

Requested by Representative EVANS

**PROPOSED AMENDMENTS TO
SENATE BILL 1055**

1 On page 1 of the printed bill, line 2, after “service;” insert “creating new
2 provisions; and” and after “ORS” insert “107.105, 107.135, 107.137.”

3 Delete lines 5 through 30 and delete pages 2 and 3 and insert:

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

5 **“107.145. (1) The Legislative Assembly finds and declares that:**

6 **“(a) Establishing a fair, efficient and expeditious process to resolve**
7 **child custody and visitation issues when a parent is deployed with the**
8 **Armed Forces of the United States is in the best interests of the child**
9 **of such a deployed parent; and**

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

16 **“[(1)] (2) As used in this section and ORS 107.146:**

17 **“(a) ‘Deployed parent’ means a parent of a minor child whose parental**
18 **rights have not been terminated who is deployed with the Armed Forces of**
19 **the United States[, *National Guard or other reserve component*].**

20 **“(b) ‘Deployment’ or ‘deployed’:**

21 **“(A) Means military service in compliance with written orders received**

1 by an active duty or reserve member of the Armed Forces of the United
2 States, National Guard or other reserve component to report for combat op-
3 erations, contingency operations, peacekeeping operations, temporary duty,
4 **mobilization**, a remote tour of duty or other active military service;

5 “(B) Includes the period of time from which the deployed parent receives
6 and is subject to written orders to deploy to the actual date of deployment;
7 and

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

11 “(c) **‘Mobilization’ means the transfer of a member of the Armed**
12 **Forces of the United States, National Guard or other reserve compo-**
13 **nent to extended active duty status but does not include National**
14 **Guard or reserve component annual training.**

15 “(d) **‘Temporary duty’ means the transfer of an active duty or re-**
16 **serve member of the Armed Forces of the United States, National**
17 **Guard or other reserve component from a military base to a different**
18 **location, including but not limited to another military base, for a**
19 **limited period of time for training or to assist in the performance of**
20 **a noncombat mission.**

21 “[2] (3) Notwithstanding ORS 107.135 and except as provided in sub-
22 section [(3)] (4) of this section, a court may not set aside, alter or modify
23 any portion of a judgment of annulment, separation or dissolution of mar-
24 riage that provides for the custody, parenting time, visitation, support and
25 welfare of a minor child of a deployed parent until 90 days after the com-
26 pletion of the deployed parent’s deployment unless a motion to set aside, al-
27 ter or modify was filed with, heard by and decided by the court **at least 10**
28 **days** before the commencement of the deployed parent’s deployment.

29 “[3](a)] (4)(a) Notwithstanding ORS 107.138 and 107.139, a court may
30 enter a temporary order modifying the terms of a preexisting judgment of

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

12 “(b) A temporary order entered under this subsection must include the
13 following provisions:

14 “(A) Parenting time for the deployed parent during periods of approved
15 leave in the best interests of the child;

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

20 “(C) Modification of the child support provisions of the preexisting judg-
21 ment to reflect the changed circumstances of the parents and the child dur-
22 ing the period of deployment;

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

26 “(E) That the temporary order entered under this subsection **is made**
27 **without prejudice and** terminates by operation of law upon completion of
28 deployment and that the provisions of the preexisting judgment that have
29 been modified by the temporary order are automatically reinstated unless a
30 request is made and granted under subsection [(5)] (7) of this section;

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

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

11 “**(5)(a) On motion made by a deployed parent, a temporary order**
12 **entered under subsection (4) of this section may include a provision**
13 **allowing or requiring reasonable visitation between the child of a de-**
14 **ployed parent and a stepparent, grandparent or other family member**
15 **related to the child. In making an order for visitation under this sub-**
16 **section, the court must:**

17 “**(A) Find that there is a preexisting relationship between the**
18 **stepparent, grandparent or family member and the child that has**
19 **engendered a bond such that visitation is in the best interest of the**
20 **child; and**

21 “**(B) Find that the visitation will facilitate the child’s contact with**
22 **the deployed parent.**

23 “**(b) An order for visitation under this subsection does not affect a**
24 **current and valid child support order involving the deployed parent**
25 **and the child.**

26 “**(c) Nothing in this section increases the authority of the persons**
27 **described in paragraph (a) of this subsection to independently seek**
28 **other custody or visitation orders.**

29 “[~~4~~] **(6)** A true copy of a motion under subsection [~~3~~] **(4)** of this section
30 shall be served by the moving party by mail or personal delivery on the

1 Administrator of the Division of Child Support of the Department of Justice
2 or on the branch office providing support services to the county in which the
3 motion is filed.

