

Enrolled House Bill 2311

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Judiciary for Oregon State Bar Family Law Section)

CHAPTER

AN ACT

Relating to service of legal documents; amending ORS 107.718 and 163.730.

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

SECTION 1. ORS 107.718 is amended to read:

107.718. (1) When a person files a petition under ORS 107.710, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a showing that the petitioner has been the victim of abuse committed by the respondent within 180 days preceding the filing of the petition, that there is an imminent danger of further abuse to the petitioner and that the respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child, the court shall, if requested by the petitioner, order:

(a) Except as provided in subsection (2) of this section, that temporary custody of the children of the parties be awarded to the petitioner or, at the request of the petitioner, to the respondent, subject to reasonable parenting time rights of the noncustodial parent, which the court shall order, unless such parenting time is not in the best interest of the child;

(b) That the respondent be required to move from the petitioner's residence, if in the sole name of the petitioner or if it is jointly owned or rented by the petitioner and the respondent, or if the parties are married to each other;

(c) That the respondent be restrained from entering, or attempting to enter, a reasonable area surrounding the petitioner's current or subsequent residence if the respondent is required to move from petitioner's residence;

(d) That a peace officer accompany the party who is leaving or has left the parties' residence to remove essential personal effects of the party or the party's children, or both, including but not limited to clothing, toiletries, diapers, medications, Social Security cards, birth certificates, identification and tools of the trade;

(e) That the respondent be restrained from intimidating, molesting, interfering with or menacing the petitioner, or attempting to intimidate, molest, interfere with or menace the petitioner;

(f) That the respondent be restrained from intimidating, molesting, interfering with or menacing any children in the custody of the petitioner, or attempting to intimidate, molest, interfere with or menace any children in the custody of the petitioner;

(g) That the respondent be restrained from entering, or attempting to enter, on any premises and a reasonable area surrounding the premises when it appears to the court that such restraint is necessary to prevent the respondent from intimidating, molesting, interfering with or menacing the petitioner or children whose custody is awarded to the petitioner;

(h) Other relief that the court considers necessary to provide for the safety and welfare of the petitioner and the children in the custody of the petitioner including, but not limited to, emergency monetary assistance from the respondent; or

(i) **Except as described in subsection (12) of this section or parenting time ordered under this section**, that the respondent have no contact with the petitioner in person, by telephone or by mail [*except as described in parenting time ordered under this section*].

(2) If the court determines that exceptional circumstances exist that affect the custody of a child, the court shall order the parties to appear and provide additional evidence at a hearing to determine temporary custody and resolve other contested issues. Pending the hearing, the court may make any orders regarding the child's residence and the parties' contact with the child that the court finds appropriate to provide for the child's welfare and the safety of the parties. The court shall set a hearing time and date as provided in ORS 107.716 (2) and issue a notice of the hearing at the same time the court issues the restraining order.

(3) The court's order under subsection (1) of this section is effective for a period of one year or until the order is withdrawn or amended, or until the order is superseded as provided in ORS 107.722, whichever is sooner.

(4) If respondent is restrained from entering, or attempting to enter, an area surrounding petitioner's residence or any other premises, the order restraining respondent shall specifically describe the area.

(5) Imminent danger under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with additional bodily harm.

(6) If the court awards parenting time to a parent who committed abuse, the court shall make adequate provision for the safety of the child and of the petitioner. The order of the court may include, but is not limited to, the following:

(a) That exchange of a child between parents shall occur at a protected location.

(b) That parenting time be supervised by another person or agency.

(c) That the perpetrator of the abuse be required to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or any other counseling program designated by the court as a condition of the parenting time.

(d) That the perpetrator of the abuse not possess or consume alcohol or controlled substances during the parenting time and for 24 hours preceding the parenting time.

(e) That the perpetrator of the abuse pay all or a portion of the cost of supervised parenting time, and any program designated by the court as a condition of parenting time.

(f) That no overnight parenting time occur.

