

House Bill 2766

Sponsored by Representative THATCHER (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires court to enter order prohibiting defendant from contacting victim when defendant is arraigned on sex crime or crime constituting domestic violence. Authorizes court, at victim's request, to enter additional order at sentencing for period of time equal to statutory maximum sentence for crime. Authorizes victim to petition for termination of order.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 133.310, 133.315, 133.381, 135.250, 135.260
3 and 181.550; and declaring an emergency.

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

5 **SECTION 1.** (1) **When a defendant who is charged with a sex crime or a crime that con-**
6 **stitutes domestic violence is arraigned, the court shall enter an order prohibiting the de-**
7 **fendant from contacting the victim. Except as provided in subsection (3) of this section, the**
8 **order shall remain valid until the defendant is sentenced for the crime, the charge is dis-**
9 **missed or the defendant is acquitted of the crime.**

10 (2) **When the court sentences a defendant who has been convicted of a sex crime or a**
11 **crime that constitutes domestic violence, the court shall, at the request of a victim, enter**
12 **an order prohibiting the defendant from contacting the victim. Except as provided in sub-**
13 **section (3) of this section, the order shall remain valid for a period of time equal to the**
14 **maximum statutory indeterminate sentence described in ORS 161.605 or, if the crime is**
15 **classified as a misdemeanor, to the maximum term of imprisonment described in ORS**
16 **161.615.**

17 (3) **Upon petition of the victim, the court may enter an order terminating an order en-**
18 **tered under subsection (1) or (2) of this section if the court finds, after a hearing on the**
19 **petition, that terminating the order is in the best interests of the parties and the commu-**
20 **nity.**

21 (4) **When the court issues an order under this section the court shall set a security**
22 **amount for the violation of the order. Pending a contempt hearing for alleged violation of**
23 **the order, a person arrested and taken into custody pursuant to ORS 133.310 may be released**
24 **as provided in ORS 135.230 to 135.290.**

25 (5) **The clerk of the court shall deliver a true copy of the order to the county sheriff as**
26 **soon as practicable. Upon receipt of a true copy of an order entered:**

27 (a) **Under subsection (1) or (2) of this section, the county sheriff shall promptly enter the**
28 **order into the Law Enforcement Data System maintained by the Department of State Police**
29 **and into the databases of the National Crime Information Center of the United States De-**
30 **partment of Justice. Entry into the Law Enforcement Data System constitutes notice to all**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 law enforcement agencies of the existence of the order.

2 (b) Under subsection (3) of this section, the county sheriff shall promptly remove the
 3 original order from the Law Enforcement Data System and the databases of the National
 4 Crime Information Center of the United States Department of Justice.

5 (6) Law enforcement agencies shall establish procedures adequate to ensure that an of-
 6 ficer at the scene of an alleged violation of the order may be informed of the existence and
 7 terms of the order. The order is fully enforceable in any county or tribal land in this state.

8 (7) When an order issued under this section is entered into the Law Enforcement Data
 9 System and the databases of the National Crime Information Center of the United States
 10 Department of Justice under subsection (5) of this section, a county sheriff shall cooperate
 11 with a request from a law enforcement agency from any other jurisdiction to verify the ex-
 12 istence of the order.

13 (8) As used in this section:

14 (a) “Domestic violence” has the meaning given that term in ORS 135.230.

15 (b) “Sex crime” has the meaning given that term in ORS 181.594.

16 **SECTION 2.** ORS 133.310 is amended to read:

17 133.310. (1) A peace officer may arrest a person without a warrant if the officer has probable
 18 cause to believe that the person has committed any of the following:

19 (a) A felony.

20 (b) A misdemeanor.

21 (c) An unclassified offense for which the maximum penalty allowed by law is equal to or greater
 22 than the maximum penalty allowed for a Class C misdemeanor.

23 (d) Any other crime committed in the officer’s presence.

24 (2) A peace officer may arrest a person without a warrant when the peace officer is notified by
 25 telegraph, telephone, radio or other mode of communication by another peace officer of any state
 26 that there exists a duly issued warrant for the arrest of a person within the other peace officer’s
 27 jurisdiction.

28 (3) A peace officer shall arrest and take into custody a person without a warrant when the
 29 peace officer has probable cause to believe that:

30 (a) There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c) or (d), 107.716, 107.718,
 31 124.015, 124.020, 163.738 or 419B.845 restraining the person;

32 (b) A true copy of the order and proof of service on the person has been filed as required in
 33 ORS 107.720, 124.030, 163.741 or 419B.845; and

34 (c) The person to be arrested has violated the terms of that order.

