



**OREGON CHILD SUPPORT  
BENCH BOOK**



**DEVELOPED BY**

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**OREGON DEPARTMENT OF JUSTICE**

**January, 2026**

## INTRODUCTION AND ACKNOWLEDGEMENTS

This bench book was created by the Civil Enforcement Division of the Oregon Department of Justice. It is intended as a guide to assist the courts and members of the bar when creating, modifying, terminating and enforcing child support orders.

Contributors to the creation of the bench book include Chief Counsel Claudia Garcia Groberg, Assistant Attorneys General Michael Ritchey, Audrey Hirsch, Jonathan Tucker, Adam Peterson, Shannon Richard, Darin Tweedt and former AAG David Pebworth. The AAGs in turn owe a debt of gratitude to the many lead workers and child support case managers who have helped us to better understand the procedures and policies of the DOJ Division of Child Support and Oregon Child Support Program. We are also indebted to the Honorable Maureen McKnight, Senior Judge, and the Honorable Keith R. Raines, Senior Judge, for their review and contributions.

Contributors to the January 2026 bench book revisions include Assistant Attorneys General Michael Ritchey, Audrey Hirsch, Ana Maria Carter, Darin Tweedt, Jonathan Cable and Attorney-in-Charge Shannon Richard. The online version of this bench book can be found at [Tools for Professionals - Oregon Department of Justice : Child Support](#). It contains links to statutes, administrative rules, and other resources.

Disclaimer: This bench book summarizes statutes and administrative rules, but it is not intended to provide a complete legal analysis of every issue or dispute that may arise in any particular case.



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## **DE NOVO APPEALS AND OTHER CHILD SUPPORT PROCEEDINGS**

### **1.0 Circuit Court Jurisdiction**

- A.** Pursuant to [ORS 25.513](#) administrative orders issued by the Child Support Program and orders issued by the Office of Administrative Hearings are fully enforceable upon issuance and have the full force, effect and attributes of a judgment of the circuit court upon entry in the register, but may be appealed under [ORS 25.513\(6\)](#) to the circuit court in the county where the order was entered under [ORS 25.529](#). Parties have 60 days from the date of entry of the order to request a hearing. Court's review is de novo.
- B.** The party filing the de novo review petition has the burden of proof to establish the findings and determinations set forth in the order are incorrect. [Oregon Evidence Code Rules 305](#).
- C.** A party may file a de novo appeal of an administrative order establishing paternity, but paternity may not be challenged in a de novo hearing of a later-issued child support order.

### **1.1 Subject of Hearings**

- A.** A broad range of child support-related issues can be appealed to circuit court for de novo review.
- B.** May require the court to make findings related to the child support calculation and perform child support calculations.
- C.** Some courts make findings and ask the District Attorney or Assistant Attorney General to perform calculations.

### **1.2 Parties**

- A.** In any child support proceeding under [ORS 25.501 to 25.556](#), the following are parties and must be given notice pursuant to [ORS 25.503](#):
  - 1.** State of Oregon
  - 2.** Obligee
  - 3.** Obligor

4. Any other person who has physical custody of a child covered by the order who has been joined as a party.
- B. A child aged 18-20 who is a child attending school is a party to any legal proceeding related to the support order. [ORS 107.108\(3\)](#).
- C. A child aged 18-20, regardless of whether the child qualifies as a child attending school is a necessary party to any judicial action to establish or modify a support order. [ORS 107.108\(4\)\(b\)](#).

### 1.3 Jurisdiction Issues

- A. Subject matter jurisdiction is seldom an issue except for cases involving modification of an order from another state that has been registered in Oregon. See [ORS 110.632](#).
- B. If one of the parties does not live in Oregon, see [ORS 110.518](#), which describes the circumstances that permit exercising long arm personal jurisdiction over a non-resident.
- C. Out of State orders: Generally, once a tribunal has established a support order consistent with its state laws, that state acquires CEJ (continuing exclusive jurisdiction). [ORS 110.527](#).
- D. A state continues to have CEJ as long as the obligor, obligee or child continues to reside in the state or until the parties give written consent for another state to assume CEJ. As long as a state has CEJ, no other state may modify its order.
- E. There is a process to register, enforce and modify foreign orders in Oregon courts. [ORS 110.605](#). (See also Uniform Interstate Family Support Act (UIFSA chapter).

### 1.4 Duty to Support

- A. “It is the policy of the State of Oregon that dependent children shall be maintained as much as possible from the resources of both parents” thereby reducing the burden on the state due to public assistance. [ORS 25.502](#).
- B. Provisions of [ORS 25.501 to 25.556](#) augment traditional judicial remedies for establishing and modifying child support.

## 1.5 Support Orders Must Use First of Month as Due Date

- A. [ORS 25.166](#) provides that any order for child or spousal support must specify an initial due date that is on the first day of a month, with subsequent payment due on the first day of each subsequent month.
- B. Support payments become delinquent only if not paid in full within one month of the payment due date. If a support obligation is due in two or more installments, the payment becomes delinquent only if not paid in full by the due date for the first installment in the next month.
- C. A support payment that has a due date other than the first of the month is nevertheless fully enforceable by income withholding on the first day the month in which it accrues.

## 1.6 Support Rights Assigned to State if on Cash or Medical Assistance

- A. Support rights are automatically assigned to the state if a custodial parent receives Temporary Assistance to Needy Families (TANF) benefits or if the children are enrolled in public health care. [ORS 412.024](#), [OAR 461-120-0310](#), [OAR 461-120-0315](#).
- B. Support rights are automatically assigned to the state when DHS has legal custody of a child (Foster Care). [ORS 418.032](#); [ORS 419B.406](#).
- C. In 2014, the CSP stopped receiving medical referrals from the Oregon Health Authority (OHA) because the information was missing critical data or was categorized by OHA as unreliable – and therefore did not meet the criteria for an appropriate referral. As a result, the CSP does not require cash medical support be included in an order for children on the Oregon Health Plan, and the CSP does not assign any cash medical support to the state.

## 1.7 Parentage

- A. Parentage for a child may be established for an individual, regardless of gender, by:
  - 1. Marital presumption regardless of spouse's gender. [ORS 109.067](#).
  - 2. Adoption. [ORS 109.226 to 109.410](#).

3. Consent in writing to, or an adjudication of, parentage of a child conceived by assisted reproduction other than under a gestational surrogacy agreement. [ORS 109.211](#).
  4. Consent in writing to, or an adjudication of, parentage of a child, conceived by assisted reproduction other than under a gestational surrogacy agreement. [ORS 109.238](#). [ORS 109.211](#).
- B. Parentage for men (genetic parent), may also be established by:
1. Voluntary acknowledgment. [ORS 109.070](#); [ORS 432.098](#).
  2. Adjudication of Parentage. [ORS 109.124](#), et seq.
  3. Administrative order. [ORS 25.511](#) [ORS 25.550](#).
- C. Challenges to paternity established by administrative order may be heard in a de novo hearing. Depending on the circumstances, it may be appropriate for the court to order paternity testing pursuant to [ORS 109.184](#).
- D. If parentage was established due to an un rebutted marital presumption, and the birth mother alleges a father who is not the presumed parent, the CSP will assist the parties in determining parentage. Parentage will be resolved through a three-party action including the mother, the presumed parent, and the alleged father. [OAR 137-055-3020\(5\) and \(6\)](#).

## 1.8 Child Support Calculation Formula

- A. Child support must be calculated using a formula. [ORS 25.275](#).
- B. The formula is contained in the Child Support Guidelines found at [OAR 137-050-0700 to OAR 137-050-0765](#).
- C. Guideline amount presumed correct. [ORS 25.280](#).
- D. Calculate support for an 18-year-old child who is attending high school and living with a parent in the same manner as support for a minor child. [OAR 137-050-0700\(4\)](#). When using the support calculator, simply enter that child as a minor rather than as a Child Attending School.

- 1.9 Deviation From Presumed Guideline Amount by Use of Rebuttal**
- A. Presumption in favor of guideline amount may be rebutted. [ORS 25.287](#), [OAR 137-050-0760](#). *Matter of Marriage of Petersen*, 132 Or. App. 190, 888 P.2d 23 (1994).**
  - B. Requires a finding that the guideline amount is unjust or inappropriate. *Rossi and Rossi*, 128 Or. App. 536, 876 P.2d 820 (1994).**
  - C. May be supported by a calculation showing why the guideline amount is unjust or inappropriate. In such a calculation, factors may be applied to party's income, costs, or bottom-line support amount.**
  - D. Specific rebuttal factors are set out in [OAR 137-050-0760](#). This list is not exclusive and any other economically based reason may be used. *Matter of Marriage of Petersen*, 132 Or. App. 190, 198, 888 P.2d 23 (1994).**

**1.10 Deviation From Presumed Amount by Agreement (Consent)**

- A. Parties may agree to a deviation of up to 15% of the presumed amount. [OAR 137-050-0765](#).**
- B. Requires parties to waive rights to administrative hearing.**

**1.11 Medical Support**

- A. All child support orders must include a medical support clause. [ORS 25.323\(1\)](#).**
- B. The medical support clause must require one or both parents to provide health care coverage (insurance). If health care coverage is not available, must require health care coverage to be provided when available and require payment of cash medical support or include a finding why not appropriate. [ORS 25.323\(4\)](#). Typical findings include, but are not limited to:
  - 1. Cash medical support is not necessary because the child does not have predictable recurring uninsured expenses.**
  - 2. Cash medical support is not necessary because uninsured medical expenses are already addressed by the Uninsured Medical Expenses provision in an existing judgment.****

- C. **The medical support clause may require contingent medical support. [ORS 25.323\(3\)](#). For example, an order may require the payment of cash medical support only when not providing health care coverage.**
- D. **Health insurance must be appropriate and available. [ORS 25.323\(5\) & \(6\)](#).**
- E. **Medical support clause may not order a parent to pay to provide health care coverage (including contributing to the other parent's cost) or cash medical support if parent's income is equal to or less than the highest Oregon minimum wage. [ORS 25.323\(7\)](#) and [OAR 137-050-0750\(6\)](#). May order a minimum wage parent to provide health care coverage that is available at no cost. May also order a parent to enroll the children in public health care coverage if private health care coverage is not available.**
- F. **Under the guidelines, the amount that can be ordered to provide private health care coverage is 4% of the parties' combined adjusted incomes. Income of parent with income at or below Oregon minimum wage is not included. Can exceed 4% to provide health care coverage if compelling factors are found. [OAR 137-050-0750\(7\)](#). If ordered, cash medical support is 4% of the obligor's adjusted income.**

#### **1.12 Income of Parties**

- A. **For purposes of calculating support, a party's income should be determined by using actual income, potential income or both. Actual income should be used unless it is less than the party's potential income, in which case additional potential income should be imputed. [OAR 137-050-0715](#).**
- B. **Actual income includes earnings and income from any source, including, for example, wages, pensions, bonuses, interest, trust income, annuities, gifts, prizes, self-employment, unemployment, social security, workers' compensation and disability insurance benefits, rent, etc.**
- C. **Potential income is determined by considering the party's qualifications, work history and the prevailing employment opportunities in the community.**
- D. **If insufficient information about the parent's income history is available to make a determination of actual or potential income, the parent's income**

is the amount the parent could earn working full-time at the lowest minimum wage in the state in which the parent resides.

- E. Child support, food stamps, Social Security or Veterans' benefits received on behalf of a child in the household, adoption assistance, guardianship assistance, and foster care subsidies are not considered income for purposes of this calculation.

### 1.13 Adjustments to Income

- A. A party's income is adjusted upward for spousal support received. A party's income is adjusted downward for union dues paid, spousal support paid, non-joint children and the portion of a health insurance premium that is paid to enroll the parent, regardless of whether the children will be enrolled. [OAR 137-050-0720](#).
- B. To qualify as a non-joint child, the minor child must reside with the parent or the parent must be ordered to pay support for the child. [OAR 137-050-0720\(2\)](#).
- C. A child aged 18-20 who is attending school qualifies as a non-joint child only if the parent is ordered to pay support for that child. [OAR 137-050-0720\(2\)](#).

### 1.14 Parenting Time Credit

- A. If a child spends one or more overnights with a parent, the parent is entitled to a parenting time credit. [OAR 137-050-0730](#).
- B. Generally, parenting time is calculated using average number of overnights for a two-year period.
- C. The rule does provide for an alternate method of calculation when overnights may not be an appropriate measure.
- D. Parenting time credit is applied in the child support calculator.
- E. Parenting time is based on the minor child(ren) only. This includes an 18-year-old attending high school and living with a parent. The amount of the credit is based only on the minors' portion of the support obligation but it reduces the total support obligation. Because a CAS receives a

proportionate share of the total support in a class order, the parenting time credit indirectly reduces the CAS' share. [OAR 137-050-0730](#).

#### 1.15 Child Care Credit

- A. A support calculation can be adjusted for child-care costs incurred for a child under the age of 13 or for a child of any age who is disabled. [OAR 137-050-0735](#).
- B. Child-care costs can be incurred by either parent, but must be related to the parent's employment, job search, or training or education necessary to obtain a job.
- C. Child-care costs must be reasonable and are capped depending on the parent's geographic location. [OAR 137-050-0735](#) has a chart and a link to a comprehensive list of zip codes and associated child-care caps.
- D. Do not include child-care subsidies paid by the government for the parent.

#### 1.16 Social Security and Veterans' Benefits

- A. Amount of support obligation must be reduced for certain types of social security and veterans' benefits paid to a child or a child's representative payee on behalf of obligated parent who is disabled or retired. [OAR 137-050-0740](#).
- B. See *Lawhorn and Lawhorn*, 119 Or. App. 225, 850 P.2d 1126 (1993).

#### 1.17 Minimum Order

- A. It is rebuttably presumed that a parent can pay at least \$100 per month as support. [OAR 137-050-0755](#).
- B. Presumption does not apply when:
  - 1. Each parent has exactly 50% parenting time;
  - 2. The order is for medical support only;
  - 3. The obligated parent is an incarcerated obligor as defined in [OAR 137-055-3300](#).

4. The obligated parent has disability benefits as the sole source of income; or
5. The obligated parent receives public benefits as defined by [ORS 25.245](#).

**1.18 Presumption of Inability to Pay Child Support When on Cash Assistance or When Incarcerated for at Least 180 Days**

- A. A parent who is receiving SSI or public assistance benefits from Oregon or another state or tribe is presumed unable to pay child support. [ORS 25.245 \(1\)](#). Cash payments must be under one of four programs: (1) Title IV-A of the Social Security Act (TANF), (2) General Assistance Program of Oregon or of another state or tribe, (3) Oregon Supplemental Security Income Program, or (4) Federal Supplemental Security Income Program. *Amiotte v. Woods*, 179 Or. App. 179, 39 P.3d 268 (2022).
- B. A parent who is incarcerated for at least 180 days is presumed unable to pay child support. [ORS 25.247](#). (See Incarcerated Obligor chapter for more information.)
- C. CSP must send notice of presumption to parties.
- D. May object to presumption within 30 days of service of notice.
- E. **Reinstatement of Suspended Order:** An order that is suspended due to obligor's receipt of public assistance is automatically reinstated when obligor stops receiving assistance. An order that is suspended due to obligor's incarceration is automatically reinstated at 50% of the previous amount after obligor has been released for 120 days.

**1.19 Establishment of Child Support Order**

- A. To establish a parent's support obligation, the Child Support Program issues a Notice and Proposed Order Establishing Support. [ORS 25.511](#).
- B. The Notice and Proposed Order Establishing Support is served on the alleged obligated parent by mail, return receipt requested, or by any other mail service with delivery confirmation. [ORS 25.511\(1\)](#).
- C. A proposed order may also allege the establishment of parentage. A proposed order alleging parentage must be personally served. [ORS 25.511\(1\)](#).

- D. A proposed order sets forth the amount of cash child support, the type and amount of medical support and an amount of past support.

## 1.20 Past Support

- A. “Past support” means the amount of support that is ordered for a period prior to the support order becoming effective, during which the obligor was not supporting the child. [ORS 25.501\(8\)](#).
- B. Under [ORS 25.515](#), past support may not be ordered for any period prior to the later of:
  - 1. Date of application for IV-D services (application for services provided by the CSP) that resulted in the child support case opening.
  - 2. Date of mandatory referral based on receipt of public assistance that resulted in the child support case opening.
- C. If a proposed order alleges past support, but is not finalized because it is discovered that a court action is pending for the same parties, the CSP may certify the past support issue to court. The court may order past support in the same manner as the child support program. [ORS 25.515\(2\)](#).
- D. If the matter of past support is not certified and the court does not address past support, the CSP may subsequently establish a past support obligation. [ORS 25.515\(3\)](#).
- E. Administrative orders will not order past support for any time prior to the first day of the month the proposed child support order was created and sent out to be served on the parties. [OAR 137-055-3220\(7\)](#).

## 1.21 Establishment of Arrears

- A. Pursuant to [ORS 25.540](#), the CSP may establish and enforce child support arrears.
- B. Statute sets out the requirements for the notice of intent to establish and enforce arrears.
- C. State may pursue any other enforcement remedies at any time, notwithstanding the arrears establishment proceeding under [ORS 25.540](#).

- D. There is also a court process to establish arrears under [ORS 25.167](#).
- E. Interest Establishment: The CSP no longer establishes the amount of interest that has accrued on a judgment but will enforce interest that has been established by a court order. [OAR 137-055-5080](#).

#### 1.22 Credit for Direct Child Support Payments

- A. Party may not receive credit for direct payments not made to DOJ except as provided in [ORS 25.020\(11\) to \(14\)](#).
- B. When payments not assigned to state, party may get credit if obligor and obligee sign statements that payments were made and should be credited. The credit is limited to the arrears owed to the party that received the direct payments. [ORS 25.020\(12\)](#) (as revised by 2017 SB 517.).
- C. Child Attending School must also agree to credit for direct payments received by them.
- D. DOJ may also give credits for judicially determined direct payment or satisfaction. [ORS 25.020\(14\)](#).

#### 1.23 Credit Against Arrears

- A. Credit balances. Per DCS program rules, a credit for physical custody, Social Security benefits or Veterans' benefits may not exceed total arrears owed on the case. In other words, a party may not receive a credit that will create a credit balance on the party's support account. [OAR 137-055-5510\(4\)](#) and [137-055-5520\(9\)](#). A credit for direct payment cannot be used to satisfy arrears that are owed to anyone other than the person who received the payments. [OAR 137-055-5240\(5\)\(b\)](#).
- B. In the context of a modification, an obligor may be given credit against arrears. [ORS 25.527\(8\)](#).
- C. Obligor may also receive credit independent of a modification. [OAR 137-055-5510](#).
- D. Obligor may receive a credit for periods of time he/she had physical custody of the child or children covered by the order with knowledge and

consent of the other party. Does not include periods of reasonable parenting time. [OAR 137-055-5510](#).

1. Physical custody must have lasted at least 30 consecutive days or the entire month for which credit is sought.
  2. No credit will be allowed for physical custody of a child attending school. [OAR 137-055-5510\(6\)](#).
  3. As part of a modification, credit for physical custody can be allowed for the period immediately prior to the modification and no time limit on length of credit as long as physical custody of all children has been continuously with the obligor. In an independent action, credit for physical custody will only be allowed for a time period within 2 years of the date of the request.
  4. Only basis for objection is that the party did not have physical custody or that physical custody was not with the knowledge and consent of the other party.
- E. Obligor may receive credit for any Social Security or Veterans' benefits paid retroactively to or for a child's use and benefit as a result of the paying parent's disability or retirement. [OAR 137-055-5520](#).

#### 1.24 Modifications of Child Support Orders

- A. To qualify for modification when the order is less than three years old, party must show that there has been a substantial change in circumstances. If the basis for the request to modify is a change of parenting time, a change in financial or household circumstances or a change in the needs of a child, the order can be modified only if the existing order is not in substantial compliance with child support guidelines. [ORS 25.287](#), [ORS 25.527](#), [OAR 137-055-3420](#), [OAR 137-055-3430](#).
- B. Substantial compliance means the existing order amount is within the lesser of \$50 or 15% of the new calculated amount.
- C. The following bases for modification are not subject to the substantial compliance standard. [OAR 137-055-3430\(7\)](#).
  1. The order is more than three years old.

2. Need to add or change medical support provisions.
  3. Change in physical custody of a minor child.
  4. Need to add a subsequent child or remove a child of the parties.
  5. Tiered provisions for a child attending school pursuant to [ORS 107.108](#) must be added, removed or changed.
  6. The proposed new amount resulted from a calculation that:
    - a. includes a deviation by consent of the parties
    - b. includes the application of rebuttals
    - c. includes compelling factors to exceed the normal 4% cap on medical support
    - d. is for a modification to allow credit for receipt of Social Security or Veterans' Benefits.
- D. If existing order is at least three years old, no need to show substantial change of circumstances. [ORS 25.287](#).
- E. Modification is effective on or after the date the last non-requesting party is served with the motion. [ORS 25.527\(8\)](#); [OAR 137-055-3440](#).

#### 1.25 Incarcerated Obligor

- A. Beginning January 1, 2018, if an obligor is incarcerated for a period that is expected to last at least 180 days, the obligor is rebuttably presumed to be unable to pay support and the order will be suspended as provided in [ORS 25.247](#). A suspended order is reinstated at 50% of the previous ordered amount after obligor has been released from incarceration for 120 days. An order that was modified to zero prior to January 1, 2018 will automatically reinstate on the 61st day following obligor's release from incarceration as provided by the order.

## 1.26 Child Attending School (CAS)

- A. Support for children age 18-20 is addressed by [ORS 107.108](#), OAR 137-055-3485, [OAR 137-055-5110](#), and [OAR 137-055-5120](#).
- B. [ORS 107.108\(2\)](#) provides that a support order may require one or both parents to pay support to a “child attending school.”
- C. A child age 18-20 who is making satisfactory academic progress while attending at least 1/2 of a full load (as defined by the education institution) is known as a “child attending school” (CAS).
- D. A child age 18-20 who is not attending school on at least a half-time basis is an “adult child.”
- E. If a child qualifies as a CAS, support must be paid during regularly scheduled school breaks.
- F. 18, 19 and 20-year-old children may request to be parties to a de novo review hearing. [ORS 107.108\(4\)](#).
- G. For support to be paid to the child after turning 18, the child must submit before turning 18, written notice of intent to continue in school after turning 18.
- H. CAS must submit written consent for school to release academic records to the obligor.
- I. Support for a CAS is suspended when the obligor objects to paying support and the CAS fails within 30 days to submit documents proving he or she still qualifies as a child attending school. [ORS 107.108\(8\)](#).
- J. If an obligation is suspended, support is reinstated when the CAS submits documents proving he or she qualifies. [ORS 107.108\(9\)](#).
- K. Unless the child support order is a per child order, the CAS’s portion of the support is prorated. When a CAS is receiving a prorated share and support is suspended, the support that would otherwise be paid to the CAS is to be paid to the obligee.
- L. CAS case law:
  - 1. *Crocker and Crocker*, 332 Or. 42, 22 P.3d 759 (2001): [ORS 107.108](#), authorizing a support order against a parent who is divorced or separated from the other parent, but not against a married

parent, to be paid to a child attending school does not violate the Equal Protection clause of either the US or Oregon Constitution.

