

House Bill 2416

Sponsored by Representative OWENS, Senator FINDLEY (at the request of Representative Kevin Mannix) (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 procedures for issuing extreme risk protection order. Modifies court findings for issuing order. Requires court to schedule second hearing seven days after issuing initial ex parte order and to order respondent to engage in mental health evaluation. Directs court to, at second hearing, consider results of mental health evaluation and either terminate order or order third hearing and second mental health evaluation. Directs court to, at third hearing, terminate order or continue order for final 30 days.

A BILL FOR AN ACT

1
2 Relating to extreme risk protection orders; creating new provisions; amending ORS 166.527, 166.530,
3 166.537, 166.540 and 166.543; and repealing ORS 166.533 and 166.535.

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

5 **SECTION 1.** ORS 166.527 is amended to read:

6 166.527. (1) A law enforcement officer or a family or household member of a person may file a
7 petition requesting that the court issue an extreme risk protection order enjoining the person from
8 having in the person's custody or control, owning, purchasing, possessing or receiving, or attempting
9 to purchase or receive, a deadly weapon.

10 (2) An extreme risk protection order petition shall be heard by the court and issued or denied
11 on the same day the petition is submitted to the court or on the judicial business day immediately
12 following the day the petition is filed.

13 (3) The petition for an extreme risk protection order must be supported by a written affidavit
14 signed by the petitioner under oath, or an oral statement taken under oath by the petitioner or any
15 other witness the petitioner may produce.

16 (4) In determining whether to issue an extreme risk protection order, the court shall consider
17 the following:

18 (a) A history of suicide threats or attempts or acts of violence by the respondent directed
19 against another person;

20 (b) A history of use, attempted use or threatened use of physical force by the respondent against
21 another person;

22 (c) A previous conviction for:

23 (A) A misdemeanor involving violence as defined in ORS 166.470;

24 (B) A stalking offense under ORS 163.732 or 163.750, or a similar offense in another jurisdiction;

25 (C) An offense constituting domestic violence as defined in ORS 135.230;

26 (D) Driving under the influence of intoxicants under ORS 813.010 or 813.011; or

27 (E) An offense involving cruelty or abuse of animals;

28 (d) Evidence of recent unlawful use of controlled substances;

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 (e) Previous unlawful and reckless use, display or brandishing of a deadly weapon by the re-
 2 spondent;

3 (f) A previous violation by the respondent of a court order issued pursuant to ORS 107.716 or
 4 107.718;

5 (g) Evidence of an acquisition or attempted acquisition within the previous 180 days by the re-
 6 spondent of a deadly weapon; and

7 (h) Any additional information the court finds to be reliable, including a statement by the re-
 8 spondent.

9 (5)(a) The petitioner has the burden of proof at the ex parte hearing.

10 (b) The petitioner may appear in person or by electronic video transmission.

11 (c) The court may continue a hearing under this section upon a showing of good cause.

12 (6)(a) The court shall issue an extreme risk protection order if the court finds by clear and
 13 convincing evidence, based on the petition and supporting documentation and after considering a
 14 statement by the respondent, if provided, that the respondent presents a [*risk in the near future, in-*
 15 *cluding an imminent risk, of suicide or of causing physical injury to another person*] **substantial risk**
 16 **of harm to self or others to such a serious level that it is necessary to temporarily prohibit**
 17 **the respondent from possessing deadly weapons.** The court may not include in the findings any
 18 mental health diagnosis or any connection between the risk presented by the respondent and mental
 19 illness.

