

Administrative and Judicial Child Support Work Group

HB 2275

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From the Offices of the Executive Director
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I. Introductory Summary

In the 2003 Legislative Session, new laws were adopted at ORS 25.091 and 416.448 to resolve the problems associated with the entry of multiple child support judgments involving the same obligor and child for the same time period.

Prior to adoption of ORS 25.091 and 416.448, there was no mechanism in Oregon law to deal with those situations where multiple child support judgments were entered; particularly where an administrative child support order was entered and a court judgment was then entered at a later date. Upon advice from legal counsel, the Oregon Child Support Program (CSP) treated the later in time court judgment as superseding the administrative child support order.

The CSP did not anticipate the large number of instances prior to January 1, 2004, where it treated a court judgment as superseding an administrative order. The new law directs a governing child support order or judgment (GCSO/J) be completed for each of these and the arrears reconciled. Applying the new law to these cases when the obligor has relied on the billing and enforcement seems inequitable and will likely be cause for increased litigation and complaints.

The accompanying bill HB 2275 limits the applicability of ORS 25.091 and 416.448 when the multiple child support judgments were entered prior to January 1, 2004. The concept clarifies that if the judgments were entered prior to January 1, 2004 and the CSP gave a later in time court judgment precedence over the earlier issued administrative child support order, the court judgment will be treated as superseding the administrative order. HB 2275 also clarifies the reconciliation of arrears process when a

GCSO/J is completed to address confusion brought to light during discussions of the Work Group.

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. The Work Group recommended legislation that was adopted in the 2003 Legislative Session at ORS 25.091 and 416.448.

In October 2004, the Oregon Law Commission approved the CSP's request to reconvene the Work Group to discuss a clean up amendment to the legislation passed in 2003. The Work Group met one time in November 2004 and approved proposed legislation to address multiple child support judgments entered prior to January 1, 2004, and clarify the reconciliation of arrears process.

The Work Group included several attorneys in private practice, attorneys with the government entities dealing with support issues such as the Department of Justice, Division of Child Support and the Marion and Clackamas County District Attorney's Office, an administrative law judge with the Office of Administrative Hearings, two state court judges, and a representative from the State Court Administrator's Office.¹ Doug McKean from Legislative Counsel provided critical drafting assistance.

¹ Members:

Prof. Sandra Hansberger, Chair
Kevin Anselm
David Gannett
Drake Lightle
Carol Anne McFarland
Judge Maureen McKnight
Judge Keith Raines
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Interested Participants:

Susan Grabe
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Judge Dale Koch
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Oregon State Bar
Oregon Law Commission
Oregon Law Commission
Multnomah Co. Circuit Court
Office of Legislative Counsel
Office of State Court Administrator
Judiciary Committee Counsel
Department of Justice, Division of Child Support

III. Statement of the Problem Area

When multiple child support judgments have been entered for the same obligor and child for the same time period, ORS 25.091 and 416.448 direct the court or administrator to make a determination as to the controlling terms of each child support judgment, enter a GCSO/J and reconcile the arrears resulting from the multiple judgments. The entry of a GCSO/J does not affect any arrears that accrued under the multiple judgments prior to the date of entry. However, consistent with the Uniform Interstate Family Support Act, the amounts due under the multiple judgments are credited against each other. In other words, the obligor will not owe amounts due under both judgments, but will owe the higher of the two judgments during periods of time when the judgments overlap.

Prior to the adoption of the GCSO/J process in Oregon law, the CSP gave precedence to the later in time court judgment. If the CSP was enforcing an administrative child support order and later received a court judgment for the same obligor and child (and the court judgment was not a modification of the administrative order), the CSP treated the court judgment as superseding the administrative order and began billing the new amount of support contained in the court judgment.

The GCSO/J process does not contain any provision as to timeframes for applicability. The court or administrator is therefore required to apply the process to those circumstances outlined above, where the court judgment has been given precedence over the earlier administrative order. If the earlier issued administrative order contained a higher amount of support than the later in time court judgment, the reconciliation of arrears results in a higher arrears balance being owed by the obligor than what the CSP previously billed.

The CSP underestimated the number of cases where it had treated a court judgment as superseding the administrative order. With the implementation of ORS 25.091 and 416.448, the CSP became aware that there are several thousand cases that have the potential for being adversely impacted by the application of the GCSO/J process. This would be contrary to their reliance on CSP accounting and enforcement.

