment relating to par-
40 enting time, the court may suspend or terminate a parent's parenting time with a child if the court
41 finds that the parent has abused a controlled substance and that the parenting time is not in the
42 best interests of the child. If a court has suspended or terminated a parent's parenting time with
43 a child for reasons described in this subsection, the court may not grant the parent future parenting
44 time until the parent has shown that the reasons for the suspension or termination are resolved and
45 that reinstated parenting time is in the best interests of the child. Nothing in this subsection limits

1 the court's authority under subsection (1)(a) of this section.

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

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

11 (15)(a) It is the policy of this state:

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

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

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

19 (A) As contract terms using contract remedies;

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

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

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

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

31 **SECTION 4.** ORS 107.485 is amended to read:

32 107.485. A marriage may be dissolved by the summary dissolution procedure specified in this
 33 section and ORS 107.490 when all of the following conditions exist at the time the proceeding is
 34 commenced:

35 (1) The jurisdictional requirements of ORS 107.025 and 107.075 are met.

36 (2)(a) There are no minor children born to the parties or adopted by the parties during the
 37 marriage;

38 *[(b) There are no children over age 18 attending school, as described in ORS 107.108, either born
 39 to the parties or adopted by the parties during the marriage;]*

40 *[(c)]* (b) There are no minor children born to or adopted by the parties prior to the marriage;
 41 and

42 *[(d)]* (c) The wife is not now pregnant.

43 (3) The marriage is not more than 10 years in duration.

44 (4) Neither party has any interest in real property wherever situated.

45 (5) There are no unpaid obligations in excess of \$15,000 incurred by either or both of the parties

1 from the date of the marriage.

2 (6) The total aggregate fair market value of personal property assets in which either of the
3 parties has any interest, excluding all encumbrances, is less than \$30,000.

4 (7) The petitioner waives any right to spousal support.

5 (8) The petitioner waives any rights to pendente lite orders except those pursuant to ORS
6 107.700 to 107.735 or 124.005 to 124.040.

7 (9) The petitioner knows of no other pending domestic relations suits involving the marriage in
8 this or any other state.

9 **SECTION 5.** ORS 108.045 is amended to read:

10 108.045. (1) The expenses of the family and the education of minor children, including
11 stepchildren, are chargeable upon the property of both husband and wife, or either of them. How-
12 ever, with regard to stepchildren, the obligation shall cease upon entry of a judgment of dissolution.

13 (2) As used in this section, "stepchild" means a child under the age of 18[*or a child attending*
14 *school as defined in ORS 107.108*] who is in the custody of one biological or adoptive parent who is
15 married to and not legally separated from a person other than the second biological or adoptive
16 parent of such child.

17 (3) Notwithstanding subsection (1) of this section, the legal duty of a parent to provide support
18 for a child, as otherwise required by law, shall not be affected.

19 **SECTION 6.** ORS 108.110 is amended to read:

20 108.110. (1) Any married person may apply to the circuit court of the county in which the mar-
21 ried person resides or in which the spouse may be found for an order upon the spouse to provide
22 for support of the married person or for the support of minor children [*and children attending school,*
23 *or both,*] and, if the married person initiating the action for support is a woman who is pregnant,
24 her unborn child, or both, if her spouse is the natural father of [*such*] **the** children[, *children at-*
25 *tending school*] or unborn child or if her spouse is the adoptive father of [*such*] **the** children [*or*
26 *children attending school*]. The married person initiating the action for support may apply for the
27 order by filing in such county a petition setting forth the facts and circumstances upon which the
28 married person relies for such order. If satisfied that a just cause exists, the court shall direct that
29 the married person's spouse appear at a time set by the court to show cause why an order of support
30 should not be entered in the matter. [*The provisions of ORS 107.108 apply to an order entered under*
31 *this section for the support of a child attending school.*]

32 [(2) As used in this section, "child attending school" has the meaning given that term in ORS
33 107.108.]

34 [(3)] **(2)** The petitioner shall state in the petition, to the extent known:

35 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
36 ceeding involving children of the marriage, including a proceeding brought under ORS 107.085,
37 109.100, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

38 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
39 ORS 110.303, involving children of the marriage.

40 [(4)] **(3)** The petitioner shall include with the petition a certificate regarding any pending sup-
41 port proceeding and any existing support order. The petitioner shall use a certificate that is in a
42 form established by court rule and include information required by court rule and subsection [(3)]
43 **(2)** of this section.

