

Enrolled Senate Bill 766

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION
(at the request of Oregon Law Center)

CHAPTER

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;

(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 this section:

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

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

(5)(a) If the county sheriff:

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

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

(b) If a petitioner receives notice of incomplete service under paragraph (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.

(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 [*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 this section:

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

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

(5)(a) If the county sheriff:

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

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

(b) If a petitioner receives notice of incomplete service under paragraph (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 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 3. ORS 163.773 is amended to read:

163.773. (1)(a) When a restraining order is issued in accordance with ORS 163.760 to 163.777 and the person to be restrained has actual notice of the restraining order, the clerk of the court or any other person serving the petition and the restraining order shall immediately deliver to a county sheriff copies of the petition and the restraining order and a true copy of proof of service on which it is stated that the petition and the restraining order were served personally on the respondent. **If alternative service is ordered by the court, the person performing service shall instead immediately deliver to the county sheriff copies of the petition, the restraining order and, if applicable, the summons, and a true copy of proof of service on which it is stated that alternative service was completed in accordance with ORCP 7 D(6).** Proof of service may be made by affidavit or by declaration under penalty of perjury. If a restraining order entered by the circuit court recites that the respondent appeared in person before the court, the necessity for service of the restraining order and proof of service is waived.

(b) Upon receipt of a copy of the restraining order and notice of completion of any required service by a member of a law enforcement agency, the county sheriff shall immediately enter the restraining order into the Law Enforcement Data System maintained by the Department of State Police and the databases of the National Crime Information Center of the United States Department of Justice. If the petition and the restraining order were served on the respondent by a person other than a member of a law enforcement agency, **or if alternative service was ordered by the court and completed in accordance with ORCP 7 D(6),** the county sheriff shall enter the restraining

order into the Law Enforcement Data System and the databases of the National Crime Information Center upon receipt of a true copy of proof of service. The sheriff shall provide the petitioner with a true copy of any required proof of service.

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

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

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

(3)(a) A sheriff may serve and enter into the Law Enforcement Data System a copy of a restraining order issued under ORS 163.760 to 163.777 that was transmitted to the sheriff by a circuit court or law enforcement agency through an electronic communication device. Before transmitting a copy of a restraining order to a sheriff under this subsection through an electronic communication device, the person transmitting the copy must receive confirmation from the sheriff's office that an electronic communication device 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 2 and 3 of this 2021 Act become operative on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

SECTION 5. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate April 26, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 9, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State