

**ADMINISTRATIVE & JUDICIAL
CHILD SUPPORT ORDERS:
Resolution of Multiple Orders
REPORT
(HB 2645)**

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From
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Report of the Administrative and Judicial Child Support Work Group of the Oregon Law Commission

I. Introductory summary

Oregon law provides for the resolution of child support in judicial proceedings and in administrative proceedings. The administrative process found at ORS 416.400-416.470 is handled through the Oregon Department of Justice's Division of Child Support and contracting District Attorneys, hereafter the "Administrator."¹ The judicial process occurs in circuit court in dissolution and other proceedings primarily under Chapters 107, 108, and 109. Both forums operate under a labyrinth of federal and state statutes and administrative rules. 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. In addition, the agency and courts may have concurrent jurisdiction. Confusion results regarding which order should be enforced and how much support is owed to the family.

LC 1587 is a companion bill to HB 2277 (formerly LC 977). The primary purpose of HB 2277 is to prevent the entry of multiple orders by requiring litigants and others to notify the judicial forum or the Administrator of existing orders or pending support proceedings involving the same children. The primary purpose of LC 1587 is to provide a clear process for the courts to resolve the problem of existing multiple judgments involving the same parties and children, including a set of guidelines for making a determination as to the controlling terms of each child support judgment. The determination of the controlling terms of multiple child support judgments will result in a single document entitled a "governing child support judgment." Proceedings to determine a governing child support judgment may be initiated by a party, the Administrator, or a judge upon discovering the existence of multiple child support judgments that involve the same child and cover the same period of time.

In addition, LC 1587 specifies that a court is limited to enforcing, modifying, or setting aside existing judgments. ORCP 71 remains a basis for setting aside a child support judgment. However, LC 1587 adds that a child support judgment may also be set aside if the party failed to notify the court or the Administrator of the existence of another child support judgment or a pending support proceeding as set forth in HB 2277.

¹For 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.

The Work Group anticipates that the need for issuing a “governing child support judgment” will gradually diminish in coming years in light of HB 2277 which would require parties to notify the courts of the existence of other support judgments or pending support proceedings. In other words, if the courts and agency are properly notified of an existing or pending child support judgment, there will be fewer instances where multiple judgments are entered in the first place. For the interim, however, this proposed legislation provides a procedure for determining which terms are entitled to prospective enforcement.

II. History of the Project

On December 14, 2001, the Oregon Law Commission approved the formation of a Judicial and Administrative Child Support Orders Work Group at the request of the State Family Law Advisory Committee. Chaired by Commissioner Sandra Hansberger, the Work Group met 10 times between February 2002 and October 2002 to consider the problem of multiple child support judgments to draft LC 977. The group met four more times from November 2002 to January 2003 to continue its work to resolve the issue of existing multiple child support judgments. 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 District Attorney’s Office, a hearing officer with the State Hearing Officer Panel, two state court judges, and a representative from the State Court Administrator’s Office.² Doug McKean from Legislative Counsel’s Office provided critical drafting assistance.

² **Members:**

Prof. Sandra Hansberger, Chair
Kevin Alselm
Jean Fogarty
David Gannett
Drake Lightle
Carol Anne McFarland
Judge Maureen McKnight
Judge Keith Raines
Ronelle Shankle
Carl Stecker
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Multnomah Co. Circuit Court
Washington Co. Circuit Court
Department of Justice, Child Support Division
Marion Co. District Attorney’s Office, DA
Office of State Court Administrator

Interested Participants:

Susan Grabe
Wendy Johnson
David Kenagy
Judge Dale Koch
Doug McKean
Craig Prins
Bradd Swank
William Taylor

Oregon State Bar
Oregon Law Commission
Oregon Law Commission
Multnomah Co. Circuit Court
Office of Legislative Counsel
Judiciary Committee Counsel
Office of State Court Administrator
Judiciary Committee Counsel

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. HB 2277 addresses the prevention of multiple support orders; LC 1587 develops a process and guidelines to reconcile multiple orders involving the same parties and children.

III. Statement of the Current Problem in the Law

Oregon law currently does not require all 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 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 Court 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 prevent conflicting orders from being entered in the future, other steps must be taken in the interim to prevent conflicting orders.

HB 2277's mandate that parties notify the courts and the Administrator of the existence of another child support judgment, and/or that another child support proceeding is pending should help in reducing the problem of multiple judgments from occurring in the future. Nonetheless, a clear process is needed by which the terms in multiple judgments that now exist can be resolved.