44 [(5)] **(4)** The provisions of this section apply equally to cases where it is the husband making
45 application for a support order.

1 [(6)] (5) In any proceeding under this section, the obligee, as that person is defined in ORS
2 110.303, is a party to the proceeding.

3 **SECTION 7.** ORS 109.072 is amended to read:

4 109.072. (1) As used in this section:

5 (a) "Blood tests" has the meaning given that term in ORS 109.251.

6 (b) "Paternity judgment" means a judgment or administrative order that:

7 (A) Expressly or by inference determines the paternity of a child, or that imposes a child support
8 obligation based on the paternity of a child; and

9 (B) Resulted from a proceeding in which blood tests were not performed and the issue of
10 paternity was not challenged.

11 (c) "Petition" means a petition or motion filed under this section.

12 (d) "Petitioner" means the person filing a petition or motion under this section.

13 (2)(a) The following may file in circuit court a petition to vacate or set aside the paternity de-
14 termination of a paternity judgment, including any child support obligations established in the
15 paternity judgment, and for a judgment of nonpaternity:

16 (A) A party to the paternity judgment.

17 (B) The Department of Human Services if the child is in the care and custody of the Department
18 of Human Services under ORS chapter 419B.

19 (C) The Division of Child Support of the Department of Justice if the child support rights of the
20 child or of one of the parties to the paternity judgment have been assigned to the state.

21 (b) The petitioner may file the petition in the circuit court proceeding in which the paternity
22 judgment was entered, in a related proceeding or in a separate action. The petitioner shall attach
23 a copy of the paternity judgment to the petition.

24 (c) If the ground for the petition is that the paternity determination was obtained by or was the
25 result of mistake, inadvertence, surprise or excusable neglect, the petitioner may not file the petition
26 more than one year after entry of the paternity judgment.

27 (d) If the ground for the petition is that the paternity determination was obtained by or was the
28 result of fraud, misrepresentation or other misconduct of an adverse party, the petitioner may not
29 file the petition more than one year after the petitioner discovers the fraud, misrepresentation or
30 other misconduct.

31 (3) In the petition, the petitioner shall:

32 (a) Designate as parties:

33 (A) All persons who were parties to the paternity judgment;

34 [(B) *The child if the child is a child attending school, as defined in ORS 107.108;*]

35 [(C)] (B) The Department of Human Services if the child is in the care and custody of the De-
36 partment of Human Services under ORS chapter 419B; and

37 [(D)] (C) The Administrator of the Division of Child Support of the Department of Justice if the
38 child support rights of the child or of one of the parties to the paternity judgment have been as-
39 signed to the state.

40 (b) Provide the full name and date of birth of the child whose paternity was determined by the
41 paternity judgment.

42 (c) Allege the facts and circumstances that resulted in the entry of the paternity judgment and
43 explain why the issue of paternity was not contested.

44 (4) After filing a petition under this section, the petitioner shall serve a summons and a true
45 copy of the petition on all parties as provided in ORCP 7.

1 (5) The court, on its own motion or on the motion of a party, may appoint counsel for the child.
2 However, if requested to do so by the child, the court shall appoint counsel for the child. A rea-
3 sonable fee for an attorney so appointed may be charged against one or more of the parties or as
4 a cost in the proceeding, but may not be charged against funds appropriated for public defense ser-
5 vices.

6 (6) The court may order the mother, the child and the man whose paternity of the child was
7 determined by the paternity judgment to submit to blood tests. In deciding whether to order blood
8 tests, the court shall consider the interests of the parties and the child and, if it is just and equitable
9 to do so, may deny a request for blood tests. If the court orders blood tests under this subsection,
10 the court shall order the petitioner to pay the costs of the blood tests.

11 (7) Unless the court finds, giving consideration to the interests of the parties and the child, that
12 to do so would be substantially inequitable, the court shall vacate or set aside the paternity deter-
13 mination of the paternity judgment, including provisions imposing child support obligations, and
14 enter a judgment of nonpaternity if the court finds by a preponderance of the evidence that:

15 (a) The paternity determination was obtained by or was the result of:

16 (A) Mistake, inadvertence, surprise or excusable neglect; or

17 (B) Fraud, misrepresentation or other misconduct of an adverse party;

18 (b) The mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation or other
19 misconduct was discovered by the petitioner after the entry of the paternity judgment; and

20 (c) Blood tests establish that the man is not the biological father of the child.

