



PARENTING & THE LAW

A LEGAL GUIDE FOR ADULTS CARING FOR CHILDREN IN OREGON

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FAMILY LAW & ESTATE PLANNING

TABLE OF CONTENTS

PAGE	
III	HOW TO USE THIS BOOKLET
01	CHAPTER 1 PARENTAL RIGHTS AND RESPONSIBILITIES BEGIN AT BIRTH Paternity and Financial Responsibilities 1 Unmarried Parents and Custody 3 Adoption 5 Assisted Reproduction 7
09	CHAPTER 2 PARENTAL RIGHTS & RESPONSIBILITIES THROUGH SCHOOL AGE Education 9 Supervision. 10 Discipline 13
15	CHAPTER 3 FAMILY SAFETY AND INTERVENTION BY THE STATE Legal Rights of Children and Parents 15 Legal Authority to Intervene in Families: Juvenile Court . . 16 Juvenile Court Procedure. 17 Emancipation Through Juvenile Court. 21
23	CHAPTER 4 TROUBLED TEENS Domestic Violence Against Siblings, Parents, and Relatives 23 Alcohol and Drug Use 24 Delinquent Behavior 25 Sexual Conduct 26



Paternity and Pregnancy Issues	27
Minor Children and Marriage	28
Car-related Issues	28
Juvenile Court and Delinquency Matters	29
Court-Appointed Attorneys	30
Informal Resolution of Delinquency Matters	30
Adult Treatment and Sanctions	31
Juvenile Court Authority Over Parents	31

34 **CHAPTER 5**
PARENTS, CHILDREN & DIVORCE

Custody	34
Parenting Time.	35
Parenting Classes and Mediation	37
Custody and Parenting Time Evaluations and Court	38
Child Support	40

43 **CHAPTER 6**
CUSTODY & VISITATION BY THIRD-PARTIES

47 **CHAPTER 7**
RIGHTS OF THIRD-PARTIES IN JUVENILE COURT

HOW TO USE THIS BOOKLET

This booklet contains practical information for parents and other adults caring for children in Oregon. We hope it will provide you with some basic, helpful legal information. The booklet is not intended to replace a consultation with an attorney. The issues addressed are common legal issues faced by parents and other adults in raising children in Oregon.

The chapters in the booklet are broken down as follows:

- Chapter 1 addresses issues faced by unmarried parents and people seeking to adopt. It also looks at issues that might be raised in assisted reproduction. Many of the issues are very complicated and need the expertise of an attorney.
- Chapter 2 discusses parental rights and responsibilities, including issues of education, supervision and discipline.
- Chapter 3 reviews family safety and the juvenile court system.
- Chapter 4 focuses on common issues faced by families with teenagers.
- Chapter 5 addresses child custody, parenting time, and child support.
- Chapter 6 looks at options for third-parties regarding custody and/or visitation with minors.
- Chapter 7 reviews options for 3rd party (non-parent) custody in the context of juvenile court.

The attorneys who created this booklet are especially dedicated to issues involving parents, guardians and children. Although this booklet focuses on Oregon law, many of our attorneys are licensed to practice in both Oregon and Washington.





01 PARENTAL RIGHTS & RESPONSIBILITIES BEGIN AT BIRTH

While impending childbirth is a time of anticipation for some parents-to-be, anxieties around the birth may include legal concerns. This section addresses some of the issues faced by many parents, such as financial responsibility for children and the establishment of paternity. This section also touches on some of the general issues that may come up regarding adoption and assisted reproduction.

PATERNITY & FINANCIAL RESPONSIBILITIES

In Oregon, both parents, whether married or unmarried, are legally obligated to provide financial support for their children that's sufficient enough to meet the child's basic needs. Identifying a child's mother is usually easy. Establishing a child's legal father can be much more complicated.

Establishing the identity of a child's legal father is referred to either as establishing "paternity" or "filiation." If the parents are married, the mother's husband is automatically presumed to be the child's legal father (whether or not he is the child's biological father.) For non-married heterosexual couples, paternity can be established by both parents signing an affidavit of paternity at birth or afterwards. Paternity can also be established through state support enforcement agencies or the state court. The mother, child and "putative" father may be required to submit to blood or DNA testing. The mother or putative father may also file a paternity action prior to or after the child's birth. When a mother files a paternity action naming a putative father, she may also ask that the father be required to pay a portion of the child's prenatal and birth expenses.

Once paternity is established, child support is set using the Oregon child support guidelines. Child support can be determined either through an administrative process or through the court. The child support guidelines take into account:

- Each parent's gross income
- Whether the parent pays work-related union dues
- Whether either parent pays spousal support (alimony) to the other; or a spouse from a previous marriage
- The "out of pocket" cost of health insurance for each parent and the child

- The cost of work-related day care expenses
- The number of overnights each parent spends with the child
- Whether either parent has children from another relationship for whom the parent is required to pay support
- In limited circumstances, other financial information about the family may be an important factor

Under Oregon law, a parent's duty to support their child extends past age 18 if the child is attending school and meets other qualifications.

