

Sixth Family Law Conference

Oregon Family Law: Change, Challenge, Opportunity

What's New and Shiny in the Oregon Child Support Program?

Presenters:

Kate Cooper Richardson is the administrator of the Oregon Department of Justice Division of Child Support and the director of the Oregon Child Support Program, Oregon's federal Title IV-D program. Kate joined the Program in 2010, and was appointed by Attorney General Ellen Rosenblum in January 2013 as director. A graduate cum laude of Willamette University School of Law, her public service career spans work in all three branches of state government, including eight years as Chief of Staff to the Oregon State Treasurer. Kate is a board member of the National Child Support Enforcement Association and co-chair of its Policy & Government Relations Committee, and she is an active member of the National Council of Child Support Directors. She is currently leading her organization through a multi-year \$129 million replacement of Oregon's legacy child support system.

Dawn Marquardt is the Deputy Director and Policy Section Chief of the Oregon Department of Justice Division of Child Support. She also serves as the Statewide Tribal Liaison for the Program. Prior to joining the Oregon Program in 2014, Dawn worked for nine years in the Wisconsin child support program. She received the Wisconsin Child Support Enforcement Association's "Hall of Fame Award" in 2014 and "Child Support Attorney of the Year" in 2009. Before moving to the public sector, Dawn practiced in the areas of family law, real estate, estate planning, and civil litigation. She is admitted to practice law in Oregon, Colorado, and Wisconsin. Dawn received her J.D. from the University of Wisconsin Law School and her B.B.A. from the University of Wisconsin–Whitewater.

Vera Poe is the Policy Development Manager of the Oregon Department of Justice Division of Child Support. Prior to joining the Oregon Program in 2015, she served for over twelve years as Assistant Attorney General with the Texas Child Support Program (2003-2015), and worked previously as an attorney with Legal Services of North Texas in Dallas, Texas (2000-2003), a sole practitioner in Dallas, handling civil litigation and family law matters (1999), Associate General Counsel for Metlife in New York (1995-1998), and Associate in the litigation section of Hopkins & Sutter in Dallas (1990-1995). An honors graduate of the University of Texas School of Law, Vera is licensed to practice law in Oregon (2015) and Texas (1990).

Mike Ritchey is a Senior Assistant Attorney General with the Oregon Department of Justice and has been serving as General Counsel for the Oregon Child Support Program since 2009. From 1985 to 2005, Mike was an attorney and partner with Bricker, Zakovics, and Querin in Portland and represented injured railroad workers in state and federal court throughout the western United States.

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Claudia Garcia Groberg is the Attorney In Charge of the Civil Recovery Section with the Oregon Department of Justice. Claudia earned her B.A. from Idaho State University in 1994 and her J.D from the University of Oregon School of Law in 2003. After law school, Claudia clerked at the Lane County Circuit Court for the Honorable Lauren Holland, worked as a staff attorney at the Workers' Compensation Board, and joined the Oregon Department of Justice in 2006. Claudia provides legal advice to the Division of Child Support and represents the agency in several counties. She also appears at monthly wage withholding hearings at the Siletz Tribal Court and once a year for per capita distribution hearings. When she's not working, Claudia enjoys spending time with her family, which includes her husband, three grown sons, two dogs, and an assortment of cats.

Carol Anne McFarland has been the Oregon District Attorney Association (ODAA) Child Support Liaison since June, 2014. She has a Bachelor's in American Studies, Pre Law from OSU and a J.D. from Thomas Jefferson School of Law in San Diego. Before returning to Oregon, Carol Anne practiced law in San Diego, focusing on family law. She returned to her native Oregon to raise her children and continue her legal career. Carol Anne worked as a deputy district attorney in the Clackamas County Family Support Office from 1990 until her retirement in September, 2013. She has been an active member of the Oregon State Bar and served on the House of Delegates. She is a charter member of Oregon Women Lawyers (OWLS). When Clackamas Women Lawyers was formed as a chapter of OWLS, Carol Anne served as the first president and continues to be active with that group. As the ODAA Child Support Liaison, Carol Anne works with the 25 District Attorney county child support offices and the Oregon Child Support Program regarding child support issues. She is a member of several standing committees within the Program and is also a member of the SFLAC Subcommittee on Courts/Child Support.

What's New and Shiny in the Oregon Child Support Program?

Oregon Judicial Department | State Family Law Advisory Committee
Family Law Conference
Salem, Oregon | March 17, 2017

Presented by

Oregon Child Support Program
Oregon Department of Justice

Topics for Discussion

- ▶ Oregon's new child support system—coming soon-ish
- ▶ Implementation of new federal final rule
- ▶ Update on 2017 Legislative Session

But wait – there's more!

- ▶ Recent Oregon Child Support Program rule and policy updates
- ▶ Adoption of UIFSA 2008
- ▶ Implementation of the Hague Convention

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Child Support System Project Background

Since 2010, DOJ has been working on a multi-biennium plan to replace its current COBOL-based mainframe child support case management and financial system

- Feasibility study report (Nov 2011 to Oct 2012)
- Business process re-engineering (Dec 2012 to Dec 2013)
- Planning approval (2013 Legislative Session)
- Planning and implementation (2015 Legislative Session)

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System Functionality

A certified child support system must provide a number of key components



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System Replacement Goals

- ▶ Increase in support collections for families
- ▶ Remove risk of catastrophic failure of current system
- ▶ Compliance with federal and state regulations and data security requirements
- ▶ Data warehousing and business intelligence
- ▶ Timely completion of legal actions
- ▶ Reduction in manual processes
- ▶ Public cost savings
- ▶ Recoveries for state agencies