21 (8) If the court finds that the paternity determination of a paternity judgment was obtained by
22 or was the result of fraud, the court may vacate or set aside the paternity determination regardless
23 of whether the fraud was intrinsic or extrinsic.

24 (9) If the court finds, based on blood test evidence, that the man may be the biological father
25 of the child and that the cumulative paternity index based on the blood test evidence is 99 or
26 greater, the court shall deny the petition.

27 (10) The court may grant the relief authorized by this section upon a party's default, or by
28 consent or stipulation of the parties, without blood test evidence.

29 (11) A judgment entered under this section vacating or setting aside the paternity determination
30 of a paternity judgment and determining nonpaternity:

31 (a) Shall contain the full name and date of birth of the child whose paternity was established
32 or declared by the paternity judgment.

33 (b) Shall vacate and terminate any ongoing and future child support obligations arising from or
34 based on the paternity judgment.

35 (c) May vacate or deem as satisfied, in whole or in part, unpaid child support obligations arising
36 from or based on the paternity judgment.

37 (d) May not order restitution from the state for any sums paid to or collected by the state for
38 the benefit of the child.

39 (12) If the court vacates or sets aside the paternity determination of a paternity judgment under
40 this section and enters a judgment of nonpaternity, the petitioner shall send a court-certified true
41 copy of the judgment entered under this section to the State Registrar of the Center for Health
42 Statistics and to the Department of Justice as the state disbursement unit. Upon receipt of the
43 court-certified true copy of the judgment entered under this section, the state registrar shall correct
44 any records maintained by the state registrar that indicate that the male party to the paternity
45 judgment is the father of the child.

1 (13) The court may award to the prevailing party a judgment for reasonable attorney fees and
 2 costs, including the cost of any blood tests ordered by the court and paid by the prevailing party.

3 (14) A judgment entered under this section vacating or setting aside the paternity determination
 4 of a paternity judgment and determining nonpaternity is not a bar to further proceedings to deter-
 5 mine paternity, as otherwise allowed by law.

6 (15) If a man whose paternity of a child has been determined by a paternity judgment has died,
 7 an action under this section may not be initiated by or on behalf of the estate of the man.

8 (16) This section does not limit the authority of the court to vacate or set aside a judgment
 9 under ORCP 71, to modify a judgment within a reasonable period, to entertain an independent action
 10 to relieve a party from a judgment, to vacate or set aside a judgment for fraud upon the court or
 11 to render a declaratory judgment under ORS chapter 28.

12 (17) This section shall be liberally construed to the end of achieving substantial justice.

13 **SECTION 8.** ORS 109.124 is amended to read:

14 109.124. As used in ORS 109.124 to 109.230, unless the context requires otherwise:

15 [(1) "*Child attending school*" has the meaning given that term in ORS 107.108.]

16 [(2)] (1) "Child born out of wedlock" means a child born to an unmarried woman or to a married
 17 woman by a man other than her husband.

18 [(3)] (2) "Respondent" may include, but is not limited to, one or more persons who may be the
 19 father of a child born out of wedlock, the husband of a woman who has or may have a child born
 20 out of wedlock, the mother of a child born out of wedlock, the woman pregnant with a child who
 21 may be born out of wedlock, or the duly appointed and acting guardian of the child or conservator
 22 of the child's estate.

23 **SECTION 9.** ORS 109.155 is amended to read:

24 109.155. (1) The court, in a private hearing, shall first determine the issue of paternity. If the
 25 respondent admits the paternity, the admission shall be reduced to writing, verified by the respond-
 26 ent and filed with the court. If the paternity is denied, corroborating evidence, in addition to the
 27 testimony of the parent or expectant parent, shall be required.

28 (2) If the court finds, from a preponderance of the evidence, that the petitioner or the respondent
 29 is the father of the child who has been, or who may be born out of wedlock, the court shall then
 30 proceed to a determination of the appropriate relief to be granted. The court may approve any
 31 settlement agreement reached between the parties and incorporate the agreement into any judgment
 32 rendered, and the court may order such investigation or the production of such evidence as the
 33 court deems appropriate to establish a proper basis for relief.

34 (3) The court, in its discretion, may postpone the hearing from time to time to facilitate any
 35 investigation or the production of such evidence as it deems appropriate.