UNMARRIED PARENTS & CUSTODY

Once paternity is established, unmarried parents will need to determine who will have legal custody (legal decision-making) and how much parenting time (previously called "visitation") each parent will have with the child. A finding of paternity does not establish custody or parenting time unless custody and parenting time are clearly defined in a court order. Both mothers and fathers may be assigned primary or joint responsibility for raising a child. The various types of custody and parenting plans are more fully discussed in Chapter 5.

Parents who have "legal custody" have the right

and responsibility to make major decisions for their child such as:

- Where the child primarily lives.
- Where the child goes to school.
- The child’s religious training, if any.
- Major medical decisions related to the child.

In most cases, Oregon law supports children’s ongoing contact with both parents. A parenting plan sets out the child’s schedule with each parent as well as the “rules” which will govern that parenting time. Custody and parenting time can be determined by mutual agreement of the parents or ordered by the court following litigation. Many times parents use a neutral third-party (often called a “mediator”) to help them develop their parenting plan. The Oregon Child Support Enforcement Division focuses almost exclusively on support and will not help parents establish custody or a parenting plan.

Until a court order establishes custody and a parenting plan, either parent has the right to have contact with the child. If no court order is in place setting out custody and parenting time a legal parent may take the child out of the area, state, or even the country. Some countries have very specific rules about traveling to and from their country with children. You may wish to talk to an attorney and the proper authorities before

making plans to travel abroad with a minor child, especially if you are unmarried and do not have a custody and parenting time order. The U. S. State Department sponsors a very informative website regarding travel to other countries with children (see www.travelstate.gov).

ADOPTION & ASSISTED REPRODUCTION

Many people in Oregon who do not have their own biological children are interested in having children a become part of their family. Single individuals, same-sex couples, heterosexual couples, married couples, or unmarried couples may be able to do this through a variety of methods. Two of the ways to add additional children are adoption and assisted reproduction.

ADOPTION

There are no restrictions to adopting people of any age, race, or ethnicity (although children with Native American ancestry are covered by a federal statute which may make adoption by anyone but a tribal member difficult). Even adults can be adopted.

Adoption impacts the legal rights and responsibilities of both the birth parent and the adoptive parent. In order to grant an adoption of a child, the court must terminate the parental

rights of the birth parents. This is done through a consent signed by the birth parents or through a contested adoption.

A man who believes he is the father of a child, but who has not established legal paternity, must take some action in order to be entitled to receive notice of a proposed adoption. The law requires that a man who is presumed to be the father must receive notice of the adoption if he has:

- Provided support to the mother during her pregnancy
- Obtained a signed joint affidavit stating that he is the father
- Filed a paternity action prior to the child being placed with someone else for adoption.

If he fails to do any of these things, the adoption can go forward without his consent and over his objection.

Parents hoping to adopt a child have three avenues:

- A public agency adoption.
- A private agency adoption.
- An independent adoption (usually through attorneys).

To be eligible to adopt a child, the adoptive parents must have a home study done by a licensed adoption agency which recommends them as adoptive parents. It is very important to consult with an attorney who is experienced in adoptions before proceeding to adopt a child through any of these avenues.

A stepparent may also adopt their stepchild, provided that they are married to the child's legal parent. Consent from the child's other legal parent or a court order terminating the other parent's rights are required. If the stepchild is over age 14, he or she must also consent to the adoption. If the stepparent passes a criminal history background check, the home study and post-placement report may be waived.

ASSISTED REPRODUCTION

Some couples are unable to conceive or give birth, but prefer to have a child who shares their genetic makeup. This may be possible through "assisted reproduction" techniques, such as "surrogacy" or using a "gestational carrier."

- "Surrogacy" is when a surrogate mother's egg is fertilized by the father's sperm.
- When a child is conceived in vitro and the embryo implanted in another woman who brings the pregnancy to term and gives birth, she is known as a "gestational carrier"

A contract may be drawn up and signed by the prospective parents and the surrogate or gestational carrier outlining the parties' rights and responsibilities. Typically, the surrogate or gestational carrier receives money for her efforts. Although such contracts are currently legal in Oregon, many states have found these agreements unenforceable as being against public policy. Therefore, it is important to consult with an attorney before entering into such a contract.

Once the child is born, an adoption is used to ensure that any parental rights the surrogate or gestational carrier may have are terminated and that a legal relationship is established between both parents and the child.





02 PARENTAL RIGHTS & RESPONSIBILITIES FOR CHILDREN THROUGH AGE 18

Many rights and responsibilities come with being a legal parent. These include providing for the child's care and education, receiving information from the child's doctors and educators, providing appropriate discipline and proper supervision for the child.

EDUCATION

Parents are obligated to ensure that their children attend school or engage in some other approved form of education, such as a state-approved home schooling course. All children between ages 7 and 18 years who have not completed the 12th grade are required to regularly attend a full-time school during the entire school term.

Parents have the right and duty to advocate for their children who have special educational needs. Appropriate education programs for special needs children, including children with learning disabilities, are required to be available in all public schools in Oregon. If you are having difficulty obtaining educational services for your child, consult with an attorney.

Most public schools have a handbook containing the rules for student conduct and discipline. Parents should obtain the handbook and be aware of the rules. A student can be punished for breaking a rule, even if the student or the parents did not know the rule existed. Punishment could include suspension and even expulsion in certain circumstances. However, the school is required to follow their own discipline process, which should be outlined in the handbook. If your child faces suspension or expulsion, make sure the school has, at the very least, followed its own written procedures. There are also attorneys who specialize in representing students in school disciplinary proceedings who may be able to help.

SUPERVISION

Parents are required to monitor their child's behavior and to take the necessary steps to properly supervise their child. Parents who fail to properly supervise their child may face criminal

or civil liability and may even risk having their child removed from their care. In Oregon, the age at which most children legally can be left unattended is 10 years. Specifically, the law says that “a person having custody or control of a child under 10 years of age commits the crime of child neglect in the second degree if, with criminal negligence, the person leaves the child unattended in or at any place for such period of time as may be likely to endanger the health or welfare of such child.” ORS 163.545. While this law may apply to third-parties, it certainly requires parents to appropriately supervise children under age 10.

Specific issues relating to parental supervision of their children include:

CURFEW

While there is a statewide curfew law, many communities have curfew laws that are even more restrictive—and can vary throughout different parts of town. Parents can be held liable, including through the payment of fines, for their children who violate curfew laws. Check the internet for curfew listings in the specific location your child will be in.

TRUANCY

All children between ages 7 and 18 years who have not completed the 12th grade are required

to regularly attend a full-time school during the entire school term. Children who cut school often or consistently leave during the school day may be considered truant. In addition, all children ages 5 or 6 years old who have been enrolled in a public school are required to attend regularly while enrolled. Parents can be charged with a violation and fined up to \$1 ,000 for failing to require that their child regularly attend school.

TORTS

Parents may be liable for money damages if their unemancipated child commits a “tort” -- an intentional, reckless or negligent act against other people or property. The legal obligation of the parent to pay damages in such a situation may be limited to \$7500 per claimant. Parents should check with their insurance agent to be sure they are adequately covered for this possibility.

ALCOHOL

It is illegal in Oregon for a person under age 21 to possess or consume alcohol. Teenagers may lose the right to apply for a driver’s license, or may have their license suspended if they are arrested for an alcohol violation. They may also be cited into court. People who provide alcohol to minors who are not their children, or allow minors who are not their own children to consume alcohol, can be held criminally and civilly liable. Parents

may admit their minor child to drug and alcohol treatment, even over the child's objection.

MARIJUANA

It is illegal in Oregon for a person under age 21 to possess or use recreational marijuana. Driving under the influence of marijuana remains illegal for all. It may be possible to obtain a medical marijuana card for an Oregon resident under age 18 if the patient meets a number of criteria, including being diagnosed as having a debilitating medical condition by their primary attending physician. Adults who allow people under age 21 access to recreational marijuana may be subject to criminal charges. Adults who use recreational marijuana in the presence of children need to consider the potential effect of such use on nearby children to avoid child welfare concerns.

DISCIPLINE

In Oregon, parents are legally permitted to use reasonable physical force as needed to maintain discipline or promote the welfare of a child under the parent's care. Some important points to remember include:

- Parents can be held civilly and criminally liable for using excessive force or discipline on their children. This liability may include felony charges of criminal mistreatment or assault

- Through the juvenile court system, the state can remove a child from a parent's care if excessive discipline has been used. Thereafter, the court may place the child outside the home and/or require the parents to engage in certain services. Excessive discipline is often found to include any time a parent's discipline leaves a visible mark on the child
- While spanking in and of itself is not illegal, it is often ineffectual and creates more problems than it solves. Spanking that leaves a mark may be treated as a form of child abuse and lead to intervention by the state. The use of force on a child may also create anger and resentment in that child and, in turn, the child may use similar force on others, increasing the child's and the parent's potential criminal and civil liability. An assault by a parent on another person in the presence of a child may be a felony. Using non-violent methods of discipline are often more effective and less likely to result in intervention by the state
- A parent is required to use appropriate means in handling out-of-control children. Doctors, psychologists and attorneys can suggest resources for addressing such issues. Parents may also request voluntary services through the Oregon Department of Human Services (DHS)



03 FAMILY SAFETY & INTERVENTION BY THE STATE

Parents are responsible for ensuring the safety and welfare of their child. If parents do not take appropriate steps to supervise and protect their child's interests, the state may become involved in the parents' and child's lives. This section addresses the state's authority to intervene in the lives of families, parents, and children, and touches on some aspects of the juvenile court process. For a full explanation of the juvenile court process, contact an attorney who specializes in juvenile law.

