

Post-Judgment Request for Immediate Danger Order of Temporary Custody and Parenting Time



You can use these forms ONLY if:

- 1) A *Motion to Modify* an existing *Judgment* has already been filed (or will be filed at the same time as this motion)
and
- 2) Your child is in immediate danger

If you do not meet these requirements, talk to a lawyer about your options

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To get an Immediate Danger temporary order, you must file a form called an *Ex Parte Motion for Order of Immediate Danger & Temporary Custody and Parenting Time & Declaration in Support*.

See ORS 107.139 for more details about Immediate Danger orders.

Important Contact Information

Oregon Judicial Department - www.courts.oregon.gov

Oregon State Bar Lawyer Referral Service - www.oregonstatebar.org

Phone: 503.684.3763 or toll-free in Oregon at 800.452.7636

Go to

<https://www.courts.oregon.gov/courts/clackamas/help/Pages/temp-order-forms.aspx> for the appropriate forms



Step 1: Filling out the Forms

- MAKE SURE YOU COMPLETE THE **COUNTY NAME** AT THE TOP OF THE FIRST PAGE OF EACH FORM!
- These orders are meant for *immediate* threats or danger. If the situation is not an emergency, talk to a lawyer about whether an Immediate Danger Order is the right remedy.
- **Post-judgment** – You can file an *Immediate Danger* motion only if you have an active court case against the other parent or if you file a *Motion for Order to Show Cause Re: Modification of Judgment* at the same time as the *Immediate Danger* motion.
 - If either you or the other parent has filed a *Petition* for dissolution, separation, custody, or another domestic relations action but the court has not issued a *Judgment* in your case, then your motion is “pre-judgment.”
 - If you already have a *Judgment* in your case, then your motion is “post-judgment.” You will also need to file a motion to modify your judgment. That can be done before you file an *Immediate Danger* motion or at the same time.
 - **NOTE:** if you are post-judgment, you must make a good faith effort to talk to the other parent about the reason for this motion and the time of your appearance.
- **Fill out the *Ex Parte Motion for Immediate Danger & Temporary Custody and Parenting Time & Declaration in Support*** (“Motion and Declaration”). Fill out the case caption (names and case number) on the *Order of Immediate Danger & Temporary Custody and Parenting Time*.
- **Parties** – The parties are the same on your *Motion* as they are in the *Petition* or *Judgment* that you already have. If you filed the original *Petition*, then you are still the Petitioner. If the other parent filed the original *Petition*, then you are still the Respondent, even if you are the one filing this *Motion*.
 - If you have any children with the other party who are 18, 19, or 20 years old, they are necessary parties. You must add their names to the form and serve all documents the same as you serve the other party. See below for service information.
- **Case Number**
 - Use the same case number as you have for your modification action.



Have your documents reviewed

You may want to have your documents reviewed by a lawyer or a court facilitator (if your court has one) before you file. For information about how to find a lawyer, call the Oregon State Bar at the number on Page 1. If you are low-income, you may get your documents reviewed for a smaller fee through the Oregon State Bar’s Modest Means program, or call your local Legal Aid office. Facilitators may be available for free in your court, but you may have to make an appointment. Call your court for information. Facilitators can NOT provide legal advice.



STEP 2: THE HEARING

Take your completed forms to the courtroom scheduled to hear *Ex-Parte* at 1:00 pm. You must be present in court when the judge reviews your paperwork. If the judge grants your motion, the court clerk will give you copies of the documents for service. You must have a copy of all paperwork formally served on the other parties (*see Step 3*).



STEP 3: NOTIFY THE OTHER PARTIES

You must officially notify all other parties of the *Motion* and *Order*. This is called “service.” The *Order* is effective once the judge signs it, but you **cannot** enforce it until you have the other parent, each adult child, and any other parties served. You must also provide proof of service to the court, showing that service has been completed.

****2 CRITICAL POINTS****

1. You **CANNOT** serve the papers yourself
2. If the other parent has a lawyer, you **MUST** serve the lawyer – NOT the parent

Formal Service - There are four ways you can have service completed:

1. Personal Service:

- a. **By Process Server:** Take a copy of the papers to the sheriff's office in the county where the other party is located and have a sheriff's officer serve the papers. The sheriff's office charges a fee for service. You can also hire a private process server of your choice.
- b. **By a Non-Party:** Have a competent* person 18 years or older who is a resident of Oregon **and who is not a party** to the case (Petitioner or Respondent), **nor** the lawyer of a party, serve the papers. If you have safety concerns, have the sheriff perform service. The server cannot be an employee or direct/officer of any party.
*competent means a person who can understand, remember, and tell others about an event.

