

# A-Engrossed Senate Bill 682

Ordered by the Senate April 12  
Including Senate Amendments dated April 12

Sponsored by Senators DEMBROW, WINTERS; Senator MANNING JR

## 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.

**Establishes rebuttable presumption that certain incarcerated obligors are unable to pay child support. Provides that child support obligation does not accrue for duration of incarceration unless presumption is rebutted.**

**Directs Department of Justice and Department of Corrections to enter into agreement to conduct data matches to identify incarcerated obligors.**

**Provides that suspended order for child support is automatically reinstated on first day of first month following 120 days after obligor's release from incarceration. Requires review of support order for modification within 60 days of reinstatement.**

Provides that obligor's incarceration and release from incarceration are substantial changes of circumstances to modify [*or suspend*] orders for support of child.

*[Permits modifications or suspensions of support orders involving incarcerated obligors to be ordered retroactive to date of initial incarceration, to another date during incarceration when obligor is unable to pay ordered support or to date that is 61 days following release from incarceration.]*

## A BILL FOR AN ACT

1  
2 Relating to support orders involving incarcerated obligors; creating new provisions; and amending  
3 ORS 416.425.

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

5 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS chapter 25.**

6 **SECTION 2. (1) An obligor who is incarcerated for a period of 180 or more consecutive**  
7 **days shall be rebuttably presumed unable to pay child support and a child support obligation**  
8 **does not accrue for the duration of the incarceration unless the presumption is rebutted as**  
9 **provided in this section.**

10 **(2) The Department of Justice and the Department of Corrections shall enter into an**  
11 **agreement to conduct data matches to identify the obligors described in subsection (1) of this**  
12 **section or as determined by the court.**

13 **(3) Within 30 days following identification of an obligor described in subsection (1) of this**  
14 **section whose child support obligation has not already been modified due to incarceration,**  
15 **the entity responsible for support enforcement services under ORS 25.080 shall provide notice**  
16 **of the presumption to the obligee and obligor and shall inform all parties to the support order**  
17 **that, unless a party objects as provided in subsection (4) of this section, child support shall**  
18 **cease accruing beginning with the first day of the first month that follows the obligor be-**  
19 **coming incarcerated for a period of at least 180 consecutive days and continuing through the**  
20 **support payment due in the last month prior to the reinstatement of the support order as**  
21 **provided in subsection (6) of this section. The entity shall serve the notice on the obligee in**  
22 **the manner provided for the service of summons in a civil action, by certified mail, return**

**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 receipt requested, or by any other mail service with delivery confirmation and shall serve the  
2 notice on the obligor by first class mail to the obligor's last-known address. The notice shall  
3 specify the month in which the obligor became incarcerated and shall contain a statement  
4 that the administrator represents the state and that low-cost legal counsel may be available.

5 (4) A party may object to the presumption by sending an objection to the entity that  
6 served the notice under subsection (3) of this section within 30 days after the date of service  
7 of the notice. The objection must describe the resources of the obligor or other evidence that  
8 rebuts the presumption of inability to pay child support. The entity receiving the objection  
9 shall cause the case to be set for a hearing before a court or an administrative law judge.  
10 The court or administrative law judge may consider only whether the presumption has been  
11 rebutted.

12 (5) If no objection is made, or if the court or administrative law judge finds that the  
13 presumption has not been rebutted, the Department of Justice shall discontinue billing the  
14 obligor for the period of time described in subsection (3) of this section and no arrearage  
15 shall accrue for the period during which the obligor is not billed. In addition, the entity  
16 providing support enforcement services shall file with the circuit court in which the support  
17 order or judgment has been entered a copy of the notice described in subsection (3) of this  
18 section or, if an objection is made and the presumption is not rebutted, a copy of the court's  
19 or administrative law judge's order.

20 (6) An order that has been suspended as provided in this section will automatically be  
21 reinstated at 50 percent of the previously ordered support amount on the first day of the  
22 first month that follows the 120th day after the obligor's release from incarceration.

