

107.135 Vacation or modification of judgment; policy regarding settlement; enforcement of settlement terms; remedies

**107.135 Vacation or modification of judgment; policy regarding settlement; enforcement of settlement terms; remedies.** (1) The court may at any time after a judgment of annulment or dissolution of marriage or of separation is granted, upon the motion of either party and after service of notice on the other party in the manner provided by ORCP 7, and after notice to the Division of Child Support when required under subsection (9) of this section:

(a) Set aside, alter or modify any portion of the judgment that provides for the appointment and duties of trustees, for the custody, parenting time, visitation, support and welfare of the minor children and the children attending school, as defined in ORS 107.108, including any health or life insurance provisions, for the support of a party or for life insurance under ORS 107.820 or 107.830;

(b) Make an order, after service of notice to the other party, providing for the future custody, support and welfare of minor children residing in the state, who, at the time the judgment was given, were not residents of the state, or were unknown to the court or were erroneously omitted from the judgment;

(c) Terminate a duty of support toward any minor child who has become self-supporting, emancipated or married;

(d) After service of notice on the child in the manner provided by law for service of a summons, suspend future support for any child who has ceased to be a child attending school as defined in ORS 107.108; and

(e) Set aside, alter or modify any portion of the judgment that provides for a property award based on the enhanced earning capacity of a party that was awarded before October 23, 1999. A property award may be set aside, altered or modified under this paragraph:

(A) When the person with the enhanced earning capacity makes a good faith career change that results in less income;

(B) When the income of the person with the enhanced earning capacity decreases due to circumstances beyond the person's control; or

(C) Under such other circumstances as the court deems just and proper.

(2) When a party moves to set aside, alter or modify the child support provisions of the judgment:

(a) The party shall state in the motion, to the extent known:

(A) Whether there is pending in this state or any other jurisdiction any type of support proceeding involving children of the marriage, including one brought under ORS 25.287,

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107.431, 109.100, 125.025, 416.400 to 416.465, 419B.400 or 419C.590 or ORS chapter 110;  
and

(B) Whether there exists in this state or any other jurisdiction a support order, as defined in ORS 110.503, involving children of the marriage, other than the judgment the party is moving to set aside, alter or modify.

(b) The party shall include with the motion a certificate regarding any pending support proceeding and any existing support order other than the judgment the party is moving to set aside, alter or modify. The party shall use a certificate that is in a form established by court rule and include information required by court rule and paragraph (a) of this subsection.

(3) In a proceeding under this section to reconsider the spousal or child support provisions of the judgment, the following provisions apply:

(a) A substantial change in economic circumstances of a party, which may include, but is not limited to, a substantial change in the cost of reasonable and necessary expenses to either party, is sufficient for the court to reconsider its order of support, except that an order of compensatory spousal support may only be modified upon a showing of an involuntary, extraordinary and unanticipated change in circumstances that reduces the earning capacity of the paying spouse.

(b) If the judgment provided for a termination or reduction of spousal support at a designated age in anticipation of the commencement of pension, Social Security or other entitlement payments, and if the obligee is unable to obtain the anticipated entitlement payments, that inability is sufficient change in circumstances for the court to reconsider its order of support.

(c) If Social Security is considered in lieu of spousal support or partial spousal support, the court shall determine the amount of Social Security the party is eligible to collect. The court shall take into consideration any pension, retirement or other funds available to either party to effect an equitable distribution between the parties and shall also take into consideration any reduction of entitlement caused by taking early retirement.

(4) In considering under this section whether a change in circumstances exists sufficient for the court to reconsider spousal or child support provisions of a judgment, the following provisions apply:

(a) The court or administrator, as defined in ORS 25.010, shall consider income opportunities and benefits of the respective parties from all sources, including but not limited to:

(A) The reasonable opportunity of each party, the obligor and obligee respectively, to acquire future income and assets.

(B) Retirement benefits available to the obligor and to the obligee.

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(C) Other benefits to which the obligor is entitled, such as travel benefits, recreational benefits and medical benefits, contrasted with benefits to which the obligee is similarly entitled.

(D) Social Security benefits paid to a child, or to a representative payee administering the funds for the child's use and benefit, as a result of the obligor's disability or retirement if the benefits:

(i) Were not previously considered in the child support order; or

(ii) Were considered in an action initiated before May 12, 2003.

(E) Apportioned Veterans' benefits or Survivors' and Dependents' Educational Assistance under 38 U.S.C. chapter 35 paid to a child, or to a representative payee administering the funds for the child's use and benefit, as a result of the obligor's disability or retirement if the benefits:

(i) Were not previously considered in the child support order; or

(ii) Were considered in an action initiated before May 12, 2003.

(b) If the motion for modification is one made by the obligor to reduce or terminate support, and if the obligee opposes the motion, the court shall not find a change in circumstances sufficient for reconsideration of support provisions, if the motion is based upon a reduction of the obligor's financial status resulting from the obligor's taking voluntary retirement, partial voluntary retirement or any other voluntary reduction of income or self-imposed curtailment of earning capacity, if it is shown that such action of the obligor was not taken in good faith but was for the primary purpose of avoiding the support obligation. In any subsequent motion for modification, the court shall deny the motion if the sole basis of the motion for modification is the termination of voluntarily taken retirement benefits and the obligor previously has been found not to have acted in good faith.

(c) The court shall consider the following factors in deciding whether the actions of the obligor were not in "good faith":

(A) Timing of the voluntary retirement or other reduction in financial status to coincide with court action in which the obligee seeks or is granted an increase in spousal support.

(B) Whether all or most of the income producing assets and property were awarded to the obligor, and spousal support in lieu of such property was awarded to the obligee.

(C) Extent of the obligor's dissipation of funds and assets prior to the voluntary retirement or soon after filing for the change of circumstances based on retirement.