A ***Certificate of Service*** must be filed with the court by whoever serves the other party. The certificate must include the date of service and the name of the person served.

2. **Substituted Service:** The process server may leave the papers at the other party's residence (where he or she normally lives) with someone 14 or older who lives there. A copy of the papers (with a statement of the date, time, and place that the papers were served) must also be mailed by first class mail. Your process server can do this and mark the appropriate box on the ***Certificate of Service***. If you do the mailing, you must file a

Certificate of Service Mailing with the court. The date of service is the day you put the first class mailing in the mail.

3. **Office Service:** The process server may leave the papers with someone *in charge* of the other party's office or normal workplace. A copy of the papers (with a statement of the date, time, and place that the papers were served) must also be mailed to the other party by first class mail. Your process server can do this and mark the appropriate box on the ***Certificate of Service***. If you do the mailing, you must file a ***Certificate of Service Mailing*** with the court. The date of service is the day you put the first class mailing in the mail.
4. **By Mail:** First, the process server must send the papers to the other party's home or business address by first class mail. Second, the server must send a copy by certified mail, return receipt requested. The server **must** file proof of service with the court, including the signed green card, date of receipt, and item number along with a ***Certificate of Service***. Fill out section (d) – "Service by Mail." If you do not receive the green card back or if someone other than the other parent signed for it, service by mail was not effective and you must try another type of service. The date of service is the day the green card is signed.

Proof of Service

The Certificates are your proof of service. An original *Certificate of Service* must be filed with the court for your case to proceed, regardless of the method of service.

If you are not able to have the other party served by any of the methods described above, you may ask a judge to let you to use another service method. Check with your local court about how to make this request.

CHALLENGE TO THE ORDER



The other parent can request a hearing to challenge the order at any time while the order is in effect. The court will notify you of the time of the hearing if this happens. If you do not go to the hearing, the court will "vacate" your order, meaning that your order will be cancelled. You will not be able to enforce any of the terms of the order against the other parent.

THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

Case No: _____

Petitioner
and

Respondent

**EX PARTE MOTION FOR ORDER OF
IMMEDIATE DANGER &
TEMPORARY CUSTODY AND
PARENTING TIME; & DECLARATION
IN SUPPORT (POST-JUDGMENT)**

☐ Post-judgment: Date of most recent *Judgment* awarding custody and/or parenting time: _____ **Note:** A Motion for Modification of your previous judgment **must** be filed before (or along with) this motion.

IMPORTANT (for post-judgment motions): You **must** make a good faith effort to contact the other parent about the reason you want an Immediate Danger Order. This includes telling the other parent when, where, and why you are going to court for this application.

Motion

I, (name) _____, request an emergency order regarding the children named below. This order should stay in effect until otherwise ordered by the court.

My children are in immediate danger as explained in the *Declaration* below

Name and Age

Name and Age

☐ Additional children on attached page

A. ☐ CUSTODY

I request custody of the following children: _____

The other parent should have parenting time as specified in Section B below.

B. ☐ PARENTING TIME

☐ No parenting time

☐ The other parent should have parenting time with the children as follows (*include names of affected children, proposed schedule, and safety provisions if necessary*): _____

☐ Parenting time should be supervised by _____

Any cost of the supervision should be paid by: ☐ Petitioner ☐ Respondent

Statement of Points and Authorities

ORS 107.139(1) authorizes post-judgment ex parte temporary orders of custody and parenting time if a parent of the child is present in court and presents a declaration alleging that the child is in immediate danger. A good faith effort to confer is required. Clear and convincing evidence is required.

Declaration

1. The children named above are in immediate danger because *(explain in detail)*:

☐ Additional page attached titled "Section 1 continued"

2. UCCJEA Information (Uniform Child Custody Jurisdiction and Enforcement Act) was included in the *Petition, Motion for Modification, or Response*.
3. ***Post-judgment notification:*** I have made a good faith effort to confer with the other party regarding the purpose and time of this court appearance. *Describe how and when you conferred with the other party, and what their response was:* _____

I hereby declare that the above statements are true and complete to the best of my knowledge and belief. I understand they are made for use in court and I am subject to penalty for perjury.