4 “[5] (7) Prior to reinstatement of the provisions of a preexisting judg-
5 ment, a parent may request ex parte a temporary order **under ORS 107.139**
6 alleging that the child will be irreparably harmed or placed in immediate
7 danger if the provisions of the preexisting judgment are automatically rein-
8 stated upon completion of deployment.

9 “[6] (8) When a court has entered a temporary order under subsection
10 [(3)] (4) of this section, the absence of a child from this state during a de-
11 ployed parent’s deployment is considered a temporary absence for purposes
12 of the Uniform Child Custody Jurisdiction and Enforcement Act and this
13 state shall retain exclusive continuing jurisdiction in accordance with ORS
14 109.701 to 109.834.

15 “[7] (9) The court may award attorney fees and costs reasonably in-
16 curred in a proceeding under this section if the court finds that a party
17 caused unreasonable delays, failed to provide information as required by this
18 section or acted to unreasonably interfere with or frustrate contact between
19 a deployed parent and a minor child.

20 **“SECTION 2.** ORS 107.146 is amended to read:

21 “107.146. (1) Upon motion filed by a deployed parent or a parent whose
22 deployment is imminent, the court shall hold an expedited hearing in:

23 “(a) Any proceeding in a suit for marital annulment, dissolution or sepa-
24 ration where a deployed parent or a parent whose deployment is imminent
25 is a party;

26 “(b) In any proceeding under ORS 107.135, 107.138 and 107.139 where a
27 deployed parent or a parent whose deployment is imminent is a party; and

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

29 “(2) In any proceeding listed under subsection (1) of this section, whether
30 or not a motion to expedite a hearing has been filed, the court shall make

1 reasonable accommodations to allow a deployed parent, or a parent whose
2 deployment is imminent, to provide video, electronic or Internet testimony
3 if the proceeding involves the custody, parenting time, visitation, support
4 and welfare of the parent’s child and where the deployed parent or the parent
5 whose deployment is imminent cannot personally appear.

6 **“SECTION 3.** ORS 107.105 is amended to read:

7 “107.105. (1) Whenever the court renders a judgment of marital
8 annulment, dissolution or separation, the court may provide in the judgment:

9 “(a) For the future care and custody, by one party or jointly, of all minor
10 children of the parties born, adopted or conceived during the marriage and
11 for minor children born to the parties prior to the marriage, as the court
12 may deem just and proper under ORS 107.137. The court may hold a hearing
13 to decide the custody issue prior to any other issues. When appropriate, the
14 court shall recognize the value of close contact with both parents and en-
15 courage joint parental custody and joint responsibility for the welfare of the
16 children. **The court may not consider a parent’s past, present or future
17 deployment as defined in ORS 107.145 in making a custody determi-
18 nation under this paragraph.**

19 “(b) For parenting time rights of the parent not having custody of such
20 children and for visitation rights pursuant to a petition filed under ORS
21 109.119. When a parenting plan has been developed as required by ORS
22 107.102, the court shall review the parenting plan and, if approved, incorpo-
23 rate the parenting plan into the court’s final order. When incorporated into
24 a final order, the parenting plan is determinative of parenting time rights.
25 If the parents have been unable to develop a parenting plan or if either of
26 the parents requests the court to develop a detailed parenting plan, the court
27 shall develop the parenting plan in the best interest of the child, ensuring
28 the noncustodial parent sufficient access to the child to provide for appro-
29 priate quality parenting time and ensuring the safety of the parties, if im-
30 plicated. The court shall deny parenting time to a parent under this