36 (4) The court may order either parent to pay such sum as the court deems appropriate for the
 37 past and future support and maintenance of the child during the child's minority [*and while the child*
 38 *is attending school, as defined in ORS 107.108,*] and the reasonable and necessary expenses incurred
 39 or to be incurred in connection with prenatal care, expenses attendant with the birth and postnatal
 40 care. The court may grant the prevailing party reasonable costs of suit, which may include expert
 41 witness fees, and reasonable attorney fees at trial and on appeal. [*The provisions of ORS 107.108*
 42 *apply to an order entered under this section for the support of a child attending school.*]

43 (5) An affidavit certifying the authenticity of documents substantiating expenses set forth in
 44 subsection (4) of this section is prima facie evidence to establish the authenticity of the documents.

45 (6)(a) It is the policy of this state:

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

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

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

8 (A) As contract terms using contract remedies;

9 (B) By imposing any remedy available to enforce a judgment, including but not limited to con-
 10 tempt; or

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

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

17 (d) Nothing in paragraph (b) or (c) of this subsection limits a party's ability, in a separate pro-
 18 ceeding, to file a motion to set aside, alter or modify a judgment under ORS 109.165 or to seek
 19 enforcement of an ancillary agreement to the judgment.

20 (7) If a man's paternity of a child has been established under ORS 109.070 and the paternity has
 21 not been disestablished before proceedings are initiated under ORS 109.125, the court may not ren-
 22 der a judgment under ORS 109.124 to 109.230 establishing another man's paternity of the child unless
 23 the judgment also disestablishes the paternity established under ORS 109.070.

24 **SECTION 10.** ORS 109.165 is amended to read:

25 109.165. (1) Upon motion of either party, the court may set aside, alter or modify any portion
 26 of the judgment that provides for the support of the minor child [*or child attending school, as defined*
 27 *in ORS 107.108*]. As to any installment or payment of money that has accrued up to the time the
 28 nonmoving party, other than the state, is served with a motion to set aside, alter or modify the
 29 judgment, the judgment is final and the court may not change it. However, the court may allow a
 30 credit against child support arrearages for periods of time, excluding reasonable parenting time un-
 31 less otherwise provided by order or judgment, during which the obligor, with the knowledge and
 32 consent of the obligee or pursuant to court order, has physical custody of the child. [*A child at-*
 33 *tending school is a party for purposes of this section.*]

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

35 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
 36 ceeding involving the child, including a proceeding brought under ORS 25.287, 109.100, 125.025,
 37 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110; and

38 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
 39 ORS 110.303, involving the child, other than the judgment the party is moving to set aside, alter or
 40 modify.

41 (3) The moving party shall include with the motion a certificate regarding any pending support
 42 proceeding and any existing support order other than the judgment the party is moving to set aside,
 43 alter or modify. The party shall use a certificate that is in a form established by court rule and in-
 44 clude information required by court rule and subsection (2) of this section.

45 (4)(a) It is the policy of this state:

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

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

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

8 (A) As contract terms using contract remedies;

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

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

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

17 (d) Nothing in paragraph (b) or (c) of this subsection limits a party’s ability, in a separate pro-
 18 ceeding, to file a motion to modify an order or judgment under subsection (1) of this section or to
 19 seek enforcement of an ancillary agreement to the order or judgment.

20 **SECTION 11.** ORS 416.400 is amended to read:

21 416.400. As used in ORS 416.400 to 416.465, unless the context requires otherwise:

22 (1) “Administrator” has the meaning given that term in ORS 25.010.

23 (2) “Court” means any circuit court of this state and any court in another state having juris-
 24 diction to determine the liability of persons for the support of another person.

25 (3) “Court order” means any judgment or order of any Oregon court that orders payment of a
 26 set or determinable amount of support money by the subject parent and does not include an order
 27 or judgment in any proceeding in which the court did not order support.

28 (4) “Department” means the Department of Justice of this state or its equivalent in any other
 29 state from which a written request for establishment or enforcement of a support obligation is re-
 30 ceived under ORS 416.415.

31 (5) “Dependent child” means any person under the age of 18 who is not otherwise emancipated,
 32 self-supporting, married or a member of the Armed Forces of the United States. [*“Dependent child”*
 33 *also means a child attending school as defined in ORS 107.108.*]

34 (6) “Office” means the office of the Division of Child Support or the office of the district attor-
 35 ney.