2. *Marriage of McGinley*, 172 Or. App. 717, 19 P.3d 954 (2001): Divorced parents of children attending school are not a suspect class for purposes of the Equal Protection Clause and [ORS 107.108](#) should not, therefore, be subject to heightened scrutiny on the basis that it discriminates against a suspect class.
3. *Sandlin and Sandlin*, 113 Or. App. 48, 831 P.2d 64 (1992): Child continued to meet [ORS 107.108](#) requirements for support for a child attending school to continue, when the child, who was not married, was sharing a household in a relationship resembling marriage.
4. *Eusterman and Eusterman*, 41 Or. App. 717, 598 P.2d 1274 (1979). Interpreting an early version of [ORS 107.108](#), the court held:
  - a. The original decree should indicate that child support will continue between the age of 18 to 21 if the child or children attend school within the meaning of [ORS 107.108](#) since that statute authorizes the court to extend the duty to support beyond what is otherwise statutory majority; it does not create a separate support obligation.
  - b. Courts have jurisdiction and authority to modify to provide for post-18 support at any time until the child reaches age 21.
  - c. Beginning to attend school within the meaning of [ORS 107.108](#) (or being accepted to attend plus intending to attend) is a change of circumstances.
  - d. Where the question of support for an 18 to 20 year old child was not fully litigated at the time of the original decree, the change-of-circumstances rule is not applicable in subsequent modification proceeding to extend child support in accordance with [ORS 107.108](#).

Hearing Date:

**De Novo Review Findings**

Court:

Case No

**Judge:**

CSP#

Chld: O atty: OE atty:	Non-Custodial Parent Name:	Custodial Parent Name:	Applicable OAR
<b>Gross income</b>			137-050-0715
<b>Mandatory union dues</b>			137-050-0720 (1)(a)
<b>Cost for parent to enroll or maintain ins: Self/child</b>			137-050-0720 (1)(b)
Deduct parent's <b>spousal support obligation</b> , whether ordered in the same or a different proceeding, to this or a different party & whether paid or not			137-050-0720 (1)(c)
Add amount of court-ordered monetary <b>spousal support owed to the parent</b> , whether ordered in the same or a different proceeding, by this or a different party and whether paid or not.			137-050-0720 (1)(d)
<b>Add'tl child:</b> a child who is not the child of both parties; must reside in the parent's household or the parent must be ordered to pay ongoing support for that child.			137-050-0720 (2)
<b>Parenting time credit</b>			137-050-0730
<b>Child care costs-</b> ch < 13 or disabled, care necessary for parent's employment, job search, or training necessary to obtain a job. Allowed only if cost is documented .			137-050-0735
<b>Credit for Social Security or veterans' benefits</b> pd to child on behalf of the parent.			137-050-0740
<b>Is there an exception to minimum order rule?</b> Disabled/incarcerated/or on public assistance			137-050-0755
<b>Rebuttal factors</b> apply? Describe			137-050-0760
<b>Parties agree</b> to a c/s ord w/in 15% of guideline amount?			137-050-0765
<b>Past Support Beginning</b>			137-055-3220 ORS 25.515
<b>Effective date of new order</b>			137-055-3440 ORS 25.527
All other provisions in underlying order are affirmed.			

## **MULTIPLE CHILD SUPPORT JUDGMENTS**

### **2.0 Child Support Orders/Judgments**

- A. Child Support Orders/Judgments may begin by administrative or judicial process.**
- 1. Upon entry in the court’s registry, an administrative child support order has the same force and effect as a circuit court judgment. [ORS 25.529\(3\)](#).**
  - 2. Later-issued child support judgments: [ORS 25.095](#) provides that a later-issued child support judgment terminates the monetary support terms of an earlier child support judgment under certain circumstances.**
- B. A child support order may cover monetary child support and/or medical support as defined in [ORS 25.321](#).**
- 1. “Child support order” means a judgment or administrative order that creates child support rights and that is entered or issued under [ORS 25.501 to 25.556](#), [419B.400](#) or ORS chapter [107](#), [108](#), [109](#) or [110](#). [ORS 25.321\(2\)](#).**
  - 2. “Medical support” means cash medical support and health care coverage. [ORS 25.321\(7\)](#).**
- C. A child support order may include an order for past support and/or ongoing child support.**
- 1. “Past support” means the amount of child support that could have been ordered based on the Oregon Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not being supported by the parent and no support order was in effect. [ORS 25.501\(9\)](#), [OAR 137-055-3220\(1\)\(a\)](#).**
  - 2. DCS may establish a child support order that includes past support for the period beginning with the date of the most recent referral from the Oregon Department of Human Services (DHS) based on the obligee’s receipt of public assistance or the date of the most recent application for Oregon Child Support Program services and ending the month before the beginning pay date of the new order. For this reason, only the initial administrative order includes a lump sum award for “past support.” See [ORS 25.515](#).**

## 2.1 Multiple Child Support Orders

- A. Multiple child support orders exist when two or more child support judgments exist and
1. Neither modifies the other, and
  2. They involve the same obligor and same child, and
  3. Cover the same period of time.
- B. If there is an existing Oregon child support order or judgment between the same obligor and child, the court has three choices: enforce the existing child support judgment, modify the existing child support judgment or set aside the existing child support judgment. [ORS 25.089\(3\)\(a\)](#).
- C. Grounds to modify or set aside existing Oregon order:
1. A court may modify or set aside a child support judgment issued in this state when:
    - a. The child support judgment was issued without prior notice to the issuing court, Child Support Program (CSP) or administrative law judge that:
      - (i). There was pending in this state or any other jurisdiction any type of support proceeding involving the child; or
      - (ii). There existed in this state or any other jurisdiction another child support judgment involving the child; or
      - (iii). The child support judgment was issued after another child support judgment, and the later judgment did not enforce, modify or set aside the earlier judgment. [ORS 25.089\(6\)](#).
    - b. See also [ORCP 71](#) for other reasons to modify or set aside a judgment.
  2. When modifying a child support judgment, the court, the CSP or administrative law judge shall specify in the judgment the effects of the modification on the child support judgment being modified. [ORS 25.089\(7\)](#).

3. **Multiple counties.** When multiple judgments are in different counties, the court may cause the records from the original proceedings to be transmitted to an additional court. [ORS 25.100](#).
4. **Multiple interstate orders:** When one of multiple child support judgments was issued by another state, [ORS Chapter 110](#) (the Uniform Interstate Family Support Act (“UIFSA”)) applies. See [ORS 110.632](#) and [110.636](#) re: modification of another state’s order. [ORS 110.533](#) describes the criteria to be used to determine the controlling child support order.
5. **No retroactive modification or set aside of arrears:** A judgment is final as to any installment or payment of money that has accrued up to the time the nonmoving party, other than the state, is served with a motion to set aside, alter or modify the judgment. The court may not set aside, alter or modify any portion of the judgment that provides for any payment of money, for minor children or for the support of a party that has accrued before the motion is served. [ORS 107.135\(7\)](#); [ORS 108.120\(3\)](#); [ORS 109.100 \(4\)](#). This also applies to the Administrator (Oregon Child Support Program) under [ORS 25.527\(8\)](#).
6. **Credit against arrears for physical custody:** Although arrears cannot be retroactively modified, the obligor may be awarded a credit against arrears for:
  - a. the period of time s/he had physical custody of the child with the consent of the obligee or pursuant to court order; [ORS 107.135\(7\)\(a\)](#) or
  - b. Social Security or Veterans’ benefits paid retroactively to the child, as a result of the obligor’s disability or retirement; [ORS 107.135\(7\)\(b\)](#).

## 2.2 Governing Child Support Judgments

- A. Multiple child support judgments for the same obligor, child and period of time may be resolved by a Governing Child Support Judgment (GCSJ). [ORS 25.091](#).
- B. “Governing child support judgment” means a child support judgment issued in this state that addresses child support, including medical support as defined in [ORS 25.321](#), and is entitled to exclusive prospective enforcement or modification

with respect to any earlier child support judgment issued in this state. [ORS 25.091\(1\)\(b\)](#)

**C. Who may request a GCSJ?**

1. Any party or the CSP may petition the court for a GCSJ.
2. When the court finds that two or more child support judgments exist, the court on its own motion, and after notice to all affected parties, may determine the controlling terms and issue a GCSJ. [ORS 25.091\(3\)](#).

**D. Rebuttable Presumption that latest judgment controls: There is a rebuttable presumption that the terms of the last-issued child support judgment are the controlling terms and terminate contrary terms of each earlier-issued child support judgment. [ORS 25.091\(4\)\(a\)](#).**

**E. How is Presumption rebutted? A party may rebut the presumptions by showing that:**

1. The last-issued child support judgment should be set aside under the provisions of [ORCP 71](#);
2. The last-issued child support judgment was issued without prior notice to the issuing court, CSP or administrative law judge that:
  - a. There was pending in this state or any other jurisdiction any type of support proceeding involving the child; or
  - b. There existed in this state or any other jurisdiction another child support judgment involving the child; or
  - c. The last-issued child support judgment was issued after an earlier child support judgment and did not enforce, modify or set aside the earlier child support judgment in accordance with [ORS 25.089](#). [ORS 25.091\(5\)](#).

**F. Contents of Governing Child Support Judgment.**

1. A GCSJ must include:
  - a. A reference to each child support judgment considered and a copy of the judgment;

- b. A determination of which terms regarding child support and medical support are controlling and which judgment or judgments contain those terms;
  - c. An affirmation, termination or modification of the terms regarding child support and medical support in each of the child support judgments;
  - d. A reconciliation of any child support arrears or credits under all of the child support judgments; and
  - e. The effective date of each controlling term and the termination date of each non-controlling term. In determining these dates, the court may apply the following:
    - (i) A controlling term is effective on the date specified in the judgment containing that term, or if no date is specified, the date that judgment was entered.
    - (ii) A noncontrolling term is terminated on the date the GCSJ is entered. [ORS 25.095\(8\)\(e\)\(B\)](#).
2. Note: A GCSJ must include a reconciliation of child support arrears or credits under all of the child support judgments unless the court orders the parties to reconcile arrears or credits under all of the child support judgments in a separate proceeding under [ORS 25.167](#) or [ORS 25.540](#).
- a. A GCSJ does not affect arrears accrued before the GCSJ is entered, except that arrears are reconciled. [ORS 25.091\(10\) and \(11\)](#).
  - b. Crediting amounts paid. In reconciling arrears accrued during a period when both judgments were being enforced, amounts paid under one order or judgment must be credited against arrears accrued during the same period under the other judgment. [ORS 25.091\(11\)](#).
3. Copy of GCSJ: A party designated by the court or the petitioner must file, not sooner than 30 days nor more than 60 days after entry of the GCSJ, a copy of the GCSJ with each court or the administrator (CSP) that issued an earlier child support judgment. Failure to do so may result in monetary sanctions, but a failure to file the copy does not affect the validity of the GCSJ. [ORS 25.091\(12\)](#).

## 2.3 Governing Child Support Orders

- A. When the Administrator (CSP) finds that two or more child support judgments exist involving the same obligor and child and the same period, the CSP may issue a proposed governing child support order (GCSO) as an alternative to filing a petition for a GCSJ. [ORS 25.531\(3\)\(b\)](#).
- B. The court will typically review a proposed administrative GCSO in 2 situations:
  - 1. If there is a timely written objection; or
  - 2. For review and approval if no timely written objection is received. See [ORS 25.531\(4\) and \(5\)](#).

## **UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA) (ORS 110)**

### **3.0 Determination of Parentage and/or Establishment of Support Order**

- A. If a support order entitled to recognition under UIFSA has not already been issued, a responding tribunal of this state (circuit court or Child Support Program) may issue an order determining parentage and/or establishing support at the request of another state or individual. [ORS 110.542](#), [110.592](#)**
- B. Oregon must have personal jurisdiction over all parties.**
- C. Person requesting establishment must reside out of state; or Child Support Program requesting establishment must be located out of Oregon. [ORS 110.592\(1\)](#)**
- D. Although rare, a tribunal may issue a temporary support order if it is determined to be appropriate and the alleged paying parent is:**
  - 1. A presumed parent, petitioning to have paternity adjudicated;**
  - 2. Petitioning to have paternity established;**
  - 3. Identified as the biological father through genetic testing;**
  - 4. Shown by clear and convincing evidence to be the father;**
  - 5. Acknowledged paternity under [ORS 109.070](#);**
  - 6. The mother of the child, or**
  - 7. There is an existing order that needs to be modified.**

### **3.1 Long Arm Jurisdiction**

- A. [ORS 110.518](#) provides the following bases for Oregon to exercise personal jurisdiction over a nonresident in a proceeding to establish, enforce or modify a support order or to determine parentage:**
  - 1. The individual is personally served with notice in Oregon;**
  - 2. The individual submits to Oregon jurisdiction by consent:**
    - a. In a record;**
    - b. By entering a general appearance; or**

- c. By filing a responsive document having the effect of waiving any contest to personal jurisdiction;
3. The individual resided with the child in this state;
4. The individual resided in this state and provided prenatal expenses or support for the child;
5. The child resides in this state as a result of the acts or directives of the individual;
6. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or
7. There is any other basis consistent with the Constitutions of Oregon and the U.S. for the exercise of personal jurisdiction.

### 3.2 Registration for Enforcement

- A. A support order or income withholding orders issued in another state may be registered in Oregon for enforcement. [ORS 110.605](#).
- B. [ORS 110.607](#) covers the documents and information required as part of registration of another state's child support order in Oregon.
- C. A support order is considered registered when it is filed. [ORS 110.608](#).
- D. [ORS 110.614](#) requires the court (registering tribunal) to send the parties copies of all the documents that were filed as part of the registration.
- E. 20 days to object: A nonregistering party seeking to contest the validity or enforcement of a registered support order has 20 days after the date of receiving notice from the court of the registration to request a court hearing. [ORS 110.614](#).
- F. [ORS 110.620](#) lists the defenses that can be raised when contesting registration or enforcement of another state's order. [ORS 110.623](#) covers the effect of confirmation of a registered order.
- G. [ORS 110.611](#) governs the choice of law between law of issuing state and law of registering state.

### 3.3 Modifications

- A. **Jurisdiction to modify.** Oregon must have subject matter jurisdiction to modify another state’s order. Jurisdiction to adjudicate custody and parenting time under the UCCJEA does not create jurisdiction to modify another state’s child support order. The UCCJEA, [ORS 109.704\(3\)](#), explicitly states that it does not apply to child support.
- B. **Continuing Exclusive Jurisdiction (CEJ).** A state that issues a valid support order Continuing Exclusive Jurisdiction and retains it as long as a party or child continues to reside in that state. As long as the issuing state has CEJ, no other state can modify unless all parties consent. See [ORS 110.632](#) and [110.636](#). Under UIFSA, the principle of continuing, exclusive jurisdiction aims, so far as possible, to recognize that only one valid support order may be effective at any one time.
- C. **Oregon modification of another state’s child support order is permitted when:**
1. **Modification is part of a proceeding to register another state’s order; all the parties who are individuals reside in Oregon; and the child does not reside in the issuing state ([ORS 110.636](#)); or**
  2. **[ORS 110.636](#) does not apply and**
    - a. **The child, the obligee and the obligor do not reside in the issuing state;**
    - b. **A petitioner who is a nonresident of this state seeks modification; and the respondent is subject to personal jurisdiction in Oregon; or**
    - c. **The child or a party who is an individual is subject to personal jurisdiction in Oregon and all of the parties who are individuals have filed a written consent in the issuing state’s court (or other tribunal) for Oregon to modify the order and assume CEJ. [ORS 110.632](#).**
- D. **Oregon may not modify those aspects of another state’s child support order that may not be modified in the other state. [ORS 110.632\(3\)](#) and [110.611](#).**
1. **For example: A child’s age of majority under the law of the issuing state cannot be modified in Oregon to extend to age 21 under [ORS 107.108](#).**
  2. **See also [ORS 110.611](#), Choice of Law provisions.**

### 3.4 Controlling Order Determination

- A. [ORS 110.533](#) covers the process for determining which order controls and must be enforced when two or more child support orders have been issued by multiple states, looking at whether one or more states have CEJ and where the parties and child(ren) reside.
- B. [ORS 110.533](#) and [ORS 110.537](#) require arrears to be consolidated and payments made under any child support order for the same child to be credited against amounts owed for the same period under any of the other child support orders.

### 3.5 Registration and Enforcement of Convention Country Orders

- A. In 2016, the United States became a party to the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance.
- B. The Convention mandates a uniform process for registering and enforcing orders issued by countries that have signed the Convention.
- C. [ORS 110.645 to 110.669](#) contains the statutes related to Convention orders.

### 3.6 Additional References:

- A. [Full Faith and Credit For Child Support Orders Act \(FFCCSOA\), U.S. Code Title 28 Part V Chapter 115 Sec. 1738B.](#)
- B. [UIFSA 2008 with Commentary \(NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS\)](#)

### 3.7 Oregon Case Law:

- A. Age of Majority
  - 1. Oregon court does not have the authority to modify a California decree of dissolution providing for support for children beyond 18, even if the child is attending school, if that support modification could not have been imposed under California Law. *Matter of Marriage of Tavares*, 293 Or 484, 651 P2d 133 (1982).

2. Oregon court does not have authority to extend the duration of a child support order beyond the age set by the original issuing state. *Cooney and Cooney*, 150 Or App 323, 327-328, 946 P2d 305 (1997).

**B. Multiple Support Orders and CEJ**

1. UIFSA requires that a registered child support order remains enforceable as to arrearages accruing up to the time that another order is declared to be the controlling order. *State of Oregon DCS v. Anderson*, 189 Or App 162, 74 P3d 1149 (2003).
2. When there are multiple support orders in different states, UIFSA provides the procedure for determining which order is the controlling order. Under the statute, the determination must be made whether more than one tribunal would have “continuing exclusive jurisdiction” over support. If so, then the order issued by the tribunal in the current home state of the child controls, if such an order exists. *Cohen v. Powers*, 180 Or App 409, 43 P3d 1150 (2002).
3. To the extent a state retains continuing, exclusive jurisdiction over the child support matter, that state’s order is the only support order entitled to enforcement under UIFSA. In addition, that state’s law controls accrual of arrearages and interest. *Marriage of Calvert*, 191 Or App 361, 82 P3d 1056 (2004).

## **CHILD SUPPORT GARNISHMENTS<sup>1</sup> AND INCOME WITHHOLDING ORDERS**

### **4.0 Garnishments v. Income Withholding Orders**

- A. The Child Support Program may issue Writs of Garnishment in the manner provided in [ORS 18.600 to 18.850](#) to collect past due support. [ORS 18.645](#).**
- B. The Child Support Program uses garnishments to collect from financial institution accounts, inheritances, and insurance settlements.**
- C. The Child Support Program issues Income Withholding Orders to collect both current and past due support. [ORS 25.372 & ORS 25.378](#).**
- D. Income Withholding Orders are typically used to collect from an obligor's wages, workers' compensation benefits, and Social Security benefits.**

### **4.1 Challenging an Income Withholding Order**

- A. Timing: An obligor only has 30 days to challenge an income withholding order. The “clock” runs from the time income is first withheld under the order. [ORS 25.405\(1\)](#).**
- B. Limited Defenses: The only defense to an income withholding order is a mistake of fact relating to the amount of support, the amount of arrears, or the identity of the obligor. [ORS 25.405\(2\)](#).**
  - 1. The rules involving child support garnishments and garnishments in other contexts (e.g., garnishments by state agencies, private attorneys, etc.) significantly overlap. However, there are many important distinctions. This section focuses on child support garnishments only. Rules, exemptions, and processes that do not apply to child support garnishments will not be discussed.**
- C. Where Challenge May be Heard: The forum for the challenge depends on who issued the income withholding order:**
  - 1. If the income withholding order was issued by the Division of Child Support, the challenge should be directed to the Division of Child Support. Similarly, if the order was issued by the District Attorney, the challenge should be directed to the District Attorney's office. An obligor can appeal a Division of Child Support / District Attorney decision on the challenge to the circuit court. [ORS 25.405\(5\)\(6\)](#).**

<sup>1</sup> The rules involving child support garnishments and garnishments in other contexts (e.g., garnishments by state agencies, private attorneys, etc.) significantly overlap. However, there are many important distinctions. This section focuses on child support garnishments only. Rules, exemptions, and processes that do not apply to child support garnishments will not be discussed.

2. If the income withholding order was issued by the court, the proper forum is the court that issued the order. [ORS 25.405\(3\)](#).
3. Special rules apply if the income withholding order was issued by another state. [ORS 25.405\(4\)](#).

#### 4.2 Challenging a Writ of Garnishment

- A. **Timing:** An obligor has a limited amount of time to challenge a garnishment: Generally speaking, a challenge must be filed within 30 days after the date the writ of garnishment was delivered to obligor. [ORS 18.700\(2\)\(b\)](#).
- B. **Limited Scope:** A challenge to garnishment may be used only to:
  1. Assert that the amount specified in the writ of garnishment as being subject to garnishment is greater than the total amount owed;
  2. Assert that the garnished property is not garnishable property; and
  3. To claim exemptions from garnishment as permitted by law. [ORS 18.700\(1\), \(5\)](#).
- C. **Who May File:** A challenge to garnishment may be filed by the obligor, or by others who assert an interest in a garnished piece of property (e.g., a joint bank account holder). [ORS 18.725](#).
- D. **Multiple Cases, One Garnishment:** The Child Support Program may issue a single garnishment for multiple child support cases, even if the cases are in different counties. [ORS 18.645\(3\)](#).
- E. An obligor is not required to challenge the garnishment in every county. Rather, the obligor may file a single challenge in any county with a child support judgment that was included in the Writ of Garnishment.

#### 4.3 Exemptions

- A. Property exempt from garnishment is set forth in [ORS 18.345](#) et seq. Some of the most common exemptions include:
  1. The first \$3,000 of a vehicle, including a car, truck, trailer, and other motor vehicles. [ORS 18.345\(1\)\(d\)\(B\)](#).

