

House Bill 2586

Sponsored by Representative NOBLE (at the request of Diana Gutman) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates process for obtaining restraining order against person who is not family or household member for actions that cause bodily injury or fear of imminent bodily injury.

A BILL FOR AN ACT

1
2 Relating to restraining orders; creating new provisions; and amending ORS 147.015, 163.760, 163.763,
3 163.765 and 163.775.

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

5 **SECTION 1.** ORS 163.760 is amended to read:

6 163.760. As used in ORS 163.760 to 163.777:

7 (1) **“Abuse” means the occurrence of one or more of the following acts:**

8 (a) **Attempting to cause or intentionally, knowingly or recklessly causing bodily injury;**

9 (b) **Intentionally, knowingly or recklessly placing another in fear of imminent bodily in-**
10 **jury; or**

11 (c) **Sexual abuse.**

12 (2) **“Declaration under penalty of perjury[.]” means a declaration under penalty of perjury**
13 **in the form required by ORCP 1 E.**

14 (3) **“Family or household members[.]” [*“interfere,” “intimidate,” “menace” and “molest” have the***
15 ***meanings given those terms*] has the meaning given that term** in ORS 107.705.

16 [(2)] (4) **“Sexual abuse” means sexual contact with:**

17 (a) A person who does not consent to the sexual contact; or

18 (b) A person who is considered incapable of consenting to a sexual act under ORS 163.315, un-
19 less the sexual contact would be lawful under ORS 163.325 or 163.345.

20 [(3)] (5) **“Sexual contact” has the meaning given that term** in ORS 163.305.

21 **SECTION 2.** ORS 163.763 is amended to read:

22 163.763. (1) A person who has been subjected to [*sexual*] abuse and who reasonably fears for the
23 person's physical safety may petition the circuit court for a restraining order if:

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

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

26 (c) The respondent is not prohibited from contacting the person pursuant to a foreign restraining
27 order as defined in ORS 24.190, an order issued under ORS 30.866, 124.015, 124.020, 163.738 or
28 419B.845 or an order entered in a criminal action.

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 or lawful guardian of a person who is under 18 years of age.

2 (b) The petition must allege that:

3 (A) The petitioner reasonably fears for the petitioner's physical safety with respect to the re-
4 spondent; and

5 (B) The respondent subjected the petitioner to [sexual] abuse.

6 (c) The petition must include allegations made under oath or affirmation or a declaration under
7 penalty of perjury.

8 (d) The petitioner has the burden of proving a claim under ORS 163.760 to 163.777 by a pre-
9 ponderance of the evidence.

10 **SECTION 3.** ORS 163.765 is amended to read:

11 163.765. (1) When a petition is filed in accordance with ORS 163.763, the circuit court shall hold
12 an ex parte hearing in person or by telephone on the day the petition is filed or on the following
13 judicial day. Upon a finding that it is objectively reasonable for a person in the petitioner's situation
14 to fear for the person's physical safety if an order granting relief under ORS 163.760 to 163.777 is
15 not entered and that the respondent has subjected the petitioner to [sexual] abuse, the circuit court:

16 (a) Shall enter an order restraining the respondent from contacting the petitioner and from in-
17 timidating, molesting, interfering with or menacing the petitioner, or attempting to intimidate, mo-
18 lest, interfere with or menace the petitioner.

19 (b) If the petitioner requests, may order:

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

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

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

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

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

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

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

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

39 (a) The clerk of the court shall provide, without charge, the number of certified true copies of
40 the petition and the restraining order necessary to provide the petitioner with one copy and to effect
41 service and shall have a true copy of the petition and the restraining order delivered to the county
42 sheriff for service upon the respondent, unless the circuit court finds that further service is unnec-
43 essary because the respondent appeared in person before the court. In addition and upon request
44 by the petitioner, the clerk of the court shall provide the petitioner, without charge, two exemplified
45 copies of the petition and the restraining order.

1 (b) The county sheriff shall serve the respondent personally unless the petitioner elects to have
 2 the respondent served personally by another party. Proof of service shall be made in accordance
 3 with ORS 163.773. When the restraining order does not contain the respondent's date of birth and
 4 service is effected by the sheriff, the sheriff shall verify the respondent's date of birth with the re-
 5 spondent and shall record that date on the restraining order or proof of service entered into the
 6 Law Enforcement Data System under ORS 163.773.

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

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

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

16 (b) If a petitioner receives notice of incomplete service under paragraph (a)(B) of this subsection
 17 and cannot effect service on the respondent within 30 days after the granting or renewal of the re-
 18 straining order, the circuit court may order service by an alternative method in accordance with
 19 ORCP 7 D(6) on proof of the petitioner's due diligence in attempting to effect service.

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

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

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

28 (8)(a) A restraining order entered under this section is effective for a period of five years or, if
 29 the petitioner is under 18 years of age at the time of entry, until the person attains 19 years of age,
 30 whichever occurs later, except as otherwise provided in paragraph (b) or (c) of this subsection or
 31 unless the restraining order is renewed, modified or terminated in accordance with ORS 163.760 to
 32 163.777.

