

# Chapter 107

1993 EDITION

## Dissolution, Annulment; Separation; Mediation and Conciliation Services

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**DOMESTIC RELATIONS**

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**TASK FORCE ON FAMILY LAW**

Note: Sections 1 to 4, chapter 532, Oregon Laws 1993, provide:

Sec. 1. (1) There is created the Task Force on Family Law consisting of 12 members appointed by the Governor and who serve at the pleasure of the Governor. The members shall include persons familiar with family law, mediation, family support and children's services. In addition, at least three members shall be persons who have had experience with the family laws of this state as consumers.

(2) The Governor shall appoint one member to serve as the chairperson. The task force shall meet at least once a month at a date, time and place designated by the chairperson. Five members constitute a quorum for the transaction of business.

(3) A member who misses three consecutive meetings may be removed from the task force. The Governor shall fill all vacancies immediately. [1993 c.532 §1]

Sec. 2. The Task Force on Family Law is charged with developing a proposal for providing a nonadversarial system for families undergoing divorce that provides the families with an opportunity to access appropriate services for the transition period. In accomplishing its goal, the task force shall:

(1) Gather information on and study the current state of family law and the family court system, if adopted,

(2) Develop a comprehensive plan, including, but not limited to, funding alternatives for implementing the proposals of the task force;

(3) Consider how the proposals of the task force may be coordinated with family resource centers and family service centers in order to integrate a nonadversarial divorce system with a system that provides support to families prior to making a decision regarding divorce;

(4) Make at least one progress report to the House and Senate Interim Judiciary Committees, any interim children and families committee and any other relevant committees during 1994; and

(5) Submit a final report to the Governor and, in accordance with ORS 192.245, to the Sixty-eighth Legislative Assembly. This report shall outline the findings and recommendations of the task force. [1993 c.532 §2]

Sec. 3. (1) The task force may accept contributions of funds and assistance from the United States, its agencies, or from any other source, public or private, and agree to conditions thereon not inconsistent with the purposes of the task force. All such funds are to aid in financing the functions of the task force and shall be deposited in the General Fund of the State Treasury to the credit of a separate account for the task force and shall be disbursed for the purpose for which contributed in the same manner as funds appropriated for the task force.

(2) No general funds may be appropriated for the task force unless contributions of funds and assistance from the United States or its agencies or from any other source, public or private, are received. [1993 c.532 §3]

Sec. 4. This Act is repealed on December 31, 1995. [1993 c.532 §4]

**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]

107.060 [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 §6, 1973 c.502 §5]

107.080 [Repealed by 1971 c.280 §28]

**107.085 Petition; title; content; other required information.** (1) A suit for marital annulment, dissolution or 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 "Copetitioners."

(2) The petition shall state the following:

(a) The names, 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, 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 marital annulment, dissolution or separation, the moving party or the party attending the hearing shall file with the court a written statement setting forth the full names and any former names of the parties, the residence, mailing or contact addresses of the parties, 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 born to or adopted by the parties. This information shall be incorporated in and made a part of the decree.

(4) If real property is involved, the petitioner may have a notice of pendency of the action recorded at the time the petition is filed, as provided in ORS 93.740. [1971 c.280 §2, 1973 c.502 §6, 1979 c.144 §1; 1979 c.421 §14; 1983 c.728 §1; 1987 c.586 §25; 1993 c.448 §4]

**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 ORS 418.035 (2), 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]

**107.092 Notice that spouse may continue health insurance coverage; content; liability of clerk.** (1) The clerk of the court shall furnish to both parties in a suit for legal separation or for dissolution, at the time the suit is filed, a notice of ORS 743.600, 743.601, 743.602, 743.610 and 743.619 entitling a spouse to continue health insurance coverage.

(2) The notice shall be prepared by the Director of the Department of Consumer and Business Services and also shall include a summary of the provisions of ORS 743.600 to 743.622

(3) A clerk of the court is not liable for damages arising from information contained in or omitted from a notice furnished under this section. [1981 c.752 §16; 1987 c.506 §6]

Note: 107.092 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 Preface to Oregon Revised Statutes for further explanation.

**107.095 Provisions court may make by order after commencement of suit and before decree.** (1) After the commencement of a suit for marital annulment, dissolution or separation and until 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, court clerk or court administrator, whichever is appropriate, as may be necessary to support and maintain the other party.

(b) For the care, custody, support and maintenance, by one party or jointly, of the minor children as described in ORS 107.105 (1)(a) and for the visitation rights as described in ORS 107.105 (1)(b) of the parent not having custody of such children.

(c) For the restraint of a party from molesting or interfering in any manner with the other party 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 installment 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 or garnishment 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 subsection (1)(c), (d), (e), (f) or (g) 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 or where respondent having appeared has waived further appearance, the court may, when the cause is otherwise ready for hearing on the merits, in lieu of such hearing, enter a decree of annulment or dissolution or for separation based upon a current affidavit of the petitioner or copetitioners, setting forth a prima facie case, and covering such additional matters as the court may require. If child support or custody of minor children is involved, then the affidavit also shall include:

(a) The gross monthly income of each party, to the best of the affiant's knowledge; and

(b) The name of the party with whom the children currently reside and the length of time they have so resided. [1971 c.280 §12; 1973 c.502 §7; 1977 c.205 §1; 1977 c.847 §1; 1977 c.878 §1a; 1979 c.86 §1; 1981 c.668 §1; 1987 c.873 §27; 1987 c.885 §1; 1991 c.82 §1; 1993 c.223 §4; 1993 c.716 §2]

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 marital annulment, dissolution or 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, as the court may deem just and proper pursuant to ORS 107.137. The court may hold a hearing to decide the custody issue prior to any other issues. The court may recognize the value of close contact with both parents and encourage, where practicable, joint parental custody and joint responsibility for the welfare of the children.

(b) For visitation rights of the parent not having custody of such children, and for visitation rights of grandparents pursuant to a petition filed under ORS 109.121. The court shall determine the issue of visitation in the best interest of the child, insuring the non-custodial parent sufficient access to the child to provide for quality parenting time. The court shall recognize the value of close contact with both parents and encourage, where practicable, joint responsibility for the welfare of such children and extensive contact between the minor children of the divided marriage and the parties.

(c) 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 installments, or both, as constitutes just and proper contribution toward the support and welfare of such children. The court may at any time require an accounting from the custodial parent with reference to the use of the money received as child support. The court is not required to order support for any minor child who has become self-supporting, emancipated or married, or who has ceased to attend school after becoming 18 years of age. The court, in determining the amount to be paid, shall use the scale and formula provided for in ORS 25.275 and 25.280.

(d) For the support of a party, such amount of money for such period of time as it may be just and equitable for the other party to contribute, such contribution to be in gross, in installments or both, as the court may order. The court may approve, ratify and decree voluntary agreements providing for contribution to the support of a party. In making such support order, the court shall consider the following:

(A) The length of the marriage;

(B) The age and the physical and mental health of the parties;

(C) The contribution by one spouse to the education, training and earning power of the other spouse;

(D) The earning capacity of each party, including educational background, training, employment skills and work experience;

(E) The need for education, training or retraining to enable a party to become employable at suitable work or to enable the party to pursue career objectives to become self-supporting at a standard of living not overly disproportionate to that enjoyed during the marriage to the extent that is possible;

(F) The extent to which the present and future earning capacity of a party is impaired due to the party's extended absence from the job market to perform the role of homemaker, the extent to which suitable job opportunities are unavailable to a party considering the age of the party and the length of time reasonably anticipated for a party to obtain training or updating of career or job skills. In a case of a party's extended absence from the job market to perform the role of homemaker, where it is likely that the party will never substantially recover from the loss of economic position due to the extended absence, and where the other party has, during the marriage, achieved a substantially advantageous economic position through the



joint efforts of the parties, the court may award the disadvantaged party support as compensation therefor, so that the standard of living for the disadvantaged party will not be overly disproportionate to that enjoyed during the marriage, to the extent that that is practicable;

(G) The number, ages, health and conditions of dependents of the parties or either of them and provisions of the decree relating to custody of the children, including the length of time child support obligations will be in effect;

(H) The tax liabilities or benefits to each party and the net spendable income available to each party after accounting for such liabilities and benefits, and the decree shall state the court's findings relating to net spendable income of each party if such statement is requested by either party;

(I) The amount of long-term financial obligation, including legal fees and costs;

(J) Costs of health care to a party;

(K) The standard of living established during the marriage;

(L) Premiums paid or to be paid for life insurance under ORS 107.810 to 107.830 on the life of a party ordered to pay support; and

(M) Such other matters as the court shall deem relevant in the particular case in order that each party shall have the opportunity to achieve an economic standard of living not overly disproportionate to that enjoyed during the marriage, to the extent that is possible.

(e) 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.

(f) 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. A retirement plan or pension or an interest therein shall be considered as property. The court shall consider the contribution of a spouse as a homemaker as a contribution to the acquisition of marital assets. There is a rebuttable presumption that both spouses have contributed equally to the acquisition of property during the marriage, whether such property is jointly or separately held. Subsequent to the filing of a petition for annulment or dissolution of marriage or separation, the rights of the parties in the marital assets shall be considered a species of coownership, and a transfer of marital assets pursuant to a decree of annulment or dissolution of marriage or of separation entered on or after October 4,

1977, shall be considered a partitioning of jointly owned property. The court shall require full disclosure of all assets by the parties in arriving at a just property division. In arriving at a just and proper division of property, the court shall consider reasonable costs of sale of assets, taxes and any other costs reasonably anticipated by the parties. If a spouse has been awarded spousal support in lieu of a share of property, the court shall so state on the record, and shall order the obligor to provide for and maintain life insurance in an amount commensurate with the obligation and designating the obligee as beneficiary for the duration of the obligation. If the obligor dies prior to the termination of such support and such insurance is not in force, the court may modify the method of payment of spousal support under the decree or order of support from installments to a lump sum payment to the obligee from the estate of the obligor in an amount commensurate with the present value of the spousal support at the time of death. The obligee or attorney of the obligee shall cause a certified copy of the decree to be delivered to the life insurance company or companies. If the obligee or the attorney of the obligee delivers a true copy of the decree to the life insurance company or companies, identifying the policies involved and requesting such notification under this section, the company or companies shall notify the obligee, as beneficiary of the insurance policy, whenever the policyholder takes any action that will change the beneficiary or reduce the benefits of the policy. Either party may request notification by the insurer when premium payments have not been made. If the obligor is ordered to provide for and maintain life insurance, the obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to the obligee written notice of any action that will reduce the benefits or change the designation of the beneficiaries under the policy. The present value of, and income resulting from, the future enhanced earning capacity of either party shall be considered as property. The presumption of equal contribution to the acquisition of marital property, however, shall not apply to enhanced earning capacity. A spouse asserting an interest in the income resulting from an enhancement of earning capacity of the other spouse must demonstrate that the spouse made a material contribution to the enhancement. Material contribution can be shown by, among other things, having contributed, financially or otherwise, to the education and training that resulted in the enhanced earning capacity. The contribution shall have been substantial and of prolonged duration.

(g) For the creation of trusts as follows:

(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) For the establishment of the terms of the trust and provisions 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.

(h) 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.

(i) For 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 a judgment against one party in favor of the other or in favor of the other's attorney for any 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. The decree may include a judgment for any arrearage in any sum ordered while litigation was pending, but if such a judgment is not included in the decree, such arrearages shall not be deemed satisfied.

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

(3) Upon the filing of the decree, the property division ordered shall be deemed effective for all purposes. This transfer by decree, which shall effect solely owned property transferred to the other spouse as well as commonly owned property in the same manner as would a declaration of a resulting trust in favor of the spouse to whom the property is awarded, shall not be deemed a taxable sale or exchange.

(4) 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 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610, the court making such decree may provide in a separate order for any relief provided for in ORS 107.095 and shall provide that the order is to be in effect only during the pendency of the appeal. No appeal lies from any such temporary order.

(5) 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 a 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.

(6) 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, 1981 c.775 §1; 1983 c.728 §2; 1987 c.795 §9; 1987 c.885 §2; 1989 c.811 §6; 1993 c.315 §1; 1993 c.718 §3]

107.107 [1981 c.775 §4; repealed by 1983 c.728 §9]

**107.108 Support or maintenance for child attending school.** (1) In addition to any other authority of the court, the court may enter an order against either parent, or both of them, to 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 107.174, 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 subsection (1)(c) 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 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.

(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 the child for gainful employment. A child enrolled in an educational course load of less than one-half that determined by the educational facility to constitute "full-time" enrollment is not a "child attending school." [1973 c.827 §12b; 1981 c.669 §1; 1989 c.518 §1]

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]

**107.111 When parents equally responsible for funeral expenses of child.** Whenever a court imposes upon the parents of a person under 18 years of age a shared obligation to support the person financially, the parents, unless the order creating the obligation of support specifically provides otherwise, shall be equally responsible financially for funeral expenses resulting from the death of the person before reaching the age of 18 years. [1983 c.728 §8]

Note: 107.111 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 Preface to Oregon Revised Statutes for further explanation.

**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. However, any judgment or award provided for in the decree shall become effective as a lien upon real property only upon docketing in the county where the decree is originally entered as provided in ORS 18.320 and 18.360. In all other counties, the judgment or award shall become a lien only upon recording a certified copy of the judgment or lien record abstract or a certified copy of the decree in the County Clerk Lien Record. The decree shall revoke a will pursuant to the provisions of ORS 112.315, but the decree shall not be effective insofar as it affects the marital status of the parties until the expiration of 30 days from the date of the decree.

(2) In case either party dies within the 30-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.

(3)(a) The Court of Appeals or Supreme Court shall continue to have jurisdiction of 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 30-day period specified in subsection (1) of this section without any further action by either party. However, at any time within the 30-day period, the court may set aside the decree upon motion of both parties. Reversal or modification of the decree on appeal does not restore the marriage relationship.

(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 30-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; 1981 c.537 §2; 1987 c.586 §26; 1993 c.149 §1]

107.120 [Repealed by 1971 c.280 §28]

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

**107.126 Decrees, judgments and orders as liens; duration.** (1) Except as otherwise provided in ORS 18.360 (2), no order, judgment or decree for the future payment of money in gross or in installments, 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 docketing of such order, judgment or decree unless it is renewed as provided in ORS 18.360 (1).

(2) Notwithstanding subsection (1) of this section, any child support judgment subject to ORS 25.700 (1) to (4) that is entered and docketed on or after January 1, 1994, shall continue to be a lien on real property for a period of 25 years from the date the child support judgment is entered and docketed. [1971 c.280 §15, 1993 c.716 §4; 1993 c.763 §7]

**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, and after notice to the Support Enforcement Division when required pursuant to subsection (8) of this section, 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, visitation, support and welfare of the minor children and the children attending school, including any provisions for health or life insurance, or 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 decree was given, were not residents of the state, or were unknown to the court or were erroneously omitted from the decree;

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

(d) Notwithstanding section 84 (2), chapter 827, Oregon Laws 1973, and 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 so much of the decree as may provide for a property award based on the enhanced earning capacity of a party. 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) In a proceeding under this section to reconsider the spousal or child support provisions of the decree, 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.

(b) If the decree 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.

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

(a) The court 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.

(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.

(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.

(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.

(4) 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 order.

(5) Any termination or reduction of spousal support granted because of a change of circumstances shall not be retroactive, but shall be prospective from the date such order is issued by the court, unless the party opposing the motion has caused unreasonable delay in the proceedings, in which case the termination or reduction may be ordered effective retroactive to the date the motion for modification was filed or to any date thereafter.

(6) The decree is a final judgment as to any installment 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. However, the court may allow a credit against child support arrearages for periods of time, excluding reasonable visitation unless otherwise provided by order or decree, during which the obligated parent has physical custody of the child with the knowledge and consent of the custodial parent.

(7) 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.

(8) Whenever a motion to establish, modify or terminate child support or satisfy or alter support arrearages is filed and public assistance, as defined in ORS 416.400, is being granted to or on behalf of a dependent child or children, natural or adopted, of the parties, a true copy of the motion 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 motion is filed.

(9) The courts of Oregon, having once acquired personal and subject matter jurisdiction over a party in a domestic relations action, retain such jurisdiction regardless of any change of domicile. [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.865 §3; 1989 c.545 §1; 1991 c.888 §2; 1993 c.315 §2]

**107.136 Reinstatement of terminated spousal support.** Whenever spousal support has been terminated under ORS 107.135, the court has the power to order reinstatement of the support obligation if:

(1) The basis for the termination ceases to exist; and

(2) The reinstatement motion is filed within the period of time support would have been paid had the support obligation not been terminated. [1991 c.888 §1]

Note: 107.136 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 Preface to Oregon Revised Statutes for further explanation

**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;

(c) The desirability of continuing an existing relationship; and

(d) The abuse of one parent by the other.

(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) 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.

(4) No preference in custody shall be given to the mother over the father for the sole reason that she is the mother, nor shall any preference be given to the father over the mother for the sole reason that he is the father [1975 c.722 §2; 1987 c.795 §14]

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 Preface to Oregon Revised Statutes for further explanation

**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 July 31, 1981, hereby is declared valid, and any child conceived or born of the marriage is legitimate, although:

(a) The marriage was made before the expiration of 60 days from the date of a de-

creed declaring a previous marriage of one or both of the contracting parties void or dissolved; or

(b) The marriage was made absent the entry of a decree declaring a previous marriage of one or both of the contracting parties void or dissolved, where a final trial or hearing had been held regarding the annulment or dissolution of the previous marriage and a decision voiding or dissolving the marriage had been rendered but not entered therein.

