

Senate Bill 305

Sponsored by Senator RILEY (at the request of Michael Parise) (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**.

Modifies provision of law regarding Family Abuse Prevention Act restraining orders when circumstances exist affecting child custody.

A BILL FOR AN ACT

1
2 Relating to restraining orders affecting custody of children; amending ORS 107.710, 107.716, 107.718
3 and 107.722.

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

5 **SECTION 1.** ORS 107.710 is amended to read:

6 107.710. (1) Any person who has been the victim of abuse within the preceding 180 days may
7 petition the circuit court for relief under ORS 107.700 to 107.735, if the person is in imminent danger
8 of further abuse from the abuser. The person may seek relief by filing a petition with the circuit
9 court alleging that the person is in imminent danger of abuse from the respondent, that the person
10 has been the victim of abuse committed by the respondent within the 180 days preceding the filing
11 of the petition and particularly describing the nature of the abuse and the dates thereof. The abuse
12 must have occurred not more than 180 days before the filing of the petition. The petition must in-
13 clude allegations made under oath or affirmation or a declaration under penalty of perjury. The
14 circuit court shall have jurisdiction over all proceedings under ORS 107.700 to 107.735.

15 (2) The petitioner has the burden of proving a claim under ORS 107.700 to 107.735 by a pre-
16 ponderance of the evidence.

17 (3) A person's right to relief under ORS 107.700 to 107.735 shall not be affected by the fact that
18 the person left the residence or household to avoid abuse.

19 (4) A petition filed under ORS 107.700 to 107.735 shall disclose the existence of any custody,
20 Family Abuse Prevention Act or Elderly Persons and Persons With Disabilities Abuse Prevention
21 Act proceedings, or any marital annulment, dissolution or separation proceedings, or any filiation
22 proceeding, pending between the parties, and the existence of any other custody order affecting the
23 children of the parties.

24 (5) When the petitioner requests custody of any child, the petition shall comply with ORS
25 109.767 and disclose:

26 (a) The child's present residence and the length of time the child has resided at the residence;

27 (b) The county and state where the child resided for the five years immediately prior to the
28 filing of the petition;

29 (c) The name and address of the party or other responsible person with whom the child is
30 presently residing;

31 (d) The name and current address of any party or other responsible person with whom the child

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 resided for the five years immediately prior to the filing of the petition;

2 (e) Whether the party participated as a party, witness or in any other capacity, in any other
3 litigation concerning the custody of the child in this or any other state;

4 (f) Whether the party has information of any custody proceeding concerning the child pending
5 in a court of this or any other state; *[and]*

6 (g) Whether the party knows of any person not a party to the proceedings who has physical
7 custody of the child or claims to have custody, parenting time or visitation rights with respect to
8 the child[.]; **and**

9 **(h) Whether the party has engaged in any discussions with the respondent regarding**
10 **parenting time in the 120 days immediately prior to the filing of the petition.**

11 (6) For purposes of computing the 180-day period in this section and ORS 107.718, any time
12 during which the respondent is incarcerated or has a principal residence more than 100 miles from
13 the principal residence of the petitioner shall not be counted as part of the 180-day period.

14 **SECTION 2.** ORS 107.716 is amended to read:

15 107.716. (1) If the respondent requests a hearing pursuant to ORS 107.718 (10), the court shall
16 hold the hearing within 21 days after the request. However, if the respondent contests the order
17 granting temporary child custody to the petitioner, the court shall hold the hearing within five days
18 after the request.

19 (2)(a) If the court determines under ORS 107.718 (2) that *[exceptional]* circumstances exist that
20 affect the custody of a child, the court shall hold a hearing within 14 days after issuance of the
21 restraining order. The clerk of the court shall provide a notice of the hearing along with the petition
22 and order to the petitioner and, in accordance with ORS 107.718 (8), to the county sheriff for service
23 on the respondent.

24 (b) The respondent may request an earlier hearing, to be held within five days after the request.
25 The hearing request form shall be available from the clerk of the court in the form prescribed by
26 the State Court Administrator under ORS 107.718 (7). If the respondent requests an earlier hearing,
27 the clerk of the court shall notify the parties of the scheduled hearing date by mailing a notice of
28 the time and place of hearing to the addresses provided in the petition or, for the respondent, to the
29 address provided in the request for hearing, or as otherwise designated by a party.