1 paragraph if the court finds that the parent has been convicted of rape under
2 ORS 163.365 or 163.375 or other comparable law of another jurisdiction and
3 the rape resulted in the conception of the child. Otherwise, the court may
4 deny parenting time to the noncustodial parent under this subsection only
5 if the court finds that parenting time would endanger the health or safety
6 of the child. In the case of a noncustodial parent who has a disability as
7 defined by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et
8 seq.), the court may consider the noncustodial parent's disability in deter-
9 mining parenting time only if the court finds that behaviors or limitations
10 related to the noncustodial parent's disability are endangering or will likely
11 endanger the health, safety or welfare of the child. **The court may not**
12 **consider a parent's past, present or future deployment as defined in**
13 **ORS 107.145 in making a determination of parenting time rights under**
14 **this paragraph.** The court shall recognize the value of close contact with
15 both parents and encourage, when practicable, joint responsibility for the
16 welfare of such children and extensive contact between the minor children
17 of the divided marriage and the parties. If the court awards parenting time
18 to a noncustodial parent who has committed abuse, other than being con-
19 victed for rape as described in this paragraph, the court shall make adequate
20 provision for the safety of the child and the other parent in accordance with
21 the provisions of ORS 107.718 (6).

22 “(c) For the support of the children of the marriage by the parties. In
23 ordering child support, the formula established under ORS 25.275 shall apply.
24 The court may at any time require an accounting from the custodial parent
25 with reference to the use of the money received as child support. The court
26 is not required to order support for any minor child who has become self-
27 supporting, emancipated or married or for any child who has ceased to attend
28 school after becoming 18 years of age. A general judgment entered under this
29 section may include an amount for support as requested in a petition filed
30 under ORS 107.085 or under a motion for relief made pursuant to ORS 107.095

1 (1)(b) for which a limited judgment was not entered, payment of which com-
2 mences no earlier than the date the petition or motion was served on the
3 nonrequesting party, and the amount shall be considered a request for relief
4 that has been decided by the general judgment for purposes of ORS 18.082
5 (3).

6 “(d) For spousal support, an amount of money for a period of time as may
7 be just and equitable for one party to contribute to the other, in gross or in
8 installments or both. Unless otherwise expressly provided in the judgment
9 and except for any unpaid balance of previously ordered spousal support, li-
10 ability for the payment of spousal support shall terminate on the death of
11 either party, and there shall be no liability for either the payment of spousal
12 support or for any payment in cash or property as a substitute for the pay-
13 ment of spousal support after the death of either party. The court may ap-
14 prove an agreement for the entry of an order for the support of a party. A
15 general judgment entered under this section may include an amount for
16 support as requested in a petition filed under ORS 107.085 or under a motion
17 for relief made pursuant to ORS 107.095 (1)(b) for which a limited judgment
18 was not entered, payment of which commences no earlier than the date the
19 petition or motion was served on the nonrequesting party, and the amount
20 shall be considered a request for relief that has been decided by the general
21 judgment for purposes of ORS 18.082 (3). In making the spousal support or-
22 der, the court shall designate one or more categories of spousal support and
23 shall make findings of the relevant factors in the decision. The court may
24 order:

25 “(A) Transitional spousal support as needed for a party to attain educa-
26 tion and training necessary to allow the party to prepare for reentry into the
27 job market or for advancement therein. The factors to be considered by the
28 court in awarding transitional spousal support include but are not limited
29 to:

30 “(i) The duration of the marriage;