(7) The State Court Administrator shall prescribe the content and form of the petition, order and related forms for use under ORS 107.700 to 107.735. The clerk of the court shall make available the forms and an instructional brochure explaining the rights set forth under ORS 107.700 to 107.735.

(8) If the court orders relief:

(a) The clerk of the court shall provide without charge the number of certified true copies of the petition and order necessary to provide the petitioner with one copy and to effect service and shall have a true copy of the petition and order delivered to the county sheriff for service upon the respondent, unless the court finds that further service is unnecessary because the respondent appeared in person before the court. In addition and upon request by the petitioner, the clerk shall provide the petitioner, without charge, two exemplified copies of the petition and order.

(b) The county sheriff shall serve the respondent personally unless the petitioner elects to have the respondent served personally by a private party or by a peace officer who is called to the scene of a domestic disturbance at which the respondent is present, and who is able to obtain a copy of the order within a reasonable amount of time. Proof of service shall be made in accordance with ORS 107.720. When the order does not contain the respondent's date of birth and service is effected by the sheriff or other peace officer, the sheriff or officer shall verify the respondent's date of birth

with the respondent and shall record that date on the order or proof of service entered into the Law Enforcement Data System under ORS 107.720.

(c) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the relief provided under ORS 107.700 to 107.735.

(9) If the county sheriff:

(a) Determines that the order and petition are incomplete, the sheriff shall return the order and petition to the clerk of the court. The clerk of the court shall notify the petitioner, at the address provided by the petitioner, of the error or omission.

(b) After accepting the order and petition, cannot complete service within 10 days, the sheriff shall notify the petitioner, at the address provided by the petitioner, that the documents have not been served. If the petitioner does not respond within 10 days, the sheriff shall hold the order and petition for future service and file a return to the clerk of the court showing that service was not completed.

(10)(a) Within 30 days after a restraining order is served under this section, the respondent therein may request a court hearing upon any relief granted. The hearing request form shall be available from the clerk of the court in the form prescribed by the State Court Administrator.

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

(c) The hearing shall not be limited to the issues raised in the respondent's request for hearing form. If the respondent seeks to raise an issue at the hearing not previously raised in the request for hearing form, or if the petitioner seeks relief at the hearing not granted in the original order, the other party shall be entitled to a reasonable continuance for the purpose of preparing a response to the issue.

(11) If the respondent fails to request a hearing within 30 days after a restraining order is served, the restraining order is confirmed by operation of law. The provisions of this section are sufficient to meet the due process requirements of 18 U.S.C. 922(g) in that the respondent received actual notice of the right to request a hearing and the opportunity to participate at the hearing but the respondent failed to exercise those rights.

(12) Service of process or other legal documents upon the petitioner is not a violation of this section if the petitioner is served as provided in ORCP 7 or 9.

SECTION 2. ORS 163.730 is amended to read:

163.730. As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

(1) "Alarm" means to cause apprehension or fear resulting from the perception of danger.

(2) "Coerce" means to restrain, compel or dominate by force or threat.

(3) "Contact" includes but is not limited to:

(a) Coming into the visual or physical presence of the other person;

(b) Following the other person;

(c) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;

(d) Sending or making written or electronic communications in any form to the other person;

(e) Speaking with the other person by any means;

(f) Communicating with the other person through a third person;

(g) Committing a crime against the other person;

(h) Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;

(i) Communicating with business entities with the intent of affecting some right or interest of the other person;

(j) Damaging the other person's home, property, place of work or school; [or]

(k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person[.]; **or**

(L) Service of process or other legal documents unless the other person is served as provided in ORCP 7 or 9.

(4) "Household member" means any person residing in the same residence as the victim.

(5) "Immediate family" means father, mother, child, sibling, spouse, grandparent, stepparent and stepchild.

(6) "Law enforcement officer" means any person employed in this state as a police officer by a county sheriff, constable, marshal or municipal or state police agency.

(7) "Repeated" means two or more times.

(8) "School" means a public or private institution of learning or a child care facility.

Passed by House February 26, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 19, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State