

# Enrolled House Bill 2869

Sponsored by Representative COWAN; Representatives BARKER, WHISNANT (at the request of Rob Bovett, Oregon State Sheriffs' Association)

CHAPTER .....

AN ACT

Relating to sheriffs; creating new provisions; amending ORS 18.758, 105.135, 105.156, 107.437, 107.720, 107.723, 107.732, 124.022, 124.030, 163.741, 206.050, 419B.845 and 419B.846 and ORCP 9 C; and declaring an emergency.

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

**SECTION 1.** ORS 18.758 is amended to read:

18.758. (1) A sheriff shall sell property under ORS 18.750 to 18.760 in the same manner in which property is sold on execution. If the debtor owns only part of the property, the sheriff shall sell the interest of the debtor in the property. **The date scheduled by the sheriff for the sale of the property must be [conducted by the sheriff]:**

(a) Within [15] **20** days after notice is sent to the garnishee under ORS 18.755 (4), if the garnishee is directed to continue to hold the property pending sale by the sheriff; or

(b) Within [15] **20** days after the property is delivered to the sheriff, if the garnishee is directed to deliver the property to the sheriff under ORS 18.755 (4).

(2) If the garnishor notifies the sheriff that property should be released to the debtor, the sheriff shall promptly release the property.

(3) If the garnishee continues to hold property of the debtor pending sale of the property under ORS 18.750 to 18.760, within five days after the sale of property under this section the sheriff shall advise the garnishee in writing of the identity of the purchaser and that the purchaser is entitled to possession of the property or to possession of the debtor's interest in the property. If the property is a debt owed to the debtor for which payment is not due or is subject to a bailment, lease or security interest that has not yet expired or been satisfied or released, the garnishee need not deliver the property to the purchaser until five days after payment is due, the bailment or lease has expired, or the indebtedness secured by the property is satisfied or the security interest is released.

**SECTION 2. The amendments to ORS 18.758 by section 1 of this 2007 Act apply only to garnishments issued on or after the effective date of this 2007 Act.**

**SECTION 3.** ORS 105.135 is amended to read:

105.135. (1) Except as provided in this section, the summons shall be served and returned as in other actions.

(2) At the time the clerk collects the filing fee under ORS 105.130, the clerk shall enter the first appearance date on the summons. That date shall be seven days after the judicial day next following payment of filing fees unless no judge is available for first appearance at that time, in which case the clerk may extend the first appearance date for up to seven additional days. At the request of

the plaintiff, the clerk may enter a date more than seven days after the judicial day next following payment of filing fees if a judge will be available.

(3) Notwithstanding ORCP 10, by the end of the judicial day next following the payment of filing fees:

(a) The clerk shall mail a true copy of the summons and complaint by first class mail to the defendant at the premises.

(b) The process server shall serve the defendant with a true copy of the summons and complaint at the premises by personal delivery to the defendant or, if the defendant is not available for service, by attaching a true copy of the summons and complaint in a secure manner to the main entrance to that portion of the premises of which the defendant has possession.

**(4) A sheriff may serve a facsimile of a certified true copy of a summons and complaint that is transmitted to the sheriff by a trial court administrator or another sheriff using a telephonic facsimile communication device. A copy of the facsimile must be attached to the sheriff's return of service. Before transmitting a summons and complaint to a sheriff under this subsection, the person sending the facsimile must receive confirmation by telephone from the sheriff's office that a telephonic facsimile communication device is available and operating.**

[4] (5) The process server shall indicate the manner in which service was accomplished by promptly filing with the clerk a certificate of service as provided by ORCP 7 F(2)(a).

[5] (6) In the case of premises to which ORS chapter 90 applies, the summons shall inform the defendant of the procedures, rights and responsibilities of the parties as specified in ORS 105.137.