1 “(ii) A party’s training and employment skills;
2 “(iii) A party’s work experience;
3 “(iv) The financial needs and resources of each party;
4 “(v) The tax consequences to each party;
5 “(vi) A party’s custodial and child support responsibilities; and
6 “(vii) Any other factors the court deems just and equitable.
7 “(B) Compensatory spousal support when there has been a significant fi-
8 nancial or other contribution by one party to the education, training, voca-
9 tional skills, career or earning capacity of the other party and when an order
10 for compensatory spousal support is otherwise just and equitable in all of the
11 circumstances. The factors to be considered by the court in awarding
12 compensatory spousal support include but are not limited to:
13 “(i) The amount, duration and nature of the contribution;
14 “(ii) The duration of the marriage;
15 “(iii) The relative earning capacity of the parties;
16 “(iv) The extent to which the marital estate has already benefited from
17 the contribution;
18 “(v) The tax consequences to each party; and
19 “(vi) Any other factors the court deems just and equitable.
20 “(C) Spousal maintenance as a contribution by one spouse to the support
21 of the other for either a specified or an indefinite period. The factors to be
22 considered by the court in awarding spousal maintenance include but are not
23 limited to:
24 “(i) The duration of the marriage;
25 “(ii) The age of the parties;
26 “(iii) The health of the parties, including their physical, mental and
27 emotional condition;
28 “(iv) The standard of living established during the marriage;
29 “(v) The relative income and earning capacity of the parties, recognizing
30 that the wage earner’s continuing income may be a basis for support distinct

1 from the income that the supported spouse may receive from the distribution
2 of marital property;

3 “(vi) A party’s training and employment skills;

4 “(vii) A party’s work experience;

5 “(viii) The financial needs and resources of each party;

6 “(ix) The tax consequences to each party;

7 “(x) A party’s custodial and child support responsibilities; and

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

9 “(e) For the delivery to one party of such party’s personal property in the
10 possession or control of the other at the time of the giving of the judgment.

11 “(f) For the division or other disposition between the parties of the real
12 or personal property, or both, of either or both of the parties as may be just
13 and proper in all the circumstances. In determining the division of property
14 under this paragraph, the following apply:

15 “(A) A retirement plan or pension or an interest therein shall be consid-
16 ered as property.

17 “(B) The court shall consider the contribution of a party as a homemaker
18 as a contribution to the acquisition of marital assets.

19 “(C) Except as provided in subparagraph (D) of this paragraph, there is
20 a rebuttable presumption that both parties have contributed equally to the
21 acquisition of property during the marriage, whether such property is jointly
22 or separately held.

23 “(D)(i) Property acquired by gift to one party during the marriage and
24 separately held by that party on a continuing basis from the time of receipt
25 is not subject to a presumption of equal contribution under subparagraph (C)
26 of this paragraph.

27 “(ii) For purposes of this subparagraph, ‘property acquired by gift’ means
28 property acquired by one party through gift, devise, bequest, operation of
29 law, beneficiary designation or inheritance.

30 “(E) Subsequent to the filing of a petition for annulment or dissolution

1 of marriage or separation, the rights of the parties in the marital assets shall
2 be considered a species of co-ownership, and a transfer of marital assets un-
3 der a judgment of annulment or dissolution of marriage or of separation en-
4 tered on or after October 4, 1977, shall be considered a partitioning of jointly
5 owned property.

6 “(F) The court shall require full disclosure of all assets by the parties in
7 arriving at a just property division.

8 “(G) In arriving at a just and proper division of property, the court shall
9 consider reasonable costs of sale of assets, taxes and any other costs rea-
10 sonably anticipated by the parties.

11 “(H)(i) If a party has been awarded spousal support in lieu of a share of
12 property, the court shall so state on the record and shall order the obligor
13 to provide for and maintain life insurance in an amount commensurate with
14 the obligation and designating the obligee as beneficiary for the duration of
15 the obligation.

16 “(ii) The obligee or attorney of the obligee shall cause a certified copy
17 of the judgment to be delivered to the life insurance company or companies.

18 “(iii) If the obligee or the attorney of the obligee delivers a true copy of
19 the judgment to the life insurance company or companies, identifying the
20 policies involved and requesting such notification under this section, the
21 company or companies shall notify the obligee, as beneficiary of the insur-
22 ance policy, whenever the policyholder takes any action that will change the
23 beneficiary or reduce the benefits of the policy. Either party may request
24 notification by the insurer when premium payments have not been made. If
25 the obligor is ordered to provide for and maintain life insurance, the obligor
26 shall provide to the obligee a true copy of the policy. The obligor shall also
27 provide to the obligee written notice of any action that will reduce the
28 benefits or change the designation of the beneficiaries under the policy.

