

HOUSE AMENDMENTS TO HOUSE BILL 2613

By COMMITTEE ON JUDICIARY

April 1

1 In line 2 of the printed bill, before the period insert “; amending ORS 107.097 and 107.139”.

2 Delete lines 4 through 9 and insert:

3 “**SECTION 1.** ORS 107.097 is amended to read:

4 “107.097. (1) Except as otherwise provided in subsection (3) of this section, a court may not en-
5 ter ex parte a temporary order under ORS 107.095, 109.103 or 109.119 providing for the custody of,
6 or parenting time with, a child.

7 “(2)(a) A party may apply to a court for a temporary protective order of restraint by filing with
8 the court an affidavit or a declaration under penalty of perjury in the form required by ORCP 1 E,
9 conforming to the requirements of ORS 109.767.

10 “(b) Upon receipt of an application under this subsection, the court may issue a temporary
11 protective order of restraint restraining and enjoining each party from:

12 “(A) Changing the child’s usual place of residence;

13 “(B) Interfering with the present placement and daily schedule of the child;

14 “(C) Hiding or secreting the child from the other party;

15 “(D) Interfering with the other party’s usual contact and parenting time with the child;

16 “(E) Leaving the state with the child without the written permission of the other party or the
17 permission of the court; or

18 “(F) In any manner disturbing the current schedule and daily routine of the child until custody
19 or parenting time has been determined.

20 “(c) A copy of the order and the supporting affidavit or declaration under penalty of perjury
21 must be served on the other party in the manner of service of a summons under ORCP 7. The order
22 must include the following statement:

23 “ _____

24

25 Notice: You may request a hearing on this order as long as it remains in effect by filing with
26 the court a request for a hearing. In the request you must tell the court and the other party that
27 you object to the order and specifically why you disagree with the representation of the status quo
28 described in the order. In the request you must also inform the court of your telephone number or
29 contact number and your current residence, mailing or contact address.

30 “ _____

31

32 “(3)(a) A court may enter ex parte a temporary order providing for the custody of, or parenting
33 time with, a child if:

34 “(A) The party requesting an order is present in court and presents an affidavit or a declaration
35 under penalty of perjury, alleging that the child is in immediate danger; and

1 “(B) The court finds, based on the facts presented in the party’s testimony, the party’s affidavit
2 or declaration under penalty of perjury and the testimony of the other party, if the other party is
3 present, that the child is in immediate danger.

4 “(b) **When determining whether a child is in immediate danger for purposes of this sec-**
5 **tion, the court shall consider whether, absent the temporary order, the child is at present**
6 **risk of physical harm, severe psychological damage, sex abuse, severe neglect significantly**
7 **affecting the child’s daily life or other similar harms. The court may not find that a child is**
8 **in immediate danger for purposes of this section based solely on a parent’s homelessness,**
9 **illness, poverty or other similar circumstances.**

10 “[b] (c) The party requesting an order under this subsection shall provide the court with
11 telephone numbers where the party can be reached at any time during the day and a contact ad-
12 dress.

13 “[c] (d) A copy of the order and the supporting affidavit or declaration under penalty of perjury
14 must be served on the other party in the manner of service of a summons under ORCP 7. The order
15 must include the following statement:

16 “ _____

17
18 Notice: You may request a hearing on this order as long as it remains in effect by filing with
19 the court a request for a hearing. In the request you must tell the court and the other party that
20 you object to the order on the ground that the child was not in immediate danger at the time the
21 order was issued. In the request you must also inform the court of your telephone number or contact
22 number and your current residence, mailing or contact address.

23 “ _____

24
25 “(4)(a) A party against whom an order is entered under subsection (2) or (3) of this section may
26 request a hearing by filing with the court a hearing request described in subsection (2) or (3) of this
27 section at any time while the order is in effect.

28 “(b) The court shall make reasonable efforts to hold a hearing within 14 days and shall hold a
29 hearing no later than 21 days after receipt of the request for the hearing. The court shall notify
30 each party of the time, date and place of the hearing.

31 “(c) An order issued under subsection (2) or (3) of this section remains in effect through the date
32 of the hearing. If the party against whom the order was entered fails to appear at the hearing
33 without good cause, the court shall continue the order in effect. If the party who obtained the order
34 fails to appear at the hearing without good cause, the court shall vacate the order.