**SECTION 4.** ORS 105.156 is amended to read:

105.156. The writ of execution of judgment of restitution referred to in ORS 105.151 must be in substantially the following form:

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State of Oregon,        )       WRIT OF  
                              ) ss. EXECUTION OF  
                              )       JUDGMENT OF  
                              )       RESTITUTION  
County of \_\_\_\_\_ )

To the Sheriff:

This was an eviction action for possession of the following premises:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (city)  
\_\_\_\_\_ (county)

Judgment was entered that the plaintiff have restitution of the premises and that the plaintiff may be entitled to court costs and disbursements.

In the name of the State of Oregon, you are ordered to enforce and serve this writ on the defendant, in the manner provided in ORS 105.161 [(1), after the four-day period provided in the notice of restitution].

*[If the defendant has not moved out of the premises by the end of the four-day period or any delay requested by the plaintiff, whichever is later, and if the plaintiff has paid all fees for enforcement of this execution, you shall immediately make legal service of this writ and an eviction trespass notice on the defendant. You shall remove the defendant and any other person subject to the judgment, if present, from the premises and return possession of the premises to the plaintiff.]* **You are ordered to enter the premises and remove the defendant and any other individual present on the premises**

**who is subject to the judgment and return possession of the premises to the plaintiff. You may use all reasonable force that may be necessary to enter the premises and remove individuals who are subject to the judgment.**

The plaintiff shall be responsible for removing, storing and disposing of any personal property left by the defendant on the premises following the removal of the defendant and the return of possession of the premises, as provided by ORS 105.165.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Deputy Court Administrator

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Address

\_\_\_\_\_  
City/State/Zip

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**SECTION 5.** ORS 107.437 is amended to read:

107.437. (1) A person entitled to physical custody of a child may make an ex parte application for an order of assistance to a court of any county:

(a) In which a child is located if the person is entitled to the physical custody of the child under a valid and current order issued in this state; or

(b) In which a valid and current foreign custody order has been filed with a petition as provided in subsection (3) of this section.

(2) The application must include a certified copy of the custody order. The order of assistance may direct a law enforcement agency having jurisdiction where the child is located to use any reasonable means and force to deliver the child as directed by the court, **including directing forcible entry into specified premises.** The court may issue an order of assistance upon the sworn affidavit of the applicant and a finding of the court that:

(a) The applicant is entitled to physical custody of the child under a valid and current custody order; and

(b) The child is being held by another person in substantial violation of the custody order.

(3) When the application for an order of assistance is made to a court in which the custody order has been entered or registered, the applicant shall make the application in the form of a motion. In all other cases, the applicant shall make the application in the form of a petition. The court may not charge a filing fee for a motion or petition filed under this section.

(4) The law enforcement agency to which an order of assistance is directed shall make a return to the court specifying whether the order was executed, and if so, a statement reflecting the date on which the order was executed and any other information required by the court in the order of assistance.

(5) A court may not issue an order of assistance for the purpose of enforcing parenting time or visitation rights.

(6) Except for intentional torts committed outside the scope of the peace officer's duties, a peace officer is not civilly or criminally liable for any action taken in recovering the custody of a child pursuant to an order issued under this section.

**SECTION 6.** ORS 107.720 is amended to read:

107.720. (1)(a) Whenever a restraining order, as authorized by ORS 107.095 (1)(c) or (d), 107.716 or 107.718 which includes a security amount and an expiration date pursuant to ORS 107.095,

107.716 or 107.718 and this section, is issued and the person to be restrained has actual notice thereof, the clerk of the court or any other person serving the petition and order shall deliver forthwith to a county sheriff a true copy of the affidavit of proof of service on which it is stated that personal service of the petition and order was served on the respondent, a copy of the petition and a true copy of the order. If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service of the order is waived and an accompanying proof of service is not necessary. Upon receipt of a true copy of [*proof of service, when required, and a true copy of*] the order **and completion of any required service**, the county sheriff shall forthwith enter the order into the Law Enforcement Data System maintained by the Department of State Police and into the databases of the National Crime Information Center of the United States Department of Justice. The sheriff shall also provide the petitioner with a true copy of the proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of such order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order. Such order shall be fully enforceable in any county or tribal land in the state. The petitioner may elect to deliver documents personally to a county sheriff or to have them delivered by a private person for entry into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

(b) 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 paragraph (a) of 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 order to the requesting jurisdiction.