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Oregon's Solution

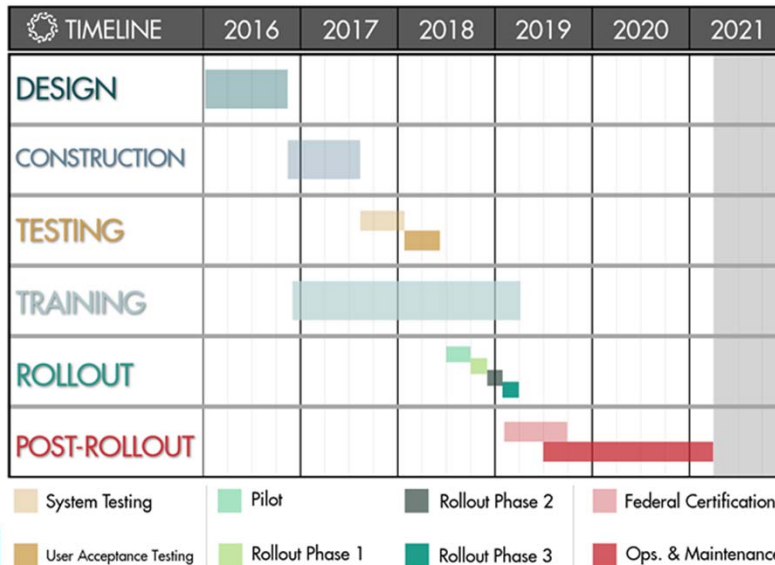
Origin will be based on current web-interface technology

- ▶ Functional and technical components from California
- ▶ Augmenting with components from Michigan and New Jersey
- ▶ Contracted vendor with industry experience and expertise (Deloitte Consulting)
- ▶ Oregon will own and plans to self-support completed system



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Project Schedule



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Customer Portal

- ▶ Greater access to information
- ▶ Ability to communicate with case manager
- ▶ Attorneys will have same access as their clients through portal

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Oregon Department of Justice
Oregon Child Support Program
Helping Parents Support Children

Frank Burns

Hello Frank Burns
Welcome to your online account!
Get started by making a selection from below:

Apply for Services View My Case

Once you initiate an application, you will have 60 days to complete it. If the application is not submitted within 60 days from the day it was created, it will no longer be accessible and you will need to start a new application.
Important: Please do not use your browser's 'Back' button. This may cause errors in your application.

Previous Applications

Application Number	Application Start Date	Applicant	Non Applicant	Application Type	Status
11405-01	04/21/2016	Frank Burns	Suzy Rose	Child Support Services	Submitted
11405-01	02/28/2016	Frank Burns	Michelle Dow	Establish Paternity	Pending
11405-01	02/28/2016	Frank Burns	Michelle Dow	Establish Paternity	Pending

Contact By Phone

From the Salem Area	(503) 373-7300
Toll-free in Oregon	(800) 850-0229
From outside Oregon	(503) 378-5667
TDD	(800) 735-2600


Online Support

Submit Inquiry
Payment Methods

Legal & Privacy

Privacy Policy
Terms & Conditions

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My Profile My Payments My Documents
Frank Burns

My Documents

Respond to Notices

Case Number	Notice	Due Date	
12345	Client Safety Packet	09/30/2016	Respond Now
67789	Credit for Direct Payment	10/15/2016	Respond Now

View Documents

To view your documents, select a month from dropdown. Click on Document Name to view the PDF version of the document. If a document needs a response, click on the Select hyperlink next to the document type.

April 2016

Case Number	Document Name	Person Paying Support	Person Receiving Support	Date
12345	Change of Custody	John Doe	Jane Doe	03/31/2016
67789	Billing Statement	Jim Hope	Jane Doe	03/31/2016

Upload Documents

To upload a document, choose your document using the browse button and continue to upload. Please upload files under 24.5 MB and in PDF, TIF, TXT, RTF or CSV format.

Choose Document:

NOTE:

- Six months of documents are available to view. Documents dated prior to enrollment are not available online.
- Documents are only available for participants that have a child support case managed by a local Child Support Agency.
- The Oregon Division of Child Support will notify you when your document is available online. If you are enrolled in eCommunications, you are responsible for notifying us if you change your email address.

Initiate Forms

Notice	Action
Client Safety Packet	Initiate Form
Credit for Direct Payment	Initiate Form
Request for Modification, Termination or Credit on Arrears	Initiate Form
ReliCard Enrollment Authorization Form	Initiate Form
Child age 18-21 link to update information	Initiate Form
Child age 18-21 request a notice of modification or termination	Initiate Form

To initiate any other forms, please visit <http://www.oregonchildsupport.gov/forms/index.aspx>

Forms can be downloaded from the website and uploaded in the Upload Documents section above.

Online Support

[Submit Inquiry](#)

[Payment Methods](#)

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TDD: (800) 735-2900

Legal & Privacy

[Privacy Policy](#)

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My Profile My Payments My Documents
Frank Burns

My Homepage

My Notifications

Child Support Offices will be closed on 07/04/2016

System maintenance scheuled between 1 AM PST and 4 AM PST on 07/11/2016

My To Do List

Your payment of \$500 is now due. (Due Date: 05/15/2016) [Pay Now](#)

Your Inquiry (Inquiry ID 320115) has been resolved. [View Now](#)

Please update your latest contact information. [Update Now](#)

Your monthly billing statement is now available under My Documents. [View Now](#)

Cases

Case ID	Parent paying support	Parent/Person receiving support	Status	Installment Amount
20000001694353	Burns, Frank	Williamson, Danielle	Open	\$500
20000005458415	Burns, Frank	Williamson, Danielle	Open	\$400

My Appointments

Date	Time	Location	Case ID	Type
04/18/2016	10:00 AM - 12:00 PM	23 State St, Salem 97301	20000001694353	Interview
04/20/2016	10:00 AM - 12:00 PM			Court Appt
04/23/2016	10:00 AM - 12:00 PM			Interview

Online Support

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[Payment Methods](#)

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Updated technology requires review of policies and practices

- ▶ The Child Support Program won't have system limitations we experience in CSEAS
- ▶ 2017 proposals for legislative bills largely focused on changes for system implementation

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New federal final rule

- ▶ Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs
 - Published December 20, 2016
 - Effective January 19, 2017
 - Varying compliance deadlines
- ▶ How is the Oregon Child Support Program affected?