29 “(g) For the creation of trusts as follows:

30 “(A) For the appointment of one or more trustees to hold, control and

1 manage for the benefit of the children of the parties, of the marriage or
2 otherwise such of the real or personal property of either or both of the par-
3 ties, as the court may order to be allocated or appropriated to their support
4 and welfare, and to collect, receive, expend, manage or invest any sum of
5 money awarded for the support and welfare of minor children of the parties.

6 “(B) For the appointment of one or more trustees to hold, manage and
7 control such amount of money or such real or personal property of either
8 or both of the parties, as may be set aside, allocated or appropriated for the
9 support of a party.

10 “(C) For the establishment of the terms of the trust and provisions for the
11 disposition or distribution of such money or property to or between the
12 parties, their successors, heirs and assigns after the purpose of the trust has
13 been accomplished. Upon petition of a party or a person having an interest
14 in the trust showing a change of circumstances warranting a change in the
15 terms of the trust, the court may make and direct reasonable modifications
16 in its terms.

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

20 “(i) For a money award for any sums of money found to be then remaining
21 unpaid upon any order or limited judgment entered under ORS 107.095. If a
22 limited judgment was entered under ORS 107.095, the limited judgment shall
23 continue to be enforceable for any amounts not paid under the limited
24 judgment unless those amounts are included in the money award made by the
25 general judgment.

26 “(j) For an award of reasonable attorney fees and costs and expenses
27 reasonably incurred in the action in favor of a party or in favor of a party’s
28 attorney.

29 “(2) In determining the proper amount of support and the proper division
30 of property under subsection (1)(c), (d) and (f) of this section, the court may

1 consider evidence of the tax consequences on the parties of its proposed
2 judgment.

3 “(3) Upon the filing of the judgment, the property division ordered shall
4 be deemed effective for all purposes. This transfer by judgment, which shall
5 affect solely owned property transferred to the other spouse as well as com-
6 monly owned property in the same manner as would a declaration of a re-
7 sulting trust in favor of the spouse to whom the property is awarded, is not
8 a taxable sale or exchange.

9 “(4) If an appeal is taken from a judgment of annulment or dissolution
10 of marriage or of separation or from any part of a judgment rendered in
11 pursuance of the provisions of ORS 107.005 to 107.086, 107.095, 107.105,
12 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610, the
13 court rendering the judgment may provide in a supplemental judgment for
14 any relief provided for in ORS 107.095 and shall provide that the relief
15 granted in the judgment is to be in effect only during the pendency of the
16 appeal. A supplemental judgment under this subsection may be enforced as
17 provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judg-
18 ment under this subsection may be appealed in the same manner as provided
19 for supplemental judgments modifying a domestic relations judgment under
20 ORS 19.275.

21 “(5) If an appeal is taken from the judgment or other appealable order in
22 a suit for annulment or dissolution of a marriage or for separation and the
23 appellate court awards costs and disbursements to a party, the court may
24 also award to that party, as part of the costs, such additional sum of money
25 as it may adjudge reasonable as an attorney fee on the appeal.

26 “(6) If, as a result of a suit for the annulment or dissolution of a marriage
27 or for separation, the parties to such suit become owners of an undivided
28 interest in any real or personal property, or both, either party may maintain
29 supplemental proceedings by filing a petition in such suit for the partition
30 of such real or personal property, or both, within two years from the entry

1 of the judgment, showing among other things that the original parties to the
2 judgment and their joint or several creditors having a lien upon any such
3 real or personal property, if any there be, constitute the sole and only nec-
4 essary parties to such supplemental proceedings. The procedure in the sup-
5 plemental proceedings, so far as applicable, shall be the procedure provided
6 in ORS 105.405 for the partition of real property, and the court granting the
7 judgment shall have in the first instance and retain jurisdiction in equity
8 therefor.