LEGAL RIGHTS OF CHILDREN & PARENTS

Oregon law recognizes that children are individuals with legal rights. Parents have a duty

to ensure that their children receive these rights, including:

- Permanency with a safe family
- Freedom from physical, sexual, or emotional abuse or exploitation
- Freedom from substantial neglect of basic needs

Parents have the right, under the 14th Amendment to the U. S. Constitution, to direct the upbringing of their children, including the right to:

- Determine secular and religious education
- Make decisions regarding their child's health care
- Provide proper discipline, as outlined above

LEGAL AUTHORITY TO INTERVENE IN FAMILIES: JUVENILE COURT

The state has legal authority to investigate and intervene when a child's condition or circumstances reasonably appear to jeopardize the child's safety or welfare. This includes the authority to interview a child at school without notice to parents, and to take a child into protective custody. The state may maintain protective custody of a child if, after a hearing, the judge or juvenile court referee finds that the

safety or welfare of the child or others may be immediately endangered by release of the child. The juvenile court may take legal control over a child if a document, called a “petition,” is filed claiming that the child is:

- Beyond the control of the parent, guardian, or custodian
- Endangering the child’s own welfare or the welfare of others
- Dependent for care or support on a public child care agency
- Abandoned, or is not being provided with the care or education required by law
- Subjected to cruelty, or is suffering from unexplained physical injury
- Has run away from home
- Commits or has committed an act which would be a crime if the child were over age 18

JUVENILE COURT PROCEDURE

Once a juvenile court petition is filed, the child’s parents:

- Must be given notice of the allegations against them and their child and of their right to a hearing

- Have the right to be represented by an attorney (a court-appointed attorney will be appointed if they are financially eligible)
- Must admit or deny the allegations in the petition

The court is also required to appoint an attorney for the child.

In cases involving child abuse or neglect, the court may also appoint a court-appointed special advocate (“CASA”) to advocate for the child’s best interests (not necessarily what the child wants). The court may also appoint an educational advocate for the child.

If a parent denies the allegations in the petition, a trial will be scheduled. The trial will be in front of a judge only, not a jury. At the trial, all parties, including the State, the child, and the parents, will have the opportunity to testify and present evidence.

At the end of the trial, the judge will determine whether the facts alleged in the petition have been proved by a “preponderance of the evidence” (more evidence than not). If so, the child will be found within the jurisdiction of the court (i.e. within the court’s legal authority to make further decisions about the child and possibly the parents.) The judge will then set a hearing to determine the proper “disposition” of the child,

including whether the child's parents will need to participate in specific services. If sufficient facts have not been proved, the case will be dismissed.

There are strict time lines in juvenile court cases for children who have been removed from their home. Under the Adoption and Safe Families Act (a federal law passed in 1997), juvenile



courts in the United States are required to make a “permanency plan” if the child found within the jurisdiction of the court is in an out-of-home placement. The juvenile court is required to determine whether the court should have jurisdiction over the child and whether the child can be safely returned home within 14 months following the child’s original placement out of the parent’s home. At that time, if the child cannot be returned home, the court is required to implement an alternate plan, such as adoption, permanent foster care, or a planned permanent living arrangement

When a child is in substitute care (outside of the home) for 15 of the most recent 22 months, the state must file a petition to terminate the parent’s parental rights. Some very limited exceptions to this rule apply if:

- The child is in the care of a relative by state placement
- There is a documented compelling reason why it is in the child’s best interests not to file a termination petition
- The state has not provided services to the family necessary for the child’s safe return
- If the court finds that a child can safely return home within a reasonable time, the court can grant the parents an extension on specific conditions

Parents whose child is removed from their care or who voluntarily place their child in a state financed out-of-home placement should immediately seek legal advice. Parents should also be aware that if they are required by the court to participate in services and delay completing those services, they may not meet the strict statutory time lines, and risk having their parental rights terminated. Parents' timely cooperation and progress are necessary before the court will return a child home.

EMANCIPATION THROUGH JUVENILE COURT

In order to be considered for legal emancipation, a child must file a written application with the court and be at least 16 years old. Parents have the right to receive notice of their child's emancipation request and notice of any scheduled hearing date.

