

D R A F T

SUMMARY

Creates process to rebut presumption of inability to pay support order after support order is suspended and procedure upon reinstatement following rebuttal of presumption. Declares that reinstatement of previously suspended support order is considered substantial change of circumstances for purposes of child support modification proceedings. Delays support order modification proceedings until reinstatement of suspended support order.

A BILL FOR AN ACT

Relating to support orders; amending ORS 25.247, 25.287 and 25.527.

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

SECTION 1. ORS 25.247 is amended to read:

25.247. (1) An obligor who is incarcerated for a period of 180 or more consecutive days shall be rebuttably presumed unable to pay child support and a child support obligation does not accrue for the duration of the incarceration unless the presumption is rebutted as provided in this section or as determined by the court.

(2) The Department of Justice and the Department of Corrections shall enter into an agreement to conduct data matches to identify the obligors described in subsection (1) of this section.

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

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

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

21 **(5) If no objection is made under subsection (4) of this section,** or if
22 the court or administrative law judge finds that the presumption has not
23 been rebutted, the administrator shall discontinue billing the obligor for the
24 period of time described in subsection (3) of this section and no arrearage
25 shall accrue for the period during which the obligor is not billed. In addition,
26 the entity providing support enforcement services shall file with the circuit
27 court in which the support order or judgment has been entered a copy of the
28 notice described in subsection (3) of this section or, if an objection is made
29 and the presumption is not rebutted, a copy of the court's or administrative
30 law judge's order.

31 **(6) After the suspension of a support order, a party may object to**

1 **the presumption of inability to pay by sending an objection to the en-**
2 **tity that served the notice under subsection (3) of this section. The**
3 **objection must describe the evidence of ability to pay that was not**
4 **available at the time the order was suspended. The entity receiving the**
5 **objection shall cause the case to be set for a hearing before a court**
6 **or an administrative law judge. The court or administrative law judge**
7 **may consider only whether the presumption has been rebutted. In**
8 **making the determination, the court or administrative law judge shall**
9 **consider any evidence presented by a party of the expenses an obligor**
10 **will incur reintegrating into society following release from incarcer-**
11 **ation.**

12 **(7) If an objection is made under subsection (6) of this section and**
13 **the court or administrative law judge finds that the presumption has**
14 **been rebutted, the support order will be reinstated at 50 percent of the**
15 **previously ordered support amount on the first day of the first month**
16 **following the finding by the court or administrative law judge.**

17 [(6)] **(8)** An order that has been suspended as provided in **subsection (3)**
18 **of** this section will automatically be reinstated at 50 percent of the previ-
19 ously ordered support amount on the first day of the first month that follows
20 the 120th day after the obligor's release from incarceration.

21 [(7)(a)] **(9)(a)** Within 30 days following reinstatement of the order pursu-
22 ant to subsection [(6)] **(8)** of this section, the administrator shall provide
23 notice to all parties to the support order:

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

25 (B) Stating that by operation of law, billing and accrual of support re-
26 sumed on the first day of the first month that follows the 120th day after the
27 obligor's release from incarceration; and

28 (C) Informing the parties that the administrator will review the support
29 order for purposes of modification of the support order as provided in sub-
30 section [(8)] **(10)** of this section within 60 days following reinstatement of the
31 order.

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

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

6 [(8)] **(10)** Within 60 days of the reinstatement under [*subsection (6)*] **sub-**
7 **section (7) or (8)** of this section, the administrator shall review the support
8 order for purposes of modifying the support order. **Reinstatement of sup-**
9 **port after an order has been suspended under this section is considered**
10 **a substantial change of circumstances for purposes of child support**
11 **modification proceedings.**

12 [(9) *An obligor's incarceration for at least 180 consecutive days or an*
13 *obligor's release from incarceration is considered a substantial change of cir-*
14 *cumstances for purposes of child support modification proceedings.*]

15 [(10)] **(11)** Proof of incarceration for at least 180 consecutive days is suf-
16 ficient cause for the administrator, court or administrative law judge to al-
17 low a credit and satisfaction against child support arrearages for each month
18 that the obligor was incarcerated or that is within 120 days following the
19 obligor's release from incarceration unless the presumption of inability to
20 pay has been rebutted.

21 [(11)] **(12)** Orders modified to zero prior to January 1, 2018, remain in
22 force with reinstatement at the full amount ordered by the court occurring
23 61 days after release. Such orders are not subject to suspension and rein-
24 statement as provided in this section.

25 [(12)] **(13)** The provisions of subsections (1)[, (9) and (10)] **and (11)** of this
26 section apply regardless of whether child support enforcement services are
27 being provided under Title IV-D of the Social Security Act.

28 [(13)] **(14)** The Department of Justice shall adopt rules to implement this
29 section.

30 [(14)] **(15)** As used in this section, "support order" means a judgment or
31 administrative order that creates child support rights and that is entered or

1 issued under ORS 25.501 to 25.556, 419B.400 or 419C.590 or this chapter or
2 ORS chapter 107, 108, 109 or 110.