(2)(a) A restraining order shall remain in effect until the order expires or is terminated by court order.

(b) When a restraining order has been entered under ORS 107.718, the restraining order shall not be terminated upon a motion for dismissal by the petitioner unless the motion is notarized.

(3) In any situation where a restraining order described in subsection (1) of this section is terminated before the expiration date, the clerk of the court shall deliver forthwith a true copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of such termination order the county sheriff shall promptly remove the original order from the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

(4) Pending a contempt hearing for alleged violation of a restraining order issued pursuant to ORS 107.095 (1)(c) or (d), 107.716 or 107.718, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290. Whenever such restraining order is issued, the issuing court shall set a security amount for the violation of such order.

**SECTION 7.** ORS 107.723 is amended to read:

107.723. (1) A sheriff may serve a restraining order under ORS 107.718 in the county in which the sheriff was elected and in any other county that is adjacent to the county in which the sheriff was elected.

**(2) A sheriff may serve and enter into the Law Enforcement Data System a facsimile of a certified true copy of a restraining order under ORS 107.718 that was transmitted to the sheriff by a trial court administrator or another sheriff using a telephonic facsimile communication device. A copy of the facsimile must be attached to the sheriff's return of service. Before transmitting a restraining order to a sheriff under this subsection, the person sending the facsimile must receive confirmation by telephone from the sheriff's office that a telephonic facsimile communication device is available and operating.**

**SECTION 8.** ORS 107.732 is amended to read:

107.732. (1) An order or a modification to an order issued under ORS 107.700 to 107.735 that provides for the custody of a child shall, when requested by the party awarded custody, contain a

provision ordering a peace officer to assist in recovering the custody of the child and authorizing the use of any reasonable force necessary to that end, **including directing forcible entry into specified premises.**

**(2) An order under ORS 107.718 directing the sheriff to use any reasonable force necessary to enforce the order authorizes the sheriff to make a forcible entry into the premises specified in the order.**

[2)] (3) No peace officer shall be civilly or criminally liable for any action taken in recovering the custody of a child pursuant to an order issued under ORS 107.700 to 107.735, except for intentional torts outside the scope of the peace officer's duties.

**SECTION 9.** ORS 124.022 is amended to read:

124.022. (1) A sheriff may serve a restraining order under ORS 124.020 in the county in which the sheriff was elected and in any other county that is adjacent to the county in which the sheriff was elected.

**(2) A sheriff may serve and enter into the Law Enforcement Data System a facsimile of a certified true copy of a restraining order under ORS 124.020 that was transmitted to the sheriff by a trial court administrator or another sheriff using a telephonic facsimile communication device. A copy of the facsimile must be attached to the sheriff's return of service. Before transmitting a restraining order to a sheriff under this subsection, the person sending the facsimile must receive confirmation by telephone from the sheriff's office that a telephonic facsimile communication device is available and operating.**

**SECTION 10.** ORS 124.030 is amended to read:

124.030. (1) Whenever a restraining order, as authorized by ORS 124.015 or 124.020, that includes a security amount and an expiration date pursuant to ORS 124.015 and 124.020 and this section, is issued and the person to be restrained has actual notice thereof, the clerk of the court or any other person serving the petition and order shall deliver forthwith to a county sheriff a true copy of the affidavit of proof of service on which it is stated that personal service of the petition and order was served on the respondent, a copy of the petition and a true copy of the order. If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service of the order is waived and an accompanying proof of service is not necessary. Upon receipt of a true copy of [*proof of service, when required, and a true copy of*] the order **and completion of any required service**, the county sheriff shall forthwith enter the order into the Law Enforcement Data System maintained by the Department of State Police. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of such order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order. Such order shall be fully enforceable in any county in the state. The petitioner or guardian petitioner may elect to deliver documents personally to a county sheriff or to have them delivered by a private person for entry into the Law Enforcement Data System.

(2)(a) A restraining order shall remain in effect until the order expires or is terminated by court order.

