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DISSOLUTION, SEPARATION AND ANNULMENT

107.005 Annulment of void marriage; declaration of validity; effect of declaration. (1) A marriage may be declared void from the beginning for any of the causes specified in ORS 106.020; and, whether so declared or not, shall be deemed and held to be void in any action, suit or proceeding in which it may come into question.

(2) When either husband or wife claims or pretends that the marriage is void or voidable under the provisions of ORS 106.020, it may at the suit of the other be declared valid or that it was void from the beginning or that it is void from the time of the decree.

(3) A marriage once declared valid by the decree of a court having jurisdiction thereof, in a suit for that purpose, cannot afterward be questioned for the same cause directly or otherwise. [1971 c.280 §7]

107.010 [Repealed by 1971 c.280 §28]

107.015 Grounds for annulment or dissolution of marriage. The annulment or dissolution of a marriage may be decreed for the following causes:

(1) When either party to the marriage was incapable of making such contract or consenting thereto for want of legal age or sufficient understanding;

(2) When the consent of either party was obtained by force or fraud;

provided that in the situations described in subsection (1) or (2) of this section the contract was not afterward ratified. [1971 c 280 §8]

107.020 [Repealed by 1971 c.280 §28]

107.025 Irreconcilable differences as grounds for dissolution or separation. (1) The dissolution of a marriage or a permanent or unlimited separation may be decreed when irreconcilable differences between the parties have caused the irremediable breakdown of the marriage.

(2) Separation may be decreed when:

(a) Irreconcilable differences between the parties have caused a temporary or unlimited breakdown of the marriage;

(b) The parties make and file with the court an agreement suspending for a period not less than one year their obligation to live together as husband and wife, and the court

finds such agreement to be just and equitable; or

(c) Irreconcilable differences exist between the parties and the continuation of their status as married persons preserves or protects legal, financial, social or religious interest. [1971 c.280 §9; 1973 c.502 §1]

107.030 [Amended by 1953 c.439 §2, 1965 c.311 §1, repealed by 1971 c.280 §28]

107.035 [1969 c.264 §2; repealed by 1971 c 280 §28]

107.036 Doctrines of fault and in pari delicto abolished; evidence admissible not to include fault; decree. (1) The doctrines of fault and of in pari delicto are abolished in suits for the annulment or dissolution of a marriage or for separation.

(2) The court shall not receive evidence of specific acts of misconduct, excepting where child custody is an issue and such evidence is relevant to that issue, or excepting at a hearing when the court finds such evidence necessary to prove irreconcilable differences.

(3) In dividing, awarding and distributing the real and personal property (or both) of the parties (or either of them) between the parties, or in making such property or any of it subject to a trust, and in fixing the amount and duration of the contribution one party is to make to the support of the other, the court shall not consider the fault, if any, of either of the parties in causing grounds for the annulment or dissolution of the marriage or for separation.

(4) Where satisfactory proof of grounds for the annulment or dissolution of a marriage or for separation has been made, the court shall not award a decree to either party but shall only decree the annulment or dissolution of the marriage or for separation. A decree of separation shall state the duration of the separation. [1971 c.280 §10, 1973 c.502 §2]

107.040 [Amended by 1965 c 388 §1; repealed by 1971 c.280 §28]

107.045 [1957 c.444 §1, 1965 c.603 §1; repealed by 1971 c 280 §28]

107.046 Appearance by public official. The district attorney, or in appropriate cases the Support Enforcement Division, shall appear in any suit for the annulment or dissolution of a marriage or for separation when requested by the court. [1971 c.280 §4; 1973 c.502 §3; 1979 c.482 §1]

107.050 [Amended by 1965 c.603 §2; repealed by 1971 c 280 §28]

107.055 Appearance by respondent; affirmative defenses abolished. The respondent shall not be required to answer a petition for annulment or dissolution of a marriage or for separation except by filing a general appearance or a general appearance with counterclaims relating to matters other than the grounds for annulment, dissolution or separation. Affirmative defenses are abolished. [1971 c.280 §11; 1973 c.502 §4]

107.060 [Amended by 1965 c.603 §3; repealed by 1971 c.280 §28]

107.065 Waiting period in dissolution suit; waiver. (1) Except as provided in ORS 107.095 and in subsection (2) of this section, no trial or hearing on the merits in a suit for the dissolution of a marriage shall be had until after the expiration of 90 days from the date of:

(a) The service of the summons and petition upon the respondent; or

(b) The first publication of summons.

(2) The court may in its discretion, on written motion supported by affidavit setting forth grounds of emergency or necessity and facts which satisfy the court that immediate action is warranted or required to protect the rights or interest of any party or person who might be affected by a final decree or order in the proceedings, hold a hearing and grant a decree dissolving the marriage prior to the expiration of the waiting period. In such case the grounds of emergency or necessity and the facts with respect thereto shall be found and recited in the decree. [1971 c.280 §6; 1979 c.284 §99]

107.070 [Repealed by 1971 c.280 §28]

107.075 Residence requirements. (1) If the marriage was solemnized in this state and either party is a resident of or domiciled in the state at the time the suit is commenced, a suit for its annulment or dissolution may be maintained where the ground alleged is one set forth in ORS 106.020 or 107.015.

(2) When the marriage was not solemnized in this state or when any ground other than set forth in ORS 106.020 or 107.015 is alleged, at least one party must be a resident of or be domiciled in this state at the time the suit is commenced and continuously for a period of six months prior thereto.

(3) In a suit for separation, one of the parties must be a resident of or domiciled in this state at the time the suit is commenced.