23 (7)(a) Within 30 days following reinstatement of the order pursuant to subsection (6) of  
24 this section, the Department of Justice shall provide notice to all parties to the support or-  
25 der:

26 (A) Specifying the last date on which the obligor was incarcerated;

27 (B) Stating that by operation of law, billing and accrual of support resumed on the first  
28 day of the first month that follows the 120th day after the obligor's release from  
29 incarceration; and

30 (C) Informing the parties that the administrator will review the support order for pur-  
31 poses of modification of the support order as provided in subsection (8) of this section within  
32 60 days following reinstatement of the order.

33 (b) The notice shall include a statement that the administrator represents the state and  
34 that low-cost legal counsel may be available.

35 (c) The entity providing support enforcement services shall file a copy of the notice re-  
36 quired by paragraph (a) of this subsection with the circuit court in which the support order  
37 or judgment has been entered.

38 (8) Within 60 days of the reinstatement under subsection (6) of this section, the admin-  
39 istrator shall review the support order for purposes of modifying the support order.

40 (9) An obligor's incarceration for at least 180 consecutive days or an obligor's release  
41 from incarceration is considered a substantial change of circumstances for purposes of child  
42 support modification proceedings.

43 (10) Proof of incarceration for at least 180 consecutive days is sufficient cause for the  
44 administrator, court or administrative law judge to allow a credit and satisfaction against  
45 child support arrearages for each month that the obligor was incarcerated or that is within

1 **120 days following the obligor’s release from incarceration unless the presumption of inability**  
2 **to pay has been rebutted.**

3 **(11) Orders modified to zero prior to the effective date of this 2017 Act remain in force**  
4 **with reinstatement at the full amount ordered by the court occurring 61 days after release.**  
5 **Such orders are not subject to suspension and reinstatement as provided in this section.**

6 **(12) The provisions of subsections (1), (9) and (10) of this section apply regardless of**  
7 **whether child support enforcement services are being provided under Title IV-D of the Social**  
8 **Security Act.**

9 **(13) The Department of Justice shall adopt rules to implement this section.**

10 **(14) As used in this section, “support order” means a judgment or administrative order**  
11 **that creates child support rights and that is entered or issued under ORS 416.400 to 416.465,**  
12 **419B.400 or 419C.590 or this chapter or ORS chapter 107, 108, 109 or 110.**

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

14 416.425. (1) Any time support enforcement services are being provided under ORS 25.080, the  
15 obligor, the obligee, the party holding the support rights or the administrator may move for the  
16 existing order to be modified under this section. The motion shall be in writing in a form prescribed  
17 by the administrator, shall set out the reasons for modification and shall state the address of the  
18 party requesting modification.

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

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

24 (b) Whether there exists in this state or any other jurisdiction a support order, as defined in  
25 ORS 110.503, involving the dependent child, other than the order the party is moving to modify.

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

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

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

43 (6) When the moving party is the administrator and no objections and request for hearing have  
44 been served within 30 days, the administrator may enter an order granting the relief sought.

45 (7) A motion for modification made under this section does not stay the administrator from en-

1 forcing and collecting upon the existing order unless so ordered by the court in which the order is  
2 entered.

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

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

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

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

17 (10) The obligee is a party to all proceedings under this section.

18 *[(11) An order entered under this section that modifies a support order because of the incarceration*  
19 *of the obligor is effective only during the period of the obligor's incarceration and for 60 days after the*  
20 *obligor's release from incarceration. The previous support order is reinstated by operation of law on*  
21 *the 61st day after the obligor's release from incarceration. An order that modifies a support order be-*  
22 *cause of the obligor's incarceration must contain a notice that the previous order will be reinstated on*  
23 *the 61st day after the obligor's release from incarceration.]*

24 **(11) An obligor's incarceration for a period of at least 180 consecutive days or an obligor's**  
25 **release from incarceration is considered a substantial change of circumstances for purposes**  
26 **of proceedings brought under this section.**

27 (12)(a) Notwithstanding subsections (1) to (11) of this section, any time support enforcement  
28 services are being provided under ORS 25.080, upon request of a party to a support order or judg-  
29 ment or on the administrator's own motion, the administrator may move to suspend the order or  
30 judgment and issue a temporary modification order under this subsection when:

31 (A) There is a period of significant unemployment as that term is described in paragraph (b) of  
32 this subsection; and

33 (B) A party to the support order or judgment experiences an employment-related change of in-  
34 come as defined by rule in ORS 416.455.

