

Requested by Senator DEMBROW

**PROPOSED AMENDMENTS TO
SENATE BILL 682**

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating
2 new provisions; and”.

3 Delete lines 4 through 29 and pages 2 through 4 and insert:

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

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

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

15 **“(3) Within 30 days following identification of an obligor described
16 in subsection (1) of this section whose child support obligation has not
17 already been modified due to incarceration, the entity responsible for
18 support enforcement services under ORS 25.080 shall provide notice of
19 the presumption to the obligee and obligor and shall inform all parties
20 to the support order that, unless a party objects as provided in sub-
21 section (4) of this section, child support shall cease accruing beginning**

1 with the first day of the first month that follows the obligor becoming
2 incarcerated for a period of at least 180 consecutive days and contin-
3 uing through the support payment due in the last month prior to the
4 reinstatement of the support order as provided in subsection (6) of this
5 section. The entity shall serve the notice on the obligee in the manner
6 provided for the service of summons in a civil action, by certified mail,
7 return receipt requested, or by any other mail service with delivery
8 confirmation and shall serve the notice on the obligor by first class
9 mail to the obligor's last-known address. The notice shall specify the
10 month in which the obligor became incarcerated and shall contain a
11 statement that the administrator represents the state and that low-
12 cost legal counsel may be available.

13 “(4) A party may object to the presumption by sending an objection
14 to the entity that served the notice under subsection (3) of this section
15 within 30 days after the date of service of the notice. The objection
16 must describe the resources of the obligor or other evidence that re-
17 butts the presumption of inability to pay child support. The entity re-
18 ceiving the objection shall cause the case to be set for a hearing before
19 a court or an administrative law judge. The court or administrative
20 law judge may consider only whether the presumption has been re-
21 butted.

22 “(5) If no objection is made, or if the court or administrative law
23 judge finds that the presumption has not been rebutted, the Depart-
24 ment of Justice shall discontinue billing the obligor for the period of
25 time described in subsection (3) of this section and no arrearage shall
26 accrue for the period during which the obligor is not billed. In addi-
27 tion, the entity providing support enforcement services shall file with
28 the circuit court in which the support order or judgment has been
29 entered a copy of the notice described in subsection (3) of this section
30 or, if an objection is made and the presumption is not rebutted, a copy

1 of the court's or administrative law judge's order.

2 “(6) An order that has been suspended as provided in this section
3 will automatically be reinstated at 50 percent of the previously ordered
4 support amount on the first day of the first month that follows the
5 120th day after the obligor's release from incarceration.

6 “(7)(a) Within 30 days following reinstatement of the order pursuant
7 to subsection (6) of this section, the Department of Justice shall pro-
8 vide notice to all parties to the support order:

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

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

13 “(C) Informing the parties that the administrator will review the
14 support order for purposes of modification of the support order as
15 provided in subsection (8) of this section within 60 days following
16 reinstatement of the order.

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

19 “(c) The entity providing support enforcement services shall file a
20 copy of the notice required by paragraph (a) of this subsection with
21 the circuit court in which the support order or judgment has been
22 entered.

23 “(8) Within 60 days of the reinstatement under subsection (6) of this
24 section, the administrator shall review the support order for purposes
25 of modifying the support order.

26 “(9) An obligor's incarceration for at least 180 consecutive days or
27 an obligor's release from incarceration is considered a substantial
28 change of circumstances for purposes of child support modification
29 proceedings.

30 “(10) Proof of incarceration for at least 180 consecutive days is suf-

1 **efficient cause for the administrator, court or administrative law judge**
2 **to allow a credit and satisfaction against child support arrearages for**
3 **each month that the obligor was incarcerated or that is within 120**
4 **days following the obligor's release from incarceration unless the**
5 **presumption of inability to pay has been rebutted.**

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

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

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

15 **“(14) As used in this section, ‘support order’ means a judgment or**
16 **administrative order that creates child support rights and that is en-**
17 **tered or issued under ORS 416.400 to 416.465, 419B.400 or 419C.590 or this**
18 **chapter or ORS chapter 107, 108, 109 or 110.**

19 **“SECTION 3. ORS 416.425 is amended to read:**

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

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

27 **“(a) Whether there is pending in this state or any other jurisdiction any**
28 **type of support proceeding involving the dependent child, including a pro-**
29 **ceeding brought under ORS 25.287, 107.085, 107.135, 107.431, 108.110, 109.100,**
30 **109.103, 109.165, 125.025, 416.415, 419B.400 or 419C.590 or ORS chapter 110;**

1 and

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

5 “(3) The moving party shall include with the motion a certificate regard-
6 ing any pending support proceeding and any existing support order other
7 than the order the party is moving to modify. The party shall use a certif-
8 icate that is in a form prescribed by the administrator and include informa-
9 tion required by the administrator and subsection (2) of this section.

10 “(4) The moving party shall serve the motion upon the obligor, the
11 obligee, the party holding the support rights and the administrator, as ap-
12 propriate. The nonrequesting parties must be served in the same manner as
13 provided for service of the notice and finding of financial responsibility un-
14 der ORS 416.415 (1)(a). Notwithstanding ORS 25.085, the requesting party
15 must be served by first class mail to the requesting party’s last known ad-
16 dress. The nonrequesting parties have 30 days to resolve the matter by stip-
17 ulated agreement or to serve the moving party by regular mail with a written
18 response setting forth any objections to the motion and a request for hearing.
19 The hearing shall be conducted under ORS 416.427.