35 “(d) The issue at a hearing to contest:

36 “(A) A temporary protective order of restraint is limited to a determination of the status quo
37 at the time the order was issued. If the child’s usual place of residence cannot be determined, the
38 court may make any further order the court finds appropriate in the best interests of the child.

39 “(B) A temporary order for the custody of, or parenting time with, a child is limited to whether
40 the child was in immediate danger at the time the order was issued.

41 “(5) The State Court Administrator shall prescribe the content and form of a request for a
42 hearing described in subsections (2) and (3) of this section.

43 “(6) As used in this section:

44 “(a) ‘Child’s usual place of residence’ has the meaning given that term in ORS 107.138.

45 “(b) ‘Party’s usual contact and parenting time,’ ‘present placement and daily schedule of the

1 child' and 'current schedule and daily routine of the child' have the meanings given 'parent's usual
2 contact and parenting time,' 'present placement and daily schedule of the child' and 'current sched-
3 ule and daily routine of the child' in ORS 107.138.

4 **"SECTION 2.** ORS 107.139 is amended to read:

5 "107.139. (1)(a) Following entry of a judgment, a court may enter ex parte a temporary order
6 providing for the custody of, or parenting time with, a child if:

7 "(A) A parent of the child is present in court and presents an affidavit or a declaration under
8 penalty of perjury in the form required by ORCP 1 E, alleging that the child is in immediate danger;

9 "(B) The parent has made a good faith effort to confer with the other party regarding the pur-
10 pose and time of this court appearance; and

11 "(C) The court finds by clear and convincing evidence, based on the facts presented in the
12 parent's testimony, the parent's affidavit or declaration under penalty of perjury and the testimony
13 of the other party, if the other party is present, that the child is in immediate danger.

14 **"(b) When determining whether a child is in immediate danger for purposes of this sec-**
15 **tion, the court shall consider whether, absent the temporary order, the child is at present**
16 **risk of physical harm, severe psychological damage, sex abuse, severe neglect significantly**
17 **affecting the child's daily life or other similar harms. The court may not find that a child is**
18 **in immediate danger for purposes of this section based solely on a parent's homelessness,**
19 **illness, poverty or other similar circumstances.**

20 "[b] (c) The party requesting an order under this subsection shall provide the court with
21 telephone numbers where the party can be reached at any time during the day and a contact ad-
22 dress.

23 "[c] (d) A copy of the order and the supporting affidavit or declaration under penalty of perjury
24 must be served on the other party in the manner of service of a summons under ORCP 7. The order
25 must include the following statement:

26 " _____

27
28 Notice: You may request a hearing on this order as long as it remains in effect by filing with
29 the court a request for a hearing. In the request you must tell the court and the other party that
30 you object to the order on the ground that the child was not in immediate danger at the time the
31 order was issued. In the request you must also inform the court of your telephone number or contact
32 number and your current residence, mailing or contact address.

33 " _____

34
35 "(2)(a) A party against whom an order is entered under subsection (1) of this section may re-
36 quest a hearing by filing with the court a hearing request described in subsection (1) of this section
37 at any time while the order is in effect.

38 "(b) The court shall hold a hearing within 14 days after receipt of the request for the hearing.
39 The court shall notify each party of the time, date and place of the hearing.

40 "(c) An order issued under subsection (1) of this section remains in effect through the date of
41 the hearing. If the party against whom the order was entered fails to appear at the hearing without
42 good cause, the court shall continue the order in effect. If the party who obtained the order fails
43 to appear at the hearing without good cause, the court shall vacate the order.

44 "(d) The issue at a hearing to contest a temporary order for the custody of, or parenting time
45 with, a child is limited to whether the child was in immediate danger at the time the order was is-

1 sued.

2 “(3) The State Court Administrator shall prescribe the content and form of a request for a
3 hearing described in this section.

4 “(4) A party seeking relief under this section shall concurrently file, or have pending, a motion
5 under ORS 107.135 to set aside, alter or modify any portion of the judgment that provides for cus-
6 tody, parenting time or visitation.”.

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