

SB 482-2
(LC 1295)
3/25/19 (JLM/ps)

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 482**

1 On page 1 of the printed bill, line 3, after “ORS” delete the rest of the
2 line and insert “163.763, 163.765, 163.767 and 163.775.”.

3 Delete lines 5 through 30 and delete pages 2 through 5 and insert:

4 **“SECTION 1.** ORS 163.763 is amended to read:

5 “163.763. (1) A person who has been subjected to sexual abuse and who
6 reasonably fears for the person’s physical safety may petition the circuit
7 court for a restraining order if:

8 “(a) The person and the respondent are not family or household members;

9 “(b) The respondent is at least 18 years of age; and

10 “(c) The respondent is not prohibited from contacting the person pursuant
11 to a foreign restraining order as defined in ORS 24.190, an order issued under
12 ORS 30.866, 124.015, 124.020, 163.738 or 419B.845 or an order entered in a
13 criminal action.

14 “(2)(a) A petition seeking relief under ORS 163.760 to 163.777 must be filed
15 in the circuit court for the county in which the petitioner or the respondent
16 resides. The petition may be filed, without the appointment of a guardian ad
17 litem, by a person who is at least 12 years of age or by a parent or lawful
18 guardian of a person who is under 18 years of age.

19 “(b) The petition must allege that:

20 “(A) The petitioner reasonably fears for the petitioner’s physical safety
21 with respect to the respondent; and

1 “(B) The respondent subjected the petitioner to sexual abuse [*within the*
2 *180 days preceding the filing of the petition*].

3 “(c) The petition must include allegations made under oath or affirmation
4 or a declaration under penalty of perjury.

5 “(d) The petitioner has the burden of proving a claim under ORS 163.760
6 to 163.777 by a preponderance of the evidence.

7 “[*(3) The following periods of time may not be counted for the purpose of*
8 *computing the 180-day period described in this section and ORS 163.765:*]

9 “[*(a) Any time during which the respondent is incarcerated.*]

10 “[*(b) Any time during which the respondent has a principal residence more*
11 *than 100 miles from the principal residence of the petitioner.*]

12 “[*(c) Any time during which the respondent is subject to an order described*
13 *in subsection (1)(c) of this section.*]

14 “**SECTION 2.** ORS 163.765 is amended to read:

15 “163.765. (1) When a petition is filed in accordance with ORS 163.763, the
16 circuit court shall hold an ex parte hearing in person or by telephone on the
17 day the petition is filed or on the following judicial day. Upon a finding that
18 it is objectively reasonable for a person in the petitioner’s situation to fear
19 for the person’s physical safety if an order granting relief under ORS 163.760
20 to 163.777 is not entered and that the respondent has subjected the petitioner
21 to sexual abuse [*within the 180 days preceding the filing of the petition*], the
22 circuit court:

23 “(a) Shall enter an order restraining the respondent from contacting the
24 petitioner and from intimidating, molesting, interfering with or menacing the
25 petitioner, or attempting to intimidate, molest, interfere with or menace the
26 petitioner.

27 “(b) If the petitioner requests, may order:

28 “(A) That the respondent be restrained from contacting the petitioner’s
29 children or family or household members;

30 “(B) That the respondent be restrained from entering, or attempting to

1 enter, a reasonable area surrounding the petitioner’s residence;

2 “(C) That the respondent be restrained from intimidating, molesting, in-
3 terfering with or menacing any children or family or household members of
4 the petitioner, or attempting to intimidate, molest, interfere with or menace
5 any children or family or household members of the petitioner;

6 “(D) That the respondent be restrained from entering, or attempting to
7 enter, any premises and a reasonable area surrounding the premises when
8 necessary to prevent the respondent from intimidating, molesting, interfering
9 with or menacing the petitioner or the petitioner’s children or family or
10 household members; and

11 “(E) Other relief necessary to provide for the safety and welfare of the
12 petitioner or the petitioner’s children or family or household members.

13 “(2) If the respondent is restrained from entering or attempting to enter
14 an area surrounding the petitioner’s residence or any other premises, the
15 restraining order must specifically describe the area or premises.

16 “(3) When the circuit court enters a restraining order under this section,
17 the court shall set a security amount for the violation of the order.

18 “(4) If the circuit court enters a restraining order under subsection (1)
19 of this section:

20 “(a) The clerk of the court shall provide, without charge, the number of
21 certified true copies of the petition and the restraining order necessary to
22 provide the petitioner with one copy and to effect service and shall have a
23 true copy of the petition and the restraining order delivered to the county
24 sheriff for service upon the respondent, unless the circuit court finds that
25 further service is unnecessary because the respondent appeared in person
26 before the court. In addition and upon request by the petitioner, the clerk
27 of the court shall provide the petitioner, without charge, two exemplified
28 copies of the petition and the restraining order.