9 **“SECTION 4.** ORS 107.135 is amended to read:

10 “107.135. (1) The court may at any time after a judgment of annulment
11 or dissolution of marriage or of separation is granted, upon the motion of
12 either party and after service of notice on the other party in the manner
13 provided by ORCP 7, and after notice to the Division of Child Support when
14 required under subsection (9) of this section:

15 “(a) Set aside, alter or modify any portion of the judgment that provides
16 for the appointment and duties of trustees, for the custody, parenting time,
17 visitation, support and welfare of the minor children and the children at-
18 tending school, as defined in ORS 107.108, including any health or life in-
19 surance provisions, for the support of a party or for life insurance under ORS
20 107.820 or 107.830;

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

26 “(c) Terminate a duty of support toward any minor child who has become
27 self-supporting, emancipated or married;

28 “(d) After service of notice on the child in the manner provided by law
29 for service of a summons, suspend future support for any child who has
30 ceased to be a child attending school as defined in ORS 107.108; and

1 “(e) Set aside, alter or modify any portion of the judgment that provides
2 for a property award based on the enhanced earning capacity of a party that
3 was awarded before October 23, 1999. A property award may be set aside,
4 altered or modified under this paragraph:

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

7 “(B) When the income of the person with the enhanced earning capacity
8 decreases due to circumstances beyond the person’s control; or

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

10 “(2) When a party moves to set aside, alter or modify the child support
11 provisions of the judgment:

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

13 “(A) Whether there is pending in this state or any other jurisdiction any
14 type of support proceeding involving children of the marriage, including one
15 brought under ORS 25.287, 107.431, 109.100, 125.025, 416.400 to 416.465,
16 419B.400 or 419C.590 or ORS chapter 110; and

17 “(B) Whether there exists in this state or any other jurisdiction a support
18 order, as defined in ORS 110.503, involving children of the marriage, other
19 than the judgment the party is moving to set aside, alter or modify.

20 “(b) The party shall include with the motion a certificate regarding any
21 pending support proceeding and any existing support order other than the
22 judgment the party is moving to set aside, alter or modify. The party shall
23 use a certificate that is in a form established by court rule and include in-
24 formation required by court rule and paragraph (a) of this subsection.

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

27 “(a) A substantial change in economic circumstances of a party, which
28 may include, but is not limited to, a substantial change in the cost of rea-
29 sonable and necessary expenses to either party, is sufficient for the court to
30 reconsider its order of support, except that an order of compensatory spousal

1 support may only be modified upon a showing of an involuntary, extraor-
2 dinary and unanticipated change in circumstances that reduces the earning
3 capacity of the paying spouse.

4 “(b) If the judgment provided for a termination or reduction of spousal
5 support at a designated age in anticipation of the commencement of pension,
6 Social Security or other entitlement payments, and if the obligee is unable
7 to obtain the anticipated entitlement payments, that inability is sufficient
8 change in circumstances for the court to reconsider its order of support.

9 “(c) If Social Security is considered in lieu of spousal support or partial
10 spousal support, the court shall determine the amount of Social Security the
11 party is eligible to collect. The court shall take into consideration any pen-
12 sion, retirement or other funds available to either party to effect an equita-
13 ble distribution between the parties and shall also take into consideration
14 any reduction of entitlement caused by taking early retirement.

15 “(4) In considering under this section whether a change in circumstances
16 exists sufficient for the court to reconsider spousal or child support pro-
17 visions of a judgment, the following provisions apply:

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

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

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

24 “(C) Other benefits to which the obligor is entitled, such as travel bene-
25 fits, recreational benefits and medical benefits, contrasted with benefits to
26 which the obligee is similarly entitled.