2. 50% of the debtor's interest in a personal injury settlement or judgment, up to a maximum of \$7500. [ORS 18.345\(4\)](#).
  3. 50% of a debtor's unemployment or workers' compensation benefits. [ORS 18.345\(4\)](#).
  4. \$400 in miscellaneous personal property. [ORS 18.345\(1\)\(p\)](#).
  5. Veterans' benefits & loans. [ORS 18.345\(1\)\(m\)](#).
  6. Federal earned income tax credit. [ORS 18.345\(1\)\(n\)](#).
  7. Funds exempt under federal law that have been deposited into a financial institution account. [ORS 18.348\(3\)](#).
  8. 75% of retirement accounts or 50% of a lump sum retirement plan disbursement or withdrawal. [ORS 18.358](#).
  9. \$40,000 of the proceeds of the sale of a debtor's homestead, if the proceeds are held for less than one year with the intention of buying another homestead. [ORS 18.395\(1\)](#), [\(2\)](#). But note: In child support cases, the court may deny the debtor the use of the homestead exemption. [ORS 18.398](#).
- B. For certain types of funds, only the first \$7,500 is exempt. [ORS 18.348\(2\)](#).
- C. Exempt property may retain its exempt status even after it is commingled with non-exempt funds. [ORS 18.348\(4\)](#).

#### 4.4 Joint Bank Accounts

- A. [ORS 708A.465\(1\)](#): "A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums deposit, unless there is clear and convincing evidence of a different intent."
- B. [ORS 708A.490](#): "Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the party demands payment."
- C. *Greenwood v. Beeson*, 253 Or 318, 324, 545 P.2d 633 (1969): "[W]here both parties make deposits into the account the provision of the deposit agreement that the account shall be 'jointly owned' probably would in most cases express their intent to create a present concurrent interest of some kind in the account."

Evidence should be freely admissible to show what the parties intended with respect to their respective interests in the account. However, when all of the funds in the account are deposited by only one of the signatories the recitation in the deposit agreement that the account is 'jointly owned' should not be treated as conclusively establishing the intent of the parties. To do so would be to give to the deposit agreement an effect which is normally not intended by those who open such accounts. Where the evidence shows that all of the funds in the account were deposited by only one of the signatories, the other signatory is to be deemed a trustee of the donor's power to withdraw from the account unless the intent to create some other legal relationship is proven."

#### 4.5 The Role of Garnishees

- A. **GARNISHEE DEFINED:** "a person to whom a writ of garnishment has been delivered." [ORS 18.600\(9\)](#).
- B. **GARNISHEE DUTIES:**
1. **Complete a garnishee response form.** A garnishee must deliver a completed garnishee response form to the creditor. [ORS 18.680](#). The form to be used is statutory, and the creditor must provide a copy of the form to the garnishee at the time the writ of garnishment is delivered. [See ORS 18.650; 18.685; 18.835](#).
  2. **Deliver garnishable property.** A garnishee must immediately take steps to hold garnishable property upon receiving a writ of garnishment. The property may then be delivered to the creditor or to the court. [See ORS 18.665; 18.668; 18.685](#).
  3. **TIMING:** A garnishee must deliver a garnishee response within 7 days of receiving the garnishment. [ORS 18.680\(2\)](#). A personal representative in receipt of a Writ of Garnishment is required to deliver a garnishee response within the same time limit. [ORS 18.672](#). However, with regard to garnished estate property:
    - a. A personal representative may wait until a probate case is completed to turn over garnished funds. [ORS 18.672](#).

#### 4.6 When a Garnishee Does Not Cooperate:

- A. If a garnishee fails to respond to a garnishment—or if a creditor is unsatisfied with a response—a creditor may:
  - 1. Obtain a court order requiring the garnishee to appear for an examination. [ORS 18.778\(1\)](#).
  - 2. Obtain a court order requiring the garnishee appear for a hearing to determine whether a judgment should be entered against the garnishee. [ORS 18.778\(1\)](#); [ORS 18.775](#).
- B. A non-complying garnishee may be held responsible for:
  - 1. The lesser of the amount required to satisfy the garnishment or the value of the debtor's garnishable property in the hands of the garnishee at the time of the garnishment;
  - 2. The creditor's costs, as determined by [ORCP 68](#).

#### 4.7 Income Withholding Orders and Uncooperative Employers:

- A. If an employer or other entity subject to an income withholding order does not timely and properly pay the amounts owed under an income withholding order, an action may be brought against that employer/entity. [ORS 25.424\(4\)](#).
- B. The action may be brought by the obligor, by the obligee, or by the Child Support Program. [ORS 25.424\(4\)](#).
- C. Failure to properly comply with the income withholding order can result in a judgment against the employer/ entity as follows:
  - 1. All amounts that were not withheld or paid; [ORS 25.424\(2\)\(a\)](#).
  - 2. Any damages suffered by the obligee or obligor as a result of the failure to withhold, or pay or to timely withhold; [ORS 25.424\(2\)& \(3\)](#).
  - 3. All amounts withheld in excess of the amount required by the terms of the order; [ORS 25.424\(3\)\(a\)](#).
  - 4. Any damages suffered by the obligor by reason of withholding that is in excess of the amount required by the terms of the order. [ORS 25.424\(3\)\(b\)](#).

- D. If the failure to comply was willful or grossly negligent, the employer/ entity shall also be held responsible for:**
- 1. A penalty not to exceed \$250 for each failed withholding or payment;**
  - 2. Reasonable attorney fees incurred by the plaintiff. [ORS 25.424\(5\)](#).**
- E. If a withholding order was issued by a court, a non-complying employer/ entity may also be found in contempt of court. See [ORS 25.424\(7\)](#).**

## **SECURITY INTERCEPT/CHALLENGE TO SECURITY INTERCEPT**

### **5.0 Child Support Program (CSP) Authority to Intercept Returned Security Deposit**

- A. [ORS 25.715\(1\)](#) authorizes a court to order that the portion of a security deposit paid under [ORS 135.265](#) that would otherwise be returned to the person who posted the security or the amount of arrearages, whichever is less, be paid the obligee or the Division of Child Support of the Department of Justice (DCS) to satisfy child support arrears.
- B. Required elements ([ORS 25.715\(1\)](#)):
1. Defendant must be an obligor who owes child support arrearages;
  2. The administrator or obligee must file a motion;
  3. Motion must be served on defendant;
  4. Defendant has an opportunity to respond and request hearing; and
  5. Court must determine that such an order is appropriate.
- C. Amount taken may not exceed the amount of the arrears.
- D. Statute does not require that the motion be served on the surety who posted security on behalf of defendant.

### **5.1 DCS Authority to Intercept Forfeited Security: [ORS 25.715\(2\)](#) authorizes the court to order that a portion of a security deposit forfeited under [ORS 135.280](#) (Arrest warrant) be paid to DCS to satisfy child support arrears and to provide security for future payment per [ORS 25.230](#) (Court authorized to require security for support payments).**

- A. Required Elements:
1. The defendant is an obligor who owes child support;
  2. The administrator has filed a motion;
  3. The motion specifies the amount to be applied to the child support judgment under [ORS 135.280](#) (Arrest warrant); and
  4. The court determines that such an order is appropriate.

## 5.2 Applies to Security Posted by Third Parties

A. In the recent case of *State v. Morales*, 367 Or 222 (2020), a defendant’s parents posted security for their son. The trial court ordered that the security be retained pursuant to [ORS 135.265](#) to pay court ordered fees. The Supreme Court held that because [ORS 135.265](#) provides that a security deposit be returned to the person who paid it and not to the defendant, Oregon law no longer includes a presumption that those funds belong to the defendant. However, intercepting security deposits for child support is governed by [ORS 25.715](#) rather than [ORS 135.265](#). In sharp contrast to [ORS 135.265](#), [ORS 25.715](#) does explicitly apply to security deposits posted by third parties.

“(1) The court may order that the portion of a security deposit made under [ORS 135.265](#) that would otherwise be returned to the person who made the deposit or the amount of child support arrearages, whichever is less, be paid to an obligee or the Division of Child Support of the Department of Justice...” (emphasis added).

Consequently, the Morales case does not limit or preclude the court’s authority to order that security posted by a third party be paid to the Division of Child Support to pay past due support.

## 5.3 DCS process for Security Intercepts

A. DCS files a motion, affidavit and proposed Order Holding Security Pending Disposition in the criminal action in which the security is posted. The motion asks that the security be held until the motion is decided or the security has been forfeited. If the court agrees to hold the security pending resolution of the underlying motion, the court should immediately sign the Order Holding Security Pending Disposition. The legal authority for the Order Holding Security Pending Disposition is derived from the court’s duty under [ORS 135.280\(3\)](#) to ensure that funds posted under [ORS 135.265](#) are available for a reasonable period of time to allow for disposition of a motion under [ORS 25.715\(2\)](#). The motion also asks that any security that is forfeited or otherwise returned to the defendant be paid to the DCS for child support arrears. The motion specifies that there is a 30-day period to object to the State’s Motion.

B. DCS serves a copy of the motion, affidavit, proposed Order Holding Security Pending Disposition and proposed Order Applying Security Posted to Child Support Judgment on the Defendant.

- C. After 30 days DCS submits the Order Applying Security Posted to Child Support Judgment unless defendant objects and requests a hearing.
- D. The court schedules a hearing if an objection is filed with the court.

**5.4 Certificate of Readiness Not Required for Orders or Judgments in Security Intercept Actions**

- A. The notice and certificate of readiness requirements of [UTCR 5.100](#) do not apply to security intercept motions because they are filed in a criminal case. See UTCR 5.100, REPORTER'S NOTE (08/01/2016). The defendant nevertheless receives an opportunity to object to the form of the proposed Order Applying Security Posted to Child Support Judgment because the order is served on Defendant at least 30 days prior to submission to court with a written explanation that the order will be submitted if there is no objection filed.

## CONTEMPT PROCEEDINGS

### 6.0 Overview

- A. **Statutory Authority:** [ORS 33.015 to 33.155](#) govern contempt proceedings. Also see [UTCRC 19](#).
- B. **The power of a court to impose a remedial or punitive sanction for contempt of court is an inherent judicial power.** [ORS 33.025](#).
- C. **Definition:** In the context of child support proceedings, “contempt of court” means the willful disobedience or resistance to or obstruction of court’s authority, process, orders or judgments. [ORS 33.015\(2\)\(b\)](#).
- D. **“Willful disobedience” of a court order to pay child support, is established by showing that a party, aware of a court order to pay, neither has complied with nor sought modification of the order.** *State ex rel Mikkelson v. Hill*, 315 Or. 452, 847 P.2d 402 (1993). A trial court need not make separate findings regarding “willfulness” and “bad intent” to support a judgment of contempt. *Barrett and Barrett*, 320 Or. 372, 377 (1994); *Douthit and Swift*, 125 Or. App. 466, 470 (1993); and *Couey and Couey*, 312 Or. 302, 305-306 (1991) (“These cases demonstrate that this court never intended to make ‘bad intent’ an element separate from the requirement of ‘willfulness.’”)
- E. **Prima Facie Case:** Proof of three elements establishes a prima facie case of contempt:
  - 1. **Existence of a valid court order.**
  - 2. **Respondent’s knowledge of the order.**
  - 3. **Willful noncompliance (no payment and no request for modification during the relevant timeframe).**
- F. **Types of contempt sanctions:** Court may impose remedial or punitive sanctions for contempt. [ORS 33.045\(1\)](#). Significant to the determination of whether a proceeding is remedial (civil) or punitive (criminal) in nature, is the type of sanction sought to be imposed.

## 6.1 Remedial Contempt

- A. A remedial sanction is imposed to terminate a continuing contempt of court or to compensate for injury, damage, or costs resulting from a past or continuing contempt of court. [ORS 33.015\(4\)](#).
1. In January 2017, the Office of Child Support Enforcement (OCSE) codified the Supreme Court’s new mandate of “additional safeguards” in 45 CFR 303.6(c)(4). See *Turner v. Rogers*, 564 U.S. 431 (2011).
    - a. 45 CFR 303.6(c)(4) requires Child Support Programs using civil contempt to establish guidelines requiring the agency to:
      - (i) Screen the case regarding ability to pay,
      - (ii) provide the court with information regarding obligor’s ability to pay, and
      - (iii) provide clear notice to the obligor that ability to pay will be the critical inquiry in the contempt proceeding.
- B. Authorized remedial sanctions include:
1. An amount not to exceed \$500 or one percent of the defendant’s annual gross income, whichever is greater, for each day the contempt of court continues. May be imposed as a fine (payable to the court), or to compensate a party for the effects of the continuing contempt. [ORS 33.105\(1\)\(c\)](#).
  2. An order designed to ensure compliance with an order of the court, including probation. [ORS 33.105\(1\)\(d\)](#).
  3. Confinement for so long as the contempt continues, or six months, whichever is shorter. [ORS 33.105\(1\)\(b\)](#). Period of incarceration or probation must include provision for respondent to be able to purge or escape the contempt, i.e. “six months or until the arrears are paid in full.”
    - a. The Oregon Court of Appeals recently reiterated in *State v. Gardner* the requirement that any remedial contempt case must refrain from imposing a determinative sanction. *State v. Gardner*, 287 Or. App. 225 (2017). In that case, the trial court imposed a determinate term of probation that the court of appeals subsequently reversed in accordance with a line of cases with similar holding. See *State v. Austin*, 276 Or. App. 648 (2016);

*Altenhofen v. Vanden-Busch*, 271 Or. App. 57 (2015);  
and *Miller and Miller*, 204 Or. App. 82 (2006).  
Attorney fees. [ORS 33.105\(1\)\(e\)](#). Effective remedy.  
[ORS 33.105\(1\)\(f\)](#).

- C. Persons who may initiate remedial contempt action, [ORS 33.055\(2\)](#):
1. A party aggrieved by the alleged contempt.
  2. A district attorney.
  3. A city attorney.
  4. The Attorney General.
- D. How initiated:
1. A remedial contempt case is initiated by motion requesting the court to order respondent to appear. [ORS 33.055\(3\)](#); [UTCRC 19](#) et. seq.
  2. [ORS 33.055\(3\)](#) was revised by SB 489 in 2017 to require a motion to initiate remedial contempt to be filed in accordance with rules adopted by the Supreme Court. In response, the Supreme Court amended [UTCRC 19.020\(2\)](#) to mandate that the initial pleading in a remedial contempt case must be filed in a related case if one exists. For purposes of the court electronic filing system, the trial court administrator will treat the contempt proceeding as a separate case and any subsequent filing must include both case numbers with the contempt appearing first.
  3. The motion must be supported by supporting documentation or affidavits sufficient to give respondent notice of the specific acts alleged to constitute contempt. [ORS 33.055\(4\)](#).
  4. The initiation instrument must state:
    - a. The maximum sanctions sought. [UTCRC 19.020\(1\)\(b\)\(i\)](#);
    - b. Whether the party seeks a sanction of confinement. [UTCRC 19.020\(1\)\(b\)\(ii\)](#); and
    - c. As to each sanction sought, whether the party seeking the sanction considers the sanction remedial or punitive. [UTCRC 19.020\(1\)\(b\)\(iii\)](#).

5. A court shall not impose a remedial sanction of confinement unless, before the hearing is held, the defendant is:
  - a. Informed that such sanctions may be imposed; and
  - b. Afforded the same right to appointed counsel required in proceedings for the imposition of an equivalent punitive sanction of confinement. [ORS 33.055\(8\)](#).
- E. **Standard of proof:** In a remedial contempt case, the standard of proof is clear and convincing evidence, except that if confinement is sought, the standard is beyond a reasonable doubt. [ORS 33.055\(11\)](#).
- F. **Service of motion and order to appear may be made by:**
  1. Personal service as provided in ORCP [7](#) and [9](#).
  2. Warrant or alternate method. Upon motion and supporting affidavit, if the court finds that defendant cannot be personally served, the court may issue a warrant or order an alternate method of service. [ORS 33.055\(5\)\(a\)-\(b\)](#).
- G. **Failure to appear:** If a person served with an order to appear fails to appear at the time and place specified in the order, the court may issue any order or warrant necessary to compel the appearance of the defendant. [ORS 33.075\(1\)](#).
- H. **Trial or stipulation.**
  1. The court may impose a remedial sanction only after affording the defendant opportunity for a hearing tried to the court. [ORS 33.055\(6\)](#).
  2. The defendant may waive the opportunity for a hearing by stipulated order filed with the court. [ORS 33.055\(6\)](#).
  3. Defendant has no right to a jury trial and, except if confinement sought, has only those rights accorded to a defendant in a civil action. [ORS 33.055\(7\)](#).
- I. **Submission of proposed Orders and Judgments.**
  1. Proposed orders or judgments submitted to the court in remedial contempt cases are subject to [UTCR 5.100](#), which requires advance notice to each affected party and a signed certificate, with certain exceptions.

## 6.2 Punitive Contempt

- A. Punitive sanctions are those imposed to punish a past contempt of court. [ORS 33.015\(3\)](#).
- B. Punitive Sanctions Authorized. [ORS 33.105\(2\)](#), [ORS 33.065\(8\)-\(9\)](#).
1. Fine up to \$500 or 1% of Respondent's annual gross income, whichever is greater.
  2. Forfeiture of any proceeds or profit obtained through the contempt.
  3. Confinement for up to 6 months.
  4. Probation or community service.
- C. The court may impose a remedial sanction in addition to or in lieu of a punitive sanction. [ORS 33.065\(8\)](#).
- D. Persons who may initiate an action seeking punitive sanctions, [ORS 33.065\(2\)](#):
1. A city attorney.
  2. A district attorney.
  3. The Attorney General.
  4. Appointed prosecutor. If a city attorney, district attorney or Attorney General declines to prosecute a punitive contempt, and the court determines that remedial sanctions would not provide an effective alternative remedy, the court may appoint an attorney who is not counsel for an interested party, to prosecute the contempt. [ORS 33.065\(3\)](#).
- E. How initiated: by an accusatory instrument. [ORS 33.065\(4\)](#).
1. After the accusatory instrument is filed, the court may issue any order or warrant necessary to compel defendant's appearance. [ORS 33.065\(4\)](#). Or the prosecutor may issue a citation to appear in lieu of custody as provided in [ORS 133.055](#). See [ORS 33.075\(2\)](#). If the prosecutor issues a citation in lieu of custody, defendant must be personally served with a copy of the citation.
  2. Except as otherwise provided, the accusatory instrument is subject to the same requirements and laws applicable to an accusatory instrument in a criminal proceeding. All proceedings on the accusatory instrument shall

be conducted in the manner prescribed for criminal proceedings.  
[ORS 33.065\(5\)](#).

**F. Failure to appear**

1. **Citation:** The defendant in a punitive contempt proceeding may be cited to appear in lieu of custody as provided in [ORS 133.055](#). (Criminal citation to appear by peace officer.) If the person fails to appear at the time and place specified in the citation, the court may issue any order or warrant necessary to compel the defendant's appearance. [ORS 33.075\(2\)](#).
2. **Security:** When the court issues a warrant for contempt, the court shall specify a security amount. Unless the defendant pays the security amount upon arrest, the sheriff shall keep the defendant in custody until either a release decision is made by the court or until disposition of the contempt proceedings. [ORS 33.075\(3\)](#).
3. **Release agreement:** The defendant shall be discharged from arrest upon executing and delivering to the sheriff, at any time before the return day of the warrant, a security release or a release agreement as provided in [ORS 135.230 to 135.290](#), to the effect that the defendant will appear on the return day and abide by the order or judgment of the court or officer or pay, as may be directed, the sum specified in the warrant. [ORS 33.075\(4\)](#).
4. **Return of warrant and security:** The sheriff shall return the warrant and the security deposit, if any, given to the sheriff by the defendant by the return day specified in the warrant. [ORS 33.075\(5\)](#).
5. **Failure to appear on return date:** If defendant fails to appear on the return day, the court may do either or both of the following:
  - a. **Issue another warrant.** [ORS 33.075\(6\)](#).
  - b. **Proceed against the security deposited upon the arrest.**
    - (i) **If the court proceeds against the security and the sum specified is recovered, the court may award any party to the action any or all of the money recovered as remedial damages.** [ORS 33.075\(7\)](#).

**G. Prima Facie Case: Proof of three elements establishes a prima facie case:**

1. **Existence of a valid court order;**

2. Respondent's knowledge of the order; and
  3. Willful non-compliance.
- H. **Standard of Proof:** Before imposing punitive sanctions, court must find proof of contempt beyond a reasonable doubt. [ORS 33.065\(9\)](#).
- I. **Statutory & Constitutional Protections:** Except for the right to a jury trial, the defendant is entitled to the constitutional and statutory protections, including the right to appointed counsel, that a defendant would be entitled to in a criminal proceeding in which the fine or term of imprisonment that could be imposed is equivalent to the punitive sanctions sought in the contempt proceeding. [ORS 33.065\(6\)](#).

### 6.3 Defenses

- A. **Inability to comply with the order, including inability to pay is an affirmative defense in both a remedial contempt case, [ORS 33.055\(10\)](#), and a punitive contempt case, [ORS 33.065\(7\)](#).**
1. In a punitive contempt case, if defendant proposes to rely in any way on evidence of inability to comply, the defendant shall, not less than five days before the trial, file and serve upon the prosecutor written notice of intent to offer that evidence. [ORS 33.065\(7\)](#).
  2. If defendant fails to file and serve notice of this defense, the court shall not allow defendant to introduce evidence of inability to comply, unless the court finds that there is just cause for failure to file. [ORS 33.065\(7\)](#).
  3. The defendant must establish the affirmative defense by a preponderance of evidence. *State ex rel Mikkelson v. Hill*, 315 Or 452, 459 n. 6 (1993).
- B. **Ten-year Statute of limitations:** Action must be filed within 10 years of the failure to pay a support obligation. [ORS 33.135\(5\)](#).

### 6.4 Miscellaneous Issues

- A. **Compelling witnesses.** [ORS 33.085](#). Upon motion of the person initiating the proceeding, court may compel the testimony of a witness as provided under [ORS 136.617](#).

1. In any case where the person initiating the proceeding is not represented by the district attorney, county counsel or Attorney General, the person initiating the proceeding shall serve a notice of intent to compel testimony on the district attorney of the county where the contempt proceeding is pending and, on the Attorney General. The notice shall be served not less than 14 calendar days before any hearing on the motion to compel testimony. [ORS 33.085\(2\)](#).
  2. Notice must include:
    - a. Identity of witness,
    - b. If known, the witness' name, date of birth, residence address and Social Security number and other pending proceedings or criminal charges involving the witness, Case name and number of the contempt proceeding, and
    - c. Date, time and place set for any hearing scheduled as provided in [ORS 136.617](#); [ORS 33.085\(3\)](#).
  3. Notice must be served on the district attorney and attorney general no later than 14 days before the hearing so that those offices may object. If notice is not served as required, the court shall grant a continuation for not less than 14 days from the date notice is served. [ORS 33.085\(4\)](#). At a hearing on a motion to compel testimony, the district attorney and the Attorney General each may appear to present evidence or arguments to support or oppose the motion. [ORS 33.085\(5\)](#).
  4. In lieu of compelling testimony under this section, the court may continue the contempt proceeding until disposition of any criminal action that is pending against the witness whose testimony is sought and that charges the witness with a crime. [ORS 33.085\(6\)](#).
- B. Admissibility of certified computer print-outs of the child support program:** Extrinsic evidence of authenticity is not required as a condition precedent to the admission of certain types of certified computer printouts of the child support program. Such records constitute prima facie evidence of the facts stated therein. [ORS 25.220](#).
- C. Referral to another judge:** A judge may be disqualified from a contempt proceeding as provided for in other cases under [ORS 14.210 to 14.270](#). [ORS 14.260\(3\)](#) shall not apply to a motion to disqualify a judge in a contempt

proceeding. The judge to whom the contempt is referred shall assume authority over and conduct any further proceedings relating to the contempt. [ORS 33.115](#).  
**(3) No motion to disqualify a judge shall be made after the judge has ruled upon any petition, demurrer or motion other than a motion to extend time in the cause, matter or proceeding. No motion to disqualify a judge or a judge pro tem, assigned by the Chief Justice of the Supreme Court to serve in a county other than the county in which the judge or judge pro tem resides shall be filed more than five days after the party or attorney appearing in the cause receives notice of the assignment.**

## **STATE'S APPEARANCE**

### **7.0 General Information**

- A. When the state responds to a proceeding filed under ORS Chapter [107](#), [108](#) or [109](#), [UTCR 8.010](#) permits the Department of Justice or a District Attorney (the State) to file an affidavit or declaration in lieu of a Uniform Support Declaration. Accordingly, the State may file an affidavit and accompanying State's Appearance document when a party, other than the State, initiates a legal action in court which affects parentage or the establishment, modification or termination of child support, and the State has an interest in the matter.

### **7.1 State Interests**

- A. The State's interest usually consists of one or more of the following, but may involve other matters impacting the children:
1. Advising the court whether the State is providing child support services.
  2. Advising the court whether parentage needs to be addressed for one or more of the parties' children.
  3. Advising the court when the children are receiving or formerly received public assistance (TANF) that is assigned to the state. [ORS 412.024\(1\)](#).
  4. Requesting the court address child support or medical support issues.
  5. Requesting the court avoid the creation of multiple orders when there is already an existing administrative order or court judgment covering the same parties and children.
  6. Advising the court when the State has initiated but not finalized an administrative order establishing parentage, child support or both.
  7. Requesting that the court calculate child support and medical support in accordance with the guidelines. [ORS 25.280](#).

8. Ensuring that all child and spousal support orders use the first of a month as the due date for all initial and subsequent payments as required by [ORS 25.166](#).

## 7.2 Mandatory Notice to the State Where Obligee or Child is Currently on Assistance or the Child is in State Care.

- A. When child support rights have been assigned to the State because a family has received public assistance (TANF), Oregon law requires that the Oregon Child Support Program be served with a true copy of the petition or motion if a proceeding is initiated under [ORS 107.087](#), [ORS 107.135\(9\)](#), [ORS 107.431\(1\)\(c\)](#), [ORS 109.103\(4\)](#) and [ORS 109.125\(4\)](#). The documents can be served by mail or personal delivery.

## 7.3 Filing When State Receives Notice of Pending Proceedings

- A. When the State receives notice that parties who are receiving services from the Oregon Child Support Program have a family law proceeding pending in court, the state may do one of the following.
  1. If the state has no interest, it may choose not to appear.
  2. If the State determines its interest is minimal, file a State's Appearance and supporting affidavit in the pending proceedings for informational purposes only and waives further appearance.
  3. If the State determines its interest is significant, file a State's Appearance in the pending proceeding and a supporting affidavit setting forth the state's interest. The State may choose to appear for additional oral argument or waive further appearance.

## 7.4 Filing When State Does Not Receive Notice and Order is Final

- A. If the State does not receive notice, the State may later become aware of a final order affecting paternity or the establishment, modification or termination of child support that does not protect the State's interest. Rather than file a State's Appearance, the State has the following options: When multiple orders exist, a Governing Child Support Judgment may resolve the conflict. [ORS 25.091](#); [25.531](#). See Ch. 2 Multiple Orders.

1. When the State is not a party to the action and the State has a significant interest, the State may file a motion to join the State as a party and to set aside provisions affecting support or paternity. [ORCP 29](#); [ORCP 71](#).
  - a. Set aside may be appropriate if a judicial court judgment is entered that does not enforce, modify or set aside the existing child support judgment. [ORS 25.089\(3\) and \(6\)](#); [25.091\(5\)\(a\)](#).

## **SPECIAL PROTECTION FOR SERVICE MEMBERS**

### **8.0 Federal Protections: Servicemembers Civil Relief Act**

- A.** If any party to a case is a service member on active duty, courts must comply with the [Servicemembers Civil Relief Act](#) (SCRA), 50 U.S.C. App. § 501 et seq; [ORCP 69](#). SCRA issues to be aware of in the child support context include:
- 1.** The court may be required to stay proceedings unless the service member affirmatively waives his/her appearance.
  - 2.** No default judgment may be entered against an active service member without first obtaining a waiver or appointing an attorney for the service member.
  - 3.** If a judgment has been entered against the service member during his/her period of military service, the court may be required to re-open the judgment to allow the service member to defend.
- B.** Any motion for order of default must be accompanied by an affidavit addressing whether or not the party against whom the order is sought is a member of the military. [ORCP 69\(C\)\(1\)\(e\)](#). If a party is a servicemember, the affidavit must contain sufficient facts to ensure compliance with the SCRA. [ORCP 69\(C\)\(2\)\(b\)](#). Note: SCRA requires the use of affidavits and does not provide for declarations.
- C.** Further Federal SCRA resources can be found at:
- [The Office of Child Support Enforcement: Child Support and the Judiciary, Applying the Servicemembers Civil Relief Act](#)
- [A Judge's Guide to the Servicemembers Civil Relief Act, by Judge Mark E. Sullivan](#)

### **8.1 Oregon Protections for Deployed Parents**

- A.** Deployed parent means “a parent of a minor child whose parental rights have not been terminated who is deployed with the Armed Forces of the United States, National Guard or other reserve component.” [ORS 107.145\(1\)](#).
- B.** Deployment means “military service in compliance with written orders received by an active duty or reserve member of the Armed Forces of the United States, National Guard or other reserve component to report for combat operations,

contingency operations, peacekeeping operations, temporary duty, a remote tour of duty or other active military service.” The time that a person is considered deployed includes:

1. The time from which the deployed parent receives and is subject to written orders to deploy to the time of actual deployment.
2. Any period of time the deployed parent is awaiting travel to or from a deployment destination.
3. Any period of time the deployed parent remains deployed because of sickness, wounds, leave or other lawful cause.

**C. Restriction on Modifying Judgment with Deployed Parent as Party, [ORS 107.145\(3\)](#).**

1. Except as set out in sections (C)(2) and (D) below, a court may not set aside, alter or modify any portion of a judgment of annulment, separation or dissolution of marriage that provides for the support and welfare of a minor child of a deployed parent until 90 days after the completion of the deployed parent’s deployment. This restriction applies equally to judgments involving unmarried parents pursuant to [ORS 109.103](#).
2. The exception to this general rule is where such a motion was heard and decided before the commencement of the deployed parent’s deployment.

**D. Temporarily Modifying Judgment with Deployed Parent as Party, [ORS 107.145\(4\)](#).**

1. A court may reasonably accommodate the circumstances of the deployed parent’s deployment in the best interests of the child by entering a temporary order modifying the terms of a preexisting judgment of annulment, separation or dissolution of marriage that provides for the support of a minor child of a deployed parent.
2. Any motion for such a temporary order must be served upon the Administrator of the Division of Child Support of the Department of Justice or the branch office providing support services.

3. **The non-deployed parent bears the burden of proof that the provisions of a temporary order are not in the best interests of the child.**  
[ORS 107.145\(4\)\(a\)](#).
4. **A temporary order must include provisions regarding:**
  - a. **Parenting time for the deployed parent during periods of approved leave in the best interests of the child;**
  - b. **Parenting time for the deployed parent during periods of deployment in the best interests of the child including but not limited to contact by telephone, electronic mail and other electronic means such as video and visual imaging;**
  - c. **Modification of the child support provisions of the preexisting judgment to reflect the changed circumstances of the parents and the child during the period of deployment;**
  - d. **A requirement that the non-deployed parent provide the court and the deployed parent with written notice 30 days prior to a change of address or telephone number during the period of deployment;**
  - e. [ORS 107.145\(4\)\(b\)\(E\)](#) provides: “That the temporary order entered under this subsection terminates by operation of law upon completion of deployment and that the provisions of the preexisting judgment that have been modified by the temporary order are automatically reinstated unless a request is made and granted under subsection (7) of this section”;
  - f. **That all other provisions of the preexisting judgment not modified by the temporary order remain in effect; and**
  - g. **That deployment is considered completed for purposes of reinstating the provisions of the preexisting judgment that have been modified by the temporary order 10 days after the date on which the deployed parent serves the non-deployed parent and provides to the court and to the Administrator of the Division of Child Support of the Department of Justice or the branch office providing support services to the county in which the motion is filed copies of written orders or other official notification that the deployed parent is no longer deployed or in active military service.**

- E. Expedited hearings, [ORS 107.146](#).**
- 1. The court must hold an expedited hearing, upon motion by deployed parent or parent whose deployment is imminent, in:**
    - a. Any proceeding in a suit for marital annulment, dissolution, separation, modification, status quo orders and temporary support modifications.**
    - b. Any proceedings under [ORS 107.103](#), [107.135](#), [107.138](#) and [107.139](#) where a deployed parent or a parent whose deployment is imminent is a party; and**
    - c. A proceeding under [ORS 107.145\(4\)](#).**
  - 2. The court must make reasonable accommodations to allow a deployed parent, or a parent whose deployment is imminent, to provide video, electronic or Internet testimony if the proceeding involves the custody, parenting time, visitation, support and welfare of the parent's child and where the deployed parent or the parent whose deployment is imminent cannot personally appear.**

**9.0 Child Support Obligations for Incarcerated Obligor. See [OAR 137-055-3300](#) and [ORS 25.247](#).**

- A. Rebuttable Presumption of Inability to Pay Child Support While Incarcerated**
1. There is a rebuttable presumption that an obligor who is incarcerated or expected to be incarcerated for a period of 180 or more consecutive days is unable to pay child support. A child support obligation does not accrue for the duration of the incarceration unless the presumption is rebutted as provided by [ORS 25.247](#). [ORS 25.247\(1\)](#).
- B. Notice of Presumption of Inability to Pay Due to Incarceration is Required**
1. Within 30 days following identification of an incarcerated obligor, the entity responsible for support enforcement services under [ORS 25.080](#) shall provide notice of the presumption to the obligee, obligor and any other parties to the support order. [ORS 25.247\(3\)](#).
  2. The notice shall state that unless a party objects in the manner provided by [ORS 25.247\(4\)](#), child support shall cease accruing beginning with the first day of the first month that follows the obligor becoming incarcerated for a period of at least 180 consecutive days and continuing through the support payment due in the last month prior to reinstatement of the support order as provided in [ORS 25.247\(8\)](#). [ORS 25.247\(3\)](#).
  3. The notice shall be served on the obligee in the manner provided for service of summons in a civil action by certified mail, return receipt requested, or by any other mail service with delivery confirmation. [ORS 25.247\(3\)](#).
  4. The notice shall be served on the obligor by first class mail to the obligor's last-known address. [ORS 25.247\(3\)](#).
  5. The notice shall specify the month in which the obligor became incarcerated and shall contain a statement that the administrator represents the state and that low-cost legal counsel may be available. [ORS 25.247\(3\)](#).

## 9.1 Objection to Presumption of Obligor's Inability to Pay Due to Incarceration

- A. A party may object to the presumption that an incarcerated obligor is unable to pay child support by sending an objection to the entity that served them with notice within 30 days after the date of service of the notice. [ORS 25.247\(4\)](#).
- B. The objection must describe the resources of the obligor or other evidence that rebuts the presumption of inability to pay child support. [ORS 25.247\(4\)](#).
- C. The entity receiving the objection shall cause the case to be set for a hearing before a court or an administrative law judge. [ORS 25.247\(4\)](#).
- D. The court or administrative law judge may consider only whether the presumption has been rebutted. [ORS 25.247\(4\)](#).
- E. After suspension, a party may also object, but only with evidence of ability to pay that was not available at the time the order was suspended. See [ORS 25.247\(6\) & ORS 25.247\(7\)](#).

## 9.2 Suspension of Billing and Arrearage

- A. If no objection is made, or if the court or administrative law judge finds that the presumption has not been rebutted, the Department of Justice shall discontinue billing the obligor as set forth in [ORS 25.247\(3\)](#) and no arrearage shall accrue for the period during which the obligor is not billed. [ORS 25.247\(5\)](#).
- B. The entity providing support enforcement services shall file with the circuit court in which the support order or judgment has been entered either a copy of the notice served upon the parties ceasing accrual of support or, if an objection is made and the presumption is not rebutted, a copy of the court's or administrative law judge's order. [ORS 25.247\(5\)](#).

## 9.3 Reinstatement of Order

- A. An order that has been suspended due to obligor's incarceration shall be automatically reinstated at 50% of the previous support obligation on the first day of the first month that follows the 120th day after the obligor's release from incarceration. [ORS 25.247\(8\)](#).

#### 9.4 Notice Following Reinstatement of Order

- A. Within 30 days following reinstatement of the order, the Department of Justice shall provide notice to all parties:
  - 1. Specifying the last date on which obligor was incarcerated.
  - 2. Stating that by operation of law, billing and accrual of support resumed on the first day of the first month that follows the 120th day after the obligor's release from incarceration; and
  - 3. Informing the parties that the Department of Justice will review the support order for purposes of modification within 60 days of the reinstatement [ORS 25.247\(9\)\(a\)](#).
- B. The notice shall include a statement that the Department of Justice represents the state and that low-cost legal counsel may be available. [ORS 25.247\(9\)\(b\)](#).
- C. The entity providing child support services shall file a copy of the notice following reinstatement with the circuit court in which the support order was entered [ORS 25.247\(9\)\(c\)](#).

#### 9.5 Review and Modification of Reinstated Support Order

- A. Within 60 days following reinstatement of the order, the Department of Justice shall review the order for purposes of modifying the support order. [ORS 25.247\(10\)](#).
- B. An obligor's incarceration or release from incarceration is a substantial change of circumstances for the purposes of support modification. [ORS 25.247\(10\)](#).

#### 9.6 Credit and Satisfaction for Support That Accrues During Incarceration

- A. Proof of incarceration for at least 180 consecutive days is sufficient cause for the Department of Justice, the court or an administrative law judge to allow credit and satisfaction against arrears that accrued during the incarceration or that is within 120 days following the obligor's release from incarceration unless the presumption of inability to pay has been rebutted. [ORS 25.247\(11\)](#).
- B. Note: A credit and satisfaction provides a remedy for cases in which the notice of suspension was not issued for time periods after January 1, 2018 and support

continued accruing during obligor's incarceration for at least 180 consecutive days.

**9.7 Orders Previously Modified to Zero Due to Incarceration**

- A. Orders modified to zero prior to January 1, 2018, remain in force with reinstatement at the full court ordered amount occurring 61 days after the obligor's release. Such orders are not subject to suspension and reinstatement under [ORS 25.247](#). [ORS 25.247\(12\)](#).**

## **137-050-0700**

### **General Provisions**

(1) ORS 25.270 through ORS 25.280 require that child support be calculated according to a formula. The formula is known as the "Oregon Child Support Guidelines" ("guidelines" or "guideline") and is contained in OAR 137-050-0700 through OAR 137-050-0765 and in the "Obligation Scale" which is located in the appendix.

(2) Any change to the guidelines applies to all calculations prepared on or after the effective date of the change. The court, administrator, or administrative law judge may issue a final order based on a calculation prepared prior to the guidelines change. However, if support is recalculated after the new guidelines become effective, the calculation must be prepared using the new guidelines.<sup>1</sup>

(3) Changes to these rules do not constitute a substantial change in circumstances for purposes of modifying a support order.

(4) Calculate support for a Child Attending School who is age 18, living with a parent, and attending high school in the same manner as support for a minor child.<sup>2</sup>

Stat. Auth.: ORS 25.270 – 25.290, 180.345

Stats. Implemented: ORS 25.270 – 25.290

Effective date: July 1, 2013

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<sup>1</sup>Commentary: This language, new for 2013, is intended principally as a clearer statement of the existing policy. All support, past, present, and future, is computed using the current guidelines. An action in progress need not be delayed solely to recalculate support that was computed based on prior guidelines if, for example, it simply awaits the court's signature. However, if support needs to be recomputed in that action for another reason, the recomputation must be completed using the current guidelines.

<sup>2</sup>Commentary: An 18-year-old child living at home and finishing high school, though technically an adult, is likely to have substantially the same economic impact on the parents' households as s/he did immediately before turning 18. Therefore, for purposes of the guidelines, such a child is treated as a minor. This means, for instance, that parenting time credit is computed for a child in this circumstance, and that a parent receives an income deduction for a similarly situated non-joint child.

## **137-050-0710**

### **Calculating Child Support**

(1) To calculate the guideline support amount:

(a) Determine each parent's income as provided in OAR 137-050-0715.

(b) Determine each parent's adjusted income and percentage share of adjusted income as provided in OAR 137-050-0720.

(c) Determine each parent's income available for support ("available income") by deducting the self-support reserve from the parent's adjusted income as provided in OAR 137-050-0745.

(d) Determine the basic support obligation and each parent's share, of the basic support obligation as provided in OAR 137-050-0725.

(e) Add to each parent's basic support obligation the parent's share of child care costs as provided in OAR 137-050-0735.

(f) Determine each parent's medical support obligation as provided in OAR 137-050-0750. Add each parent's share of health care coverage costs to the parent's obligation. Round cash medical support, if any, to the nearest dollar.

(g) Determine each parent's parenting time credit as provided in OAR 137-050-0730.

(h) Credit each parent's cash child support obligation for:

(A) parenting time as provided in OAR 137-050-0730,

(B) the parent's allowed out-of-pocket costs for child care as provided in OAR 137-050-0735(1)(4), and

(C) the parent's out-of-pocket health insurance costs for the child as provided in OAR 137-0500750.

(i) Determine whether the parent will be ordered to pay cash child support or cash medical support for minor children as follows:

(A) Only the parent with the greater net support obligation for minor children may be ordered to pay cash child support and, if applicable, cash medical support, for the minor children, except as provided in subsection (D).

(B) To determine each parent's net obligation for minor children, determine the minor children's share of the parent's basic support obligation determined in OAR 137-050-0725(6). Add the parent's share of child care costs determined in OAR 137-050-0735(5), and the minor children's share of the parent's health care coverage costs determined in OAR 137-050-0750(14). Subtract each parent's parenting time credit determined in OAR 137-050-0730(7), child care credit determined in section 1(h)(B) of this rule, and the minor children's share of the health care coverage costs credit determined in section (1)(h)(C) of this rule.

(C) For purposes of determining the minor children's shares under this subsection, each child is

allocated an equal share of the total obligation, cost, or credit.

(D) If a minor child lives with a caretaker or is in state care, both parents may be ordered to pay cash child support and, if applicable, cash medical support for minor children.

(j) Determine whether the minimum order applies and apply any necessary increase as provided in OAR 137-050-0755.

(k) Apply any reduction in support for Social Security or Veteran's benefits as determined in OAR 137-050-0740.

(L) If the parent will be ordered to pay cash child support for minor children, determine the amount by dividing each parent's cash child support obligation by the total number of joint children and multiplying the result by the number of joint minor children. Round the result to the nearest dollar.

(m) Determine the cash child support obligation for joint Children Attending School by dividing each parent's cash child support obligation by the total number of joint children and multiplying the result by the number of joint Children Attending School. Round the result to the nearest dollar.<sup>1</sup>

(n) Allocate cash medical support to joint minor children and joint Children Attending School in the same manner provided for cash child support in sections (1)(L) and (1)(m) of this rule.

(2) Round all dollar figures to the nearest penny, except as otherwise provided. Example: \$12.34. Round all percentages to the nearest one-hundredth of one percent. Example: 12.34%.

(3) If all of the minor children for whom support is being calculated live with a caretaker other than a parent or the children are in the care or custody of the state, and the action is determining the support obligation of only one parent, consider only that parent's information. For the second parent in these single-parent calculations, use the same income, spousal support, union dues, parent's own health care coverage cost, and non-joint children as for the parent whose obligation is being calculated. Include the caretaker's child care costs, if any. Do not include any other information for the "other parent".

(4) The obligations to pay cash child support and cash medical support, and to provide health care coverage under this rule together constitute the guideline child support obligation and are presumed just and appropriate, subject to the agreed support amount in OAR 137-0500765 and rebuttal as provided in OAR 137-050-0760.

Stat. Auth.: ORS 25.270 – 25.290, 180.345

Stats. Implemented: ORS 25.270 – 25.290

Effective date: May 22, 2014

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1. The guidelines are based on economic data derived from families with minor children (see [https://justice.oregon.gov/child-support/pdf/psi\\_guidelines\\_review\\_2006.pdf#page=24](https://justice.oregon.gov/child-support/pdf/psi_guidelines_review_2006.pdf#page=24)), but with some variation (e.g., omitting the parenting time credit) are also used to calculate appropriate support amounts for a Child Attending School as defined in ORS 107.108. The presumption that the amounts are appropriate may be rebutted as provided in ORS 25.280 and OAR 137-050-0760.

## 137-050-0715

### Income

(1) "Income" means the actual or potential gross income of a parent as determined in this rule. Actual and potential income may be combined when a parent has actual income and is unemployed or employed at less than the parent's potential.

(2) "Actual income" means a parent's gross earnings and income from any source, including those sources listed in section (4), except as provided in section (5).

(3) "Potential income" means the parent's ability to earn based on relevant work history, including hours typically worked by or available to the parent, occupational qualifications, education, physical and mental health, employment potential in light of prevailing job opportunities and earnings levels in the community, and any other relevant factors. A determination of potential income includes potential income from any source described in section 4 of this rule.<sup>1</sup> If a parent residing in Oregon is determined to be able to earn at the

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<sup>1</sup> Commentary: Allowing the use of potential income is intended to authorize the imputation of an income level that a person has historically earned and or is expected to earn in the future, but for various reasons is not earning at the time support is calculated. It is not intended to authorize automatically imputing full time minimum wage when someone has never consistently earned that level of income. Imputing full time minimum wage to parents who have never earned at that level is disfavored and likely to result in uncollectible debt and a host of negative collateral consequences for both the parents and the children. See Federal Register Vol. 81, No. 244 regarding Ability to Pay: [govinfo.gov/content/pkg/FR-2016-12-20/pdf/2016-29598](http://govinfo.gov/content/pkg/FR-2016-12-20/pdf/2016-29598). Some employers will not allow an employee to work a full 40-hour week, which may not be customary to the occupation, but is customary to the employer. In these types of circumstances, the fact finder must determine whether to base the parent's earning ability on a regular 40-hour work week, the customary work schedule for the parent's occupation, or work opportunities in the parent's current employment situation.

Example: A parent works 32 hours per week at a restaurant. Additional hours are unavailable. Other employment opportunities in the area for which the parent is qualified offer similar hours and wages. It would be inappropriate to base the parent's income on a 40-hour work week.

Other parents may have suffered reduced earning ability. For example, it would be inappropriate to attribute historical full-time income to a public school teacher who has been laid off and now works part-time as a substitute teacher – assuming there are limited employment opportunities in the area for a teacher of those credentials and work history.

On the other hand, it might be appropriate to attribute income based on historical earnings to a person who has left a lucrative professional career because, for example, a spouse earns sufficient income, or to work in a preferred field but at a lower rate of pay. Because the goal is to determine earning ability, this imputation should not simply apply the amount formerly earned. The review should include consideration of the currently available employment opportunities in that field in the parent's area, the condition of the parent's professional skills and/or equipment, and the time since the parent last worked in that occupation.

This provision also contemplates seasonal employment. A seasonally employed parent may have significant earnings for a portion of the year and then receive unemployment compensation for a portion of the year. Under those circumstances, the parent's earning ability might be based on an annual review of their income, divided over a 12-month period.

If a parent's occupational history is known but the parent's income is not, the Oregon Employment Department's Oregon Labor Market Information System may be of use in assessing employment

minimum wage, the hourly earning amount to be imputed as potential income will be based on the lowest minimum wage provided for in any area of Oregon.<sup>2</sup>

(4) Actual income includes but is not limited to:

(a) Employment-related income including salaries, wages, commissions, advances, bonuses, dividends, recurring overtime pay,<sup>3</sup> severance pay, pensions, and honoraria;<sup>4</sup>

(b) Expense reimbursements, allowances,<sup>5</sup> or in-kind payments to a parent, to the extent they reduce personal living expenses;

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opportunities and potential earnings. See generally [www.qualityinfo.org](http://www.qualityinfo.org). For a statewide listing of earnings by profession, see <http://www.qualityinfo.org/ed-ewind>. For regional wage information tables, see [www.qualityinfo.org](http://www.qualityinfo.org).

<sup>2</sup> Commentary ORS 653.025, as amended by SB 1532 (2016), provides a three-tiered structure of minimum wages applicable to employers in different areas of Oregon. This provision is intended to ensure the fairest results and minimize the need for additional factual determinations by ensuring that any use of potential minimum wage earnings is based on the lowest of these figures.

Under ORS 653.025(3), the applicable wages will be: from July 1, 2016, to June 30, 2017, \$9.50; from July 1, 2017, to June 30, 2018, \$10; from July 1, 2018, to June 30, 2019, \$10.50; from July 1, 2019, to June 30, 2020, \$11; from July 1, 2020, to June 30, 2021, \$11.50; from July 1, 2021, to June 30, 2022, \$12; from July 1, 2022, to June 30, 2023, \$12.50.

This provision does not restore the presumption in effect prior to July 1, 2013, that a parent is able to earn full-time minimum wage (though section 7 of this rule allows use of full-time minimum wage where there is insufficient information to make a finding of actual or potential income). Rather, it provides that where the court, administrative agency, or administrative law judge finds that a parent is able to earn minimum wage, the lowest Oregon minimum wage will be used to calculate income regardless of the parent's location in Oregon. This may apply to a parent found able to find work at the minimum wage but less than full-time, as may be common in some areas; that parent could be assessed potential income at the number of hours of work the parent is likely able to obtain, at the lowest Oregon minimum wage amount.

<sup>3</sup> Commentary: Overtime is included to the extent it is regularly occurring. Sporadic overtime is not generally included. Overtime is calculated based on an annual amount, prorated over a 12-month period. The calculation of annual overtime takes into consideration those occupations that customarily have seasonal overtime. With evidence of a recent voluntary reduction in overtime hours, a fact finder may determine an annual average of overtime based on historic accumulation of overtime.

<sup>4</sup> Commentary: Some employers contribute to medical benefits beyond the cost of health care coverage. This employer contribution should be included as gross income to the person. Any cash benefits a person may receive from not enrolling in, or "opting out" of, a health care coverage plan are considered income.

Employer contributions to profit sharing, such as unexercised stock options, should be treated as gross income only if such contributions are capable of ready conversion into cash (i.e., liquid).

<sup>5</sup> Commentary: Allowances, such as a car, home or cellular phone allowance provided by an employer, may be considered income to the extent they reduce living expenses consistent with section 4(f). Example: If an employer provides the employee a cellular phone subsidy of \$100 per month, that amount could be included in income. If, however, the cellular phone is restricted to business use, it would not be considered in determining income. In calculating income for an active-duty service member, income includes housing and subsidy allowances and special pay allowances.

(c) Annuities, trust income, including distribution of trust assets, and return on capital,<sup>6</sup> such as interest and dividends;

(d) Income replacement benefit payments including Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, and Department of Veterans Affairs disability benefits;

(e) Inheritances,<sup>7</sup> gifts and prizes, including lottery winnings; and

(f) Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, minus costs of goods sold, minus ordinary and necessary expenses required for self-employment or business operation, including one-half of the parent's self-employment tax, if applicable. Specifically excluded from ordinary and necessary expenses are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses,<sup>8</sup> investment tax credits, or any other business expenses determined by the fact finder to be inappropriate or excessive for determining gross income.<sup>9</sup>

(5) Child support, food stamps, Social Security or Veterans benefits received on behalf of a child in the household, adoption assistance, guardianship assistance, and foster care subsidies are not considered income for purposes of this calculation.<sup>10</sup>

(6) If a parent's actual income is less than the parent's potential income, the court, administrator, or administrative law judge may impute potential income to the parent.<sup>11</sup>

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<sup>6</sup>Commentary: A return on capital, including interest and dividends, can be considered regardless of whether the return is paid out to the party or reinvested to increase the value of the capital investment.

<sup>7</sup>Commentary: Inheritances are separately listed beginning in 2013 based on *In re Marriage of Leif*, 246 Or App 511, 266 P3d 165 (2011).

<sup>8</sup>Commentary: The straight-line method (regular depreciation) deducts an equal amount of depreciation each year. Accelerated depreciation front-loads the depreciation, realizing less income. If the property is sold and new property purchased and accounted for using accelerated depreciation, lower income results on an ongoing basis for tax purposes. See *IRS Publication 936*.

<sup>9</sup>Commentary: Determining gross income for persons involved in the operation of a business can be difficult. The problem is best addressed by the discovery process and by the fact-finding authority of the decision maker.

Undistributed corporate income is included in determining the gross income of the parties (see *Perlenfein and Perlenfein*, 316 Or 16 (1993)). However, the gross income thus calculated may be rebutted in whole or in part if there is evidence that such income is not actually available to the parent.

<sup>10</sup>Commentary: Adoption assistance, foster care, and guardianship subsidy payments are intended to cover the cost of care for children who may have extraordinary education, emotional or physical needs. The parents are still obligated to provide for the basic needs of the child.

<sup>11</sup>Commentary: Whether a person is receiving their potential income must be determined on a case-by-case basis. See *Matter of Marriage of LaFavor*, 151 Or App 257, 949 P.2d 313 (1997). The drafters also note that under ORS 107.135(3) as interpreted in *Hogue and Hogue*, 115 Or App 697 (1992), even a good-faith reduction in income may not constitute a substantial change in circumstance for purposes of

(7) If insufficient information about the parent's income history is available to make a determination of actual or potential income, the parent's income is the amount the parent could earn working full-time at the lowest<sup>12</sup> minimum wage in the state in which the parent resides.<sup>13</sup>

(8) Potential income may not be imputed to:

(a) A parent unable to work full-time due to a verified disability;

(b) A parent receiving workers' compensation benefits;

(c) An incarcerated obligor as defined in OAR 137-055-3300; or

(d) A parent whose order is being temporarily modified under ORS 25.527(12).

(9) To determine monthly income when the employee is paid:

(a) Weekly, multiply the weekly earnings by 52 and divide by 12.

(b) Every two weeks, multiply the bi-weekly earnings by 26 and divide by 12.

(c) Semimonthly (twice per month), multiply the semimonthly earnings by 2.<sup>14</sup>

(10) Notwithstanding any other provision of this rule, if the parent receives Temporary Assistance for Needy Families, the parent's income is presumed to be the amount which could be earned by full-time work at the lowest minimum wage in the state in which the parent resides. This income presumption is solely for the purposes of the support calculation and not to overcome the rebuttable presumption of inability to pay in ORS 25.245.<sup>15</sup>

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modifying a support judgment where the parent fails to prove that the reduced income results in reduced ability to pay.

A parent claiming the other parent has a high potential income must provide non-speculative evidence. See *Matter of Marriage of Yocum and Pockett*, 328 Or App 613 (2023).

<sup>12</sup> Commentary: See Commentary note 2.

<sup>13</sup> Commentary: Where the parent's state of residence is unknown, use the lowest Oregon minimum wage.

<sup>14</sup> Commentary: Irregular income, such as seasonal, commission, or overtime work, or volatile investment income, may be computed based on a representative period, such as one or two years, with the goal of accurately estimating ongoing ability to pay support.

<sup>15</sup> Commentary: TANF recipients are presumed unable to pay support (ORS 25.245). However, it is necessary to impute some income to all parties (even parents who receive public assistance). Income is imputed for purposes of calculating the relative responsibility of each parent and not to order a TANF recipient to pay support.

(11) As used in this rule, “full-time” means 40 hours of work in a week except in those industries, trades or professions in which most employers, due to custom, practice or agreement, utilize a normal work week of more or less than 40 hours in a week.<sup>16</sup>

Stat. Auth.: ORS 25.270 to 25.290 & 180.345

Stats. Implemented: ORS 25.270 to 25.290

Effective date: February 5, 2020

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<sup>16</sup> Commentary: This definition of “full time work” is adapted from that used by the Employment Department. This rule does not contemplate the term “underemployed.”

**137-050-0720**  
**Adjusted Income**

(1) To determine “adjusted income,” begin with income, as determined in OAR 137-050-0715, and then:

- (a) Deduct mandatory contributions to a union or other labor organization;<sup>1</sup>
- (b) Deduct the parent's cost for the parent's own health insurance.<sup>2</sup>
- (c) Deduct the parent's monetary spousal support obligation to this or a different party, whether ordered in the same or a different proceeding, and whether paid or not;<sup>3</sup>
- (d) Add the amount of court-ordered monetary spousal support owed to the parent, whether ordered in the same or a different proceeding, by this or a different party and whether paid or not; and
- (e) Subtract the non-joint<sup>4</sup> child deduction described in section (2) of this rule.

(2) A parent is entitled to a non-joint child income deduction when the parent is legally responsible for the support of a child not included in the current calculation.

(a) To qualify for the non-joint child deduction, the minor child must reside in the parent's household or the parent must be ordered to pay ongoing support for that child.

(b) A child attending school, as defined in ORS 107.108 and OAR 137-055-5110, qualifies the parent for the non-joint child deduction only if the parent is ordered to pay ongoing support for the child attending school, or as provided in subsection (c).<sup>5</sup>

(c) A child who has reached the age of 18 but is not yet 19, lives with a parent and attends high school, qualifies that parent for the non-joint child deduction, whether or not the child has qualified as a Child Attending School under ORS 107.108.

(d) A stepchild only qualifies a parent for the non-joint child deduction if the parent is ordered to pay ongoing support for the stepchild.

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<sup>1</sup> Commentary: Contributions to a union or labor organization are deductible even if membership is not mandatory as long as the party is a union member and contributions are mandatory in order to belong to the union or labor organization.

<sup>2</sup> Commentary: Beginning in 2013, deduct the parent's own health care coverage premium whether or not the parent is or will be insuring the child.

<sup>3</sup> Commentary: In a proceeding (e.g., a dissolution) in which both child support and spousal support are being determined, spousal support must be determined first so the parents' incomes may be adjusted accordingly.

<sup>4</sup> Commentary: Non-joint children were referred to as "additional children" from 2010 until July 2013.

<sup>5</sup> Commentary: A child who lives at home and attends high school but turns 18 during the final year of school probably has an economic impact on the parents' households similar to that of a child in the same circumstances but only 17 years old.

(e) To calculate a parent's non-joint child deduction<sup>6</sup>:

(A) Apply the adjustments described in subsections 1(a)-1(d) of this rule to the parent's income;

(B) Using the parent's income after the adjustments in section 2(e)(A) of this rule and total number of joint and non-joint children, reference the obligation scale and determine the applicable support amount; and

(C) Divide the result by the total number of the parent's joint and non-joint children and multiply by the number of non-joint children to determine the amount of the non-joint child deduction.

(3) Determine each parent's percentage share of adjusted income by dividing the parent's adjusted income by the parents' combined adjusted income.

Stat. Auth.: ORS 25.270 – 25.290, 180.345

Stats. Implemented: ORS 25.270 – 25.290

Effective date: July 1, 2013

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<sup>6</sup>Commentary: The 2013 non-joint child deduction calculation helps to reverse an overestimation of the costs of raising the parent's non-joint children as compared to the children in the present calculation. The new method retrieves a single-income support amount for *all* the parent's children, and then prorates the portion of that amount for the non-joint children to determine the amount of the deduction. This abbreviated calculation method is still imperfect because 1) the single-income calculation tends to produce higher support amounts (and thus, a higher non-joint child deduction), 2) it fails to reflect self-support protections the obligor would enjoy with respect to the non-joint child, and 3) it does not account for the obligor's medical support obligation to the non-joint child. Though it remains only a rough estimate, the new method substantially reduces the over-crediting from the 2010 method.

## 137-050-0725

### Basic Support Obligation

(1) The scale of basic child support obligations, found in the appendix to these rules, must be used in every support calculation made under ORS 25.270 to 25.280.<sup>1</sup> The scale is based on

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<sup>1</sup> Commentary: The Child Support Program is required by ORS 25.270 and 45 CFR 302.56 to review the Child Support Guidelines every four years.

In March 2006, Policy Studies, Inc. (PSI) completed a study analyzing nationwide data on the cost of raising children. The updated obligation scale was developed from new economic estimates of child-rearing expenditures developed by Dr. David Betson for Oregon. The scale is based on expenditures data collected from households in 1998 through 2004 through the Consumers Expenditures Survey (CEX) conducted by the U.S. Bureau of Labor Statistics. The obligation scale also considers 2006 price levels, 2006 federal and state income taxes and FICA, and the 2006 poverty guidelines. The data period considered in the obligation is based on a larger sample, so produces more statistically robust estimates. It covers a range of economic cycles (i.e., the economic boom of the 1990s, the economic recession that began and ended in 2002, and the post-recovery period of today), so is less economically volatile than previous estimates.

In 2010, the Child Support Program asked Oregon's Office of Economic Analysis to review the obligation scale in light of current economic conditions. The Office of Economic Analysis concluded that the 2006 guidelines scale was still sufficiently reliable.

#### Needs vs. wants

The scale covers the basic needs of raising a child and does not cover the “wants” of a child. The scale’s drafters realized that extra-curricular activities and other “wants” are common decisions being made when the child support obligation is being calculated, but the scale is based on basic needs only.

#### Age of the child

The drafters declined to adopt varying standards for children at different age levels. The guidelines scale incorporates an average of expenses for children from 0 through 17 years old.

Oregon law provides for child support to continue and to be distributed directly to the child if the child is attending school and is over the age of 18 and under the age of 21 years old under ORS 107.108. The scale is derived from data based on children from 0–17 years old. The drafters chose to apply the scale to children in this age group. The presumption in favor of the guideline support obligation may be rebutted under OAR 137-050-0760.

#### Number of children

Prior to 2003, this rule provided a formula for determining the amount of support when support is sought for seven or more children. This formula was developed in 1994 to determine a presumed support amount by using a fixed multiplier of 6.6% to the presumed amount for six children for each additional child thereafter. To make the scale easier to use, the drafters applied the formula to the scale and continued the scale out to 10 children. The formula was removed from the rule in 2003.

There are no current data to support a specific 6.6% increase for each additional child after six children. The 1998 PSI study discusses adjustments for the number of children, and reports that the multiplier decreases as the number of children increases because of a reallocation of the adult’s share of expenditures to provide for more children, and each child’s share of expenditures is reduced to accommodate the needs of additional children. In 2007, the scale was adjusted to add support figures for up to ten children, and considered those adjustments discussed in the study that gradually reduce the “needs factor” for each child after six and recognize that there is a point at which additional support is not needed or is no longer affordable. Therefore, the current scale adds 5.6% to the figure for six children for the seventh child, and to that adds 4.2% for the eighth child, and to that adds 2.8% for the ninth child, and to that adds 1.4% for the tenth child. There is no additional support for any child beyond the tenth child.

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## Key assumptions of the Policy Studies, Inc. guideline review

The following description of the key assumptions is copied from the June 26, 2006, "State of Oregon Guidelines Review" by Policy Studies Inc., Ch IV, pp. 14 – 16 (available online at [https://justice.oregon.gov/child-support/pdf/psi\\_guidelines\\_review\\_2006.pdf#page=21](https://justice.oregon.gov/child-support/pdf/psi_guidelines_review_2006.pdf#page=21)):

**(1) Guidelines based on net income, then converted to gross income.** As implied above, a table of child support based on obligor net income is developed before converting the tables to gross income. The tables are converted to gross income for three reasons:

- Use of gross income greatly simplifies use of the child support guidelines because it obviates the need for a complex gross-to-net calculation in individual cases;
- Use of gross income can be more equitable because it avoids non-comparable deductions that may arise in making the gross-to-net calculation in individual cases; and
- Use of gross income does not cause child support to be increased when an obligor acquires additional dependents, claims more exemptions, and therefore has a higher net income for a given level of gross income.

In converting the obligation scale to a gross income base, we have assumed that the obligated parent claims two exemptions, which is consistent with the IRS withholding formula for employers. It simulates the standard deduction and one exemption. Because the IRS withholding formula provides the same tax formula for single individuals and head of households, there is no distinction. Similarly, the Earned Income Tax Credit is not considered because it is not advanced to single, qualifying individuals without dependents. In all, this is the most favorable assumption that can be made concerning an obligor's filing status. Obligor's with more exemptions or itemized deductions, would have a slightly higher obligation under an equivalent net income guideline even if the obligee receives the advanced Earned Income Tax Credit. The child tax credit is not considered because it is not advanced and not all families are eligible.

**(2) Tax exemptions for child(ren) due support.** The obligation scale presumes that the obligated parent does not claim the tax exemptions for the child(ren) due support. In computing federal tax obligations, the primary residential parent is entitled to claim the tax exemption(s) for any divorce occurring after 1984, unless the primary residential parent signs over the exemption(s) to the alternate residential parent each year. Given this provision, the most realistic presumption for development of the obligation scale is that the primary residential parent claims the exemption(s) for the child(ren) due child support.

**(3) Income assumed to be taxable.** Because the obligation scale has withholding tables built into it, the design assumes that all income of both parents is taxable.

**(4) Obligation scale does not include expenditures on child care, extraordinary medical expenses, and children's share of health insurance costs.** The obligation is based on economic data that represent estimates of total expenditures on child-rearing costs up to age 18. The major categories of expenditures include food, housing, home furnishings, utilities, transportation, clothing, education, and recreation. Excluded from these figures are average expenditures for child care, children's extraordinary medical care, and the children's share of health insurance. These costs are deducted from the base amounts used to establish the Schedule because they are added to child support obligations as actually incurred in individual cases. Deducting these expenditures from the base amounts avoids double-counting them in the child support calculation.

**(5) Obligation scale includes expenditures on ordinary medical care.** Although expenditures for the children's extraordinary medical care and the children's share of health insurance are to be added to the child support obligation as actually incurred in individual cases, it is assumed that parents will make some expenditures on behalf of the children's ordinary medical expenses (i.e., out-of-pocket expenses not covered by insurance). This includes band-aids, co-pays for doctor's well visits, and over-the-counter medicines. Expenditures on ordinary medical care are \$250 per year per child, which approximates average out-of-pocket expenses nationally.

national data on childrearing expenditures relative to family income. The scale applies regardless of where the parent resides or works.<sup>2 3</sup>

(2) Determine the basic child support obligation by referencing the scale using the number of children for whom support is sought and the combined adjusted income of the parents.

(3) If the combined adjusted gross income of the parents is more than \$30,000 per month, the basic child support obligation is the same for parents with combined adjusted income of \$30,000 per month.<sup>4</sup>

(4) The basic child support obligation for more than ten children is the same as for ten children.<sup>5</sup>

(5) When the parents' combined income falls between two income amounts on the scale, use the lower income amount on the scale to determine the basic child support obligation.

(6) Determine each parent's share of the basic support obligation by multiplying the combined basic support obligation by the parent's percentage share of adjusted income as provided by

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**(6) Obligation scale is based on average expenditures on children 0 - 17 years.** Child-rearing expenditures are averaged for children across the entire age range of 0 - 17 years. Dr. Betson did not find statistically significant differences in expenditures on younger and older children using the Rothbarth methodology.

**(7) Parenting expenses incurred by the obligated parent are not factored into the obligation scale.**

Since the obligation scale is based on expenditures for children in intact households, there is no consideration given for parenting expenses incurred by the obligated parent. Taking such costs into account would be further complicated by the variability in actual parenting time patterns and the duplicative nature of many parenting expenses (e.g. utilities, home furnishings). Parenting expenses, however, are considered in the worksheet.

<sup>2</sup> Commentary: The scale amounts were originally determined based on net (post-tax) income. Oregon decided to base support on gross income in part to prevent variations in tax filing from biasing the support obligation. To convert the income ranges from net to gross, the scale assumes that the obligated parent claims two exemptions based on the Internal Revenue Service's withholding formula for employers, which uses the standard deduction and one exemption. See also: [https://justice.oregon.gov/child-support/pdf/psi\\_guidelines\\_review\\_2006.pdf#page=22](https://justice.oregon.gov/child-support/pdf/psi_guidelines_review_2006.pdf#page=22).

