

DEVELOPING and ENFORCING YOUR PARENTING PLAN

Oregon laws encourage separating parents to develop parenting plans for their children. Oregon laws also provide a new way to bring problems about parenting time to the attention of the courts.

This booklet explains how parenting plans can be developed and answers questions about the new procedure to enforce them.



1. What is “parenting time?”

“Parenting time” is the time with the child that the parent without legal custody has by agreement or by court order. Until recently, “visitation” was the word used in Oregon for “parenting time.”

2. What is a “parenting plan?”

This is the plan that sets out the schedule and rules for each parent’s time with the child. All custody orders (except for those in restraining orders) must include parenting plans. The plan may be very detailed and cover many issues about the child, or it may be very general and address only a few issues.

All parenting plans in court orders *must* set out the minimum amount of parenting time (visitation) and access a parent without custody is entitled to have. In other words, a new court-ordered parenting plan cannot say that the noncustodial parent has just “reasonable parenting time.”

Parenting plans *may* address any of the following, or other issues, too:

- the schedule for when the child will be at each parent’s home
- holiday, birthday, and vacation plans
- how the child will get from one parent’s home to the other, or to school or day care
- how school, medical, and other information about the child will be shared
- when a parent should call the child when the child is in the home of the other parent
- what will happen if one of the parents has to move
- how the parents will try to resolve any disagreements about the child

3. Who decides on the parenting plan?

The parents decide on the parenting plan if they can agree. If they can’t agree on their own, a mediator may be able to help them to reach an agreement. A mediator is a trained, neutral counselor who meets with parents in

one or more confidential sessions to help them discuss their disagreement. See Question 4.

If meeting with the mediator (“mediation”) doesn’t result in an agreement, then the parents (or their attorneys) may decide on a custody or parenting time study. This is an evaluation of the parents by a trained counselor or psychologist who will make recommendations to the judge.

Without mediation or a study, it is up to the parents (or their attorneys) to settle on the parenting plan. If parents don’t agree, either parent may ask the judge to decide on the plan. Some judges adopt standard schedules and rules that have been developed for that county. Oregon law requires that the plan be based on what’s best for the child and safe for the parents.

4. How can I find out about mediation in my county?

Courts in many counties provide no-cost mediation services as a part of open court cases involving a child. In some counties, mediation may be available through the court even when no court case about a child is pending but the parents are having a disagreement about their parenting plan. Ask at your courthouse about court-provided mediation. Sometimes this service is provided at the courthouse, sometimes at other agencies (such as the County Mental Health Department), and sometimes at the offices of private mediators who work part-time for the courts.

Private mediators *not* connected with the courts are also available for hire in many

counties. These mediators charge fees. Some specialize in family law matters. You may be able to find a mediator for your parenting time problem by asking a family law attorney, looking in the yellow pages of the phone book, or contacting the Oregon Mediation Association.

Some mediation resources in your community are listed at the end of this booklet.



5. Will a parenting plan require joint custody?

No. A parenting plan does not require that the parents have, or want, joint custody.

6. Who decides on the parenting plan if the other parent has not participated in the court case?

When one parent has filed a court case, sometimes the other parent chooses not to participate. Usually this means the other parent doesn’t file his or her own court papers in response. When this happens, the parenting plan proposed by the first parent is very often the plan approved by the judge.

7. Do I need to put my parenting plan in a court order if the other parent and I have agreed on the terms?

Only parenting plans contained in court orders are enforceable. The decision on whether to put the plan in a court order depends on your situation and relationship with the other parent.

8. Can parenting time rights in a court order be denied or restricted?

Yes, but only by a judge, and only if the parenting time would put the child in real danger. Usually, this means showing the judge that the visiting parent has physically or sexually abused the child, committed a violent crime, or has a very serious alcohol or other drug problem. Sometimes the judge will order that visits be supervised by a third person.

9. Can I deny parenting time to the other parent if child support is not paid?

No. You must allow the other parent the parenting time ordered in the parenting plan even if child support is not being paid.

10. Can I stop paying child support if my parenting time is being denied?

No. You must pay your child support even if you are not getting the parenting time that has been ordered. Only a court or agency judge can release you from your child support obligation.