(b) When a restraining order has been entered under ORS 124.020, the restraining order shall not be terminated upon a motion for dismissal by the petitioner or guardian petitioner unless the motion is notarized.

(3) In any situation where a restraining order described in subsection (1) of this section is terminated before the expiration date, the clerk of the court shall deliver forthwith a true copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of such termination order the county sheriff shall promptly remove the original order from the Law Enforcement Data System.

(4) Pending a contempt hearing for an alleged violation of a restraining order issued pursuant to ORS 124.015 or 124.020, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290. Whenever such restraining order is issued, the issuing court shall set a security amount for the violation of such order.

**SECTION 11.** ORS 163.741 is amended to read:

163.741. (1) Whenever a stalking protective order, as authorized by ORS 163.735 or 163.738, is issued and the person to be restrained has actual notice thereof, the person serving the order shall deliver forthwith to the county sheriff a true copy of the order and an affidavit of proof of service on which it is stated that personal service of the order was made on the respondent. If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service of the order is waived and accompanying proof of service is not necessary. Upon receipt of [*proof of service, when required, and a true copy of*] the order **and completion of any required service**, the county sheriff shall forthwith enter the order into the Law Enforcement Data System maintained by the Department of State Police and into the databases of the National Crime Information Center of the United States Department of Justice. The sheriff shall also provide the complainant with a true copy of the proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of such order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order. Such order shall be fully enforceable in any county in the state. The complainant may elect to deliver documents personally to a county sheriff or to have them delivered by a private person for entry into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

(2) When a stalking protective 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 subsection (1) of this section, a county sheriff shall cooperate with a request from a law enforcement agency from any other jurisdiction to verify the existence of the stalking protective order or to transmit a copy of the order to the requesting jurisdiction.

(3) When a stalking protective order described in subsection (1) of this section is terminated by order of the court, the clerk of the court shall deliver forthwith a true copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original order from the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

**SECTION 12.** ORS 206.050 is amended to read:

206.050. (1) When an officer finds, or has reason to apprehend, that resistance will be made to the execution or service of any process, order or paper delivered to the officer for execution or service, and authorized by law, the officer may command as many [*male*] **adult** inhabitants of the county of the officer as the officer may think proper and necessary to assist the officer in overcoming the resistance, and if necessary, in seizing, arresting and confining the resisters and their aiders and abettors, to be punished according to law.

(2) National guard members are exempt from any service commanded under subsection (1) of this section while they continue to be active members.

**SECTION 13.** ORS 419B.845 is amended to read:

419B.845. (1)(a) When a petition has been filed alleging that the child has been physically or sexually abused, the court may enter an order restraining the alleged perpetrator of the abuse from having contact with the child or attempting to contact the child and requiring the alleged perpetrator to move from the household in which the child resides. The court may issue a restraining order only if the court finds that:

(A) There is probable cause to believe the abuse occurred and that the person to be restrained committed the abuse; and

(B) The order is in the best interest of the child.

(b) Upon finding that to do so would aid in protecting the victim of the alleged abuse, the court may enter, in addition to a restraining order described in paragraph (a) of this subsection, other appropriate orders including, but not limited to, orders that control contact between the alleged abuser and other children in the household.

(c) The court shall include in an order entered under this subsection the following information about the person to be restrained:

- (A) Name;
- (B) Address;
- (C) Age and birth date;
- (D) Race;
- (E) Sex;
- (F) Height and weight; and
- (G) Color of hair and eyes.

(d) The court may include in the order a provision that a peace officer accompany the restrained person to the household when it is necessary for the restrained person to remove personal property.

(2) If the court enters an order under this section:

(a) The clerk of the court shall provide without charge the number of certified true copies of the petition and order necessary to effect service and shall have a true copy of the petition and order delivered to the sheriff or other person qualified to serve the order for service upon the person to be restrained; and

(b) The sheriff or other person qualified to serve the order shall serve the person to be restrained personally unless that person is present at the hearing. After accepting the order, if the sheriff or other person cannot complete service within 10 days, the sheriff or other person shall hold the order for future service and file a return to the clerk of the court showing that service was not completed.