20 (b) Upon making the findings described in paragraph (a) of this subsection, the court shall issue
 21 an extreme risk protection order prohibiting the respondent from having in the respondent's custody
 22 or control, owning, purchasing, possessing or receiving, or attempting to purchase or receive, a
 23 deadly weapon **until a hearing described in ORS 166.530 occurs.**

24 (c) **The court shall schedule a hearing under ORS 166.530 to occur seven days after is-**
 25 **ssuing an order under this section, and shall further order that the respondent appear at the**
 26 **hearing and obtain a mental health evaluation prior to the hearing.**

27 (7) An extreme risk protection order issued under this section must include:

28 (a) A statement of the evidence and the court's findings supporting issuance of the order;

29 (b) The date and time the order was issued;

30 [(c) A description of the manner in which the respondent may request a hearing described in sub-
 31 section (9) of this section;]

32 [(d) The address of the court to which a request for a hearing must be sent;]

33 (c) **Information on how to obtain a mental health evaluation;**

34 (d) **The date and time of the hearing described in ORS 166.530;**

35 (e) A description of the requirements for surrender of deadly weapons in the respondent's pos-
 36 session under ORS 166.537; and

37 (f) A statement in substantially the following form:

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 40 To the subject of this protection order: An extreme risk protection order has been issued by the
 41 court and is now in effect **until (insert hearing date)**. You are required to surrender all deadly
 42 weapons in your custody, control or possession. You may not have in your custody or control, pur-
 43 chase, possess, receive, or attempt to purchase or receive, deadly weapons while this order is in
 44 effect. You must, within 24 hours, surrender all deadly weapons in your custody, control or pos-
 45 session to (insert name of local law enforcement agency), a gun dealer or a third party who may

1 lawfully possess the deadly weapons. You must, within 24 hours, surrender to (insert name of local
 2 law enforcement agency) any concealed handgun license issued to you. [*You may request a hearing
 3 to contest this order. If you do not request a hearing, the extreme risk protection order against you
 4 will be in effect for one year unless terminated by the court. You have the right to request one hearing
 5 to terminate this order during the 12 months that this order is in effect starting from the date of this
 6 order.*] **You have been ordered to obtain a mental health evaluation and appear at a hearing
 7 on (insert hearing date). If you do not obtain the evaluation or appear at the hearing, this
 8 order will be extended for a minimum of seven additional days.** You may seek the advice of an
 9 attorney as to any matter connected with this order.

11
 12 (8)(a) The respondent shall be personally served with [*both*] a copy of the extreme risk pro-
 13 tection order [*and a hearing request form described in subsection (9) of this section*].

14 (b) Whenever an extreme risk protective order is served on a respondent, the person serving the
 15 order shall immediately deliver to the county sheriff a true copy of proof of service, on which it is
 16 stated that personal service of the order was made on the respondent, and a copy of the order. Proof
 17 of service may be made by affidavit or by declaration under penalty of perjury in the form required
 18 by ORCP 1 E.

19 (c) If the person serving the order cannot complete service within [*10 days*] **four days**, the
 20 person shall notify the petitioner, at the address provided by the petitioner, that the documents have
 21 not been served. If the petitioner does not respond within [*10*] **three** days, the person shall hold the
 22 order and petition for future service and file a return to the clerk of the court showing that service
 23 was not completed.

24 (d) Upon receipt of a copy of the order and notice of completion of service by a member of a law
 25 enforcement agency, the county sheriff shall immediately enter the order into the Law Enforcement
 26 Data System maintained by the Department of State Police and request that the order be entered
 27 into the databases of the National Crime Information Center of the United States Department of
 28 Justice. If the order was served on the respondent by a person other than a member of a law
 29 enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System,
 30 and shall request that the information be entered into the databases of the National Crime Infor-
 31 mation Center, upon receipt of a true copy of proof of service. The sheriff shall provide the
 32 petitioner with a true copy of the proof of service. Entry into the Law Enforcement Data System
 33 constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement
 34 agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged
 35 violation of the order may be informed of the existence and terms of the order. The order is fully
 36 enforceable in any county in this state.

37 [*(9)(a) Within 30 days after an extreme risk protection order is served on the respondent under this
 38 section, the respondent may request a court hearing using a form prescribed by the State Court Ad-
 39 ministrator.*]

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

44 [*(c) The hearing shall occur within 21 days of the date of the respondent's request for a hearing.*]

45 [*(10) If the respondent fails to request a hearing within 30 days after an extreme risk protection*

1 order is served, the protection order is confirmed by operation of law and is effective for a period of
 2 one year from the date the original order was issued or until the order is terminated, whichever is
 3 sooner.]

