

Family Law in Oregon

**Marriage and Living Together
Protection from Abuse
Legal Separation and Informal Separation
Annulment and Divorce
Paternity
Custody and Parenting Time
Child Support and Insurance
Spousal Support
Name Changes
The Child Welfare Program of the
Department of Human Services
Adoption
Guardianships for Children**



Legal Aid Services of Oregon
Community Education Series 2003

IMPORTANT! This booklet is for general educational use only. *It is not a substitute for the advice of an attorney.* If you have a specific legal question, you should contact an attorney. The information in this booklet is accurate as of November, 2003. Please remember that the law is always changing through the actions of the courts, the legislature, and agencies.

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MARRIAGE

1. How do I get married in Oregon?

To get married you need a marriage license from the County Clerk. The fee is approximately \$60. The license becomes effective three days after it is issued. A person authorized by the state must perform the marriage and two people must witness it. You do not need a blood test to get married. You do not need to live in Oregon to get married here.

2. How old do I have to be to get married?

You must be 18 years old to get married in Oregon without a parent's permission. You can get married at age 17 if: 1) you have written

permission from a parent or guardian, or 2) neither parent lives in Oregon and you have lived here for six months in the county where you are applying for the marriage license. You cannot get married in Oregon if you are under 17, even if you have a child or have a court order emancipating you (declaring you an adult for certain purposes).

3. Can I get married by common law in Oregon?

Common law marriages (marriages created by a couple living together and acting like husband and wife) cannot be created in Oregon. But Oregon might consider you married if you moved to Oregon after living together in a state that allows common law marriages.

LIVING TOGETHER

4. My partner and I are living together, but we are not married. Is there anything we need to do to protect our rights now and in case we split up?

Unmarried couples are not treated the same as married couples in all situations. But there are some things you can do to avoid problems that might come up. For example, if there is a medical emergency, a hospital may let one person consent to treatment for the other only if the couple is married. An unmarried couple can solve this problem by having each partner sign a form called a *power of attorney* that says that the other can give consent for medical care. Most stationery stores have *power of attorney* forms.

There may also be a problem in deciding who gets the property when an unmarried couple

separates. If you are living together, it is a good idea to have a written agreement about property you each had when you moved in together or that you buy afterward. If you are buying a house or land together, you should probably talk to a lawyer first.

5. My partner and I have a child together. If we split up, what are my rights concerning our child?

With unmarried couples, the answer depends on whether the father is legally recognized as the child's parent. *If paternity has not been established*, the mother has legal custody but she cannot get a child support order. The father has no enforceable custody or parenting time rights. See Questions 23 through 36 for information about paternity. *If paternity has been established*, unmarried parents usually have the

same rights and responsibilities toward their child that married parents have -- custody, parenting time, and child support. For information about these issues, see Questions 63 through 132.

At the time you and your partner separate, you should get a court order that says who the child's father is, who has custody, a parenting time schedule, and child support terms. If you and your partner agree about all of these, you can probably get the order without a hearing. If you do not agree, you will need to have a hearing and should have an attorney.

PROTECTION FROM ABUSE

6. What can I do if my spouse or someone I live with is abusing me?

You can get a restraining order, which is an order from the court that tells your attacker to stop the abuse and to leave you alone. A restraining order can require your attacker to not do anything to harass you or your children, to move from your home, and to stay away from your job or school. The police must arrest your attacker if the restraining order is not followed.

Restraining orders can also include temporary custody and parenting time orders. See Question 72 for more information.

7. Who can get a restraining order? Against whom?

You can get a restraining order if you are in imminent danger because your attacker has physically abused you or attempted to physically abuse you; put you in fear of bodily injury; or made you have sexual relations against your wishes by using force or threats of force.

You can get a restraining order against someone you are or were married to; adult relatives; a lover you live with or used to live with (of the same or opposite sex); a person who was your lover (of the same or opposite sex) during the last 24 months; and the other parent of your minor child. If you are under 18,

you can get a restraining order against a person who is 18 or older if the person is someone you are or were married to, or if you have ever had a sexual relationship with the person.

If you are 65 years old or older, or a person with a disability who has been the victim of physical abuse, sexual abuse, neglect, ridicule, harassment, coercion, intimidation *by anyone*, including a caregiver, or exploitation by sweepstakes promotion you can get a restraining order if you are in immediate danger of further abuse.

8. How can I get a restraining order?

You can ask for a restraining order in a restraining order lawsuit. Forms and instructions are available at all courthouses. Domestic violence shelters and crisis lines, and legal aid offices also have information about getting restraining orders. There is no filing or service fee for these restraining orders.

If a divorce or separation case has been filed, you can also ask for a restraining order as part of that case. You will probably need an attorney to help you get this type of restraining order. If the restraining order deals only with stopping abuse, there is no filing or service fee.

9. What can I do if someone is stalking me?

If someone has made you afraid for your physical safety by injuring you, physically or sexually abusing you, committing a crime against you (or your pets or property), threatening you (either by phone, in writing, or in person), following you, watching you, or otherwise stalking you, you may qualify for the protection of a stalking order.

The court has the power to order someone not to contact you when that person has repeatedly (*twice*) stalked you and made you reasonably afraid for your physical safety.

You can get a stalking order against *anyone* who has “stalked” you. You do not need to be related to the stalker in order to get protection. You can get a stalking order for your protection, or for the protection of a member of your immediate family or household.

Depending on what county you live in, you may get a stalking order through the police or through the courts. There are no filing or service fees for stalking protective orders.

10. What protection is available to me if I have been sexually assaulted?

You may be able to get a restraining order against the attacker, if the attacker is someone you are or were married to; an adult relative; a lover you used to live with (of the same or opposite sex); a person who was your lover (of the same or opposite sex) during the last two years; or the other parent of your minor child.

If you do not qualify for a restraining order because you are not related to the attacker or have never had a sexual relationship with him or her, you may be able to get a stalking order. You can only get a stalking order if there have been *two* contacts by the attacker.

If you do not qualify for a restraining order or for a stalking order, there may be some

protection available to you through the criminal justice system if a police report has been made and if the case is being prosecuted.

11. Are there other types of help available to me if I have been sexually or physically abused or stalked?

Yes.

Financial assistance: If you are a victim of domestic violence and you are pregnant or have minor children who live with you, you may qualify for special financial assistance from the Department of Human Resources. If you are currently a victim of domestic violence, or are at risk of domestic violence, and you need financial help to be safe, you should contact your local Department of Human Services office and ask about Temporary Assistance for Domestic Violence Survivors (TA-DVS). A limited amount of money may be available to help you.

Housing assistance: If you are a victim of domestic violence, sexual assault, or stalking, and you need to move out of your home to be safe, you can terminate your lease early by giving your landlord 14 days written notice of termination. To qualify for this relief, you must provide the landlord with a copy of a court’s stalking or restraining order, a police report, or a statement made by a law enforcement officer.

If you want to stay in your home but need the locks changed for your safety, you can ask the landlord to change the locks. If the landlord does not change the locks promptly, you can change the locks yourself. You must give the landlord a copy of the new key if you change the locks yourself. If the person who has abused you is on the lease with you, you cannot have the locks changed unless you have a restraining order which orders the abuser to move out of your home.

Unemployment assistance: If you are forced to quit your job because of domestic violence,

you may qualify for unemployment benefits if a reasonable person in your situation would have felt forced to quit for safety reasons, and if before quitting you tried other ways to keep yourself safe.

Immigration assistance: If you are not a U.S. citizen or lawful permanent resident and you have been abused in the U.S. by a U.S.

citizen or lawful permanent resident who is your current or former (within the last 2 years) spouse, you may qualify for special immigration assistance. You may also qualify for this assistance if you are the child of an abusive parent citizen or lawful permanent resident, or if you are the other parent of a child abused by a U.S. citizen or lawful permanent resident. These laws are very complicated and you should seek help from an attorney for more information.

If you are a victim of domestic violence, sexual assault, or stalking, you should contact a local domestic violence or sexual assault services program, the police, a legal aid program, or a lawyer, for support and to see if the law can help in your situation. See the Resources section at the back of this booklet.

ANNULMENT

12. What is annulment?

Annulment is a way of legally ending, or canceling, a marriage. You can get an annulment only in very special cases. For example, you can annul your marriage if one of the spouses is already married or not old enough to legally marry. You cannot get an annulment just because your marriage is only a few days old or because you have not had sex with this spouse. A lawyer can help you find out if you can get an annulment. Court costs for an annulment are about the same as for a divorce.

13. If my spouse was already married to someone else when we got married, do I need a court order to end my marriage?

In most cases, if you were married in Oregon to someone who was already married, then your marriage is void (does not exist). You do not need an annulment unless there are children to support, property to be divided, or you want a court document for your records. If you were married outside Oregon to someone

who was already legally married, it will take a court order to end the marriage.

If you were married in Oregon before July 31, 1981, to someone who was already married, you may need a divorce to end the marriage. Contact a lawyer.

14. Can I get an annulment in Oregon if I was married in a state other than Oregon?

You can get an annulment for a non-Oregon marriage if your situation fits the rules for annulment and you or your spouse have been living in Oregon for at least six months.

LEGAL SEPARATION

15. What is a legal separation? Why do people file for legal separation?

A “legal separation” is a court order setting out enforceable terms for a couple who remains married but agrees not to live together as husband and wife. The separation judgment states who gets the children, who pays support for the children, whether and how much spousal support is ordered, and who gets which property and pays which debts. Legal separation is sometimes used when religious beliefs prohibit divorce or when you or your spouse have not yet lived in Oregon long enough to file for divorce. See Question 41. A legal separation costs about the same as a divorce. During the first two

years it can be changed to a divorce by either person. After two years, you can still get a divorce, but it will be a separate case. If you get a divorce later, the terms will probably be the same as the terms of your legal separation.

16. What is the difference between divorce and legal separation?

The main difference is that you are still married after a legal separation, so you cannot marry someone else. Also, you still have the right to inherit property “automatically” from your spouse if you are legally separated. If you are divorced you lose that right.

INFORMAL SEPARATION

(You and your spouse are living apart, but you haven't filed for legal separation or divorce.)

17. My spouse and I have been separated for several years but we have never filed for divorce. Are we still married? Can I marry someone else?

Until you end your marriage through divorce (or annulment in very rare cases -- see Question 12) you and your spouse are married. Neither of you can remarry until you end your marriage.

18. My spouse and I have separated but we haven't filed for divorce. I have our children. Do I have more custody rights than my spouse?

No. Unless you have a custody order (a court order signed by a judge that says that you have custody) you and your spouse have equal rights to have the children. You and your spouse can agree on where the children should live. But, with a few exceptions, unless you have

a court custody order, you won't be able to have the police get your children back if your spouse breaks the agreement.

19. How can I get a court order that gives me custody?

If you are afraid of your spouse because of physical abuse or threats against you within the last six months, *and* your children have ties to this state or need emergency protection, you should be able to get custody for one year as part of a Family Abuse Prevention *restraining order*. See Questions 6 through 8 and 72.

If you are filing for divorce and your children have ties to this state or need emergency protection, you can ask in your petition that permanent custody be awarded you in the *divorce judgment*. See Question 37. Once you have filed for divorce, you can ask for a *temporary*

order that gives you custody until the divorce is final. See Question 60.

20. If my spouse and I are separated, can I get child support? How?

Your spouse can agree to pay you child support, but you can't enforce this arrangement unless you have a court or agency order.

You can get a child support order without filing for a divorce. If you are getting welfare, the state's Department of Justice (DOJ) will try to get a support order against your spouse. If you are not getting welfare, you can contact the county District Attorney for free help in getting a child support order. In some counties, the Department of Justice (DOJ) handles non-welfare cases.

You can also ask for child support as a part of your divorce. A judge can require your spouse to pay child support payments in a temporary order and in the final divorce judgment.

See Questions 92 through 132 for more information about child support.

21. Do I have to let my spouse back into my home if we are separated but still legally married?

If you are separated and your spouse's name is not on the rental agreement or deed to the home, your spouse has no right to enter it. If you are living in the family home and feel you are in danger from your spouse or partner, you can ask for a restraining order that will forbid him or her from contacting you or coming into your home. See Questions 6 through 8.

22. Am I responsible for my spouse's debts while we are still married?

You are not responsible for any debts signed for by your spouse **before** the marriage (unless you also signed for them). Nor are you responsible for any debts your spouse signed for alone **during** your marriage, with one exception: you and your spouse are each responsible for family expenses, such as debts for living expenses and medical care for each other and the children, even if only one spouse makes the purchase. If you separate, you each are responsible for your own new debts and expenses for the children after that time. For more information about your and your spouse's responsibility for bills after divorce, see Questions 142 through 144.

PATERNITY

23. Why is it important to establish a child's paternity?

The father of a child must be legally recognized as the parent before you can get a court or agency order that decides issues such as child custody, parenting time, and child support. Also, children whose paternity has been established may be able to get certain benefits, such as Social Security or workers' compensation, if their fathers have died or are disabled.

24. What are a father's responsibilities and rights?

A father has a right to have either custody of the child or parenting time with the child. If he does not have custody, he is responsible for paying child support. A father without custody also has the right to know how the child is doing in school, and information about the child's health.

A father does not always have the right to have his child bear his last name. If the parents cannot agree, the judge can decide. For more information about the last name of your child, see Question 149.

25. How can paternity be established?

For *married couples*, the husband will be considered to be the child's father unless the mother, husband, or natural father proves in court that the husband is not the parent. See Question 26.

For unmarried couples, both parents can *sign a sworn statement* on an official form that says that the man is the child's father. See Question 27.

There can be a *court or agency order*, signed by a judge or hearing officer, that says that the man is the child's father. See Question 29.

26. For married couples, how is paternity determined?

The husband is the legal father if the child was conceived during the marriage while the couple was living together and if the husband was able to be the child's father (not impotent or sterile). No one can challenge this. If the married couple was *not* living together when the child was conceived, the husband is still considered the father unless the mother, husband, or natural father proves in court that the husband is not the parent.

27. The father wants to admit paternity. How can this be done?

Both parents can sign an official statement that says that the man is the father of the child. You can get the form (a paternity affidavit) from the child support agency handling your case, from your welfare worker, your county health department, or by calling the State Health Division at (503) 731-4108 or 731-4495. The form must be signed, notarized and returned to the Health Division. (Almost all county health departments have notaries.) This process costs approximately \$50.

If the paternity form is filled out and filed shortly after birth, there is no charge for the process. The hospital where the baby is born or the county health department can assist you with this.

These voluntary methods of establishing paternity have the same legal effect as a court order. Paternity can be changed only in limited situations. See next question.

28. What if the father or mother changes his or her mind after voluntarily signing a paternity form?

Once a paternity affidavit has been filed with the Health Division, the law allows only three exceptions for canceling the paternity registration:

- 1) a parent withdraws his or her consent to the paternity establishment. This must be done within the first 60 days after the form is filed with the Health Department.
- 2) a parent convinces the court that he or she was defrauded or forced into signing the acknowledgment or was mistaken about important facts when he or she signed it. This must be done within 1 year after the form is filed with the Health Division; or
- 3) no genetic testing has been done and a parent makes a request for testing to a court or child support agency handling the case within 1 year after the paternity form has been filed with the Health Division.

29. Do you have to ask for a hearing to keep the Department of Justice (DOJ) from filing a paternity suit?

You can get a lawyer to file a paternity lawsuit, also called a filiation suit. In a paternity case, a judge will decide whether the man is the father if the man challenges that issue. There is no time limit for starting a paternity suit.

If you are getting welfare, the Department of Justice (DOJ) will start a paternity suit on behalf of the state, at no cost to you. DOJ may file even

if you do not want paternity established. But if you do not want DOJ to file a paternity suit, you can ask the welfare department for a hearing. At the hearing you must show that there is a good reason, like danger to you or to the child, why a paternity suit should not be filed.

If you are not getting welfare, you can ask your local District Attorney to file a paternity suit on behalf of the state. There is no cost to you.

30. What if I've never admitted paternity but want to see my child now?

You can try to make arrangements with the child's mother. But if you want a legal and enforceable right to visit the child, you must first be legally recognized as the father. If you were married to the child's mother when the child was conceived, the law considers you to be the father (unless your divorce judgment says otherwise). If you were not married to her when the child was conceived, you will have to establish your paternity of the child and ask for parenting time rights.

DOJ and District Attorneys handle cases to establish paternity both when a mother requests and also when a man claiming to be the father asks for this service. DOJ and the District Attorneys do not handle custody or parenting time issues but should have some referrals for parents with these problems.

31. Who gets custody when paternity is established?

A court deciding the issue of paternity often can also decide custody and set up a parenting plan if one of the parents files the correct legal papers. The final court order will then state the custody, parenting plan, and child support terms.

A special custody law applies to paternity cases: if the final papers do not state custody and parenting time terms, then the parent who had

physical custody of the child at the beginning of the paternity case automatically has legal custody. Also, if paternity was established by the sworn statement method (see Question 25), the parent who had physical custody when that form was filed with the Health Division automatically has legal custody.

This law might help you get your child back if the child is taken by the other parent. But final papers in a paternity case do not always say which parent had custody at the beginning of the case. And if paternity was established by the sworn statement method while the parents were *both* living with the child, this law may not be much help. You may need a separate lawsuit to decide custody and parenting time.

32. What should I do if I am served with court or agency papers in a paternity suit?

If you are not the father and do not want to pay child support, you must deny paternity and ask for a hearing. If you were served court papers, you must file your response in the time stated on the papers. If the Department of Justice (DOJ) has filed the paternity suit, agency hearing request forms will be included in the papers you receive. You have 30 days to make the request in writing. No matter who files the lawsuit, you should try to talk to a lawyer. If you cannot afford one, some legal aid offices may have an informational brochure that will help you through the process.

It is very important not to miss any deposition (formal questioning) or court hearing dates listed in the papers you are given. If you do not appear, you might lose your chance to deny paternity and to be heard on the issue of child support.

Even if you admit that you are the father, you can still challenge the amount of child support requested in the papers. You will need to ask for a hearing to challenge the amount of support.

33. Why is the Department of Justice (DOJ) involved in my paternity case?

DOJ gets involved when the state is paying welfare or foster care payments to support the child, or when the child is in the custody of the Oregon Youth Authority. If you have been named as the father, DOJ may send you a letter asking you to come in for a meeting or conference. You do not have to go but you can choose to go. You may want to talk to a lawyer about what you should do. If you do go, anything you tell them may be used against you. You do not have to sign any papers they give you, but you can if you choose. Make sure you understand what you are signing.

34. How is paternity determined in a legal proceeding?

Unless the man admits he is the father, paternity will be decided in a court or agency hearing. The best way to prove or disprove paternity is genetic testing of the man, mother, and child. These tests cost from \$150-500; a judge, DOJ, or the District Attorney can order these tests. The genetic sample usually is taken by a "buccal swab," a wiping of the saliva (spit) from the inside of the cheek.

35. What if I can't afford to pay for genetic tests?

If the District Attorney or Department of Justice filed a lawsuit and you are low-income, the state will pay for the genetic testing. If you are found to be the father, you will probably be ordered to pay the state back for the costs of these tests.

36. If I have already been found to be the father, is there any way I can challenge this later?

Sometimes, but probably only in cases for children born in the last few years.

If paternity was established by both parents' signatures on the Health Division form, see Question 28 for an explanation about what challenges can be made, and when.

If paternity was established by court or agency order and genetic testing was not done at that time, the law says that either parent can re-open the issue, but only within one year of the paternity order. If you have a paternity case that meets these conditions and you want to re-open the issue of paternity, contact an attorney or your local child support agency (Department of Justice or the District Attorney).

DIVORCE

Will I be Able to Get a Divorce?

37. What is a divorce? What gets decided in a divorce?

A divorce is a way of legally ending (dissolving) a marriage. After you have gone through all the steps in a divorce, you will get a divorce decree (also called a "Judgment of Dissolution of Marriage"), which is an order signed by a judge.

The divorce judgment will usually state:

- The date your marriage ends;
- Who gets custody of the children and when the other parent sees them;
- Who pays child support and how much;
- If health insurance for the children will be paid and who will pay it;
- Who should pay past bills;

- How property (including retirement benefits) will be divided;
- If one spouse must pay support to the other (spousal support or alimony).

38. Do I need a legal reason to get a divorce?

Oregon has "no fault" divorce. The only reason you need is that you and your spouse cannot get along, and you see no way of settling your problems. The law calls this "irreconcilable differences."

39. Can my spouse keep me from getting a divorce?

No. Your spouse cannot stop you from getting a divorce. But your spouse can contest (disagree with you about) issues in the divorce, such as child custody and support, spousal support, and property division. This can delay the divorce. In some counties, your spouse can ask the judge to postpone your divorce and order both of you to see a counselor.

40. Will I be able to get a divorce if I don't know where my spouse is?

Yes, but you will have to prove to a judge that you have tried in many ways to find your spouse before a judge will let you go ahead with the divorce. See Question 48. If your spouse can't be found for personal delivery of the divorce papers, you will be able to end your marriage and (usually) get custody decided, but you will probably not get child support or any divorce terms which require your spouse to pay money or do something (such as transferring title to property).

41. Can I get a divorce in Oregon now if I just moved here?

Probably not, unless your spouse is living here. In almost all cases either you or your spouse must have lived in Oregon for six months before filing for divorce.

42. Will it take me long to get a divorce?

An uncontested divorce (where you and your spouse agree about the terms of the divorce) can be final approximately three months after the divorce petition is filed and delivered to your spouse. You may be able to reduce this time if the judge thinks you have a very good reason. If you and your spouse have agreed on the divorce terms and both signed the proposed final judgment, the judge can waive the waiting period.

A contested divorce (where you and your spouse are arguing about the terms of the divorce), could take much longer than three months because court hearings may be needed.

43. Will I have to go through a trial to get a divorce?

If the divorce is uncontested (if you and your spouse agree about all the terms of the divorce), you can probably get divorced without a trial. But if the divorce is contested you will probably need a trial.

44. Will it cost a lot of money to get a divorce?

Court costs and fees are in the range of \$300. The Circuit Court Clerk's office at your local courthouse can tell you the costs and fees in your county. If you can't afford to pay the costs and fees, you can ask the judge to excuse you from paying them by filling out court papers that show your income is very low and your expenses are more than your income. For more information, see Question 54.

If you hire a lawyer, you will need more money. These cases can cost a lot if you have a trial. Be sure you know what the lawyer's charge includes. Keep asking questions until you understand what the lawyer's bill will pay for.

45. Will I need to have a lawyer to get a divorce?

If you and your spouse agree about all the terms of the divorce, or if neither you nor your spouse wants to contest (fight about or challenge) what the other is asking for, you won't need a trial. You may be able to do the divorce paperwork yourself, but you may want a lawyer to look it over.

Divorce paperwork is available online at <http://www.ojd.state.or.us>. Once at this website, click on the "FORMS" link and then choose "Family Law Forms". Finally, print the appropriate forms and instructions for your circumstances.

If you meet all the rules for a *Summary Dissolution* (see Question 49), you can get the forms at the county courthouse. Also, the legal aid office serving your county may give classes and materials so that you can handle your own divorce. You may want to have a lawyer look over the divorce papers you prepare. This will cost less than having a lawyer do the whole divorce.

If you and your spouse cannot agree and one of you will contest issues in the divorce in court, a judge will have to make a decision about the issues. This will probably require

court hearings. If one spouse gets a lawyer, the other spouse often needs one too.

46. What if I cannot afford a lawyer?

If your spouse has an income that is much higher than yours, the judge may order your spouse to pay your lawyer. If you have an income that would allow you to make monthly payments to a lawyer, talk to different lawyers to see if they will help you. Some legal aid offices do not handle divorces directly, but they may offer classes and materials to help you do your own divorce. See the Resource Section of this booklet for the legal aid office nearest you.

47. Will there be problems getting a divorce if the wife is pregnant?

No, but your divorce petition (request) should state that the wife is pregnant and if the husband is the father. The judge will want to know if the husband is the father, so that issues such as child custody and support can be handled as part of the divorce.

If the husband is *not* the father, the divorce petition and the final divorce judgment should state that he is not the father. Otherwise, the law will assume that he is and treat him as the father.

How do I File for a Divorce?

48. What do I need to do to start a divorce?

In almost all cases either you or your spouse must have lived in Oregon for at least six months before you file the divorce papers. If one of you has lived here that long, you need to do three things to start your divorce:

- a. You must pay or be excused from paying the fees that are charged for filing a

divorce petition. There might also be costs for having your spouse served. See Questions 53 and 54 for information about these costs.

- b. You must file (turn in) a Petition for Dissolution of Marriage with the Circuit Court Clerk's office at the local county courthouse. The petition tells the court and your spouse what you are asking for in the divorce.

- c. You must have the petition *served* on (officially delivered to) your spouse. This lets your spouse know that a divorce action has been started and what you are asking for. See Questions 51 and 52 for information about serving the petition. Other paperwork is also required.

49. Can I use Summary Dissolution forms or other self-help forms to file for divorce?

A *summary dissolution* is a simple, uncontested divorce. The forms and instructions are free and are available at county courthouses. To use the *summary dissolution* forms, you must meet *all* of the following requirements:

- a. **Residency** - You or your spouse is a resident of Oregon and one of you has been living here for the last six months.
- b. **Length of Marriage** - You have not been married for more than ten years.
- c. **Children** - You have no minor children (or children 18-20 years old attending school), born to or adopted by you and your spouse, either before or during the marriage. The wife is not pregnant now.
- d. **Real Property** - Neither you nor your spouse owns any real property (land, houses, or buildings) anywhere.
- e. **Personal Property** - The combined net value of the personal property owned by you and your spouse is not more than \$30,000.
- f. **Debts** - The combined unpaid debts of you and your spouse during your marriage are not more than \$15,000.
- g. **Spousal Support (Alimony)** - Neither spouse is asking for spousal support.
- h. **Temporary Orders** - Neither spouse is asking for any temporary orders (except a restraining order in a separate family abuse prevention case).

- i. **Other Divorce Actions** - You are not aware of any other divorce or annulment proceedings involving this marriage filed in any court and not yet decided.

If you don't meet all of the requirements for *summary dissolution*, you will not be able to use the forms that are available at the courthouse. But your local legal aid office may provide classes and forms so that you can get your own divorce.

The *summary dissolution* forms and self-help forms that you get through your local legal aid office are intended to help get you a divorce *without* an attorney. But you have the right to be represented or helped by an attorney if you can obtain one. It may be helpful to see an attorney before you file the forms, to make sure you have filled them out correctly. You may have questions about the procedure or want advice about your individual rights and responsibilities. *If your spouse contests the divorce by filing papers with the court, you should try to get legal advice.*

50. How do I fill out the petition?

The petition tells the judge and your spouse what you are asking for in the divorce. If a lawyer is representing you, he or she will write the petition after talking to you about what you want. If you are using "do-it-yourself" forms, the class you go to or the instructions you receive will give you information about the kinds of things you can ask for in a divorce.

After the petition is written, it is filed (turned in) at the courthouse. Other legal paperwork is required, too. A few courthouses have a staff person (a "facilitator") to help with family law paperwork and procedures.

51. How do I serve the divorce papers?

If a lawyer is handling your divorce, he or she will have the divorce papers served on (officially delivered to) your spouse. If you are

using "do-it-yourself" forms, the instructions should tell you what you need to do. Your spouse can agree to sign papers that say he or she has been served. Otherwise, your spouse must be served by either the sheriff or another adult (not you).

If you are getting welfare or certain other public benefits, the Department of Justice (DOJ) will also have to be served with the divorce petition. If you do not have a lawyer or if the divorce forms you are using do not have instructions about this, you can call the DOJ to find out how to serve them with the papers.

52. How do I serve the divorce papers if I cannot find my spouse?

If you cannot find your spouse, you will need to serve your spouse by either publishing or posting a notice that you have filed for divorce. *You MUST have an order signed by a judge that gives you permission to serve your spouse by publishing or posting notice.* To get the order, you will have to show the judge that you have tried in many ways to find your spouse. If notice is published in the newspaper, there will be a fee of approximately \$100. Posting the notice in the courthouse is free. You can find out more about these kinds of service from a lawyer or the instructions in the self-help forms that you are using.

53. What are the costs for filing and serving the petition?

When you file the petition with the court clerk, you will be charged a filing fee of approximately \$300. Each county charges its own fees based on services offered there; call the Circuit Court Clerk's office at your local courthouse to find out the cost and fees in your county.

If you have a county sheriff in Oregon serve the divorce papers on your spouse, you will be charged a service fee of approximately \$25.00.

54. What can I do if I can't afford the fees for filing and serving the petition?

Before you file the petition, you can ask the judge to excuse you from paying the fees by filling out court papers that show your income is very low. These are called Fee Waiver or Fee Deferral forms. The judge will then decide if you have to pay at all or if you will have to pay the fees later. The judge can order your spouse to pay the costs and fees in many cases or can order you to pay them either in affordable payments or all at once after the case is over. Court costs are a debt you owe the state. If you don't pay costs the judge has ordered you to pay you can lose money that the state owes you, such as your tax refund.

55. What happens after the divorce papers are filed and served?

After you have filed for divorce and served your spouse with the papers, your spouse has thirty days to file papers to fight (contest) the divorce. If, after thirty days from the date your spouse was served with the papers, he or she does not file papers to contest the divorce, you will be able to get a final divorce judgment in approximately two months. You might be able to get the judgment sooner if a judge decides that you have a very good reason, such as you have both signed an agreement to the terms of the divorce. If a lawyer is handling the divorce, the lawyer will file the papers so that you can get the final judgment. If you are handling your own divorce, the instructions will tell you what papers you need to file and when you need to file them.

If you are filing for temporary orders, such as custody and child support, or if your spouse files a response to fight about issues in the divorce, you may need to have court hearings. If this happens, it could take much longer than three months to get the final divorce judgment. If your spouse gets an attorney, you will probably need one, too.

My Spouse is Divorcing Me

56. How will I know if my spouse is starting a divorce?

To start a divorce, your spouse must first file a petition for divorce. You will then be given a copy of the petition by the sheriff, or someone else, at your home, place of work, or somewhere else. If the judge believes you can't be found, your spouse can get a divorce after publishing a legal notice in the newspaper or another public place, such as the courthouse. For more information about serving divorce papers if you cannot find your spouse, see Question 52.

If you have never received a divorce petition, you can find out if your spouse has started a divorce or already divorced you by contacting the court clerk. It is likely that your spouse would file for divorce in the county in which she or he lives, so you can call or go to the courthouse in that county to see if a divorce has been filed.

57. What should I do if I am served with an Oregon divorce petition?

If you agree with all of the terms of the divorce as listed in the petition, you do not need to respond. The judge will then approve all the terms in a final divorce judgment.

If you want to contest (challenge) the terms listed in the petition, you must file a written

answer (called a Response) with the court within 30 days of when you were handed the papers. Contact a lawyer or, if you are low-income, your local legal aid office right away to learn about what you can do. Legal aid offices may have forms you can use to make your response.

There is a court fee of approximately \$200 to file a Response in a divorce case. If you can't afford this fee, you can ask the judge to excuse you from paying it by filling out court papers that show your income is very low. These are called Fee Waiver or Fee Deferral forms. The judge will decide whether or not you have to pay at all, if you will have to pay the fees later, or if your spouse will have to pay. Court costs are a debt you owe the state. If you don't pay costs the judge has ordered you to pay, you can lose money that the state owes you, such as your tax refund.

58. What happens if I live in Oregon and my spouse files for divorce in another state where she or he lives?

Your spouse will probably be able to get a judgment ending the marriage. But if you are served with papers that say that your spouse should get child custody, or that you should pay child support or other money, and you don't agree, talk with a lawyer right away.

While the Divorce is Pending

(The divorce has been filed but there is no final divorce judgment.)

59. Can I move out of state while waiting for my divorce to be finished?

Yes. But you can't take your children out of state if your spouse got a court order to keep you from doing this. Also, if you have moved out of state you probably will have to return for any divorce hearings.

60. Will I be able to get a temporary custody order?

Maybe. There could be a court hearing about the custody arrangements while the case is pending. In court, you and your spouse would have a chance to prove which temporary custody arrangement would be best for the children. Many times, the parent who is given a temporary custody order also is given custody in the final judgment.

But temporary custody orders may not be easy to get. Judges want to give parents time to try to work out an agreement about the children, and do not want to give one parent the advantage of a temporary custody order while these discussions are taking place. Often these judges will issue a "protective" or "status quo" order at the beginning of a divorce case. This protective order keeps the child's situation the same as it was at the time the divorce case started (same home, school, child care schedule, same amount of contact with the other parent, etc.). With a protective order, there usually isn't a custody hearing until the time of the final divorce judgment. Both parents are usually ordered to keep the child in Oregon unless the other parent agrees in writing to the travel or move.

Sometimes judges grant temporary custody without a hearing, if there is proof that the child is in immediate physical danger or is likely to be taken from the state. If you get an emergency custody order without a hearing, the other parent will be given a chance to present his or her side soon afterwards.

If you have been physically abused or threatened by your spouse in the last six months, you may be able to obtain a temporary custody order as part of a Family Abuse Prevention Act restraining order, even if a divorce is pending. See Questions 6 through 8 for more information about restraining orders.

For more information about how child custody is decided, see Questions 62 through 79.

61. Is there a way to decide child support and who stays in the family home while the divorce is pending?

Yes. You and your spouse can agree on these issues. But to require one spouse to pay support or move out of the home, you will need to go to court and get a court order. You can often get a court hearing about temporary child support more quickly than a hearing about temporary custody. For more information about child support orders, see Questions 95 through 106 and 111 through 119.

62. Do I have to see or talk with my spouse or his attorney while the divorce is pending?

It is up to you how and whether to have contact with your spouse. If you believe you can settle some or all of your divorce case, it might be a good idea to talk with your spouse. If you are afraid of your spouse or if a restraining order or stalking protective order is in effect, contact with your spouse may be dangerous (or even unlawful for the spouse restrained by the court order). Also, If you and your spouse both have attorneys, your spouse's attorney must talk with your attorney, not with you.

If you don't have an attorney but your spouse does, the attorney might contact you to attempt to get information or settle the case. You might also receive a notice for a deposition (answering questions under oath in the attorney's office) or a request to produce documents (such as tax returns, pay stubs, etc.). You may want to talk with an attorney if you get any legal papers like these.

CHILD CUSTODY

NOTE: The laws on custody of children apply to both married and unmarried parents. For unmarried parents, paternity must be established before custody can be ordered. See Questions 24 through 28 of this booklet for information about establishing paternity.

63. How is custody decided?

Legal custody means having the legal responsibility for caring for a child. The divorce judgment or court order will usually say who gets custody. Either parent (or both) can get custody. If the parents agree between themselves on custody, they can avoid a long and expensive court case. But if they can't agree, the judge will hear both sides and decide what's best for the child, not the parents. The judge will consider many factors such as:

- Which parent has been the children's primary caregiver;
- Emotional ties of the children to parents and other family members;
- Attitude of the parents towards the child;
- Whether one parent has physically or sexually abused the other. The law now assumes that it is not best for the child to be in the custody of a parent who has abused the other parent;
- Whether one parent is more likely to help the other parent keep a close relationship with the children. The judge won't consider this if one parent shows that the other parent has been abusive and that a continuing relationship with the children would be dangerous for either the parent or the children;
- Any criminal record of the parents;
- The parents' emotional stability;
- Home environment;
- The child's age, sex, and health; and
- Whom the child wishes to be with (if the child is old enough to make a good decision).

Judges will often award permanent legal custody to the parent who has had physical

custody of the child. Judges do not like to change the living situation of a child who is doing well.

64. What kinds of custody arrangements are possible?

- a. One parent gets legal custody of the children. The other gets parenting time (visitation) rights. This is the arrangement in most cases.
- b. Both parents have joint custody. With joint custody all or most decision-making about the child is shared. Joint custody does *not* mean that the child must spend equal or substantial time in each parent's home; a joint custody order can say that one parent's home is the child's primary home and that the other parent gets parenting time. Child support can still be awarded if there is joint custody. In Oregon a court cannot order joint custody unless both parents agree to all the terms.
- c. In families with more than one child, one or more children live with one parent and one or more children live with the other parent. (This is sometimes called "split" custody.) Judges usually don't order this kind of custody arrangement. They are worried that it may be harmful to the children to separate them.
- d. Rarely, a nonparent can be awarded custody in a divorce, or in a separate lawsuit. See Question 68.

65. What is "parenting time?"

"Parenting time" is a new term that courts use in place of "visitation." Parenting time and visitation are the same thing.

66. What is a “parenting plan?”

A parenting plan is the part of a court order that deals with custody and parenting time. All orders about custody must include parenting plans. Parenting plans may have detailed terms or general terms. All parenting plans must establish a minimum amount of parenting time for the parent who does not have custody.

67. What if my spouse and I can't agree about custody of our children?

The judge will probably order both of you to go to an information session on mediation. Mediation is one or more free, private counseling sessions in which a trained person tries to help you and your spouse reach an agreement about your children. You must attend the orientation session, but you can go to orientation at a different time than your spouse.

After this orientation, and depending on what county you live in, the judge might order you to try to agree on a parenting plan through mediation. If your spouse has abused you in any way and you would rather not go through mediation, talk with the mediator. Mediators must take the family abuse into account when deciding whether and how to mediate a case.

The judge might also order a custody or parenting time study. This is an evaluation of the parents by a trained counselor or psychologist who will make his or her recommendations available to the judge. Very few counties offer a free evaluation. Usually, a custody or parenting time study is not ordered unless one or both parents can afford the cost. The judge can order either parent or both parents to pay for the cost of the custody study.

Without mediation or a study, it is up to you and your spouse (or your attorneys if you have them) to settle on custody terms. If you cannot agree, the judge will decide.

68. How can a nonparent get legal custody of my child?

Sometimes a judge will grant legal custody to a nonparent, usually a relative, such as a grandparent or stepparent who has been living with your child and providing day-to-day care on a regular basis. Judges tend to award custody to third parties only if the judge finds that there is a good reason not to give custody to the natural parents (for example, the parents are unfit).

A nonparent can request custody in your divorce case, any other court case involving the child's custody (such as guardianship, or where juvenile court or the Child Welfare Program of the Department of Human Services is involved), or in a separate lawsuit. These are sometimes called "psychological parent" cases. Usually, a judge cannot award custody to a nonparent unless that person has filed legal papers that ask for custody. For information about guardianships and cases involving the Child Welfare Program of the Department of Human Services, see Questions 151 through 160 and 170 through 174.

69. Can the judge deny a parent custody just because he or she is a homosexual?

No. A judge *cannot* consider a parent's lifestyle in making a custody determination *unless* the lifestyle causes emotional or physical damage to the child. If you or your partner's homosexuality will be brought up in a custody case, you should consider hiring a lawyer.

70. Without a custody order, what rights do I have?

Married parents have equal rights to have custody of the child until a court order changes this. If your child lives with you, you may be able to determine many day-to-day issues about your child, but you cannot force your spouse to return your child after a visit, or enforce any other agreement, unless you have a court order.

When parents are unmarried and paternity has not been established, the mother has legal custody and the father has no custody or parenting time

rights. When parents are unmarried and paternity has been established by signatures on the birth certificate or in a lawsuit (often handled by the Division of Child Support or the District Attorney), custody might have been granted by the law to the parent who is the child's physical caretaker, even though no court order says so. See Question 31.

71. Can I get legal custody before my divorce or other custody case is final?

Maybe. See Question 60.

72. Can I get custody without filing for divorce or bringing a separate custody case?

Yes, but only temporarily. If you have been a victim of abuse within the last six months and your children have ties to Oregon or need emergency protection, you may be able to get an emergency *restraining order* with custody under the Family Abuse Prevention Act. See Questions 6 through 8 for more information about *restraining orders*. These orders usually last for one year. But if the other parent requests a hearing, the judge might change custody or parenting time terms, depending on the evidence. You will eventually need a permanent decision about custody in a divorce or other custody lawsuit.

73. Can I get the police to help me get my child back if I had an agreement with the other parent about child custody?

No. Usually, the police will help you only if you have a court custody order. If you have filed for a divorce and reached even a temporary agreement, it is a good idea to have the judge approve the agreement and make it a court order.

74. Can I represent myself in a custody dispute?

Yes, but it is a good idea to get a lawyer. If the other parent has a lawyer, you very probably will need one.

75. What if a child disagrees with his or her parents about custody?

Once a divorce starts, a child who disagrees with the parents over custody or parenting time arrangements has a right to have a lawyer. (But the parents are responsible for paying for the child's attorney in a custody case that does not involve juvenile court.)

Even if a child doesn't have an attorney, the child's wishes can be told to the judge. Sometimes the judge will talk to the child directly in the judge's office, with only the lawyers (not the parents) in the room. In deciding custody, a judge will seriously consider a child's wishes only if the child is mature enough to make a thoughtful choice, perhaps age 13 or older.

76. Do I have to tell the other parent that I'm moving?

Not if you're moving less than 60 miles farther from the other parent (unless a court order says you have to give notice even for this short move). Usually, custody orders other than restraining orders require a parent moving *more* than 60 miles farther away to tell the other parent and the court. But you don't have to give this notice if you can show the judge that you have a good reason not to.

77. If I have legal custody, can I move out of Oregon with my children?

You should be able to move out of state with your child unless a custody order or protective order (see Question 60) says that you cannot. But even if there are no restrictions in your orders, the other parent can stop you from moving the child by getting a new court order at the time of the move. A judge will order a parent not to move the child if the judge finds that the move would not be in the best interest of the child. You must still allow parenting time to the other parent if you move. Some adjustments will have to be made and a court will decide if the parents can't agree.

78. What rights do I have if I don't have legal custody of my children?

Unless a court orders differently, a parent without legal custody does have the right to parenting time with the child, to know about how the child is doing in school and to have information about the child's health.

79. Can a custody order be changed?

Yes, if the parent without custody proves something happened to make it necessary to change custody -- for example, the child was neglected or abused since the time of the last custody order. If there are no new problems in the child's home, the judge probably will not change a custody order even if the parent without custody can now provide a "better" home.

80. Can I do anything to prevent my child from going to the other parent when I die?

Your child's custody usually goes to the other parent if you die. But after your death the judge must consider any notarized document you left. You can have a lawyer prepare an Affidavit (sworn statement) that names a person you want to take care of your child or you can state your custody wishes in a will. You can also write a letter that says who you want to take care of your child and that gives specific reasons why the other parent should not have custody. The letter must be notarized to be effective. If the other parent decides to fight your wishes, the judge will have the final say.

PARENTING TIME (VISITATION)

NOTE: The laws about child parenting time apply to both married and unmarried parents. For unmarried parents, paternity must be established before parenting time can be ordered. See Questions 25 through 29 for information about establishing paternity.

81. Who gets parenting time rights?

The parent who does not have custody gets some sort of parenting time rights except in unusual situations. See Question 85. Grandparents and other people who have a substantial relationship with the child can also get visitation rights in some situations.

82. How are parenting time rights decided?

Parenting time rights are usually decided as part of a divorce or custody case. Parenting time rights are often part of restraining order cases, too. See Questions 6 through 8.

If you can come to an agreement with the other parent on your own or through mediation, the judge will probably make your parenting plan part of the final order. See Question 67. If you can't come to an agreement, the judge will decide.

In some limited circumstances, grandparents and other people who have a substantial relationship with the child can ask for visitation rights. This is a changing area of the law, so be sure to consult an attorney about these issues.

83. Do I need a court order if I have an agreement with the other parent about parenting time?

Yes, because if the parent with custody stops the visits, only a court order can be enforced.

84. How much parenting time does the parent without custody get?

Judges in many cases will give two weekends each month, some holidays, and approximately one month in the summer. But the amount of parenting time ordered depends on facts such as the age of the child and the distance between the

parents' homes. In restraining order cases, parenting time may be more limited.

85. Can parenting time rights be denied or restricted?

Yes, but only by a judge, and only if the parenting time would put the child in real danger. Usually, this means showing the judge that the visiting parent has physically or sexually abused the child or committed another violent crime. Sometimes the judge will order that visits be supervised by a third party.

If the visiting parent shows up for a visit under the influence of drugs or alcohol, you should consider carefully what to do to protect your child. It may be helpful to have a witness who saw what condition the visiting parent was in. If the pattern continues, you should ask that the parenting time be changed. See Question 91.

86. Can I deny parenting time to the other parent if child support is not paid?

No. You must give the other parent the parenting time ordered in the divorce or custody judgment even if child support is not being paid.

87. Do I have to make my children go on visits if they don't want to?

Your children should go on visits that a court has ordered, even if they don't want to go. You should try to find out why your child does not want the visits and you should try to work out the problems by talking to the other parent (if that is safe) or through counseling. In rare cases a judge might change the parenting plan. See Question 91.

88. Do I have to let my child visit the other parent out of state? If so, who pays travel expenses?

In most cases you must let the child visit out of state unless the order limits the visit to within the state. The divorce or custody judgment may state who pays travel expenses. If there is nothing in the court order about who pays travel costs, the person who asks for the visiting time

may end up paying but you may agree to share the costs.

89. What should I do if my child's other parent denies parenting time that the court gave me?

You should first try to talk to the other parent to try to work out the problem if you can do this safely.

If that fails, you can file papers with the court complaining about the denial of parenting time. Every county has a special hearing procedure to handle parenting time problems. Go to the circuit court clerk's office and ask for the parenting time enforcement forms. The court will schedule a hearing within 45 days. Some counties will require you to attend mediation first. (See Question 67 about mediation.) At the hearing, the judge can make an order to try to make sure the parent with custody gives you the parenting time the court ordered; one or more different types of court orders could be issued. You should not need a lawyer to file the papers or to go to the hearing with you.

If nothing else works, you should get a lawyer so you can ask the judge for an order holding the custodial parent in contempt of court. The rules and paperwork in these "contempt" cases are complicated. The judge can order penalties until the other parent allows visits.

You cannot stop making child support payments on your own just because parenting time was denied. But you can ask a judge to free you from paying child support until you get your visits. Judges do not like to stop child support payments and they will only do so if there is proof that you have had *very* serious problems getting parenting time.

90. Can the parent with custody move out of state with the children? Can that parent then deny the other parent parenting time?

A parent with custody can move out of state with the children unless this is forbidden by a

divorce or custody judgment or other court order. Many custody orders contain a provision requiring a parent who moves more than 60 miles away to give the other parent reasonable notice of the move and to send a copy of the notice to the court. A parent who moves has no right to deny parenting time to the other parent. A parent who is denied parenting time with children who live out of state may need to get a lawyer, depending on what enforcement procedures are available in that other state. Except in emergency situations, courts in other states must honor parenting time terms that were ordered by an Oregon court.

91. How do I change the terms of parenting time?

In some counties, you can reach an agreement in mediation which could then be

approved by a judge as a court order. In other counties, you will have to get a lawyer to go back to court for a change in the original parenting time order. To get the parenting time terms changed, you need to prove to the judge that it is best for the children if the parenting time terms are changed. You do not need to show that there has been a change from the way things were at the time of the first order.

If you file papers to enforce the parenting time the court ordered (see question 89), you can ask the judge at the hearing to change the parenting plan. At that hearing, the judge can change parenting time, but can not change custody.

TAKING CHILDREN

92. The other parent has taken our child and there is no court order giving custody to either one of us. Can I go to jail for taking back the child?

Perhaps, but probably not. Usually both parents have equal custody rights if there is no custody order.

But in two situations without custody orders, unmarried parents do *not* have equal custody rights: 1) if paternity has not been established the father has no custody rights; and 2) if paternity has been established by signatures on the birth certificate or in a lawsuit (often handled by the Department of Justice or the District Attorney), the child's caretaker might have automatic legal custody even if the court order does not say this. See Question 32. In these cases, the parents do not have equal rights to take the child even though there is no custody order.

But even if you have the right to take the child, you should not do anything that might

harm the child. You should also be careful not to do anything illegal, such as trespassing or assaulting someone. Avoid taking the child if you possibly can. Try counseling or mediation, or try to get a temporary custody order from the judge. Most judges disapprove of one parent taking a child who has been living with the other parent for a long time unless there is an emergency situation like abuse or neglect.

93. What if I have legal custody and the child's other parent takes our child without my consent?

- a. You can try to get the child back yourself if this will not put you or the child in danger.
- b. You can ask the local police or county sheriff to help you get your child back. In a few places the police or sheriff will go with you to get your child if you have a certified copy of your custody order. In most places you will have to go to

court to get an "Order of Assistance," which tells the county sheriff to return your child to you. Some legal services offices can help you request an Order of Assistance.

- c. You can also ask the judge to find the other parent in contempt of court for violating the custody order. The judge can order fines or jail time until the other parent returns the child. You will need an attorney for this.
- d. You can ask the District Attorney to bring criminal or contempt charges because the other parent has interfered with your custody rights. If the District Attorney's office decides to bring such a case (it is up to them) and wins, the other

parent could be jailed and required to repay any money you spent to find the child or get legal help.

94. I am unmarried and the person I was living with has taken my child but is not the child's natural parent. What can I do?

You can call the police. You can also try to get the child back by talking to the person. But you should not do anything that will be harmful or dangerous to the child.

You can also hire a lawyer to file a lawsuit against the person or ask the District Attorney to bring criminal charges because the person interfered with your parental rights. (It is up to the District Attorney's office to decide whether or not to bring charges.)

CHILD SUPPORT AND INSURANCE

Note: The laws on child support apply to both married and unmarried parents. For unmarried parents, paternity must be established before child support can be ordered. See Questions 25 through 29 for information about how paternity is established.

Child Support

95. What is child support?

Money that is regularly paid by a parent to help pay for food, housing, clothing, medical care, day care and other costs for a child. Health insurance is also considered a form of child support. See Questions 129 through 132.

96. Is legal action needed to force a parent to pay child support?

Yes. The only way to **make** a parent pay support is to get a support order, which must be signed by a judge or hearing officer. A promise or agreement to pay is not enough, but a judge or hearing officer can approve an agreement or promise and make it a support order.

97. How is child support ordered?

Child support can be ordered in divorce and custody cases. It is ordered when one parent has custody of the child and also when there is joint custody. If you have filed for divorce or custody, your attorney may ask for a support order as part of the case. If you are using "do it yourself" forms, you should get instructions that explain how to ask for support, if you don't already have a support order.

Child support can also be ordered *without* a divorce or custody case. The Department of Justice (DOJ), will get a child support order if the parent taking care of the children is now getting welfare for your children or if that parent received welfare in the past and there is unpaid

support from that time. In all other cases, you can ask the local District Attorney's (DA) office or a private lawyer to get a support order. For more information about how the DOJ and the DA get child support orders, see Question 111.

98. How is the amount of child support decided?

Since 1989 there have been guidelines and charts that must be used in all Oregon child support cases. The guidelines take into account many factors, such as the incomes of the parents, other children the parents have to support, parenting time schedules, and work-related day care costs for the children.

Under the guidelines it is assumed that all parents can work 40 hours a week at minimum wage, unless the parent is disabled or in jail. If a parent has the ability to make more than minimum wage, the guidelines will take that parent's actual or potential income into account. The amount of child support is automatically reduced in some cases if the parent who owes support is very low income. It is sometimes possible to get a child support order which is different from the amount listed in the guidelines and charts.

99. Do clothes, presents, and travel costs count as child support?

Unless your child support order says otherwise, usually only money payments made to the State of Oregon or to the bank account of the parent with custody will count as child support payments. Gifts and clothes, and cash that is not

paid the way that the support order requires will not count as child support unless both parents agree in writing afterwards that these contributions were child support. (Receiving these types of contributions from the other parent could create problems for parents getting welfare.)

100. Can the child support order include insurance coverage?

A parent owing child support must be ordered to pay for the children's medical insurance if suitable and affordable insurance is available through work, a union, or group. But, the other parent has the right to choose to provide insurance instead. The cost of the insurance provided will increase or decrease the child support payment, depending on which parent is providing the insurance. See Question 129. A parent can also be required to buy a life insurance policy that names the children as beneficiaries. See Question 132.

101. How long does child support have to be paid?

In Oregon, a parent usually must pay child support until the child is 18 years old. If the child is going to school or job training at least half time, and maintains at least a C average and provides proof of these grades, the child support can continue to age 21. Support can be paid directly to the 18-20 year-old child. The child support can stop before a child reaches 18 if the child gets married, joins the military, or in some other way becomes legally emancipated (considered an adult).

Getting Child Support

102. How do I get a child support order?

If you have filed a divorce or custody case, child support can very often be ordered as part of the case. The Department of Justice (DOJ) will get a child support order if you are now getting welfare for your children or if you did in the past

and there is unpaid support from that time. In all other cases, you can contact the District Attorney (DA) or a private attorney for help with child support. DOJ and DA services are free.

103. Can I get child support if the other parent doesn't live in Oregon?

In some situations, it is possible for the Department of Justice (DOJ), the District Attorney (DA), or a private lawyer to get an Oregon child support order against a parent who is living in another state. If they cannot, they can send the paperwork to the state where that parent lives and that state can order that child support be paid.

104. Can I get child support if I don't know where the other parent lives?

If you do not know where the other parent lives, the Department of Justice (DOJ) or the District Attorney (DA) can help you look for that parent as long as you are trying to find the parent so that you can get or change a child support order or collect child support.

105. What can I do if the child support order is not being paid?

The Department of Justice (DOJ) or the District Attorney (DA) will help you collect your child support order. They represent the State and not you, but their services are free. You can also contact a private lawyer. See Questions 123 through 126 for information about how child support is collected.

106. Can I stop allowing parenting time if the other parent is not paying child support?

No. You must allow the parenting time that is ordered in your divorce or custody order, even if child support is not being paid.

**If I Am Getting Welfare
for My Children**

107. If I am getting welfare for my children, do I still get the child support payments?

No. Child support payments for families on public assistance go to the state to pay for the welfare you are now getting. The state will also keep any back child support collected from the other parent while you are on assistance. But the state cannot keep more than the total cash amount your family received in welfare grants.

108. If I have custody of the children and I am getting welfare, do I have any say in how much the child support order will be?

Yes. You have a right to be told about settlement offers and to agree or disagree with how much the state is asking for. If you do not agree with the settlement, you have the right to ask for and participate in hearings about the amount of child support.

109. Can the state make me tell them the name of the father of my child?

You must tell the Department of Justice (DOJ) and the welfare agency the father's name if you are getting welfare for his child, unless there is a very good reason not to. The DOJ may use the information to get a child support order and to collect child support.

Good reasons for not telling the name of the father are: serious harm to you and/or the child would occur (more serious than being upset); an adoption is pending or planned; or the child was born as the result of rape or incest. If your welfare worker does not agree with your reason for not giving the father's name, you should ask your worker for a hearing.

110. If there is back child support owed, who gets paid first, welfare or me?

If you and your children are still getting welfare, the back child support will go to the

state first. If you and your children no longer are getting welfare, you will get paid first until you have been paid back all the child support that was missed after you stopped getting welfare.

(Money taken from the other parent's federal tax refund is an exception -- it goes first to pay back the state.)

Paying Child Support

111. How will I know if legal action has been started to order me to pay support?

You might be served with *court papers* that ask for a child support order in a divorce or custody case started by the other parent, or in a paternity or support case that is filed by the District Attorney (DA) or the Department of Justice (DOJ). If you are served with court papers, you must respond in the time given, or the amount of child support stated in the papers will probably be the amount in the support order that is signed by the judge. You may contact a legal aid program or a private attorney if you need legal help.

You might also be sent *agency papers* asking for child support. These might be labeled as a "Notice and Finding of Financial Responsibility" (or NFFR). This paper will be mailed to you by the Department of Justice (DOJ) or the District Attorney (DA) and will say how much child support the state thinks you should pay. Once you get the NFFR, you have a right to a conference or a meeting with the DOJ or the DA to try to reach an agreement about the amount of support you should pay.

If you received a NFFR and are not able to reach an agreement about the amount of support, you have the right to have an agency hearing. You can represent yourself or bring a lawyer to the hearing. You must ask for the hearing within 20 days after you get the NFFR, even if you have had a conference or a meeting. (If paternity is involved, you have 30 days to ask for a hearing.) If you do not ask for a hearing in those 20 days and do not reach an agreement, you will probably be responsible for the child support asked for in the NFFR. If you disagree with the

child support order after the hearing, you have the right to have a court hearing. The hearing decision will explain your appeal rights to you.

The parent who has the children must be told about any agreements you reach with the DOJ or the DA and has the right to ask for a hearing on the amount of child support.

112. Do I have to pay child support if I am getting public assistance?

If you are getting TANF (Temporary Assistance to Needy Families), General Assistance, SSI, or OSIP, or similar benefits from another state or tribe, it is assumed that you are unable to pay child support. If you are getting any of these types of public assistance, it must be proved that you can still afford to pay child support before you can be ordered to pay. If you already have been ordered to pay child support and you then begin getting any of these types of public assistance, you can get an order that stops your child support obligation for the time that you get public assistance or until it is proved that you can pay support. The Department of Justice (DOJ) or the District Attorney (DA) will do this for you for free.

113. If I am disabled and my children get Social Security do I have to pay child support?

Yes. You are responsible for paying child support if a child support order says so, even if your children also get Social Security benefits because of your disability. But Social Security benefits that your children receive must be *considered* in setting the amount of support you must pay, and benefits directly sent to the children must be taken into account when calculating the amount of child support owed.

A law passed in 1999 allows a retroactive (back) award of Social Security benefits to reduce child support arrearages (past child support owed) in some cases. A court or agency can give this credit. You should contact an attorney, the DA or the DOJ about changing your support order when you become disabled. Contact them about this credit as soon as possible after the Social Security Administration awards the back benefits.

114. If I leave the state, can Oregon still order me to pay child support?

Child support can be ordered in Oregon if you and your spouse lived in Oregon for six months (not necessarily together) and the legal action begins within one year of the date you left the state. (This rule may be true for unmarried parents, too.) Also, if you had sexual relations in Oregon resulting in the child's birth, Oregon can order you to pay support for that child even if you don't live in Oregon now and were only visiting before.

There are other situations where non-Oregon parents can be ordered by an Oregon court to pay support. And a court or agency in the state where you have moved can also order you to pay support for your child in Oregon.

115. If I leave Oregon after support is ordered, do I still have to pay?

Yes. Any state where you live can use the Oregon order to make you pay child support.

116. Can Oregon make me pay child support that was ordered in another state?

Yes.

117. Do I have to support my stepchildren?

Yes. If you marry someone who has custody of children, you must support them. This responsibility stops when the couple gets divorced or when the child is no longer living with your spouse.

118. Can I stop paying child support if I'm not working?

It is almost always a bad idea to stop paying child support. If you are out of work and have only a small amount of money, you can ask to reduce the amount of your child support. See Question 127. When you go to a hearing to get the amount of support lowered, you want to be able to say that you have been doing everything you can to keep up with your support payments. Paying even a small amount helps prove you are trying.

119. Can I stop paying child support if the other parent won't let me visit my child?

Not on your own. You can ask a judge to end the child support order until you get your parenting time. But judges do not like to stop child support payments and they will allow support to be stopped only if there is proof that you have had very serious problems getting visits.

If Welfare is Paying to Support My Children

120. If welfare is paying to support my children, why do I have to pay child support?

The child support goes to the state to reimburse it for the welfare paid to support the children.

121. If welfare is paying to support my children, should I wait for the state to contact me?

The sooner the state starts a support case, the more likely it is that a fair order will be issued. If the state can't find you or the support case is otherwise delayed, the state may end up using old information that shows a higher (or lower) income than what you currently have. Avoiding the state when your children receive welfare won't help you avoid paying support for that period anyway. When the state support agency *does* contact you, you will usually have to pay "past" support that could have been

ordered if the case had started earlier. You will then have current *and* past support to pay.

122. If the parent with custody is no longer getting welfare, do I still have to pay the support that was ordered by the Department of Justice (DOJ)?

Yes. The DOJ child support order is the same as a court order. The ordered support must be paid even after the parent with custody stops receiving welfare. After the welfare is stopped, all of the monthly child support payment goes to the parent with custody for the support of the children, and not to the state.

Collecting Support

123. How is child support collected if I am working?

The Department of Justice (DOJ), the District Attorneys (DA), and private attorneys can get orders to withhold wages if the person who is supposed to make child support payments is working. All Oregon employers must now report to the DOJ within 20 days of the hiring or rehiring of a worker.

For support orders dated after January 1, 1994, wage withholding is automatic from the time when the support order is first issued unless the parents agree in writing not to have it, or a judge finds that there is a very good reason to avoid withholding. This is the law even if the case is not being handled by DOJ or the DA. In DOJ or DA cases, usually the only way to avoid withholding is by the electronic transfer of wages to the other parent's bank account.

For support orders dated before January 1, 1994, wage withholding may begin when the support is first ordered, when an arrearage exists, or when either parent requests.

For withholding by Oregon employers:

If you are current in paying your support, the amount that can be withheld from your wages is the monthly support amount, but only up to a maximum of 50% of your take-home pay (up to 65% in some cases, if a court agrees after a hearing).

If you are behind in making your monthly support payments, the amount that can be withheld is 120% of the monthly support amount, up to a maximum of 50% of your take-home pay (up to 65% in some cases, if a court agrees after a hearing).

If you do not owe current support, only arrearages (unpaid back support), the amount that can be withheld is the amount of the last monthly order, if there was one, or an amount based on your income and calculated under the child support guidelines. In either case, you must be left with an income equal to a full time federal minimum wage. If these arrearages are owed only to the state (not to the custodial parent), you may be able to have the monthly withholding reduced if you have another child to support.

124. Can my employer fire me if my wages are being withheld?

No. It is not legal for an employer to fire you, discipline you, or refuse to hire you just because there is a wage withholding order. If you think you were fired because your wages were withheld, you should talk to the Department of Justice, the District Attorney, or a private attorney.

125. What happens if the child support I owe cannot be collected by wage withholding?

Other types of income such as Unemployment Compensation, Worker's Compensation, and Social Security Disability can be withheld for child support. Usually no more than 25% of these payments can be taken each month, and only 15% (or the amount of the last monthly order) can be taken if there is no current order. In some cases, a collection agency can assist in collecting child support.

The Department of Justice (DOJ) and the District Attorney (DA) can also take state and federal tax refunds for back child support as well as lump sum payments on veterans benefits, personal injury awards, non-SSI disability and social security, pensions, and insurance proceeds. You may be able to exempt

some of these amounts from garnishment with a "claim of exemption." If your unpaid back support exceeds \$2,500 and a payment plan is not being followed, DOJ and the DA can suspend your driver's license, occupational or professional license, passport, as well as your recreational, hunting or fishing license. In addition, the DOJ is required to report delinquent cases to credit agencies. If the DOJ or the DA feel you **could** work or pay child support some other way and you are not paying, they can ask the judge to hold you in contempt of court. In contempt cases, fines and jail sentences are possibilities; you may have the right to a court-appointed attorney. You will usually be given a chance to start making child support payments to avoid going to jail.

126. How long can back child support be collected?

Unpaid child support from an Oregon child support order can now be collected for 25 years after it was ordered. (For some orders dated before January 1, 1994, it may not be possible to collect the order by foreclosing on real property, but all other methods of collecting the support are available. Also, for some orders dated before January 1, 1994, the enforcement period could run twenty years from the date of the delinquency.)

Changing the Support Order

127. How can I get my current child support order changed?

If your support case is handled by the District Attorney or the DOJ and your child support order is at least two years old, you can ask the enforcing agency to "review" your child support order to see if it meets the current guidelines. In most situations, the agency must do this review at your request. If this review shows that your current support order is more than 15% or \$50 different from what the guidelines call for, the agency will file the modification paperwork.

If it has been *less* than two years since the most recent child support order or modification, you may still be able to get a "change of circumstances modification." The change may be in your income, the other parent's income, or the child's needs. This service, or the paperwork to do it on your own, is also available from DOJ and the DA. If you are the parent who owes support and begin receiving public assistance, you can also get your child support order changed. See Question 112.

128. If I am behind in paying child support, can the amount of back child support I owe be changed?

Once you are behind in paying child support that you have been ordered to pay, you cannot go back and cancel any amount of support you owe -- even if you didn't pay because you didn't have a job or were disabled. Child support can be modified only back to the time legal papers are served on the other parent requesting the modification. But you may be able to get credit

on your child support account if the children lived with you for a long time when it wasn't your usual parenting time, and if the other parent had agreed to your having the children. You should contact a private attorney or, in some counties, the District Attorney, about getting this credit.

You may also qualify for a credit in some cases in which retroactive (back) Social Security benefits were awarded to your child. See Question 113.

Health and Life Insurance

129. Does the parent who is ordered to pay child support also have to provide health insurance for the child?

Yes. Unless the parent who has custody chooses to provide insurance, the other parent must put the child on any suitable and reasonable group health insurance plan that is available through work or a union. There is an exception if the parent's cost of the child's insurance is more than the amount of the cash child support obligation. The cost of the insurance is divided on a percentage basis between the two parents. The amount of child support to be paid may be reduced or increased, depending on which parent provides insurance and how much insurance costs.

130. How can I make sure the noncustodial parent obeys the court order to get medical insurance for my child?

If the District Attorney (DA) or Department of Justice (DOJ) is handling your support case, they will handle health insurance issues for you, too, at no cost. If the parent who owes support is ordered to provide health insurance, the enforcing agency will require that parent's employer to put the child on the health plan and deduct the insurance cost from the parent's wages. If the DA or DOJ is not handling your case, you will need an attorney.

If a parent was ordered to provide medical or dental insurance and did not do so, that parent is responsible for paying for all of the child's medical or dental costs after the date of the order. The doctor or dentist still may ask you to make this happen, if the other parent does not voluntarily reimburse you.

131. Who must pay for my child's health care costs that are not covered by insurance?

If the parent without custody was ordered to get insurance and did not do so, that parent is responsible for paying. If there was insurance but if it didn't cover all costs, the parent with custody must pay unless the divorce or support order states that these costs are to be shared or paid totally by the other parent.

If you are going through a divorce, make sure that you think about health costs that are not covered by insurance and that you ask in your court papers for what you want. If the District Attorney or the Department of Justice is getting your support order, talk with them about medical costs and make sure that the judge or hearing officer is told what you want to do about costs that are not covered by insurance.

132. Can the child support order require buying a life insurance policy?

When the parent who pays child support dies, the child support stops. But the child

support order can require that parent to buy a life insurance policy that gives the children a one-time cash settlement when the parent dies.

SPOUSAL SUPPORT (ALIMONY)

Note: Spousal support applies only to married couples.

133. What is spousal support?

Spousal support, also known as alimony, is money paid by one spouse to support the other. Usually the money is paid in monthly installments. A judge can also order the money to be paid all at once in a "lump sum." Either the husband or the wife can be ordered to pay spousal support. Spousal support is *not* available to unmarried partners (except in rare cases where they have agreed to this).

134. How do I get a spousal support order?

Most spousal support orders are part of divorce or legal separation cases. But even if a divorce case has not been filed, a judge can order spousal support when a married person files a lawsuit that asks for support. If you are married and want a spousal support order without filing for divorce, you will probably need an attorney.

The District Attorney and the Department of Justice usually will not get a spousal support order for you, but will help you collect support if you already have an order and child support is being collected, too.

135. How does the judge decide whether and how much spousal support should be paid?

Under new laws passed in 1999, there are three different types of spousal support, and each has a different purpose. A dissolution judgment must label the award (more than one type can be ordered in the same case) and include facts that show why the award is appropriate.

For *transitional support*, the judge looks at what support is necessary to help the spouse get an education or training to re-enter or advance in the job market.

For *compensatory support*, the judge decides what will repay a spouse for a major financial or other contribution to the education, career, or earning ability of the other spouse.

For *spousal maintenance*, the judge considers what support is appropriate to keep a standard of living similar to what was enjoyed in the marriage. This support could be ordered for a specific time, or permanently. Many factors affect this decision.

136. If spousal support is ordered, does it continue forever?

Your divorce judgment or spousal support judgment will say when spousal support ends. Depending on its purpose, support is sometimes ordered for a few years, sometimes until the spouse dies, and sometimes just until the spouse who gets support finds a job. See Question 135. Spousal support does not always end when the spouse who is getting support remarries.

If spousal support is ordered for more than ten years, the paying spouse can ask the judge to end it if there is proof that the spouse who gets support has not made reasonable efforts to become self-supporting.

137. Once spousal support is ordered, can it be changed?

Either ex-spouse can ask the court to modify (change) the order if there is an unexpected change in either spouse's situation. This is called a "change in circumstance." The spousal support order can be increased, lowered, extended, or ended. If the change is to "compensatory support," (see Question 135), the ex-spouse wanting the change must also show that there is an "involuntary and extraordinary" change reducing the ability of the paying spouse to earn income.

If a support order has been ended, it is sometimes possible to get spousal support reinstated (ordered again). If you were originally awarded support for a specific time

(example--for five years) but the support was modified in court and ended early because there was a change in circumstances, you can sometimes ask the judge to reinstate it. You must make the request during the original time that the support was supposed to be paid (in the example, within the five years). You should see a lawyer about any reinstatement of spousal support.

138. If I didn't get spousal support in my divorce judgment, can I go back to court later and get it?

No. Spousal support must be ordered in your original divorce judgment. You cannot go back to court after your divorce to get it for the first time.

PROPERTY, DEBTS, AND TAXES

139. How is property divided in a divorce?

You and your spouse can agree on the division of property and debts. The judge will probably make your agreement part of the divorce judgment. If you do not agree, the judge will divide property and consider many factors such as:

- Where the property came from (gift, inheritance, purchase);
- If one spouse owned it before the marriage;
- If the spouses kept their money in joint bank accounts;
- How much money each spouse is making now and is expected to make in the future;
- Whether it would make sense for a specific item to go to the parent with custody.

The law assumes that a spouse who cared for the couple's home and children has an equal right to have the property that the couple bought or was given during the marriage. This "equal right" rule also applies to the increased value of assets that were owned before the marriage. But one spouse can try to convince the judge that there are good reasons not to follow this rule in your case.

140. What kind of property is divided in a divorce?

Unless the spouses agree on what property is to be divided, the judge will divide all of the property that the couple owns -- any land or houses, motor vehicles, home furnishings, money in bank accounts, stocks and bonds, pensions and retirement benefits, lawsuit settlements, etc. The judge can even divide property owned by a spouse before the marriage, but usually it is given to that spouse. The judge also decides which spouse should pay which debts. You should get a lawyer if retirement

benefits, pensions, or real property (land or a house) will be issues in your divorce case.

141. How is property divided if the couple is not married?

If you and your former partner do not agree on how to divide your property, you will almost certainly need an attorney, and a lawsuit could be needed. It is a good idea for unmarried couples to have a written agreement about property at the time they begin living together.

142. After the divorce, who is responsible for debts both spouses took on during the marriage?

The divorce judgment will probably state which spouse should pay the debt. But you *both* are responsible for making sure that the creditor gets paid. When you made the purchase you both agreed to pay, and a divorce judgment does not change the creditor's right to expect payment from both of you.

If the bill is not paid, a creditor can ask for payment from both spouses. The creditor can also file a lawsuit against either one or both of you for the unpaid bill.

See Question 144 for information about the right to get reimbursement by the spouse who was ordered to pay.

143. After the divorce, who is responsible for the debts that my spouse signed for alone while we were married?

The divorce judgment will probably state which spouse should pay the debt. But if the spouses were *living together* when one spouse made the purchase, the other spouse is usually also responsible to the creditor and could be sued, too. The exceptions are for business expenses and loans of money.

If the spouses were *separated* when one spouse signed for the debt, the other spouse is not responsible to the creditor unless the debt is for the children's education, health, or support needs.

See Question 144 for information about the right to get reimbursement by the spouse who was ordered to pay.

144. What can I do if my ex-spouse does not pay the bills as ordered in the divorce judgment?

You can tell the creditor that your ex-spouse was ordered to pay in the divorce judgment. You can also give the creditor information about how to find your ex-spouse. In many cases, especially if your ex-spouse has more money than you do, the creditor will first try to get payment from the spouse who was ordered to pay the bill in the divorce. (But see Questions 142 and 143 for information about your responsibility to pay the creditor.) If you pay the bill or if the creditor brings a lawsuit against you, you have the right to take your ex-spouse to court so you can get reimbursed (paid back) for the money you paid.

145. How will divorce affect my taxes?

Child Support: You do not have to pay taxes on child support payments you get and you cannot deduct child support payments you make.

Exemptions: *For recent divorce and custody cases, the parent who has legal custody has the right to claim the child as a dependent for tax purposes, but can sign a form to give the other parent this right. For older cases, the rules are different. For more information about exemptions you should talk to a lawyer or call the IRS.*

Spousal Support: You have to pay taxes on spousal support payments you get and you can deduct spousal support payments you make. The Internal Revenue Service has special rules about

what payments qualify as spousal support for tax purposes.

Property Transfers: There are special tax rules about property transfers.

For information about taxes, you can talk to a lawyer, accountant, tax preparer, or the IRS Taxpayer Information Service listed in your phone book.

CHANGING NAMES

146. Can I take back my former name when I get divorced?

Yes. The judge must give you back a former name if you ask for it in a divorce.

147. Can I change my child's last name in a divorce?

Even if the mother gets custody and changes back her name in the divorce, the child most often keeps the name that is on the birth certificate. Many divorce judges will not change a child's name in a divorce case, especially when the other parent disagrees.

If you want to change your child's name, you can file a separate legal case. The other parent of the child must be told about this lawsuit by receiving legal notice. The judge will allow the name change only if it is in the child's best interest.

It may also be possible to change your child's name without going to court. See Question 148.

148. What if I want a completely new name for myself or my child?

You can't do it in a divorce. But it is legal to just start calling yourself or your child by a new

name as long as you are not doing it for an improper purpose (like to hide from creditors or to avoid the police). It is often better to file a separate name change case so you will have a court judgment you can use to change your identification. A name change done without going to court very often creates serious problems with Social Security or other government agencies, and might make it hard for you or your child to get benefits that you're entitled to.

149. Does my child have to have the father's last name?

Parents often agree that their child will have the father's last name, but they can give their child any last name they want. If the parents can't agree, a judge can decide, but this usually happens only when the parents are unmarried. A father establishing paternity of the child does *not* have an automatic right to have the child bear his name. The judge can decide, based on what is best for the child.

THE CHILD WELFARE PROGRAM OF THE DEPARTMENT OF HUMAN SERVICES

150. What should I do if my spouse or someone I live with is abusing my children?

Except as explained below, the law does not require you to report abuse to the police or to the Child Welfare Program of the Department of

Human Services (DHS). But if you believe that your children are being abused by someone you live with, you should protect your children by contacting DHS, by making sure the abuser leaves and that your child gets treatment, or by urging the abuser to report the abuse or get counseling. You may also be able to get help from Parents Anonymous, a group for parents who have been involved with abuse situations. Your phone book or your local health department will have the phone number.

Certain people are required to report child abuse. Counselors, doctors, school employees, and other public and private officials are all required to report abuse or suspected abuse. Lawyers, psychiatrists, psychologist, and members of the clergy (priest, rabbi, minister, etc.) don't always have to report (if the law considers the information privileged).

If your children are being abused, you should get help right away. If you know that your child is being abused and you do not do anything to stop the abuse, you could lose custody of your child because of your failure to protect.

151. What should I do if someone from the Child Welfare Program of the Department of Human Services wants to talk to me about my children?

If the Child Welfare Program of the Department of Human Services (DHS) believes that a child is in danger, it is DHS's job to investigate the situation and to take steps to protect the child. If DHS wants to talk to you, you do not have to cooperate. If you do, you should be aware that anything you tell DHS or the police can be used against you. But you should not do anything to get in the way of the investigation. If DHS is investigating you, it is a good idea to talk to a lawyer.

152. When can the state's child welfare agency take my child?

DHS's Child Welfare Program (or the police) can take your child in only three cases:

- They believe your child is in immediate danger (such as a young child being left alone or a child left in a car or home where drugs are made or sold or being exposed to domestic violence);
- They have a warrant from a judge to take your child;
- They believe your child has broken certain serious laws.

153. What should I do if my child is taken from me and placed in foster care?

Try to get an attorney right away to represent you. If you cannot afford a lawyer, ask the judge to appoint one for you. You are most likely to get a court-appointed lawyer if DHS wants to have the child live in foster care for a long time or if criminal charges (like for sex abuse) could be filed. In some counties, almost all low-income parents get attorneys. If you are low-income and DHS has filed to *permanently* end your parental rights, you definitely have the right to have a court-appointed attorney.

154. Will there be court hearings if DHS's Child Welfare Program takes my child?

Yes. The first hearing will take place within 24 hours, not counting weekends. The judge will decide if it is safe for your child to return home, or if you need any emergency services to make it safe to bring your child home. You have the right to be at this hearing and to tell the judge, by yourself or through your lawyer, why your child should or should not come home.

There will be another hearing approximately two months after the case starts, unless you tell the judge that you agree that DHS should have custody or that the court should have legal control ("wardship") of your child. The judge will also decide about plans and services for your child. You and your attorney have the right to participate at any hearings about custody and services.

Later on, there will be reviews of your child's situation. You and your lawyer can ask for a hearing at any time to try to end the court's wardship or DHS's custody.

155. When do I get my child back?

When DHS or the judge believes that you can take care of the child. Recent state and federal laws require DHS and the judge to act quickly, either to return your child or to make an alternative plan. You will need to act quickly, too, to get your child back.

156. If DHS has custody of my child, should I cooperate with them?

Yes. DHS has two duties when it takes custody of your child: (1) to look after your child's best interests, and (2) to help you as a parent solve the problem that led to DHS taking custody. If DHS believes you have solved your problems and can take care of the child, DHS will return your child to you. Sometimes the judge can order that your child be returned to you even if DHS disagrees. You will have a much better chance of getting your child back if you work with DHS and accept their services.

157. What type of services does the Child Welfare Program of the Department of Human Services provide?

- Parenting classes
- Counseling for families and individuals
- Homemaker and caretaker services
- Emergency shelters
- Emergency financial assistance

If you are working with DHS because there is a court case about your children, DHS should prepare a written service plan for your family. Ask for a copy of this plan. If the plan states that you should be getting services from DHS, ask for these services in writing and keep a copy of your letter.

158. Can I visit my child who is in DHS's custody?

You will probably be allowed to have visits, but DHS will decide the kind of parenting time that is allowed. Sometimes it is very limited. DHS may require the visits to be supervised.

159. If my child has been taken from me and placed in foster care or a state training school, do I have to pay for the child's support?

If you have enough money, you may be required to help support the child. You have the right to have a court or agency hearing if you disagree with the amount you are asked to pay.

160. Can the Child Welfare Program of the Department of Human Services take away my child permanently?

Only a judge can take away your child permanently, but DHS will recommend to the judge whether or not your parental rights should be ended. If "termination of rights" papers are filed, you have a right to a court-appointed attorney if you cannot afford to hire one.

ADOPTION

161. What is an adoption?

With adoption, an adult who is not a child's natural parent becomes the legal parent of the child. Once the judge signs the final adoption order, the law treats the adopting parents as natural parents even if they get divorced later.

162. Can I have contact with a child after I give the child up for adoption?

It depends on the case. After an adoption, a natural parent usually does not have any rights concerning the child. But if the adoptive parents agreed in the court papers to allow the natural

parent to have parenting time or other contact, the natural parent can go to court to seek a court order requiring the contact. But first, all the parents must try mediation. See Question 67. If mediation doesn't work, a judge will decide whether to enforce the contact that had been agreed to, or to change the agreement because of exceptional circumstances. The natural parent can't stop or set aside the adoption if the adoptive parents do not allow the contact they agreed to give.

163. How can I adopt a child?

You will probably need a lawyer's help. For more information, contact the Child Welfare Program of the Department of Human Services (DHS) or an adoption agency.

164. Will I be investigated before I can adopt a child?

If you are adopting a step-child, the Child Welfare Program of the Department of Human Services (DHS) can investigate your home, but DHS probably will not do this. If you are adopting a child who is not your step-child, DHS (or a private agency working with DHS) probably will investigate your home. There is a cost for the investigation. If you cannot pay the fee, DHS will try to work out a payment plan with you and can lower or eliminate the amount you have to pay for the study. But you may be asked why you are adopting a child when your money is so limited.

165. Can I adopt a child without the natural parents' consent?

You should talk to a lawyer. The consent of the natural parents is usually needed, but in some cases the judge can order an adoption without that consent. The most common case is when the parent has neglected or deserted the child for at least one year. But natural parents always have the right to have notice of the adoption suit, if they can be found, and to challenge whether the adoption should be granted without their consent.

166. To adopt a child do I need the natural father's consent if paternity has not been established?

Most of the time, a father whose paternity has not been established does not have the right to be told about an adoption case or to have the chance to contest it. But if he has lived with or supported the child, or started his own paternity suit, a natural father *may* have the right to be given notice of the case and to be given a chance to challenge it. You should talk to an attorney. See Questions 25 through 29 for information about how paternity is established.

167. Can my new spouse adopt my child from an earlier relationship?

Yes, if the child's other parent consents to the adoption. In this case, you may be able to do the adoption without the help of a lawyer. If the child's other parent does not consent, you will need a lawyer.

In step-parent adoption cases, the grandparents (the mother and father of the other parent) must usually be served with (given) a copy of the adoption petition. They may be able to get a court order that gives them visitation rights after the adoption if there was a relationship with the child before and visitation rights won't interfere with the child and the adoptive family's relationship. See Question 82 for information about grandparent visitation.

168. Can my child be adopted without my consent?

No, not unless your rights as a parent were permanently ended by a judge before, or the judge now decides that your rights as a parent should be ended. You have a right to be notified if anyone is trying to adopt your child, if you can be found, and the right to object to someone adopting your child. If you are low-income, you also have the right to a court-appointed attorney.

169. If the child is a Native American, are there any special adoption procedures?

Yes. A law called the Indian Child Welfare Act has special rules for adopting Native American children. You should talk to a lawyer who knows about this law.

GUARDIANSHIPS FOR CHILDREN

170. What is a guardian?

A guardian is an adult who is appointed by a judge to care for an unmarried person under 18 years old. A guardian has the responsibilities of a custodial parent, except that a guardian does not have a legal obligation to support the child from the guardian's own income. A guardian may consent to marriage or adoption of the child. The child is known as a "protected person" or "ward."

171. When is a guardian appointed?

A guardian is appointed by a judge when the parents of a child cannot or will not take care of the child. The Child Welfare Program of the Department of Human Services (DHS) may be appointed as the guardian. Relatives or other adults are often guardians, too.

172. What is the difference between a guardianship and a conservatorship?

In a conservatorship, a conservator is appointed to handle only the financial affairs or property of a person under 18 years old. A guardian can handle business affairs, but a guardian is also responsible for taking care of a child's other needs.

173. How do I get a guardianship for a child?

You will need a lawyer to ask a judge to appoint a guardian. The judge must believe that the guardianship is in the best interests of the child. Parents and the people taking care of the child must be told when someone is trying to get a guardian appointed. A judge will order a

guardianship without the parents' consent only in limited circumstances. This area of the law is rapidly changing. Consult an attorney for up-to-date advice.

There are special laws about guardianships of Native American children. You should talk to a lawyer who knows about these laws.

174. What can I do to stop a guardianship?

If you are a parent of the child, or have been taking care of the child, you should be given notice that there will be a hearing where the guardianship will be decided. The notice should tell you that you must give oral (spoken) or written reasons why you think there should not be a guardian appointed. Read the notice carefully. You usually have to go to the courthouse to give your objections in person, or turn in your written answer to the court within 15 days of getting the court papers (20 days if interstate issues are involved).

You have a right to go to the hearing to tell the judge why a guardian should not be appointed. If you are the parent, the person wanting guardianship must prove that there is some very good reason for the guardianship. Because the law in this area is rapidly changing, it is a very good idea to talk to an attorney for advice.

175. Can I give another person temporary parental authority over my child?

Yes. You can give a *power of attorney* to another person so that he or she has the temporary authority to take care of your child, to consent to medical care for the child, to enroll

the child in school, and to perform other parental responsibilities. You cannot give temporary authority to consent to marriage or adoption of the child. To give someone a *power of attorney*, you will need a power of attorney form, which you can get from most stationery stores. A sample form is provided below. Fill out the form and sign it in front of a notary public. You do not have to go to court. Give the original form to the person caring for your child and keep a copy for your records.

In most cases, a *power of attorney* lasts no longer than six months, but you can give a school a *power of attorney* that lasts up to 12 months. If you are in the U.S. Armed Forces Reserves and called to active duty, you can give a *power of attorney* that lasts for the time you are on active duty plus 30 days.

You can end any *power of attorney* at any time by writing, dating, and signing a statement that says you are "revoking the power of attorney given on _____ (date)." It's a good idea to get this statement notarized. Give the statement to the person you named in the *power of attorney* form.

SAMPLE POWER OF ATTORNEY

STATE OF OREGON)
) ss
County of _____)

I/we are the parent(s) of _____, born _____, a minor child. I/we give to: _____ the full authority to act in my/our place regarding any matter concerning the care, custody, or property of this child, including, but not limited to: granting of consent for any medical, dental, psychological, psychiatric examinations, care, or treatment including vaccinations or immunizations; enrollment in school and participation in school activities; applying for public benefits; and any other matter regarding the health or welfare of this child except: _____.

This power of attorney shall be valid for a period ending _____ but in no case for more than 180 days.

I/we reserve the right to terminate (end) this authority at any time.

Signed: _____

SIGNED AND SWORN TO before me on this _____ day of _____, 20____, by _____.

Signature of Notary _____
My Commission Expires: _____

RESOURCE SECTION

Legal Aid Offices and Volunteer Lawyer Programs

These offices provide legal assistance to low-income persons who live in the counties that are listed. Information is also available online at the statewide legal aid website: <http://www.oregonlawhelp.org>.

Albany Regional Office
(Linn & Benton)
(541) 926-8678
1-800-817-4605

Legal Aid Services of Oregon
433 4th Ave. SW
Albany, OR 97321-2262

Bend Regional Office
(Jefferson, Crook, & Deschutes)
(541) 385-6944
1-800-678-6944

Legal Aid Services of Oregon
817 NW Hill St.
Bend, OR 97701-2924

Center for NonProfit Legal Services
(Jackson)
(541) 779-7291

225 W Main St.
P.O. Box 1586
Medford, OR 97501

Columbia County Legal Aid, Inc.
(Columbia)
(503) 397-1628

P.O. Box 1400
St. Helens, OR 97051

Coos Bay Regional Office
(Coos, Curry, & Western Douglas)
(541) 269-1226
1-800-303-3638

Oregon Law Center
P.O. Box 1098
Coos Bay, OR 97420-0241

Farmworker Office
(Mid-Willamette Valley farmworkers)
(503) 981-5291
1-800-662-6096

Legal Aid Services of Oregon
397 N 1st Street
Woodburn, OR 97071-4623

Farmworker Office
(Mid-Willamette Valley farmworkers)
(503) 981-0336
1-800-973-9003

Oregon Law Center
230 W Hayes St.
Woodburn, OR 97071

Grants Pass Regional Office
(Josephine)
(541) 476-1058
1-800-556-1058

Oregon Law Center
207 SW "G" St, Suite C
P.O. Box 429
Grants Pass, OR 97528

Hillsboro Regional Office
(Clatsop, Columbia, Tillamook,
Washington, & Yamhill)
(503) 648-7163
1-888-245-4091

Legal Aid Services of Oregon
230 NE 2nd, Suite A
Hillsboro, OR 97124-3011

Klamath & Lake Counties
Legal Aid Services of Oregon

English: Spanish:
(541) 882-6982 (541) 882-2008
1-800-480-9160 1-888-250-9877

Lane County Legal Aid
(Lane)
(541) 342-6056
1-800-422-5247

376 E 11th St.
Eugene, OR 97401

Lane County Law & Advocacy Center
(Lane)
(541) 485-1017
1-800-575-9283

376 E 11th St.
Eugene, OR 97401

Lincoln County Office
(Lincoln)
(541) 265-5305
1-800-222-3884

Legal Aid Services of Oregon
304 SW Coast Hwy
P.O. Box 1970
Newport, OR 97365-0132

Marion-Polk Legal Aid
(Marion & Polk)
(503) 581-5265
1-800 -359-1845

1655 State St.
Salem, OR 97301-4258

McMinnville Office
(Yamhill - Hillsboro satellite office)
(503) 472-9561
1-888-245-4091

Legal Aid Services of Oregon
720 E 3rd
P.O. Box 141
McMinnville, OR 97128-0141

Multnomah County Office
(Multnomah)
(503) 224-4086
1-888-610-8764

Legal Aid Services of Oregon
700 SW Taylor, Suite 300
Portland, OR 97205

Native American Program
(assistance to tribal governments)
(503) 223-9483

Oregon Legal Services
812 SW Washington, Suite 700
Portland, OR 97205-2829

Ontario Regional Office
(Malheur, Harney, Grant, & Baker)
(541) 889-3121
1-888-250-9877

Oregon Law Center
225 SW 1st Ave. #6
Ontario, OR 97914

Oregon City Regional Office
 (Clackamas, Hood River, Sherman, &
 Wasco)
(503) 655-2518
1-800-228-6958

Legal Aid Services of Oregon
 421 High St., Suite 110
 Oregon City, OR 97045-2249

Pendleton Regional Office
 (Gilliam, Morrow, Umatilla, Union,
 Wallowa, & Wheeler)
(541) 276-6685
1-800-843-1115

Legal Aid Services of Oregon
 365 SE 3rd St.
 P.O. Box 1327
 Pendleton, OR 97801-0260

Roseburg Regional Office
 (Douglas)
(541) 673-1181

Legal Aid Services of Oregon
 700 SE Kane St.
 P.O. Box 219
 Roseburg, OR 97470-0039

Other Organizations

Lawyer Referral Service
 Oregon State Bar
 (503) 684-3763 in Portland, or
 1-800-452-7636 toll free in Oregon

This service gives you the name of an attorney in your community. There is a fee of \$35 for the first meeting with the lawyer. This referral service also operates the Modest Means Program, which makes referrals to lawyers who provide reduced-fee legal services on some cases to clients that meet eligibility guidelines. Call for information.

Tel-Law Tape Library
 (503) 620-3000 in Portland, or
 1-800-452-4776 toll free in Oregon

Tel-Law is a collection of tape-recorded messages on topics. You can get a list of all the topics from the Oregon State Bar, P.O. Box 1689, Lake Oswego, OR 97035-0889. The tapes on family law are:

- # 1131 - Marriage in Oregon
- # 1132 - Dissolution of Marriage
- # 1133 - Who Will Get Child Custody in Dissolution of Marriage
- # 1134 - How Financial Support for a Child or Spouse is Established in a Marriage Dissolution
- # 1135 - What to do if Child Support or Spousal Support (Alimony) is Not Being Paid
- # 1136 - Information about Adoptions
- # 1137 - Change of Name

- # 1138 - Legal Information for Teenagers - Problems Solvers Program
- # 1139 - Financial and Legal Responsibilities of Parents for Their Children
- # 1140 - Restraining Orders and Domestic Violence
- # 1141 - Foster Care and Termination of Parental Rights
- # 1142 - Paternity
- # 1143 - Juvenile Court System

Child Support Programs

Child Support Website: <http://www.dcs.state.or.us>

Department of Justice

Accounting Unit - 1-800-850-0228 & (503) 378 - 5567

Department of Justice (DOJ) Regional Offices

Administration - (503) 986-6166
 (Statewide)

Albany - (541) 967-2028
 (Linn County)

Bend - (541) 388-6141
 (Deschutes, Gilliam, Hood River, Jefferson, Sherman, & Wheeler Counties)

Corvallis - (541) 757-4222

Cottage Grove - (541) 942-9186

Eugene - (541) 686-7834
 West Eugene - (541) 686-7833

Medford - (541) 776-6043
(Lake County)

Milwaukie - (503) 872-6825

Oregon City - (503) 657-2111

Pendleton - (541) 276-6932

Portland - (503) 229-5825
East Portland - (503) 257-4300

Roseburg - (541) 440-3357

West Salem - (503) 378-4489
East Salem - (503) 378-3636

Springfield - (541) 726-3525

Tigard - (503) 670-9775

White City - (541) 864-8700

District Attorney Offices

Baker County - (541) 523-6414

Benton County - (541) 766-6817

Clackamas County - (503) 655-8469

Clatsop County - (503) 325-2716

Columbia County - (503) 397-1105

Coos County - (541) 396-3121

Crook County - (541) 447-8153

Curry County - (541) 247-3215

Deschutes County - **Services Provided by Bend DOJ
Office Above**

Douglas County - (541) 673-2202

Gilliam County - **Services Provided by Bend DOJ
Office Above**

Grant County - (541) 575-0146

Harney County - (541) 573-8300

Hood River County - **Services Provided by Bend DOJ
Office Above**

Jackson County - (541) 774-8186

Jefferson County - **Services Provided by Bend DOJ
Office Above**

Josephine County - (541) 474-5206

Klamath County - (541) 883-4265

Lake County - **Services Provided by Medford DOJ
Office Above**

Lane County - (541) 682-4517

Lincoln County - (541) 265-4173 or 4174

Linn County - **Services Provided by Albany DOJ
Office Above**

Malheur County - (541) 473-5133

Marion County - (503) 588-5152

Morrow County - (541) 676-5625

Multnomah County - (503) 988-3150

East Multnomah County - (503) 988-5321

Polk County - (503) 623-9269

Sherman County - **Services Provided by Bend
DOJ Office Above**

Tillamook County - (503) 842-3411

Umatilla County - (541) 278-6280

Union County - (541) 963-1028

Wallowa County - (541) 426-4543 Ext. 31

Wasco County - (541) 296-4612

Washington County - (503) 846-8759

Wheeler County - **Services Provided by Bend DOJ
Office Above**

Yamhill County - (503) 434-7511

Domestic Violence & Sexual Assault Programs

Astoria - Clatsop County Women's Resource Center
(503) 325-5735

Baker City - May Day, Inc.
(541) 523-4134; (888) 213-4134

Bend - Central Oregon Battering & Rape Alliance
(COBRA) - (541) 389-7021; (800) 356-2369

Boardman - Domestic Violence Services
(541) 481-2832

Burns - Harney Helping Organization for Personal
Emergencies (HHOPE) - (541) 573-7176

Cave Junction - Illinois Valley Safe House Alliance
(541) 592-5332

Christmas Valley - New Beginnings Intervention Center
(541) 410-7034; (800) 850-4838

Coos Bay - Women's Safety & Resource Center
(541) 756-7000; (888) 793-5612

Corvallis - Center Against Rape & Domestic Violence
(CARDV) - (541) 754-0110; (800) 927-0197

Dallas - S.A.B.L.E House - (503) 623-4033

Enterprise - Safe Harbors
(541) 426-6565; (866) 404-7233

Eugene - Sexual Assault Support Services
(541) 343-7277; (800) 788-4727
Womenspace - (541) 485-6513; (800) 281-2800

Florence - Siuslaw Area Women's Center
(541) 997-4444; (877) 997-3687

Gold Beach - Oasis Shelter Home
(541) 247-7600; (800) 447-1167

Grants Pass - Women's Crisis Support Team
(541) 479-9349; (800) 750-9278

Gresham - El Programa Hispano - (503) 665-3763
Raphael House DV Outreach Office - (503) 222-6222

Hermiston - Domestic Violence Services
(541) 567-0424

Hillsboro - Domestic Violence Resource Center
(503) 469-8620

Hood River - Helping Hands Against Violence
(541) 386-6603

Klamath Falls - Klamath Crisis Center
(541) 884-0390; (800) 452-3669

La Grande - Shelter From the Storm - (541) 963-9261

Lakeview - Lake County Crisis Center
(541) 947-2449; (800) 338-7590

Lincoln City - My Sisters' Place
(541) 994-5959; (800) 841-8325

McMinnville - Henderson House
(503) 472-1503; (877) 227-5946

Medford - On Track Inc. - (541) 772-1777
Community Works Dunn House / Rape Crisis
(541) 779-4357; (888) 609-4357

Mill City - Canyon Crisis Center - (503) 897-2327

Milwaukie - Clackamas Women's Services
(503) 654-2288

Newport - My Sisters' Place
(541) 994-5959; (800) 841-8325

North Bend - Women's Safety & Resource Center
(541) 756-7000; (888) 793-5612

Ontario - Domestic Violence Eliminated (Project Dove)
(541) 889-2000; (800) 889-2000

Pendleton - Domestic Violence Services
(541) 278-0241; (800) 833-1161

Portland - Bradley-Angle House - (503) 281-2442
Dessarrollo Integral de la Familia - (503) 284-5178
Insights Teen Parent Program - (503) 239-6996
IRCO: Refugee & Immigrant Family Strengthening
(503) 318-4270
Baldwin Foundation (survivors of sex industry)
(503) 236-7244
LOTUS (survivors of sex industry)
(503) 282-1082; (866) 445-6887
MEWERC - (503) 778-8333

Native American Family Healing Circle
(503) 318-5213
Portland Women's Crisis Line
(503) 235-5333; (800) 235-5333
Programa de Mujeres - (503) 232-4448
Raphael House - (503) 222-6222
Russian Oregon Social Services - (503) 777-3437
SAWERA - (503) 778-7386
Salvation Army West Women's & Children's Shelter
(503) 224-7718
Sexual Assault Resource Center - (503) 640-5311
Volunteers of America - (503) 232-6562
YWCA Yolanda House - (503) 535-3269

Reedsport - Non-Violence & Intervention Education
Project (NIEP) - (541) 271-0664

Roseburg - Battered Persons' Advocacy
(541) 673-7867; (800) 464-6543

Salem - Mid-Valley Women's Crisis Services
(503) 399-7722; (866) 399-7722
Oregon Coalition Against Domestic Violence
& Sexual Violence - (503) 365-9644; (888) 235-5333

St. Helens - Columbia County Women's Resource
Center - (503) 397-6161; (866) 397-6161

Statewide - Oregon Coalition Against Domestic
Violence & Sexual Violence - (888) 235-5333

The Dalles - Haven From Domestic Violence
(541) 298-4789; (800) 249-4789

Tillamook - Women's Crisis Center - (503) 842-9486;
(800) 992-1679