27 “(D) Social Security benefits paid to a child, or to a representative payee
28 administering the funds for the child’s use and benefit, as a result of the
29 obligor’s disability or retirement if the benefits:

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

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

2 “(E) Apportioned Veterans’ benefits or Survivors’ and Dependents’ Edu-
3 cational Assistance under 38 U.S.C. chapter 35 paid to a child, or to a rep-
4 resentative payee administering the funds for the child’s use and benefit, as
5 a result of the obligor’s disability or retirement if the benefits:

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

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

8 “(b) If the motion for modification is one made by the obligor to reduce
9 or terminate support, and if the obligee opposes the motion, the court shall
10 not find a change in circumstances sufficient for reconsideration of support
11 provisions, if the motion is based upon a reduction of the obligor’s financial
12 status resulting from the obligor’s taking voluntary retirement, partial vol-
13 untary retirement or any other voluntary reduction of income or self-imposed
14 curtailment of earning capacity, if it is shown that such action of the obligor
15 was not taken in good faith but was for the primary purpose of avoiding the
16 support obligation. In any subsequent motion for modification, the court
17 shall deny the motion if the sole basis of the motion for modification is the
18 termination of voluntarily taken retirement benefits and the obligor previ-
19 ously has been found not to have acted in good faith.

20 “(c) The court shall consider the following factors in deciding whether the
21 actions of the obligor were not in ‘good faith’:

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

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

28 “(C) Extent of the obligor’s dissipation of funds and assets prior to the
29 voluntary retirement or soon after filing for the change of circumstances
30 based on retirement.

1 “(D) If earned income is reduced and absent dissipation of funds or large
2 gifts, whether the obligor has funds and assets from which the spousal sup-
3 port could have been paid.

4 “(E) Whether the obligor has given gifts of substantial value to others,
5 including a current spouse, to the detriment of the obligor’s ability to meet
6 the preexisting obligation of spousal support.

7 “(5) Upon terminating a duty of spousal support, a court shall make spe-
8 cific findings of the basis for the termination and shall include the findings
9 in the judgment.

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

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

19 “(a) The court may allow a credit against child support arrearages for
20 periods of time, excluding reasonable parenting time unless otherwise pro-
21 vided by order or judgment, during which the obligor, with the knowledge
22 and consent of the obligee or pursuant to court order, has physical custody
23 of the child; and

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

29 “(8) In a proceeding under subsection (1) of this section, the court may
30 assess against either party a reasonable attorney fee and costs for the benefit

1 of the other party. If a party is found to have acted in bad faith, the court
2 shall order that party to pay a reasonable attorney fee and costs of the de-
3 fending party.

4 “(9) Whenever a motion to establish, modify or terminate child support
5 or satisfy or alter support arrearages is filed and the child support rights
6 of one of the parties or of a child of both of the parties have been assigned
7 to the state, a true copy of the motion shall be served by mail or personal
8 delivery on the Administrator of the Division of Child Support of the De-
9 partment of Justice or on the branch office providing support services to the
10 county in which the motion is filed.

11 “(10)(a) Except as provided in ORS 109.701 to 109.834, the courts of
12 Oregon, having once acquired personal and subject matter jurisdiction in a
13 domestic relations action, retain such jurisdiction regardless of any change
14 of domicile.

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

18 “(11) In a proceeding under this section to reconsider provisions in a
19 judgment relating to custody or parenting time[,]:

20 “(a) The court may consider repeated and unreasonable denial of, or in-
21 terference with, parenting time to be a substantial change of
22 circumstances; **and**

23 “(b) **The court may not consider a party’s absence due to deploy-**
24 **ment as defined in ORS 107.145 in itself to be a substantial change in**
25 **circumstances.**

26 “(12) In a proceeding under this section to reconsider provisions in a
27 judgment relating to parenting time, the court may suspend or terminate a
28 parent’s parenting time with a child if the court finds that the parent has
29 abused a controlled substance and that the parenting time is not in the best
30 interests of the child. If a court has suspended or terminated a parent’s

1 parenting time with a child for reasons described in this subsection, the
2 court may not grant the parent future parenting time until the parent has
3 shown that the reasons for the suspension or termination are resolved and
4 that reinstated parenting time is in the best interests of the child. Nothing
5 in this subsection limits the court’s authority under subsection (1)(a) of this
6 section.