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Civil Contempt Guidelines

- ▶ Intended to bring all states into compliance with *Turner v. Rogers*, 564 U.S. ____, 131 S Ct. 2507 (2011)
- ▶ Applies only to Title IV-D cases
- ▶ Court not constrained, affects which cases are referred for remedy

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Income withholding

- ▶ Clarifies all income withholding orders must be on the OMB form
- ▶ Requires all withheld income to be paid to the State Disbursement Unit (DOJ)
 - regardless whether the Child Support Program is providing services

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Disbursements only to Families

- ▶ State may not disburse payments to a private collection agency or attorney
 - Even if the receiving parent authorizes
- ▶ State statutory change required for ORS 25.020(3)

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Guidelines changes

- ▶ Oregon generally positioned well
- ▶ Guidelines already contain many of the newly required features
- ▶ Substantive changes
 - Imputation of income
 - Minimum wage presumption
 - Minimum order rule
- ▶ Guideline review process
 - Increased transparency
 - Data driven review

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Incarcerated Obligor

- ▶ State must either modify or notify parties when paying parent is or will be incarcerated at least 6 months
- ▶ Oregon initiates modification
 - Pursuant to OAR 137-055-3300, effective February 1, 2016

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Protection of SSI benefits

- ▶ Prohibits garnishment of accounts to extent they contain SSI or SSI/SSDI benefits
- ▶ Requires refund of any garnishments within 5 days of learning account contained SSI or SSI/SSDI

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Medical Support

- ▶ Removes requirement for private insurance if child fully covered by public insurance



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Case closure

- ▶ Allows a child support case to be closed in additional situations, such as:
 - The Program does not have a good address for a party
 - The paying parent will be institutionalized, incarcerated, or disabled for child's minority
 - The paying parent's sole source of income is SSI or SSI combined with SSDI

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Modernization

- ▶ Internet applications
- ▶ Electronic signatures
- ▶ Use of customer portal for document delivery
- ▶ Electronic communication and notifications

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2017 Legislative Session

- ▶ Most Oregon Child Support Program bills are to support Origin functionality



ORIGIN

Supporting kids begins with modern technology

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Senate Bill 509

- ▶ Grants rulemaking authority to determine distribution priority and application of payments
- ▶ Supports automated processing and ensures compliance with federal distribution rules



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Senate Bill 516

- ▶ Legal accrual on the 1st of month
- ▶ Enforcement of current support on 1st of month even if order due date is later



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Senate Bill 517

- ▶ Limits direct payment credit to existing balance owed to person who received the direct payment



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Senate Bill 513

- ▶ Eliminates certain statutory mandates to send courtesy copies of enforcement notices to persons who receive support (obligees)
 - State tax offset, required by ORS 25.610
 - Income withholding, required by ORS 25.399
 - Credit reporting, required by ORS 25.650(2)(b)
 - Liens on property of parent who pays, required by ORS 25.670(3)(b)



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Senate Bill 511

- ▶ Provides for creation of a state debt for any person who is overpaid by the Child Support Program
 - To specifically include parents who pay, caretakers, and children attending school who receive money in error



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Senate Bill 510

- ▶ Adds “insurance claim” to definition of account for which insurance companies must match data with Child Support Program



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Senate Bill 513

- ▶ Eliminates state law requirement to give 10 days' notice by certified mail before accessing consumer report information of parents who pay support
 - State law based on federal Fair Credit Reporting Act (FCRA) requirements
 - Mandate to send notice removed from FCRA in 2015



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Senate Bill 512

- ▶ Extends by statute the marital presumption of parentage to any person married to a woman who gives birth to the child during the marriage
 - To statutorily overrule dicta in *Shineovich**
 - construing presumption as of biological paternity
 - To enable Program to use single process for all presumed parentage cases

* *Shineovich and Kemp*, 229 Or App 670, 214 P3d 29, rev den, 347 Or 365 (2009)



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Recent Policy and Rule Updates

- ▶ Incarcerated Obligors
 - OAR 137-055-3300
- ▶ Past Support
 - OAR 137-055-3220
- ▶ Actual Income (ability to pay)
 - OAR 137-050-0715

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UIFSA 2008 & Hague Convention

- ▶ UIFSA governs coordination and enforcement of child support when 1 state has issued child support order and 1 or both parents have now moved to another state
- ▶ Provides a similar process when the parties are living in different countries
- ▶ Oregon adopted UIFSA 2008 in 2015 session – Senate Bill 604 (2015)

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- ▶ Hague Convention became effective 1/1/17 in U.S.
- ▶ 35 convention countries
- ▶ Hague Convention recognizes U.S. due process requirements
- ▶ Allows a court to refuse recognition of an order if manifestly incompatible with public policy
- ▶ Applications can be made through the Child Support Program or directly to circuit court as set forth in ORS 110.653

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Questions?

- ▶ We've got answers (probably)



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Thank you

- ▶ Kate Cooper Richardson
 - Director, Oregon Child Support Program & Division of Child Support, DOJ
- ▶ Dawn M. Marquardt
 - Deputy Director, Division of Child Support, DOJ
- ▶ Vera L. Poe
 - Policy Manager, Division of Child Support, DOJ
- ▶ Claudia G. Groberg
 - Attorney-in-Charge, Civil Recovery Section, DOJ
- ▶ Michael Ritchey
 - Oregon Child Support Program General Counsel, DOJ
- ▶ Carol Anne McFarland
 - Child Support Liaison, Oregon District Attorneys Association

References (attached unless indicated)

1. Topic: New federal final rule

- a. [Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs](#) (federal final rule published 12/20/2016). (318 pages, not attached)
- b. Summary and comments regarding selected updates to federal regulations (pages 2 - 10)

2. Topic: Legislation for Oregon's 2017 session

- a. [Senate Bill 512](#) Extension of marital presumption to same sex spouse of birth mother. (50 pages, not attached)
- b. Summary of proposed amendments to Senate Bill 512 (page 11)
- c. [Senate Bill 516](#) Requires support orders to provide for accruals on the first of the month (page 12)
- d. Summary of proposed amendments to Senate Bill 516 (page 13)

3. Major rule updates of the Oregon Child Support Program

- a. Oregon Administrative Rule [137-055-3300](#); Incarcerated Obligor (pages 14-15)
- b. Oregon Administrative Rule [137-055-3220](#); Establishment of Past Support Orders (pages 16-17)
- c. Past Support Memo (sent by Hope Hicks by email October 26, 2016) (pages 18-23)

On December 20, 2016, the federal Office of Child Support Enforcement published its final rule entitled **Flexibility, Efficiency, and Modernization in Child Support Enforcement Program** proposed in the November 17, 2014, Notice of Proposed Rulemaking. The rule amends sections in 45 CFR Parts 301, 302, 303, 304, 305, 307, 308, and 309.