(3) Within 30 days after an order is served under this section, the restrained person may file a written request with the court and receive a court hearing on any portion of the order. If the restrained person requests a hearing under this subsection:

(a) The clerk of the court shall notify the parties and, if the restrained person is not a party, the restrained person of the date and time of the hearing; and

(b) The court shall hold the hearing within 21 days after the request and may cancel or modify the order.

(4) Upon receipt of [*proof of service, when required, and a true copy of*] the order **and completion of any required service**, the sheriff shall immediately enter the order into the Law Enforcement Data System maintained by the Department of State Police. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order. The order shall be fully enforceable in any county in this state.

(5) A restraining order issued pursuant to this section remains in effect for a period of one year or until the order is modified, amended or terminated by court order.

(6) A court that issued a restraining order under this section may renew the order for a period of up to one year if the court finds that there is probable cause to believe the renewal is in the best interest of the child. The court may renew the order on motion alleging facts supporting the required finding. If the renewal order is granted, subsections (2) and (3) of this section apply.

(7) If a restraining order issued pursuant to this section is terminated before its expiration date, the clerk of the court shall promptly deliver a true copy of the termination order to the sheriff. The sheriff shall promptly remove the original order from the Law Enforcement Data System.

(8) Pending a contempt hearing for alleged violation of a restraining order issued under this section, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290. Unless the order provides otherwise, the security amount for release shall be \$5,000.

(9) When a restraining order entered under this section prohibits the restrained person from contacting the protected person in writing, the restrained person does not violate the restraining order by serving on the protected person a copy of a notice of appeal of the restraining order or any other document required by law to be served on the adverse party to an appeal if:

- (a) Neither the restrained person nor the protected person is represented by counsel;
- (b) The restrained person serves the document by mail; and
- (c) The contents of the document are not intended to harass or intimidate the protected person.

**SECTION 14.** ORS 419B.846 is amended to read:

419B.846. (1) A sheriff may serve a restraining order under ORS 419B.845 in the county in which the sheriff was elected and in any other county that is adjacent to the county in which the sheriff was elected.

**(2) A sheriff may serve and enter into the Law Enforcement Data System a facsimile of a certified true copy of a restraining order under ORS 419B.845 that was transmitted to the sheriff by a trial court administrator or another sheriff using a telephonic facsimile communication device. A copy of the facsimile must be attached to the sheriff's return of service. Before transmitting a restraining order to a sheriff under this subsection, the person sending the facsimile must receive confirmation by telephone from the sheriff's office that a telephonic facsimile communication device is available and operating.**

**SECTION 15.** ORCP 9 C, as amended by the Council on Court Procedures on December 9, 2006, is amended to read:

C Filing; proof of service. Except as provided by section D of this rule, all papers required to be served upon a party by section A of this rule shall be filed with the court within a reasonable time after service. Except as otherwise provided in Rule 7 and Rule 8, proof of service of all papers required or permitted to be served may be by written acknowledgment of service, by affidavit or declaration of the person making service, or by certificate of an attorney. Such proof of service may be made upon the papers served or as a separate document attached to the papers. Where service is made by telephonic facsimile communication device or e-mail, proof of service shall be made by affidavit or declaration of the person making service, or by certificate of an attorney **or sheriff**. Attached to such affidavit, declaration, or certificate shall be the printed confirmation of receipt of the message generated by the transmitting machine, if facsimile communication is used. If service is made by e-mail under section G of this rule, the person making service must certify that he or she received confirmation that the message was received, either by return e-mail, automatically generated message, telephonic facsimile, or orally.

**SECTION 16. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.**

**Passed by House April 18, 2007**

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Chief Clerk of House

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Speaker of House

**Passed by Senate May 15, 2007**

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President of Senate

**Received by Governor:**

.....M,....., 2007

**Approved:**

.....M,....., 2007

.....  
Governor

**Filed in Office of Secretary of State:**

.....M,....., 2007

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Secretary of State