33 (b) The circuit court shall enter a permanent restraining order if, at the time of the petition or
 34 renewal of the order, the respondent has been convicted of a crime described in ORS 163.355 to
 35 163.445 committed against the petitioner.

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

41 (A) Information that the respondent has a history of engaging in [*sexual abuse or*] domestic vi-
 42 olence as defined in ORS 135.230 **or abuse**;

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

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

1 **(9) As used in this section, “interfere,” “intimidate,” “menace” and “molest” have the**
 2 **meanings given those terms in ORS 107.705.**

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

4 163.775. (1)(a) A circuit court may renew a restraining order entered under ORS 163.760 to
 5 163.777 upon a finding that it is objectively reasonable for a person in the petitioner’s situation to
 6 fear for the person’s physical safety if the restraining order is not renewed. A finding that the re-
 7 spondent has subjected the petitioner to additional [*sexual*] abuse is not required.

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

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

16 (a) A party may request that the circuit court modify terms in the restraining order for good
 17 cause shown.

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

21 (3) The clerk of the court shall provide without charge the number of certified true copies of
 22 the request for modification of the restraining order and notice of hearing necessary to effect ser-
 23 vice and, at the election of the party requesting the modification, shall have a true copy of the re-
 24 quest and notice delivered to the county sheriff for service upon the other party.

25 (4) The county sheriff shall serve the other party with a request for modification of a restraining
 26 order under subsection (2)(a) of this section by personal service, unless the party requesting the
 27 modification elects to have the other party personally served by a private party or unless otherwise
 28 ordered by the circuit court.

29 (5) The provisions of ORS 163.767 (3) apply to a modification of a restraining order under this
 30 section.

31 (6) The clerk of the court shall deliver a copy of an order of modification entered under this
 32 section to the county sheriff for service and entry into the Law Enforcement Data System as pro-
 33 vided in ORS 163.773.

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

35 (A) Entered under subsection (2)(a) of this section by personal service on the nonrequesting
 36 party.

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

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

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

43 **SECTION 5.** ORS 147.015 is amended to read:

44 147.015. (1) A person is eligible for an award of compensation under ORS 147.005 to 147.367 if:

45 (a) The person is a victim, or is a survivor or dependent of a deceased victim, of a compensable

1 crime that has resulted in or may result in a compensable loss;

2 (b) The appropriate law enforcement officials were notified of the perpetration of the crime
 3 allegedly causing the death or injury to the victim, unless the Department of Justice finds good
 4 cause exists for the failure of notification;

5 (c) The notification described in paragraph (b) of this subsection occurred within 72 hours after
 6 the perpetration of the crime, unless the Department of Justice finds good cause exists for the fail-
 7 ure of notification within 72 hours;

8 (d) The applicant cooperated with law enforcement officials in the apprehension and prosecution
 9 of the assailant or the department has found that the applicant's failure to cooperate was for good
 10 cause;

11 (e) The application for compensation is not the result of collusion between the applicant and the
 12 assailant of the victim;

13 (f) The death or injury to the victim was not substantially attributable to the wrongful act of
 14 the victim; and

15 (g) The application for an award of compensation under ORS 147.005 to 147.367 is filed with the
 16 department:

17 (A) Within one year of the date of the injury to the victim; or

18 (B) Within such further extension of time as the department, for good cause shown, allows.

19 (2)(a) The fact that a victim was subjected to sexual exploitation as defined in ORS 419B.005,
 20 domestic violence as defined in ORS 135.230, [sexual] abuse as defined in ORS 163.760 or stalking
 21 as defined in ORS 163.732 is prima facie evidence of good cause for the victim's failure to notify law
 22 enforcement in a timely manner under subsection (1)(c) of this section, or for failure to cooperate
 23 with law enforcement under subsection (1)(d) of this section.

24 (b) The requirement under subsection (1)(b) of this section to notify the appropriate law
 25 enforcement officials of the perpetration of the crime is satisfied if, as a result of the compensable
 26 crime for which the victim or applicant is applying for compensation, the victim or applicant ob-
 27 tained:

28 (A) A temporary or permanent stalking protective order under ORS 30.866 or 163.730 to 163.750;

29 (B) [A sexual] An abuse restraining order under ORS 163.760 to 163.777;

30 (C) An abuse prevention order under ORS 107.700 to 107.735 or 124.005 to 124.040; or

31 (D) A medical assessment, as defined in ORS 147.395, for sexual assault.

32 (3) The department shall adopt rules establishing:

33 (a) A limited domestic violence counseling award for victims of domestic violence who apply for
 34 an award of compensation but who do not otherwise qualify under the eligibility requirements of this
 35 section.

36 (b) A limited sexual assault counseling award for victims of sexual assault who apply for an
 37 award of compensation but who do not otherwise qualify under the eligibility requirements of this
 38 section.

39 **SECTION 6. The amendments to ORS 147.015, 163.760, 163.763, 163.765 and 163.775 by**
 40 **sections 1 to 5 of this 2021 Act apply to petitions for restraining orders filed on or after the**
 41 **effective date of this 2021 Act.**