Additionally, in discussing the above problem with members of the Work Group and other interested parties, it became clear there was not a consistent understanding of how arrears are to be reconciled when a GCSO/J is entered.

ORS 25.091(10) and ORS 416.448(6) provide that a GCSO/J does not affect any amounts that accrued under the multiple judgments. This provision was written to mirror reconciliation of arrears for out-of-state multiple orders under both the Uniform Interstate Family Support Act and the Full Faith and Credit for Child Support Orders Act. Under those acts, a person owes the highest amount of support ordered until such time as a controlling order is recognized.

ORS 25.091(7) directs that a GCSO/J include a reconciliation of any monetary support arrears or credits for overpayments under all of the child support judgments. However, reading this provision together with ORS 25.091(10) and 416.448(6) does not provide adequate instruction to practitioners or the public as to how the reconciliation of arrears is to be accomplished.

IV. The Objectives of the Proposal

In drafting proposed amendments to ORS 25.091 and 416.448, the Work Group sought two primary objectives. First, when the CSP has treated a court judgment as superseding an administrative order, the GCSO/J process should not operate to cause an adverse impact on those obligors who have relied on the accounting and enforcement of the CSP. Second, Oregon law should provide clear direction as to how arrears should be reconciled under multiple child support judgments when a GCSO/J is entered.

V. Review of Legal Solutions Existing or Proposed Elsewhere

The Work Group looked at the provisions of ORS 25.091 and 416.448 and determined that the court or administrator is required to apply the GCSO/J process to multiple judgments entered prior to January 1, 2004. The CSP provided input that this would have an adverse impact on thousands of cases.

In addressing the reconciliation of arrears issue, the Work Group reviewed the discussions and report of the original meetings of the group to determine the original intent of the legislation. The Work Group also looked at the provisions of the Uniform Interstate Family Support Act (UIFSA) and the Full Faith and Credit for Child Support Orders Act (FFCCSOA). While those Acts apply to multiple child support orders issued by multiple states, it was the intent of the original legislation that the process for reconciling arrears under multiple orders be consistent with the multiple state process.

VI. Proposal

Section 1: Section 1 of the proposed concept contains a limited exception to the GCSO/J process contained in ORS 25.091 and 416.448.

If all of the following are met, then the monetary support terms of an administrative child support judgment are terminated by the monetary support terms of a later-issued child support judgment of a court:

- Two child support judgments exist that involve the same obligor and same child for the same time period;
- The administrator was providing services under ORS 25.080;
- The later-issued child support judgment was entered before January 1, 2004; and

- The administrator gave the later-issued child support judgment precedence over the earlier-issued child support judgment originating under ORS 416.440.

This provision would affirm the practice of the CSP in treating a later in time court judgment as superseding a prior administrative order that was entered prior to January 1, 2004.

The Work Group anticipates that the number of cases to which this provision applies will diminish over time. The Work Group and Legislative Counsel therefore recommend that the provision not be formally codified into statute, but added as a note. At such time as the provision becomes obsolete, it would be removed from the ORS.

Section 2: In addition to cleaning up certain terminology in ORS 25.091 related to health benefit plans and judgment provisions, this section clarifies the process for reconciling child support arrears under multiple child support judgments when a GCSO/J is entered. More specifically, it makes clear that arrears accrue under each child support judgment until the GCSO/J is entered. When reconciling arrears, amounts collected and credited for a particular period under one child support judgment must be credited against the amounts accruing or accrued for the same period under any other child support judgment. For periods when the multiple judgments overlap, this will result in the obligor owing the amount due under the highest order, consistent with those processes under UIFSA and FFCCSOA.

Section 3: The changes to ORS 416.448 in this section are essentially the same as provided in Section 2.

VII. Conclusion

In conclusion, the adoption of ORS 25.091 and 416.448 created a much needed process for determining what action should be taken when multiple child support judgments are entered for the same obligor and child for the same time period. However, this process should not work an injustice for those obligors who have been receiving child support services and have relied on the CSP's action in treating the court judgment as superseding the administrative order. Further, the reconciliation of arrears process should be clarified to provide adequate notice and direction as to how arrears should be reconciled when a GCSO/J is entered to ensure consistent implementation of this statute.

For the reasons listed above, the Work Group urges the Oregon Law Commission to adopt the proposal as written.