(3) Any marriage in all other respects legal and regular, made prior to January 1, 1965, hereby is declared valid, and any child conceived or born of the marriage is legitimate, although:

(a) The marriage was made 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; or

(b) The marriage was made absent the entry of a decree declaring a previous marriage of one or both of the contracting parties void or dissolved, where a final trial or hearing had been held regarding the annulment or dissolution of the previous marriage and a decision voiding or dissolving the marriage had been rendered but not entered therein.

(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; 1981 c.537 §1]

**107.149 Policy.** It is the policy of this state to assure minor children of frequent and continuing contact with parents who have shown the ability to act in the best interest of the child and to encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or dissolved their marriage. [1987 c.795 §2]

**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]

**107.154 Effect of order granting sole custody of minor child to one parent on authority of other parent.** Unless otherwise ordered by the court, an order of sole custody to one parent shall not deprive the other parent of the following authority:

(1) To inspect and receive school records and to consult with school staff concerning the child's welfare and education, to the same extent as the custodial parent may in-

spect and receive such records and consult with such staff;

(2) To inspect and receive governmental agency and law enforcement records concerning the child to the same extent as the custodial parent may inspect and receive such records;

(3) To consult with any person who may provide care or treatment for the child and to inspect and receive the child's medical, dental and psychological records, to the same extent as the custodial parent may consult with such person and inspect and receive such records;

(4) To authorize emergency medical, dental, psychological, psychiatric or other health care for the child if the custodial parent is, for practical purposes, unavailable; or

(5) To apply to be the child's conservator, guardian ad litem or both. [1987 c.795 §3]

**107.159 Effect of order granting visitation rights or restricting ability of custodial parent to change residence.** In the case of a court order or decree granting custody of a minor child and visitation rights relating to the child, the court may include in its order a provision requiring that neither parent shall move to a residence more than 60 miles further distant from the other parent without giving the other parent reasonable notice of the change of residence and providing a copy of such notice to the court. [1987 c.795 §4]

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

**107.164 When parents to notify each other of emergency circumstances or substantial change in health of child.** Unless otherwise ordered by the court, both parents shall have a continuing responsibility, once a custody or protective order concerning the child is issued, to provide addresses and contact telephone numbers to the other parent and to immediately notify the other parent of any emergency circumstances or substantial changes in the health of the child. [1987 c.795 §5]

**107.169 Joint custody of minor child; order; conditions; modification.** (1) As used in this chapter, "joint custody" means an arrangement by which parents share rights and responsibilities for major decisions concerning the child, including, but not limited to, the child's residence, education, health care and religious training. An order providing for joint custody may specify one home as the primary residence of the child and designate one parent to have sole power to make decisions about specific matters while both parents retain equal rights and responsibilities for other decisions.

(2) The existence of an order of joint custody shall not, by itself, determine the responsibility of each parent to provide for the support of the child.

(3) The court shall not order joint custody, unless both parents agree to the terms and conditions of the order.

(4) When parents have agreed to joint custody in an order or a decree, the court may not overrule that agreement by ordering sole custody to one parent.

(5) Modification of a joint custody order shall require showing of changed circumstances and a showing that the modification is in the best interests of the child such as would support modification of a sole custody order. Inability or unwillingness to continue to cooperate shall constitute a change of circumstances sufficient to modify a joint custody order. [1987 c.795 §6]

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

**107.174 Modification of order for visitation of minor child; stipulation; exception for nonresident child.** (1) Except as otherwise provided in this subsection, the court shall order modification under ORS 107.135 of so much of a decree as relates to the visitation of a minor child, if the parents submit to the court a notarized stipulation signed by both of the parents and requesting such modification together with a form of order. The content and form of such stipulation and order shall be as prescribed by the State Court Administrator. At its discretion, the court may order the matter set for a hearing and require the parties to appear personally before the court.

(2) 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. [1987 c.795 §12]

**107.179 Request for joint custody of minor children; mediation proceeding; exception; privileged communications.** (1) When either party to a child custody issue, other than one involving temporary custody, whether the issue arises from a case of marital annulment, dissolution or separation, or from a determination of paternity, requests the court to grant joint custody of the minor children of the parties under ORS 107.105, the court, if the other party objects to the request for joint custody, shall proceed under this section. The request under this subsection must be made, in the petition or the response, or otherwise not less than 30 days before the date of trial in the case, except for good cause shown. The court in such cir-

cumstances, except as provided in subsection (3) of this section, shall direct the parties to participate in mediation in an effort to resolve their differences concerning custody. The court may order such participation in mediation within a mediation program established by the court or as conducted by any mediator approved by the court. Unless the court or the county provides a mediation service available to the parties, the court may order that the costs of the mediation be paid by one or both of the parties, as the court finds equitable upon consideration of the relative ability of the parties to pay those costs. If, after 90 days, the parties do not arrive at a resolution of their differences, the court shall proceed to determine custody.

(2) At its discretion, the court may

(a) Order mediation under this section prior to trial and postpone trial of the case pending the outcome of the mediation, in which case the issue of custody shall be tried only upon failure to resolve the issue of custody by mediation;

(b) Order mediation under this section prior to trial and proceed to try the case as to issues other than custody while the parties are at the same time engaged in the mediation, in which case the issue of custody shall be tried separately upon failure to resolve the issue of custody by mediation; or

(c) Complete the trial of the case on all issues and order mediation under this section upon the conclusion of the trial, postponing entry of the decree pending outcome of the mediation, in which case the court may enter a temporary decree as to issues other than custody upon completion of the trial or may postpone entry of any decree until the expiration of the mediation period or agreement of the parties as to custody.

(3) If either party objects to mediation on the grounds that to participate in mediation would subject the party to severe emotional distress and moves the court to waive mediation, the court shall hold a hearing on the motion. If the court finds it likely that participation in mediation will subject the party to severe emotional distress, the court may waive the requirement of mediation.

(4) Communications made by or to a mediator or between parties as a part of mediation ordered under this section are privileged and are not admissible as evidence in any civil or criminal proceeding. [1987 c.795 §13]

107.180 [1959 c.634 §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 installments 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. The petition shall not be granted if spousal support was granted in the decree in lieu of a share of property in order to provide the other spouse with a tax benefit. [1975 c.500 §2; 1983 c.728 §7]

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 the gainful employment of the child, 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 children; physical, psychological, psychiatric or mental health examinations; counsel for children.** (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. Costs of the investigation may be charged against either or both of the parties or as a cost in the proceedings but shall not be charged against funds appropriated for indigent defense services.

(2) The court, on its own motion or on the motion of either party, may order an independent physical, psychological, psychiatric or mental health examination of either party or the children and may require either or both parties and the children to appear and to testify as witnesses during this investigation and to be interviewed, evaluated and tested by an expert. In the event the parties are unable to stipulate to the selection of the psychologist, psychiatrist or registered clinical social worker to conduct the investigation, the court shall choose such expert from a list of three submitted to the court by each party with a statement of the experts' qualifications and fees for the investigation. The court shall direct either or both of the parties to pay for the investigation in the absence of an agreement between the parties as to the responsibility for payment but shall not direct that the expenses be charged against funds appropriated for indigent defense services. If both parties are directed to pay, the court may determine the amount that each party will pay based on financial ability.

(3) The court, on its own motion or the motion of either party, may appoint counsel for the children. However, if requested to do so by one or more of the children, the court shall appoint counsel for the child or 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 but shall not be charged against

funds appropriated for indigent defense services.

(4) Prior to the entry of an order, the court on its own motion or upon the motion of a party may take testimony from or confer with the child or children of the marriage and may exclude from the conference the parents and other persons if the court finds that such action would be likely to be in the best interests of the child or children. However, the court shall permit an attorney for each party to attend the conference and question the child, and the conference shall be reported. [1971 c.280 §3; 1973 c.502 §11; 1981 c.775 §5, 1981 a.s. c.3 §34; 1983 c.369 §1, 1983 c.386 §1; 1989 c.168 §1; 1989 c.1084 §1]

**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 ORS 418.035 (2), 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 107.095, 108.110 and 108.120, and in any contempt proceeding brought to compel compliance with any order or decree in any suit for marital annulment, dissolution or separation, the court may make an order awarding to a party, or directly to the party's attorney, a sum of money determined to be reasonable as an attorney fee at trial and on appeal therein. When a district attorney initiates or prosecutes a proceeding pursuant to ORS 33.015 to 33.155 for enforcement of a restraining order issued under ORS 107.716 or 107.718 or for enforcement of a support order, the court may order a reasonable attorney fee to be paid by the respondent to the county in which the district attorney holds office. 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. A judgment so ordered or decreed is enforceable by the party or attorney in whose favor the order is issued against property of the other party or against any property held jointly or in common between the parties. [1971 c.280 §18; 1981 c.775 §6; 1981 c.781 §2, 1981 c.897 §32; 1983 c.728 §4, 1987 c.331 §2, 1991 c.724 §21]

**107.449 Vacation or modification of decree; transfer of matter to auxiliary circuit court for hearing.** (1) Upon motion of a party to a proceeding under ORS 107.135 (1) that is not otherwise covered under the provisions of ORS 25.100 (1), based upon convenience of the parties, the court that has entered the original judgment or decree may order that the matter be transferred to an auxiliary circuit court where either party resides for the purpose of hearing the matter.