(4) Residence or domicile under subsection (2) or (3) of this section is sufficient to give the court jurisdiction without regard to the place where the marriage was solemnized or where the cause of suit arose. [1971 c.280 §5; 1973 c.502 §5]

107.080 [Repealed by 1971 c.280 §28]

107.085 Petition; title; content; other required information. (1) A suit for annulment or dissolution of a marriage or for separation shall be entitled: "IN THE MATTER OF THE MARRIAGE OF (names of parties): PETITION FOR (ultimate relief sought)." The moving party shall be designated as the "Petitioner" and the other party the "Respondent." Nothing in this section shall preclude both parties from acting as "Co-Petitioners."

(2) The petition shall state the following:

(a) The names, addresses, social security numbers, if known, and dates of birth of all of the children born or adopted during the marriage, and a reference to and expected date of birth of any children conceived during the marriage but not yet born;

(b) The names, addresses, social security numbers, if known, and dates of birth of all children born to the parties prior to the marriage; and

(c) To the extent known, whether there is pending in this or any other state a domestic relations suit, as defined in ORS 107.510, or any type of support proceeding involving dependents of the same marriage, including one brought under ORS 108.110, 416.400 to 416.470 or this section.

(3) At or prior to the hearing of a suit for annulment or dissolution of a marriage or for separation, the moving party or the party attending the hearing shall file with the court a written statement setting forth the residence or legal addresses of the parties, the maiden and all former legal names of the wife, the ages of both parties, their wage earner social security account numbers, the date and place of the marriage of the parties, and the names and ages of the children of the parties. This information shall be incorporated in and made a part of the decree. [1971 c.280 §2; 1973 c.502 §6, 1979 c.144 §1; 1979 c.421 §14]

107.087 When petition to be served on Support Enforcement Division. Whenever a suit for dissolution, separation or annulment is initiated under ORS 107.085 and aid, as

defined in subsection (2) of ORS 418.035, is being granted to or on behalf of any dependent child or children, natural or adopted, of the parties, a true copy of the petition shall be served by mail or personal delivery on the Administrator of the Support Enforcement Division of the Department of Justice, or on the branch office of the division providing service to the county in which the suit is filed. [1979 c.90 §6]

107.090 [Amended by 1953 c.602 §2; 1955 c.648 §4; 1959 c.572 §1; 1969 c.221 §1; repealed by 1971 c.280 §28]

107.095 Provisions court may make by order after commencement of suit and before decree. (1) After the commencement of a suit for annulment or dissolution of a marriage or for separation and before a decree therein, the court may provide as follows:

(a) That a party pay to the clerk of the court such amount of money as may be necessary to enable the other party to prosecute or defend the suit, including costs of expert witnesses, and also such amount of money to the Department of Human Resources or the county clerk, whichever is appropriate, as may be necessary to support and maintain the other party.

(b) For the care, custody, support and maintenance of the minor children of the marriage by one party or jointly and for the visitation rights of the parent or parents not having custody of such children.

(c) For the restraint of a party from in any manner molesting or interfering with the other or the minor children.

(d) That if minor children reside in the family home and the court considers it necessary for their best interest to do so, the court may require either party to move out of the home for such period of time and under such conditions as the court may determine, whether the home is rented, owned or being purchased by one party or both parties.

(e) Restraining and enjoining either party or both from encumbering or disposing of any of their property, real or personal, except as ordered by the court.

(f) For the temporary use, possession and control of the real or personal property of the parties or either of them and the payment of instalment liens and encumbrances thereon.

(g) That even if no minor children reside in the family home, the court may require one party to move out of the home for such period

of time and under such conditions as the court determines, whether the home is rented, owned or being purchased by one party or both parties if that party assaults or threatens to assault the other.

(2) In case default is made in the payment of any moneys falling due under the terms of an order pending suit, any such delinquent amount shall be entered and docketed as a judgment, and execution may issue thereon to enforce payment thereof in the same manner and with like effect as upon a final decree. The remedy provided in this subsection shall be deemed cumulative and not exclusive.

(3) The court shall not require an undertaking in case of the issuance of an order under paragraph (c), (d), (e), (f) or (g) of subsection (1) of this section.

(4) In a suit for annulment or dissolution of marriage or for separation, wherein the parties are copetitioners or the respondent is found by the court to be in default, the court may, when the cause is otherwise ready for hearing on the merits, if support or custody of minor children is not involved, in lieu of such hearing, enter a decree of annulment or dissolution or for separation based upon an affidavit of the petitioner, setting forth a prima facie case, and covering such additional matters as the court may require. [1971 c.280 §12, 1973 c.502 §7; 1977 c.205 §1, 1977 c.847 §1; 1977 c.878 §1a; 1979 c.86 §1]

107.100 [Amended by 1953 c.553 §2; 1953 c.635 §2; 1961 c.540 §1; 1963 c.476 §1; 1965 c.603 §6; 1969 c.198 §53; 1969 c.591 §283; repealed by 1971 c.280 §28]

107.105 Provisions of decree. (1) Whenever the court grants a decree of annulment or dissolution of marriage or of separation, it has power further to decree as follows:

(a) For the future care and custody, by one party or jointly, of all minor children of the parties born, adopted or conceived during the marriage, and for minor children born to the parties prior to the marriage, and for the visitation rights of the parent or parents not having custody of such children as it may deem just and proper.

(b) For the recovery from the party not allowed the care and custody of such children, or from either party or both parties if joint custody is decreed, such amount of money, in gross or in instalments, or both, as may be just and proper for such party, either party or both parties to contribute toward the support and welfare of such children. The court may

at any time require an accounting from the custodian of the children with reference to the use of the money awarded.

