

# D R A F T

## SUMMARY

Expands definition of “deployment” or “deployed” to include “mobilization” of member of Armed Forces, National Guard or reserve component in specific laws affecting certain family law judgments.

Permits court to enter temporary order allowing or requiring reasonable visitation between child of deployed parent and stepparent, grandparent or other family member related to child.

## A BILL FOR AN ACT

Relating to family law proceedings involving deployed parents in military service; amending ORS 107.145 and 107.146.

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

**SECTION 1.** ORS 107.145 is amended to read:

107.145. (1) **The Legislative Assembly finds and declares that:**

(a) **Establishing a fair, efficient and expeditious process to resolve child custody and visitation issues when a parent is deployed with the Armed Forces of the United States, National Guard or other reserve component is in the best interests of the child of such a deployed parent; and**

(b) **Courts should, to the extent feasible within existing resources and court practices, prioritize the scheduling for hearing of family law matters involving a deployed parent or a parent whose deployment is imminent, avoid unnecessary delays or continuances and ensure that deployed parents are not denied access to their children because of their deployment.**

[(1)] (2) As used in this section and ORS 107.146:

1 (a) “Deployed parent” means a parent of a minor child whose parental  
2 rights have not been terminated who is deployed with the Armed Forces of  
3 the United States, National Guard or other reserve component.

4 (b) “Deployment” or “deployed”:

5 (A) Means military service in compliance with written orders received by  
6 an active duty or reserve member of the Armed Forces of the United States,  
7 National Guard or other reserve component to report for combat operations,  
8 contingency operations, peacekeeping operations, temporary duty,  
9 **mobilization**, a remote tour of duty or other active military service;

10 (B) Includes the period of time from which the deployed parent receives  
11 and is subject to written orders to deploy to the actual date of deployment;  
12 and

13 (C) Includes any period of time in which the deployed parent is awaiting  
14 travel to or from a deployment destination or remains deployed because of  
15 sickness, wounds, leave or other lawful cause.

16 (c) **“Mobilization” means the transfer of a member of the Armed**  
17 **Forces of the United States, National Guard or other reserve compo-**  
18 **nent to extended active duty status but does not include training in**  
19 **the Armed Forces of the United States, National Guard or other re-**  
20 **serve component.**

21 (d) **“Temporary duty” means the transfer of an active duty or re-**  
22 **serve member of the Armed forces of the United States, National**  
23 **Guard or other reserve component from one military base to a differ-**  
24 **ent location, including but not limited to another military base, for a**  
25 **limited period of time for training or to assist in the performance of**  
26 **a noncombat mission.**

27 [(2)] (3) Notwithstanding ORS 107.135 and except as provided in sub-  
28 section [(3)] (4) of this section, a court may not set aside, alter or modify  
29 any portion of a judgment of annulment, separation or dissolution of mar-  
30 riage that provides for the custody, parenting time, visitation, support and  
31 welfare of a minor child of a deployed parent until 90 days after the com-

1 pletion of the deployed parent's deployment unless a motion to set aside, al-  
2 ter or modify was filed with, heard by and decided by the court before the  
3 commencement of the deployed parent's deployment.

4 [(3)(a)] (4)(a) Notwithstanding ORS 107.138 and 107.139, a court may enter  
5 a temporary order modifying the terms of a preexisting judgment of  
6 annulment, separation or dissolution of marriage that provides for the cus-  
7 tody, parenting time, visitation, support and welfare of a minor child of a  
8 deployed parent to reasonably accommodate the circumstances of the de-  
9 ployed parent's deployment in the best interests of the child, upon motion  
10 filed by either party and after service of notice on the other party in the  
11 manner provided by ORCP 7, and after notice to the Administrator of the  
12 Division of Child Support of the Department of Justice or the branch office  
13 providing support services when required by subsection [(4)] (6) of this sec-  
14 tion. The nondeployed parent bears the burden of proof that the provisions  
15 of a temporary order made under this subsection are not in the best interests  
16 of the child.

