

D R A F T

SUMMARY

Modifies date of expiration of sexual abuse restraining order for orders entered when petitioner was under 18 years of age. Specifies procedures when service on respondent of sexual abuse restraining order is completed by alternative service.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to sexual abuse restraining orders; creating new provisions; amending ORS 163.765 and 163.773; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 163.765 is amended to read:

163.765. (1) When a petition is filed in accordance with ORS 163.763, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a finding that it is objectively reasonable for a person in the petitioner's situation to fear for the person's physical safety if an order granting relief under ORS 163.760 to 163.777 is not entered and that the respondent has subjected the petitioner to sexual abuse, the circuit court:

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

(b) If the petitioner requests, may order:

(A) That the respondent be restrained from contacting the petitioner's children or family or household members;

1 (B) That the respondent be restrained from entering, or attempting to
2 enter, a reasonable area surrounding the petitioner's residence;

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

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

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

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

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

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

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

30 (b) The county sheriff shall serve the respondent personally unless the
31 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)(a) If the county sheriff:

8 (A) Determines that the restraining order and petition are incomplete, the
9 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 restraining
13 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 (b) If a petitioner receives notice of incomplete service under paragraph
19 (a)(B) of this subsection and cannot effect service on the respondent within
20 30 days after the granting or renewal of the restraining order, the circuit
21 court may order service by an alternative method in accordance with ORCP
22 7 D(6) on proof of the petitioner's due diligence in attempting to effect ser-
23 vice.

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

27 (b) If the respondent requests a hearing under paragraph (a) of this sub-
28 section, the clerk of the court shall notify the petitioner of the date and time
29 of the hearing and shall supply the petitioner with a copy of the respondent's
30 request for a hearing. The petitioner shall give the clerk of the court infor-
31 mation sufficient to allow such notification.

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

(8)(a) A restraining order entered under this section is effective for a period of five years or, if the petitioner is under 18 years of age at the time of entry, until [*the person attains 19 years of age*] **January 1 of the year following the petitioner's 18th birthday**, whichever occurs later, except as otherwise provided in paragraph (b) or (c) of this subsection or unless the restraining order is renewed, modified or terminated in accordance with ORS 163.760 to 163.777.

(b) The circuit court shall enter a permanent restraining order if, at the time of the petition or renewal of the order, the respondent has been convicted of a crime described in ORS 163.355 to 163.445 committed against the petitioner.

(c) The circuit court may enter a permanent restraining order if the court finds that it is objectively reasonable for a person in the petitioner's situation to fear for the person's physical safety and that the passage of time or a change in circumstances would not dissipate that fear. In making the finding, the court shall consider any information offered by the petitioner to support the request for a permanent restraining order, including but not limited to:

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

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

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

SECTION 2. ORS 163.765, as amended by section 1 of this 2021 Act, is amended to read:

163.765. (1) When a petition is filed in accordance with ORS 163.763, the circuit court shall hold an ex parte hearing in person or by telephone on the

day the petition is filed or on the following judicial day. Upon a finding that it is objectively reasonable for a person in the petitioner's situation to fear for the person's physical safety if an order granting relief under ORS 163.760 to 163.777 is not entered and that the respondent has subjected the petitioner to sexual abuse, the circuit court:

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

(b) If the petitioner requests, may order:

(A) That the respondent be restrained from contacting the petitioner's children or family or household members;

(B) That the respondent be restrained from entering, or attempting to enter, a reasonable area surrounding the petitioner's residence;

(C) That the respondent be restrained from intimidating, molesting, interfering with or menacing any children or family or household members of the petitioner, or attempting to intimidate, molest, interfere with or menace any children or family or household members of the petitioner;

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

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

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

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

(4) If the circuit court enters a restraining order under subsection (1) of

1 this section:

2 (a) The clerk of the court shall provide, without charge, the number of
3 certified true copies of the petition and the restraining order necessary to
4 provide the petitioner with one copy and to effect service and shall have a
5 true copy of the petition and the restraining order delivered to the county
6 sheriff for service upon the respondent, unless the circuit court finds that
7 further service is unnecessary because the respondent appeared in person
8 before the court. In addition and upon request by the petitioner, the clerk
9 of the court shall provide the petitioner, without charge, two exemplified
10 copies of the petition and the restraining order.