11. Do I have to make my children go on visits if they don't want to?

Your children should follow the parenting plan even if they don't agree with it. You should try to find out why your child does not want to go. Try to work out the problems by talking to the other parent or through counseling, if those are safe steps for you. You may also want to try mediation. See Question 4. In some situations, a judge may change the parenting plan.

12. What can I do if the other parent denies me the parenting time ordered by the court?

You should first try to talk to the other parent to try to work out the problem if you can do this safely (and if no court order prohibits you from contacting the other parent). You may also want to contact a private mediator, or a mediator connected to the court, to see if that process helps. See Question 4, on mediation. You could also contact an attorney. Perhaps negotiation through attorneys will improve the situation. Mediation and low-cost legal resources for your county are listed at the end of this booklet

If these steps fail or if they are not options for you, you can file papers with the court complaining about the denial of parenting time. Each county has a special procedure to handle parenting time problems. Go to the circuit court clerk's office at the county courthouse and ask for the "parenting time enforcement" forms. The room number for this clerk in your courthouse is listed at the end of this booklet.

13. Does the court's "parenting time enforcement procedure" cost anything?

In most cases, you must pay at least \$45 to file a complaint about denial or interference with parenting time under this procedure. Some counties have added an extra charge on this filing fee to pay for mediation services.

If you have a very low income, the court might defer (postpone) payment of this fee until after the case is resolved. Some courts may even waive the fee. If you want to request a fee deferral or waiver, ask the clerk if a "fee deferral" or "fee waiver" form is available. You might also get these forms from a local Legal Aid office.

14. Do I need an attorney?

The parenting time enforcement procedure is designed to be easy to understand and use. Judges expect that many people will use this procedure without attorneys. But it may be helpful to have an attorney, or at least to consult with one about your situation before you file the forms. Some low-cost legal resources for your county are listed at the end of this booklet.

15. How do I start the "parenting time enforcement procedure" at the court?

The first step is for you to fill out and file the "motion" (request) to the court asking that your parenting plan be enforced. The court will give you this form at no charge, but there is a fee for filing it. (See question 13). You will mark the form to show the type of enforcement action you want. See Question 19. You must attach to the motion a copy of the court order setting out your current parenting plan.



The court will also give you a signed order requiring the other party to come to court to "show cause" (explain why) the parenting plan should not be enforced in the way you request. The order also contains a notice about "contempt of court" penalties. See Question 21. The order may have a specific date for a hearing on it, or it may state that the hearing will be set later, after the other parent has had a chance to respond in writing to the court and to you.

Most courts want mediation to occur before a court hearing is held on parenting time issues. So you may also be given a signed court order requiring both parents to participate in mediation. See Questions 3 and 4. If mediation is ordered, either parent can also get forms to fill out for "waiving" mediation if either has good reason to skip the mediation step.

You must then make sure a copy of these court papers is “served on” (officially delivered to) the other parent. Some courts include forms for you (or a third person or the sheriff) to sign to prove that “service” (delivery) has taken place. This form is called a “Proof of Service” or an “Affidavit of Service.” If your court does not make this form available, you may be able to obtain one from a local Legal Aid office.

16. How long will it take to get a court hearing?

The law says that the hearing must be held no later than 45 days after you filed your motion for enforcement, unless the parents agree to delay the hearing time. One reason for delay is the parents’ trying to work out an agreement with the help of a mediator, an attorney, or by themselves.



17. What if mediation doesn’t work, or isn’t an option in my case?

If you and the other parent don’t agree on a solution, the judge will hold a hearing.

18. What will happen if a hearing is necessary?

The first step the judge will probably take is to review the existing parenting plan to make sure that the judge and each parent

understands what the plan says. The judge may then ask the parent who filed the request for enforcement to explain what happened. The other parent will then have a chance to explain whether or why the parenting time was denied.

Each parent may want to bring one or two witnesses to court to give information about times that the plan was not followed (or to show that the plan *has* been followed, or was not followed for a good reason). The judge will tell the parents when the witnesses may offer their information to the court. Each parent will have a chance to ask questions of their own witnesses and the other parent’s witnesses.

