

**ADMINISTRATIVE & JUDICIAL
CHILD SUPPORT ORDERS:
Certificate Requirements**

REPORT

(HB 2277)

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From
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Administrative and Judicial Child Support Orders Work Group Certificate Requirements Report

I. Introductory Summary

Oregon law provides for the resolution of child support in judicial proceedings and in administrative proceedings. The administrative process is through the Oregon Department of Justice's Division of Child Support and contracting District Attorneys, hereafter the "Administrator".¹ Both forums operate under a labyrinth of federal and state statutes and administrative rules.² The existence of these two separate processes to establish or modify child support may result in separate, and sometimes inconsistent, child support orders being entered for the same family. The result is confusion regarding which order should be enforced and how much support is owed to the family.

The primary purpose of the accompanying bill (HB 2277) is to prevent multiple orders by requiring litigants to notify the judicial forum or the Administrator of existing orders or pending support proceedings involving the same children. In addition, in some cases, the DOJ will be required to inform the court and parties of existing orders or pending proceedings.

Notification is a first step toward law improvement in this area because it should reduce the occurrences of multiple orders. The Work Group believes that with knowledge of a pre-existing order, the Administrator or court will not purposefully enter a contradictory support order for the same family. The Work Group continues to work toward a resolution of the problem of how to reconcile existing multiple support orders.

II. History of the Project

In 2002, the Oregon Law Commission approved the formation of the Judicial and Administrative Child Support Orders Work Group, having received a law reform project proposal from the State Family Law Advisory Committee. Chaired by Commissioner Sandra Hansberger, the Work Group met 10 times between February 2002 and October 2002. Meetings were held at the Oregon State Bar. The Work Group includes several attorneys in private practice, attorneys with the government entities dealing with support issues such as the Department of Justice's Division of Child Support and the Marion and Clackamas County

¹ For most enforcement services, the term "Administrator" usually refers to the functions given by statute to the District Attorneys and the Department of Justice in child support cases. See ORS 25.010(1); ORS 25.080. However, some program or administrative functions are provided solely by the Department of Justice. In this document when the term "DOJ" is used, it is intended to refer to the Department of Justice's child support program functions.

² Letter from State Family Law Advisory Committee, The Honorable Dale R. Koch, Chair (Oct. 11, 2001) (on file with Oregon Law Commission).

District Attorney's Office, a hearing officer with the State Hearing Officer Panel, two state court judges, a representative from the State Court Administrator's Office and a law professor.³ Doug McKean, Deputy Legislative Counsel, provided drafting assistance.

After studying the scope of the problem presented to the Work Group, the Work Group divided its work into two topics: (1) preventing multiple support and conflicting child support orders; and (2) reconciling multiple and conflicting support orders. The proposed legislation addresses the prevention of multiple support orders.

III. Statement of the Current Problem in the Law

Oregon law currently does not always require litigants in judicial proceedings to notify the court that another support order between the parties exists or that there is a child support proceeding pending in another forum or county. In addition, parties seeking child support orders, or seeking to modify existing orders, are not required to notify the Administrator of existing orders or other pending proceedings. As a result, courts and the Administrator enter

³ Members:

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Kevin Alselm	Hearings Officer Panel, ALJ
Jean Fogarty	Department of Justice, AAG
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Carol Anne McFarland	Clackamas Co. District Attorney's Office
Judge Maureen McKnight	Multnomah Co. Circuit Court
Marsha Morasch	Yates Matthew & Morasch PC
Judge Keith Raines	Washington Co. Circuit Court
Ronelle Shankle	Department of Justice, Child Support Division
Carl Stecker	Marion Co. District Attorney's Office
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Interested Participants:

Susan Grabe	Oregon State Bar
Wendy Johnson	Oregon Law Commission
David Kenagy	Oregon Law Commission
Judge Dale Koch	Multnomah Co. Circuit Court
Doug McKean	Office of Legislative Counsel
Craig Prins	Judiciary Committee
Bradd Swank	Office of State Court Administrator
William Taylor	Judiciary Committee

conflicting orders dealing with the same children and parties. OJIN may not provide current and relevant information regarding administrative proceedings to courts and may not always be a source of accurate and timely information regarding other pending judicial proceedings. The State CASE Registry, which is required by federal statute to record child support orders, is not available to courts and does not contain information on all support orders entered or registered in Oregon. Furthermore, because of confidentiality concerns, the Registry is presently of limited utility to the courts and to litigants. While technology may help to solve some of the problems with conflicting orders from being entered in the future, other steps must be taken in the interim to prevent conflicting orders.

IV. The Objectives of the Proposal

In drafting this bill, the Work Group sought to establish a requirement that parties provide information about existing or pending child support proceedings in their filings with the court and with the Administrator. The intent is to require parties to certify whether there is another child support order in existence, or whether there is another child support proceeding pending.

Child support may be ordered or modified pursuant to a request by an obligor, an obligee, or a state agency entity providing financial support to the child. Furthermore, as noted below, proceedings under a number of different statutes may give rise to a child support order.

The intent of this legislation is to require the moving party to certify the existence of other support orders or proceedings in every action in which support may be decided. In those limited situations where the court may order support on its own motion, the court must provide notice to the Department of Justice (DOJ), and the DOJ, in turn, must notify the court of any existing orders or pending support proceedings.

The Work Group was specifically concerned with the following issues:

1. Notice

This bill addresses the need to notify the Court, Administrator, and parties of known existing support orders or pending support proceedings. A state agency providing enforcement services is also required to provide notice where applicable.