11 (b) The county sheriff shall serve the respondent personally unless the
12 petitioner elects to have the respondent served personally by another party.
13 Proof of service shall be made in accordance with ORS 163.773. When the
14 restraining order does not contain the respondent's date of birth and service
15 is effected by the sheriff, the sheriff shall verify the respondent's date of
16 birth with the respondent and shall record that date on the restraining order
17 or proof of service entered into the Law Enforcement Data System under
18 ORS 163.773.

19 (5)(a) If the county sheriff:

20 (A) Determines that the restraining order and petition are incomplete, the
21 sheriff shall return the restraining order and petition to the clerk of the
22 court. The clerk of the court shall notify the petitioner, at the address pro-
23 vided by the petitioner, of the error or omission.

24 (B) Cannot complete service within 10 days after accepting the restraining
25 order and petition, the sheriff shall notify the petitioner, at the address
26 provided by the petitioner, that the documents have not been served. If the
27 petitioner does not respond within 10 days, the sheriff shall hold the re-
28 straining order and petition for future service and file a return to the clerk
29 of the court showing that service was not completed.

30 (b) If a petitioner receives notice of incomplete service under paragraph
31 (a)(B) of this subsection and cannot effect service on the respondent within

30 days after the granting or renewal of the restraining order, the circuit court may order service by an alternative method in accordance with ORCP 7 D(6) on proof of the petitioner's due diligence in attempting to effect service. **If appropriate, the court may order the use of a summons to effect service. The summons must include notice of where the respondent may obtain a complete copy of the order.**

(6)(a) Within 30 days after a restraining order is served under this section, the respondent may request a circuit court hearing upon any relief granted.

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

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

(8)(a) A restraining order entered under this section is effective for a period of five years or, if the petitioner is under 18 years of age at the time of entry, until January 1 of the year following the petitioner's 18th birthday, whichever occurs later, except as otherwise provided in paragraph (b) or (c) of this subsection or unless the restraining order is renewed, modified or terminated in accordance with ORS 163.760 to 163.777.

(b) The circuit court shall enter a permanent restraining order if, at the time of the petition or renewal of the order, the respondent has been convicted of a crime described in ORS 163.355 to 163.445 committed against the petitioner.

(c) The circuit court may enter a permanent restraining order if the court finds that it is objectively reasonable for a person in the petitioner's situation to fear for the person's physical safety and that the passage of time or a change in circumstances would not dissipate that fear. In making the

1 finding, the court shall consider any information offered by the petitioner to
2 support the request for a permanent restraining order, including but not
3 limited to:

4 (A) Information that the respondent has a history of engaging in sexual
5 abuse or domestic violence as defined in ORS 135.230;

6 (B) If the petitioner is a minor, the fact that the respondent is related to
7 the petitioner by blood or marriage; or

8 (C) Any vulnerability of the petitioner that is not likely to change over
9 time.

10 **SECTION 3.** ORS 163.773 is amended to read:

11 163.773. (1)(a) When a restraining order is issued in accordance with ORS
12 163.760 to 163.777 and the person to be restrained has actual notice of the
13 restraining order, the clerk of the court or any other person serving the pe-
14 tition and the restraining order shall immediately deliver to a county sheriff
15 copies of the petition and the restraining order and a true copy of proof of
16 service on which it is stated that the petition and the restraining order were
17 served personally on the respondent. **If alternative service is ordered by**
18 **the court, the person performing service shall instead immediately**
19 **deliver to the county sheriff copies of the petition, the restraining or-**
20 **der and, if applicable, the summons, and a true copy of proof of service**
21 **on which it is stated that alternative service was completed in ac-**
22 **cordance with ORCP 7 D(6).** Proof of service may be made by affidavit or
23 by declaration under penalty of perjury. If a restraining order entered by the
24 circuit court recites that the respondent appeared in person before the court,
25 the necessity for service of the restraining order and proof of service is
26 waived.