29 “(b) The county sheriff shall serve the respondent personally unless the
30 petitioner elects to have the respondent served personally by another party.

1 Proof of service shall be made in accordance with ORS 163.773. When the
2 restraining order does not contain the respondent's date of birth and service
3 is effected by the sheriff, the sheriff shall verify the respondent's date of
4 birth with the respondent and shall record that date on the restraining order
5 or proof of service entered into the Law Enforcement Data System under
6 ORS 163.773.

7 “(5) If the county sheriff:

8 “(a) Determines that the restraining order and petition are incomplete,
9 the sheriff shall return the restraining order and petition to the clerk of the
10 court. The clerk of the court shall notify the petitioner, at the address pro-
11 vided by the petitioner, of the error or omission.

12 “(b) Cannot complete service within 10 days after accepting the restrain-
13 ing order and petition, the sheriff shall notify the petitioner, at the address
14 provided by the petitioner, that the documents have not been served. If the
15 petitioner does not respond within 10 days, the sheriff shall hold the re-
16 straining order and petition for future service and file a return to the clerk
17 of the court showing that service was not completed.

18 “(6)(a) Within 30 days after a restraining order is served under this sec-
19 tion, the respondent may request a circuit court hearing upon any relief
20 granted.

21 “(b) If the respondent requests a hearing under paragraph (a) of this
22 subsection, the clerk of the court shall notify the petitioner of the date and
23 time of the hearing and shall supply the petitioner with a copy of the
24 respondent's request for a hearing. The petitioner shall give the clerk of the
25 court information sufficient to allow such notification.

26 “(7) If the respondent fails to request a hearing within 30 days after a
27 restraining order is served, the restraining order is confirmed by operation
28 of law.

29 “(8)(a) A restraining order entered under this section is effective for a
30 period of [*one year*] **five years or, if the petitioner is under 18 years of**

1 **age at the time of entry, until the person attains 19 years of age,**
2 **whichever occurs later, except as otherwise provided in paragraph (b)**
3 **or (c) of this subsection or** unless the restraining order is renewed, modi-
4 fied or terminated in accordance with ORS 163.760 to 163.777.

5 **“(b) The circuit court shall enter a permanent restraining order if,**
6 **at the time of the petition or renewal of the order, the respondent has**
7 **been convicted of a crime described in ORS 163.355 to 163.445 commit-**
8 **ted against the petitioner.**

9 **“(c) The circuit court may enter a permanent restraining order if**
10 **the court finds that it is objectively reasonable for a person in the**
11 **petitioner’s situation to fear for the person’s physical safety and that**
12 **the passage of time or a change in circumstances would not dissipate**
13 **that fear. In making the finding, the court shall consider any infor-**
14 **mation offered by the petitioner to support the request for a perma-**
15 **nent restraining order, including but not limited to:**

16 **“(A) Information that the respondent has a history of engaging in**
17 **sexual abuse or domestic violence as defined in ORS 135.230;**

18 **“(B) If the petitioner is a minor, the fact that the respondent is**
19 **related to the petitioner by blood or marriage; or**

20 **“(C) Any vulnerability of the petitioner that is not likely to change**
21 **over time.**

22 **“SECTION 3.** ORS 163.767 is amended to read:

23 **“163.767. (1) If the respondent requests a hearing under ORS 163.765 (6),**
24 **the circuit court shall hold the hearing within 21 days after the request. At**
25 **the hearing, the circuit court may terminate or modify the restraining order**
26 **issued under ORS 163.765.**

27 **“(2)(a) If service of a notice of hearing is inadequate to provide a party**
28 **with sufficient notice of the hearing, the circuit court may extend the date**
29 **of the hearing for up to five days so that the party may seek representation.**

30 **“(b) If one party is represented by an attorney at the hearing, the circuit**

1 court may extend the date of the hearing for up to five days at the other
2 party's request so that the other party may seek representation.