(2) Upon entry of an order under this section and payment by the moving party of the copying and certification costs, the clerk of the court that ordered the transfer shall transmit certified copies of the files, records and prepared transcripts of testimony in the original proceeding to the clerk of the court receiving the matter. Upon receipt of such certified copies, the circuit court of the county to which such certified copies have been transmitted shall have jurisdiction the same as if it were the court that made and entered the original order or decree.

(3) The only court having jurisdiction to modify any provision of the original order or

decree is the court having original jurisdiction of the cause in which such order or decree was entered or the circuit court of the county in which either party resides if that court has received the certified copies referred to in subsection (2) of this section. The provisions of ORS 25.100 (2) to (4) shall apply to all records maintained and orders issued in the auxiliary proceeding. [1993 c.548 §1]

**Note:** 107.449 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 Preface to Oregon Revised Statutes for further explanation.

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]

### SUMMARY DISSOLUTION PROCEDURE

**107.485 Conditions for summary dissolution procedure.** A marriage may be dissolved by the summary dissolution procedure specified in ORS 107.485 to 107.500 when all of the following conditions exist at the time the proceeding is commenced:

(1) The jurisdictional requirements of ORS 107.025 and 107.075 are met.

(2) There are no minor children born to the parties or adopted by the parties during the marriage. There are no children over age 18 attending school either born to the parties or adopted by the parties during the marriage. There are no minor children born to or adopted by the parties prior to the marriage. The wife is not now pregnant.

(3) The marriage is not more than 10 years in duration.

(4) Neither party has any interest in real property wherever situated.

(5) There are no unpaid obligations in excess of \$15,000 incurred by either or both of the parties from the date of the marriage.

(6) The total aggregate fair market value of personal property assets in which either of the parties has any interest, excluding all encumbrances, is less than \$30,000.

(7) The petitioner waives any right to spousal support.

(8) The petitioner waives any rights to pendente lite orders except those pursuant to ORS 107.700 to 107.730.

(9) The petitioner knows of no other pending domestic relations suits involving the marriage in this or any other state. [1983 c.692 §1, 1985 c.610 §12]

**Note:** 107.485 to 107.500 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 107 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**107.490 Commencement of proceeding; petition content; court authority.** A proceeding for summary dissolution of the marriage shall be commenced by filing in the circuit court a petition in the form prescribed by ORS 107.500. The petition shall be signed by the petitioner and shall state that as of the date of the filing of the petition each and every condition set forth in ORS

107.485 has been met. The court, upon its own motion, may require a showing by appearance or affidavit of the petitioner. [1983 c.692 §2]

Note: See note under 107.485.

107.500 Forms. Each circuit court shall make available with appropriate forms an instructional brochure prescribed by the State Court Administrator and describing the procedures set forth in ORS 107.485 to 107.500. The content of the forms used pursuant to ORS 107.485 to 107.500 shall be substantially as follows:

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF \_\_\_\_\_

In the Matter of )
the Marriage of )
) No. \_\_\_\_\_
)
Petitioner, ) PETITION FOR
) SUMMARY
) DISSOLUTION
and ) OF MARRIAGE
)
Respondent. )

1. ( \_\_\_\_\_, Petitioner,) ( \_\_\_\_\_, Respondent,) has been a resident of Oregon continuously for the past six months before filing this petition.

2. Statistical Facts:

a Date of marriage:

b. Place of marriage:

c. Wife's address:

d. Wife's maiden name:

e Wife's former legal names:

f. Wife's age:

g. Wife's social security number:

h. Husband's address:

i. Husband's former legal names:

j. Husband's age:

k. Husband's social security number:

3. My spouse and I have not been married more than 10 years.

4. Petitioner does not know of any pending (not yet decided by a judge) domestic relations suits involving this marriage in this or any other state.

5. There are no minor children born to the parties or born during the marriage. There are no adopted minor children. The wife is not now pregnant.

6. Petitioner requests a dissolution because irreconcilable differences between the parties have caused the irremediable breakdown of the marriage.

7. The personal property of the parties is not worth more than \$30,000. Petitioner requests that the Court divide the property as follows:

(a) The wife should be awarded the following personal property:

Additional pages have been attached and labeled "7a. continued."

(b) The husband should be awarded the following personal property:

Additional pages have been attached and labeled "7b. continued."

(c) The husband and wife should each sign any documents necessary to remove his or her name as owner of personal property awarded to the other party.

8. Neither the husband nor the wife own any real property.

9. The debts incurred by the husband and wife together or separately from the date of the marriage are not greater than \$15,000.

Petitioner requests the following division of debts:

(a) The wife be required to pay the debts listed below. The husband is awarded a judgment against the wife in the sum of \$\_\_\_\_\_ The wife can satisfy this judgment by paying off the following debts:

Table with 2 columns: Name of Creditor, Amount Owed

(b) The husband be required to pay the debts listed below. The wife is awarded a judgment against the husband in the sum of \$\_\_\_\_\_ The husband can satisfy the judgment by paying off the following debts:

Table with 2 columns: Name of Creditor, Amount Owed

10. I relinquish all rights I may have to spousal support and waive any right to pendente lite orders (temporary orders) except those pursuant to ORS 107.700 to 107.730 (the Abuse Prevention Act).

(Complete only if petitioner is paying fees and wants reimbursement from spouse or if fees are being deferred for the petitioner.)

11. (a) If petitioner has paid court costs and service fees, petitioner requests that costs and fees paid by petitioner be repaid by respondent spouse, \_\_\_\_\_, and that a judgment in the amount of such costs and fees be entered in favor of petitioner, \_\_\_\_\_, in the amount of \$\_\_\_\_\_

(b) If fees are being deferred for petitioner:

Petitioner requests that judgment be entered against

(\_\_\_\_\_, Petitioner) (\_\_\_\_\_, Respondent) in favor of the state in the amount of \$\_\_\_\_\_

12. Petitioner requests that: wife's legal name be restored to \_\_\_\_\_ husband's legal name be restored to \_\_\_\_\_

(Petitioner's signature) Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF \_\_\_\_\_ In the Matter of the Marriage of \_\_\_\_\_ ) No. \_\_\_\_\_ ) Petitioner, ) SUMMONS FOR SUMMARY ) DISSOLUTION ) Marriage Dissolution Suit ) and ) ) Respondent. ) TO: Name of Respondent \_\_\_\_\_ Address of Respondent \_\_\_\_\_, Oregon

YOU HAVE BEEN SUED. The court may decide against you without your being heard unless you respond within 30 days of the day you received these papers. Read the information below.

NOTICE TO RESPONDENT: READ THESE PAPERS CAREFULLY

Your spouse has filed a petition with the court to end your marriage and asking to divide your property and debts, if any. You must "appear" in this case or the court will grant your spouse's requests. To "appear," you must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the Court Clerk or Administrator at: (location) \_\_\_\_\_ within 30 days of the day you received these papers, along with the required filing fee. The "motion" or "answer" must be in proper form and you must show that your spouse has been served with a copy of it.

Name of Petitioner \_\_\_\_\_ Address of Petitioner \_\_\_\_\_ City/State/Zip Code \_\_\_\_\_

Important Information about Respondent (A recent photo may be attached in addition to the requested information.) Height: \_\_\_\_\_ Weight: \_\_\_\_\_ Race: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Automobile license number and description: \_\_\_\_\_ Other identifying information: \_\_\_\_\_ Best time and place to locate: \_\_\_\_\_



and ) AFFIDAVIT, MOTION  
 ) AND ORDER FOR  
 ) DEFAULT DECREE  
 ) OF DISSOLUTION  
 )  
 Respondent. )  
 )  
 STATE OF OREGON )  
 ) ss.  
 County of )

I, \_\_\_\_\_,  
 swear/affirm under oath that:

I am the Petitioner. The Respondent is not now nor was at the time of the commencement of this suit in the military service of the United States; nor is the Respondent a legally mentally incapacitated person; nor is the Respondent under 18 years of age.

The Respondent was served with Summons and Petition for Dissolution on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in \_\_\_\_\_ County, Oregon, and has failed to answer or appear

\_\_\_\_\_  
 Petitioner

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
 NOTARY PUBLIC FOR OREGON  
 My Commission expires \_\_\_\_\_

Petitioner moves the Court for an Order entering the default of Respondent.

\_\_\_\_\_  
 Petitioner

\_\_\_\_\_  
 Address of Petitioner

\_\_\_\_\_  
 City, State Zip

ORDER

IT IS SO ORDERED.