27 (b) Upon receipt of a copy of the restraining order and notice of com-
28 pletion of any required service by a member of a law enforcement agency,
29 the county sheriff shall immediately enter the restraining order into the Law
30 Enforcement Data System maintained by the Department of State Police and
31 the databases of the National Crime Information Center of the United States

1 Department of Justice. If the petition and the restraining order were served
2 on the respondent by a person other than a member of a law enforcement
3 agency, **or if alternative service was ordered by the court and com-**
4 **pleted in accordance with ORCP 7 D(6)**, the county sheriff shall enter the
5 restraining order into the Law Enforcement Data System and the databases
6 of the National Crime Information Center upon receipt of a true copy of
7 proof of service. The sheriff shall provide the petitioner with a true copy of
8 any required proof of service.

9 (c) Entry into the Law Enforcement Data System constitutes notice to all
10 law enforcement agencies of the existence of the restraining order. Law
11 enforcement agencies shall establish procedures adequate to ensure that an
12 officer at the scene of an alleged violation of the restraining order may be
13 informed of the existence and terms of the restraining order. The restraining
14 order is fully enforceable in any county or tribal land in this state.

15 (d) When a restraining order has been entered into the Law Enforcement
16 Data System and the databases of the National Crime Information Center
17 of the United States Department of Justice under this subsection, a county
18 sheriff shall cooperate with a request from a law enforcement agency from
19 any other jurisdiction to verify the existence of the restraining order or to
20 transmit a copy of the restraining order to the requesting jurisdiction.

21 (2) A sheriff may serve a restraining order issued under ORS 163.760 to
22 163.777 in the county in which the sheriff was elected and in any county that
23 is adjacent to the county in which the sheriff was elected.

24 (3)(a) A sheriff may serve and enter into the Law Enforcement Data Sys-
25 tem a copy of a restraining order issued under ORS 163.760 to 163.777 that
26 was transmitted to the sheriff by a circuit court or law enforcement agency
27 through an electronic communication device. Before transmitting a copy of
28 a restraining order to a sheriff under this subsection through an electronic
29 communication device, the person transmitting the copy must receive con-
30 firmation from the sheriff's office that an electronic communication device
31 is available and operating.

(b) For purposes of this subsection, “electronic communication device” means a device by which any kind of electronic communication can be made, including but not limited to communication by telephonic facsimile and electronic mail.

(4) When a circuit court enters an order terminating a restraining order issued under ORS 163.760 to 163.777 before the expiration date, the clerk of the court shall immediately deliver a copy of the termination order to the county sheriff with whom the original restraining order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original restraining order from the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

(5)(a) A contempt proceeding for an alleged violation of a restraining order issued under ORS 163.760 to 163.777 must be conducted by the circuit court that issued the restraining order or by the circuit court for the county in which the alleged violation of the restraining order occurs. If contempt proceedings are initiated in the circuit court for the county in which the alleged violation of the restraining order occurs, the person initiating the contempt proceedings shall file with the court a copy of the restraining order that is certified by the clerk of the court that originally issued the restraining order. Upon filing of the certified copy of the restraining order, the circuit court shall enforce the restraining order as though that court had originally issued the restraining order.

(b) Pending a contempt hearing for an alleged violation of a restraining order issued under ORS 163.760 to 163.777, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290.

(c) Service of process or other legal documents upon the petitioner is not a violation of a restraining order entered under ORS 163.760 to 163.777 if the petitioner is served as provided in ORCP 7 or 9.

SECTION 4. The amendments to ORS 163.765 and 163.773 by sections

1 2 and 3 of this 2021 Act become operative on the 91st day after the date
2 on which the 2021 regular session of the Eighty-first Legislative As-
3 sembly adjourns sine die.

4 SECTION 5. This 2021 Act being necessary for the immediate pres-
5 ervation of the public peace, health and safety, an emergency is de-
6 clared to exist, and this 2021 Act takes effect on its passage.

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