4 [(11)] (9) A filing fee, service fee or hearing fee may not be charged for proceedings under this
 5 section or ORS 166.530 [or 166.533] **section 4 of this 2023 Act.**

6 [(12)] (10) If the court declines to issue an extreme risk protection order under this section, the
 7 court shall state with particularity the reasons for the denial on the record.

8 **SECTION 2.** ORS 166.530 is amended to read:

9 166.530. (1) At a hearing on an extreme risk protection order [*requested by the respondent under*
 10 *ORS 166.527 (9)*] **scheduled under ORS 166.527 (6)(c)**, the court may:

11 (a) Examine under oath the petitioner, the respondent and any witness either party may
 12 produce, including a mental health professional selected by the respondent, or, in lieu of examina-
 13 tion, consider sworn affidavits of the petitioner, the respondent or a witness of either party; [*and*]

14 **(b) Consider the results of the mental health evaluation ordered under ORS 166.527 (6)(c);**
 15 **and**

16 [*(b)*] (c) Ensure that a reasonable search has been conducted for criminal history records related
 17 to the respondent.

18 (2)(a) The Oregon Evidence Code shall apply in a hearing under this section.

19 (b) The court may continue a hearing under this section upon a showing of good cause. If the
 20 court continues a hearing under this paragraph, the extreme risk protection order shall remain in
 21 effect until the next hearing date.

22 (3)(a) At the hearing, the court shall determine:

23 (A) Whether to terminate the extreme risk protection order or continue the order [*for a duration*
 24 *of one year*] **until a hearing described in section 4 of this 2023 Act occurs**; and

25 (B) Whether any deadly weapons surrendered to a law enforcement agency pursuant to ORS
 26 166.537 shall be returned to the respondent or retained by the law enforcement agency.

27 (b) The petitioner has the burden of proving, by clear and convincing evidence, that the re-
 28 spondent presents a [*risk in the near future, including an imminent risk, of suicide or of causing*
 29 *physical injury to another person*] **substantial risk of harm to self or others to such a serious**
 30 **level that it is necessary to temporarily prohibit the respondent from possessing deadly**
 31 **weapons until a second mental health evaluation occurs.**

32 (c) If the court finds that the petitioner has met the burden of proof, **or if the respondent does**
 33 **not appear at the hearing or did not obtain a mental health evaluation prior to the hearing,**
 34 the court shall:

35 (A) Order that the extreme risk protection order continue [*for the duration of one year from the*
 36 *date the original order was issued*] **until a hearing described in section 4 of this 2023 Act**
 37 **occurs.**

38 (B) Order that any deadly weapons surrendered to a law enforcement agency pursuant to ORS
 39 166.537 remain in the custody of the law enforcement agency while the order is in effect.

40 **(C) Schedule a hearing under section 4 of this 2023 Act to occur seven days after the date**
 41 **of the hearing described in this section, and further order that the respondent appear at the**
 42 **hearing and obtain a second mental health evaluation prior to the hearing. If the respondent**
 43 **did not obtain a mental health evaluation prior to the hearing under this section, the re-**
 44 **spondent is required to obtain a single mental health evaluation prior to a hearing under**
 45 **section 4 of this 2023 Act.**

1 (d) The court may not include in findings made under this subsection any mental health diag-
 2 nosis or any connection between the risk presented by the respondent and mental illness.

3 (4) An extreme risk protection order continued under this section must include:

4 (a) A statement of the evidence and the court’s findings supporting issuance of the order;

5 (b) The date and time the order was issued;

6 (c) **Information on how to obtain a mental health evaluation;**

7 [(c)] (d) The date and time of the *[expiration of the order]* **hearing under section 4 of this 2023**
 8 **Act;**

9 [(d)] (e) A description of the requirements for surrender of deadly weapons in the respondent’s
 10 possession under ORS 166.537; and

11 [(e)] (f) A statement in substantially the following form:

14 To the subject of this protection order: This order is valid until *[the date and time noted above]*
 15 **(insert hearing date)**. If you have not done so already, you are required to surrender all deadly
 16 weapons in your custody. You must immediately surrender all deadly weapons in your custody,
 17 control or possession to (insert name of local law enforcement agency), a gun dealer or a third party
 18 who may lawfully possess the deadly weapons. You must immediately surrender to (insert name of
 19 local law enforcement agency) any concealed handgun license issued to you. You may not have in
 20 your custody or control, purchase, possess, receive, or attempt to purchase or receive, a deadly
 21 weapon while this order is in effect. *[You have the right to request one hearing to terminate this order*
 22 *during the 12 months that this order is in effect starting from the date of this order.]* **You have been**
 23 **ordered to obtain a second mental health evaluation and appear at a hearing on (insert**
 24 **hearing date)**. **If you do not obtain the evaluation or appear at the hearing, this order will**
 25 **be extended for an 30 additional days.** You may seek the advice of an attorney as to any matter
 26 connected with this order.

29 [(5) *When the court continues an extreme risk protection order under this section, the court shall*
 30 *inform the respondent that the respondent is entitled to request termination of the order in the manner*
 31 *described in ORS 166.533. The court shall provide the respondent with a form with which to request*
 32 *a termination hearing.*]

33 [(6)] (5) The respondent need not be served if an order of the court indicates that the respondent
 34 appeared in person before the court.

35 [(7)] (6) If the court terminates an extreme risk protection order after a hearing under this
 36 section:

37 (a) The court shall state with particularity the reasons for the termination on the record.

38 (b) The clerk of the court shall immediately deliver a copy of the termination order to the
 39 county sheriff with whom the original order was filed. Upon receipt of the termination order, the
 40 county sheriff shall promptly remove the original order from the Law Enforcement Data System and
 41 shall request that the order be removed from the databases of the National Crime Information
 42 Center of the United States Department of Justice.

43 (7) **The refusal by a respondent to participate in a mental health evaluation or the failure**
 44 **of a respondent to appear at a hearing described in this section is not the basis for a finding**
 45 **of contempt of court.**

1 **SECTION 3.** Section 4 of this 2023 Act is added to and made a part of ORS 166.525 to
2 **166.543.**

3 **SECTION 4.** (1) At a hearing on an extreme risk protection order scheduled under ORS
4 **166.530 (3)(c)(C), the court may:**

5 (a) Examine under oath the petitioner, the respondent and any witness either party may
6 produce, including a mental health professional selected by the respondent, or, in lieu of ex-
7 amination, consider sworn affidavits of the petitioner, the respondent or a witness of either
8 party; and

9 (b) Consider the results of any mental health evaluation previously ordered by the court.

10 (2)(a) The Oregon Evidence Code shall apply in a hearing under this section.

11 (b) The court may continue a hearing under this section upon a showing of good cause.
12 If the court continues a hearing under this paragraph, the extreme risk protection order
13 shall remain in effect until the next hearing date.

14 (3)(a) At the hearing, the court shall determine:

15 (A) Whether to terminate the extreme risk protection order or continue the order for
16 an additional 30 days; and

17 (B) Whether any deadly weapons surrendered to a law enforcement agency pursuant to
18 ORS 166.537 shall be returned to the respondent or retained by the law enforcement agency.

19 (b) The petitioner has the burden of proving, by clear and convincing evidence, that the
20 respondent presents a substantial risk of harm to self or others to such a serious level that
21 it is necessary to temporarily prohibit the respondent from possessing deadly weapons for
22 an additional 30 days.

23 (c) If the court finds that the petitioner has met the burden of proof, or if the respondent
24 does not appear at the hearing or did not obtain a mental health evaluation prior to the
25 hearing, the court shall:

26 (A) Order that the extreme risk protection order continue for an additional 30 days.

27 (B) Order that any deadly weapons surrendered to a law enforcement agency pursuant
28 to ORS 166.537 remain in the custody of the law enforcement agency while the order is in
29 effect.