The rule includes regulatory improvements that cover three topics:

- 1) Procedures to promote program flexibility, efficiency, and modernization;
- 2) Updates to account for advances in technology; and
- 3) Technical corrections which are not considered substantive changes. These correct cross-references and outdated addresses, remove provisions that applied only for specified years (now past), update terminology (such as changing “putative father” to “alleged father”), or provide clarifying language.

Key changes that may be of interest are summarized below.

Section: 45 CFR § 302.32

Effective/Compliance Date: January 19, 2017

Summary of changes: Clarifies that the State Disbursement Unit (SDU) must process payments from Income Withholding Orders (IWO) for non-IV-D child support cases.

Program comments: A non-IV-D child support case is an order entered by or registered in an Oregon court, but for which the Program has not received an application or referral for full services. The Program is in compliance with this requirement and processes IWO payments for all cases whether or not the parties are receiving IV-D services.

Section: 45 CFR § 302.33

Effective/Compliance Date: December 20, 2017 (unless state law changes are needed, then either October 1, 2017, or January 1, 2018, depending on when the 2017 legislative sessions ends)

Summary of changes:

- 1) Eliminates the requirement to send notice of continuation of services if the IV-D agency determines that such services and notice are no longer appropriate. This recognizes that children leaving foster care often return to intact families who do not need child support services.

2) Creates an option to provide limited services for paternity only in intrastate (within Oregon) cases. The NPRM had suggested the possibility of a wider range of limited services (such as income withholding only, or *ala carte* selection of services), which was removed based on public comment.

Program comments: The Program already offer paternity only services and by policy allows a paternity-only order and closure upon completion of the service.

Section: 45 CFR § 302.38

Effective/Compliance Date: October 1, 2017, except January 1, 2018, if 2017 legislature adjourns after June 30, 2017.

Summary of changes:

Requires that the SDU only disburse payments directly to the resident parent, legal guardian, caretaker relative having custody of or responsibility for the child or children, judicially-appointed conservator with a legal and fiduciary duty to the custodial parent and the child, or alternate caretaker designated in a record by the custodial parent. An alternate caretaker is a nonrelative caretaker who is designated in a record by the custodial parent to take care of the children for a temporary period.

Program comments: We will not be able to disburse payments to private collection agencies or private attorneys. In the 2017 legislative session, the Program is seeking amendments to ORS 25.020(3), which currently provides for disbursement to private collection agencies when authorized by the obligee.

Section: 45 CFR § 302.56

Effective/Compliance Date: Requirements for the substance of the guidelines must be incorporated into the state guidelines with the first guideline review occurring after December 20, 2017. Requirements for the guideline review process must be used for the subsequent guideline review.

Summary of changes:

- 1) Requires that state guidelines consider the following:
 - All earnings and income of the noncustodial parent (and custodial, at state option).
 - Basic subsistence needs of the noncustodial parent (and custodial, at state option) such as with a self-support reserve (other methods also allowed).
 - The “specific circumstances” of the noncustodial parent (and custodial, at state option) if imputing income, including assets, residence, employment and

earnings history, job skills, educational attainment, literacy, age health, criminal record and other employment barriers, record of seeking work, local job market, availability of employers willing to hire the noncustodial parent, prevailing earnings in the local community, and other relevant background factors.

- 2) Provides that the guidelines must address provision of child's health care needs through private or public health care coverage and/or through cash medical support.
- 3) Requires the guidelines to be included in the State Plan and be published on the internet for the public, along with all reports from the guidelines reviewing body, resulting from quadrennial review.
- 4) Requires that rebuttal of the guideline amount must be under criteria established by the state, which must take into account the best interest of the child and require that the guideline amount be stating in a finding in the order, along with a justification for why the order varies from the guideline.
- 5) Specifies requirements for the guideline review process including that the state must:
 - Consider economic data on the cost of raising children, labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;
 - Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c) (1) (ii) of this section. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c) (1) (ii). The analysis of the data must be used in the State's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g); and

- Provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives. The State must also obtain the views and advice of the State child support agency funded under title IV-D of the Act.

Program comments: Guidelines are included in the State Plan and to the public via the internet. Current guidelines take many of the newly required considerations into account (obligor's subsistence needs, income and earnings of both parents) but also include features inconsistent with the rule, such as the presumption by rule of minimum wage income for purposes of our calculation for a custodial parent receiving TANF, the minimum wage presumption in the absence of other data, and the imposition of a minimum order when support based on actual, very low, income results in a low dollar amount order. The Program is considering statutory changes to the incarcerated modification statute (ORS 416.425) for the 2017 session.

Section: 45 CFR 303.2 (a) (2), (3)

Effective/Compliance Date: January 19, 2017

Summary of changes: Allows customers to request and submit applications by email or other electronic means including via the internet.

Program comments: The Program will be able to accept an electronically signed and submitted application for services.

Section: 45 CFR § 303.4 (b)

Effective/Compliance Date: 1 year after completion of first guideline review that commences after December 20, 2017.

