

Senate Bill 821

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

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 **as introduced**.

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

1
2 Relating to support orders; amending ORS 25.247, 25.287 and 25.527.

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

4 **SECTION 1.** ORS 25.247 is amended to read:

5 25.247. (1) An obligor who is incarcerated for a period of 180 or more consecutive days shall be
6 rebuttably presumed unable to pay child support and a child support obligation does not accrue for
7 the duration of the incarceration unless the presumption is rebutted as provided in this section or
8 as determined by the court.

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

11 (3) Within 30 days following identification of an obligor described in subsection (1) of this sec-
12 tion whose child support obligation has not already been modified due to incarceration, the entity
13 responsible for support enforcement services under ORS 25.080 shall provide notice of the
14 presumption to the obligee and obligor and shall inform all parties to the support order that, unless
15 a party objects as provided in subsection (4) of this section, child support shall cease accruing be-
16 ginning with the first day of the first month that follows the obligor becoming incarcerated for a
17 period of at least 180 consecutive days and continuing through the support payment due in the last
18 month prior to the reinstatement of the support order as provided in subsection [(6)] (8) of this
19 section. The entity shall serve the notice on the obligee in the manner provided for the service of
20 summons in a civil action, by certified mail, return receipt requested, or by any other mail service
21 with delivery confirmation and shall serve the notice on the obligor by first class mail to the
22 obligor's last-known address. The notice shall specify the month in which the obligor became
23 incarcerated and shall contain a statement that the administrator represents the state and that
24 low-cost legal counsel may be available.

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

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 rebutted.

2 (5) If no objection is made **under subsection (4) of this section**, or if the court or administra-
 3 tive law judge finds that the presumption has not been rebutted, the administrator shall discontinue
 4 billing the obligor for the period of time described in subsection (3) of this section and no arrearage
 5 shall accrue for the period during which the obligor is not billed. In addition, the entity providing
 6 support enforcement services shall file with the circuit court in which the support order or judgment
 7 has been entered a copy of the notice described in subsection (3) of this section or, if an objection
 8 is made and the presumption is not rebutted, a copy of the court's or administrative law judge's
 9 order.

10 (6) **After the suspension of a support order, a party may object to the presumption of**
 11 **inability to pay by sending an objection to the entity that served the notice under subsection**
 12 **(3) of this section. The objection must describe the evidence of ability to pay that was not**
 13 **available at the time the order was suspended. The entity receiving the objection shall cause**
 14 **the case to be set for a hearing before a court or an administrative law judge. The court or**
 15 **administrative law judge may consider only whether the presumption has been rebutted. In**
 16 **making the determination, the court or administrative law judge shall consider any evidence**
 17 **presented by a party of the expenses an obligor will incur reintegrating into society following**
 18 **release from incarceration.**

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

23 [(6)] (8) An order that has been suspended as provided in **subsection (3) of this section** will
 24 automatically be reinstated at 50 percent of the previously ordered support amount on the first day
 25 of the first month that follows the 120th day after the obligor's release from incarceration.

26 [(7)(a)] (9)(a) Within 30 days following reinstatement of the order pursuant to subsection [(6)]
 27 (8) of this section, the administrator shall provide notice to all parties to the support order:

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

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

31 (C) Informing the parties that the administrator will review the support order for purposes of
 32 modification of the support order as provided in subsection [(8)] (10) of this section within 60 days
 33 following reinstatement of the order.

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

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

39 [(8)] (10) Within 60 days of the reinstatement under [subsection (6)] **subsection (7) or (8) of this**
 40 **section, the administrator shall review the support order for purposes of modifying the support or-**
 41 **der. Reinstatement of support after an order has been suspended under this section is con-**
 42 **sidered a substantial change of circumstances for purposes of child support modification**
 43 **proceedings.**

44 [(9) *An obligor's incarceration for at least 180 consecutive days or an obligor's release from*
 45 *incarceration is considered a substantial change of circumstances for purposes of child support mod-*

1 *ification proceedings.]*

2 [(10)] (11) Proof of incarceration for at least 180 consecutive days is sufficient cause for the
3 administrator, court or administrative law judge to allow a credit and satisfaction against child
4 support arrearages for each month that the obligor was incarcerated or that is within 120 days fol-
5 lowing the obligor's release from incarceration unless the presumption of inability to pay has been
6 rebutted.

7 [(11)] (12) Orders modified to zero prior to January 1, 2018, remain in force with reinstatement
8 at the full amount ordered by the court occurring 61 days after release. Such orders are not subject
9 to suspension and reinstatement as provided in this section.

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

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

14 [(14)] (15) As used in this section, "support order" means a judgment or administrative order
15 that creates child support rights and that is entered or issued under ORS 25.501 to 25.556, 419B.400
16 or 419C.590 or this chapter or ORS chapter 107, 108, 109 or 110.

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

18 25.527. (1) Any time support enforcement services are being provided under ORS 25.080, the
19 obligor, the obligee, the party holding the support rights or the administrator may move for the
20 existing order to be modified under this section. The motion shall be in writing in a form prescribed
21 by the administrator, shall set out the reasons for modification and shall state the address of the
22 party requesting modification.