36 (7) “Parent” means the natural or adoptive father or mother of a dependent child or youth
 37 offender. “Parent” also means stepparent when the person has an obligation to support a dependent
 38 child under ORS 108.045.

39 (8) “Past support” means the amount of child support that could have been ordered and accu-
 40 mulated as arrears against a parent for the benefit of a child for any period of time during which
 41 the child was not supported by the parent and for which period no support order was in effect.

42 (9) “Public assistance” means any money payments made by the state that are paid to or for the
 43 benefit of any dependent child or youth offender, including but not limited to payments made so that
 44 food, shelter, medical care, clothing, transportation or other necessary goods, services or items may
 45 be provided, and payments made in compensation for the provision of the necessities. “Public as-

1 sistance” does not include money payments made by the state to or for the benefit of a dependent
2 child as the result of the child’s removal from the parent’s home against the wishes of the parent,
3 if the Department of Human Services determines after completion of a child protective services as-
4 sessment that the report of abuse is unfounded according to rules adopted by the Department of
5 Human Services.

6 (10) “Youth offender” has the meaning given that term in ORS 419A.004.

7 **SECTION 12.** ORS 416.415 is amended to read:

8 416.415. (1)(a) At any time after the state is assigned support rights, a public assistance payment
9 is made, an application for enforcement services under ORS 25.080 is made by an individual who is
10 not a recipient of public assistance or a written request for enforcement of a support obligation is
11 received from the state agency of another state responsible for administering the federal child sup-
12 port enforcement program, the administrator may, if there is no court order or administrative sup-
13 port order, issue a notice and finding of financial responsibility. The notice shall be served upon the
14 parent in the manner prescribed for service of summons in a civil action, or by certified mail, return
15 receipt requested. Notices that involve the establishment of paternity must be served by personal
16 service. All notices may be personally served by the administrator on the premises of the offices of
17 the administrator.

18 (b) The administrator shall serve the notice and finding issued under this section upon the
19 obligee. Service shall be by regular mail.

20 (2) The administrator shall include in the notice:

21 (a) A statement of the name of the caretaker relative or agency and the name of the dependent
22 child for whom support is to be paid;

23 (b) A statement of the monthly support for which the parent shall be responsible;

24 (c) A statement of the past support for which the parent shall be responsible;

25 (d) A statement that the parent may be required to provide health care coverage for the de-
26 pendent child whenever the coverage is available to the parent at a reasonable cost;

27 (e) To the extent known, a statement of:

28 (A) Whether there is pending in this state or any other jurisdiction any type of support pro-
29 ceeding involving the dependent child, including a proceeding brought under ORS 25.287, 107.085,
30 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.425, 419B.400 or 419C.590 or ORS
31 chapter 110; and

32 (B) Whether there exists in this state or any other jurisdiction a support order, as defined in
33 ORS 110.303, involving the dependent child;

34 (f) A statement that if the parent or the obligee desires to discuss the amount of support or
35 health care coverage that the parent is required to pay or provide, the parent or the obligee may
36 contact the office that sent the notice and request a negotiation conference. If no agreement is
37 reached on the monthly support to be paid, the administrator may issue a new notice and finding
38 of financial responsibility, which may be sent to the parent and to the obligee by regular mail ad-
39 dressed to the parent’s and to the obligee’s last-known address, or if applicable, the parent’s or the
40 obligee’s attorney’s last-known address;

41 (g) A statement that if the parent or the obligee objects to all or any part of the notice and
42 finding of financial responsibility, then the parent or the obligee must send to the office issuing the
43 notice, within 20 days of the date of service, a written response that sets forth any objections and
44 requests a hearing. In those cases where the administrator is seeking to establish paternity, then
45 the alleged parent and the obligee will have 30 days to respond instead of 20 days;

1 (h) A statement that if such a timely response is received by the appropriate office, either the
2 parent or the obligee or both shall have the right to a hearing; and that if no timely written re-
3 sponse is received, the administrator may enter an order in accordance with the notice and finding
4 of financial responsibility;

5 (i) A statement that as soon as the order is entered, the property of the parent is subject to
6 collection action, including but not limited to wage withholding, garnishment and liens and exe-
7 cution thereon;

8 (j) A reference to ORS 416.400 to 416.465;

9 (k) A statement that both the parent and the obligee are responsible for notifying the office of
10 any change of address or employment;

11 (L) A statement that if the parent has any questions, the parent should telephone or visit the
12 appropriate office or consult an attorney; and

13 (m) Such other information as the administrator finds appropriate.