Summary of changes:

Requires that establishment statutes, procedures, and legal processes include:

- Taking reasonable steps to develop a sufficient factual basis for the support obligation, through such means as investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources;
- Gathering information regarding the earnings and income of the noncustodial parent and, when earnings and income information is unavailable or insufficient in a case, gathering available information about the specific circumstances of the noncustodial parent, including § 302.56(c)(1)(iii) factors;

- Basing the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is unavailable or insufficient to use as the measure of the noncustodial parent's ability to pay, then the support obligation or recommended support obligation amount should be based on available information about the specific circumstances of the noncustodial parent, including § 302.56(c)(1)(iii) factors; and
- Documenting the factual basis for the support obligation or the recommended support obligation in the case record.

Program comments: As discussed above in connection with § 302.56(c) (1) (iii), the Program's imputation of imputed income or presumed income in the calculation of support obligations, and its imposition of a minimum order when the obligation based on actual income is below a threshold (even with the existing exceptions to the rule), may not be compliant with these new requirements.

Section: 45 CFR § 303.6

Effective/Compliance Date: February 19, 2017 (unless state law changes are needed, then either October 1, 2017, or January 1, 2018, depending on when the 2017 legislative sessions ends).

Summary of changes: Requires state to establish guidelines for the use of civil contempt citations in IV-D cases that include requirements that the IV-D agency:

- Screen the case for information regarding the noncustodial parent's ability to pay or otherwise comply with the order;
- Provide the court with such information regarding the noncustodial parent's ability to pay, or otherwise comply with the order, which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay the purge amount or comply with the purge conditions; and
- Provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the civil contempt action.

Program comments: This change is intended to bring states into compliance with *Turner v. Rogers*, 564 U.S. ___, 131 S Ct. 2507 (2011). The Program formed a workgroup composed of Assistant Attorneys General and Deputy District Attorneys to discuss and develop best practices for contempt cases that can form the basis of the required guidelines for use of civil contempt. The Program also will review its form notices and

pleadings to ensure they provide clear notice that ability to pay constitutes the critical question. Note that these guidelines will apply only in IV-D cases.

Section: 45 CFR § 303.8 (b) (7)

Effective/Compliance Date: December 20, 2017 (unless state law changes are needed, then either October 1, 2017, or January 1, 2018, depending on when the 2017 legislative sessions ends).

Summary of changes:

- 1) Allows state to elect in its State Plan to review, and if appropriate, adjust an order after learning that a parent who pays will be incarcerated more than 180 days without the need for a request.
- 2) If the state does not so elect, requires notice to both parents of the right to request a review and adjustment sent within 15 days of learning that a parent who pays will be incarcerated more than 180 days.

Program comments: Because the Program has already elected to initiate a modification upon learning a parent who pays will be incarcerated for at least six consecutive months (see OAR 137-055-3300, eff. February 1, 2016), Oregon is already in compliance.

Section: 45 CFR § 303.8 (c)

Effective/Compliance Date: 1 year after completion of the first guideline review that commences after December 20, 2017.

Summary of changes: Prohibits states from excluding incarceration as a basis for determining that the existing obligation is not guideline (i.e., that incarceration is voluntary unemployment and thus not a basis for modification).

Program comments: The Program is already in compliance.

Section: 45 CFR § 303.8 (d)

Effective/Compliance Date: One year after completion of the first guideline review that commences after December 20, 2017.

Summary of changes: Removes language that had stated that Medicaid cannot be considered to meet the need to provide for the child's health care needs.

Program comments: If an order provides that a child has health care coverage through Medicaid, it would not require a modification to attempt to secure alternate coverage.

Section: 45 CFR § 303.11

Effective/Compliance Date: January 19, 2017

Summary of changes:

1) Requires that the IV-D agency, if electing to close a case, must maintain supporting documentation for the case closure decision in the case record. New closure options include:

- No current support and all arrearages are assigned to the state;
- No current support, all children have reached age of majority, the parent who pays is entering or has entered long-term care, and has no income or assets above the subsistence level available for support;
- The parent who pays is living with the minor children, either as primary caregiver or in an intact, two-parent household, and the IV-D agency has determined that services are not or are no longer appropriate;
- No locate for two years (reduced from three) when there is sufficient information to initiate automated locate;
- No locate for six months (reduced from one year) when there is not sufficient information to initiate automated locate;
- No locate for one year when there is sufficient information to initiate automated locate, but no verified social security number;
- The IV-D agency has determined that throughout the duration of the child's minority or afterward; the parent has no evidence of support potential because they are institutionalized in a psychiatric facility, are incarcerated, or have a medically verified total and permanent disability; and the parent has no income or assets above subsistence level for support;
- The parent's sole source of income is Supplemental Security Insurance (SSI) or a combination of SSI and Social Security Disability Insurance (SSDI);
- A limited service under 302.33(a)(6) [paternity establishment only] has been completed;
- The case was opened as the result of an inappropriate referral and there is no application for services from the parent/person who receives support; and
- A IV-D case has been transferred to a Tribal IV-D program through procedures as specified (see new section 21).

2) Mandates closure of a case opened on a Medicaid referral and the child is eligible for health care services from the Indian Health Service. (Compliance date for this provision is December 20, 2017, unless state law changes are needed, then either October 1, 2017, or January 1, 2018, depending on when the 2017 legislative sessions ends).

3) Allows closure notification to be sent electronically to a recipient who has consented to receive electronic notifications and the IV-D agency has maintained documentation of the consent in the case record.

4) Requires a “good faith effort to contact the recipient through at least two different methods” before closing a case because the IV-D agency is unable to contact a recipient who is not required to cooperate.

Program comments: The Program will be able to close cases sooner for no locate, and it can close other cases for which future collection potential is doubtful due to incarceration, disability, or institutionalization. The Program will also have the option to elect to close arrears-only cases where all support is assigned, or to close a case based on a change of physical custody or reconciliation. We will be updating our rules to provide for these additional options and reviewing our caseload to identify cases newly eligible for closure. The Program will review its processes for attempting contact in non-assistance cases to ensure a good faith effort through at least two different methods, such as a phone call and a letter, or an email and a letter, etc.