Multiple judgments, involving the same children and parties, and which cover the same period of time, create confusion for the parties, the courts, and the Administrator.

Here is a common example:

Custodial parent and child receive public assistance and an administrative child support order is taken for \$200 a month in child support. The non-custodial parent is also ordered to provide health insurance. This order becomes a judgment in Clackamas County. Six months later, one of the parties files for divorce in Multnomah County. In this proceeding, the judge unaware of the Clackamas County judgment awards \$300 per month in support, and does not mention health insurance. The result is two conflicting judgments running concurrently in different counties on both the issue of child support and health insurance.

The result of multiple conflicting child support orders often occurs because the agency and judicial forums are not aware of the pendency of another

child support proceeding or the existence of a previously entered judgment. Currently no clear process determines which terms of multiple judgments govern. Traditional principles of issue and claim preclusion are not often applicable because the facts of the case may be in almost constant flux.

IV. The Objectives of the Proposal

In drafting this bill, the Work Group seeks to set forth two primary principles. First, if a child support judgment already exists with regard to the same obligor and child, a court may only set aside, modify (as authorized by law),³ or enforce existing orders. In other words, any new order must, in some way, reference an existing order if there is one. Second, once a court (or in some cases the Administrator) becomes aware of the existence of multiple orders that have already been entered, LC 1587 sets forth guidelines for the court (or Administrator) to determine a *governing* child support judgment. The governing child support judgment will set forth the controlling terms of any existing judgments and also determine the termination date of any noncontrolling terms.

The Work Group was specifically concerned with the following issues:

1. Continuing to prevent the issuance of multiple child support judgments.

Although HB 2277 is intended to require the parties and the Administrator to give notice of existing judgments and pending proceedings involving child support, the Work Group considered whether it is necessary to clarify the role of the courts or Administrator in acknowledging the existence of other judgments. For example the Work Group decided that to further prevent multiple orders, the courts and the Administrator (to a limited extent) should be explicitly restricted to enforcing, setting aside, or modifying existing orders.

2. Developing a process for the court to resolve multiple judgments.

No clear process for resolving multiple **intra state** child support judgments involving the same parties and children and covering the same period of time currently exists. The Work Group developed a process whereby the parties, the Administrator, or the court (on its own motion) could resolve conflicts between multiple judgments. An outline of the proposed process is presented in the attached flowcharts, which are attached as Exhibit A. Procedural questions, including transfer and consolidation of cases from other counties are addressed in the bill.

3. Presumptions for determining the validity of controlling terms.

The Work Group agreed that it was important to establish guidelines for determining which terms of an order are valid. Guidelines, or presumptions, will aid the parties, attorneys, the Administrator and the courts in dealing with multiple child support judgments in a consistent manner. Note: As further discussed below, because the last-issued order may

³ Current law allows modification of child support orders upon a showing of a change of circumstance, or pursuant to a two-year review by the Administrator. *See e.g.* ORS 416.425, ORS 25.287, and ORS 107.135.

be silent as to terms addressed in the earlier-issued order, it is necessary to deal with controlling terms as opposed to controlling orders or judgments.

4. Developing a final document that contains the resolution of the multiple judgments and terms. Once a court (or the Administrator) has applied the presumptions and has determined the controlling terms of the various judgments, the terms must be recorded in one final document. This document also needs to reflect the effect on terms of other judgments that are deemed not controlling. This proposed bill calls such a document a “governing child support judgment.”

5. Separation of Powers Issues and the Authority of the Administrator. The Work Group considered whether the Administrator would have the authority to consider the controlling terms of orders, where court orders are involved. The Work Group considered separation of powers issues, and concluded that the Administrator can have no greater power in this process than it does under existing law to modify a court judgment. That is, an administrative order that modifies a judicial order will continue to be reviewed and approved by the court before it becomes effective.

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 Full Faith and Credit for Child Support Orders Act (FFCCSOA)⁴, is aimed at preventing multiple interstate child support orders. While this statute provides guidance for preventing multiple orders, the federal law does not apply to intrastate Oregon orders. Federal child support laws require that equal effect be given to judicial and administrative orders, but provide little guidance on resolving conflicts between the two.⁵

The Work Group also reviewed previous Oregon legislative proposals dealing with both the problems of conflicting multiple orders and minor legislative changes aimed toward providing notice to the Department of Justice when child support has been assigned to the state.⁶ The Work Group looked at how other jurisdictions (specifically Texas and Iowa where the issue has been addressed) handled similar problems with conflicting orders. While other jurisdictions have had some success in preventing these problems, these solutions were not entirely applicable to the problems faced in Oregon. 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. It also aided the group in developing the rebuttable presumptions to be applied in determining the controlling terms of multiple orders.