14 (3) If the paternity of the dependent child has not been legally established, the notice and finding
15 of financial responsibility shall also include:

16 (a) An allegation that the person is the parent of the dependent child;

17 (b) The name of the child's other parent;

18 (c) The child's date of birth;

19 (d) The probable time or period of time during which conception took place; and

20 (e) A statement that if the alleged parent or the obligee does not timely send to the office is-
21 suing the notice a written response that denies paternity and requests a hearing, then the adminis-
22 trator, without further notice to the alleged parent, or to the obligee, may enter an order that
23 declares and establishes the alleged parent as the legal parent of the child.

24 (4) The statement of monthly future support required under subsection (2)(b) and the statement
25 of past support required under subsection (2)(c) of this section are to be computed as follows:

26 (a) If there is sufficient information available concerning the parent's financial and living situ-
27 ation, the formula provided for in ORS 25.275 and 25.280 shall be used; or

28 (b) If there is insufficient information available to use the formula, an allegation of ability to
29 pay shall be the basis of the statement.

30 (5) The parent or alleged parent and the obligee shall have time to request a hearing as outlined
31 in subsection (2)(g) of this section. The time limits may be extended by the administrator and are
32 nonjurisdictional.

33 (6) If a timely written response setting forth objections and requesting a hearing is received by
34 the appropriate office, a hearing shall be held under ORS 416.427.

35 (7) If no timely written response and request for hearing is received by the appropriate office,
36 the administrator may enter an order in accordance with the notice, and shall include in that order:

37 (a) If the paternity of the dependent child is established by the order, a declaration of that fact;

38 (b) The amount of monthly support to be paid, with directions on the manner of payment;

39 (c) The amount of past support to be ordered against the parent;

40 (d) Whether health care coverage is to be provided for the dependent child;

41 (e) The name of the caretaker relative or agency and the name and birthdate of the dependent
42 child for whom support is to be paid; and

43 (f) A statement that the property of the parent is subject to collection action, including but not
44 limited to wage withholding, garnishment and liens and execution thereon.

45 (8) The parent and the obligee shall be sent a copy of the order by regular mail addressed to

1 the last-known address of each of the parties or if applicable, to the last-known address of an at-
 2 torney of record for a party. The order is final, and action by the administrator to enforce and col-
 3 lect upon the order, including arrearages, may be taken from the date of issuance of the order.

4 [(9) *The provisions of ORS 107.108 apply to an order entered under this section for the support*
 5 *of a child attending school.*]

6 **SECTION 13.** ORS 419B.400 is amended to read:

7 419B.400. (1) The court may, after a hearing on the matter, require the parents or other person
 8 legally obligated to support a child alleged to be within the jurisdiction of the court under ORS
 9 419B.100 or a ward to pay toward the child or ward's support such amounts at such intervals as the
 10 court may direct[, *even though the child or ward is over 18 years of age as long as the child or ward*
 11 *is a child attending school, as defined in ORS 107.108*].

12 (2) At least 21 days before the hearing, the court shall notify the Administrator of the Division
 13 of Child Support of the Department of Justice, or the branch office providing support services to the
 14 county where the hearing will be held, of the hearing. Before the hearing the administrator shall
 15 inform the court, to the extent known:

16 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
 17 ceeding involving the child or ward, including a proceeding brought under ORS 25.287, 107.085,
 18 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.400 to 416.465 or 419C.590 or ORS
 19 chapter 110; and

20 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
 21 ORS 110.303, involving the child or ward.

22 (3) The Judicial Department and the Department of Justice may enter into an agreement re-
 23 garding how the courts give the notice required under subsection (2) of this section to the Depart-
 24 ment of Justice and how the Department of Justice gives the information described in subsection
 25 (2)(a) and (b) to the courts.

26 (4) The court, in determining the amount to be paid, shall use the scale and formula provided
 27 for in ORS 25.275 and 25.280. Unless otherwise ordered, the amounts so required to be paid shall
 28 be paid to the Department of Justice or the county clerk, whichever is appropriate, for transmission
 29 to the person, institution or agency having legal custody of the child or ward.

30 **SECTION 14.** ORS 419C.590 is amended to read:

31 419C.590. (1) The court may, after a hearing on the matter, require the parents or other person
 32 legally obligated to support a youth offender to pay toward the youth offender's support such
 33 amounts at such intervals as the court may direct, while the youth offender is within the jurisdiction
 34 of the court [*even though the youth offender is over 18 years of age as long as the youth offender is*
 35 *a child attending school, as defined in ORS 107.108*].