Section: 45 CFR § 303.100

Effective/Compliance Date: January 19, 2017

Summary of changes: Specifies that OMB income withholding form must be used when initiating income withholding

Program comments: This requirement applies to all income withholding orders issued, whether by the Program or by a court.

Section: 45 CFR § 307.11

Effective/Compliance Date: December 20, 2017 (unless state law changes are needed, then either October 1, 2017, or January 1, 2018, depending on when the 2017 legislative sessions ends).

Summary of changes:

1) Requires states to build automatic processes designed to preclude garnishing financial accounts of noncustodial parents who are recipients of Supplemental Security Income (SSI) payments or individuals concurrently receiving both SSI and Social Security Disability Insurance (SSDI) benefits.

2) Requires that funds must be returned to a parent’s account within five business days after the agency determines they were improperly garnished because they contain SSI or SSI/SSDI funds.

Program comments: The Program already avoids garnishing accounts to the extent they contain SSI benefit payments. Procedure updates will be required to include accounts that contain a combination of SSI and SSDI benefits and to provide for the return of erroneously garnished funds. In Origin, garnishments will be automatically held for 40 days to provide the parent who pays an opportunity to contest. We may need to modify our notice to request that parents contact us if the garnished account contained SSI or SSI/SSDI benefits. Many cases where the parent's sole source of income is these benefits will be eligible for closure under updates to 303.11. However, in the event that the case remains open, and the parent does not contest the collection as containing SSI or SSI/SSDI benefits, it is possible that a garnishment from an account will be disbursed to the person who receives support prior to the Program learning that it contained such benefits.

Section: 45 CFR § 301.1

Effective/Compliance Date: January 19, 2017

Summary of changes: Updates definitions to substitute "record" for "written" regarding format of required procedures, and defines "record" as "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form."

Program comments: This change will facilitate maximum use of electronic communication, storage, signatures, etc.

Summary of amendments to Senate Bill 512 proposed by the Oregon Child Support Program

1. Modify the language referring to a woman giving birth as a mother to more inclusive, less-gendered terms to ensure that it does not exclude persons who have legally changed their gender before or after giving birth, while still identifying who is “mother.”
2. Do not broaden the application of the filiation statute.
3. Add language to clarify that blood test evidence is required for a court to set aside or vacate an order only if the parentage determination was of a person who was physically capable of impregnating a woman.
4. Include “paternity or parentage” when referencing acknowledgments or determinations that may come from other jurisdictions that offer acknowledgments or initial parentage determinations for unmarried non-biological parents, retaining “paternity” in statutes concerning biological parentage, and using “parentage” alone when referring to legal parentage that could include paternity but would Remove a number of sections from the measure for this reason.
4. Make conforming amendments to ORS 109.030 to remove gendered language limiting the application to parents consisting of a mother and father, ORS 109.124 to provide for the possibility that the woman giving birth may not be married to a husband, and to ORS 109.243 to provide for parentage for a consenting spouse, particularly since this statute has been extended to same-sex spouses by the decision in the *Madrone v. Madrone*, 271 Or App 214 (2015).

Senate Bill 516

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires that all orders for payment of child support and spousal support have monthly due date of first day of month in which payment is due.

Provides that for purposes of support enforcement, any support payment that becomes due and payable on day other than first day of month in which payment is due shall be considered to have accrued and become due and payable on first day of month.

Provides exception for determinations of due dates in issuance of liens and writs under ORS chapter 18.

A BILL FOR AN ACT

Relating to due dates for payment of support obligations.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) Any court order or administrative order in a proceeding under ORS chapter 107, 108, 109, 110, 416, 419B or 419C that contains an order for the payment of child support or spousal support must have a due date for the payment of support on the first day of the month in which the support is due.

(2) For purposes of support enforcement, any support payment that becomes due and payable on a day other than the first day of the month in which the payment is due shall be considered to have accrued and become due and payable on the first day of the month.

(3) Any court order or administrative order that contains an award of child support or spousal support that accrues on other than a monthly basis may, for support enforcement purposes only, be converted to a monthly average.

(4) This section does not apply to the determination or issuance of support arrearage liens, installment arrearage liens, judgment liens, writs of garnishment or any other action or proceeding that affects property rights under ORS chapter 18.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

Summary of amendments to Senate Bill 516 proposed by the Oregon Child Support Program

1. Include a requirement that all orders issued or modified revert to a due date that is the first of a specific month with subsequent due dates being the first of subsequent months. This change addresses the issue when a judgment is effective in a month other than the month it is signed, a common occurrence.
2. Limit the ability to enforce a payment that has not come due as of the first of the month to payments remitted in response to income withholding orders, which generally will collect an average amount intended to, over time, result in collection of the appropriate total amount. However, due to employer pay dates not always coinciding with payment due dates, the suggested change ensures that the correct amount can be remitted and applied to the month's current support.

Suggested edits to the measure's text:

SECTION 1. (1) Any court order or administrative order issued or modified in a proceeding under ORS chapter 107, 108, 109, 110, 416, 419B or 419C that contains an order for the payment of child support or spousal support must specify [have a] an initial due date for the payment of support that is [on] the first day of a calendar month and year, [the month in which the support is due] with subsequent payments due on the first day of each subsequent month for which the support is payable.

(2) For purposes of support enforcement, any support payment that becomes due and payable on a day other than the first day of the month in which the payment is due shall be [considered to have accrued and become due and payable on] enforceable by income withholding as of the first day of that [the]month.

137-055-3300

Incarcerated Obligor

(1) For purposes of establishing or modifying a support order, the following definitions apply:

(a) "Correctional facility" means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order, and includes but is not limited to a youth correction facility as provided in ORS 162.135.

(A) "Correctional facility" applies to a state hospital only as to persons detained therein charged with or convicted of a crime, or detained therein after having been found guilty except for insanity of a crime under ORS 161.290 to 161.370.

(B) "Correctional facility" includes alternative forms of confinement, such as house arrest or confinement, where an obligor is not permitted to seek or hold regular employment.

