

HB 2613 -1 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 2/18

WHAT THE MEASURE DOES:

This measure requires the Department of Human Services to study how to improve services provided to victims of child abuse.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 The amendment replaces the measure and sets criteria for the court to consider in determining whether a child is in immediate danger, which is the court's requisite threshold finding before issuing a temporary protective order in favor of one parent/adult to protect a child from another parent/adult.

Detailed Summary:

- Provides that, in determining whether a child is in immediate danger, a court should consider whether the child is at present risk of physical harm, severe psychological damage, sex abuse, severe daily neglect, or similar harms.
- Directs a court not to find immediate danger based solely on a parent's homelessness, illness, poverty, or other similar life circumstances.

BACKGROUND:

ORS 107.097(3) and 107.139 establish the procedure through which a parent/adult can apply for an ex parte, temporary restraining order on behalf of their child. To apply for such an order, the parent must file an affidavit attesting that "the child is in immediate danger." Upon finding clear and convincing evidence that a child is in immediate danger and finding that the parent made a good faith effort to confer with the other party regarding the court appearance, the court may issue a temporary restraining order as to the parent's custody or parenting time.

The term "immediate danger" is undefined and lacks statutory criteria. While state law does not speak to the meaning of "immediate danger," Linn County has issued the below-copied guidance on this term.

What is immediate danger? Immediate danger means that there is a clear and present risk that a child will be physically injured or neglected in such a way as to endanger the child. The "risk" here is for physical injury. "Immediate" means today. The evidence to support this finding must be truthful and credible. It must be based on the affiant's actual observations (person signing the affidavit is the affiant). The mere fact asserted that the other parent is abusing alcohol, abusing drugs, engaged in criminal behavior or has done these things in the past is usually not sufficient to show an immediate danger. The mere fact that a parent is ill, hospitalized, or homeless may not create an immediate danger depending on the age of the child and the overall circumstances. The court does not need a multipage history of every event that has occurred in the family. The court requires solid evidence that there is an immediate genuine risk of harm to the child – physical harm. Today.

Linn County Circuit Court. *Self-help information for residents in Linn County Circuit Court*,
<https://www.courts.oregon.gov/courts/linn/help/Pages/FamilyForms.aspx>