30 (d) The court may not include in findings made under this subsection any mental health
31 diagnosis or any connection between the risk presented by the respondent and mental illness.

32 (4) An extreme risk protection order continued under this section must include:

33 (a) A statement of the evidence and the court's findings supporting issuance of the order;

34 (b) The date and time the order was issued;

35 (c) A description of the requirements for surrender of deadly weapons in the respondent's
36 possession under ORS 166.537; and

37 (d) A statement in substantially the following form:

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40 **To the subject of this protection order: This order is valid until (insert date). If you have**
41 **not done so already, you are required to surrender all deadly weapons in your custody. You**
42 **must immediately surrender all deadly weapons in your custody, control or possession to**
43 **(insert name of local law enforcement agency), a gun dealer or a third party who may law-**
44 **fully possess the deadly weapons. You must immediately surrender to (insert name of local**
45 **law enforcement agency) any concealed handgun license issued to you. You may not have in**

1 **your custody or control, purchase, possess, receive, or attempt to purchase or receive, a**
 2 **deadly weapon while this order is in effect. You may seek the advice of an attorney as to any**
 3 **matter connected with this order.**

5
 6 **(5) The respondent need not be served if an order of the court indicates that the re-**
 7 **spondent appeared in person before the court.**

8 **(6) If the court terminates an extreme risk protection order after a hearing under this**
 9 **section:**

10 **(a) The court shall state with particularity the reasons for the termination on the record.**

11 **(b) The clerk of the court shall immediately deliver a copy of the termination order to**
 12 **the county sheriff with whom the original order was filed. Upon receipt of the termination**
 13 **order, the county sheriff shall promptly remove the original order from the Law Enforce-**
 14 **ment Data System and shall request that the order be removed from the databases of the**
 15 **National Crime Information Center of the United States Department of Justice.**

16 **(7) The refusal by a respondent to participate in a mental health evaluation or the failure**
 17 **of a respondent to appear at a hearing described in this section is not the basis for a finding**
 18 **of contempt of court.**

19 **SECTION 5.** ORS 166.537 is amended to read:

20 166.537. (1) Upon issuance of an extreme risk protection order under ORS 166.527, the court
 21 shall further order that the respondent:

22 (a) Within 24 hours surrender all deadly weapons in the respondent's custody, control or pos-
 23 session to a law enforcement agency, a gun dealer or a third party who may lawfully possess the
 24 deadly weapons; and

25 (b) Within 24 hours surrender to a law enforcement agency any concealed handgun license is-
 26 sued to the respondent under ORS 166.291 and 166.292.

27 (2) Upon continuance of an extreme risk protection order after a hearing under ORS 166.530[,
 28 *or renewal of an extreme risk protection order under ORS 166.535,*] **or section 4 of this 2023 Act,**
 29 the court shall further order that the respondent:

30 (a) Immediately surrender all deadly weapons in the respondent's custody, control or possession
 31 to a law enforcement agency, a gun dealer or a third party who may lawfully possess the deadly
 32 weapons; and

33 (b) Immediately surrender to a law enforcement agency any concealed handgun license issued
 34 to the respondent under ORS 166.291 and 166.292.

35 (3)(a) A law enforcement officer serving an extreme risk protection order issued under ORS
 36 166.527 shall request that the respondent immediately surrender to the officer all deadly weapons
 37 in the respondent's custody, control or possession and any concealed handgun license issued to the
 38 respondent under ORS 166.291 and 166.292. The law enforcement officer shall take possession of all
 39 deadly weapons appearing to be in the custody, control or possession of the respondent that are
 40 surrendered by the respondent. If the respondent indicates an intention to surrender the deadly
 41 weapons to a gun dealer or a third party, the law enforcement officer shall request that the re-
 42 spondent identify the gun dealer or third party.