DATED: This \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
 CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF  
 THE STATE OF OREGON FOR  
 THE COUNTY OF \_\_\_\_\_

In the Matter of )  
 the Marriage of )  
 ) No. \_\_\_\_\_  
 )  
 Petitioner, ) DECREE OF SUMMARY  
 ) DISSOLUTION  
 )  
 and )  
 )  
 Respondent. )

Statistical Facts:

a. Date of marriage:

b. Place of marriage:

c. Wife's address:

d. Wife's maiden name:

e. Wife's former legal names:

f. Wife's age:

g. Wife's social security number:

h. Husband's address:

i. Husband's former legal names:

j. Husband's age:

k. Husband's social security number:

This matter came before the Court for default. Petitioner appeared (in person) (by affidavit), and Respondent did not appear. THE COURT HAS BEEN FULLY ADVISED, AND THEREFORE IT IS HEREBY DECREED THAT:

1. Dissolution: This marriage is dissolved and shall terminate on \_\_\_\_\_

2. Prior Wills: Any will previously executed by either spouse with provisions in favor of the other spouse is revoked with respect to those provisions, unless the will expresses a different intent.

3. Division of Property: (a) The wife is awarded and shall own by herself the following personal property:

Additional pages have been attached as C-1.

(b) The husband is awarded and shall own by himself the following personal property:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional pages have been attached as C-2.

(c) Husband and wife each shall sign any documents necessary to remove his or her name as owner of personal property awarded to the other. If either fails to sign the necessary documents, a certified copy of the Decree shall serve as a conveyance of the property.

4. Payment of Debts: (a) The wife shall pay the debts listed below. The husband is awarded a judgment against the wife in the sum of \$\_\_\_\_\_. The wife can satisfy this judgment by paying the following debts:

<u>Name of Creditor</u>	<u>Amount Owed</u>
_____	_____
_____	_____
_____	_____

Additional pages have been added as D-1.

(b) The husband shall pay the debts listed below. The wife is awarded a judgment against the husband in the sum of \$\_\_\_\_\_. The husband can satisfy the judgment by paying the following debts:

<u>Name of Creditor</u>	<u>Amount Owed</u>
_____	_____
_____	_____
_____	_____

Additional pages have been added as D-2.

5. The wife shall have her former legal name restored. The restored name is \_\_\_\_\_

The husband shall have his former legal name restored. The restored name is \_\_\_\_\_

6. A judgment against (the husband) (the wife) for court costs and service fees in the amount of \$\_\_\_\_\_ is awarded to (the husband) (the wife) (this state if fees were waived or deferred).

DATED This \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

CIRCUIT COURT JUDGE

[1983 c.692 §3, 1985 c.610 §13; 1993 c.448 §5]

Note: See note under 107.485.

CONCILIATION SERVICES

107.510 Definitions for ORS 107.510 to 107.610. 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, with the prior approval of the governing body of each county involved, 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 ex-



penses of providing conciliation services may be paid by the county or as may be agreed upon between the counties involved. Personnel performing conciliation services are not state employees, and their compensation and expenses shall not be paid by the state. [1963 c.434 §3; 1965 c.625 §2; 1981 s.s. c.3 §35]

**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 concil-

iation 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 attendance 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. A spouse or any other individual engaged in conciliation proceedings shall not be examined in any civil or criminal action as to such communications. Exceptions to testimonial privilege otherwise applicable under ORS 40.225 to 40.295 do not apply to communications made confidential under this subsection.

(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 counsel upon written authorization by a judge of the court. [1963 c.434 §10; 1965 c.625 §6; 1991 c.892 §88]

**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 in ORS 205.320 (5) 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 and mediation services under ORS 107.755 to

107.785. 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; 1983 c.671 §7; 1991 c.230 §33]

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 Preface to Oregon Revised Statutes for further explanation.

**FAMILY ABUSE PREVENTION**

**107.700 Short title.** ORS 107.700 to 107.730 shall be known and may be cited as the "Abuse Prevention Act." [1977 c.845 §4]

**107.705 Definitions for ORS 107.700 to 107.730.** As used in ORS 107.700 to 107.730, 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.

(c) Causing another to engage in involuntary sexual relations by force or threat of force.

(2) "Family or household members" means any of the following:

(a) Spouses.

(b) Former spouses.

(c) Adult persons related by blood or marriage.

(d) Persons who are cohabiting or who have cohabited with each other.

(e) Persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing by one of them of a petition under ORS 107.710.

(f) Unmarried parents of a minor child. [1977 c.845 §5; 1979 c.161 §1; 1981 c.780 §1; 1985 c.629 §1; 1987 c.331 §3; 1987 c.805 §1; 1993 c.643 §1]

**107.710 Petition to circuit court for relief.** (1) Any person who has been the victim of abuse within the preceding 180 days

may petition the circuit court for relief under ORS 107.700 to 107.730, if the person is in immediate and present danger of further abuse from the abuser. The person may seek relief by filing a petition with the circuit court alleging that the person is in immediate and present danger of abuse from the respondent, that the person has been the victim of abuse committed by the respondent within the 180 days preceding the filing of the petition and particularly describing the nature of the abuse and the dates thereof. The abuse must have occurred not more than 180 days before the filing of the petition. Allegations in the petition shall be made under oath or affirmation. The circuit court shall have jurisdiction over all proceedings under ORS 107.700 to 107.730.

(2) A person's right to petition for relief under ORS 107.700 to 107.730 shall not be affected by the fact that the person has left the residence or household to avoid abuse.

(3) A petition filed under ORS 107.700 to 107.730 shall disclose the existence of any custody or family abuse prevention act proceedings, or any marital annulment, dissolution or separation proceedings, or any filiation proceeding, pending between the parties, and the existence of any other custody order affecting the children of the parties.

(4) When the petitioner requests custody of any child, the petition shall disclose:

(a) The county and state where the child has resided for six months immediately prior to the filing of the petition;

(b) The party or other responsible person with whom the child is presently residing; and

(c) The party or other responsible person with whom the child has resided for the six months immediately prior to the filing of the petition.

(5) For purposes of computing the 180-day period in this section and ORS 107.718, any time during which the respondent is incarcerated or has a principal residence more than 100 miles from the principal residence of the petitioner shall not be counted as part of the 180-day period. [1977 c.845 §6; 1981 c.780 §2, 1985 c.629 §2; 1987 c.805 §2; 1993 c.375 §1]

107.715 [1977 c.845 §7; repealed by 1981 c.780 §5 (107.716 enacted in lieu of 107.715)]

**107.716 Hearing; additional relief; effect on title to real property; no undertaking required.** (1) If the respondent requests a hearing pursuant to ORS 107.718 (6), the court shall hold the hearing within 21 days following the request, and may cancel or change any order issued under ORS 107.718.

(2) In addition to the relief granted under ORS 107.718, the court, in a hearing held pursuant to subsection (1) of this section, may:

(a) Award temporary custody of or establish temporary visitation rights with regard to the minor children of the parties;

(b) Require either party to move from any family residence whose title or right to occupy such premises is held jointly by the parties; and

(c) Assess against either party a reasonable attorney fee and such costs as may be incurred in the hearing.

(3) The court shall have the further power to approve any consent agreement to bring about a cessation of abuse of the parties. Any order or consent agreement made under this section may be amended at any time and shall continue in effect for a period of one year from the date of the order issued under ORS 107.718, or until superseded as provided in ORS 107.722.

(4) No order or agreement made under ORS 107.705 to 107.720, 133.310 and 133.381 shall in any manner affect title to any real property.

(5) No undertaking shall be required in any proceeding under ORS 107.700 to 107.730.

(6) Any proceeding under ORS 107.700 to 107.730 shall be in addition to any other available civil or criminal remedies. [1981 c.780 §6 (enacted in lieu of 107.715); 1985 c.629 §3; 1987 c.805 §3]

**107.718 Petition for relief when petitioner in danger of abuse.** (1) When a person files a petition under ORS 107.710, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a showing that the petitioner has been the victim of abuse committed by the respondent within 180 days preceding the filing of the petition and that there is an immediate and present danger of further abuse to the petitioner, the court shall, if requested, order, for a period of one year or until the order is withdrawn or amended, or until the order is superseded as provided in ORS 107.722, whichever is sooner:

(a) That temporary custody of the minor children of the petitioner or of the parties be awarded to the petitioner, or that temporary custody of the minor children of the respondent or of the parties be awarded to the respondent, subject to reasonable visitation rights of the noncustodial parent, which the court shall order, unless such visitation is not in the best interest of the child;

(b) That the respondent be required to move from the petitioner's residence, if in

the sole name of the petitioner or if it is jointly owned or rented by the petitioner and the respondent, or if the parties are married to each other;

(c) That a peace officer accompany the party who is leaving or has left the parties' residence to remove essential personal effects of the party or the party's children, or both, including but not limited to clothing, diapers, medications, social security cards, birth certificates and identification;

(d) That the respondent be restrained from molesting, interfering with or menacing the petitioner;

(e) That the respondent be restrained from molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner; or

(f) That the respondent be restrained from entering on any premises when it appears to the court that such restraint is necessary to prevent the respondent from molesting, interfering with or menacing the petitioner or with the minor children whose custody is awarded to the petitioner.