A court will consider several factors in determining whether to grant an application for emancipation:

- Whether the child's parents consent
- Whether the child has been living away from home and is substantially able to support themselves without parental guidance and supervision

- Whether the child is mature and knowledgeable enough to manage the child's own affairs without parental assistance
- Whether the child is employed or has any other reasonable means of financial support

If emancipation is granted, the minor is recognized as an adult for the purposes of:

- Contracting and conveying
- Establishing a residence
- Suing and being sued
- Criminal Acts

Emancipation terminates parents' obligation to support their child. Emancipation does not legally allow minors to:

- Use or purchase alcohol or marijuana before age 21
- Marry before age 18 without parental consent
- Reduce the age of majority below 18 years of age



04 TROUBLED TEENS

As children become teens, their physical and emotional development, peer pressure, and new legal rights and responsibilities, combine to form many unique challenges for parents. This section sets out some of the most common problems faced by parents of teens.

DOMESTIC VIOLENCE AGAINST SIBLINGS, PARENTS, & RELATIVES

Different parental responsibilities arise depending upon the age of the child who is violent. When a minor teenager is causing domestic violence:

- A parent has a duty to protect the other children in the house
- An offending child may have delinquency liability in juvenile court

- Things that parents or guardians can do to respond to such actions include making a police report, placing the violent child in the custody of a third party, obtaining mental health intervention, and engaging in family counseling

If a “child” over age 18 causes the domestic violence, that “child” will be considered and treated as an adult, with corresponding adult liability:

- A parent has a duty to protect other children in the house
- An offending “adult child” may have adult criminal liability
- A Family Abuse Prevention Act (FAPA) restraining order may be obtained against the abusive child
- A police report may be made
- Eviction procedures may be used to remove an adult child from the home

ALCOHOL & DRUG USE

When a parent suspects drug or alcohol use by a teenager:

- The parent has a duty to supervise the child
- The child may have juvenile delinquency liability

- The child may lose driving privileges
- The parent may be civilly liable for crimes or accidents caused by an intoxicated teen

The negative consequences of drug and alcohol addiction and resulting lifestyle can be extremely serious for the child and their family. To try to address these concerns, a parent may want to consider:

- Engaging in voluntary services with the state
- Engaging in private health and mental health services
- That they may have civil liability for damage caused by their minor child while that child is under the influence
- That either the parent or other adults may also have criminal and/or civil liability for assisting minor children in the purchase or consumption of alcohol or illegal drugs (including recreational marijuana if the user is under age 21)

DELINQUENT BEHAVIOR

Parents who suspect that their minor child is engaging in criminal activity, or committing acts against other people or their property, should know that:

- They may have civil liability for their child's acts
- They have a duty to supervise their child and failure to supervise may result in a fine
- They run the risk of secondary liability for the acts of their child and they may wish to see a lawyer
- Their child may have juvenile delinquency liability, for which they might be placed outside their home

SEXUAL CONDUCT

If parents suspect sexual contact between two minors, they should know:

- Parents have a duty to supervise their child
- Children who are victims often perpetuate the offense
- A minor may be charged as a juvenile or an adult for certain sexual offenses. Age differentials between the children involved in the sexual activity may provide a defense in some limited situations
- Parents with knowledge of sexual conduct by their own child may be liable for harm to other minor children
- Certain parents are mandatory reporters of sexual conduct by minors and may be required to report such conduct to authorities even if it concerns their own child

If a parent suspects that their minor child is having sexual contact with an adult, they should remember that they have a duty to protect their minor child. Parents who have knowledge of sexual contact between their minor child and an adult may be civilly or criminally liable if they allow it to continue.

PATERNITY & PREGNANCY ISSUES

Parents should remember that teenagers who become pregnant or cause someone else to become pregnant may have certain responsibilities and may benefit from adult support and assistance. For example, if your teenager fathers a child, he can be held financially responsible for his child if paternity is established.

As another example, if your daughter is under age 18 and becomes pregnant:

- You may be responsible for her medical expenses but may have a right to recover from the biological father
- Certain parents are mandatory reporters when sex abuse is involved. Sex abuse includes statutory rape (i. e. where one of the sexual partners is under a certain age.)
- Counseling and parenting resources are available through state and community agencies as well as private programs

MINOR CHILDREN & MARRIAGE

In Oregon, a person must be at least 18 years old in order to legally marry. However, children may marry at age 17 with their parent's consent. (This remains true even if a child is emancipated.) There are certain narrow exceptions to this rule.

CAR-RELATED ISSUES

Un-emancipated minors lack the legal ability to enter into contracts to purchase goods on their own. Therefore, a child under age 18 usually cannot legally enter into a contract to purchase a car. In order to obtain a driver's license, a minor child must be enrolled in school (or meet the exemption requirements). Parents should also know that certain juvenile crimes will result in the suspension or revocation of a child's driver's license.

Parents also face financial liability for their child's use and possession of an automobile. Parents and children may be held liable for personal injury and property damage caused by their child. It is a good idea to have all licensed drivers in your home included on your automobile insurance policy.