(b) "Incarcerated obligor" means a person who:

(A) Is or may become subject to an order establishing or modifying child support; and

(B) Is, or is expected to be, confined in a correctional facility for at least six consecutive months from the date of initiation of action to establish a support order, or from the date of a request to modify an existing order pursuant to this rule.

(2) The provisions of this rule do not apply to an obligor who is incarcerated because of nonpayment of support.

(3) For purposes of computing a monthly support obligation for an incarcerated obligor, all provisions of the Oregon child support guidelines, as set forth in OAR 137-050-0700 through 137-050-0765, will apply except as otherwise specified in this rule.

(4) The incarcerated obligor's income and assets are presumed available to the obligor, unless such income or assets are specifically restricted, assigned, or otherwise inaccessible pursuant to state or federal laws or rules regarding the income and assets of incarcerated obligors.

(5) If the incarcerated obligor has gross income less than \$200 per month, the administrator shall presume that the obligor has zero ability to pay support.

(6) If the provisions of section (5) of this rule apply, the administrator will not initiate an action to establish a support obligation if the obligor is an incarcerated obligor, as defined in subsection (1)(b) of this rule, until 61 days after the obligor's release from incarceration.

(7) Upon receipt of proof that an obligor is an "incarcerated obligor" as defined in subsection (1)(b) of this rule, the Administrator will initiate a modification of the support obligation.

(8) An order entered pursuant to ORS 416.425 and this rule, that modifies a support order because of the incarceration of the obligor, is effective only during the period of the obligor's incarceration and for 60 days after the obligor's release from incarceration. The previous support order is reinstated by operation of law on the 61st day after the obligor's release from incarceration.

(a) An order that modifies a support order because of the obligor's incarceration must contain a notice that the previous order will be reinstated on the 61st day after the obligor's release from incarceration;

(b) Nothing in this rule precludes an obligor from requesting a modification based on a periodic review, pursuant to OAR 137-055-3420, or a change of circumstances, pursuant to OAR 137-055-3430.

Stat. Auth.: ORS 180.345 and 416.455

Stats. Implemented: ORS 416.425

Effective: February 1, 2016

137-055-3220**Establishment of Past Support Orders**

(1) For purposes of this rule the following definitions apply:

(a) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

(b) "Supported by the parent" in subsection (1)(a) means payments in cash or in kind in amounts or in-kind value equal to the amount that would have accrued under the Oregon Child Support Guidelines from the obligor to the obligee for purposes of support of the child.

(c) The Oregon Child Support Guidelines means the formula for calculating child support specified in ORS 25.275.

(2) The administrator may establish "past support" when establishing a child support order under ORS 416.400 through 416.470.

(3) When an obligor has made payments in cash or in kind an obligee for the support of the child during the period for which a judgment for past support is sought, and providing that those payments were in amounts equal to or exceeding the amount of support that would have been presumed correct under the Oregon Child Support Guidelines, no past support will be ordered.

(4) When such payments as described in section (3) were made in amounts less than the amount of support presumed correct under the Oregon Child Support Guidelines, the amount of the past support judgment will be the correct amount presumed under the Oregon Child Support Guidelines minus any amounts of support paid.

(5) The obligor must provide evidence of such payments as described in sections (3) and (4) by furnishing copies of:

(a) Canceled checks;

(b) Cash or money order receipts;

(c) Any other type of funds transfer records;

(d) Merchandise receipts;

(e) Verification of payments from the obligee;

(f) Any other record of payment deemed acceptable by the administrator.

(6) The administrator may decide whether to accept evidence of such cash or in-kind support payments for purposes of giving credit for them. If any party disagrees, the past support calculation may be appealed to an administrative law judge as provided in ORS 416.427.

(7) For any month or part of a month for which past support is ordered, the amount of support shall be a full month increment and shall not be prorated.

(a) Past support may not be ordered for any period of time prior to the first day of the month the Notice and Finding of Financial Responsibility and proposed Order Establishing Support are issued.

(b) If the Notice and Finding of Financial Responsibility and proposed Order Establishing Support are issued in the same month an application or mandatory referral is received, past support may not be ordered for any period of time prior to the application or mandatory referral.

(8) If the parties are filing for annulment, dissolution or separation under ORS 107.105 and a judgment will be entered for months when the proceeding was pending, any order for past support may only include amounts owed for a time period prior to the filing of the judicial action.

(9) If the order to be entered does not include current support and the past support would be owed only to the State of Oregon or another jurisdiction, the administrator will not enter an order for past support that covers a period of less than four months.

(10) Past support will be calculated under the Oregon Child Support Guidelines and will use current income for the parties in calculating past support monthly amounts. Parties may rebut use of current income by presenting evidence of income in differing amounts for the months for which past support is being ordered.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 416.422

Effective: October 1, 2016



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

October 24, 2016
(SENT BY EMAIL)

MEMORANDUM

TO: Presiding Judges
Trial Court Administrators
Family Law Judges

FROM: Hope Hicks, Child Support Program Analyst
Juvenile and Family Court Programs Division

RE: Message from Oregon Division of Child Support Policy and Development
Manager Vera Poe, Past Support Rule Change

Please review the attached message regarding changes to the establishment of past support on administrative child support orders. For questions, please contact Vera Poe at Vera.L.Poe@doj.state.or.us.

(From DOJ) –

The Oregon Child Support Program has adopted a new policy and administrative rule concerning past support. After several years of discussion and research, the Program determined that it is in the best interest of both our customers and the state to limit the amount of past support ordered in initial administrative orders issued by the Program. This new policy and amended OAR 137-055-3220 were effective October 1, 2016.

New Policy: The Oregon Child Support Program will seek past support beginning with the month in which the Program initiates the Notice and Finding of Financial Responsibility and proposed order.

The Oregon Child Support Program adopted this policy because studies show—and we have found to be true—that large past support awards have unfavorable outcomes, such as:

- Reducing the likelihood parents will pay current support.
- Hurting the paying parent's credit standing and other negative effects.
- Inducing parents to work for cash to avoid income withholding.
- Contributing to an undesirable dynamic between the parents.