The parent who filed the request for enforcement has the responsibility to prove that the other parent violated the parenting time order.

It is important to be respectful to the other parent, to the witnesses, and to the judge. Even when you disagree with what is being said, you should not interrupt or speak rudely. It may also be helpful to bring a list of notes of the most important things that you want to tell the judge. You can use these notes at the hearing to help you remember all the points you wanted to make.

This hearing may be very short or it could last an hour or longer, depending on the case and the procedure in your county. Before you go to court, you may want to ask the court clerk how much time the hearing has been scheduled to last. In some counties, the court clerk may be able to tell you this when you first file your “motion” (request). In other counties, you may not know this until right before the hearing.

19. What can the court do at the hearing if it finds that the parenting time order has been violated?

The judge has many options available, depending on the facts of the case. The court can:

- specify a detailed schedule, especially if only a general schedule now exists
- add new terms and conditions to the parenting time order
- order make-up parenting time, to compensate for time that was improperly denied to a parent
- order the parent who has violated the plan to post a bond (deposit money) with the court that the parent would lose for continuing to disobey the parenting time order
- require both parents to attend classes that teach the parents about the effect on children when parenting time is denied
- order the party who has violated the order (or the party who failed to prove the order was violated) to pay the costs of the hearing process (including filing fees, court fees, hearing costs, and attorney fees)
- end or modify spousal support terms that had been ordered between the parents
- end or modify child support (if the child lives in another state, the court may not have the power to do this)
- schedule a hearing for modification of custody, if the parent without custody has shown he or she has been repeatedly and unreasonably denied parenting time and files the correct legal papers for such a hearing.

Depending on the facts, a judge could decide that the complaining parent has *not* shown that the plan was violated. The judge could also decide that the plan was violated, but that a good reason existed for the violation in a particular situation. In cases like these, the judge might explain to the parties possible ways to avoid problems in the future.



20. What if I am not satisfied with what the judge did at the enforcement hearing?

A parent has a right to appeal the decision of this judge to a higher court. There is a deadline for making this request and the paperwork is complicated and lengthy. You will need the assistance of an attorney.

21. Are there other remedies for a parent when parenting time is denied?

Yes. In addition to the new parenting time enforcement procedure, a parent can file legal papers to have the judge decide that the other parent is in “contempt of court” for violating a court order about parenting. The forms and procedures for this type of case are complicated and are not available from the court. You will need an attorney for this process.

It is also possible to ask the court to change (“modify”) custody or parenting time because of enforcement problems. A parent can file a modification motion asking for a new order. A few courts might have these forms available, but in most counties you will need to contact an attorney for a modification.

When you have a custody or parenting time order from another state (or you have an Oregon order but your children have been living in another state), special laws control which state can decide a modification issue. You may need an attorney if you have this situation, too.

Finally, in some situations, major violations of parenting plans might be considered crimes. This is rare, however, and depends very much on the type of wording in the court order and the facts of the case.

22. Can a parent who has custody use this enforcement process if the other parent does not follow a parenting time court order?

Yes. Either parent may start this court and mediation process by filing the forms available at the courthouse. If the parent with custody has the complaint, this parent must show that the other parent’s failure to follow the parenting time terms was “substantial.” In mediation, any type of parenting issue can be discussed.

IMPORTANT: This booklet is provided for general educational use only. *It is not a substitute for the advice of an attorney.* If you have a specific legal question, you should contact an attorney. The information in this booklet is accurate as of June 1999. Please remember that the law is always changing through the actions of the courts, the legislature, and agencies.

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Parenting Time Enforcement in County



Location of Parenting Time Enforcement forms:

Room _____ of the
Courthouse

Fee for filing Parenting Time Enforcement Motion in this county (unless deferred or waived):

\$ _____

Sample Parenting Time Plans or Guidelines:

- are not available in this county
- are available at _____

Legal Resources in the Community:

- Oregon State Bar Lawyer Referral Program (684-3763 Portland area; 1/800/452-8260 statewide)
- nearest Legal Aid office

- other low-cost resources

Mediation Resources in the Community:

- **Court-Connected**

- **Oregon Mediation Association**
1/503/294-1017

Other Resources: