

Request for Immediate Danger Order of Temporary Custody and Parenting Time



You can use these forms ONLY if:

- 1) A *Petition* for separation, dissolution, annulment, or custody and parenting time **or** a request to modify an existing *Judgment* has already been filed (or will be filed at the same time as this motion) **and**
- 2) Your child is in immediate danger

If you do not meet these requirements, talk to a lawyer about your options

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To get an Immediate Danger temporary order, you must file a form called an *Ex Parte Motion for Order of Immediate Danger & Temporary Custody and Parenting Time & Declaration in Support*.

See ORS 107.097(3) (before you have a judgment) or 107.139 (if you already have a judgment) for more details about Immediate Danger orders

Important Contact Information

Oregon Judicial Department - www.courts.oregon.gov

Oregon State Bar Lawyer Referral Service - www.oregonstatebar.org

Phone: 503.684.3763 or toll-free in Oregon at 800.452.7636

Go to www.courts.oregon.gov for the appropriate forms



Step 1: Filling out the Forms

- MAKE SURE YOU COMPLETE THE **COUNTY NAME** AT THE TOP OF THE FIRST PAGE OF EACH FORM!
- These orders are meant for *immediate* threats or danger. If the situation is not an emergency, talk to a lawyer about whether an Immediate Danger Order is the right remedy.
- **Pre- or Post-judgment** – You can file an *Immediate Danger* motion only if you have an active court case against the other parent or if you file a *Petition* at the same time as the *Immediate Danger* motion.
 - If either you or the other parent has filed a *Petition* for dissolution, separation, custody, or another domestic relations action but the court has not issued a *Judgment* in your case, then your motion is “pre-judgment.”
 - If you already have a *Judgment* in your case, then your motion is “post-judgment.” You will also need to file a motion to modify your judgment. That can be done before you file an *Immediate Danger* motion or at the same time.
 - **NOTE:** if you are post-judgment, you must make a good faith effort to talk to the other parent about the reason for this motion and the time of your appearance.
- **Fill out the *Ex Parte Motion for Immediate Danger & Temporary Custody and Parenting Time & Declaration in Support*** (“Motion and Declaration”)
- **Parties** – The parties are the same on your *Motion* as they are in the *Petition* or *Judgment* that you already have. If you filed the original *Petition*, then you are still the Petitioner. If the other parent filed the original *Petition*, then you are still the Respondent, even if you are the one filing this *Motion*.
 - If you have any children with the other party who are 18, 19, or 20 years old, they are necessary parties. You must add their names to the form and serve all documents the same as you serve the other party. See below for service information.
- **Case Number**
 - Use the same case number as you have for your *Petition* or modification action.



Have your documents reviewed

You may want to have your documents reviewed by a lawyer or a court facilitator (if your court has one) before you file. For information about how to find a lawyer, call the Oregon State Bar at the number on Page 1. If you are low-income, you may get your documents reviewed for a smaller fee through the Oregon State Bar’s Modest Means program, or call your local Legal Aid office. Facilitators may be available for free in your court, but you may have to make an appointment. Call your court for information.



Make TWO copies of the *Motion & Declaration* - one for your records and one for service on the other party. See Section 3 below for information about service.
Note: if you have adult children (18, 19, or 20) make an additional copy to serve each child



File the original *Motion & Declaration* with the court clerk. Put the case number the clerk gives you on your copies. There is no fee to file these forms.



STEP 2: THE HEARING

You must be present in court when the judge reviews your paperwork. If the judge grants your motion, the court clerk will give you copies of the *Order* for service. You must formally serve a copy of all paperwork on the other parties (*see Step 3*).



STEP 3: NOTIFY THE OTHER PARTIES

You must officially notify all other parties of the *Motion* and *Order*. This is called “service.” The *Order* is effective once the judge signs it, but you **cannot** enforce it until you serve the other parent and each adult child, **and** notify the court that service has been completed.

****2 CRITICAL POINTS****

1. You **CANNOT** serve the papers yourself
2. If the other parent has a lawyer, you **MUST** serve the lawyer – NOT the parent

Formal Service - There are four ways you can serve:

1. **Personal Service:**

- a. **By Process Server:** Take a copy of the papers to the sheriff’s office in the county where the other party is located and have a sheriff’s officer serve the papers. The sheriff’s office charges a fee for service. You can also hire a private process server of your choice.
- b. **By a Non-Party:** Have a competent* person 18 years or older who is a resident of Oregon **and who is not a party** to the case (Petitioner or Respondent), **nor** the lawyer of a party, serve the papers. If you have safety concerns, have the sheriff perform service. The server cannot be an employee or direct/officer of any party.
 *competent means a person who can understand, remember, and tell others about an event.

A ***Certificate of Service*** must be filed with the court by whoever serves the other party. The certificate must include the date of service and the name of the person served.

2. **Substituted Service:** The process server may leave the papers at the other party's residence (where he or she normally lives) with someone 14 or older who lives there. A copy of the papers (with a statement of the date, time, and place that the papers were served) must also be mailed by first class mail. Your process server can do this and mark the appropriate box on the ***Certificate of Service***. If you do the mailing, you must file a ***Certificate of Service Mailing*** with the court. The date of service is the day you put the first class mailing in the mail.
3. **Office Service:** The process server may leave the papers with someone *in charge* of the other party's office or normal workplace. A copy of the papers (with a statement of the date, time, and place that the papers were served) must also be mailed to the other party by first class mail. Your process server can do this and mark the appropriate box on the ***Certificate of Service***. If you do the mailing, you must file a ***Certificate of Service Mailing*** with the court. The date of service is the day you put the first class mailing in the mail.
4. **By Mail:** First, the process server must send the papers to the other party's home or business address by first class mail. Second, the server must send a copy by certified mail, return receipt requested. The server **must** file proof of service with the court, including the signed green card, date of receipt, and item number along with a ***Certificate of Service***. Fill out section (d) – "Service by Mail." If you do not receive the green card back or if someone other than the other parent signed for it, service by mail was not effective and you must try another type of service. The date of service is the day the green card is signed.

Proof of Service

The Certificates are your proof of service. An original *Certificate of Service* must be filed with the court for your case to proceed, regardless of the method of service.

If you are not able to have the other party served by any of the methods described above, you may ask a judge to let you to use another service method. The judge might let you publish or post the documents. Check with your local court about how to make this request.

CHALLENGE TO THE ORDER



The other parent can request a hearing to challenge the order at any time while the order is in effect. The court will notify you of the time of the hearing if this happens. If you do not go to the hearing, the court will "vacate" your order, meaning that your order will be cancelled. You will not be able to enforce any of the terms of the order against the other parent.

THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

Case No: _____

and

Petitioner
Respondent

**EX PARTE MOTION FOR ORDER OF
IMMEDIATE DANGER &
TEMPORARY CUSTODY AND
PARENTING TIME
& DECLARATION IN SUPPORT**

pre-judgment post-judgment

and

Unmarried children 18, 19, or 20 years old (per ORS 107.108) (*full names*)

Pre-judgment: A *Petition* has been filed requesting custody and/or parenting time. No *Judgment* has been issued.

Post-judgment: Date of most recent *Judgment* awarding custody and/or parenting time: _____ **Note:** a motion for modification of your judgment must be filed before (or along with) this motion

IMPORTANT (for post-judgment motions): You **MUST** make a good faith effort to contact the other parent about the reason you want an Immediate Danger Order. This includes telling the other parent when and where you are going to court.

Motion

I, (*name*) _____, request an emergency order regarding the children named below. This order should stay in effect until otherwise ordered by the court.

My children are in immediate danger as explained in the *Declaration* below

<u>Name and Age</u>	<u>Name and Age</u>
_____	_____
_____	_____

Additional children on attached page

A. CUSTODY
I request custody of the following children: _____
The other parent should have parenting time as specified in Section B, below

B. PARENTING TIME
 No parenting time
 The other parent should have parenting time with the children as follows (*include names of affected children*): _____

Parenting time should be supervised by _____
Any cost of supervision should be paid by Petitioner Respondent

Statement of Points and Authorities

ORS 107.097(3) permits the court to enter ex parte a temporary order providing for custody of or parenting time with a child if the court finds that the child is in immediate danger.