2. Sanctions

The Work Group had considerable discussion about the type of sanction or consequence that should follow from the failure to accurately certify whether there are other child support orders or pending proceedings. Ultimately, the Work Group decided that sanctions would not be imposed in this bill (HB 2277), in part, because of the large number of *pro se* litigants and the possibility of unintentional errors. However, in future discussions regarding how to reconcile multiple child support orders, the Work Group will consider whether a party's failure to properly notify the court of orders or pending proceedings will be grounds to set aside an

order.

3. Providing a form

The Work Group discussed whether the legislation should include a sample form or certificate to fulfill the notice requirement. The group agreed that the form of the certificate should be prescribed in the Uniform Trial Court Rules or by the Administrator, as appropriate.

V. Review of Legal Solutions Existing or Proposed Elsewhere

The Work Group reviewed state and federal statutes relating to child support, and looked to legislation in other jurisdictions. The federal FFCCSOA (Full Faith and Credit for Child Support Orders Act, see 28 U.S.C § 1738B) is aimed at preventing interstate multiple child support orders. While this statute provides guidance for preventing multiple orders, the federal law does not apply to intrastate Oregon orders.

The Work Group also reviewed previous legislative proposals dealing with both the problem of conflicting multiple orders and the lack of notice to the Department of Justice when child support has been assigned to the state. *See e.g.* SB 337 (2001). The Work Group looked to other jurisdictions for handling similar problems with conflicting orders. The Work Group also conducted an informal survey of Oregon judges on their perception of the problems. All of the information gathered lead to the conclusion that a logical first step in addressing the complicated problem of multiple orders was to prevent multiple orders from occurring in the first place.

VI. The Proposal

A. General Provisions

As noted, the purpose of this bill is to require notification of existing child support orders or pending support proceedings in every instance where a court or Administrator may award or modify child support. Specifically, the bill requires notice of:

1. Any type of support proceeding pending in this state or any other jurisdiction;
and
2. Any existing support order involving the child in this state or any other jurisdiction, other than the support obligation the entity seeks to modify.

Furthermore, a state agency, when initiating a proceeding, must include a certificate regarding any existing order or pending support proceeding.

B. Statutes Modified

The bill modifies the following statutory sections to add the requirement of notification of existing orders or pending support proceedings:

- Administrative or judicial support proceedings initiated by an entity providing support enforcement services (ORS 25.287; Section 1 & 2);
- Proceedings for marital annulment, dissolution, or separation (ORS 107.085; Section 3);
- Modification of divorce decree when change of circumstances are present (ORS 107.135; Section 4);
- Modification of dissolution upon motion of parent with parenting time (ORS 107.431; Section 5);
- Expedited parenting time enforcement (ORS 107.434; Section 6);
- Child support action by married person (ORS 108.110; Section 7);
- Action by minor child or state agency for support (ORS 109.100; Section 8);
- Support for child born out of wedlock with established paternity (ORS 109.103; Section 9);
- Motion for modification (ORS 109.165; Section 10);
- Child protective proceeding (ORS 125.025; Section 11);
- Notice and finding of financial responsibility issued by Department of Human Service if there is no court order for support (ORS 416.415; Section 12);
- Modification of support order where support enforcement services are provided (ORS 418.425; Section 13);
- Filing and docketing of financial responsibility order (ORS 416.440; Section 14);
- Modification of order after public assistance has ceased (ORS 416.470; Section 15);
- Dependency and delinquency proceedings (ORS 419B.400 and ORS 419C.590; Sections 16 and 17).

C. Notification to the Court and Court's Own Motion to Modify Support

As noted, courts deal with child support pursuant to a number of different statutes. In certain circumstances, the court may, on its own motion, award or modify support. In ORS 125.025 (child protective proceeding), see Section 11 of this bill (HB 2277), and in ORS 419B.400 and ORS 419C.590 (dependency and delinquency hearings), see Sections 16 and 17 respectively, the court may require parents or other persons to pay support. In these cases, the bill requires the court to notify the DOJ that there will be a hearing on support. In addition, the bill requires that prior to the hearing on support, the DOJ inform the court of any existing support orders or any pending support proceeding involving the same child. The Judicial Department and the Department of Justice may enter into an agreement regarding how the courts give the notice required under these sections and how the Department of Justice provides information to the courts.

D. Notification in an Administrative Proceeding

When support enforcement services are being provided under ORS 25.080, if the Administrator issues and serves a notice and finding of financial responsibility, the notice must include, to the extent known, a statement regarding the existence of support orders or pending proceedings regarding the same child. *See* ORS 416.415 and Section 12 of this bill (HB 2277). Similarly, if the Administrator or a private party seeks to initiate or modify an existing support order in an administrative proceeding, the moving party is required to give notice to the Administrator of the existence of support orders or pending support proceedings. *See* ORS 416.425 and Section 13 of this bill (HB 2277). Section 15 of this proposed bill (HB 2277) requires notice to the Administrator of child support orders and proceedings when an obligor or obligee seeks to modify support after public assistance is no longer provided.

VII. Conclusion

This proposed bill is the first step in addressing the problems created by multiple and conflicting child support orders: that is, the bill if passed, will operate to prevent the existence of multiple orders from arising in the future. The intent is clear: to require notice to the courts and the Administrator of existing orders and pending child support proceedings in order to prevent multiple orders for the same children. The bill becomes complex only by the need to address the numerous proceedings in which child support obligations may be addressed.