

2011 LEGISLATION ALERTS

FAMILY AND JUVENILE LAW

SPOUSAL AND CHILD SUPPORT

WITHHOLDING CAPS FOR COLLECTION OF ARREARAGES ORS 25.275

2011 OR LAWS CH 317 (SB 43)

SB 43 removes the federal minimum hourly wage standard cap on child-support arrearage withholding in most cases where there is no present, or previously ordered, monthly support amount. In these cases, the withholding will now be calculated according to the child-support computation formula established under ORS 25.275. This bill also increases the cap from the current 25% to 50% for the collection of arrearages from lump-sum payments (e.g., workers' compensation benefits, lump-sum retirement plan disbursements or withdrawals, insurance payments or settlements, severance pay, bonus payments, lottery winnings, etc.). Practitioners should update garnishment forms (e.g., writs and notices of exemptions) accordingly.

SB 43 limits the amount that can be withheld when the withholding is from (1) Social Security disability benefits, (2) black lung benefits, or (3) veterans disability benefits. The bill also limits the withholding for arrearages if the person has an obligation to pay current child support or is unable to meet his or her own basic needs.

Effective date: January 1, 2012.

The amendments apply to actions taken to enforce support obligations on or after the effective date.

ADMINISTRATIVE CHILD SUPPORT ORDER ORS CH 25

2011 OR LAWS CH 318 (SB 45)

SB 45 standardizes at 30 days the time to request a hearing in administrative child support proceedings. The bill also removes the presumption of an inability to pay child support for obligors receiving foster-care payments, regardless of actual income. The bill provides flexibility to the Division of Child Support in expanding how and by whom service may be accomplished. Finally, the bill allows individuals seeking limited support enforcement services, such as accounting and disbursement assistance, to complete a simpler application form. These individuals are no longer required to apply for full services.

Effective date: January 1, 2012.

The amendments apply to support enforcement proceedings pending before, on, or after the effective date.

TEMPORARY SUPPORT ORS 107.085, 107.095, 107.105 2011 OR LAWS CH 115 (HB 2687)

HB 2687 grants the court authority to award temporary spousal support and/or child support in an ORS 107.105 general judgment. Parties must request such temporary support in either an ORS 107.085 petition or an ORS 107.095 motion. Temporary support may only be ordered retroactive to the date the petition or motion was served on the non-requesting party.

DISCLAIMER

IN BRIEF includes claim prevention information that helps you to minimize the likelihood of being sued for legal malpractice. The material presented does not establish, report, or create the standard of care for attorneys. The articles do not represent a complete analysis of the topics presented, and readers should conduct their own appropriate research.

HB 2687 also amends ORS 107.095 to allow for direct payment from one party to the other party of temporary spousal support, temporary custody support, and/or suit money to enable the other party to prosecute or defend the suit. This change conforms the law to current practice by practitioners. Nothing in HB 2687 prohibits the Department of Justice, through the Division of Child Support, from facilitating the collection and distribution of spousal-support payments as set forth in the provisions of ORS 25.020.

Effective date: January 1, 2012.

The amendments apply to proceedings commenced on or after the effective date.

FAMILY ABUSE PREVENTION ACT

APPEARANCE BY ELECTRONIC COMMUNICATION ORS 45.400

2011 OR LAWS CH 244 (HB 2928)

HB 2928 permits the court to allow the appearance of a party or witness by telephone or other two-way electronic communication device in a Family Abuse Prevention Act (FAPA) proceeding. The party requesting an electronic appearance must file a motion under ORS 45.400, which requires that the party provide written notice of such request to all other parties to the proceeding at least 30 days before the trial or hearing at which electronic testimony will be offered unless good cause is shown.

Importantly, HB 2928 requires that the court take into consideration the expedited nature of FAPA hearings when deciding whether to allow ORS 45.400 motions submitted with less than 30 days' notice. If a respondent requests a hearing to challenge the FAPA order, the court is required to hold the hearing within 21 days after the request, or within 5 days after the request if the respondent contests an order granting temporary child custody to the petitioner.