(c) For the support of a party, in gross or in instalments, or both, such amount of money for such period of time as it may be just and equitable for the other party to contribute. The court may approve, ratify and decree voluntary property settlement agreements providing for contribution to the support of a party. If requested by either party, the court shall make and set forth in its decree the findings of fact upon which its award or denial of support was based. In making such support order, the court shall consider the following matters:

- (A) The duration of the marriage;
- (B) The ages of the parties;
- (C) Their health and conditions;
- (D) Their work experience and earning capacities;
- (E) Their financial conditions, resources and property rights;
- (F) The provisions of the decree relating to custody of the minor children of the parties;
- (G) The ages, health and dependency conditions of the children of the parties, or either of them;
- (H) The need for maintenance, retraining or education to enable the spouse to become employable at suitable work or to enable the spouse to pursue career objectives; and
- (I) Such other matters as the court shall deem relevant.

(d) For the delivery to one party of such party's personal property in the possession or control of the other at the time of the giving of the decree.

(e) For the division or other disposition between the parties of the real or personal property, or both, of either or both of the parties as may be just and proper in all the circumstances. The court shall view the contribution of a spouse as a homemaker in the contribution of marital assets. There is a rebuttable presumption that both spouses have contributed equally to the acquisition of property during the marriage. The court shall require full disclosure of all assets by the parties in arriving at a just property division.

(f) If there is a minor child of the parties:

(A) For the appointment of one or more trustees to hold, control and manage for the

benefit of the children of the parties, of the marriage or otherwise, such of the real or personal property of either or both of the parties, as the court may order to be allocated or appropriated to their support and welfare; and to collect, receive, expend, manage or invest any sum of money decreed for the support and welfare of minor children of the parties.

(B) For the appointment of one or more trustees to hold, manage and control such amount of money or such real or personal property of either or both of the parties, as may be set aside, allocated or appropriated for the support of a party.

(C) The court shall direct the terms of the trust and make provision for the disposition or distribution of such money or property to or between the parties, their successors, heirs and assigns after the purpose of the trust has been accomplished. Upon petition of a party or a person having an interest in the trust showing a change of circumstances warranting a change in the terms of the trust, the court shall have the power to make and direct reasonable modifications in its terms.

(g) To change the name of either spouse to a name the spouse held before the marriage. The court must decree a change if it is requested by the affected party.

(h) A judgment against one party in favor of the other for any sums of money found to be then remaining unpaid upon any enforceable order or orders theretofore duly made and entered in the proceedings pursuant to any of the provisions of ORS 107.095, and for any such further sums as additional attorney fees or additional costs and expenses of suit or defense as the court finds reasonably and necessarily incurred by such party; or, in the absence of any such order or orders pendente lite, a like judgment for such amount of money as the court finds was reasonably necessary to enable such party to prosecute or defend the suit.

(2) In determining the proper amount of support and the proper division of property pursuant to paragraphs (b), (c) and (e) of subsection (1) of this section, the court may consider evidence of the tax consequences on the parties of its proposed decree.

(3) If an appeal is taken from a decree of annulment or dissolution of marriage or of separation or from any part of a decree rendered in pursuance of the provisions of ORS

107.005 to 107.085, 107.095, 107.105, 107.115 to 107.142, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610, the court making such decree shall provide for the temporary support of the minor children of the parties thereto, and may provide for the temporary support of a party. The order may be modified at any time by the court making the decree appealed from, shall provide that the support money be paid in monthly installments, and shall further provide that it is to be in effect only during the pendency of the appeal. No appeal lies from any such temporary order.

(4) If an appeal is taken from the decree or other appealable order in a suit for annulment or dissolution of a marriage or for separation, and the appellate court awards costs and disbursements to the prevailing party, it may also award to that party, as part of the costs, such additional sum of money as it may adjudge reasonable as an attorney fee on the appeal.

(5) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the parties to such suit become owners of an undivided interest in any real or personal property, or both, either party may maintain supplemental proceedings by filing a petition in such suit for the partition of such real or personal property, or both, within two years from the entry of said decree, showing among other things that the original parties to such decree and their joint or several creditors having a lien upon any such real or personal property, if any there be, constitute the sole and only necessary parties to such supplemental proceedings. The procedure in the supplemental proceedings, so far as applicable, shall be the procedure provided in ORS 105.405, for the partition of real property, and the court granting such decree shall have in the first instance and retain jurisdiction in equity therefor. [1971 c.280 §13; 1973 c.502 §8; 1975 c.722 §1; 1975 c.733 §2; 1977 c.205 §2; 1977 c.847 §2; 1977 c.878 §2a; 1979 c.144 §2]

107.108 Support or maintenance for child attending school. (1) In addition to any other authority of the court, the court may provide for the support or maintenance of a child attending school:

(a) After the commencement of a suit for annulment or dissolution of a marriage or for separation from bed and board and before the decree therein;

(b) In a decree of annulment or dissolution of a marriage or of separation from bed and board; and

(c) During the pendency of an appeal taken from all or part of a decree rendered in pursuance of ORS 107.005 to 107.085, 107.095 to 107.142, 107.260, 107.405, 107.425, 107.445 to 107.520, 107.540, 107.610 or this section.

(2) An order providing for temporary support pursuant to paragraph (c) of subsection (1) of this section may be modified at any time by the court making the decree appealed from, shall provide that the support money be paid in monthly instalments, and shall further provide that it is to be in effect only during the pendency of the appeal. No appeal lies from any such temporary order.