If a minor child has traffic tickets or fines, the child faces the same fines and penalties under the Oregon Motor Vehicle Code as do adults.

However, a child may be treated differently than an adult for motor vehicle crimes that have jail time as a penalty.

JUVENILE COURT & DELINQUENCY MATTERS

Juvenile court delinquency procedures are similar to adult criminal procedures, but often use different terminology. For example, instead of being found “guilty,” people in Juvenile Court may be found “within the jurisdiction of the court.” In addition, people under age 18 who are alleged to have committed acts that would be a crime if they were adults are referred to as “youth” in juvenile delinquency matters. Youth have some, but not all, of the Constitutional rights that adults have who are charged with similar crimes. Youth do not have the right to bail, or the right to a jury trial. The juvenile court also uses a different standard to detain a youth than the court does for an adult.

Juvenile court cases may be heard in the county where the youth lives or where the alleged criminal act occurred.

Parents or guardians must be given notice of the juvenile court filings, and are often formally summoned to the first court appearance. At the trial or “adjudication” phase, the official participants (“parties”) are the youth and the state (usually represented by someone from the

district attorney's office.) At the sentencing or "dispositional" phase, other parties may include parents, Court Appointed Special Advocates ("CASA"), the Oregon Youth Authority, and third party interveners. If there is a "victim," that person will also have an opportunity to be heard by the court.

COURT APPOINTED ATTORNEYS

Youth are entitled to court-appointed attorneys in delinquency cases. Parents should remember that:

- Youth have the right to a confidential relationship with their attorney
- Parents have no right to information or control as to their child's decisions in delinquency matters
- The attorney for a youth ethically cannot share information with a parent unless specifically permitted to by the youth
- Youth are deemed to make voluntary and informed decisions relating to advising and assisting their attorney
- Parents may be obligated to repay the state for the cost of their child's attorney

INFORMAL RESOLUTION OF DELINQUENCY MATTERS

In certain circumstances, parents and youth may avoid formal charges from being filed by working with the juvenile department in their county. Juvenile court counselors may meet with a youth and parent prior to filing a Juvenile Court petition. An accountability agreement may be an option for youth offenders in certain cases. Youth have a right to the assistance of a court-appointed attorney before entering into an accountability agreement. Some counties have diversion programs or local resolution programs. Drug and alcohol treatment programs may be required for certain drug and alcohol offenses.

ADULT TREATMENT & SANCTIONS

Youth may be treated as adults for certain criminal offenses. Youth can be “waived” into adult court if certain allegations are made. Youth charged with “Measure 11” crimes are treated as adults in the criminal justice system. However, even if charged and convicted as an adult for a “Measure 11” crime, some youth may be detained or incarcerated in youth correctional facilities, while others will be held in the adult correctional system.

JUVENILE COURT AUTHORITY OVER PARENTS

Parents or guardians may be held financially liable to the state for the cost of a youth's attorney and a youth's placement in foster care, shelter care, or a youth treatment program.

After making certain findings, the delinquency court may require parents or guardians to:

- Enter into substance abuse treatment and be responsible for the cost of such treatment
- Take parenting classes or attend other programs
- Assist the court in providing appropriate education and counseling for their child or ward
- Pay for supervision costs if a youth offender is placed on probation
- Pay a fine if the parent or guardian violates an agreement with the court to supervise their child or ward



PARENTS, CHILDREN & DIVORCE

05

Parents and children may confront many issues during the break up of a marriage, domestic partnership, or Registered Domestic Partnership. This chapter highlights legal issues surrounding children, such as child custody, parenting time, and child support. Other financial issues that may have an indirect impact on children, such as spousal support and property division, are not discussed here. If you have specific questions about your rights or responsibilities stemming from a divorce, contact an attorney.

Families involved in a divorce can face a wide range of emotional issues. Parents and children often benefit from consultation with a mental health professional in order to work through the emotional issues associated with divorce. Judges and attorneys are professionals in the legal arena and are not trained to professionally address the real emotional issues dissolution can raise.

CUSTODY

For most parents, the welfare of their children is the most important issue in their dissolution. In Oregon, this issue is broken up into two different components: legal custody and parenting time.

Custody and parenting time orders are important legal matters.

An award of legal custody gives parents authority to make major decisions about their child's life. These include major decisions regarding the child's residence, health care, education, and religious upbringing. In Oregon there are two types of legal custody:

- Sole Legal Custody: Sole legal custody is when one parent is solely responsible for making those major decisions
- Joint Legal Custody: Joint legal custody is when parents share the rights and responsibilities for major decisions concerning the child

It is important to note that in Oregon joint legal custody can only be ordered if both parents agree to it. Therefore, if one parent wants sole legal custody while the other wants joint legal custody, the court only has the power to award sole legal custody to one parent or the other.