<sup>3</sup> Commentary: The obligation scale presumes that the obligated parent does not claim the tax exemptions for the children. The parenting time credit is derived from the basic support obligation, so it effectively assumes the parents share in the benefit of the children's tax exemptions in proportion to each parent's share of parenting time. If the parents claim the children's exemptions in a manner inconsistent with the division of the parenting time credit, and the effect on the support amount renders the guideline amount unjust or inappropriate, a parent may seek a rebuttal as provided in OAR 137-050-0760. The Child Support Program does not provide a calculation resource for determining the tax effects of switching the child tax exemption from one parent to another. [https://justice.oregon.gov/child-support/pdf/psi\\_guidelines\\_review\\_2006.pdf#page=23](https://justice.oregon.gov/child-support/pdf/psi_guidelines_review_2006.pdf#page=23).

<sup>4</sup> Commentary: The guideline scale only computes support obligations for combined incomes up to \$30,000. If the result is unjust or inappropriate, it may be rebutted as provided in OAR 137-050-0760.

<sup>5</sup> The guideline scale only computes support obligations for up to ten children. If the result is unjust or inappropriate, it may be rebutted as provided in OAR 137-050-0760.

OAR 137-050-0720. The basic support amount may not exceed the parent's income available for support as provided in OAR 137-050-0745.

Link to the appendix (the scale):

[http://oregonchildsupport.gov/laws/rules/docs/guidelines\\_scale.pdf](http://oregonchildsupport.gov/laws/rules/docs/guidelines_scale.pdf)

Stat. Auth.: ORS 25.275, 25.280, 180.345

Stats. Implemented: ORS 25.275, 25.280

Effective date: July 1, 2013

**137-050-0730**  
**Parenting Time Credit**

(1) For the purposes of this rule:

(a) “Primary physical custody” means the parent provides the primary residence for the child and is responsible for the majority of the day-to-day decisions concerning the child.<sup>1</sup>

(b) “Split custody” means that there are two or more children and each parent has at least one child more than 50 percent of the time.

(2) If there is a current<sup>2</sup> written parenting time agreement or court order providing for parenting time, calculate each parent's overnights for the minor children<sup>3</sup> as follows<sup>4</sup>:

(a) Determine the average number of overnights using two consecutive years.<sup>5</sup>

(b) Add the total number of overnights the parent is allowed with each minor child and divide by the total number of minor children

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<sup>1</sup> Commentary: A parent may be ordered to pay child support notwithstanding that parent’s status as the custodial parent. Under ORS 25.240, a parent may be ordered to pay support attributable to those periods of time when s/he does not have physical custody of the children. *Matter of Marriage of Greenfield*, 130 Or App 632, 635-36 (1994).

<sup>2</sup> Commentary: The word “current” in “a current written parenting time agreement or court order providing for parenting time” acknowledges those situations where the current parenting time situation is not reflected in the last court order or written agreement. For example, assume Mother has custody of the child and Father has a court order for 30% parenting time. At some point, the child goes to live with the Father, and Mother now exercises parenting time. Father seeks a support order, but the existing custody order has never been changed. Pursuant to ORS 25.240, the parent with primary physical custody (now, the Father) may get a support order, regardless of the terms of the last custody order. In this circumstance, the existing custody (or parenting time) order is not “current” and, therefore, would not be used to calculate parenting time for child support. Support is calculated with no shared parenting time until a new written parenting time agreement or court order providing for parenting time is entered.

<sup>3</sup> Commentary: Parenting time is calculated based on minor children and those 18-year-olds attending high school and living with a parent. See ORS chapter 107; *Matter of Marriage of Smith*, 44 Or App 635, 641 (1980); *Matter of Marriage of Miller*, 62 Or App 371, 374 (1983).

<sup>4</sup> Commentary: Where the child support computation will be submitted as part of a petition that includes parenting time, the calculation should reflect the parenting time included in the action. This applies primarily to private actions for dissolution (under ORS Chapter 107) and establishing paternity and/or parenting time for unmarried parents (under ORS Chapter 109). The Child Support Program will continue to require a written agreement or court order in order to consider shared parenting time in administrative actions.

<sup>5</sup> Commentary: Parenting time cannot be calculated using speculative data. Since parenting time is calculated based on 365 days in a year, averaged over two consecutive years, practitioners may calculate the number of days spent with the parent for known periods of time (E.g., “The child will spend Memorial Day weekend with the Mother,”: quantifiable as 3 overnights). Unknown or unquantifiable periods of time would not be calculated (E.g., “The child will spend time during the summer months with the Father”): unquantifiable period of time; no overnights can be calculated). The determination of overnights applies to the parenting plan that will be followed while the new support order is in effect.

(c) Notwithstanding the calculation provided in subsections (2)( a) and (2)(b), parenting time may be determined using a method other than overnights if the parents have an alternative parenting time schedule in which a parent has significant time periods where the minor child is in the parent's physical custody but does not stay overnight. For example, in lieu of overnights, 12 continuous hours may be counted as one day. Additionally, blocks of time of four hours up to 12-hours may be counted as half-days, but not in conjunction with overnights. Regardless of the method used, blocks of time may not be used to equal more than one full day per 24-hour period.

(3) If the parents have split custody but no written parenting time agreement, determine each parent's parenting time overnights by dividing the number of minor children with the parent by the total number of children and multiplying by 365.

(4) If there is no current written parenting time agreement or court order providing for parenting time, the parent or party having primary physical custody of the minor child will be treated as having all of the parenting time for that child unless a court or administrative law judge determines actual parenting time.

(5) If the court or administrative law judge determines actual parenting time exercised by a parent is different than what is provided in a written parenting plan or court order, the parenting time overnights may be calculated using the actual parenting time exercised by the parent.<sup>6</sup>

(6) Determine each parent's parenting time credit percentage as follows:  $\text{credit percentage} = 1 / (1 + e^{-7.14 * ((\text{overnights} / 365) - 0.5)}) - 2.74\% + (2 * 2.74\% * (\text{overnights} / 365))$ . The precisely computed credit percentage is preferred. However, where this is impractical (for example, when calculating support by hand) an approximate credit percentage can be determined by referencing the table at the end of this rule using the parents' average overnights determined in step 2, 3, or 4, rounding up or down to the nearest whole number of overnights.

(7) To determine the amount of each parent's parenting time credit:<sup>7 8</sup>

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<sup>6</sup>Commentary: A finding of actual parenting time does not alter the written parenting time agreement or court order. If the parties want the written parenting time agreement to reflect the actual parenting time exercised the parties will need to amend the written parenting time agreement through the judicial process or stipulate to a new written parenting time agreement.

<sup>7</sup>Commentary: This rule applies to parents whose child lives with a caretaker or is in state care. The caretaker has no obligation and needs no credit, but a credit is computed for each parent with parenting time.

<sup>8</sup>Commentary: The assumptions underlying the formula include:

- Any parenting time creates some expenses for the parent
- Low levels of parenting time result in low levels of expenses, because there are fewer fixed, duplicated expenses like housing, and do not significantly decrease the expenses of the parent with greater parenting time.
- Higher levels of parenting time increase the likelihood that the parents will incur fixed, duplicated expenses.
- At equal parenting time, parents' expenses are most likely to be equal.

If each parent has the child 50% of the time and parental incomes are equal, no support would be owed. However, if each parent has 50% of the parenting time and one parent's income is greater than the other

(a) Determine the minor children's portion of the combined basic support obligation, as determined in OAR 137-050-0725(2), by dividing the combined basic support obligation by the total number of minor children and children attending school and multiply the result by the number of minor children only.

(b) Multiply the result by each parent's parenting time credit percentage.

Stat. Auth.: ORS 25.270, 25.290, 180.345

Stats. Implemented: ORS 25.270, 25.290

Effective date: July 1, 2013

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parent's, the parent with the larger income would pay some support. In either case, expenses such as child care or health care coverage could cause the opposite result.

**Table: Parenting time credit percentage by number of overnights**

<b>Overnights</b>	<b>Credit %</b>						
0	0.00%	36	3.19%	72	8.67%	108	17.77%
1	0.07%	37	3.30%	73	8.87%	109	18.09%
2	0.14%	38	3.42%	74	9.07%	110	18.41%
3	0.21%	39	3.54%	75	9.27%	111	18.73%
4	0.28%	40	3.66%	76	9.48%	112	19.06%
5	0.35%	41	3.78%	77	9.68%	113	19.39%
6	0.42%	42	3.91%	78	9.90%	114	19.72%
7	0.49%	43	4.04%	79	10.11%	115	20.06%
8	0.57%	44	4.16%	80	10.33%	116	20.40%
9	0.65%	45	4.30%	81	10.55%	117	20.75%
10	0.72%	46	4.43%	82	10.77%	118	21.10%
11	0.80%	47	4.56%	83	11.00%	119	21.45%
12	0.88%	48	4.70%	84	11.23%	120	21.81%
13	0.96%	49	4.84%	85	11.47%	121	22.17%
14	1.04%	50	4.98%	86	11.70%	122	22.54%
15	1.13%	51	5.12%	87	11.94%	123	22.90%
16	1.21%	52	5.27%	88	12.19%	124	23.27%
17	1.29%	53	5.41%	89	12.43%	125	23.65%
18	1.38%	54	5.56%	90	12.68%	126	24.03%
19	1.47%	55	5.71%	91	12.94%	127	24.41%
20	1.56%	56	5.87%	92	13.19%	128	24.80%
21	1.65%	57	6.02%	93	13.45%	129	25.19%
22	1.74%	58	6.18%	94	13.72%	130	25.58%
23	1.84%	59	6.34%	95	13.98%	131	25.98%
24	1.93%	60	6.51%	96	14.25%	132	26.38%
25	2.03%	61	6.67%	97	14.53%	133	26.78%
26	2.12%	62	6.84%	98	14.80%	134	27.19%
27	2.22%	63	7.01%	99	15.08%	135	27.60%
28	2.32%	64	7.19%	100	15.37%	136	28.01%
29	2.43%	65	7.36%	101	15.66%	137	28.43%
30	2.53%	66	7.54%	102	15.95%	138	28.85%
31	2.64%	67	7.72%	103	16.24%	139	29.27%
32	2.74%	68	7.91%	104	16.54%	140	29.70%
33	2.85%	69	8.09%	105	16.84%	141	30.13%
34	2.96%	70	8.28%	106	17.15%	142	30.56%
35	3.08%	71	8.47%	107	17.46%	143	31.00%

144	31.44%	181	49.24%	218	67.23%	255	81.59%
145	31.88%	182	49.75%	219	67.68%	256	81.91%
146	32.32%	183	50.25%	220	68.12%	257	82.23%
147	32.77%	184	50.76%	221	68.56%	258	82.54%
148	33.22%	185	51.26%	222	69.00%	259	82.85%
149	33.68%	186	51.76%	223	69.44%	260	83.16%
150	34.13%	187	52.27%	224	69.87%	261	83.46%
151	34.59%	188	52.77%	225	70.30%	262	83.76%
152	35.05%	189	53.27%	226	70.73%	263	84.05%
153	35.52%	190	53.77%	227	71.15%	264	84.34%
154	35.99%	191	54.27%	228	71.57%	265	84.63%
155	36.45%	192	54.77%	229	71.99%	266	84.92%
156	36.93%	193	55.27%	230	72.40%	267	85.20%
157	37.40%	194	55.77%	231	72.81%	268	85.47%
158	37.88%	195	56.27%	232	73.22%	269	85.75%
159	38.35%	196	56.77%	233	73.62%	270	86.02%
160	38.83%	197	57.26%	234	74.02%	271	86.28%
161	39.32%	198	57.75%	235	74.42%	272	86.55%
162	39.80%	199	58.25%	236	74.81%	273	86.81%
163	40.29%	200	58.74%	237	75.20%	274	87.06%
164	40.77%	201	59.23%	238	75.59%	275	87.32%
165	41.26%	202	59.71%	239	75.97%	276	87.57%
166	41.75%	203	60.20%	240	76.35%	277	87.81%
167	42.25%	204	60.68%	241	76.73%	278	88.06%
168	42.74%	205	61.17%	242	77.10%	279	88.30%
169	43.23%	206	61.65%	243	77.46%	280	88.53%
170	43.73%	207	62.12%	244	77.83%	281	88.77%
171	44.23%	208	62.60%	245	78.19%	282	89.00%
172	44.73%	209	63.07%	246	78.55%	283	89.23%
173	45.23%	210	63.55%	247	78.90%	284	89.45%
174	45.73%	211	64.01%	248	79.25%	285	89.67%
175	46.23%	212	64.48%	249	79.60%	286	89.89%
176	46.73%	213	64.95%	250	79.94%	287	90.10%
177	47.23%	214	65.41%	251	80.28%	288	90.32%
178	47.73%	215	65.87%	252	80.61%	289	90.52%
179	48.24%	216	66.32%	253	80.94%	290	90.73%
180	48.74%	217	66.78%	254	81.27%	291	90.93%

292	91.13%	329	96.81%				
293	91.33%	330	96.92%				
294	91.53%	331	97.04%				
295	91.72%	332	97.15%				
296	91.91%	333	97.26%				
297	92.09%	334	97.36%				
298	92.28%	335	97.47%				
299	92.46%	336	97.57%				
300	92.64%	337	97.68%				
301	92.81%	338	97.78%				
302	92.99%	339	97.88%				
303	93.16%	340	97.97%				
304	93.33%	341	98.07%				
305	93.49%	342	98.16%				
306	93.66%	343	98.26%				
307	93.82%	344	98.35%				
308	93.98%	345	98.44%				
309	94.13%	346	98.53%				
310	94.29%	347	98.62%				
311	94.44%	348	98.71%				
312	94.59%	349	98.79%				
313	94.73%	350	98.87%				
314	94.88%	351	98.96%				
315	95.02%	352	99.04%				
316	95.16%	353	99.12%				
317	95.30%	354	99.20%				
318	95.44%	355	99.28%				
319	95.57%	356	99.35%				
320	95.70%	357	99.43%				
321	95.84%	358	99.51%				
322	95.96%	359	99.58%				
323	96.09%	360	99.65%				
324	96.22%	361	99.72%				
325	96.34%	362	99.79%				
326	96.46%	363	99.86%				
327	96.58%	364	99.93%				
328	96.70%	365	100.00%				

**137-050-0735**  
**Child Care Costs**

(1) Adjust the support obligation for child care costs paid by either parent or the child’s caretaker if the child for whom support is being calculated is disabled or under the age of 13.<sup>1</sup>

(2) Child care costs must be related to the parent's or caretaker's employment, job search, or training or education necessary to obtain a job. Only actual costs<sup>2</sup> paid by a parent or caretaker for child care that can be documented and determined may be used to compute an adjustment under these rules.<sup>3</sup>

(3) Child care costs are allowable only to the extent that they are reasonable and, except as provided in section (4), do not exceed the maximum amounts set out in Table 1.

Table 1: Maximum Allowable Child Care Costs by Provider Location

	Column A	Column B
Age of Child	The metropolitan areas <sup>4</sup> of Portland, Bend, Eugene, Corvallis, Springfield, Monmouth, Ashland Maximum Per Child	All Other Oregon or Out of State Locations Maximum Per Child
Newborn to 1 year	\$1,705	\$1,190
1 year to 3 years	\$1,705	\$1,083
3 years to 6 years	\$1,400	\$860
6 years and older	\$1,100	\$629

(4) The maximum amounts allowed by the Department of Early Learning and Care (DELDC) as shown in the Employment-Related Day Care Allowance tables in OAR 414-175-0075, available online at <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=301963> may be used when those amounts are greater than the amounts in the abbreviated table in section (3).

<sup>1</sup> Commentary: The child support calculation should reflect the costs incurred by either or both parents, or by a caretaker, so long as those costs meet the criteria set out in this rule.

The guidelines do not account for child care tax credits. The credits are speculative; some parents eligible for the credits may not file tax returns. In cases where the parent actually receives a tax benefit that renders the guideline result unjust or inappropriate, a rebuttal of the guideline result may be in order.

<sup>2</sup> Commentary: The guidelines do not allow inclusion of the state- or employer-subsidized portion of child care costs because the parent does not actually pay the cost. Example:

The obligee receives an Employment Related Day Care (ERDC) subsidy from the Department of Early Learning and Care. The total cost of day care is \$475, but the obligee receives a \$400 subsidy and has a co-pay of \$75. The figure used in the guidelines calculation is the \$75 co-pay.

<sup>3</sup> Commentary: Future child care costs that are determinable and certain to occur should be included in the guidelines calculation when those future costs are known.

<sup>4</sup> Commentary: The metropolitan areas of the cities listed can be identified by referring to the Zip Codes for Group Area A table in OAR 414-175-0075.

(5) Each parent's obligation for child care costs is that parent's income share percentage as provided by OAR 137-050-0720 multiplied by the total allowed child care costs. A parent's child care cost obligation may not exceed the parent's available income after deducting the parent's basic support obligation.

(6) As used in section 1 of this rule, "disabled" refers to a child who has a physical or mental disability that substantially limits one or more major life activities (for example, self-care, performing manual tasks, walking, seeing, speaking, hearing, eating, sleeping, standing, lifting, bending, breathing, learning, reading, concentrating, thinking, communicating, and working).<sup>5</sup>

Stat. Auth.: ORS 25.270 to 25.290, 180.345

Stats. Implemented: ORS 25.270 to 25.290

Effective date: July 7, 2023

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<sup>5</sup>Commentary: For 2013, this list was updated for consistency with changes to 42 USC § 12102.

**137-050-0740**

**Social Security and Veterans Benefits; Dollar-for-Dollar Reduction in Support Obligation<sup>1</sup>**

(1) For the purposes of this rule:

(a) "Apportioned Veterans benefits" means the amount the U.S. Department of Veterans Affairs deducts from an obligated parent's Veterans benefits and disburses to the child or to the child's representative payee; and

(b) "Social Security benefits" refer to those benefits paid on behalf of a disabled or retired obligated parent to a child or a child's representative payee.<sup>2</sup>

(2) The child support obligation may be reduced dollar for dollar in consideration of any Social Security or apportioned Veterans benefits; and

(3) The child support obligation must be reduced dollar for dollar in consideration of any Survivors' and Dependents' Educational Assistance (Veterans benefit) under 38 U.S.C. chapter 35.

(4) A parent is not entitled to a reduction in support for Veterans or Social Security benefits:

(a) that result from the child's own disability,<sup>3</sup>

(b) for which the obligated parent is the representative payee, or

(c) that do not result from the obligated parent's own disability or retirement, or, in the case of subsection (3), from that parent's military service.

Stat. Auth: ORS 25.270 – 25.290, 180.345

Stats. Implemented: ORS 25.270 – 25.290

Effective date: March 30, 2015

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<sup>1</sup>Commentary: A reduction in support pursuant to this rule is applied after the \$100 minimum order presumption in OAR 137-050-0755. The reduction is applied first to cash child support, and then to any cash medical support. It may reduce support below \$100 or eliminate it entirely. This adjustment does not change the determination of which parent(s) should be obligated to pay support. It is subject to rebuttal pursuant to ORS 25.280 and OAR 137-050-0760 and to the agreed support amount pursuant to OAR 137-050-0765.

<sup>2</sup>Commentary: If a parent's disability or retirement results in a child receiving Social Security or Veteran's benefits, include the benefits in that parent's column (except as provided in section 4, which provides that credit is not given if the parent who pays support is also the representative payee). Except where both parents' obligations are being determined for a Child Attending School, a child with a caretaker, or a child in state care, only the disabled or retired obligor's support obligation is ultimately reduced. See OAR 137-050-0710(1)(i)(D).

<sup>3</sup>Commentary: Social Security death/survivor benefits and Social Security benefits based on the child's disability are not addressed under this rule because such benefits are not derived from either party to the support order. Death benefits should be treated as income to the child only and should be considered, when appropriate, through rebuttal under OAR 137-050-0760.

## 137-050-0745 Self-Support Reserve

(1) The support calculation must leave an obligated parent enough income to meet their own basic needs.<sup>1</sup>

(2) To determine the amount of the parent's income available for support ("available income"), subtract the self-support reserve of \$1,522 from the parent's adjusted income.

(3) The parent's total obligation, including the parent's shares of the basic support obligation, child care costs, health insurance, and cash medical support, may not exceed the parent's available income, except as provided in OAR 137-050-0750(7).

(4) The limitation on support described in this rule is reflected in the specific provisions of OAR 137-050-0710 (Calculating Support), OAR 137-050-0725 (Basic Support Obligation), OAR 137-050-0735 (Child Care Costs), and OAR 137-050-0750 (Medical Support).<sup>2</sup>

(5) The amount of the self-support reserve is based on the federal poverty guideline, multiplied by 1.167 to account for estimated taxes, and rounded to the nearest whole dollar. This rule will be reviewed and updated annually to reflect changes in the federal poverty guideline.

Stat. Auth.: ORS 25.275, 25.280 & 180.345

Stats. Implemented: ORS 25.275 & 25.280

Effective date: July 1, 2025

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<sup>1</sup> Commentary: Research suggests that an obligor is more likely to pay child support if the order is within the obligor's means. A smaller amount of support that is actually paid is of greater value to the child than a higher support order that goes unpaid. Accumulating arrears without ability to pay is a disincentive to paying current support. *see, e.g.,* Margot Bean, *Story Behind the Numbers: Understanding and Managing Child Support Debt*, Information Memorandum 08-05, Office of Child Support Enforcement, available at [www.acf.hhs.gov/css/policy-guidance/story-behind-numbers-understanding-and-managing-child-support-debt](http://www.acf.hhs.gov/css/policy-guidance/story-behind-numbers-understanding-and-managing-child-support-debt).

<sup>2</sup> Commentary: Subsection 1 provides the underlying principle that, notwithstanding the \$100 minimum order, parents are allowed to meet their own subsistence needs before allocating their income to child support, including health care coverage costs. Subsection 3 explains that this includes costs in which the parent is sharing and describes the exception. Subsection 4 explains that the basic rule is implemented throughout the guideline rules.

## 137-050-0750 Medical Support

(1) The basic support obligation (OAR 137-050-0725) includes ordinary unreimbursed medical costs of \$250 per child per year. These costs represent everyday expenses such as bandages, non-prescription medication, and co-pays for doctor's well visits. The basic support obligation does not account for health care coverage costs or for extraordinary medical expenses.<sup>1</sup>

(2) "Cash medical support", as used in OAR 137-050-0700 through 137-050-0765, has the meaning given in ORS 25.321(1).<sup>2</sup>

(3) For purposes of this rule, "to provide" health care coverage means to apply to enroll the child and pay any costs associated with the enrollment, even if the cost to the parent is zero.

(4) For purposes of ORS 25.323, private health care coverage may be "available" to a parent from any source, including but not limited to an employer, spouse, or domestic partner.