Submitted by: ☐ Petitioner ☐ Respondent

Date

Signature

Name (printed)

Contact Address

City / State / ZIP

Contact Phone

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

Case No: _____

Petitioner

And

Respondent

**ORDER OF IMMEDIATE
DANGER & TEMPORARY
CUSTODY AND PARENTING
TIME (POST-JUDGMENT)**

_____, ☐ Petitioner ☐ Respondent, filed a Motion and
Declaration alleging that the following children are in immediate danger (*names*):

The court finds by clear and convincing evidence that:

☐ The children **are** in immediate danger at this time

☐ The children **are not** in immediate danger at this time. The request for temporary
custody is denied.

Post-Judgment only – A good faith effort to confer with the other parent about this request

☐ has been made **or** ☐ has NOT been made

The court orders that:

Temporary custody is granted to ☐ Petitioner ☐ Respondent until further order of the Court.

Parenting Time:

☐ No parenting time

☐ Parenting time is granted to ☐ Petitioner ☐ Respondent, ☐ as attached *or* ☐ as

follows: _____

☐ Parenting time must be supervised by: _____

Any cost of supervision must be paid by ☐ Petitioner ☐ Respondent

=====

Notice to Party Being Served

You may request a hearing on this order as long as it remains in effect by filing with the court a request for a hearing. In the request you must tell the court and the other party that you object to the order because the child was not in immediate danger at the time the order was issued.

In the request you must also inform the court of your telephone number or contact number and your current residence, mailing, or contact address. A form is available on the Oregon Judicial Department's Family Law web site, www.courts.oregon.gov.

If circumstances change before the final judgment in this case and you want to change this *Order*, talk to a lawyer.

Judicial Signature:

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

Case No: _____

CERTIFICATE OF SERVICE

(ORCP 7D(2))

- ☐ (a) Personal Service
☐ (b) Substitute Service
☐ (c) Office Service
☐ (d) Service by Mail

and

Petitioner
Respondent

I, (name) _____, declare that I am a resident of the state of _____ . I am a competent person 18 years of age or older. I am not a party to or lawyer in this case, and not the employee of a party. I certify that the person served is the person named below. I served true copies of the original (*check all that apply*):

- ☐ Ex-Parte Motion for Order of Immediate Danger; and Declaration
☐ Order of Immediate Danger & Temporary Custody and Parenting Time

by (*check a, b, c, or d and complete all information*):

(a) ☐ **Personal Service** on (date) _____, at _____ a.m./p.m., to { ☐ Petitioner ☐ Respondent } (name) _____ in person at the following address _____ in the County of _____, State of _____.

(b) ☐ **Substitute Service** on (date) _____, at _____ a.m./p.m., by delivering them to the following address _____ in the County of _____, State of _____. Delivered to (name) _____, who is a person age 14 or older and who lives there.

(*Complete the section below only if the server also did the follow-up mailing required by ORCP 7D(2)(b). If a person other than the server did the follow-up mailing, that person must complete a separate Certificate of Service Mailing.*)

☐ On (date) _____, I personally deposited a true copy of the same documents served with the U.S. Postal Service, via first class mail, in a sealed envelope, postage paid, addressed to the party to be served: ☐ Petitioner ☐ Respondent (name) _____, at the party's home address listed above, together with a statement of the date, time and place that the documents were hand-delivered to the party's dwelling (residence).

(c) ☐ **Office Service** on (date) _____, at _____ a.m./p.m., by delivering them to the office of the party to be served, located at: (address) _____, during normal working hours for that office, where I left the documents with (name) _____, who is a person apparently in charge, to give the documents to the party to be served.

(*Complete the section below only if the server also did the follow-up mailing required by ORCP 7D(2)(c). If a person other than the server did the follow-up mailing, that person must complete a separate Certificate of Service Mailing.*)

☐ On (date)_____, I personally deposited a true copy of the same documents served with the U.S. Postal Service, via first class mail, in a sealed envelope, postage paid, addressed to the party to be served: ☐ Petitioner ☐ Respondent (name) _____, at the party's: ☐ home address at: _____, **OR** ☐ business address above, together with a statement of the date, time and place that the documents were hand-delivered to the party's office.

(d) ☐ **Service by Mail, Return Receipt Requested** on (date)_____, I personally deposited **two** true copies with the U.S. Postal Service. **One** by first class mail, and the **other** by certified or registered mail, Return Receipt Requested, or by express mail, postage paid, addressed to the party to be served: ☐ Petitioner ☐ Respondent _____ (name), at the party's home address located at: _____ (address). (NOTE: If mailed Return Receipt Requested, the return receipt must be attached to this Certificate of Service.)

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Date

Signature of Server

Print Name

*If person serving is NOT a sheriff or sheriff's deputy, **address and phone number of server:***