3 “(3) If the circuit court continues the restraining order issued under ORS
4 163.765, with or without modification, at a hearing about which the re-
5 spondent received actual notice and the opportunity to be heard, the court
6 shall include in the restraining order a certificate in substantially the fol-
7 lowing form in a separate section immediately above the signature of the
8 judge:

9 “

10 CERTIFICATE OF COMPLIANCE
11 WITH THE VIOLENCE
12 AGAINST WOMEN ACT OF 1994
13

14 This protective order meets all full faith and credit requirements of the Vi-
15 olence Against Women Act of 1994, 18 U.S.C. 2265. This court has jurisdic-
16 tion over the parties and the subject matter. The respondent was afforded
17 notice and timely opportunity to be heard as provided by the law of this ju-
18 risdiction. This protective order is valid and entitled to enforcement in this
19 and all other jurisdictions.

20 “

21 “(4) The circuit court may approve a consent agreement if the court de-
22 termines that the agreement provides sufficient protections to the petitioner.
23 The circuit court may not approve a term in a consent agreement that pro-
24 vides for restraint of a party to the agreement unless the other party peti-
25 tioned for and was granted a restraining order issued under ORS 163.765.

26 “(5) A restraining order entered under this section, or a consent agree-
27 ment entered into under this section, shall continue for a period of [*one*
28 *year*] **five years** from the date of the restraining order issued under ORS
29 163.765 **or, if the petitioner is under 18 years of age at the time of is-**
30 **suance, until the petitioner attains 19 years of age, whichever occurs**

1 **later**, unless the **court enters a permanent order under ORS 163.765 (8)**
2 **or the** restraining order is renewed, modified or terminated in accordance
3 with ORS 163.775.

4 **“SECTION 4.** ORS 163.775 is amended to read:

5 “163.775. (1)(a) A circuit court may renew a restraining order entered
6 under ORS 163.760 to 163.777 upon a finding that it is objectively reasonable
7 for a person in the petitioner’s situation to fear for the person’s physical
8 safety if the restraining order is not renewed. A finding that the respondent
9 has subjected the petitioner to additional sexual abuse is not required.

10 “(b) A circuit court may renew a restraining order on the basis of an ex
11 parte petition alleging facts supporting the required finding. The petition
12 must include allegations made under oath or affirmation or a declaration
13 under penalty of perjury. If the renewal order is granted, the provisions of
14 ORS 163.765 (4) to (8) and 163.767 (3) apply, except that the court may hear
15 no issue other than the basis for renewal, unless requested in the hearing
16 request form and thereafter agreed to by the petitioner. The circuit court
17 shall hold a hearing required under this paragraph within 21 days after the
18 respondent’s request.

19 “(2) At any time after the time period set forth in ORS 163.765 (6):

20 “(a) A party may request that the circuit court modify terms in the re-
21 straining order for good cause shown.

22 “(b) A petitioner may request that the circuit court remove terms in the
23 restraining order or make terms in the order less restrictive. Application to
24 the circuit court under this paragraph may be by ex parte motion.

25 “(3) The clerk of the court shall provide without charge the number of
26 certified true copies of the request for modification of the restraining order
27 and notice of hearing necessary to effect service and, at the election of the
28 party requesting the modification, shall have a true copy of the request and
29 notice delivered to the county sheriff for service upon the other party.

30 “(4) The county sheriff shall serve the other party with a request for

1 modification of a restraining order under subsection (2)(a) of this section by
2 personal service, unless the party requesting the modification elects to have
3 the other party personally served by a private party or unless otherwise or-
4 dered by the circuit court.

5 “(5) The provisions of ORS 163.767 (3) apply to a modification of a re-
6 straining order under this section.

7 “(6) The clerk of the court shall deliver a copy of an order of modification
8 entered under this section to the county sheriff for service and entry into the
9 Law Enforcement Data System as provided in ORS 163.773.

10 “(7)(a) The county sheriff shall serve a copy of an order of modification:

11 “(A) Entered under subsection (2)(a) of this section by personal service
12 on the nonrequesting party.

13 “(B) Entered under subsection (2)(b) of this section by mailing a copy of
14 the order of modification to the respondent by first class mail.

15 “(b) If the order of modification recites that the respondent appeared in
16 person before the circuit court, the necessity for service of the order and
17 proof of service is waived.

18 “(8)(a) A restraining order entered under ORS 163.760 to 163.777 may not
19 be terminated on motion of the petitioner, unless the motion is notarized.

20 “(b) **A hearing on termination of the restraining order is not re-**
21 **quired if:**

22 “(A) **The petitioner moved for termination of the order; or**

23 “(B) **The petitioner does not object to termination of the order.**

24 “**SECTION 5. The amendments to ORS 163.763, 163.765, 163.767 and**
25 **163.775 by sections 1 to 4 of this 2019 Act apply to petitions for sexual**
26 **abuse restraining orders filed on or after the effective date of this 2019**
27 **Act.”.**

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