30 (c) When the court schedules a hearing under this subsection, the respondent may not request
31 a hearing under ORS 107.718 (10).

32 (3) In a hearing held pursuant to subsection (1) or (2) of this section:

33 (a) The court may continue any order issued under ORS 107.718 if the court finds that:

34 (A) Abuse has occurred within the period specified in ORS 107.710 (1);

35 (B) The petitioner reasonably fears for the petitioner's physical safety; and

36 (C) The respondent represents a credible threat to the physical safety of the petitioner or the
37 petitioner's child.

38 (b) The court may cancel or change any order issued under ORS 107.718 and may assess against
39 either party a reasonable attorney fee and such costs as may be incurred in the proceeding.

40 (4)(a) If service of a notice of hearing is inadequate to provide a party with sufficient notice of
41 the hearing held pursuant to ORS 107.718 (2) or (10), the court may extend the date of the hearing
42 for up to five days so that the party may seek representation.

43 (b) If one party is represented by an attorney at a hearing held pursuant to ORS 107.718 (2) or
44 (10), the court may extend the date of the hearing for up to five days at the other party's request
45 so that the other party may seek representation.

1 (5) If the court continues the order, with or without changes, at a hearing about which the re-
 2 spondent received actual notice and the opportunity to participate, the court shall include in the
 3 order a certificate in substantially the following form in a separate section immediately above the
 4 signature of the judge:

5
 6
 7 CERTIFICATE OF COMPLIANCE
 8 WITH THE VIOLENCE
 9 AGAINST WOMEN ACT

10
 11 This protective order meets all full faith and credit requirements of the Violence Against Women
 12 Act, 18 U.S.C. 2265 (1994). This court has jurisdiction over the parties and the subject matter. The
 13 respondent was afforded notice and timely opportunity to be heard as provided by the law of this
 14 jurisdiction. This order is valid and entitled to enforcement in this and all other jurisdictions.

15
 16
 17 (6) The court may approve any consent agreement to bring about a cessation of abuse of the
 18 parties. However, the court may not approve a term in a consent agreement that provides for re-
 19 straint of a party to the agreement unless the other party petitioned for and was granted an order
 20 under ORS 107.710. An order or consent agreement made under this section may be amended at any
 21 time and shall continue in effect for a period of one year from the date of the order issued under
 22 ORS 107.718, or until superseded as provided in ORS 107.722.

23 (7) No order or agreement made under ORS 107.705 to 107.720, 133.310 and 133.381 shall in any
 24 manner affect title to any real property.

25 (8) No undertaking shall be required in any proceeding under ORS 107.700 to 107.735.

26 (9) Any proceeding under ORS 107.700 to 107.735 shall be in addition to any other available civil
 27 or criminal remedies.

28 **SECTION 3.** ORS 107.718 is amended to read:

29 107.718. (1) When a person files a petition under ORS 107.710, the circuit court shall hold an
 30 ex parte hearing in person or by telephone on the day the petition is filed or on the following judi-
 31 cial day. Upon a showing that the petitioner has been the victim of abuse committed by the re-
 32 spondent within 180 days preceding the filing of the petition, that there is an imminent danger of
 33 further abuse to the petitioner and that the respondent represents a credible threat to the physical
 34 safety of the petitioner or the petitioner’s child, the court shall, if requested by the petitioner, order:

35 (a) Except as provided in subsection (2) of this section, that temporary custody of the children
 36 of the parties be awarded to the petitioner or, at the request of the petitioner, to the respondent,
 37 subject to reasonable parenting time rights of the noncustodial parent, which the court shall order,
 38 unless such parenting time is not in the best interest of the child;

39 (b) That the respondent be required to move from the petitioner’s residence, if in the sole name
 40 of the petitioner or if it is jointly owned or rented by the petitioner and the respondent, or if the
 41 parties are married to each other;

42 (c) That the respondent be restrained from entering, or attempting to enter, a reasonable area
 43 surrounding the petitioner’s current or subsequent residence if the respondent is required to move
 44 from petitioner’s residence;

45 (d) That a peace officer accompany the party who is leaving or has left the parties’ residence

1 to remove essential personal effects of the party or the party's children, or both, including but not
2 limited to clothing, toiletries, diapers, medications, Social Security cards, certified copies of records
3 of live birth, identification and tools of the trade;