⁴ See 28 U.S.C. 1738B.

⁵ See 42 USC 666(a) (9).

⁶ See, e.g., SB 337 (2001).

VI. The Proposal

A. General Provisions.

As noted, the purpose of LC 1587 is to resolve multiple child support judgments when those judgments involve the same children and cover the same period of time. The new legislation would make it clear that a court may only enforce, modify (under the terms of existing law), or set aside child support judgments when there already exists a child support judgment with regard to the same obligor and child. In addition, when there are multiple judgments, the parties or the Administrator may petition the court for a governing child support order. When a matter regarding child support is before the court, the court may *sua sponte* address the issue of multiple judgments and issue a governing support judgment after notice to the parties. The bill establishes guidance for the Administrator and the courts in the form of a rebuttable presumption that the terms of the last-issued child support judgment are controlling. Once the court determines the controlling terms of the multiple judgments by applying the presumptions or finding them rebutted, the court will issue a governing child support judgment. The governing child support judgment will specify which terms continue, and the effect of any non-controlling terms. Flowcharts, attached as Exhibit A, represent the new process for resolving multiple child support judgments.

LC 1587 also sets up alternative processes for the Administrator to reconcile multiple child support judgments. The Administrator may petition the circuit court for a governing controlling judgment; the circuit court will then set a hearing on the matter and follow the presumptions set forth in the bill. In the alternative, the Administrator can issue a proposed governing order, serving it on the parties in the manner specified for service of an administrative modification of the order. If a party objects to the proposed governing order, the Administrator will then certify the matter to the court for a hearing and determination of a governing support judgment. If no timely objection is filed with the Administrator, the Administrator then certifies the matter to circuit court for review and approval.

LC 1587 deals with judicial and administrative actions. These are addressed separately below:

JUDICIAL ACTIONS.

It is anticipated that Sections 2 and 3 of LC 1587 will be added to and made a part of ORS chapter 25. Those sections will apply to any judicial proceedings in which child support may be awarded or modified under ORS chapters 25, 107, 108, 109, 416 or the provisions of ORS 125.025, ORS 419B.400, ORS 418B.923, ORS 419C.590 and ORS 419C.610. The following is a more detailed analysis of the proposed legislation:

Section 2. This section defines “child support judgment” for the purposes of this section as “the terms of a judgment, decree or order of a court, or an order that has been filed and docketed under ORS 416.440 that provide for past and current monetary support

or health insurance under ORS 25.255 for the benefit of a child.” “Child support judgment” does not include terms other than the monetary support or health insurance of the child. This section also reiterates that a child support judgment originating under ORS 416.440 has the full force and effect and attributes of a docketed judgment of a circuit court. This section limits the authority of the court and the Administrator to enforcing, modifying, or setting aside an existing child support judgment. The grounds for setting aside a child support judgment are: the criteria specified under ORCP 71; the fact that the support judgment was issued without prior notice to the issuing court, Administrator or hearing officer that another support judgment existed or there was a proceeding pending; or the fact that there was a later support judgment issued that did not enforce, modify or set aside the earlier judgment. Finally, the court must specify how its judgment effects the previously entered child support judgment.

Section 3. This section provides a procedure for the determination of a governing child support judgment. A party or the Administrator may petition the court for a governing child support judgment. If a matter involving a child is before the court and the court is aware of the existence of multiple child support judgments, the court may *sua sponte*, and after notice to the parties, issue a governing child support judgment. This section also establishes a rebuttable presumption that the terms of the last-issued child support judgment are the controlling terms superseding contrary terms of each earlier-issued child support judgment. This rebuttable presumption does not apply to silent terms. If the last order is silent about either monetary support or health care, the term in the earlier-issued order is presumed to continue. The presumption can be rebutted if the judgment is set aside under ORCP 71,⁷ or, if either the Court or the Administrator was unaware of the existence of another order or a pending child support proceeding at the time of entering the order or judgment.