In deciding whether to allow electronic appearance, the court must also consider whether the safety or welfare of the party or witness would be threatened if testimony were required to be provided in person.

No ORS 45.400 motion or good-cause determination is required for ex parte hearings held by telephone to determine whether the petitioner satisfies the statutory requirements in order to qualify for a FAPA order.

Effective date: January 1, 2012.

RENEWAL BY PROTECTED CHILD ORS 107.725 2011 OR LAWS CH 206 (HB 3433)

HB 3433 allows a child who is now 18 years of age or older, and who was a protected person in the petitioner's custody under a Family Abuse Prevention Act (FAPA) order when under the age of 18, to seek a renewal of that order if the person reasonably fears abuse. A finding of further acts of abuse is not required to renew a FAPA order under this bill.

The court may renew a FAPA order under this new bill regardless of whether the original petitioner agrees to or seeks a renewal of the order. If the original petitioner does not agree to or seek renewal of the order concurrently with the request of the child who has now reached 18 years of age, the court may modify the original order to exclude the original petitioner as a protected person in the renewed order.

The person seeking renewal under this section is not required to file a new FAPA petition.

Effective date: January 1, 2012.

The amendments apply to petitions for renewal filed on or after the effective date, regardless of the date the initial FAPA order was filed or took effect.

JUVENILE LAW

FALSE REPORT OF CHILD ABUSE ORS 419B.005 – 419B.050 2011 OR LAWS CH 606 (HB 2183)

HB 2183 establishes as an offense the false report of child abuse. In order to commit the offense of making a false report of child abuse, the reporting individual must know the report is false and, with intent to influence a custody, parenting time, or child-support decision, either (1) personally make such a report to the Department of Human Services (DHS); or (2) make such a report to a public or private official with the intent that the public or private official make a report to the DHS. False Report of Child Abuse is a Class A violation and carries with it a \$720 fine.

As this offense is a violation rather than a crime, the defendant does not have the opportunity for a jury trial if the defendant denies the allegation. Instead, the matter would

be tried to the court sitting without a jury. The allegations in the complaint must be proven by a preponderance of the evidence. ORS 153.076.

Effective date: January 1, 2012.

**COURT APPOINTED SPECIAL ADVOCATES (CASA)
ORS 419A.170
2011 OR LAWS CH 190 (HB 2272)**

ORS 419A.170(7) allows the Court Appointed Special Advocate (CASA) to inspect and copy the records of the child that are in the possession of the Department of Human Services or any hospital, school organization, doctor, nurse, psychologist, psychiatrist, police department, or mental health clinic. This bill allows these service providers to consult with the CASA regarding any records relating to the child or ward involved in the case, without the consent of the child, ward, or parents.

Effective date: January 1, 2012.

**DEPENDENCY CASE SUMMONS
ORS 419B.818
2011 OR LAWS CH 116 (HB 2689)**

HB 2689 amends ORS 419B.818, the dependency form of summons, to add language relating to the right to appeal a juvenile court decision to the Court of Appeals as provided for in ORS 419A.200. The amendment requires particular language in the form of summons.

Effective date: January 1, 2012.

MISCELLANEOUS

**GIFTED PROPERTY
ORS 107.105
2011 OR LAWS CH 306 (SB 386)**

Under current ORS 107.105(1)(f), there is a rebuttable presumption that both parties have contributed equally to all marital assets. If the presumption is not rebutted, the value of the marital asset is included in the marital property and typically divided equally between the parties upon dissolution of the marriage. In order to rebut the presumption, the burden falls on the recipient spouse to prove there was no intent by the donor that the non-recipient spouse share in that particular asset. *Olesberg and Olesberg*, 206 Or App 496, *rev den* 342 Or 633 (2007)

held that the intent of a donor cannot be established merely by proving that the donor specifically named one spouse as the recipient and not the other.

SB 386 removes property received by gift, devise, bequest, operation of law, beneficiary designation, or inheritance from the presumption of equal contribution under ORS 107.105(1)(f). The bill leaves intact the court's authority to divide such property as may be "just and proper" depending upon the facts presented in a particular case. The non-recipient spouse is not precluded from presenting evidence to show the donor intended to include the non-recipient spouse in the gift and simply omitted his or her name from the donative document.