(3) If the court provides for the support and maintenance of a child attending school pursuant to this section, the child is a party for purposes of matters related to that provision.

(4) As used in this section, "child attending school" means a child of the parties who is unmarried, is 18 years of age or older and under 21 years of age and is a student regularly attending school, community college, college or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.

[1973 c.827 §12b]

107.110 [Amended by 1965 c.603 §4; 1969 c.179 §1; 1969 c.198 §54; 1969 c.591 §284; repealed by 1971 c.280 §28]

107.115 Effect of decree; effective date; appeal. (1) A decree of annulment or dissolution of a marriage restores the parties thereto to the status of unmarried persons, unless a party is married to another person. Such decree shall give the court jurisdiction to award, to be effective immediately, the relief provided by ORS 107.105. The decree shall revoke a will pursuant to the provisions of ORS 112.315, but the decree shall not be effective in so far as it affects the marital status of the parties until the expiration of 60 days from the date of the decree, or, if an appeal is taken, until the suit is determined on appeal, whichever is later.

(2) In case either party dies within the 60-day period specified in subsection (1) of this section, the decree shall be considered to have entirely terminated the marriage relationship immediately before such death, unless an appeal is pending.

(3) (a) The Court of Appeals or Supreme Court shall continue to have jurisdiction of such an appeal pending at the time of the death of either party. The appeal may be continued by the personal representative of the deceased party. The attorney of record on the appeal, for the deceased party, may be allowed a reasonable attorney fee, to be paid from the decedent's estate. However, costs on appeal may not be awarded to either party.

(b) The Court of Appeals or Supreme Court shall have the power to determine finally all matters presented on such appeal. Before making final disposition, the Court of Appeals or Supreme Court may refer the proceeding back to the trial court for such additional findings of fact as are required.

(4) The marriage relationship is terminated in all respects at the expiration of the 60-day period specified in subsection (1) of this section, or, if an appeal is taken, when the suit is determined on appeal, whichever is later, without any further action by either party. However, at any time within the 60-day period or while an appeal is pending, the court may set aside the decree upon motion of both parties.

(5) A decree declaring a marriage void or dissolved shall specify the date on which the decree becomes finally effective to terminate the marriage relationship of the parties.

(6) The 60-day period specified in subsection (1) of this section does not apply when a decree declares a marriage void under ORS 107.005. [1971 c.280 §14]

107.120 [Repealed by 1971 c 280 §28]

107.125 [1965 c.386 §3; repealed by 1971 c.280 §28]

107.126 Decrees and orders as liens; duration. No order or decree for the future payment of money in gross or in instalments, entered under ORS 107.095 or 107.105, shall continue to be a lien on real property for a period of more than 10 years from the date of such order or decree unless it is renewed as provided in ORS 18.360. [1971 c.280 §15]

107.130 [Amended by 1961 c 429 §1; repealed by 1971 c 280 §28]

107.135 Vacation or modification of decree. (1) The court has the power at any time after a decree 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 law for service of a summons, to:

(a) Set aside, alter or modify so much of the decree as may provide for the appointment and duties of trustees, for the custody, support and welfare of the minor children, or for the support of a party; and

(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 decree was given, were not residents of the state, or were unknown to the court or were erroneously omitted from the decree.

(2) The decree is a final judgment as to any instalment or payment of money which has accrued up to the time either party makes a motion to set aside, alter or modify the decree, and the court does not have the power to set aside, alter or modify such decree, or any portion thereof, which provides for any payment of money, either for minor children or the support of a party, which has accrued prior to the filing of such motion.

(3) In a proceeding under subsection (1) of this section, the court may assess against either party a reasonable attorney's fee for the benefit of the other party. [1971 c.280 §16; 1973 c.502 §9]

107.137 Factors considered in determining custody of minor child. (1) In determining custody of a minor child pursuant to ORS 107.105 or 107.135, the court shall give primary consideration to the best interests and welfare of the child. In determining the best interests and welfare of the child, the court may consider the following relevant factors:

(a) The emotional ties between the child and other family members;

(b) The interest of the parties in and attitude toward the child; and

(c) The desirability of continuing an existing relationship.

(2) The best interests and welfare of the child in a custody matter shall not be determined by isolating any one of the relevant factors referred to in subsection (1) of this section, or any other relevant factor, and relying on it to the exclusion of other factors.

(3) No preference in custody shall be given to the mother over the father for the sole reason that she is the mother.

(4) In determining custody of a minor child pursuant to ORS 107.105 or 107.135, the court shall consider the conduct, marital status, income, social environment or life style of either party only if it is shown that any of these factors are causing or may cause emotional or physical damage to the child. [1975 c.722 §2]

Note: 107.137 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 107 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

Note: The age of majority was reduced to 18 from 21 in 1973. See note following 109.520.

107.140 [Paragraph (f) of subsection (1) of 1959 Replacement Part enacted as 1955 c.72 §1; repealed by 1961 c.551 §2]

107.141 [1961 c.551 §1; repealed by 1971 c.280 §28]

107.142 Validation of certain decrees of dissolution or annulment; status of children. (1) Any decree of divorce or annulment entered prior to January 1, 1970, otherwise valid but the validity of which may be affected by failure of the court records to evidence the service of process upon the district attorney or the presence of the district attorney at the final hearing, is in all respects valid.

(2) Any marriage in all other respects legal and regular, made prior to January 1, 1973, and before the expiration of 60 days from the date of a decree declaring a previous marriage of one or both of the contracting parties void or dissolved, hereby is declared valid. Any child conceived or born of such a marriage is legitimate.