PARENTING TIME

“Parenting time” is the term used to describe the court-ordered schedule of when and under what rules the child will spend time with each parent. Some counties and the Oregon Judicial Department have suggestions or guidelines for parenting time plans. If parents agree, parenting

time can be as broad or as specific as they desire. If parents cannot agree, a mediator might assist them in developing their plan. If mediation is unsuccessful and the parents still cannot agree, the court will decide a parenting time plan based on what the court believes is in the “best interest of the child”.

For further information regarding parenting plan options, you may want to contact the Oregon Judicial Department family law website at:

<http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/pages/index.aspx>

In developing a parenting plan, parents make a schedule for their children to spend time with each parent during the year. Specific times that are often addressed in a parenting plan are:

- Weekly parenting time during the year
- Holiday and vacation parenting time
- Summer parenting time

Be aware that different parenting plans may be appropriate for children at different developmental levels and based upon the child’s individual needs and personality. Parenting plans may need to be modified depending on the child’s age/development. A parenting plan that is appropriate for a 6 year old likely will not be appropriate for a 13 year old.

If circumstances exist in which parenting time would endanger a child, the court may order that parenting time be supervised, or suspended. If you believe that such conditions exist in your case, seek the assistance of an attorney.

If you are being denied parenting time, you may file a court action to enforce your parenting plan. The court must hold a hearing within 45 days of your written request. The court has broad powers to enforce parenting time and, among other remedies, can order that child support be suspended until the parenting time is back in place. Consult with an attorney if you are being denied your parenting time.

PARENTING CLASSES & MEDIATION

All parents in cases involving custody or parenting issues must attend a court-sponsored parenting class. The duration and cost of these classes vary from county to county. Your county may have detailed information about this class on the internet and even allow you to register for the class online.

In most counties, parents are required to attend mediation to discuss custody and parenting time. This can be mediation through the courts or with a private mediator. Court-sponsored mediation is usually low cost or free. Private mediators often charge an hourly rate for their services

and can help parties address both custody and parenting time, as well as other financial issues. Court-ordered mediation focuses on custody and parenting time only. Attorneys, grandparents and friends are not permitted to attend court-ordered mediation with the parents.

The purpose of mediation is to allow parents to try to work out a specific parenting plan for their children. Parents are not required to come to an agreement at mediation. However, if the parents are able to reach an agreement, many times the mediator will write out the agreement and have the parties sign it.

CUSTODY & PARENTING TIME EVALUATIONS & THE COURT

If parents are unable to reach an agreement regarding custody and parenting time, they may



choose to participate in a custody and parenting time evaluation. Some counties provide low-cost evaluations, while other counties do not. Parents may also hire a private psychologist, psychiatrist, or social worker who has experience with the process to conduct an evaluation. During an evaluation, the evaluator will meet with both parents and the children to determine what is the best custody and parenting time arrangement. The evaluator may also choose to speak with “collateral references” suggested by the parents, including people such as school teachers, day care providers, relatives or friends.

If a custody case goes to court, the judge determines what custody award is in the best interests of the child by considering at least the following:

- The emotional ties between the child and other family members
- The interest of the parents in and their attitude toward the child
- The desirability of continuing an existing relationship
- The abuse of one parent by the other
- The willingness of each parent to encourage a close and continuing relationship between the other parent and the child
- The statutory preference for the child’s primary caretaker, if that caretaker is fit

If parents are unable to agree on a parenting plan, the court will impose a plan that it believes is in the best interests of the child. Each parenting plan is determined on a case-by-case basis. Issues relating to custody and parenting time are emotionally and legally challenging. You will want to seriously consider contacting a lawyer to determine your legal rights, responsibilities, and how best to present your case.

CHILD SUPPORT

Child support is linked with child custody and parenting time. Typically, the non-custodial parent is ordered to pay child support to the custodial parent, but that may depend on the difference in income between the two parents. It is very difficult, if not impossible, to determine with any reasonable certainty what child support might be in a given situation without performing a child support calculation.

The following factors are used in a child support calculation:

- The monthly gross income of both parents
- The monthly amount of spousal support one parent is ordered to pay the other—or a spouse of a previous marriage
- Whether either party has children from another relationship who are eligible to receive support

- Whether either parent pays union dues and the monthly amount of those dues
- The percentage of overnight parenting time each parent has with each child
- The cost of health insurance premiums for each parent and the children
- The cost of work-related day care expenses for the children

Other factors also may be taken into account in establishing child support, such as whether the child has special medical needs or receives disability payments from the government. To learn of other special factors that may be used to determine child support, consult with an attorney.