(2) Immediate and present danger under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with additional bodily harm.

(3) An instruction brochure shall be available from the clerk of the circuit court explaining the rights set forth under ORS 107.700 to 107.730. The petition and order forms shall be available from the clerk of the court and shall be in substantially the following form.

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_, ) NO. \_\_\_\_\_
Petitioner, )
) PETITION FOR
and ) RESTRAINING
) ORDER TO
Respondent. ) PREVENT ABUSE
)
)

(PETITIONER MUST COMPLETE THIS FORM. FAILURE TO PROVIDE COMPLETE AND TRUTHFUL INFORMATION AS INDICATED MAY BE PUNISHABLE AS CONTEMPT OF COURT UNDER ORS 33.015 to 33.155 AND MAY RESULT IN A DENIAL OF RELIEF UNDER THIS PETITION.)

Petitioner alleges:

I.

I am a resident of \_\_\_\_\_ County, Oregon, or respondent is a resident of \_\_\_\_\_ County, Oregon.

II.

- I was married to respondent on \_\_\_\_\_, 19\_\_\_\_
- I was divorced from respondent on \_\_\_\_\_
- I have been living with respondent since \_\_\_\_\_, 19\_\_\_\_
- I lived with respondent from \_\_\_\_\_, 19\_\_\_\_ to \_\_\_\_\_, 19\_\_\_\_
- I have been involved in a sexually intimate relationship with respondent within the previous two years.
- I am related to respondent by blood or marriage. Respondent is an adult and is my \_\_\_\_\_ (relationship).

III.

I am a victim of abuse committed by respondent within the 180 days preceding the filing of this petition, in that respondent has:

- caused me bodily injury.
- attempted to cause me bodily injury.
- placed me in fear of imminent serious bodily injury.
- caused me to engage in involuntary sexual relations by force, threat of force.

During the 180 days after the abuse:

- the respondent was incarcerated from \_\_\_\_\_, 19\_\_\_\_ to \_\_\_\_\_, 19\_\_\_\_
- the respondent lived more than 100 miles from my home from \_\_\_\_\_, 19\_\_\_\_ to \_\_\_\_\_, 19\_\_\_\_

(Any period of time after the abuse occurred during which the respondent was incarcerated or lived more than 100 miles from your home does not count in computing the 180-day time period.)

IV.

The abuse I am complaining about happened on \_\_\_\_\_ (date) at \_\_\_\_\_ (location). Respondent injured or threatened to injure me in the following way:

\_\_\_\_\_
\_\_\_\_\_

V.

I am in immediate and present danger of further abuse, because \_\_\_\_\_

VI.

- There (is — or is not — ) a proceeding for marital annulment, dissolution or separation, or a filiation (paternity) proceeding, pending between me and the respondent. It is

filed in \_\_\_\_\_ (county and state).

- There (is — or is not —) another custody or family abuse prevention act proceeding pending between me and respondent. It is filed in \_\_\_\_\_ (county and state).
- There (is — or is not —) another custody order now in effect as to our children.
- I am requesting custody of my child(ren). For the last six months the child(ren) have lived:

In the following county and state:

\_\_\_\_\_ with the following person(s).

The child(ren) are presently residing with the following person(s): \_\_\_\_\_

VII.

Petitioner should be granted the following relief:

- Respondent should be restrained from, in any manner, molesting, interfering with or menacing me.
- Respondent should be restrained from, in any manner, molesting, interfering with or menacing the minor child(ren) in my custody: (name children)

- Respondent should be required to move from the petitioner's residence, or the parties' marital residence and should not return to this residence, located at \_\_\_\_\_, except with a peace officer to remove the following essential personal effects of the respondent or if the respondent is the custodian, the following essential personal effects of the respondent's children, or both: Clothing, diapers, medications, social security cards, birth certificates and identification.

- Respondent should be restrained from entering my:
  - home
  - school
  - business
  - place of employment

- Petitioner is permitted to return to the parties' residence with a peace officer to remove the following essential personal effects of petitioner or if the petitioner is the custodian, the following essential personal effects of the petitioner's children, or both:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

— Petitioner should be awarded custody of the following minor children of the parties, who are now residing with petitioner, or who are the petitioner's children, subject to reasonable visitation rights of the respondent, unless such visitation is not in the best interest of the child:

\_\_\_\_\_

\_\_\_\_\_

— Respondent should be awarded custody of the following minor children of the parties, who are now residing with respondent, or who are the respondent's children, subject to reasonable visitation rights of the petitioner, unless such visitation is not in the best interest of the child:

\_\_\_\_\_

\_\_\_\_\_

WHEREFORE, petitioner prays for the relief petitioned for in Paragraph VI and such other relief as the Court thinks just.

\_\_\_\_\_ Petitioner  
 STATE OF OREGON            )  
   ) ss.  
 County of \_\_\_\_\_ )

I, \_\_\_\_\_, being first duly sworn, depose and say that I am the petitioner herein; that the allegations set forth in the foregoing petition are true and correct as I verily believe.

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

NOTARY PUBLIC FOR OREGON  
My Commission Expires: \_\_\_\_\_

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
 Petitioner,                    )  
   ) NO. \_\_\_\_\_  
   ) RESTRaining ORDER  
 and                                )  
   )  
 \_\_\_\_\_  
 Respondent.                    )

This matter coming before this Court on the petition of petitioner,  
 IT IS HEREBY:  
 — ORDERED that respondent is restrained (prohibited) from, in any

manner, molesting, interfering with or menacing petitioner;

— ORDERED that respondent is restrained (prohibited) from, in any manner, molesting, interfering with or menacing the minor child(ren) in petitioner's custody:

- \_\_\_\_\_;
- ORDERED that respondent is restrained (prohibited) from entering petitioner's:
- home
- school
- business
- place of employment

— ORDERED that respondent shall move from the residence and shall not return to this residence located at \_\_\_\_\_ except with a peace officer in order to remove the following essential personal effects of the respondent or if the respondent is the legal custodian, the following essential personal effects of the respondent's children, or both: Clothing, diapers, medications, social security cards, birth certificates and identification.

— ORDERED that a peace officer shall accompany the petitioner to the parties' residence in order to remove the following essential personal effects of petitioner or if the petitioner is the legal custodian, the following essential personal effects of the petitioner's children, or both:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

— ORDERED that petitioner shall be awarded temporary custody of the following minor children of the parties or who are not respondent's children:

\_\_\_\_\_  
\_\_\_\_\_

— ORDERED that with respect to the minor children of the parties in the temporary custody of the petitioner, the respondent is awarded the following temporary visitation rights (The court may enter an order denying visitation rights if the court finds that visitation with respondent is not in the best interest of the child):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

— ORDERED that respondent shall be awarded temporary custody of the following minor children of the parties, or who are not petitioner's children:

\_\_\_\_\_

— ORDERED that with respect to the minor children of the parties in the temporary custody of the respondent, the petitioner is awarded the following temporary visitation rights (The court may enter an order denying visitation rights if the court finds that visitation with petitioner is not in the best interest of the child):

\_\_\_\_\_  
\_\_\_\_\_

— ORDERED that no further service is necessary because respondent appeared in person before the court.

— ORDERED that the SECURITY AMOUNT FOR VIOLATION OF ANY PROVISION OF THIS ORDER IS \$5,000 UNLESS OTHERWISE SPECIFIED;

— ORDERED that the above provisions of this restraining order are in effect for a period of one year.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

CIRCUIT COURT JUDGE TO THE RESPONDENT: THIS ORDER BECOMES EFFECTIVE IMMEDIATELY. IF YOU WISH TO CONTEST THE CONTINUATION OF THIS ORDER YOU MUST WRITE TO \_\_\_\_\_ AND REQUEST A HEARING. YOUR REQUEST MUST BE MADE WITHIN 30 DAYS AFTER YOU RECEIVE THESE PAPERS, EXCEPT THAT A REQUEST RELATING TO CHILD CUSTODY MAY BE MADE AT ANY TIME. YOU MUST INCLUDE YOUR ADDRESS AND TELEPHONE NUMBER WITH YOUR REQUEST. AT A HEARING A JUDGE WILL DECIDE WHETHER THE ORDER SHOULD BE CANCELED OR CHANGED. UNTIL SUCH A HEARING, THIS ORDER IS IN EFFECT. VIOLATION OF THIS ORDER CONSTITUTES CONTEMPT OF COURT, PUNISHABLE BY A FINE OF UP TO \$300, A JAIL TERM OF UP TO SIX MONTHS, OR BOTH.