(3) Any marriage in all other respects legal and regular, made prior to January 1, 1965, and before the expiration of six months from the date of a decree declaring a previous marriage of one or both of the contracting parties void or dissolved, hereby is declared valid. Any child conceived or born of such a marriage is legitimate.

(4) Any decree of divorce or annulment entered prior to August 13, 1965, otherwise valid but the validity of which may be affected by irregularities in the procedure relative to the bill of particulars or contents of the complaint, is in all respects valid. [1971 c.280 §17; 1973 c.530 §1]

107.150 [Subsection (5) enacted as 1953 c.491 §1; 1959 c.228 §1; subsection (6) enacted as 1965 c.603 §7; subsection (7) enacted as 1965 c.386 §4; repealed by 1971 c.280 §28]

107.160 [Amended by 1963 c.497 §4; repealed by 1971 c.280 §28]

107.170 [1955 c.648 §1; repealed by 1961 c.210 §6]

107.180 [1959 c.534 §1; renumbered 107.430]

107.210 [Repealed by 1973 c.502 §18]

107.220 [Repealed by 1973 c.502 §18]

107.230 [Repealed by 1973 c.502 §18]

107.240 [Repealed by 1973 c.502 §18]

107.250 [Amended by 1955 c.648 §5; 1959 c.572 §2; 1969 c.221 §2; 1969 c.313 §1; repealed by 1973 c.502 §18]

107.260 [Repealed by 1973 c.502 §18]

107.270 [Amended by 1969 c.198 §55, repealed by 1973 c.502 §18]

107.280 [Amended by 1959 c.572 §3; 1969 c.591 §285; repealed by 1973 c.502 §18]

107.290 [Amended by 1971 c.314 §2; repealed by 1973 c.502 §18]

107.300 [Amended by 1971 c.280 §23; repealed by 1973 c.502 §18]

107.310 [Amended by 1973 c.502 §10; renumbered 107.455]

107.320 [Repealed by 1973 c.502 §18]

107.400 Amendment of pleadings in dissolution, annulment or separation proceeding to change relief sought. At any time prior to the entry of a decree, upon motion of a party and due notice to the other party in the manner provided by law for service of summons, the court may allow an amendment of pleadings to change the relief sought from annulment to dissolution or separation, from dissolution to annulment or separation, or from separation to annulment or dissolution. [1973 c.502 §15(2)]

107.405 Powers of court in dissolution, separation or annulment proceedings. When a court is sitting in proceedings for annulment or dissolution of a marriage, or for separation, it shall have full equity powers. [1971 c.280 §1]

107.407 Setting aside portion of decree for support of former spouse. If an individual has paid an amount of money in instalments for more than 10 years for the support of a former spouse under a court decree of annulment or dissolution of marriage that ordered such payment, and when the former spouse has not made a reasonable effort during that period of time to become financially self-supporting and independent of the support provided under the decree, the

individual paying the support may petition the court that issued the decree to set aside so much of the decree as may provide for the support of the former spouse. [1975 c 500 §2]

107.410 [1961 c 418 §1; repealed by 1971 c.280 §28]

107.412 Procedure applicable to ORS 107.407; matters considered; attorney fees.

(1) Upon petition of an individual and after service of notice on the other party in the manner provided by law for service of a summons, the court shall conduct a proceeding to determine whether so much of its decree as provides for the support of a party shall be set aside.

(2) Except as provided in subsections (3) and (4) of this section, if the court finds that the party receiving support has not made a reasonable effort during the previous 10 years to become financially self-supporting and independent of the support provided under the decree, the court shall order that support terminated. In making its finding under this subsection, the court shall consider the following matters:

- (a) The age of the party receiving support;
- (b) The health, work experience and earning capacity of the party;
- (c) The ages, health and dependency conditions of the minor children of the party; and
- (d) Efforts made by the party during the previous 10 years to improve opportunities for gainful or improved employment including, but not limited to, attendance at any school, community college or university or attendance at courses of vocational or technical training.

(3) A court does not have power under ORS 107.407 and this section to set aside any payment of money for the support of a party that has accrued prior to the filing of the petition under subsection (1) of this section.

(4) ORS 107.407 and this section do not affect a decree, or any portion of it, that provides for the payment of money for the support of minor children or for the support of a party who is 60 years of age or older when the proceeding under subsection (1) of this section is held.

(5) In a proceeding held under subsection (1) of this section, the court may assess against either party a reasonable attorney fee for the benefit of the other party. [1975 c.500 §3]

107.415 Notice of change of status of minor child required; effect of failure to give notice. (1) If a party is required by a decree of a court in a domestic relations suit, as defined in ORS 107.510, to contribute to the support, nurture or education of a minor child while the other party has custody thereof, the custodial parent shall notify the party contributing such money when the minor child receives income from his own gainful employment, or is married or enters the military service.

(2) Any custodial parent who does not provide notice, as required by subsection (1) of this section may be required by the court to make restitution to the contributing party of any money paid, as required by the decree. The court may enter a judgment or satisfy all or part of any accrued judgment to accomplish the restitution. [1971 c.314 §1]

107.420 [1961 c.340 §1; repealed by 1971 c.280 §28]

107.425 Investigation of parties in domestic relations suit involving welfare of children; counsel for children; staff. (1) Whenever a domestic relations suit, as defined in ORS 107.510, is filed, or whenever a habeas corpus proceeding or motion to modify an existing decree in a domestic relations suit is before the court, the court having jurisdiction may, in cases in which there are minor children involved, cause an investigation to be made as to the character, family relations, past conduct, earning ability and financial worth of the parties to the suit for the purpose of protecting the children's future interest. The court may defer the entry of a final decree until the court is satisfied that its decree in such suit will properly protect the welfare of such children. The investigative findings shall be offered as and subject to all rules of evidence.