- Competing for family resources (when past support is assigned to the state).
- Promoting a culture of non-compliance rather than compliance.

Additional information

The rule and policy will be applied to all newly issued proposed orders, amended actions, and actions heard by the Office of Administrative Hearings. Support for the month the order is signed will continue to be treated as current support. An order issued and signed in a single month, such as a consent order, would not have past support.

137-055-3220**Establishment of Past Support Orders**

(1) For purposes of this rule the following definitions apply:

(a) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

(b) "Supported by the parent" in subsection (1)(a) means payments in cash or in kind in amounts or in-kind value equal to the amount that would have accrued under the Oregon Child Support Guidelines from the obligor to the obligee for purposes of support of the child.

(c) The Oregon Child Support Guidelines means the formula for calculating child support specified in ORS 25.275.

(2) The administrator may establish "past support" when establishing a child support order under ORS 416.400 through 416.470.

(3) When an obligor has made payments in cash or in kind an obligee for the support of the child during the period for which a judgment for past support is sought, and providing that those payments were in amounts equal to or exceeding the amount of support that would have been presumed correct under the Oregon Child Support Guidelines, no past support will be ordered.

(4) When such payments as described in section (3) were made in amounts less than the amount of support presumed correct under the Oregon Child Support Guidelines, the amount of the past support judgment will be the correct amount presumed under the Oregon Child Support Guidelines minus any amounts of support paid.

(5) The obligor must provide evidence of such payments as described in sections (3) and (4) by furnishing copies of:

(a) Canceled checks;

(b) Cash or money order receipts;

(c) Any other type of funds transfer records;

(d) Merchandise receipts;

(e) Verification of payments from the obligee;

(f) Any other record of payment deemed acceptable by the administrator.

(d) The administrator may decide whether to accept evidence of such cash or in-kind support payments for purposes of giving credit for them. If any party disagrees, the past support calculation may be appealed to an administrative law judge as provided in ORS 416.427.

(e) For any month or part of a month for which past support is ordered, the amount of support shall be a full month increment and shall not be prorated.

- Past support may not be ordered for any period of time prior to the first day of the month the Notice and Finding of Financial Responsibility and proposed Order Establishing Support are issued.
- If the Notice and Finding of Financial Responsibility and proposed Order Establishing Support are issued in the same month an application or mandatory referral is received, past support may not be ordered for any period of time prior to the application or mandatory referral.

(6) If the parties are filing for annulment, dissolution or separation under ORS 107.105 and a judgment will be entered for months when the proceeding was pending, any order for past support may only include amounts owed for a time period prior to the filing of the judicial action.

(7) If the order to be entered does not include current support and the past support would be owed only to the State of Oregon or another jurisdiction, the administrator will not enter an order for past support that covers a period of less than four months.

(8) Past support will be calculated under the Oregon Child Support Guidelines and will use current income for the parties in calculating past support monthly amounts. Parties may rebut use of current income by presenting evidence of income in differing amounts for the months for which past support is being ordered.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 16.422

Effective: October 1, 2016

If you have questions regarding this rule change, or other child support issues, please contact me at Hope.L.Hicks@ojd.state.or.us or (503) 986-5851.

137-055-3220**Establishment of Past Support Orders**

(1) For purposes of this rule the following definitions apply:

(f) "Past support" means the amount of child support that could have been ordered based on the Oregon Child Support Guidelines and accumulated as arrears against a parent for the benefit of a child for any period of time during which the child was not supported by the parent and for which period no support order was in effect.

(g) "Supported by the parent" in subsection (1)(a) means payments in cash or in kind in amounts or in-kind value equal to the amount that would have accrued under the Oregon Child Support Guidelines from the obligor to the obligee for purposes of support of the child.

(h) The Oregon Child Support Guidelines means the formula for calculating child support specified in ORS 25.275.

(9) The administrator may establish "past support" when establishing a child support order under ORS 416.400 through 416.470.

(10) When an obligor has made payments in cash or in kind an obligee for the support of the child during the period for which a judgment for past support is sought, and providing that those payments were in amounts equal to or exceeding the amount of support that would have been presumed correct under the Oregon Child Support Guidelines, no past support will be ordered.

(11) When such payments as described in section (3) were made in amounts less than the amount of support presumed correct under the Oregon Child Support Guidelines, the amount of the past support judgment will be the correct amount presumed under the Oregon Child Support Guidelines minus any amounts of support paid.

(12) The obligor must provide evidence of such payments as described in sections (3) and (4) by furnishing copies of:

- (a) Canceled checks;
- (b) Cash or money order receipts;
- (c) Any other type of funds transfer records;
- (d) Merchandise receipts;
- (e) Verification of payments from the obligee;

(f) Any other record of payment deemed acceptable by the administrator.

(i) The administrator may decide whether to accept evidence of such cash or in-kind support payments for purposes of giving credit for them. If any party disagrees, the past support calculation may be appealed to an administrative law judge as provided in ORS 416.427.

(j) For any month or part of a month for which past support is ordered, the amount of support shall be a full month increment and shall not be prorated.

- Past support may not be ordered for any period of time prior to the first day of the month the Notice and Finding of Financial Responsibility and proposed Order Establishing Support are issued.
- If the Notice and Finding of Financial Responsibility and proposed Order Establishing Support are issued in the same month an application or mandatory referral is received, past support may not be ordered for any period of time prior to the application or mandatory referral.

(13) If the parties are filing for annulment, dissolution or separation under ORS 107.105 and a judgment will be entered for months when the proceeding was pending, any order for past support may only include amounts owed for a time period prior to the filing of the judicial action.

(14) If the order to be entered does not include current support and the past support would be owed only to the State of Oregon or another jurisdiction, the administrator will not enter an order for past support that covers a period of less than four months.

(15) Past support will be calculated under the Oregon Child Support Guidelines and will use current income for the parties in calculating past support monthly amounts. Parties may rebut use of current income by presenting evidence of income in differing amounts for the months for which past support is being ordered.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 16.422

Effective: October 1, 2016