ORS 107.139(1) authorizes post-judgment ex parte temporary orders of custody and parenting time if a parent of the child is present in court and presents a declaration alleging that the child is in immediate danger. A good faith effort to confer is required. Clear and convincing evidence is required.

Declaration

1. The children named above are in immediate danger because of the following facts (*explain*):

Additional page attached titled "Section 1"

2. UCCJEA Information (Uniform Child Custody Jurisdiction and Enforcement Act) was included in the *Petition, Motion for Modification, or Response*

3. ***Post-judgment only***: I have made a good faith effort to confer with the other party regarding the purpose and time of this court appearance. *Describe how and when you conferred with the other party*: _____

I hereby declare that the above statements are true and complete to the best of my knowledge and belief. I understand they are made for use in court and I am subject to penalty for perjury.

Submitted by: Petitioner Respondent

Date

Signature

Name (printed)

Contact Address

City / State / ZIP

Contact Phone

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF _____

Case No: _____

CERTIFICATE OF SERVICE

and

Petitioner
Respondent

(ORCP 7D(2))

- (a) Personal Service
 (b) Substitute Service
 (c) Office Service
 (d) Service by Mail

I, (name) _____, declare that I am a resident of the state of _____ . I am a competent person 18 years of age or older. I am not a party to or lawyer in this case, and not the employee of a party. I certify that the person served is the person named below. I served true copies of the original (check all that apply):

- Petition and Summons
 Information about mediation
 Notice of Confidential Information Form (CIF) Filing
 Notice of Statutory Restraining Order Preventing Dissipation of Assets
 Order to Show Cause re: Modification with Motion and Declaration
 Information about continuing insurance coverage (COBRA)
 Uniform Support Declaration
 Other information provided by the court clerk (name all forms or documents served) _____

 Other (name all forms or documents served) _____

by (check a, b, c, or d and complete all information):

(a) **Personal Service** on (date) _____, at _____ a.m./p.m., to
{ Petitioner Respondent} (name) _____ in person at the
following address _____ in the
County of _____, State of _____.

(b) **Substitute Service** on (date) _____, at _____ a.m./p.m., by
delivering them to the following address _____
in the County of _____, State of _____ . Delivered to (name) _____
_____, who is a person age 14 or older and who lives there.

(Complete the section below only if the server also did the follow-up mailing required by ORCP 7D(2)(b). If a person other than the server did the follow-up mailing, that person must complete a separate Certificate of Service Mailing.)

On (date) _____, I personally deposited a true copy of the same documents served with the U.S. Postal Service, via first class mail, in a sealed envelope, postage paid, addressed to the party to be served: Petitioner Respondent (name) _____

_____, at the party's home address listed above, together with a statement of the date, time and place that the documents were hand-delivered to the party's dwelling (residence).

(c) **Office Service** on (date) _____, at _____ a.m./p.m., by delivering them to the office of the party to be served, located at: (address) _____, during normal working hours for that office, where I left the documents with (name) _____, who is a person apparently in charge, to give the documents to the party to be served. (Complete the section below only if the server also did the follow-up mailing required by ORCP 7D(2)(c). If a person other than the server did the follow-up mailing, that person must complete a separate Certificate of Service Mailing.)

On (date) _____, I personally deposited a true copy of the same documents served with the U.S. Postal Service, via first class mail, in a sealed envelope, postage paid, addressed to the party to be served: Petitioner Respondent (name) _____, at the party's: home address at: _____, **OR** business address above, together with a statement of the date, time and place that the documents were hand-delivered to the party's office.

(d) **Service by Mail, Return Receipt Requested** on (date) _____, I personally deposited **two** true copies with the U.S. Postal Service. **One** by first class mail, and the **other** by certified or registered mail, Return Receipt Requested, or by express mail, postage paid, addressed to the party to be served: Petitioner Respondent (name) _____, at the party's home address located at: _____ (address). (NOTE: If mailed Return Receipt Requested, the return receipt must be attached to this Certificate of Service.)

I hereby declare that the above statements are true to the best of my knowledge and belief, and that I understand they are made for use as evidence in court and I am subject to penalty for perjury.

Date

Signature of Server

Print Name

If person serving is NOT a sheriff or sheriff's deputy, address and phone number of server:

