

House Bill 2931

Sponsored by Representative HOLVEY (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 order, if requested by petitioner, that respondent in Family Abuse Prevention Act proceeding be restrained from electronic tracking of petitioner or petitioner's children. Defines contact that can be prohibited in stalking order to include electronic tracking.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to prohibition against electronic tracking in protective orders; amending ORS 107.718 and
3 163.730; and declaring an emergency.

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

5 **SECTION 1.** ORS 107.718 is amended to read:

6 107.718. (1) When a person files a petition under ORS 107.710, the circuit court shall hold an
7 ex parte hearing in person or by telephone on the day the petition is filed or on the following judi-
8 cial day. Upon a showing that the petitioner has been the victim of abuse committed by the re-
9 spondent within 180 days preceding the filing of the petition, that there is an imminent danger of
10 further abuse to the petitioner and that the respondent represents a credible threat to the physical
11 safety of the petitioner or the petitioner's child, the court shall, if requested by the petitioner, order:

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

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

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

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

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

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

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

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

8 (i) Except as described in subsection (12) of this section or parenting time ordered under this
 9 section, that the respondent have no contact with the petitioner in person, by telephone or by
 10 mail; or

11 **(j) That the respondent be restrained from electronic tracking of the petitioner or of any**
 12 **children in the custody of the petitioner. As used in this paragraph, “electronic tracking”**
 13 **means determining the location of the petitioner, or the location of any children in the cus-**
 14 **tody of the petitioner, by any technological means, including but not limited to the use of**
 15 **cellular phones, the Internet, cameras, videotape, a global positioning system or interception**
 16 **of wire, electronic or oral communications.**

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

24 (3) The court’s order under subsection (1) of this section is effective for a period of one year or
 25 until the order is withdrawn or amended, or until the order is superseded as provided in ORS
 26 107.722, whichever is sooner.

27 (4) If respondent is restrained from entering, or attempting to enter, an area surrounding
 28 petitioner’s residence or any other premises, the order restraining respondent shall specifically de-
 29 scribe the area.

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

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

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

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

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

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

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

44 (f) That no overnight parenting time occur.

45 (7) The State Court Administrator shall prescribe the content and form of the petition, order and

1 related forms for use under ORS 107.700 to 107.735. The clerk of the court shall make available the
 2 forms and an instructional brochure explaining the rights set forth under ORS 107.700 to 107.735.

3 (8) If the court orders relief:

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

10 (b) The county sheriff shall serve the respondent personally unless the petitioner elects to have
 11 the respondent served personally by a private party or by a peace officer who is called to the scene
 12 of a domestic disturbance at which the respondent is present, and who is able to obtain a copy of
 13 the order within a reasonable amount of time. Proof of service shall be made in accordance with
 14 ORS 107.720. When the order does not contain the respondent's date of birth and service is effected
 15 by the sheriff or other peace officer, the sheriff or officer shall verify the respondent's date of birth
 16 with the respondent and shall record that date on the order or proof of service entered into the Law
 17 Enforcement Data System under ORS 107.720.

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

20 (9) If the county sheriff:

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

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

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

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

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

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

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

3 **SECTION 2.** ORS 163.730 is amended to read:

4 163.730. As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

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

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

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

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

9 (b) Following the other person;

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

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

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

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

15 (g) Committing a crime against the other person;

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

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

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

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

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

25 **(m) Electronic tracking of the other person or of a member of that person's family or**
26 **household. As used in this paragraph, "electronic tracking" means determining the location**
27 **of the other person or of a member of that person's family or household by any technological**
28 **means, including but not limited to, the use of cellular phones, the Internet, cameras, vide-**
29 **otape, a global positioning system or interception of wire, electronic or oral**
30 **communications.**

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

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

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

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

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

38 **SECTION 3. This 2011 Act being necessary for the immediate preservation of the public**
39 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
40 **on its passage.**

41