(5) Private health care coverage is reasonable in cost if it costs no more than the total of four percent of each parent's adjusted income as determined in OAR 137-050-0720.

(a) The amount calculated for each parent in this section may not exceed that parent's available income after deducting the parent's shares of basic support obligation and child care costs.<sup>3</sup>

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<sup>1</sup> Commentary: It is no longer appropriate to deduct the first \$250 of unreimbursed medical expenses before dividing costs between the parents. Ordinary expenses are included in the support amount. Extraordinary unreimbursed expenses may be divided from the first dollar.

Prior to 2013, we did not differentiate between the types of medical expenses. Rather, the guidelines required parents to always deduct the first \$250 in unreimbursed expenses before dividing any subsequent expenses. During the 2013 review, we realized that approach was not entirely consistent with the economic study on which our support scale is based. Also, it would be unreasonable to require a parent to painstakingly document small, routine costs like bandages and vitamins in detail before receiving reimbursement for the extraordinary expenses.

**Ordinary expenses**, such as bandages, non-prescription medication, and vitamins, are included in the basic support amount based on national economic data indicating an average amount of about \$250 per child per year in ordinary expenses. Since these kinds of costs are already included in the scale and allocated between the parents based on parenting time, they should not be divided among the parties.

**Extraordinary expenses** are not included in the basic support obligation and are suitable for division between the parties from the first dollar. This includes uncovered costs of treatment of illness or injury; chronic medical conditions, like asthma or diabetes; orthodontia; medical equipment; and visits to the emergency room.

For more information, see the Guidelines Advisory Committee Report and Recommendations: [doj.state.or.us/child-support/calculators-laws/child-support-laws-and-rules/child-support-guidelines-archive/](http://doj.state.or.us/child-support/calculators-laws/child-support-laws-and-rules/child-support-guidelines-archive/)

<sup>2</sup> Commentary: ORS 25.321(1) reads: (1) "Cash medical support" means an amount that a parent is ordered to pay to defray the cost of health care coverage provided for a child by the other parent or a public body, or to defray uninsured medical expenses of the child.

<sup>3</sup> Commentary: If a parent with *income* above the minimum wage has no *available income* as a result of

(b) The reasonable cost contribution of a parent whose income is at or below the highest Oregon minimum wage for full-time employment is zero.

(6) A parent with income at or below the highest Oregon minimum wage for full-time employment may be ordered to provide health care coverage only if it is available at no cost.<sup>4</sup>

(7) Compelling factors may support a finding that health care coverage is reasonable in cost at an amount greater than the amount determined in section 5 of this rule so long as the providing parent has income greater than full-time employment at the highest Oregon minimum wage.<sup>5</sup>

(8) In determining the cost of private health care coverage, consider only the cost to the parents of covering the children for whom support is sought. To calculate the amount to be considered:

(a) If there is a known cost for self-only coverage for the providing parent, deduct that cost from the cost of family coverage. Divide the remainder by the total number of people covered, excluding the providing parent. Multiply the result by the number of children for whom coverage is sought in the present calculation.<sup>6</sup>

(b) If there is no self-only coverage option or the cost cannot be determined, divide the total cost of coverage by total number of people covered, including the providing parent. Multiply the result by the number of children for whom coverage is sought in the present calculation.<sup>7</sup>

(9) If only one parent has private health care coverage that is appropriate and available under ORS 25.323, that parent must be ordered to provide it.<sup>8</sup>

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adjustments to income or the self-support reserve, that parent may be ordered to provide health care coverage, but the other parent will be assessed the entire cost of the coverage.

<sup>4</sup> Commentary: If a parent's income as determined in OAR 137-050-0715 is at or below the highest Oregon minimum wage, that parent may not be ordered to pay *any* cost to provide insurance, even if the other parent can reimburse the full cost.

<sup>5</sup> Commentary: Compelling factors may include but are not limited to continued access to health care for a child with a chronic health condition or a frequent need for medical care, the parents' agreement to continue coverage despite the cost, and minimal difference between the cost determined under sections (5) and the parent's portion of the cost of coverage.

<sup>6</sup> Example: Health care coverage costs \$375 and covers obligor, obligor's spouse, obligor's two non-joint children, and the joint child that is the subject of this calculation. The cost to cover the obligor is \$175. The cost to cover the people other than the obligor is \$200 (\$375 minus \$175). The per-person cost is \$50 (\$200 divided by 4 covered people). The cost to cover the child in this calculation, then, is \$50.

<sup>7</sup> Commentary: If there is no known premium cost for an individual parent, the cost for that parent can be calculated by dividing the total premium cost by the number of individuals to be covered by the policy.

<sup>8</sup> Commentary: In addition to the reasonable in cost standard, ORS 25.323 requires that coverage be "accessible" and not impose unreasonable deductibles or copays. "Accessible" means that the coverage will be available for at least one year, based on the work history of the parent providing the coverage, and that the coverage either does not have service area limitations or the child lives within 30 miles or 30 minutes of a primary care provider who is eligible for payment under the coverage. Whether copays and deductibles are "unreasonable" is for the fact finder to determine in light of the family's circumstances, such as the child's medical needs, the availability of alternate forms of coverage, and the sufficiency of cash medical support to meet the child's needs.

(10) If both parents have access to appropriate, available private health care coverage, the parent with the greater share of parenting time as determined in OAR 137-050-0730 (Parenting Time Credit) may select which coverage will be ordered.

(a) If the parent with the greater share of parenting time does not select between the parents' coverage, or each parent has exactly 50% or 182.5 overnights of parenting time and the parents do not agree on which policy should be ordered, the policy with the lower out-of-pocket premium cost will be ordered unless the court, administrator, or administrative law judge makes a finding that the more expensive policy should be ordered.

(b) The parents may agree that both parents will be ordered to provide private coverage if both parents have appropriate coverage available so long as the total coverage to be provided is reasonable in cost under sections 5 or 7 of this rule.

(11) If the child lives with a caretaker, both parents are parties to the action, and both parents have appropriate and available private health care coverage, the caretaker may select which coverage will be ordered. If the caretaker does not select between the parents' coverage, the policy with the lower out-of-pocket premium cost will be ordered unless the court, administrator, or administrative law judge makes a finding that the more expensive policy should be ordered.<sup>9</sup>

(12) If neither parent has access to appropriate, available private health care coverage:

(a) One or both parents must be ordered to provide appropriate private health care coverage at any time whenever it becomes available;

(b) The parent with custody of the child may be ordered to provide public health care coverage for the child; and

(c) Either or both parents who are found to have a cash child support obligation as provided in OAR 137-050-0710(1)(i) must be ordered to pay cash medical support,<sup>10</sup> or the order must include a finding explaining why cash medical support is not ordered.<sup>11</sup> The amount of the cash medical support obligation is the lesser of:

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<sup>9</sup> Commentary: When the child lives with a caretaker or is in state care and the support obligation is being computed for only one parent under OAR 137-050-0710(3) (the method typically used by the Child Support Program), only that parent's health care coverage is considered. The single-parent calculation method assesses the obligor one-half of the responsibility for the coverage and credits the obligor for the full cost of the premiums. In most cases, this will mean the obligation is reduced by one-half of the cost of coverage. Also note that if another single-parent order is taken for the other absent parent to pay, the parents' medical support obligations are considered independently, without reference to one another. Regardless of the coverage provided by the first obligor, the second obligor's contribution might be made through providing additional coverage, through cash medical support, or by rebuttal of the guideline support amount.

<sup>10</sup> Commentary: Cash medical support is assigned to the state for any month the child receives Medicaid benefits as described in OAR 461-120-0310.

<sup>11</sup> Commentary: The Child Support Program's administrative child support actions under ORS Chapter 25 do not modify or supersede existing provisions entered under ORS 107.106 requiring parents to share the cost of uninsured medical expenses. Amounts a parent pays as cash medical support may offset that parent's obligation for uninsured expenses imposed by the underlying court order judgment unless

- (A) four percent of the parent's adjusted income as determined in OAR 137-050-0720,
- (B) the parent's available income after deducting the parent's shares of basic support obligation and child care costs, or
- (C) zero, if the parent's income is at or below the highest Oregon minimum wage for full-time employment.<sup>12</sup>

(13) A medical support clause may order an obligor to provide appropriate private health care coverage whenever it is available to the obligor, and to pay cash medical support whenever the obligor does not provide appropriate private health care coverage.

(14) Determine each parent's share of the cost of health care coverage to be ordered under this rule by multiplying the total cost by each parent's percentage share of the parents' combined reasonable in cost limitation, as determined in section 5 of this rule.<sup>13</sup>

(a) If only one parent has income above the highest Oregon minimum wage, that parent is responsible for all health care coverage costs. No share of the cost is apportioned to a parent with income at or below the highest Oregon minimum wage as provided in section 12(c)(C) of this rule.

(15) When enforcing the health insurance provision of a child support judgment entered under this rule, health insurance is reasonable in cost if the premium cost for the child is equal to or less than the amount that was determined reasonable in cost under section 5 of this rule based on both parents' income at the time support was calculated, regardless of whether that cost exceeds either:

- (a) The providing parent's individual contribution to the reasonable cost cap, or
- (b) The actual cost of insurance allocated to the providing parent under section 14 of this rule.<sup>14</sup>

otherwise noted in that judgment. To the extent that a child's medical needs are being met in some other way, it may be appropriate to include findings in lieu of cash medical support. One such way might be provision under ORS 107.106 for the parents to share in the children's uninsured medical expenses. If a child receives Medicaid funded medical benefits, medical support is assigned to the state, and the state must be served with the action and has the right to object.

<sup>12</sup>ORS 653.025, as amended by SB 1532 (2016), provides a three-tiered structure of minimum wages applicable to employers in different areas of Oregon. This provision is intended to ensure the fairest results and minimize the need for additional factual determinations by ensuring that in determining whether a parent has sufficient earnings to be ordered to pay to provide health insurance or to pay cash medical support, the parent's income is compared against the highest Oregon minimum wage.

<sup>13</sup> Commentary: Include health care coverage costs that will be ordered pursuant to this rule, even if they are not yet being paid. Also, if a parent will provide coverage through a spouse or domestic partner, include the costs as if the parent paid the costs directly.

<sup>14</sup> Commentary: The 2013 guidelines combine the parents' income for purposes of determining whether health insurance is reasonable in cost, but divide only the exact cost of the current coverage between the parents. This means that if the cost of coverage increases after entry of the support order, the providing parent may be required to pay a greater cost for insurance than is accounted for in the support amount. If 35 months have passed since entry of the order, or if the change rises to the level of a substantial change of circumstances, the parent may be eligible for a modification. However, small changes in the insurance

Stat. Auth.: ORS 25.270 to 25.290, 25.323, 180.345  
Stats. Implemented: ORS 25.270 to 25.290, 25.321 to 25.343  
Effective date: July 1, 2016

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premium are unlikely to put the order out of substantial compliance with the guidelines.

**137-050-0755**  
**Minimum Order**

(1) Except as provided in OAR 137-050-0740, 137-050-0760, 137-050-0765 and this rule<sup>1</sup>, it is rebuttably presumed that an obligated parent is able to pay at least \$100 per month as child support. If an obligated parent's total support is less than \$100, increase cash child support by the amount needed for total support to equal \$100. For purposes of this rule total support equals cash child support plus the greater of cash medical support or the total out of pocket cost for health care coverage the parent is ordered to provide pursuant to OAR 137-050-0750.

(2) The presumption in this rule does not apply when:

(a) Each parent has exactly 182.5 annual average overnights as determined by OAR 137-050-0730;

(b) The administrator is entering an order which requires only medical support;

(c) A support order is suspended as provided by ORS 25.247; or

(d) The parent from whom support is sought:

(A) Has disability benefits as a sole source of income;

(B) Qualifies as an incarcerated obligor, as defined in OAR 137-055-3300; or

(C) Receives public benefits as defined in ORS 25.245.

Stat. Auth.: ORS 25.270 to 25.290 & 180.345

Stats. Implemented: ORS 25.270 to 25.290

Effective date: February 5, 2020

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<sup>1</sup> Commentary: The support obligation, as adjusted pursuant to this rule, remains subject to a dollar-for-dollar reduction under ORS 25.275(4) and OAR 137-050-0740 (Social Security and Veterans Benefits; Dollar-for-Dollar Reduction of Support Obligation).

## 137-050-0760 Rebuttals

(1) The presumption that the guideline support amount as provided in OAR 137-050-0700 through OAR 137-050-0755 is the correct support amount may be rebutted by a finding that sets out the presumed amount, concludes that it is unjust or inappropriate, and sets forth a different amount and a reason it should be ordered.<sup>1</sup> The criteria that may be the basis for rebuttal include but are not limited to:

- (a) Evidence of the other available resources of the parent;<sup>2</sup>
- (b) The reasonable necessities of the parent;
- (c) The net income of the parent remaining after withholding required by law or as a condition of employment;<sup>3</sup>
- (d) A parent's ability to borrow;
- (e) The number and needs of other dependents of a parent;<sup>4</sup>

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<sup>1</sup> Commentary: The child support amount determined by the formula in OAR 137-050-0700 through OAR 137-050-0755 is presumed correct. If the result is unjust or inappropriate, the court, administrator, or administrative law judge may rebut that presumption and substitute a just and appropriate figure. This list of possible reasons for rebuttal, like the list in ORS 25.280, is not exclusive. The court, administrator, or administrative law judge may consider other appropriate economic factors that directly affect the needs and best interests of the child(ren). *Matter of Marriage of Petersen*, 132 Or App 190 198; 888 P2d 23 (1994).

The party seeking to rebut the presumption in ORS 25.280 has the burden of coming forward with probative evidence that would support a finding that it would be unjust or inappropriate to apply the formula in establishing a child support obligation. *Redler & Redler*, 330 Or 51, 60, 996 P2d 963, 968 (2000)

The court may not base a rebuttal on a factor, such as income disparity between the parties, that is a determinative factor in the guidelines' calculation of a parent's presumed child support obligation. *Matter of Marriage of Larkin*, 146 Or App 310, 313, 932 P2d 115, 116 (1997)

<sup>2</sup> Commentary: "Evidence of the other available resources of the parent" may include income earned as overtime that will increase the parent's ability to support the child, but is not already included in gross income because, e.g., it is not recurring or is not amenable to annualization.

<sup>3</sup> Commentary: Employee contributions to a retirement plan required as a condition of employment may or may not make a significant impact on a parent's ability to pay the presumed amount of child support. In order to be considered as a rebuttal by the trier of fact, any adjustment must be mandatory and significantly reduce or enhance the income that is available to the parent.

<sup>4</sup> Commentary: Stepchildren are excluded from the nonjoint child deduction in OAR 137-050-0720 unless there is an order for the stepparent to support the child, as it is presumed that the legal parents of the stepchild are responsible for his or her support. However, where the stepparent is providing substantial support for a stepchild, rebuttal may be appropriate.

(f) The special hardships of a parent affecting the parent's ability to pay support, including, but not limited to, any medical circumstances, extraordinary travel costs related to the exercise of parenting time, or requirements of a reunification plan if the child is in state-financed care;<sup>5</sup>

(g) The desirability of the custodial parent remaining in the home as a full-time parent or working less than full-time to fulfill the role of parent and homemaker;<sup>6</sup>

(h) The tax consequences, if any, to both parents resulting from spousal support awarded, the determination of which parent will name the child as a dependent, child tax credits, or the earned income tax credit received by either parent;<sup>7</sup>

(i) The financial advantage afforded a parent's household by the income of a spouse or domestic partner;<sup>8</sup>

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<sup>5</sup>Commentary: When a parent incurs extraordinary transportation costs in the exercise of parenting time with a child, and when that expense would impair the ability to pay the presumed correct child support amount, the trier may find it appropriate to reduce the amount of support to be paid by a parent. This criterion might also justify an increase in support when the nonpaying parent incurs extraordinary travel costs to facilitate parenting time between the child and the other parent.

Transportation costs should be extraordinary in order to render the guideline support amount unjust or inappropriate, such as travel that requires an overnight stay or transportation other than by auto. The parenting time credit considers basic travel costs, including exercising parenting time.

This criterion also includes the hardships of a parent trying to comply with the specific requirements of a reunification plan or other agreement to reunite with their child, who are in custody of Child Welfare. When a parent is required to pay for expenses (such as classes, counseling, medical costs, appropriate housing, transportation costs, visitation costs, etc.) as part of the reunification plan or other agreement, it may be appropriate to reduce the amount of support to be paid by the parent when such expenses would impair the ability to pay the presumed correct child support amount.

<sup>6</sup>Commentary: To increase the support order based on this factor, it would presumably be demonstrated both that the custodial parent's failure to work full time (or at all) was justified by the compelling desirability of remaining at home with the children and that the custodial parent's failure to produce the expected income should be compensated for by increased payments on the part of the noncustodial parent. In considering an argument that this criterion stands as the reason for a rebuttal, the trier will probably have to be persuaded both on the merits of the custodial parent remaining at home, the noncustodial parent's ability to pay an increased amount and the equities of such an order.

<sup>7</sup>Commentary: The formula and scale presume that the parent with primary physical custody of the child will receive the dependency exemption. If this presumption is correct, no further consideration need be given to this issue. If in a particular case, however, this exemption goes to the parent who does not have primary physical custody, there may be a reason to adjust the calculation. Because the parenting time credit is based on the scale amount, it allocates the dependency exemption between the parents in proportion to their parenting time credits.

The scale is based on 2006 federal and state tax assumptions. It does not include any changes to the tax code since 2006. It also does not account for any Earned Income Tax Credit (EITC) to which a parent may be entitled. The fact finder may use actual evidence of the earned income or child tax credit in these scenarios. See [https://justice.oregon.gov/child-support/pdf/psi\\_guidelines\\_review\\_2006.pdf#page=21](https://justice.oregon.gov/child-support/pdf/psi_guidelines_review_2006.pdf#page=21).

<sup>8</sup>Commentary: This criterion is intended to apply in situations where an obligor or obligee is voluntarily unemployed or employed at less than his or her earning capacity because a spouse or domestic partner

(j) The financial advantage afforded a parent's household by benefits of employment including, but not limited to, those provided by a family owned corporation or self-employment, such as housing, food, clothing, health benefits and the like, but only if unable to include those benefits as income under OAR 137-050-0715;<sup>9</sup>

(k) Evidence that a child who is subject to the support order is not living with either parent;<sup>10</sup>

(L) Findings in a judgment, order, decree or settlement agreement that the existing support award is or was made in consideration of other property, debt or financial awards, and those findings remain relevant;<sup>11</sup>

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provides a financial advantage to the household which enables the obligor or obligee to be unemployed or work at less than a full-time job.

A spouse or domestic partner's income is not included in income for purposes of the guideline support calculation. *Matter of Marriage of Ainsworth*, 114 Or App 311, 314-315, 835 P2d 928, 929-30 (1992). The Court of Appeals found that it was error for the court to include the wages of each parent's new partner in calculating the presumptive child support obligation of each parent. *Matter of Marriage of Hardiman*, 133 Or App 112, 113, 889 P2d 1354, 1355 (1995).

Example: Obligee used to work full-time, but is no longer working because he or she is married to a spouse who earns a significant income. Because obligee has chosen not to work, his or her income would be calculated based on a determination of potential income. Under this situation, the fact finder may consider the financial advantage afforded to obligee's household resulting from the spouse's income to rebut the presumed child support amount.

Before employing this rebuttal criterion, ensure that the guideline support amount reflects any appropriate imputed income for the unemployed or underemployed parent. For a parent foregoing a professional career because of a spouse's income, using the parent's potential income may result in a just and appropriate support amount without need to rebut.

<sup>9</sup>Commentary: The "benefits of employment" could be any benefit, not counted as income, that provides a financial advantage. Those benefits may include, but are not limited to, those which provide or subsidize housing, transportation, food, clothing, health benefits and the like. The trier, in allowing a rebuttal based on this criterion, must assign a dollar value to the benefit and make a decision about how that amount affects the need for, or the ability to pay, child support. This criterion should be considered only after determining the guideline support amount in light of any in-kind payments or reimbursements counted as income under OAR 137-050-0715(4)(b).

<sup>10</sup>Commentary: Where the child does not live with either parent, it is for the trier to determine whether the presumptive amount of support should be ordered, or whether a departure from the guidelines is appropriate.

<sup>11</sup> If previous orders regarding child support varied from the presumptively correct amount because of other property, debt or financial awards, and those facts remain relevant to any subsequent proceeding (i.e., a modification proceeding), then those facts should be allowed to support rebuttal argument to any support award contemplated.

(m) The net income of the parent remaining after payment of mutually incurred financial obligations;<sup>12</sup>

(n) The tax advantage or adverse tax effect of a parent's income or benefits;<sup>13</sup>

(o) The extraordinary or diminished needs of the child,<sup>14</sup> except:

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<sup>12</sup>Commentary: One party may assume financial responsibility for significant obligations incurred jointly. If this obligation relieves one parent of a significant financial burden while reducing the available resources of the other, it may be appropriate to increase or reduce the income of the parent accordingly.

<sup>13</sup>Commentary: The guidelines assume that income will be taxed as earnings and that there is a standard net income for each gross income level specified in these guidelines. That is, even though the guidelines provide for calculations using gross income amounts, the child support awards produced by the guidelines are, in fact, based upon the net income resulting from that particular gross income amount, assuming a tax deduction claim for only one person, i.e., the person whose income is being determined.

Therefore child support for one child based on a gross income of \$2000, and filing as described above, is \$245. What the user cannot see is that \$245 is really the child support for net disposable income of \$1477, which is \$2000 minus \$237 federal income taxes, \$133 state income tax and \$153 in Social Security deductions. For details of the net to gross conversion method, please see [https://justice.oregon.gov/child-support/pdf/psi\\_guidelines\\_review\\_2006.pdf#page=127](https://justice.oregon.gov/child-support/pdf/psi_guidelines_review_2006.pdf#page=127).

This is not to imply that a parent who claims more or less than one deduction, and whose net income is therefore more or less than would result from one deduction, should be treated differently by this process. The method of deriving net income from gross as explained here is simply a method of "leveling the playing field", so that when we deal with people with similar gross earnings we will also be attributing similar net incomes to them regardless of the number of exemptions they may claim.

However, if the nature of the income or benefit received by the parent is such that it is subject to either more or less taxes than earned income then consideration should be given to both the parent's before-tax and after-tax income. If the trier finds that the income or benefit is not taxable as assumed by the guidelines or taxed at a lower than normal rate, then the presumptively correct support award may not be correct and could be subject to rebuttal under this rule.

<sup>14</sup>Commentary: The guideline support amount is intended to provide for the educational, physical and emotional needs of the child for whom support is sought. In some circumstances, these needs may be higher or lower than that of the average child.