Effective date: January 1, 2012.

The amendments apply to domestic relations proceedings pending or commenced on or after the effective date.

**IMPACT OF RAPE CONVICTION ON
CUSTODY DETERMINATION
ORS 107.105, 107.137
2011 OR LAWS CH 438 (SB 522)**

SB 522 amends ORS 107.105 and ORS 107.137 to allow the court to terminate parental rights if the court finds that the child at issue was conceived as a result of an act that led to the parent's conviction for rape, other than Rape III (sexual intercourse with another person under 16 years of age, but over 14 years of age). The bill prohibits the court from awarding custody of a child to a parent convicted of rape if the rape resulted in the conception of the child. The court is required to deny parenting time to a parent under these circumstances.

Nothing in this bill relieves the affected parent of any obligation to pay child support.

Effective date: January 1, 2012.

The amendments apply to child custody, parenting time, and parental termination proceedings filed on or after the effective date.

**90-DAY WAITING PERIOD; TEMPORARY CUSTODY
ORDERS; UNMARRIED PARENTS
ORS 107.065, 107.135, 107.139, 109.103
2011 OR LAWS CH 114 (HB 2686)**

Sections 1 and 2 of HB 2686 repeal the 90-day waiting period for a final trial or hearing on the merits of a dissolution of marriage proceeding. Domestic relations cases are now subject to the same 30-day period as any other civil case.

Section 3 of HB 2686 requires that parties requesting an ORS 107.139 temporary custody order (i.e., a post-judgment ex parte order for a child who is in immediate danger) concurrently file a modification proceeding under ORS 107.135, which results in formal service on the non-requesting party and an eventual modification hearing at which the court can adequately address the best interests of the child.

HB 2686 brings ORS chapter 109 up-to-date with ORS chapter 107. The provisions of ORS chapter 107 that now specifically apply to unmarried parents include:

- (1) Procedure for modifying judgments relating to parenting time or child support (ORS 107.431).
- (2) Expedited parenting time enforcement procedure (ORS 107.434);
- (3) Order of assistance to obtain custody of child held in violation of custody order (ORS 107.437);
- (4) Attorney fees in certain domestic relations proceedings (ORS 107.445);
- (5) Transfer of proceeding to auxiliary circuit court (ORS 107.449); and
- (6) Mediation procedures (ORS 107.755 through ORS 107.795).

Effective date: January 1, 2012.

The amendments apply to proceedings commenced on or after the effective date.

**CUSTODY ORDERS INVOLVING A PARENT
IN ACTIVE MILITARY SERVICE
ORS 107.093 – 107.425
2011 OR LAWS CH 64 (HB 3162)**

HB 3162 goes one step further than Servicemembers Civil Relief Act (SCRA) in relation to any portion of a judgment that provides for custody, parenting time, visitation, support, and welfare of a minor child of a deployed parent. The bill restricts the court from setting

aside, altering, or modifying such judgments until 90 days after the completion of the deployed parent's deployment unless a motion to set aside, alter, or modify was filed with, heard by, and decided by the court before the commencement of the deployment. The court has discretionary authority to enter a temporary order modifying the terms of a preexisting judgment in order to reasonably accommodate the circumstances of the deployment in the best interests of the child. Any such temporary order must include:

- (1) Parenting time for the deployed parent during leave;
- (2) Parenting time in consideration of best interests of the child, but can include telephone, e-mail, and other electronic means;
- (3) Modification of child support to match a new situation;
- (4) A provision that the non-deployed parent must provide 30 days' advance notice of a new address or telephone number; and
- (5) An automatic expiration notice (i.e., the temporary order terminates by operation of law ten days after the deployed parent serves the other parent and the Department of Justice with official notification that the deployment has ended). This means the preexisting judgment automatically goes back into effect unless an ex parte order is entered based on immediate danger or irreparable harm to the child.

Effective date: January 1, 2012.

The bill applies to proceedings involving a deployed parent or a parent whose deployment is imminent occurring on or after the effective date.