The above information is used to determine the specific child support award. Child support is based upon state guidelines and is generally relatively easy to calculate if the above information is known. Child support typically continues until the child reaches age 18, or until age 21 under Oregon law if the child is attending school and meets other qualifications. Child support may be paid to a parent directly, through the state, through a wage withholding order, or directly to the child once the child is 18 years old (if the child is still attending school and meets certain other criteria.) See the Oregon Judicial Department website at www.ojdstate.or.us for links to more information,

including an interactive child support calculator. Other financial issues relating to children include allocating responsibility for the payment of the child's uninsured medical expenses, the provision of life insurance to secure payment of the child's need for support, and the use of tax dependency exemptions. In dissolution cases, parents should think about what arrangements they want to make about these financial decisions.

New child support guidelines are often put into effect every few years. These changing child support rules may lower or increase your support amount. You should contact an attorney or local child support enforcement office for information if you have questions.



06 THIRD-PARTIES SEEKING CUSTODY OF CHILDREN

Under Oregon and federal law, parents have a constitutional due process right to make decisions concerning the care, custody and control of their children. This fundamental right supersedes a “best interests of the child” analysis in a dispute about custody or contact rights. This parental right may even trump the ability of a grandparent to see or contact their grandchild if the parent objects to the relationship. Grandparents have no special right to contact grandchildren simply by virtue of being a child’s grandparent.

Oregon law also presumes a legal parent acts in the best interests of his or her child and that the parent's decisions regarding who the child has contact with are in the child's best interests unless that presumption can be overcome.

A third-party (who can be any person, but not limited to a step-parent, grandparent, foster parent, or relative by blood or marriage), who has a "child-parent relationship" or an "ongoing personal relationship" with a child may request rights to custody or visitation with a minor child by filing a petition with the court. Whether a "child-parent relationship" or an "ongoing personal relationship" exists is based on a specific legal definition of those terms.

In order to have a "child-parent relationship," a person needs to show that within the six months before a legal action is filed the person:

- Resided in the same household as the child
- Met the child's physical needs
- Provided the child with food, clothing, shelter and incidental necessities
- Provided the child with necessary care, education and discipline
- Fulfilled the child's psychological need for a parent

The third-parties will need to show that the relationship with the child continued on a daily basis through interaction, companionship, interplay and mutuality. This relationship must have existed during the six-month period before filing the petition or motion in the court, and for a longer period in the case of a non-related foster parent.

The courts have determined a different standard applies to prove an “ongoing personal relationship” for a third-parties. A person must provide evidence showing a “relationship with substantial continuity for at least one year through interaction, companionship, interplay and mutuality” in order to establish an ongoing personal relationship, as compared with a child-parent relationship

When deciding whether to award custody to a third-party over the objections of the legal parent, courts consider the following factors, which include but are not limited to:

- Whether the legal parent is unwilling or unable to care adequately for the child
- Whether the third-party is, or recently has been the child’s primary caretaker
- If there would be circumstances detrimental to the child if relief is denied
- Whether the legal parent has fostered,

encouraged, or consented to the relationship between the child and the third-party; or;

- Whether the legal parent is unreasonably denying or limiting contact between the child and the third-party

In summation, a third-party, even a grandparent, must overcome both the fundamental constitutional right of legal parents to make decisions regarding the care, custody and control of the child and rebut the presumption that the parent acts in the “best interests of the child” in order to have court-ordered custody and/or contact time with a minor child.



07 RIGHTS OF THIRD-PARTIES IN JUVENILE COURT

While chapter 3 discussed juvenile court procedure with regard to a child's legal parents, this chapter addresses the rights of third-parties to participate in juvenile court proceedings. The rights described below apply only in dependency proceedings regarding allegations of abuse or neglect, not in delinquency proceedings (where children are alleged to have committed acts which would be criminal if they were adults).

A legal grandparent, upon written request, is entitled to notice and the opportunity to be heard in a juvenile court dependency proceeding.

A third-party who has a “caregiver relationship” with a child may move to intervene in a juvenile court dependency proceeding concerning that child, according to standards similar but not identical to standards that apply in domestic relations actions in circuit court (described above). Being allowed to intervene in juvenile court does not provide for intervention in the domestic relations court or vice versa.

To have a “caregiver relationship,” one must have exercised physical custody of, or lived with the child during the year before the initiation of the juvenile court action (or for at least six months during the juvenile court proceeding, or for most of the child’s life in the case of a child younger than six months), and loved and nurtured the child during this time, providing for the child’s psychological and physical needs on a daily basis.

If the third-party establishes by a preponderance of the evidence that they have such a relationship with the child so that the proposed intervention is consistent with the child’s best interests and is helpful to the court, and establishes that the existing parties to the proceeding cannot adequately protect the child’s best interests, then the court may allow intervention in the juvenile court proceeding. The court may also allow the lesser right of limited participation

A successful intervener becomes a party to the juvenile court case. He or she is then entitled to

the opportunity to appear and participate in hearings, to request such hearings, and to appeal decisions of the court. An intervener may also request consideration by the court for ultimate placement of the child with the intervener.



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