4 (e) That the respondent be restrained from intimidating, molesting, interfering with or menacing
5 the petitioner, or attempting to intimidate, molest, interfere with or menace the petitioner;

6 (f) That the respondent be restrained from intimidating, molesting, interfering with or menacing
7 any children in the custody of the petitioner, or attempting to intimidate, molest, interfere with or
8 menace any children in the custody of the petitioner;

9 (g) That the respondent be restrained from entering, or attempting to enter, on any premises and
10 a reasonable area surrounding the premises when it appears to the court that such restraint is
11 necessary to prevent the respondent from intimidating, molesting, interfering with or menacing the
12 petitioner or children whose custody is awarded to the petitioner;

13 (h) Other relief that the court considers necessary to:

14 (A) Provide for the safety and welfare of the petitioner and the children in the custody of the
15 petitioner, including but not limited to emergency monetary assistance from the respondent; and

16 (B) Prevent the neglect and protect the safety of any service or therapy animal or any animal
17 kept for personal protection or companionship, but not an animal kept for any business, commercial,
18 agricultural or economic purpose; or

19 (i) Except as described in subsection (12) of this section or parenting time ordered under this
20 section, that the respondent have no contact with the petitioner in person, by telephone or by mail.

21 (2) If the court determines that [*exceptional*] circumstances exist that affect the custody of a
22 child, the court shall order the parties to appear and provide additional evidence at a hearing to
23 determine temporary custody and resolve other contested issues. Pending the hearing, the court
24 may make any orders regarding the child's residence and the parties' contact with the child that the
25 court finds appropriate to provide for the child's welfare and the safety of the parties. The court
26 shall set a hearing time and date as provided in ORS 107.716 (2) and issue a notice of the hearing
27 at the same time the court issues the restraining order.

28 (3) The court's order under subsection (1) of this section is effective for a period of one year or
29 until the order is withdrawn or amended, or until the order is superseded as provided in ORS
30 107.722, whichever is sooner.

31 (4) If respondent is restrained from entering, or attempting to enter, an area surrounding
32 petitioner's residence or any other premises, the order restraining respondent shall specifically de-
33 scribe the area.

34 (5) Imminent danger under this section includes but is not limited to situations in which the
35 respondent has recently threatened petitioner with additional bodily harm.

36 (6) If the court awards parenting time to a parent who committed abuse, the court shall make
37 adequate provision for the safety of the child and of the petitioner. The order of the court may in-
38 clude, but is not limited to, the following:

39 (a) That exchange of a child between parents shall occur at a protected location.

40 (b) That parenting time be supervised by another person or agency.

41 (c) That the perpetrator of the abuse be required to attend and complete, to the satisfaction of
42 the court, a program of intervention for perpetrators or any other counseling program designated
43 by the court as a condition of the parenting time.

44 (d) That the perpetrator of the abuse not possess or consume alcohol or controlled substances
45 during the parenting time and for 24 hours preceding the parenting time.

1 (e) That the perpetrator of the abuse pay all or a portion of the cost of supervised parenting
2 time, and any program designated by the court as a condition of parenting time.

3 (f) That no overnight parenting time occur.

4 (7) The State Court Administrator shall prescribe the content and form of the petition, order and
5 related forms for use under ORS 107.700 to 107.735. The clerk of the court shall make available the
6 forms and an instructional brochure explaining the rights set forth under ORS 107.700 to 107.735.

7 (8) If the court orders relief:

8 (a) The clerk of the court shall provide without charge the number of certified true copies of
9 the petition and order necessary to provide the petitioner with one copy and to effect service and
10 shall have a true copy of the petition and order delivered to the county sheriff for service upon the
11 respondent, unless the court finds that further service is unnecessary because the respondent ap-
12 peared in person before the court. In addition and upon request by the petitioner, the clerk shall
13 provide the petitioner, without charge, two exemplified copies of the petition and order.

14 (b) The county sheriff shall serve the respondent personally unless the petitioner elects to have
15 the respondent served personally by a private party or by a peace officer who is called to the scene
16 of a domestic disturbance at which the respondent is present, and who is able to obtain a copy of
17 the order within a reasonable amount of time. Proof of service shall be made in accordance with
18 ORS 107.720. When the order does not contain the respondent's date of birth and service is effected
19 by the sheriff or other peace officer, the sheriff or officer shall verify the respondent's date of birth
20 with the respondent and shall record that date on the order or proof of service entered into the Law
21 Enforcement Data System under ORS 107.720.