(D) If earned income is reduced and absent dissipation of funds or large gifts, whether the obligor has funds and assets from which the spousal support could have been paid.

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(E) Whether the obligor has given gifts of substantial value to others, including a current spouse, to the detriment of the obligor's ability to meet the preexisting obligation of spousal support.

(5) Upon terminating a duty of spousal support, a court shall make specific findings of the basis for the termination and shall include the findings in the judgment.

(6) Any modification of child or spousal support granted because of a change of circumstances may be ordered effective retroactive to the date the motion for modification was served or to any date thereafter.

(7) The judgment is final as to any installment or payment of money that has accrued up to the time the nonmoving party, other than the state, is served with a motion to set aside, alter or modify the judgment. The court may not set aside, alter or modify any portion of the judgment that provides for any payment of money, either for minor children or for the support of a party, that has accrued before the motion is served. However:

(a) The court may allow a credit against child support arrearages for periods of time, excluding reasonable parenting time unless otherwise provided by order or judgment, during which the obligor, with the knowledge and consent of the obligee or pursuant to court order, has physical custody of the child; and

(b) The court may allow, as provided in the rules of the Child Support Program, a dollar-for-dollar credit against child support arrearages for any Social Security or Veterans' benefits paid retroactively to the child, or to a representative payee administering the funds for the child's use and benefit, as a result of an obligor's disability or retirement.

(8) In a proceeding under subsection (1) of this section, the court may assess against either party a reasonable attorney fee and costs for the benefit of the other party. If a party is found to have acted in bad faith, the court shall order that party to pay a reasonable attorney fee and costs of the defending party.

(9) Whenever a motion to establish, modify or terminate child support or satisfy or alter support arrearages is filed and the child support rights of one of the parties or of a child of both of the parties have been assigned to the state, a true copy of the motion shall be served by mail or personal delivery on the Administrator of the Division of Child Support of the Department of Justice or on the branch office providing support services to the county in which the motion is filed.

(10)(a) Except as provided in ORS 109.701 to 109.834, the courts of Oregon, having once acquired personal and subject matter jurisdiction in a domestic relations action, retain such jurisdiction regardless of any change of domicile.

(b) The courts of Oregon, in a proceeding to establish, enforce or modify a child support order, shall recognize the provisions of the federal Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B).

(11) In a proceeding under this section to reconsider provisions in a judgment relating to custody or parenting time, the court may consider repeated and unreasonable denial of, or interference with, parenting time to be a substantial change of circumstances.

(12) In a proceeding under this section to reconsider provisions in a judgment relating to parenting time, the court may suspend or terminate a parent's parenting time with a child if the court finds that the parent has abused a controlled substance and that the parenting time is not in the best interests of the child. If a court has suspended or terminated a parent's parenting time with a child for reasons described in this subsection, the court may not grant the parent future parenting time until the parent has shown that the reasons for the suspension or termination are resolved and that reinstated parenting time is in the best interests of the child. Nothing in this subsection limits the court's authority under subsection (1)(a) of this section.

(13) In a proceeding under this section to reconsider provisions in a judgment relating to custody, temporary placement of the child by the custodial parent pursuant to ORS 109.056 (3) with the noncustodial parent as a result of military deployment of the custodial parent is not, by itself, a change of circumstances. Any fact relating to the child and the parties occurring subsequent to the last custody judgment, other than the custodial parent's temporary placement of the child pursuant to ORS 109.056 (3) with the noncustodial parent, may be considered by the court when making a change of circumstances determination.

(14) Within 30 days after service of notice under subsection (1) of this section, the party served shall file a written response with the court.

(15)(a) It is the policy of this state:

(A) To encourage the settlement of cases brought under this section; and

(B) For courts to enforce the terms of settlements described in paragraph (b) of this subsection to the fullest extent possible, except when to do so would violate the law or would clearly contravene public policy.

(b) In a proceeding under subsection (1) of this section, the court may enforce the terms set forth in a stipulated order or judgment signed by the parties, an order or judgment resulting from a settlement on the record or an order or judgment incorporating a settlement agreement:

(A) As contract terms using contract remedies;

(B) By imposing any remedy available to enforce an order or judgment, including but not limited to contempt; or

(C) By any combination of the provisions of subparagraphs (A) and (B) of this paragraph.

(c) A party may seek to enforce an agreement and obtain remedies described in paragraph

(b) of this subsection by filing a motion, serving notice on the other party in the manner provided by ORCP 7 and, if a remedy under paragraph (b)(B) of this subsection is sought, complying with the statutory requirements for that remedy. All claims for relief arising out of the same acts or omissions must be joined in the same proceeding.

(d) Nothing in paragraph (b) or (c) of this subsection limits a party's ability, in a separate proceeding, to file a motion to modify an order or judgment under subsection (1) of this section or to seek enforcement of an ancillary agreement to the order or judgment. [1971 c.280 §16; 1973 c.502 §9; 1981 c.775 §2a; 1981 c.855 §1; 1983 c.728 §3; 1983 c.761 §9; 1987 c.795 §10; 1987 c.885 §3; 1989 c.545 §1; 1991 c.888 §2; 1993 c.315 §2; 1995 c.22 §2; 1997 c.91 §1; 1997 c.475 §6; 1997 c.704 §52; 1997 c.707 §9; 1999 c.80 §65; 1999 c.587 §2; 1999 c.1030 §2; 2001 c.104 §32; 2001 c.203 §4; 2001 c.334 §4; 2003 c.14 §41; 2003 c.116 §4; 2003 c.419 §1; 2003 c.572 §13a; 2003 c.576 §§112,112a,112b; 2005 c.708 §6; 2007 c.611 §11; 2009 c.80 §5; 2015 c.298 §90]

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