

SB 389 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Prepared By: Kris Kolta, LPRO Analyst

Meeting Dates: 2/25

WHAT THE MEASURE DOES:

This measure allows an individual to obtain a harassment restraining order and establishes associated procedures, standards, and timelines.

Detailed Summary:

Section 1: Defines the term “harassment”

- Incorporates Oregon’s existing legal definitions of criminal harassment, aggravated harassment, and telephonic harassment. See Background below.

Section 2: Protective/restraining order petition

- Allows a petitioner to seek a temporary protective order through a sworn petition which attests to 1) harassment by the respondent within the past 180 days, 2) the nature and dates of the harassment, and 3) a reasonable apprehension for personal safety.
- Requires the petitioner to establish the criteria by a preponderance of the evidence.
- Provides circuit courts with jurisdiction.

Section 3 (subsections 1-4): Judicial review of petition and scope of protective order

- Requires the circuit court to hold an ex parte, in-person or telephonic hearing on the day the petition was filed or on the next judicial day.
- Authorizes the court issue an order for two years that does any of the following:
 - Restrains the respondent from harassing or attempting to harass the petitioner;
 - Restrains the respondent from entering the petitioner’s premises and surrounding area;
 - Prohibits the respondent from contacting the petitioner;
 - Provides relief necessary to protect the petitioner’s safety and welfare except that the court may not enter an order that affects the respondent’s ability to possess or engage in activities involving firearms.

Section 3 (subsections 5-7): Form and service

- Requires the State Court Administrator to provide a form for petitions, orders, and related filings.
- Requires the court clerk to provide free certified copies of the protective order to the petitioner and the county sheriff for service on respondent unless the respondent was served in person.
- Directs the county sheriff to personally serve order upon the respondent, unless the petitioner elects personal service by a private party, and to promptly provide notice of any service problem.

Section 3 (subsections 8-10): Respondent’s right to a hearing

- Allows the respondent to file request for hearing within 30 days of being served with order.
- Permits the respondent to raise additional matters or the petitioner to seek additional relief at the hearing, and allows either party additional time to respond to the new matters.
- Confirms protective order automatically if respondent fails to timely request a hearing.

Section 4: Court procedures

- Requires court to hold hearing within 21 days of receiving the respondent’s request.
- Permits continuation of order on the petitioner’s showing of harassment and reasonable apprehension.
- Provides court with discretion to cancel or change order and award attorney fees to either party.
- Allows court to approve parties’ mutual agreement to end harassment.

This summary has not been adopted or officially endorsed by action of the committee.

Section 5: Remote appearances

- Allows parties to move for remote court appearances under ORS 45.400, for good cause, with less than thirty days' notice.
- Requires the court to consider the expedited nature of the proceeding and whether the safety or welfare of a party or witness would be threatened by requiring in-person attendance.
- Excepts initial ex parte hearings by telephone from good cause requirements.

Section 6: Sheriff's responsibilities

- Authorizes sheriff to serve a protective order in their county and adjacent counties.
- Permits sheriff to serve and enter protective order into the Law Enforcement Data System.
- Provides for when the sheriff is unable to complete service.

Section 7: Court's renewal of protective order

- Provides court with discretion to renew order upon finding that a person in petitioner's situation would reasonably fear further acts of harassment even if no further harassment has occurred.
- Allows petitioner to seek renewal via ex parte petition, permits respondent to request hearing, and requires such hearing within 21 days of such request.

Section 8: Venue

- Allows petitioner to file for a protective order in their county of residence, respondent's county, or county in which harassment occurred.
- Allows contempt proceeding for violation of protective order in county where the order was issued or where the violation occurred.

Section 9: Modifications of Protective Orders

- Entitles parties to seek modification or termination of a protective order for good cause.
- Requires the court clerk to provide copies of modification request to the county sheriff for service.
- Requires the court clerk to provide modification request and order to the sheriff for service and entry into Law Enforcement Data System.
- Empowers the court to assess reasonable attorney fees and costs against either party.

Sections 10 through 20: Conforming Amendments

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Oregon law prohibits the following types/definitions of harassment:

- Criminal harassment means intentional, offensive physical conduct; public insults or provocations with abusive words/gestures; or conveying false alarm concerning serious injury, death, or the threat of the same. ORS 166.065.
- Aggravated harassment means knowingly propelling bodily fluids or another dangerous substance at a person performing their official duties. ORS 166.070.
- Telephonic harassment means intentionally calling a person and hanging up, making calls or leaving messages knowing such are prohibited. ORS 166.090.

Oregon has several existing types of restraining orders, summarized below:

- First, a Family Abuse Prevention Act (FAPA) restraining order protects an individual from a romantic partner or family member. ORS 107.710. A person who has been a victim of abuse within the preceding 180 days and is

in imminent danger of further abuse may petition a circuit court for a FAPA restraining order against the abuser.

- Second, a Sexual Abuse Protection Order (SAPO) restraining order protects an individual from sexual abuse by a respondent who is not a family member. An individual may petition for such an order if they have been subjected to sexual abuse, reasonably fear for their personal safety, and are at least 18 years old. ORS 163.763, 163.765.
- Third, an Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA) restraining order protects the elderly or disabled from abuse. ORS 124.010.
- Fourth, an Extreme Risk Protection Order protects a person from violence inflicted by a deadly weapon. Upon receiving a petition from law enforcement or family member, the court can issue a restraining order to enjoin that person from obtaining or possessing a deadly weapon. ORS 166.527.
- Fifth, a Stalking Protective Order (SPO) restrains order protects an individual from being stalked as defined in ORS 163.732. To obtain a SPO, an individual must initiate an action for a citation by filing a complaint with a law enforcement officer. ORS 163.744. The officer then evaluates the citation to determine whether there is 1) probable cause that the accused stalker intentionally and repeatedly engaged in unwanted contact with the victim (or victim's family member), 2) it is objectively reasonable for the victim to feel alarmed or coerced, and 3) the unwanted contacts actually caused the victim reasonable apprehension for their personal safety. If such probable cause exists, the officer orders the accused to appear in court within 3 days to show cause why the court should not enter an SPO. ORS 163.735.