RELEVANT DATA:

- Respondent: \_\_\_\_\_
- Address: \_\_\_\_\_
- Birthdate: \_\_\_\_\_
- Race: \_\_\_\_\_
- Age: \_\_\_\_\_
- Height: \_\_\_\_\_

Weight: \_\_\_\_\_
Hair Color: \_\_\_\_\_
Eye Color: \_\_\_\_\_

Petitioner: \_\_\_\_\_
Address: \_\_\_\_\_

(If you wish to have your residential address withheld from respondent, use a contact address so the court and the sheriff can reach you if necessary.)

Birthdate: \_\_\_\_\_
Race: \_\_\_\_\_
Age: \_\_\_\_\_
Height: \_\_\_\_\_
Weight: \_\_\_\_\_
Hair Color: \_\_\_\_\_
Eye Color: \_\_\_\_\_

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF \_\_\_\_\_

Petitioner, ) NO. \_\_\_\_\_
vs. ) AFFIDAVIT OF PROOF
Respondent. ) OF SERVICE
STATE OF )
OREGON )
County of \_\_\_\_\_ ) ss

I am a resident of the State of Oregon. I am a competent person over the age of 18 years. I am not an attorney for or a party to this case, or an officer, director or employee of any party to this case.

On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, I served the Restraining Order and the Petition for Restraining Order to Prevent Abuse in this case personally upon the above-named respondent in \_\_\_\_\_ County by delivering to the respondent a copy of those papers, each of which was certified to be a true copy of each original.

Signature of \_\_\_\_\_
SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_
NOTARY PUBLIC FOR OREGON
My Commission Expires: \_\_\_\_\_

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF \_\_\_\_\_

Petitioner, ) NO. \_\_\_\_\_
vs. ) MOTION AND ORDER

\_\_\_\_\_ ) OF DISMISSAL
Respondent. )

Comes now petitioner, \_\_\_\_\_, and moves this Court for an order allowing the voluntary withdrawal and dismissal of the Restraining Order on file herein.

\_\_\_\_\_ Petitioner
SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

NOTARY PUBLIC FOR OREGON
My Commission Expires: \_\_\_\_\_
IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_ JUDGE

(4) If the court orders relief:

(a) The clerk of the court shall provide without charge the number of certified true copies of the petition and order necessary to effect service and shall have a true copy of the petition and order delivered to the county sheriff for service upon the respondent.

(b) The county sheriff shall serve the respondent personally unless the petitioner elects to have the respondent served personally by a private party or by a peace officer who is called to the scene of a domestic disturbance at which the respondent is present, and who is able to obtain a copy of the order within a reasonable amount of time. Return of service shall be made in accordance with ORS 107.720.

(c) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the relief provided under ORS 107.700 to 107.730.

(5) If the county sheriff:

(a) Determines that the order and petition are incomplete or otherwise fail to conform to the requirements of this section and ORS 107.720, or cannot be entered into the Law Enforcement Data System, the order and petition shall be returned to the clerk of the court. The clerk of the court shall notify the petitioner, at the address provided by the petitioner, of the error or omission.

(b) After accepting the order and petition, cannot complete service within 10 days, the sheriff shall notify the petitioner, at the address provided by the petitioner, that the documents have not been served. If the petitioner does not respond within 10 days, the county sheriff shall return the documents to the clerk of the court.

(6)(a) Within 30 days after a restraining order is served under this section, the respondent therein may request a court hearing upon any relief granted. The hearing request form shall be available from the clerk of the court and shall be in substantially the following form:

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF \_\_\_\_\_

Petitioner, ) NO. \_\_\_\_\_
)
) RESPONDENT'S
and ) REQUEST FOR
) HEARING
)
Respondent. )

I request a hearing. I object to the restraining order for the following reasons.

\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_
\_\_\_\_\_

\_\_\_\_\_ Respondent
Date: \_\_\_\_\_
Address: \_\_\_\_\_
Telephone: \_\_\_\_\_

(b) At any time after the restraining order is issued and while it remains in effect, the respondent therein may request a court hearing upon the issue of custody of minor children under the order.

(c) If the respondent requests a hearing, the clerk of the court shall notify the petitioner of the date and time of such hearing, and shall supply the petitioner with a copy of the respondent's request for a hearing. The petitioner shall give to the clerk of the court information sufficient to allow such notification.

(d) The hearing shall not be limited to the issues raised in the respondent's request for hearing form. If the respondent seeks to raise an issue at the hearing not previously raised in the request for hearing form, the petitioner shall be entitled to a reasonable continuance for the purpose of preparing a response to the issue. (1981 c.780 §4; 1983 c.561 §2; 1985 c.629 §4; 1987 c.805 §4; 1989 c.605 §1; 1991 c.303 §2, 1991 c.382 §2, 1991 c.724 §22; 1993 c.375 §2; 1993 c.643 §2)

107.719 Removal of personal effects; party accompanied by peace officer. (1) A peace officer who accompanies a party re-

moving essential personal effects pursuant to an order issued under ORS 107.718 shall remain for up to 20 minutes and may temporarily interrupt the removal of property at any time. Nothing in this subsection shall affect a peace officer's duty to arrest under ORS 133.055 and 133.310.

(2) The party removing essential personal effects from the residence pursuant to an order issued under ORS 107.718 is entitled to be accompanied by a peace officer on one occasion only.

(3) A peace officer who accompanies a party removing essential personal effects pursuant to an order issued under ORS 107.718 shall have immunity from any liability, civil or criminal, for any actions of the party committed during the removal of essential personal effects. (1989 c.605 §3)

Note: 107.719 was added to and made a part of ORS chapter 107 by legislative action but was not added to any series therein. See Preface to Oregon Revised Statutes for further explanation.

107.720 Enforcement of restraining orders; sheriff's proceedings; contempt hearings; security. (1) Whenever a restraining order, as authorized by ORS 107.095 (1)(c) or (d), 107.716 or 107.718 which includes a security amount and an expiration date pursuant to ORS 107.716 or 107.718 and this section, is issued and the person to be restrained has actual notice thereof, the clerk of the court or any other person serving the petition and order shall deliver forthwith to a county sheriff a true copy of the affidavit of proof of service on which it is stated that personal service of the petition and order was served on the respondent, a copy of the petition and a true copy of the order. If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service of the order is waived and an accompanying proof of service is not necessary. Upon receipt of a true copy of proof of service, when required, and a true copy of the order, the county sheriff shall forthwith enter the order into the Law Enforcement Data System maintained by the Department of State Police. Entry into the Law Enforcement Data System constitutes 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. The petitioner may elect to deliver documents personally to a county sheriff or to have them delivered by a private person for entry into the Law Enforcement Data System.



(2)(a) A restraining order shall remain in effect until the order expires or is terminated by court order

(b) When a restraining order has been entered under ORS 107.718, the restraining order shall not be terminated upon a motion for dismissal by the petitioner unless the motion is notarized.

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

(4) Pending a contempt hearing for alleged violation of a restraining order issued pursuant to ORS 107.095 (1)(c) or (d), 107.716 or 107.718, 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 a security amount for the violation of such order. [1977 c.845 §8; 1979 c.522 §1; 1981 c.780 §7, 1983 c.661 §3; 1991 c.382 §1; 1993 c.188 §10]

**107.722 Effect of dissolution, separation or annulment decree on abuse prevention order.** The provisions of an order issued under ORS 107.105 supersede contrary provisions of a preexisting order issued under ORS 107.700 to 107.730, as to all matters addressed in the order under ORS 107.105. [1987 c.805 §6]

**107.725 Renewal of order entered under ORS 107.716 or 107.718.** For good cause shown, the court may renew an order entered under ORS 107.716 or 107.718, and the court may do so regardless of whether there has been a further act of abuse. [1985 c.629 §46]

**107.726 Standing to petition for relief of person under 18 years of age.** A person who is under 18 years of age may petition the circuit court for relief under ORS 107.710 if:

- (1) The person is:
  - (a) The spouse of the respondent;
  - (b) The former spouse of the respondent;
 or
- (c) A person who has been in a sexually intimate relationship with the respondent; and

(2) The respondent is 18 years of age or older. [1993 c.643 §4]

**107.730 Modification of custody and visitation provisions of order entered under ORS 107.700 to 107.730.** Upon motion of

either party and after service of notice on the other party in the manner provided by law for service of summons, the court has power at any time after entry of an order under ORS 107.700 to 107.730 to modify so much of the order as may provide for the custody and visitation of minor children. [1985 c.629 §6]

## MEDIATION PROCEDURES

**107.755 Circuit court may establish mediation procedures; mediation as part of conciliation services.** (1) Subject to the approval of the Chief Justice of the Supreme Court, the circuit court in a judicial district, by an affirmative vote of a majority of the judges of the court, may provide mediation under ORS 107.755 to 107.785 for child custody and visitation disputes in a domestic relations suit not including proceedings under ORS 107.700 to 107.730, or for child custody and visitation disputes in filiation suits under ORS 109.124 to 109.230. The court, as provided in ORS 3.220, may make rules consistent with ORS 107.755 to 107.785 to govern the operation and procedure of the mediation provided.