17 (b) A temporary order entered under this subsection must include the  
18 following provisions:

19 (A) Parenting time for the deployed parent during periods of approved  
20 leave in the best interests of the child;

21 (B) Parenting time for the deployed parent during periods of deployment  
22 in the best interests of the child including but not limited to contact by  
23 telephone, electronic mail and other electronic means such as video and  
24 visual imaging;

25 (C) Modification of the child support provisions of the preexisting judg-  
26 ment to reflect the changed circumstances of the parents and the child dur-  
27 ing the period of deployment;

28 (D) A requirement that the nondeployed parent provide the court and the  
29 deployed parent with written notice 30 days prior to a change of address or  
30 telephone number during the period of deployment;

31 (E) That the temporary order entered under this subsection **is made**

1 **without prejudice and** terminates by operation of law upon completion of  
2 deployment and that the provisions of the preexisting judgment that have  
3 been modified by the temporary order are automatically reinstated unless a  
4 request is made and granted under subsection [(5)] (7) of this section;

5 (F) That all other provisions of the preexisting judgment not modified by  
6 the temporary order remain in effect; and

7 (G) That deployment is considered completed for purposes of reinstating  
8 the provisions of the preexisting judgment that have been modified by the  
9 temporary order 10 days after the date on which the deployed parent serves  
10 the nondeployed parent and provides to the court and to the Administrator  
11 of the Division of Child Support of the Department of Justice or the branch  
12 office providing support services to the county in which the motion is filed  
13 copies of written orders or other official notification that the deployed par-  
14 ent is no longer deployed [*or in active military service*].

15 **(5)(a) A temporary order entered under subsection (4) of this section**  
16 **may include a provision allowing or requiring reasonable visitation**  
17 **between the child of a deployed parent and a stepparent, grandparent**  
18 **or other family member related to the child. In making an order for**  
19 **visitation under this subsection, the court must balance the interest**  
20 **of the child in having visitation with the stepparent, grandparent or**  
21 **other family member with the right of the nondeployed parent of the**  
22 **child to exercise care, custody and control of the child.**

23 **(b) An order for visitation under this subsection must contain the**  
24 **following findings:**

25 **(A) A preexisting relationship exists between the stepparent,**  
26 **grandparent or other family member and the child that has**  
27 **engendered a bond such that visitation is in the best interests of the**  
28 **child; and**

29 **(B) Visitation will facilitate the child's contact with the deployed**  
30 **parent.**

31 **(c) An order for visitation under this subsection does not affect:**

1 (A) The presumption set forth in ORS 109.119 (2)(a) that the legal  
2 parent acts in the best interests of the child; or

3 (B) A current and valid child support order involving the deployed  
4 parent and the child.

5 [(4)] (6) A true copy of a motion under subsection [(3)] (4) of this section  
6 shall be served by the moving party by mail or personal delivery on the  
7 Administrator of the Division of Child Support of the Department of Justice  
8 or on the branch office providing support services to the county in which the  
9 motion is filed.

10 [(5)] (7) Prior to reinstatement of the provisions of a preexisting judg-  
11 ment, a parent may request ex parte a temporary order **under ORS 107.139**  
12 alleging that the child will be irreparably harmed or placed in immediate  
13 danger if the provisions of the preexisting judgment are automatically rein-  
14 stated upon completion of deployment.

15 [(6)] (8) When a court has entered a temporary order under subsection  
16 [(3)] (4) of this section, the absence of a child from this state during a de-  
17 ployed parent's deployment is considered a temporary absence for purposes  
18 of the Uniform Child Custody Jurisdiction and Enforcement Act and this  
19 state shall retain exclusive continuing jurisdiction in accordance with ORS  
20 109.701 to 109.834.

21 [(7)] (9) The court may award attorney fees and costs reasonably incurred  
22 in a proceeding under this section if the court finds that a party caused  
23 unreasonable delays, failed to provide information as required by this section  
24 or acted to unreasonably interfere with or frustrate contact between a de-  
25 ployed parent and a minor child.

26 **SECTION 2.** ORS 107.146 is amended to read:

27 107.146. (1) Upon motion filed by a deployed parent or a parent whose  
28 deployment is imminent, the court shall hold an expedited hearing in:

29 (a) Any proceeding in a suit for marital annulment, dissolution or sepa-  
30 ration where a deployed parent or a parent whose deployment is imminent  
31 is a party;

1 (b) In any proceeding under ORS 107.135, 107.138 and 107.139 where a de-  
2 ployed parent or a parent whose deployment is imminent is a party; and

3 (c) A proceeding under ORS 107.145 [~~(3)~~] (4).

4 (2) In any proceeding listed under subsection (1) of this section, whether  
5 or not a motion to expedite a hearing has been filed, the court shall make  
6 reasonable accommodations to allow a deployed parent, or a parent whose  
7 deployment is imminent, to provide video, electronic or Internet testimony  
8 if the proceeding involves the custody, parenting time, visitation, support  
9 and welfare of the parent's child and where the deployed parent or the parent  
10 whose deployment is imminent cannot personally appear.

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