35 (4) **A peace officer shall arrest and take into custody a person without a warrant when**
 36 **the peace officer has probable cause to believe that:**

37 (a) **There exists an order issued pursuant to section 1 (1) or (2) of this 2011 Act re-**
 38 **straining the person; and**

39 (b) **The person to be arrested has violated the terms of that order.**

40 [(4)] (5) A peace officer shall arrest and take into custody a person without a warrant if:

41 (a) The person protected by a foreign restraining order as defined by ORS 24.190 presents a copy
 42 of the foreign restraining order to the officer and represents to the officer that the order supplied
 43 is the most recent order in effect between the parties and that the person restrained by the order
 44 has been personally served with a copy of the order or has actual notice of the order; and

45 (b) The peace officer has probable cause to believe that the person to be arrested has violated

1 the terms of the foreign restraining order.

2 [(5)] (6) A peace officer shall arrest and take into custody a person without a warrant if:

3 (a) The person protected by a foreign restraining order as defined by ORS 24.190 has filed a copy
4 of the foreign restraining order with a court or has been identified by the officer as a party pro-
5 tected by a foreign restraining order entered in the Law Enforcement Data System or in the data-
6 bases of the National Crime Information Center of the United States Department of Justice; and

7 (b) The peace officer has probable cause to believe that the person to be arrested has violated
8 the terms of the foreign restraining order.

9 [(6)] (7) A peace officer shall arrest and take into custody a person without a warrant if the
10 peace officer has probable cause to believe:

11 (a) The person has been charged with an offense and is presently released as to that charge
12 under ORS 135.230 to 135.290; and

13 (b) The person has failed to comply with a no contact condition of the release agreement.

14 **SECTION 3.** ORS 135.250 is amended to read:

15 135.250. (1) If a defendant is released before judgment, the conditions of the release agreement
16 shall be that the defendant will:

17 (a) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter
18 as ordered by the court until the defendant is discharged or the judgment is entered;

19 (b) Submit to the orders and process of the court;

20 (c) Not depart this state without leave of the court; and

21 (d) Comply with such other conditions as the court may impose.

22 **(2)(a) If the court has entered an order under section 1 of this 2011 Act or ORS 135.970**
23 **(4)(a) that prohibits the defendant from contacting the victim, the court shall require the**
24 **defendant to comply with the order as a condition of release.**

25 [(2)(a)] (b) *[In addition to the conditions listed in subsection (1) of this section,] If the defendant*
26 *is charged with an offense that [also] constitutes domestic violence[, the court shall include as a*
27 *condition of the release agreement that the defendant not contact the victim of the violence.]*

28 *[(b) Notwithstanding paragraph (a) of this subsection, the court may enter an order waiving the*
29 *condition that the defendant have no contact with the victim if:]*

30 *[(A) The victim petitions the court for a waiver; and]*

31 *[(B) The court finds, after a hearing on the petition, that waiving the condition is in the best in-*
32 *terests of the parties and the community.]*

33 *[(c) If the defendant] and the defendant* was provided notice and an opportunity to be heard,
34 the court shall also include in the agreement, when appropriate, terms and findings sufficient under
35 18 U.S.C. 922 (d)(8) and (g)(8) to affect the defendant's ability to possess firearms and ammunition
36 or engage in activities involving firearms.

37 *[(d) ORS 107.720 applies to release agreements executed by defendants charged with an offense that*
38 *constitutes domestic violence, except that proof of service of the release agreement is not required and*
39 *the agreement may not be terminated at the request of the victim without a hearing.]*

40 (3) If the defendant is released after judgment of conviction, the conditions of the release
41 agreement shall be that the defendant will:

42 (a) Duly prosecute the appeal of the defendant as required by ORS 138.005 to 138.500;

43 (b) Appear at such time and place as the court may direct;

44 (c) Not depart this state without leave of the court;

45 (d) Comply with such other conditions as the court may impose; and

1 (e) If the judgment is affirmed or the judgment is reversed and the cause remanded for a new
 2 trial, immediately appear as required by the trial court.

3 **SECTION 4.** ORS 133.315 is amended to read:

4 133.315. (1) No peace officer shall be held criminally or civilly liable for making an arrest pur-
 5 suant to ORS 133.055 (2) or 133.310 (3), ~~(4)~~ or ~~[(5)]~~ **(6)** provided the peace officer acts in good faith
 6 and without malice.