20 “(5) When the moving party is other than the administrator and no ob-
21 jections and request for hearing have been served within 30 days, the moving
22 party may submit a true copy of the motion to the administrative law judge
23 as provided in ORS 416.427, except the default may not be construed to be
24 a contested case as defined in ORS chapter 183. Upon proof of service, the
25 administrative law judge shall issue an order granting the relief sought.

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

29 “(7) A motion for modification made under this section does not stay the
30 administrator from enforcing and collecting upon the existing order unless

1 so ordered by the court in which the order is entered.

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

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

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

17 “(9) The party requesting modification has the burden of showing a sub-
18 stantial change of circumstances or that a modification is appropriate under
19 the provisions of ORS 25.287.

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

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

29 “**(11) An obligor’s incarceration for a period of at least 180 consec-**
30 **utive days or an obligor’s release from incarceration is considered a**

1 **substantial change of circumstances for purposes of proceedings**
2 **brought under this section.**

3 “(12)(a) Notwithstanding subsections (1) to (11) of this section, any time
4 support enforcement services are being provided under ORS 25.080, upon re-
5 quest of a party to a support order or judgment or on the administrator’s
6 own motion, the administrator may move to suspend the order or judgment
7 and issue a temporary modification order under this subsection when:

8 “(A) There is a period of significant unemployment as that term is de-
9 scribed in paragraph (b) of this subsection; and

10 “(B) A party to the support order or judgment experiences an
11 employment-related change of income as defined by rule in ORS 416.455.

12 “(b) Proceedings under this subsection may be initiated only when there
13 is a period of significant unemployment in Oregon. The Attorney General
14 shall determine when a ‘period of significant unemployment’ exists in Oregon
15 and designate the beginning and ending dates thereof. In making the deter-
16 mination of when a period of significant unemployment exists in Oregon, the
17 Attorney General may consider whether there is in effect an ‘extended ben-
18 efit period’ as that term is defined in ORS 657.321.

19 “(c) Except as otherwise provided in this subsection, the provisions of
20 subsections (1) to (11) of this section apply to a motion for an order of sus-
21 pension and temporary modification under this subsection.

22 “(d) A party’s employment-related change of income during a period of
23 significant unemployment is considered a substantial change of circum-
24 stances for purposes of proceedings brought under this section.

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

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

28 “(B) The amount of the obligor’s and obligee’s income immediately pre-
29 ceding the party’s employment-related change of income, if known;

30 “(C) The reason for the party’s employment-related change of income;

1 “(D) How the party’s employment-related change of income affects the
2 party’s employment status, income and, if applicable, ability to pay support;

3 “(E) The obligor’s and the obligee’s current sources of income, if known;

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

5 “(G) A statement that if a party objects to the motion for an order of
6 suspension and temporary modification, then the party may request a hearing
7 within 14 days of service of the motion as provided in paragraph (g) of this
8 subsection;

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

11 “(I) A statement that a party may request a renewal of the order of sus-
12 pension and temporary modification prior to its expiration as provided in
13 paragraph (j) of this subsection.

14 “(f) The administrator shall serve the motion filed under this subsection
15 upon the parties by regular first class mail, facsimile or electronic mail un-
16 less a party signs a form agreeing to accept service of the motion.

17 “(g) A party may request a hearing within 14 days of service of the mo-
18 tion. If a hearing is requested, the provisions of ORS 416.427 apply. When
19 there has been no request for hearing, the administrator may enter an order
20 of suspension and temporary modification under this subsection. The order
21 must be consistent with the provisions of the motion filed under this sub-
22 section and be in substantial compliance with the formula established under
23 ORS 25.275.

24 “(h) An order of suspension and temporary modification issued under this
25 subsection is temporary and remains in effect for six months from the date
26 the order is filed under ORS 416.440 or until the date specified in the notice
27 provided under paragraph (i) of this subsection informing of the party’s re-
28 employment, whichever is earlier, at which time the preexisting support or-
29 der or judgment becomes immediately effective and payable on the first day
30 of the following month unless an order of renewal is issued under paragraph

1 (j) of this subsection.

2 “(i) The administrator may issue a notice of reinstatement at any time
3 during which an order of suspension and temporary modification is in effect
4 under this subsection when a party obtains employment and receives income
5 that is sufficient to reinstate support in an amount substantially similar to
6 the amount in the preexisting support order or judgment. The notice shall
7 be served as provided in paragraph (f) of this subsection and must state that,
8 unless a request for hearing is received within 14 days of service of the no-
9 tice, the administrator will enter an order terminating the order of suspen-
10 sion and temporary modification and reinstating the amount of the
11 preexisting support order or judgment effective on a date to be specified in
12 the notice. If a hearing is requested, the provisions of ORS 416.427 apply.
13 When there is no request for hearing, the administrator may enter an order
14 terminating the order of suspension and temporary modification and rein-
15 stating the preexisting support order or judgment effective upon the date
16 specified in the notice.

17 “(j) Prior to expiration of an order of suspension and temporary modifi-
18 cation under this subsection and upon request of a party, the administrator
19 may renew the order of suspension and temporary modification for additional
20 six-month periods or until the party obtains employment as described in
21 paragraph (i) of this subsection, whichever occurs first, if the circumstances
22 under which the order was originally issued continue to exist unchanged.

23 **“SECTION 4. Sections 1 and 2 of this 2017 Act and the amendments**
24 **to ORS 416.425 by section 3 of this 2017 Act apply to child support ob-**
25 **ligations of incarcerated obligors that accrue on or after the effective**
26 **date of this 2017 Act.”**

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