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Child Support Obligations

REPORT

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Report of the Workgroup on the Revision of the Juvenile Code

Subgroup on Child Support Obligations

I. Introductory Summary

Currently, the juvenile court may, after a hearing, require a parent or any person legally obligated to support a child who is within the jurisdiction of the juvenile court to pay child support. ORS 419B.400 and ORS 419C.590. The statutes do not identify the process for bringing support matters before the court, and do not identify the court=s specific authority to review and modify support orders set by the juvenile court or another court of competent jurisdiction. Further, the statutes do not provide a system for review of past child support obligations and arrears when they are an impediment to reunification and stability of the family.

The subcommittee received various proposals and the full workgroup supported a legislative change to chapter 25.396 which will allow Services to Children and Families and the Oregon Youth Authority, as judgment creditors, to enter into payment agreements with child support obligors to reduce the monthly burden on obligors where appropriate. Further, the proposal does not require a legislative change to the already existing authority of judgment creditors to suspend enforcement or to forgive support obligations when appropriate. Both SCF and OYA have agreed to review administrative rules and internal policies to make those options available if deemed appropriate.

II. History of the Project

The OLC undertook Revision on the Juvenile Code in 1999. Commission members Senator Brown and Jeff Carter have worked to include a broad range of practitioners and administrators of juvenile law in the workgroup. The subgroup on Child Support is co-chaired by Ronelle Shankle on the Department of Justice Child Support Division, and John Richardson of the Oregon State Bar Juvenile Law Section. In addition to the co-chairs, the sub-group includes representatives from the Department of Human Resources State Offices for Services to Children and Families, the Oregon Youth Authority and Legal Aid Services of Oregon. The subgroup reviewed current Oregon practice regarding data collection and referral of child support cases, state statutes, administrative rules and agency policies, as well as federal law effecting the process of establishing and enforcing child support.

III. Statement of the Problem Area

The Juvenile Code currently allows the juvenile court to set and enforce child support judgments for the benefits of children and youths within the jurisdiction of the juvenile court. ORS 419B.400 and 419C.590. There was concern that although the code allows this process, most orders are set by administrative order, or already exist from a previous domestic relations order and are not set by the juvenile court where information about the parent=s circumstances is readily available. Administrative orders are typically set when a child is placed in substitute care (e.g. foster care) through Services to Children and Families or when a youth is committed to the Oregon Youth Authority. Administrative orders typically take between 3-6 months to complete

(on average, 129 days for OYA and 165 days for SCF). In many cases this creates an automatic arrearage for the parent paying support. The Division of Child Support then begins collecting the obligation both for the current month's support and the arrears. Typically, this results in an income withholding of 120% of the ordered support amount. In a small number of cases, where reunification of a parent and child is possible, the child support order or arrears make it impossible to sufficiently stabilize the family to make final reunification possible. For example, parents may not be able to obtain housing because of a support arrears judgment or be able to afford rent without housing assistance, may not qualify for cash assistance or food stamps, or be able to maintain a sufficient income to meet the needs of the child.

The subgroup explored possibilities to: 1) Determine if it is possible to set initial support orders more quickly; 2) Provide better information to the agency or court setting order so that the child support amount accurately reflects the parents' current circumstances, 3) Determine if it is appropriate for SCF and OYA to participate in systems that could provide greater flexibility in collection and enforcement of child support orders, and 4) Determine if changes were necessary to clarify statutory provisions for setting or modifying child support orders through the juvenile court.

To meet these goals, the subcommittee reviewed data from OYA and SCF related to referral of cases to the Division of Child Support for establishment of support orders and reviewed enforcement data from the Division. The subgroup also reviewed the administrative policies of the agencies for conflicts or contradictions between referral policies as well as enforcement policies and reviewed the agencies' compliance with federal support guidelines. Four meetings were held to discuss the data and information collected before sending three proposals to the full workgroup.

IV. The Objectives of the Proposal

(See attached Draft LC1510)

Amending ORS Chapter 25.396 to allow an additional exception to wage withholding of support obligations allows the State Offices for Services to Children and Families (SCF) and the Oregon Youth Authority (OYA) to enter into payment arrangements with parent-obligors to meet their financial needs without forgiving the debt associated with state care of their children.

Both SCF and the OYA, as judgment creditors of the a support obligation, currently have the ability to satisfy or to suspend enforcement of support obligations. These options do not necessarily provide a family with immediate relief of the support obligation, and they do not encourage parents to be financially responsible for the support of their children, and although the agencies have this ability, they commonly do not use it or are reluctant to use these methods. Federal regulations require that child support obligations be collected by wage withholding unless a state has set a specific exception to that requirement. The Division of Child Support currently has no statutory authority to enter into such agreements. This proposal sets such an exception.

There was discussion that no statutory language would be necessary if SCF and OYA utilized their ability to suspend or to satisfy child support obligations. Review of the data and amounts collected suggested that this could have a substantial impact on current operating

budgets for both agencies. For example, SCF currently projects that about \$7,000,000 of its operating budget will come from child support collections in the next biennium. Further, both OYA and SCF feel that it is inappropriate for front-line personnel with expertise in social work or probation matters to be saddled with financial decisions as well. Current policy allows a case worker to request a satisfaction or suspension of support, but it must go through management channels to be approved. Neither agency support a change in these policies, but both supported the concept of entering into payment arrangements to reduce the immediate impact of the obligation via an exception to wage withholding.

Likewise, there was discussion that the court could provide better information to DCS by collecting additional financial information from the parent when they initially appear in court. Both SCF and OYA discouraged any system that required the worker to be responsible for collection of this information, or to be responsible for sending the information to DCS. Parents currently complete an application for court appointed counsel in most cases. The application contains current financial information about the parent. It was thought that this information could be submitted to DCS so that they would have some current information about the parent's financial situation and could compare this against information that is collected by DCS. However, the indigent defense application has statutory restrictions on its use. It cannot be used as a discovery tool in this manner. There is continuing discussion about creating a form to be used for this purpose that either the court could submit to DCS, or that a parent could voluntarily submit to DCS.

Finally, the subgroup proposed that the courts set initial temporary support in every case at some minimum level. The rationale was to provide the parent with timely notice of the amount of the child support obligation and to avoid arrears by waiting several months before the support obligation was calculated. This system would allow the administrative order to recapture a higher support obligation later, but would avoid the 3-6 month delay in the current system. It would also allow DCS to take more time to investigate which could result in fewer default orders. Again, SCF and OYA objected to this proposal because of the impact to their budgets. Average support orders for both agencies are higher than the minimum child support order (SCF average order is between \$143-\$242, and OYA is between \$171-\$285). Both agencies disagreed with setting support at a lower amount without the ability to collect retroactively if a higher level of support were later determined to be the appropriate level of support.

V. Review of Legal Solution Existing or Proposed Elsewhere

There were no other proposals examined by the workgroup other than the alternative discussed above.

VI. The Proposal

Please see the attached LC draft.

VII. Conclusion

The Workgroup on Juvenile Code Revision respectfully requests that the Oregon Law Commission adopt the draft LC1510. The draft legislation represents the consensus of the Workgroup that this change will allow SCF and OYA to enter into payment arrangements with a child support obligor and will stop income withholding to reduce monthly payment obligations in those cases where it is necessary to stabilize the financial situation of the family and effect reunification with the child or children. This solution has the minimum impact on the workload of each caseworker, and does not significantly change the management system or policies of each of the three systems responsible for referral or enforcement of child support obligations.