3 **SECTION 2.** ORS 25.527 is amended to read:

4 25.527. (1) Any time support enforcement services are being provided un-
5 der ORS 25.080, the obligor, the obligee, the party holding the support rights
6 or the administrator may move for the existing order to be modified under
7 this section. The motion shall be in writing in a form prescribed by the ad-
8 ministrator, shall set out the reasons for modification and shall state the
9 address of the party requesting modification.

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

11 (a) Whether there is pending in this state or any other jurisdiction any
12 type of support proceeding involving the dependent child, including a pro-
13 ceeding brought under ORS 25.287, 25.511, 107.085, 107.135, 107.431, 108.110,
14 109.100, 109.103, 109.165, 125.025, 419B.400 or 419C.590 or ORS chapter 110;
15 and

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

19 (3) The moving party shall include with the motion a certificate regarding
20 any pending support proceeding and any existing support order other than
21 the order the party is moving to modify. The party shall use a certificate that
22 is in a form prescribed by the administrator and include information required
23 by the administrator and subsection (2) of this section.

24 (4) The moving party shall serve the motion upon the obligor, the obligee,
25 the party holding the support rights and the administrator, as appropriate.
26 The nonrequesting parties must be served in the same manner as provided
27 for service of the notice and finding of financial responsibility under ORS
28 25.511 (1)(a). Notwithstanding ORS 25.085, the requesting party must be
29 served by first class mail to the requesting party's last known address. The
30 nonrequesting parties have 30 days to resolve the matter by stipulated
31 agreement or to serve the moving party by regular mail with a written re-

1 sponse setting forth any objections to the motion and a request for hearing.
2 The hearing shall be conducted under ORS 25.513.

3 (5) When the moving party is other than the administrator and no ob-
4 jections and request for hearing have been served within 30 days, the moving
5 party may submit a true copy of the motion to the administrative law judge
6 as provided in ORS 25.513, except the default may not be construed to be a
7 contested case as defined in ORS chapter 183. Upon proof of service, the
8 administrative law judge shall issue an order granting the relief sought.

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

12 (7) A motion for modification made under this section does not stay the
13 administrator from enforcing and collecting upon the existing order unless
14 so ordered by the court in which the order is entered.

15 (8) An administrative order filed in accordance with ORS 25.529 is a final
16 judgment as to any installment or payment of money that has accrued up to
17 the time the nonrequesting party is served with a motion to set aside, alter
18 or modify the judgment. The administrator may not set aside, alter or
19 modify any portion of the judgment that provides for any payment of money
20 for minor children that has accrued before the motion is served. However:

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

26 (b) The administrator may allow a credit against child support arrearages
27 for any Social Security or veterans' benefits paid retroactively to the child,
28 or to a representative payee administering the funds for the child's use and
29 benefit, as a result of a parent's disability or retirement.

30 (9) The party requesting modification has the burden of showing a sub-
31 stantial change of circumstances or that a modification is appropriate under

1 the provisions of ORS 25.287.

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

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

6 *[(12)(a)]* **(11)(a)** Notwithstanding subsections (1) to *[(11)]* **(10)** of this sec-
7 tion, any time support enforcement services are being provided under ORS
8 25.080, upon request of a party to a support order or judgment or on the
9 administrator's own motion, the administrator may move to suspend the or-
10 der or judgment and issue a temporary modification order under this sub-
11 section when:

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

14 (B) A party to the support order or judgment experiences an
15 employment-related change of income as defined by rule in ORS 25.505.

16 (b) Proceedings under this subsection may be initiated only when there
17 is a period of significant unemployment in Oregon. The Attorney General
18 shall determine when a "period of significant unemployment" exists in
19 Oregon and designate the beginning and ending dates thereof. In making the
20 determination of when a period of significant unemployment exists in
21 Oregon, the Attorney General may consider whether there is in effect an
22 "extended benefit period" as that term is defined in ORS 657.321.

23 (c) Except as otherwise provided in this subsection, the provisions of
24 subsections (1) to *[(11)]* **(10)** of this section apply to a motion for an order
25 of suspension and temporary modification under this subsection.

26 (d) A party's employment-related change of income during a period of
27 significant unemployment is considered a substantial change of circum-
28 stances for purposes of proceedings brought under this section.

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

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

1 (B) The amount of the obligor's and obligee's income immediately pre-
2 ceding the party's employment-related change of income, if known;

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

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

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

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

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

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

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

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

20 (g) A party may request a hearing within 14 days of service of the motion.
21 If a hearing is requested, the provisions of ORS 25.513 apply. When there has
22 been no request for hearing, the administrator may enter an order of sus-
23 pension and temporary modification under this subsection. The order must
24 be consistent with the provisions of the motion filed under this subsection
25 and be in substantial compliance with the formula established under ORS
26 25.275.