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

24 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
25 ceeding involving the dependent child, including a proceeding brought under ORS 25.287, 25.511,
26 107.085, 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 419B.400 or 419C.590 or ORS
27 chapter 110; and

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

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

34 (4) The moving party shall serve the motion upon the obligor, the obligee, the party holding the
35 support rights and the administrator, as appropriate. The nonrequesting parties must be served in
36 the same manner as provided for service of the notice and finding of financial responsibility under
37 ORS 25.511 (1)(a). Notwithstanding ORS 25.085, the requesting party must be served by first class
38 mail to the requesting party's last known address. The nonrequesting parties have 30 days to resolve
39 the matter by stipulated agreement or to serve the moving party by regular mail with a written
40 response setting forth any objections to the motion and a request for hearing. The hearing shall be
41 conducted under ORS 25.513.

42 (5) When the moving party is other than the administrator and no objections and request for
43 hearing have been served within 30 days, the moving party may submit a true copy of the motion
44 to the administrative law judge as provided in ORS 25.513, except the default may not be construed
45 to be a contested case as defined in ORS chapter 183. Upon proof of service, the administrative law

1 judge shall issue an order granting the relief sought.

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

4 (7) A motion for modification made under this section does not stay the administrator from en-
5 forcing and collecting upon the existing order unless so ordered by the court in which the order is
6 entered.

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

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

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

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

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

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

25 *[(12)(a)]* **(11)(a)** Notwithstanding subsections (1) to *[(11)]* **(10)** of this section, any time support
26 enforcement services are being provided under ORS 25.080, upon request of a party to a support
27 order or judgment or on the administrator's own motion, the administrator may move to suspend the
28 order or judgment and issue a temporary modification order under this subsection when:

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

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

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

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

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

45 (e) The motion for an order of suspension and temporary modification must be in writing and

1 must include, but need not be limited to:

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

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

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

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

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

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

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

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

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

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

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

25 (h) An order of suspension and temporary modification issued under this subsection is temporary
26 and remains in effect for six months from the date the order is filed under ORS 25.529 or until the
27 date specified in the notice provided under paragraph (i) of this subsection informing of the party's
28 reemployment, whichever is earlier, at which time the preexisting support order or judgment be-
29 comes immediately effective and payable on the first day of the following month unless an order of
30 renewal is issued under paragraph (j) of this subsection.

31 (i) The administrator may issue a notice of reinstatement at any time during which an order of
32 suspension and temporary modification is in effect under this subsection when a party obtains em-
33 ployment and receives income that is sufficient to reinstate support in an amount substantially
34 similar to the amount in the preexisting support order or judgment. The notice shall be served as
35 provided in paragraph (f) of this subsection and must state that, unless a request for hearing is re-
36 ceived within 14 days of service of the notice, the administrator will enter an order terminating the
37 order of suspension and temporary modification and reinstating the amount of the preexisting sup-
38 port order or judgment effective on a date to be specified in the notice. If a hearing is requested,
39 the provisions of ORS 25.513 apply. When there is no request for hearing, the administrator may
40 enter an order terminating the order of suspension and temporary modification and reinstating the
41 preexisting support order or judgment effective upon the date specified in the notice.

42 (j) Prior to expiration of an order of suspension and temporary modification under this sub-
43 section and upon request of a party, the administrator may renew the order of suspension and tem-
44 porary modification for additional six-month periods or until the party obtains employment as
45 described in paragraph (i) of this subsection, whichever occurs first, if the circumstances under

1 which the order was originally issued continue to exist unchanged.

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

3 25.287. (1)(a) The entity providing support enforcement services under ORS 25.080 may initiate
4 proceedings to modify a support obligation to ensure that the support obligation is in accordance
5 with the formula established under ORS 25.275.

6 (b) Proceedings under this subsection may occur only after three years have elapsed, or such
7 shorter cycle as determined by rule of the Department of Justice, from the latest of the following:

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

9 (B) The date any previous modification of the support obligation took effect; or

10 (C) The date of any previous review and determination under this subsection that resulted in
11 no modification of the support obligation.

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

14 (d) The only issues at proceedings under this subsection are whether three years have elapsed,
15 or such shorter cycle as determined by rule of the department, and whether the support obligation
16 is in substantial compliance with the formula established under ORS 25.275.

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

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

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

29 **(B) Notwithstanding subparagraph (A) of this paragraph, if a support order is suspended**
30 **under ORS 25.245 or 25.247, the provisions of this subsection apply to the support obligation**
31 **upon reinstatement of the support order.**

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

34 (a) Whether there is pending in this state or any other jurisdiction any type of support pro-
35 ceeding involving the child, including a proceeding brought under ORS 25.501 to 25.556, 107.085,
36 107.135, 107.431, 108.110, 109.100, 109.103, 109.165, 125.025, 419B.400 or 419C.590 or ORS chapter 110;
37 and

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

40 (3) The entity providing support enforcement services shall include with the document initiating
41 the proceeding a certificate regarding any pending support proceeding and any existing support or-
42 der other than the support obligation the entity seeks to modify. The entity providing support
43 enforcement services shall use a certificate that is in a form prescribed by the administrator and
44 shall include information required by the administrator and subsection (2) of this section.

45 (4) The administrator, court or administrative law judge may use the provisions of subsection

1 (1) of this section when a support order was entered in another state and registered in Oregon, the
2 provisions of ORS chapter 110 apply and more than three years have elapsed, or such shorter cycle
3 as determined by rule of the department.

4 (5) Notwithstanding the provisions of this section, proceedings may be initiated at any time to
5 modify a support obligation based upon a substantial change of circumstances under any other pro-
6 vision of law.

7 (6) The obligee is a party to any action to modify a support obligation under this section.
8