Extraordinary medical expenses are not considered in the guideline support amount. If the child has extraordinary medical expenses, they can be addressed under this factor to the extent they are not addressed through cash medical support. The basic support amount derived from the scale and determined under OAR 137-050-0725 includes the children's ordinary medical expenses (i.e., out-of-pocket expenses not covered by insurance). This includes band-aids, co-pays for doctor's well visits, and over-the-counter medicines. Extraordinary are "likely to be expended on such items as orthodontia and uninsured expenses that may include asthma treatment, certain medical equipment, visits to the emergency room of a hospital outside of the healthcare provider's network and other expenses." Because extraordinary and ordinary medical expenses are different in character, and ordinary expenses typically consist of small over-the-counter purchases, it is not necessary to demonstrate \$250 in expenditures before considering extraordinary costs as a rebuttal factor.

A child's earnings may be considered as a possible basis for departing from the presumed support amount if there is evidence that those earnings diminish the child's need for parental support. Such earnings, therefore, should be extraordinary, e.g., a large personal injury settlement or a significant trust fund, etc. In the vast majority of cases, a child's earnings or property should not impact a parent's

(A) Expenses for extracurricular activities<sup>15</sup> and

(B) Social Security benefits paid to a child because of a child's disability;<sup>16</sup>

(p) The return of capital.<sup>17</sup>

(q) The financial costs of supporting a Child Attending School at school, including room, board, tuition and fees, and discretionary expenses, the ability of the Child Attending School to meet those expenses with scholarships, grants and loans, and the ability of a parent to provide support for the Child Attending School, either in kind where a child continues to live in a parent's home or with cash if there are parental resources to provide financial support over and above the amount for a Child Attending School generated by the child support calculator.<sup>18</sup>

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responsibility to contribute to the support of his or her child. To conclude otherwise would negatively impact the parent-child relationship and provide a disincentive for children to obtain experience in the workforce. See *Redler & Redler*, 330 Or 51, 60-61, 996 P2d 963, 968 (2000) (Evidence that two minor daughters residing with mother earned combined income of approximately \$6,200 from newspaper routes in previous year and that their mother earned approximately \$3,900 in same year was insufficient to rebut presumption that statutory formula provided correct amount of child support owed by noncustodial father, where other evidence indicated mother and father had only part-time jobs that paid minimum wage or slightly above minimum wage and that financial situation in mother's household remained "tight" despite daughters' employment)

<sup>15</sup> Commentary: The guidelines do not take into consideration extracurricular expenses. This is an issue that needs to be negotiated between the parents as these types of expenses are wants, not needs, and the guidelines and scale cover only the needs of children.

<sup>16</sup> Commentary: Social Security benefits paid to a child because of the child's disability are based on the child's extraordinary needs the child and should not be included as income to either parent or be used to reduce the child support obligation. Because the benefits paid by the Social Security Administration are intended to defray the additional costs associated with a child's disability, an upward deviation from the guideline amount may not be necessary. On a related but distinct issue, please see OAR 137-050-0740 for the treatment of Social Security or Veterans benefits received on behalf of a child due to a parent's disability.

For case law on this topic see *Longcor v. Longcor*, 114 Or App 89, 834 P2d 479 (1992), and *Dawson v. Dawson*, 142 Or App 35, 919 P2d 517 (1996).

<sup>17</sup> Commentary: Return on capital (for instance, interest earnings on investments), is income as provided in OAR 137-050-0715. Return of capital is income derived from the sale of property, but does not include interest payments. Return of capital could, for example, be the part of a payment received on a land sale contract in payment for real property which represents the principal rather than the interest.

Generally, it is not intended that an obligated parent should be required to spend down an asset in order to pay support. However, it may be appropriate to increase the parent's income in certain scenarios, such as where a parent has opted to live off of the sale of an asset rather than earning income.

<sup>18</sup> Commentary: Application of these guidelines is often difficult in those situations where an 18-21 year old child is a "child attending school" as defined in ORS 107.108. The scale itself is based on the average expenses of children in the home from ages 0-17. A child attending school may live with a parent, in a dormitory, with a roommate, with a domestic partner, or alone. These situations may call for a rebuttal of the presumptive amount of child support.

(2) A supplemental calculation is not required but may be used in support of the rebuttal.<sup>19</sup>

Stat. Auth.: ORS 25.270 to 25.290, 180.345

Stats. Implemented: ORS 25.270 to 25.290

Effective date: June 1, 2019

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<sup>19</sup> Commentary: Such a calculation could be based on the guideline support formula but could also be based on factors not considered under the support guidelines. The Oregon Child Support Program publishes a support rebuttal calculator which allows rebuttal factors to be applied by adjusting the income of a parent, or the costs for the child or the presumed support amount.

## **137-050-0765**

### **Agreed Support Amount**

(1) It is in the best interest of children to have support orders reached by agreement of the parents. Entering orders with the parents' consent promotes positive parental involvement and prompt, consistent payment of the support obligation. Parents who enter into agreed support amounts avoid the uncertainty of hearings and possible appeals.

(2) The guideline support amount and rebuttal factors are intended to meet the needs of most families. Likewise, the rebuttal factors in OAR 137-050-0760 address most situations in which the guideline amount is inappropriate. However, there will be families for whom the support amount, even rebutted, is not correct and who value the certainty of agreed support amounts.

(3) In consideration of foregoing administrative hearing rights, the parties may consent to a support amount that is within 15 percent of the amount determined under rules 137-050-0700 through 137-050-0760. The order must be entered with the written consent of the parties.

(4) Apply any change to the support amount under this rule proportionally to cash child support and cash medical support, and to minor children and Children Attending School. Round each result to the nearest dollar.

(5) An agreed support amount entered pursuant to this rule is presumed to be just and appropriate within the meaning of ORS 25.280.

Stat. Auth.: ORS 25.270, 25.290, 180.345

Stats. Implemented: ORS 25.270, 25.290

Effective date: July 1, 2018

## BENCH BOOK CHILD SUPPORT CASE NOTES

**Disclaimer:** These case notes summarize relevant child support cases, but are not intended to be an exhaustive digest of Oregon child support case law. These case notes should not be relied on as an exhaustive authority for child support; they are intended only to be a resource.

### I. ARREARS

#### A. Interest on Unpaid Arrears.

1. “Because child support installments are judgment obligations, they accrue postjudgment interest under [ORS 82.010\(2\)\(b\)](#) as a statutory penalty for the obligor's failure to pay a judgment when due; such interest is not imposed to compensate the obligee for a prejudgment loss.” *Chase v. Chase*, 354 Or. 776, 788 (2014).
2. “Postjudgment interest on the arrearage judgment . . . accrue[s] on the unpaid child support amounts—but not on previously accrued interest on those amounts—as simple interest under [ORS 82.010\(2\)\(b\)](#).” *Chase v. Chase*, 354 Or. 776, 789 (2014).

#### B. Temporary Support Arrearages.

1. A trial court may not adjust temporary support arrears either directly (satisfying arrears) or indirectly (awarding an equalizing judgment). *Matter of Marriage of Binnell*, 153 Or. App. 204 (1998).

### II. CHILD ATTENDING SCHOOL

#### A. Constitutionality.

1. The legislature may provide for support of an adult child of unmarried parents without violating equal protection. *In re Marriage of Crocker*, 332 Or. 42 (2001).

#### B. Establishing Paternity.

1. A parent can establish paternity even after age eighteen and seek child support under ORS 107.108. *Norton v. McDonald*, 194 Or. App. 174 (2004).

### III. CONTEMPT

#### A. Contempt Defense.

1. The defendant must establish the affirmative defense by a preponderance of evidence. *State ex rel. Mikkelson v. Hill*, 315 Or. 452, 459 n. 6 (1993).

#### B. Contempt—Mens Rea.

1. A trial court need not make separate findings regarding “willfulness” and “bad intent” to support a judgment of contempt. *Matter of Marriage of Barrett*, 320 Or. 372, 377 (1994).
2. “These cases demonstrate that this court never intended to make ‘bad intent’ an element separate from the requirement of ‘willfulness.’” *Matter of Marriage of Couey*, 312 Or. 302, 305-06 (1991)

#### C. Hearsay Declarations.

1. Although official records may contain hearsay declarations, such declarations are not witness statements that offend a defendant's confrontation right if they are confined to matters that the officer is bound by administrative duty to report and do not include investigative or gratuitous facts or opinions. *State v. Copeland*, 353 Or. 816 (2013).

#### D. Mootness.

1. When a defendant challenges a punitive sanction for contempt, the served sanction does not render the appeal moot. *State v. Langford*, 260 Or. App. 61 (2013).

#### E. Punitive Contempt.

1. In the context of punitive contempt, all the procedures applicable to a criminal proceeding, except for the right to a jury trial, apply. That is true whether confinement is ordered or not. *State v. Langford*, 260 Or. App. 61 (2013).
2. In the context of punitive contempt, the validity of the underlying order is not dispositive. *State v. Graham*, 251 Or. App. 217 (2012).

#### F. Remedial Contempt.

1. Any remedial contempt case must refrain from imposing a determinative sanction. *State v. Gardner*, 287 Or. App. 225 (2017).

2. Where a defendant could not fully comply with a support order, but had some money that he could, but failed to, apply toward his support obligation, that defendant may be held in contempt. *In re Marriage of Altenhofen and Vanden-Busch*, 271 Or. App. 57 (2015).
3. A trial court may not impose a punitive sanction in a remedial contempt proceeding. *In re Marriage of Miller*, 204 Or. App. 82 (2006).

**G. Sanctions.**

1. A determinate term of probation is a punitive sanction. *In re Marriage of Altenhofen and Vanden-Busch*, 271 Or. App. 57 (2015).

**H. Willful Disobedience.**

1. “Willful disobedience” of a court order to pay child support, is established by showing that a party, aware of a court order to pay, neither has complied with nor sought modification of the order. *State ex rel. Mikkelson v. Hill*, 315 Or. 452 (1993).

**IV. CREDIT FOR ARREARS**

**A. Discretion.**

1. When a child moves to the non-custodial parent, the court has discretion to forgive arrears from that time forward. *In re Marriage of Crook*, 199 Or. App. 260 (2005).

**B. Retroactive Modification.**

1. Obligor could not retroactively modify the child support order despite the trial court’s finding that the child support order did not give the obligor credit for parenting time. It is impermissible to do so under statutory law and the obligor failed to contest the amount in a timely manner. *State ex. rel. Dept. of Justice v. Akins*, 285 Or. App. 217 (2017).

## V. DE NOVO REVIEW

### A. Time Frame for Filing.

1. The 60-day limitation period to file for a de novo review begins to run from the date the order is entered in the trial court's register. *In re Marriage of Wessels*, 214 Or. App. 545 (2007).

## VI. DEVIATION FROM GUIDELINES

### A. Calculation.

1. To deviate, the trial court must first calculate what the guideline amount should be. *In re Marriage of Thanouser*, 198 Or. App. 472 (2005); *In re Marriage of Cain and Gilbert*, 196 Or. App. 28 (2004).

### B. Credibility.

1. Credibility of a party is not a basis for a deviation although it may help determine a party's income. *In re Marriage of Cain and Gilbert*, 196 Or. App. 28 (2004).

### C. Departure.

1. The trial court must adequately explain how it arrives at a support amount that deviates from the guideline amount. *In re Marriage of South*, 222 Or. App. 403 (2008).
2. There must be a specific finding of reasons for the departure based on the child support formula in the guidelines. *In re Marriage of St. Sauver*, 196 Or. App. 175 (2004).

### D. Findings.

1. The court must justify the basis for a deviation from the guidelines by making written or specific findings on the record. *In re Marriage of Berry*, 196 Or. App. 296 (2004).

### E. Lack of Enforceable Prior Order.

1. The lack of a prior enforceable support order is not a basis for deviating from the presumed child support amount. *In re Marriage of Cain and Gilbert*, 196 Or. App. 28 (2004).

**F. Payment to Non-custodial Parent.**

- 1. Awarding child support to a parent who does not have legal custody would be poor public policy. *In re Marriage of Cain and Gilbert*, 196 Or. App. 28 (2004).**

**G. Potential Departure.**

- 1. The child support guidelines formula to determine child support award has three basic steps: (1) determine the parents' presumed incomes, (2) use parents' presumed incomes to determine their presumed support obligations, and (3) determine if presumed support obligations are unjust or inappropriate. *In re Marriage of Gilmore and Ambrose*, 258 Or. App. 747, 752 (2013).**

**H. Private Schooling.**

- 1. The cost of private school may be a basis for deviating from the guidelines. *In re Marriage of Thanouser*, 198 Or. App. 472 (2005).**

**I. Tax Exemption.**

- 1. The award of a tax exemption to a non-custodial parent is a deviation factor. *In re Marriage of Cain and Gilbert*, 196 Or. App. 28 (2005).**

**J. Underemployment.**

- 1. Underemployment is not a basis for deviation. Finding a party's proper income is a part of the guidelines. *In re Marriage of Cain and Gilbert*, 196 Or. App. 28 (2004).**

**K. Unrealized Income.**

- 1. Income that could potentially be earned from reinvesting assets may be a basis for deviation. *In re Marriage of Thanouser*, 198 Or. App. 472 (2005).**

**L. Valuing Deviation.**

- 1. The deviation must be assigned a dollar value and be a part of the support calculation. *In re Marriage of Berry*, 196 Or. App. 296 (2004).**

## VII. EXEMPTIONS

### A. Dependency Exemption.

1. A trial court may award a dependent child tax exemption to a noncustodial parent. *In re Marriage of Malpass*, 255 Or. App. 233 (2013).

### B. Dependency Exemption.

1. The custodial parent is presumed to receive tax dependency exemptions. A deviation requires findings in writing after considering tax consequences. *Matter of Marriage of Willey*, 155 Or. App. 352 (1998).

## VIII. HEALTH INSURANCE

### A. Payment of Premiums.

1. An obligor is not responsible for reimbursing the obligee for health insurance premiums which have not been incurred. *In re Marriage of Jensen*, 187 Or. App. 196 (2003).

## IX. INABILITY TO PAY PRESUMPTION

### A. Requirements.

1. [ORS 25.245\(1\)](#)'s [disputable] presumption that a parent receiving cash assistance is unable to pay support must be strictly construed. Cash payments must be under one of four programs: (1) Title IV-A of the Social Security Act, (2) General Assistance Program, (3) Oregon Supplemental Security Income Program, or (4) Supplemental Security Income Program. *Amiotte v. Woods*, 179 Or. App. 179 (2002).

## X. INCOME DETERMINATION

### A. Adoption Assistance.

1. There is a rebuttable presumption that adoption assistance payments are not income for purposes of calculating child support. *In re Marriage of Timm*, 200 Or. App. 621 (2005).

- B. Income from Assets.**
- 1. Averaging income is appropriate when obligor's business and rental income vary from year to year. Obligor did not demonstrate a downward trend in income to invalidate the use of the obligor's average income to calculate his gross income. *In re Marriage of Leif*, 246 Or. App. 511 (2011).**
- C. Income from Assets.**
- 1. The court cannot infer income from assets which potentially could be altered to obtain higher yields, but it may deviate. *In re Marriage of Thanouser*, 198 Or. App. 472 (2005).**
- D. Income from Inheritance.**
- 1. Inheritance that obligor received was equivalent to a gift that could be considered when calculating his gross income to determine his presumptive child support obligation. *In re Marriage of Leif*, 246 Or. App. 511 (2011).**
- E. Income from Military.**
- 1. BAH (Basic Allowance for Housing) & BAS (Basic Allowance for Subsistence) are included in income. *In re Marriage Stokes*, 234 Or. App. 566 (2010).**
- F. Income from Retirement Contributions.**
- 1. The obligor's income includes voluntary contributions to the obligor's retirement plan. *In re Marriage of Gillis*, 234 Or. App. 50 (2008).**
- G. Income Potential.**
- 1. The court used obligor's probable full-time earnings based on obligor's work history and occupational qualifications (potential income) rather than actual income from retirement benefits to determine child support obligation because obligor was unemployed due to her voluntary retirement. *In re Marriage of Gilmore and Ambrose*, 258 Or. App. 747 (2013).**
  - 2. The court must calculate the income of a less than full-time employee by using potential income of at least full-time minimum wage. If the party**

rebutts the full-time presumption, the court may use actual income. *Matter of Marriage of Wilson*, 152 Or. App. 454 (1998).

**H. Income Presumption.**

1. A parent is presumed to be able to work full-time; the court must find on the record any rebuttal of that presumption. *In re Marriage of Dotson*, 177 Or. App. 450 (2001).

**I. Overcoming Income Presumption (Medical).**

1. Obligor had medical evidence sufficient to verify disability that prevented obligor from performing gainful work. The court was required to use obligor's actual income as opposed to potential income in determining the obligor's child support obligation. *In re Marriage of Morgan*, 269 Or. App. 156 (2015).

**J. Spousal Support.**

1. Spousal support is income for the obligee. *In re Marriage of Timm*, 200 Or. App. 621 (2005).

**XI. JUDGMENT**

**A. Separate from Spousal Support.**

1. A child support award in a general judgment must be separately stated from spousal support – combined awards are unacceptable. *In re Marriage of Garza*, 201 Or. App. 318 (2005).

**XII. JURISDICTION**

**A. Interstate.**

1. Parties may waive jurisdiction for modifiable portions of another state's order, but waivers do not allow modification of nonmodifiable provisions. *In re Marriage of Daly*, 228 Or. App. 134 (2009).

**B. Trial Court Jurisdiction.**

1. Obligor received judgment that marriage was void. Judgment based on stipulation did not draw into question the trial court's personal or subject-

matter jurisdiction to determine custody although the marriage had been shown to be void. *Larkins v. Larkins*, 275 Or. App. 89 (2015).

### **XIII. MODIFICATION**

#### **A. Agreement not to Modify.**

- 1. Agreements that purport to deprive a court of authority to modify an award of support may not be enforced. *Matter of Marriage of McDonnal*, 293 Or. 772 (1982); *Matter of Marriage of Watson*, 149 Or. App. 598 (1997).**

#### **B. Automatic Modification.**

- 1. The court may not order an automatic future child support award. *In re Marriage of Shlitter*, 188 Or. App. 277 (2003).**

#### **C. Change of Circumstances.**

- 1. The increase in both parties' incomes may be the requisite change in circumstances. The circumstantial change must be substantial and unanticipated. *In re Marriage of Nieth*, 199 Or. App. 330 (2005); affirmed and clarified, 200 Or. App. 582 (2005).**
- 2. Wife's inability to establish a permanent residence coupled with husband's wrongful repo of the vehicle she needed to obtain work was unanticipated and substantial changes in circumstances. *In re Marriage of St. Sauver*, 196 Or. App. 175 (2004).**
- 3. If a substantial improvement in mental health was contemplated in the original hearing setting support, then failure to achieve that improvement may constitute a change of circumstances. *In re Marriage of Vandenberg*, 186 Or. App. 592 (2003).**
- 4. Retirement, even though anticipated, may constitute a change of circumstances if the timing of it was speculative at the time of the prior support hearing. *In re Marriage of Wilson*, 186 Or. App. 515 (2003).**
- 5. The court must utilize the statutory standards to determine if there is a change of circumstance. *In re Marriage of Nibler*, 184 Or. App. 23 (2002).**

**D. Filing Deadline.**

1. Where a termination date for support obligation occurred on a weekend, time for filing petition to modify support obligation was not extended to next business day. *In re Marriage of Goertel*, 209 Or. App. 585 (2006).

**XIV. PARENTING TIME**

**A. Change in Parenting Time.**

1. A change in parenting time permissibility depends solely upon proof that proposed change from status quo better serves interests of child. *In re Marriage of Cooksey*, 203 Or. App. 157 (2005).

**B. Denial of Parenting Time.**

1. Obligor's denied parenting time warranted a review of his continuing obligation to pay support. A sharply divided appeals court did not terminate support on this fact-bound case. *Matter of Marriage of Kempke*, 151 Or. App. 434 (1997).

**C. Deprivation of Parenting Time.**

1. To engage in "wrongful deprivation of parenting time," one party must deprive the other party of parenting time in pursuit of improper motive or by improper means. *State ex rel Maubach v. Sarangi*, 223 Or App 421, (2008).

**XV. PARTIES**

**A. Determining Parties.**

1. The state may bring an action for support; it is not bound by a judgment declaring non-paternity because it is not in privity with the parties. *State ex rel. Moran v. Rushman*, 177 Or. App. 290 (2001).

## **XVI. PAST SUPPORT – FILIATION**

### **A. Laches.**

- 1. Obligor may assert a defense of laches against a past support obligation in a filiation case. Mother waited eighteen years to establish support. The court awarded no money. *Norton v. MacDonald*, 194 Or. App. 174 (2004).**

## **XVII. PAYMENTS**

### **A. Application of Payments.**

- 1. The obligor may not designate the application of support payments between spousal, child, and arrears after payment has been made; but may designate the application of support payments before, or at the time of, payment. The intent may be deduced from acts and circumstances. *Matter of Marriage of Gayer*, 326 Or. 436 (1998).**

## **XVIII. TEMPORARY JUDGMENT**

### **A. Temporary Judgment.**

- 1. The court may order pendente lite child support under ORS 107.095. Additionally, prospective child support may be awarded if the facts sufficiently support an equitable order. *Matter of Marriage of Moore*, 84 Or. App. 182 (1987).**

## **XIX. UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA)**

### **A. Competing Support Orders.**

- 1. Under UIFSA, when a state obtains continuing, exclusive jurisdiction (CEJ) and the child or a party continues to reside in that state, that state's orders will control all competing state support orders absent a written stipulation of the parties to a modification. *State DCS ex rel. State of AK v. Anderson*, 189 Or. App. 162 (2003).**
- 2. Under UIFSA, if one tribunal has CEJ, that tribunal's orders control. If more than one tribunal has CEJ status, the tribunal in the child's current home state controls. Issuing an order, not merely registering another**

tribunal's order, confers CEJ status. *Cohen v. Powers*, 180 Or. App. 409 (2002).

**B. Interest.**

1. Interest may be included in a UIFSA arrearage case without notice to the obligor if the obligor had the opportunity to contest the underlying arrearage. *In re Marriage of Calvert*, 191 Or. App. 361 (2004).

**C. Judgment.**

1. If a UIFSA money judgment conflicts with a judgment from a CEJ state, the money judgment is without legal effect. The CEJ order controls. *In re Marriage of Calvert*, 191 Or. App. 361 (2004).

**XX. WAGE WITHHOLDING**

**A. Multiple Employers.**

1. An obligor with multiple employers is subject to wage withholding from each employer. *In re Marriage of Morrow*, 191 Or. App. 354 (2004).