(2) The court, on its own motion, may:

(a) Cite either party to the suit to appear and testify as a witness during this investigation; and

(b) Appoint counsel for the children. A reasonable fee for an attorney so appointed may be charged against either or both of the parties or as a cost in the proceedings.

(3) The court having jurisdiction of cases described in subsection (1) of this section may hire and fix the salaries of such professional and clerical personnel as are necessary to carry out the purposes of this section. The salaries of the professional and clerical assis-

tants shall be paid in the same manner as the salaries of county officers are paid. [1971 c 280 §3; 1973 c 502 §11]

107.430 [Formerly 107 180, 1963 c 223 §1, repealed by 1971 c 280 §28]

107.431 Modification of portion of decree regarding visitation of minor child; procedure. (1) At any time after a decree of annulment or dissolution of a marriage or a separation is granted, the court may set aside, alter or modify so much of the decree relating to visitation of a minor child as it deems just and proper or may terminate or modify that part of the order or decree requiring payment of money for the support of the minor child with whom visitation is being denied after:

(a) Motion to set aside, alter or modify is made by the parent having visitation rights;

(b) Service of notice on the parent or other person having custody of the minor child is made in the manner provided by law for service of a summons;

(c) Service of notice on the administrator of the Support Enforcement Division of the Department of Justice when aid, as defined in subsection (2) of ORS 418.035, is being granted to or on behalf of any dependent child of the parties. As an alternative to the service of notice on the administrator, service may be made upon the branch office of the division which provides service to the county in which the motion was filed. Service may be accomplished by personal delivery or first class mail; and

(d) A showing that the parent or other person having custody of the child or a person acting in that parent or other person's behalf has interfered with or denied without good cause the exercise of the parent's visitation rights.

(2) The court may request the appearance of the district attorney or the Support Enforcement Division in any proceeding under this section in which it finds that the state may have a substantial interest.

(3) This section shall not apply when the child to whom a duty of support is owed is in another state which has enacted the Uniform Child Custody Jurisdiction Act and a court in that state would have subject matter and personal jurisdiction under that Act to determine custody and visitation rights. [1977 c.878 §4, 1979 c 482 §2]

107.435 [1971 c 280 §19; repealed by 1973 c 502 §18]

107.440 [1963 c 434 §14, 1965 c.386 §1, repealed by 1971 c.280 §28]

107.445 Attorney fees in certain domestic relations proceedings. In any proceeding brought under ORS 108.110 and 108.120, and in any contempt proceeding brought to compel compliance with any orders authorized by ORS 107.095, or with the decree in any suit to annul or dissolve a marriage or for separation the court may make an order awarding to a party a sum of money determined to be reasonable as an attorney fee therein. The order shall be entered and docketed as a judgment, and execution may issue thereon in the same manner and with like effect as upon a final decree. [1971 c.280 §18]

107.450 [1963 c 434 §13; 1965 c 386 §2; repealed by 1971 c 280 §28]

SEPARATION

107.455 Effect of separation statutes or decrees on subsequent dissolution proceedings. The provisions of law pertaining to separation are not intended to and shall not repeal or affect any existing law pertaining to the granting of a decree of dissolution of marriage. The entry of a decree of separation under ORS 107.475 shall not be a bar to a suit for dissolution by either party. No decree of dissolution of marriage granted by a court of this or any other state upon constructive service of summons shall affect an award of support or maintenance in a decree of separation made pursuant to ORS 107.095 or 107.105. [Formerly 107 310]

107.465 Authority of court to allow proceedings for dissolution; effect of proceedings. (1) The court has the power within two years after the entry of a decree of separation, upon motion of a party and after service of notice to the other party in the manner provided by law for service of summons, to allow supplemental proceedings for dissolution of the marriage; provided that any supplemental decree shall not set aside, alter or modify any part of the decree of separation which has created or granted rights which have vested.

(2) Nothing in this section is intended to prevent either party to a decree of separation from commencing at any time in the manner required by law a suit for dissolution of the marriage. [1973 c 502 §16]

107.475 Court to determine duration of separation; modification or vacation of decree. The court shall determine and fix in its decree the duration of the separation. At the expiration of such time the decree shall have no further effect. However, no rights created or granted in the decree which have vested shall be affected by its termination. Upon motion of a party and service upon the other party of notice in the manner provided by law for service of summons, the court may renew or extend the duration. When the decree is for unlimited separation, a party may by motion alleging that the cause for separation no longer exists and after due service of notice upon the other party in the manner provided by law for service of summons, apply for an order modifying or vacating the decree, subject to the provisions of ORS 107.135. [1973 c 502 §14]

CONCILIATION SERVICES

107.510 Definitions. As used in ORS 21.112 and 107.510 to 107.610:

(1) "Conciliation jurisdiction" means domestic relations conciliation jurisdiction and authority referred to under ORS 21.112 and exercised under ORS 107.510 to 107.610 by a circuit court in any controversy existing between spouses which may, unless a reconciliation or a settlement of the controversy is effected, result in the dissolution or annulment of the marriage or in disruption of the household.

(2) "Conciliation services" means domestic relations counseling and related services obtained by a circuit court exercising conciliation jurisdiction and used by the court in exercising that jurisdiction.

(3) "Domestic relations suit" means suit for dissolution of the marriage contract, annulment of the marriage or separation.