35 (b) Proceedings under this subsection may be initiated only when there is a period of significant  
36 unemployment in Oregon. The Attorney General shall determine when a "period of significant un-  
37 employment" exists in Oregon and designate the beginning and ending dates thereof. In making the  
38 determination of when a period of significant unemployment exists in Oregon, the Attorney General  
39 may consider whether there is in effect an "extended benefit period" as that term is defined in ORS  
40 657.321.

41 (c) Except as otherwise provided in this subsection, the provisions of subsections (1) to (11) of  
42 this section apply to a motion for an order of suspension and temporary modification under this  
43 subsection.

44 (d) A party's employment-related change of income during a period of significant unemployment  
45 is considered a substantial change of circumstances for purposes of proceedings brought under this

1 section.

2 (e) The motion for an order of suspension and temporary modification must be in writing and  
3 must include, but need not be limited to:

4 (A) The amount of the existing support order or judgment;

5 (B) The amount of the obligor's and obligee's income immediately preceding the party's  
6 employment-related change of income, if known;

7 (C) The reason for the party's employment-related change of income;

8 (D) How the party's employment-related change of income affects the party's employment status,  
9 income and, if applicable, ability to pay support;

10 (E) The obligor's and the obligee's current sources of income, if known;

11 (F) The proposed amount of the temporary modification order;

12 (G) A statement that if a party objects to the motion for an order of suspension and temporary  
13 modification, then the party may request a hearing within 14 days of service of the motion as pro-  
14 vided in paragraph (g) of this subsection;

15 (H) A statement that the preexisting support order or judgment will be reinstated as provided  
16 in paragraph (h) of this subsection; and

17 (I) A statement that a party may request a renewal of the order of suspension and temporary  
18 modification prior to its expiration as provided in paragraph (j) of this subsection.

19 (f) The administrator shall serve the motion filed under this subsection upon the parties by  
20 regular first class mail, facsimile or electronic mail unless a party signs a form agreeing to accept  
21 service of the motion.

22 (g) A party may request a hearing within 14 days of service of the motion. If a hearing is re-  
23 quested, the provisions of ORS 416.427 apply. When there has been no request for hearing, the ad-  
24 ministrator may enter an order of suspension and temporary modification under this subsection. The  
25 order must be consistent with the provisions of the motion filed under this subsection and be in  
26 substantial compliance with the formula established under ORS 25.275.

27 (h) An order of suspension and temporary modification issued under this subsection is temporary  
28 and remains in effect for six months from the date the order is filed under ORS 416.440 or until the  
29 date specified in the notice provided under paragraph (i) of this subsection informing of the party's  
30 reemployment, whichever is earlier, at which time the preexisting support order or judgment be-  
31 comes immediately effective and payable on the first day of the following month unless an order of  
32 renewal is issued under paragraph (j) of this subsection.

33 (i) The administrator may issue a notice of reinstatement at any time during which an order of  
34 suspension and temporary modification is in effect under this subsection when a party obtains em-  
35 ployment and receives income that is sufficient to reinstate support in an amount substantially  
36 similar to the amount in the preexisting support order or judgment. The notice shall be served as  
37 provided in paragraph (f) of this subsection and must state that, unless a request for hearing is re-  
38 ceived within 14 days of service of the notice, the administrator will enter an order terminating the  
39 order of suspension and temporary modification and reinstating the amount of the preexisting sup-  
40 port order or judgment effective on a date to be specified in the notice. If a hearing is requested,  
41 the provisions of ORS 416.427 apply. When there is no request for hearing, the administrator may  
42 enter an order terminating the order of suspension and temporary modification and reinstating the  
43 preexisting support order or judgment effective upon the date specified in the notice.

44 (j) Prior to expiration of an order of suspension and temporary modification under this sub-  
45 section and upon request of a party, the administrator may renew the order of suspension and tem-

1 porary modification for additional six-month periods or until the party obtains employment as  
2 described in paragraph (i) of this subsection, whichever occurs first, if the circumstances under  
3 which the order was originally issued continue to exist unchanged.

4 **SECTION 4. Sections 1 and 2 of this 2017 Act and the amendments to ORS 416.425 by**  
5 **section 3 of this 2017 Act apply to child support obligations of incarcerated obligors that ac-**  
6 **cruce on or after the effective date of this 2017 Act.**

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