(2) A circuit court may provide mediation for child custody and visitation disputes in connection with its exercise of conciliation jurisdiction under ORS 107.510 to 107.610, but a circuit court need not provide conciliation services in order to provide mediation under ORS 107.755 to 107.785. [1983 c.671 §2; 1993 c.138 §4]

**107.765 When referral to mediation required; scope of mediation; effect of agreement.** (1) In a domestic relations suit in a circuit court providing mediation under ORS 107.755 to 107.785, where it appears on the face of one or more pleadings, appearances, petitions or motions, including any form of application for the setting aside, alteration or modification of an order or decree, that either custody or visitation of a child, or both, are contested, the court shall refer the matter for mediation of the contested issues prior to or concurrent with the setting of the matter for hearing. The purpose of the mediation shall be to assist the parties in reaching a workable settlement of the contested issues instead of litigating those issues before the court. The mediator shall not consider issues of property division or spousal or child support, in connection with the mediation of a dispute concerning child custody or visitation, or otherwise, without the written approval of both parties or their counsel.

(2) The mediator shall report in writing to counsel for the parties any agreement reached by the parties as a result of the mediation, and the agreement shall be incorpo-

rated in a proposed order or decree provision prepared for the court. If the parties do not reach an agreement, the mediator shall report that fact to the court and to counsel for the parties, but shall not make a recommendation to the court as to child custody or visitation without the written consent of the parties or their counsel. [1983 c.671 §3]

**107.775 Methods of providing mediation services; qualifications; costs.** (1) A circuit court providing mediation under ORS 107.755 to 107.785 may obtain mediation services, with the prior approval of the governing body of each county involved, by:

(a) Using personnel performing conciliation services for the court under ORS 107.510 to 107.610;

(b) Contracting or entering into agreements with public or private agencies to provide mediation services to the court; or

(c) Employing or contracting for mediators directly.

(2) Personnel performing mediation services for the circuit court shall have the minimum educational and experience qualifications required by rule of the Dispute Resolution Commission.

(3) Subject to the provisions of the Local Budget Law, the compensation and expenses of personnel performing mediation services for the circuit court and other expenses of mediation services provided by the court shall be paid by the county or as may be agreed upon by the counties involved. Personnel performing mediation services are not state employees, and their compensation and expenses shall not be paid by the state

(4) The parties to a child custody or visitation dispute that is referred by the circuit court to mediation may use, at their option and expense, mediation services other than those provided by the court [1983 c.671 §4, 1989 c.718 §25]

**107.785 Mediation proceedings closed; information confidential; exceptions; records closed.** (1) All mediation proceedings under ORS 107.755 to 107.785 shall be held in private, and all persons other than mediation services personnel, the parties, their counsel and children of the parties shall be excluded.

(2) All communications, verbal or written, made in mediation proceedings shall be confidential. A party or any other individual engaged in mediation proceedings shall not be examined in any civil or criminal action as to such communications and such communications shall not be used in any civil or criminal action without the consent of the parties to the mediation. Exceptions to testi-

monial privilege otherwise applicable under ORS 40.225 to 40.295 do not apply to communications made confidential under this subsection.

(3) All records of the court with respect to mediation proceedings shall be closed. [1983 c.671 §5]

**107.795 Availability of other remedies.** Nothing in ORS 21.112, 107.615 and 107.755 to 107.795 shall preclude a party from obtaining any orders available under ORS 107.700 to 107.730 before or during mediation. [1983 c.671 §8]

Note: 107.795 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 Preface to Oregon Revised Statutes for further explanation

## LIFE INSURANCE ON OBLIGOR

**107.810 Policy.** It is the policy of the State of Oregon to encourage persons obligated to support other persons as the result of a dissolution or annulment of marriage or as the result of a legal separation to obtain or to cooperate in the obtaining of life insurance adequate to provide for the continued support of those persons in the event of the obligor's death. [1981 c.775 §9]

Note: 107.810 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 Preface to Oregon Revised Statutes for further explanation.

**107.820 Support order as insurable interest; order to obtain, renew or continue insurance; right of beneficiary to purchase insurance or pay premiums.** A court order for the payment of spousal or child support whether issued prior to, on or following November 1, 1981, constitutes an insurable interest in the party awarded the right to receive the support. In any case of marital annulment, dissolution or separation, the issue of life insurance shall be determined as follows:

(1) When the decree creates an obligation of spousal or child support or awards a share of a pension or retirement plan, the court may also order the obligated party to maintain any existing insurance policies on the life of the obligated spouse and in which the dependent spouse is named as beneficiary. The court may order the policies maintained until the obligation is fulfilled. The premiums may be paid by the obligated spouse, and the court may consider the cost of premiums when determining the obligation. Any life insurance policies on the life of the obligated spouse owned by parties outside of the marriage or purchased and held for purposes clearly outside the marriage relationship are exempt from this subsection.

(2) If the party ordered to pay support or a share of a pension or retirement plan has no life insurance policy naming as beneficiary the party ordered to receive either support or a share of a pension or retirement plan, or if an existing policy is inadequate to cover the obligation, the court in its decree may order that the party ordered to pay shall purchase a life insurance policy naming as beneficiary the party ordered to receive the support or a share of a pension or retirement plan and that the obligated party shall pay premiums on the policy and keep the policy in force until the obligation ends. The obligated spouse has the option of obtaining a nonreducing term life insurance policy or any other type of policy in lieu of using existing policies.

(3) Additionally, the party awarded the right to receive support or a share of a pension or retirement plan may purchase a life insurance policy on the life of the obligated party. In such case the court shall order the obligated party to undergo a physical examination. All rights of policy ownership, including those regarding the extent of coverage, shall be in the party purchasing the policy under this subsection who shall also be responsible for paying the premiums. The provisions of this subsection may be exercised at the time of annulment, dissolution or separation, or at any later time while the obligation continues.

(4) Upon motion of either party, the court shall order a party to renew a life insurance policy allowed to lapse for any reason during the pendency of the suit.

(5) A party who is the beneficiary of any policy under this section upon which the other party is obligated to pay premiums, is entitled, in the event of default by the paying party, to pay the premiums on the policy and to obtain judgment for reimbursement of any money so expended. A default in the payment of premiums by the party obligated by the decree or order is a contempt of the court.

(6) Life insurance retained or purchased by an obligor under subsection (1) or (2) of this section for the purpose of protecting the support, pension or retirement plan obligation shall not be reduced by loans or any other means of reduction until the obligation has been fulfilled. The obligee or the attorney of the obligee shall cause a certified copy of the decree to be delivered to the life insurance company or companies. If the obligee or the attorney of the obligee delivers a true copy of the decree to the life insurance company or companies, identifying the policies involved and requesting such notification under this section, the company or companies shall notify the obligee, as beneficiary of the insurance policy, whenever the

policyholder takes any action that will change the beneficiary or reduce the benefits of the policy. Either party may request notification by the insurer when premium payments have not been made. If the obligor is ordered to provide for and maintain life insurance, the obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to the obligee written notice of any action that will reduce the benefits or change the designation of the beneficiaries under the policy. [1981 c.775 §11; 1983 c.728 §5; 1987 c.885 §4; 1993 c.716 §5]

**107.830 Physical examination may be ordered; responsibility for premiums.** The court may order a party to undergo a physical examination for the purpose of obtaining life insurance and may order this party to pay any premiums on such policy, except in cases in which the life insurance policy has been obtained under ORS 107.820 (3). If life insurance is obtained by a spouse or former spouse with an insurable interest, the person obtaining the policy is responsible for all premiums to be paid and for the choice of policy type and amount. If either party owns life insurance on the life of the paying spouse, and it is allowed to lapse for any reason during the suit, upon the request of the party receiving support, the paying spouse can be ordered to submit to a physical examination for the purpose of renewing the policy, if such examination is a requirement for renewal. [1981 c.775 §12]

## MISCELLANEOUS

**107.835 Waiver of personal service in subsequent contempt proceeding.** (1) When any court enters a decree, order or modification of any decree or order under ORS chapter 25, 107, 108, 109 or 416 or ORS 110.005 to 110.291, the court shall allow any party to the decree or order to include in the decree or order a waiver of personal service in a subsequent contempt proceeding. The content of the waiver shall be substantially as follows:

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In order to maintain the confidentiality of my residential address, I hereby waive my right to personal service if I am subsequently charged with contempt. I am giving the following contact address for service of process and select the following method of substituted service:

- ( ) Mailing address: \_\_\_\_\_  
 ( ) Business address: \_\_\_\_\_  
 ( ) Specified agent: \_\_\_\_\_  
 Signed: \_\_\_\_\_
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(2) Any time after a party has waived personal service under subsection (1) of this

section, the party may file an amended waiver in substantially the same form designating a different method of substituted service or a different address for substituted service. The party must give notice of the amendment to all other parties. [1993 c.448 §6]

Note: 107.835 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 Preface to Oregon Revised Statutes for further explanation.

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