(4) "Separation" means separation from bed and board and separate maintenance. [1963 c.434 §1; 1971 c.280 §24, 1973 c 502 §13]

107.520 Establishment of conciliation jurisdiction. The circuit court for any county or the circuit courts of more than one county comprising a judicial district after making a determination that the social conditions of the county or district make it desirable to establish conciliation services for the full and proper consideration of domestic relations suits filed in such county or district may exercise

conciliation jurisdiction and obtain, use and provide conciliation services referred to in ORS 21.112 and exercised under ORS 107.510 to 107.610. After conciliation jurisdiction has been established the circuit court or courts of such county or district may at any time determine that the need for such service does not warrant its continuance and terminate the same. [1963 c.434 §2; 1965 c 625 §1, 1971 c.280 §25]

107.530 Source of conciliation services; county to pay expenses. (1) A circuit court or the circuit courts of a judicial district exercising conciliation jurisdiction may obtain conciliation services by:

(a) Employing or contracting for counselors and other personnel; or

(b) Contracting or entering into agreements with public or private agencies to provide conciliation services to the court or courts.

(2) Subject to the provisions of the Local Budget Law, the compensation and expenses of personnel performing conciliation services for the circuit court or courts and other expenses of providing conciliation services may be paid by the county or as may be agreed upon between the counties involved. [1963 c 434 §3; 1965 c.625 §2]

107.540 Conciliation jurisdiction by court; effect. Whenever any domestic relations suit is commenced in a circuit court exercising conciliation jurisdiction and providing conciliation services, the court may, in its discretion, exercise conciliation jurisdiction over the controversy and over the parties thereto and all persons having any relation to the controversy. If, within 45 days after the court commences to exercise conciliation jurisdiction, a reconciliation or a settlement of the controversy has not been effected, the domestic relations suit shall proceed as if the court had not exercised conciliation jurisdiction. [1963 c.434 §4; 1971 c.280 §26]

107.550 Petition for conciliation jurisdiction; contents. (1) Whenever either spouse or both spouses file in a circuit court exercising conciliation jurisdiction and providing conciliation services a petition requesting the court to exercise conciliation jurisdiction with respect to a controversy existing between the spouses, the court shall exercise conciliation jurisdiction over the controversy and over the parties thereto and all persons having any relation to the controversy.

(2) The petition shall:

(a) Allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or a settlement of the controversy;

(b) State the name, address and age of each spouse and the date and place of marriage;

(c) State the name, address and age of each minor child of the spouses or either spouse;

(d) State, if known, whether a domestic relations suit involving the same marriage is pending in any other court in this or any other state; and

(e) State such other information as the court, by rule, may require.

(3) No fee shall be charged for filing the petition. [1963 c.434 §5; 1965 c.625 §3]

107.560 Effect of petition; waiver. (1) A petition may be filed under ORS 107.550 whether or not a domestic relations suit in which the spouses are parties has been commenced. Except as provided in subsection (2) of this section, when a petition for conciliation jurisdiction is filed no trial or hearing on the merits of a domestic relations suit between the parties shall be had until after the expiration of 45 days from the filing of the petition; provided, however, that during this period the court may use its full equity powers to protect and preserve the rights of the spouses.

(2) Subject to the provisions of ORS 107.065, the court may, in its discretion, waive the 45-day period as prescribed by subsection (1) of this section upon stipulation of the parties or upon written motion supported by affidavit setting forth facts which satisfy the court that such waiver is warranted. [1963 c.434 §6; 1965 c.625 §4; 1975 c.228 §1]

107.570 Notice; attendance at hearings. When a circuit court undertakes to exercise conciliation jurisdiction pursuant to ORS 107.540 or 107.550, it shall refer the matter to the conciliation services provided by the court. The court shall cause notice to be given to the spouses of the undertaking to exercise conciliation jurisdiction and the authority therefor, whether under ORS 107.540 or 107.550, and of the time and place of any hearing, conference or other proceeding scheduled pursuant to the exercise of conciliation jurisdiction. The court may require the atten-

dance of the spouses and of witnesses as in other civil cases. [1963 c.434 §7]

107.580 Restriction of services; priority where children involved. Whenever a circuit court determines that the conciliation services provided by it are not adequate for the proper disposition of all matters that may be referred to the services under ORS 107.570, the court, by rule, may restrict the services provided, but shall give priority to controversies in which the spouses have children under 15 years of age whose welfare is involved in the outcome of the controversy. [1963 c.434 §8]

107.590 Court orders; reconciliation agreements. (1) A circuit court undertaking to exercise conciliation jurisdiction pursuant to ORS 107.540 or 107.550, with the consent of the spouses, may make orders with respect to the conduct of the spouses and with respect to the subject of the controversy as it considers necessary to preserve the marriage or to implement the reconciliation of the spouses; but an order shall not be effective for more than 60 days unless the spouses consent to a continuance of the order.

(2) Any reconciliation agreement between the spouses may be reduced to writing, and, with the consent of the spouses, the court may make an order requiring the spouses to comply fully with the agreement.

(3) The court may at any time terminate or modify any order previously made. [1963 c.434 §9; 1965 c.625 §5]

107.600 Privacy of hearings; confidentiality of communications; records closed. (1) All hearings, conferences and other proceedings held pursuant to circuit court exercise of conciliation jurisdiction pursuant to ORS 107.540 or 107.550 shall be held in private, and all persons other than officers of the court, conciliation services personnel, the spouses, their counsel and witnesses shall be excluded.