22 (c) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the
23 relief provided under ORS 107.700 to 107.735.

24 (9) If the county sheriff:

25 (a) Determines that the order and petition are incomplete, the sheriff shall return the order and
26 petition to the clerk of the court. The clerk of the court shall notify the petitioner, at the address
27 provided by the petitioner, of the error or omission.

28 (b) After accepting the order and petition, cannot complete service within 10 days, the sheriff
29 shall notify the petitioner, at the address provided by the petitioner, that the documents have not
30 been served. If the petitioner does not respond within 10 days, the sheriff shall hold the order and
31 petition for future service and file a return to the clerk of the court showing that service was not
32 completed.

33 (10)(a) Within 30 days after a restraining order is served under this section, the respondent
34 therein may request a court hearing upon any relief granted. The hearing request form shall be
35 available from the clerk of the court in the form prescribed by the State Court Administrator.

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

40 (c) The hearing shall not be limited to the issues raised in the respondent's request for hearing
41 form. If the respondent seeks to raise an issue at the hearing not previously raised in the request
42 for hearing form, or if the petitioner seeks relief at the hearing not granted in the original order,
43 the other party shall be entitled to a reasonable continuance for the purpose of preparing a response
44 to the issue.

45 (11) If the respondent fails to request a hearing within 30 days after a restraining order is

1 served, the restraining order is confirmed by operation of law. The provisions of this section are
2 sufficient to meet the due process requirements of 18 U.S.C. 922(g) in that the respondent received
3 actual notice of the right to request a hearing and the opportunity to participate at the hearing but
4 the respondent failed to exercise those rights.

5 (12) Service of process or other legal documents upon the petitioner is not a violation of this
6 section if the petitioner is served as provided in ORCP 7 or 9.

7 **SECTION 4.** ORS 107.722 is amended to read:

8 107.722. (1) The provisions of an order or judgment, or of a modification to an order or judgment,
9 issued under ORS 107.095 (1)(b), 107.105, 107.135, 109.103 or 109.155 supersede contrary provisions
10 of a preexisting order issued under ORS 107.700 to 107.735, except that an order issued under ORS
11 107.095 (1)(b) supersedes a preexisting order issued under ORS 107.700 to 107.735 only if the party
12 requesting temporary relief consolidates the subsequently filed matter with the preexisting matter
13 filed under ORS 107.700 to 107.735 and provides the nonmoving party with notice and an opportunity
14 for a hearing.

15 (2)(a) In a proceeding under ORS 107.700 to 107.735, **after a hearing held pursuant to ORS**
16 **107.716 (1) or (2)**, the court may modify the custody or parenting time provisions of a preexisting
17 order or judgment issued under ORS 107.095 (1)(b), 107.105, 107.135, 109.103 or 109.155, or a similar
18 order or judgment issued by the tribunal of another jurisdiction, if necessary to protect the safety
19 and welfare of the child or the petitioner.

20 (b) If the court, in an order issued under ORS 107.700 to 107.735, modifies the custody provisions
21 of a preexisting order or judgment issued under ORS 107.095 (1)(b), 107.105, 107.135, 109.103 or
22 109.155, the court shall specify in the order issued under ORS 107.700 to 107.735 a period that the
23 court considers adequate under the circumstances within which the party seeking relief may obtain
24 a modification of the preexisting order or judgment under controlling law. Upon the expiration of
25 the period specified by the court, if a modification of the preexisting order or judgment has not been
26 obtained, the custody and parenting time provisions of the order issued under ORS 107.700 to 107.735
27 expire and the custody and parenting time provisions of the preexisting order or judgment become
28 immediately effective.

29 (c) If the court, in an order issued under ORS 107.700 to 107.735, modifies the custody provisions
30 of a preexisting order or judgment issued by the tribunal of another jurisdiction, ORS 109.701 to
31 109.834 apply.

32 **(d) Nothing in this subsection is intended to limit the court's authority to issue an order**
33 **awarding temporary custody of the children of the parties, as provided under ORS 107.718**
34 **(1)(a).**

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