43 (b) A law enforcement officer serving an extreme risk protection order continued after a hearing
 44 under ORS 166.530[, *or renewed under ORS 166.535,*] **or section 4 of this 2023 Act** shall request
 45 that the respondent immediately surrender to the officer all deadly weapons in the respondent's

1 custody, control or possession and any concealed handgun license issued to the respondent under
 2 ORS 166.291 and 166.292. The officer may conduct any search permitted by law for deadly weapons
 3 in the custody, control or possession of the respondent and shall take possession of all deadly
 4 weapons appearing to be in the custody, control or possession of the respondent that are surren-
 5 dered, in plain sight or discovered pursuant to a lawful search.

6 (4) At the time of the surrender of any deadly weapons or concealed handgun licenses under
 7 subsection (3) of this section, the law enforcement officer taking possession shall issue a receipt
 8 identifying all surrendered items and provide a copy of the receipt to the respondent. Within 72
 9 hours after service of the order, the law enforcement officer serving the order shall file the original
 10 receipt with the court and shall ensure that the law enforcement agency employing the law
 11 enforcement officer retains a copy of the receipt.

12 (5) If a third party claims lawful ownership or right of possession of a deadly weapon surren-
 13 dered pursuant to this section, the law enforcement agency may return the deadly weapon to the
 14 third party if the third party provides proof of lawful ownership or right of possession of the deadly
 15 weapon, in a sworn affidavit, affirms that:

16 (a) The third party may lawfully possess the deadly weapon;

17 (b) The third party did not consent to the prior possession of the deadly weapon by the re-
 18 spondent; and

19 (c) The third party will prevent the respondent from accessing or possessing the deadly weapon
 20 in the future.

21 **SECTION 6.** ORS 166.540 is amended to read:

22 166.540. (1) If an extreme risk protection order is terminated or expires [*without renewal*], a law
 23 enforcement agency holding any deadly weapon or concealed handgun license that has been sur-
 24 rendered pursuant to the order shall return the surrendered items as requested by the respondent
 25 of the order only after:

26 (a) Confirming through a criminal background check, if the deadly weapon is a firearm, that the
 27 respondent is legally eligible to own or possess firearms under state and federal law; and

28 (b) Confirming that the extreme risk protection order is no longer in effect.

29 (2) The owner of a deadly weapon, if the deadly weapon is a firearm, in the custody of a law
 30 enforcement agency pursuant to ORS 166.537 who does not wish to have the firearm returned is
 31 entitled to sell or transfer title of any firearm to a licensed gun dealer as defined in ORS 166.412,
 32 provided that the firearm is lawful to own or possess and the person has a legal right to transfer
 33 title of the firearm.

34 (3) A deadly weapon surrendered by a person pursuant to ORS 166.537 that remains unclaimed
 35 by the owner shall be disposed of in accordance with the law enforcement agency's policies and
 36 procedures for the disposal of deadly weapons in the agency's custody.

37 **SECTION 7.** ORS 166.543 is amended to read:

38 166.543. (1) A person commits a Class A misdemeanor if:

39 (a) The person knowingly possesses a deadly weapon; and

40 (b) The person is prohibited from possessing deadly weapons pursuant to an extreme risk pro-
 41 tection order:

42 (A) Issued **or continued** after notice and a hearing under ORS 166.530 **or section 4 of this 2023**
 43 **Act; or**

44 (B) Confirmed by operation of law after the person failed to **appear at a hearing described in**
 45 **ORS 166.530 or section 4 of this 2023 Act.** [*request a hearing under ORS 166.527 (9); or*]

1 *[(C) Renewed under ORS 166.535.]*

2 (2) A person convicted under subsection (1) of this section shall be prohibited from having in the
3 person's custody or control, owning, purchasing, possessing or receiving, or attempting to purchase
4 or receive, any firearms for a five-year period beginning when the extreme risk protection order
5 expires or is terminated, or the judgment of conviction is entered, whichever occurs later.

6 (3) A person who files a petition for any extreme risk protection order under ORS 166.525 to
7 166.543 with the intent to harass the respondent, or knowing that the information in the petition is
8 false, is guilty of a Class A misdemeanor.

9 **SECTION 8. ORS 166.533 and 166.535 are repealed.**

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