Finally, section 3 describes what a governing child support judgment must include as follows:

- (1) A reference to each child support judgment considered and a copy of the judgment;
- (2) A determination of which terms regarding monetary support and health insurance are controlling and which child support judgment(s) contain those terms;
- (3) An affirmation, termination or modification of the terms regarding monetary support arrears or credits for overpayments under all of the child support judgments (with some exceptions); and

⁷ ORCP 71B sets forth grounds for setting aside a judgment. A judgment may be set aside for fraud, inadvertence, newly discovered evidence or because it is void. The criteria under ORCP 71 is well established and currently employed by practitioners.

(4) The effective date of each controlling term and the date of the termination of each non-controlling term in each of the child support judgments.

The court may also reconcile the arrears and credits due under the conflicting judgments or order a separate proceeding to determine arrears under ORS 416.429 or ORS 25.167.

It should be noted that non-controlling terms are terminated. However, termination does not affect any support payment arrearage or any liability related to health insurance that accrued before the governing child support judgment is issued.

After the period for appealing the governing child support judgment expires, a party named by the court or the petitioner, must file a copy of the governing child support judgment with each court or the Administrator that issued an earlier child support judgment. This filing will allow county and administrative records to reflect the result of the governing support judgment on the previously entered judgments. Failure does not affect the validity or enforceability of the governing child support judgment, but a party who fails to file is subject to monetary sanctions including, but not limited to, attorney's fees, costs and disbursements.

ADMINISTRATIVE ACTIONS.

Section 5. Section 5, dealing with the administrative process for resolving multiple child support judgments, is added to and made a part of ORS 416.400 to 416.470. LC 1587 gives the Administrator the option of having the court determine the governing child support judgment, or to allow the Administrator to propose a governing child support order in those cases where a straightforward application of the presumptions seems appropriate. Should the Administrator propose an order, and the parties object to the proposed order, the matter would be certified to court for a judicial hearing and determination. If the parties do not object to the proposed order, it is not effective unless it is approved by the court.

Upon discovery of the existence of multiple child support judgments, the Administrator may either petition the circuit court where the child resides, or may enter a proposed governing controlling order and serve it on the parties in a manner consistent with service of modification of existing judgments. If the administrator petitions the court for determination, the court shall hold a hearing on the matter, apply the presumptions, and enter a governing child support judgment.

If the Administrator proposes a governing child support order, the Administrator must also apply the same presumptions, and serve notice on the parties in the manner prescribed under ORS 416.425 (the manner for serving notice for child support modifications). The proposed order must include all of the terms specified for judicial governing child support judgments. If one of the parties files a timely objection with the Administrator, the Administrator must then certify the matter to court. Upon receipt of a certification the court would set a hearing, apply the presumptions and consider any rebuttal evidence, and issue a governing child support judgment. If no timely objection

is received, the Administrator certifies the proposed order to court for court review and approval. Once reviewed and approved and filed under ORS 416.440, the governing child support order becomes the governing child support judgment. The Administrator is responsible for filing the governing child support judgment with each court that issued an earlier child support judgment.

Finally, when a hearings officer finds that two or more child support judgments exist involving the same child and same period of time, the hearings officer shall remand the matter to the Administrator. The Administrator may then choose to issue a proposed governing order, or petition the court for a determination.

OTHER PROVISIONS.

Section 6. Section 6 modifies ORS 25.167, the procedure for determining arrearages, by adding references to governing child support judgments and the administrative process to determine arrearages under ORS 416.429. Section 7 modifies ORS 416.422 to allow the Administrator, after issuing a notice and finding of financial responsibility (“NFFR”) but before the Administrator or hearing officer has issued an order, to certify a support matter to court. Section 7 gives the court authority, in this consolidated action, to decide matters of past support initiated by the Administrator.⁸ If, however, the court does not award past support, the Administrator or hearing officer may thereafter issue an order directing a parent to pay an amount of past support.⁹

B. Statutes Modified The following statutes are modified: ORS chapters 25, 107, 108, 109, 416 and ORS 125.025, ORS 419B.400, ORS 418B.923, ORS 419C.590 and ORS 419C.610.

⁸The court is currently limited to ordering support only from the date the petition is filed. *See* ORS 107.135. ORS 416.400(8) and ORS 416.422 allow the administrator to enter an order of support for periods before the petition is filed.

⁹ This reflects the current practice of the Administrator when it is presented with issues of past support that the court cannot address. In other words, the current practice is for the agency to maintain jurisdiction of issues of past support when the court is not able to act.