7 “(13)(a) In a proceeding under this section to reconsider provisions in a
8 judgment relating to custody **or parenting time**, temporary placement of the
9 child:

10 “(A) By the custodial parent pursuant to ORS 109.056 (3) with the non-
11 custodial parent as a result of [*military*] deployment of the custodial parent
12 is not, by itself, a change of circumstances[.]; **and**

13 “(B) Pursuant to **ORS 107.145 as a result of deployment of a party**
14 **is not, by itself, a change of circumstances.**

15 “(b) Any fact relating to the child and the parties occurring subsequent
16 to the last [*custody*] judgment, other than the custodial parent’s temporary
17 placement of the child pursuant to ORS 109.056 (3) with the noncustodial
18 parent **or the temporary placement of the child pursuant to ORS**
19 **107.145**, may be considered by the court when making a change of circum-
20 stances determination.

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

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

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

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

28 “(b) In a proceeding under subsection (1) of this section, the court may
29 enforce the terms set forth in a stipulated order or judgment signed by the
30 parties, an order or judgment resulting from a settlement on the record or

1 an order or judgment incorporating a settlement agreement:

2 “(A) As contract terms using contract remedies;

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

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

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

13 “(d) Nothing in paragraph (b) or (c) of this subsection limits a party’s
14 ability, in a separate proceeding, to file a motion to modify an order or
15 judgment under subsection (1) of this section or to seek enforcement of an
16 ancillary agreement to the order or judgment.

17 **“SECTION 5.** ORS 107.137 is amended to read:

18 “107.137. (1) Except as provided in subsection (6) of this section, in de-
19 termining custody of a minor child under ORS 107.105 or 107.135, the court
20 shall give primary consideration to the best interests and welfare of the
21 child. In determining the best interests and welfare of the child, the court
22 shall consider the following relevant factors:

23 “(a) The emotional ties between the child and other family members;

24 “(b) The interest of the parties in and attitude toward the child;

25 “(c) The desirability of continuing an existing relationship;

26 “(d) The abuse of one parent by the other;

27 “(e) The preference for the primary caregiver of the child, if the caregiver
28 is deemed fit by the court; and

29 “(f) The willingness and ability of each parent to facilitate and encourage
30 a close and continuing relationship between the other parent and the child.

1 However, the court may not consider such willingness and ability if one
2 parent shows that the other parent has sexually assaulted or engaged in a
3 pattern of behavior of abuse against the parent or a child and that a con-
4 tinuing relationship with the other parent will endanger the health or safety
5 of either parent or the child.

6 “(2) The best interests and welfare of the child in a custody matter shall
7 not be determined by isolating any one of the relevant factors referred to in
8 subsection (1) of this section, or any other relevant factor, and relying on it
9 to the exclusion of other factors. However, if a parent has committed abuse
10 as defined in ORS 107.705, other than as described in subsection (6) of this
11 section, there is a rebuttable presumption that it is not in the best interests
12 and welfare of the child to award sole or joint custody of the child to the
13 parent who committed the abuse.

14 “(3) If a party has a disability as defined by the Americans with Disabil-
15 ities Act of 1990 (42 U.S.C. 12101 et seq.), the court may not consider that
16 party’s disability in determining custody unless the court finds that behav-
17 iors or limitations of the party that are related to the party’s disability are
18 endangering or will likely endanger the health, safety or welfare of the child.

19 “(4) In determining custody of a minor child under ORS 107.105 or 107.135,
20 the court shall consider the conduct, marital status, income, social environ-
21 ment or lifestyle of either party only if it is shown that any of these factors
22 are causing or may cause emotional or physical damage to the child.

23 “(5) No preference in custody shall be given to the mother over the father
24 for the sole reason that she is the mother, nor shall any preference be given
25 to the father over the mother for the sole reason that he is the father.

26 “(6)(a) The court determining custody of a minor child under ORS 107.105
27 or 107.135 shall not award sole or joint custody of the child to a parent if:

28 “(A) The court finds that the parent has been convicted of rape under
29 ORS 163.365 or 163.375 or other comparable law of another jurisdiction; and

30 “(B) The rape resulted in the conception of the child.