(2) All communications, verbal or written, between spouses and from spouses to counselors, the court, attorneys, doctors or others engaged in the conciliation proceedings, made in conciliation conferences, hearings and other proceedings had pursuant to the exercise of the court's conciliation jurisdiction shall be confidential within the meaning of paragraph (e) of subsection (1) of ORS 44.040.

(3) All records of the court with respect to exercise of conciliation jurisdiction shall be

closed. However, any petition filed under ORS 107.550, any written reconciliation agreement between the spouses and any court order made in the matter may be opened to inspection by either spouse or his counsel upon written authorization by a judge of the court. [1963 c.434 §10; 1965 c 625 §6]

107.610 Qualifications of conciliation counselors. Persons performing conciliation services referred to in ORS 21.112 and exercised under ORS 107.510 to 107.610 shall have minimum educational and experience qualifications of a master's degree in the behavioral sciences; or a bachelor's degree and one year's graduate training, both in the behavioral sciences plus two years' paid case work or clinical experience; or a bachelor's degree in the behavioral sciences plus four years' paid case work or clinical experience. [1963 c.434 §12; 1971 c 280 §27]

107.615 Fees to support service; contracts for service; eligibility rules. (1) The governing body of any county may impose a fee up to \$10 above that prescribed for in subsection (7) of ORS 205.320 for a marriage license.

(2) In addition to any other funds used therefor, the governing body shall use the proceeds from the fee increase authorized by this section to pay the expenses of conciliation services under ORS 107.510 to 107.610. If there are none in the county, the governing body may provide such services through other county agencies or may contract with a public or private agency or person to provide such services.

(3) The governing body may establish rules of eligibility for conciliation services funded under this section so long as its rules do not conflict with rules of the court adopted under ORS 107.580.

(4) Fees collected under this section shall be collected and deposited in the same manner as other county funds are collected and deposited but shall be maintained in a separate account to be used as provided in this section. [1977 c.489 §1]

Note: 107 615 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 107, or any series therein, by legislative action See the Preface to Oregon Revised Statutes for further explanation

FAMILY ABUSE PREVENTION

107.700 Short title. ORS 107.700 to 107.720 shall be known and may be cited as the "Abuse Prevention Act." [1977 c.845 §4]

107.705 Definitions for ORS 107.700 to 107.720. As used in ORS 107.700 to 107.720, 133.055, 133.310 and 133.315:

(1) "Abuse" means the occurrence of one or more of the following acts between family or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent serious bodily injury.

(2) "Family or household members" means spouses, former spouses, persons cohabiting with each other or persons who cohabited with each other within one year immediately preceding the filing by one of them of a petition under ORS 107.710. [1977 c.845 §5; 1979 c.161 §1]

107.710 Petition to circuit court for relief. (1) Any person may seek relief under ORS 107.700 to 107.720, 133.055, 133.310 and 133.315 by filing a petition with the circuit court alleging that he has been the victim of abuse committed by the respondent. The circuit court shall have jurisdiction over all proceedings under ORS 107.700 to 107.720, 133.055, 133.310 and 133.315.

(2) A person's right to petition for relief under ORS 107.700 to 107.720, 133.055, 133.310 and 133.315 shall not be affected by his or her leaving the residence or household to avoid abuse. [1977 c 845 §6]

107.715 Scope of relief; undertaking not required. (1) The court shall have the power to grant any temporary restraining order or an injunction or approve any consent agreement to bring about a cessation of abuse of the petitioner including relief as provided in paragraph (c) or (d) of subsection (1) of ORS 107.095, and, in addition, may award temporary custody of or establish temporary visitation rights with regard to the minor children of the parties.

(2) Any relief granted by the court shall be for a fixed period of time not to exceed one year. The court may amend its order or the consent agreement at any time.

(3) No order or agreement made under ORS 107.700 to 107.720, 133.055, 133.310 and

133.315 shall in any manner affect title to any real property.

(4) The court shall not require an undertaking from the petitioner to issue an order under ORS 107.700 to 107.720, 133.055, 133.310 and 133.315.

(5) Any proceeding under ORS 107.700 to 107.720, 133.055, 133.310 and 133.315 shall be in addition to any other available civil or criminal remedies. [1977 c.845 §7]

107.720 Enforcement of restraining orders; law enforcement agency proceedings; contempt hearings; bail. (1) Whenever a restraining order, as authorized by paragraph (c) or (d) of subsection (1) of ORS 107.095 or ORS 107.715 which includes bail and an expiration date pursuant to ORS 107.715 and this section, is issued and the person to be restrained has actual notice thereof, the petitioner shall deliver forthwith to a law enforcement agency a true copy of proof of service on the respondent and a true copy of the order. Upon receipt of a true copy of proof of service and a true copy of the order, the law enforcement agency shall forthwith enter the order into the Law Enforcement Data System maintained by the Executive Department. Entry into the Law Enforcement Data System shall constitute notice to all law

enforcement agencies of the existence of such order. Law enforcement agencies shall establish procedures adequate to insure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order. Such order shall be fully enforceable in any county in the state.

(2) In any situation where a restraining order described in subsection (1) of this section is terminated before the expiration date, the petitioner shall deliver forthwith a true copy of the termination order to the law enforcement agency with whom the original order was filed. Upon receipt of such termination order the law enforcement agency shall promptly remove the original order from the Law Enforcement Data System.

(3) Pending a contempt hearing for alleged violation of a restraining order issued pursuant to paragraph (c) or (d) of subsection (1) of ORS 107.095 or ORS 107.715, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290. Whenever such restraining order is issued, the issuing court shall set bail for the violation of such order.

[1977 c.845 § 8; 1979 c.522 §1]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel

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