36 (2) At least 21 days before the hearing, the court shall notify the Administrator of the Division
 37 of Child Support of the Department of Justice, or the branch office providing support services to the
 38 county where the hearing will be held, of the hearing. Before the hearing the administrator shall
 39 inform the court, to the extent known:

40 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
 41 ceeding involving the youth offender, including a proceeding brought under ORS 25.287, 107.085,
 42 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 416.400 to 416.465 or 419B.400 or ORS
 43 chapter 110; and

44 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in
 45 ORS 110.303, involving the youth offender.

1 (3) The Judicial Department and the Department of Justice may enter into an agreement re-
 2 garding how the courts give the notice required under subsection (2) of this section to the Depart-
 3 ment of Justice and how the Department of Justice gives the information described in subsection
 4 (2)(a) and (b) to the courts.

5 (4) The court, in determining the amount to be paid, shall use the scale and formula provided
 6 for in ORS 25.275 and 25.280. Unless otherwise ordered, the amounts so required to be paid shall
 7 be paid to the Department of Justice or the county clerk, whichever is appropriate, for transmission
 8 to the person, institution or agency having legal custody of the youth offender.

9 **SECTION 15.** ORS 25.080 is amended to read:

10 25.080. (1) The following entity is primarily responsible for providing the support enforcement
 11 services described in subsection (4) of this section when an application as described in ORS 25.084
 12 is made, or when an assignment of support rights is made to the state:

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

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

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

18 (b) Except as provided in subsection (6) of this section, the district attorney in cases other than
 19 those described in paragraph (a) of this subsection if an application as described in ORS 25.084 is
 20 made by the obligee, by the obligor, by a person having physical custody of a minor child [*or by a*
 21 *child attending school, as defined in ORS 107.108*].

22 (2) The provisions of this section apply to support enforcement services for any order or judg-
 23 ment that is or could be entered under ORS 419B.400 or 419C.590 or ORS chapter 107, 108, 109, 110
 24 or 416. The entity specified in subsection (1) of this section shall provide the support enforcement
 25 services on behalf of the State of Oregon and not on behalf of any other party or on behalf of a
 26 parent. The Department of Justice shall adopt rules addressing the provision of support enforcement
 27 services when the purposes of the state in providing those services may be contradictory in indi-
 28 vidual cases.

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

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

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

37 (b) Shall establish paternity;

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

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

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

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

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

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

5 (i) Shall carry out the policy of the State of Oregon regarding child support obligations as ex-
6 pressed in ORS 416.405; and

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

9 (5) In any proceeding under subsection (4) of this section, the parties are those described in ORS
10 416.407.

11 (6) The district attorney of any county and the department may provide by agreement for as-
12 sumption by the Division of Child Support of the functions of the district attorney under subsection
13 (1) of this section or for redistribution between the district attorney and the Division of Child Sup-
14 port of all or any portion of the duties, responsibilities and functions set forth in subsections (1) and
15 (4) of this section.

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

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

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

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

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

33 (b) Increase the effectiveness of child support enforcement services provided by the district at-
34 torneys.

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

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

1 shall set out the circumstances under which such requests shall be honored.

2 **SECTION 16.** ORS 25.164 is amended to read:

3 25.164. (1) If the payment method for support payments set forth in the support judgment does
 4 not require that payments be made through the Department of Justice, an application may be made
 5 to the department for support enforcement services under this chapter and under federal laws and
 6 regulations relating to support payments and enforcement of judgments. An application under this
 7 section may be made by an obligee, by an obligor[,] **or** by a person having physical custody of a
 8 minor child [*or by a child attending school, as defined in ORS 107.108*].

9 (2) An application under subsection (1) of this section must be in the form prescribed by ORS
 10 25.084.

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

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

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

20 **SECTION 17. (1) That portion of a judgment or order entered before the effective date**
 21 **of this 2011 Act that requires the payment of support for a child attending school, as defined**
 22 **in ORS 107.108 as in effect immediately before the effective date of this 2011 Act, is void and**
 23 **unenforceable.**

24 **(2) Subsection (1) of this section does not affect a payment of support for a child at-**
 25 **tending school that became due before the effective date of this 2011 Act.**