7 (2) No peace officer shall be criminally or civilly liable for any arrest made under ORS 133.310
 8 ~~[(4)]~~ **(5)** if the officer reasonably believes that:

9 (a) A document or other writing supplied to the officer under ORS 133.310 ~~[(4)]~~ **(5)** is an accurate
 10 copy of a foreign restraining order as defined by ORS 24.190 and is the most recent order in effect
 11 between the parties; and

12 (b) The person restrained by the order has been personally served with a copy of the order or
 13 has actual notice of the order.

14 **SECTION 5.** ORS 133.381 is amended to read:

15 133.381. (1) When a peace officer arrests a person pursuant to ORS 133.310 (3) **or** **(4)** or pursuant
 16 to a warrant issued under ORS 33.075 by a court or judicial officer for the arrest of a person
 17 charged with contempt for violating an order issued under ORS 107.095 (1)(c) or (d), 107.716, 107.718,
 18 124.015 or 124.020, if the person is arrested in a county other than that in which the warrant or
 19 order was originally issued, the peace officer shall take the person before a magistrate as provided
 20 in ORS 133.450. If it becomes necessary to take the arrested person to the county in which the
 21 warrant or order was originally issued, the costs of such transportation shall be paid by that county.

22 (2) If a person arrested for the reasons described in subsection (1) of this section is subsequently
 23 found subject to the imposition of sanctions for contempt, the court, in addition to any other sanc-
 24 tion it may impose, may order the person to repay a county all costs of transportation incurred by
 25 the county pursuant to subsection (1) of this section.

26 **SECTION 6.** ORS 135.260 is amended to read:

27 135.260. (1) Conditional release may include one or more of the following conditions:

28 (a) Release of the defendant into the care of a qualified person or organization responsible for
 29 supervising the defendant and assisting the defendant in appearing in court. The supervisor shall
 30 not be required to be financially responsible for the defendant, nor to forfeit money in the event the
 31 defendant fails to appear in court. The supervisor, however, shall notify the court immediately in the
 32 event that the defendant breaches the conditional release.

33 (b) Reasonable regulations on the activities, movements, associations and residences of the de-
 34 fendant, including, if the court finds it appropriate, restriction of the defendant to the defendant's
 35 own residence or to the premises thereof.

36 (c) Release of the defendant from custody during working hours.

37 (d) Any other reasonable restriction designed to assure the defendant's appearance.

38 (2) Except as otherwise provided in ~~[ORS 135.250 (2)(b)]~~ **section 1 (3) of this 2011 Act**, condi-
 39 tional release shall include a prohibition against contacting the victim if the defendant is charged
 40 with an offense that also constitutes domestic violence.

41 **SECTION 7.** ORS 181.550 is amended to read:

42 181.550. (1) All law enforcement agencies shall report to the Department of State Police statis-
 43 tics concerning crimes:

44 (a) As directed by the department, for purposes of the Uniform Crime Reporting System of the
 45 Federal Bureau of Investigation.

1 (b) As otherwise directed by the Governor concerning general criminal categories of criminal
2 activities but not individual criminal records.

3 (c) Motivated by prejudice based on the perceived race, color, religion, national origin, sexual
4 orientation, marital status, political affiliation or beliefs, membership or activity in or on behalf of
5 a labor organization or against a labor organization, physical or mental disability, age, economic or
6 social status or citizenship of the victim.

7 (d) And other incidents arising out of domestic disturbances under ORS 133.055 (2) and 133.310
8 (3) **and** (4).

9 (2) The department shall prepare:

10 (a) Quarterly and annual reports for the use of agencies reporting under subsection (1) of this
11 section, and others having an interest therein;

12 (b) An annual public report of the statistics on the incidence of crime motivated by prejudice
13 based on the perceived race, color, religion, national origin, sexual orientation, marital status, poli-
14 tical affiliation or beliefs, membership or activity in or on behalf of a labor organization or against
15 a labor organization, physical or mental disability, age, economic or social status or citizenship of
16 the victim;

17 (c) Quarterly and annual reports of the statistics on the incidence of crimes and incidents of
18 domestic disturbances; and

19 (d) Special reports as directed by the Governor.

20 **SECTION 8. Section 1 of this 2011 Act and the amendments to ORS 133.310, 133.315,**
21 **133.381, 135.250, 135.260 and 181.550 by sections 2 to 7 of this 2011 Act apply to persons**
22 **charged with, or sentenced for, a crime committed on or after the effective date of this 2011**
23 **Act.**

24 **SECTION 9. This 2011 Act being necessary for the immediate preservation of the public**
25 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
26 **on its passage.**

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