27 (h) An order of suspension and temporary modification issued under this
28 subsection is temporary and remains in effect for six months from the date
29 the order is filed under ORS 25.529 or until the date specified in the notice
30 provided under paragraph (i) of this subsection informing of the party's re-
31 employment, whichever is earlier, at which time the preexisting support or-

1 der or judgment becomes immediately effective and payable on the first day
2 of the following month unless an order of renewal is issued under paragraph
3 (j) of this subsection.

4 (i) The administrator may issue a notice of reinstatement at any time
5 during which an order of suspension and temporary modification is in effect
6 under this subsection when a party obtains employment and receives income
7 that is sufficient to reinstate support in an amount substantially similar to
8 the amount in the preexisting support order or judgment. The notice shall
9 be served as provided in paragraph (f) of this subsection and must state that,
10 unless a request for hearing is received within 14 days of service of the no-
11 tice, the administrator will enter an order terminating the order of suspen-
12 sion and temporary modification and reinstating the amount of the
13 preexisting support order or judgment effective on a date to be specified in
14 the notice. If a hearing is requested, the provisions of ORS 25.513 apply.
15 When there is no request for hearing, the administrator may enter an order
16 terminating the order of suspension and temporary modification and rein-
17 stating the preexisting support order or judgment effective upon the date
18 specified in the notice.

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

25 **SECTION 3.** ORS 25.287 is amended to read:

26 25.287. (1)(a) The entity providing support enforcement services under
27 ORS 25.080 may initiate proceedings to modify a support obligation to ensure
28 that the support obligation is in accordance with the formula established
29 under ORS 25.275.

30 (b) Proceedings under this subsection may occur only after three years
31 have elapsed, or such shorter cycle as determined by rule of the Department

1 of Justice, from the latest of the following:

2 (A) The date the original support obligation took effect;

3 (B) The date any previous modification of the support obligation took ef-
4 fect; or

5 (C) The date of any previous review and determination under this sub-
6 section that resulted in no modification of the support obligation.

7 (c) For purposes of paragraph (b) of this subsection, a support obligation
8 or modification takes effect on the first date on which the obligor is to pay
9 the established or modified support amount.

10 (d) The only issues at proceedings under this subsection are whether three
11 years have elapsed, or such shorter cycle as determined by rule of the de-
12 partment, and whether the support obligation is in substantial compliance
13 with the formula established under ORS 25.275.

14 (e) Upon review, if the administrator determines that a support obligation
15 does not qualify for modification under this section, a party may appeal the
16 administrator's decision under ORS 183.484.

17 (f) If the court, the administrator or an administrative law judge finds
18 that more than three years have elapsed, or such shorter cycle as determined
19 by rule of the department, the court, the administrator or the administrative
20 law judge shall modify the support order to bring the support obligation into
21 substantial compliance with the formula established under ORS 25.275, re-
22 gardless of whether there has been a substantial change in circumstances
23 since the support obligation was last established, modified or reviewed. Pro-
24 ceedings by the administrator or administrative law judge under this sub-
25 section shall be conducted according to the provisions of ORS 25.513 and
26 25.527.

27 (g)(A) The provisions of this subsection apply to any support obligation
28 established by a support order under this chapter or ORS chapter 107, 108,
29 109 or 110 or ORS 25.501 to 25.556, 419B.400 or 419C.590.

30 **(B) Notwithstanding subparagraph (A) of this paragraph, if a sup-**
31 **port order is suspended under ORS 25.245 or 25.247, the provisions of**

1 **this subsection apply to the support obligation upon reinstatement of**
2 **the support order.**

3 (2) The entity providing support enforcement services shall state in the
4 document initiating the proceeding, to the extent known:

5 (a) Whether there is pending in this state or any other jurisdiction any
6 type of support proceeding involving the child, including a proceeding
7 brought under ORS 25.501 to 25.556, 107.085, 107.135, 107.431, 108.110, 109.100,
8 109.103, 109.165, 125.025, 419B.400 or 419C.590 or ORS chapter 110; and

9 (b) Whether there exists in this state or any other jurisdiction a support
10 order, as defined in ORS 110.503, involving the child, other than the support
11 obligation the entity seeks to modify.

12 (3) The entity providing support enforcement services shall include with
13 the document initiating the proceeding a certificate regarding any pending
14 support proceeding and any existing support order other than the support
15 obligation the entity seeks to modify. The entity providing support enforce-
16 ment services shall use a certificate that is in a form prescribed by the ad-
17 ministrator and shall include information required by the administrator and
18 subsection (2) of this section.

19 (4) The administrator, court or administrative law judge may use the
20 provisions of subsection (1) of this section when a support order was entered
21 in another state and registered in Oregon, the provisions of ORS chapter 110
22 apply and more than three years have elapsed, or such shorter cycle as de-
23 termined by rule of the department.

24 (5) Notwithstanding the provisions of this section, proceedings may be
25 initiated at any time to modify a support obligation based upon a substantial
26 change of circumstances under any other provision of law.

27 (6) The obligee is a party to any action to modify a support obligation
28 under this section.

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