

**Enrolled**  
**Senate Bill 396**

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CHAPTER .....

AN ACT

Relating to protective orders; creating new provisions; and amending ORS 107.720, 107.723, 107.730, 124.022, 124.030, 163.741, 419B.845 and 419B.846.

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

**SECTION 1.** 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], **that** 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] **of the order**, the clerk of the court or any other person serving the petition and order shall **immediately** 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] **and copies** 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 **and an affidavit of proof of service** is waived [and an accompanying proof of service is not necessary]. Upon receipt of a [true] copy of the order and **notice of completion** of any required service **by a member of a law enforcement agency**, the county sheriff shall [forthwith] **immediately** 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. **If the petition and order were served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System and databases of the National Crime Information Center upon receipt of a true copy of the affidavit of proof of service.** The sheriff shall [also] provide the petitioner with a true copy of [the] **any required** proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of [such] **the** order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of [such] **the** order may be informed of the existence and terms of [such] **the** order. [Such] **The** order [shall be] **is** fully enforceable in any county or tribal land in [the] **this** 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 **immediately** deliver *[forthwith]* a *[true]* copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of *[such]* **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.

(4) Pending a contempt hearing for alleged violation of a restraining order issued *[pursuant to]* **under** 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]* a restraining order is issued **under ORS 107.095 (1)(c) or (d), 107.716 or 107.718**, the issuing court shall set a security amount for the violation of *[such]* **the** order.

**SECTION 2.** ORS 107.723 is amended to read:

107.723. (1) A sheriff may serve a restraining order **issued** under ORS *[107.718]* **107.700 to 107.735** 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]* **107.700 to 107.735** that was transmitted to the sheriff by a *[trial court administrator or another sheriff using a telephonic facsimile communication device]* **court or law enforcement agency using an electronic communication device.** *[A copy of the facsimile must be attached to the sheriff's return of service.]* Before transmitting a **copy** of a restraining order to a sheriff under this subsection **by telephonic facsimile or electronic mail**, the person sending the *[facsimile]* **copy** must receive confirmation *[by telephone]* from the sheriff's office that *[a telephonic facsimile]* **an electronic communication device** is available and operating. **For purposes of this subsection, "electronic communication device" means a device by which any kind of electronic communication can be made, including but not limited to communication by telephonic facsimile and electronic mail.**

**SECTION 3.** ORS 107.730 is amended to read:

107.730. (1) At any time after an order has been issued under ORS 107.700 to 107.735 and after the time period set forth in ORS 107.718 (10)(a):

(a) A party may request that the court modify terms in the order that were entered under ORS 107.718 (1)(a), (b), (g) or (i) for good cause shown.

(b) A petitioner may request that the court modify by removing or making less restrictive terms in the order that were entered under ORS 107.718 (1)(b), (g) or (i) for good cause shown. Application to the court under this paragraph may be by ex parte motion.

(2) The clerk of the court shall provide without charge the number of certified true copies of the request for modification of the order and notice of hearing necessary to effect service and, at the election of the party requesting the modification, shall have a true copy of the request and notice delivered to the county sheriff for service upon the other party.

*[(3) Service shall be in the manner provided by law for service of summons. The county sheriff shall serve the other party personally unless the party requesting the modification elects to have the other party served personally by a private party.]*

**(3) The county sheriff shall personally serve the other party with a request under subsection (1)(a) of this section, unless the party requesting the modification under subsection (1)(a) of this section elects to have the other party personally served by a private party or unless otherwise ordered by the court.**

(4) The provisions of ORS 107.716 (5) apply to a modification of an order under this section.

**(5) The clerk of the court shall deliver a copy of an order of modification entered under subsection (1) of this section to the county sheriff for service and entry into the Law Enforcement Data System as provided in ORS 107.723.**

**(6)(a) The county sheriff shall serve a copy of an order of modification:**

**(A) Entered under subsection (1)(a) of this section by personal service on the nonrequesting party.**

**(B) Entered under subsection (1)(b) of this section by mailing a copy of the order to the nonrequesting party by first class mail.**

**(b) If the order of modification recites that the respondent appeared in person before the court, the necessity for service of the order and an affidavit of proof of service is waived.**

[~~(5)~~] (7) The court may assess against either party a reasonable attorney fee and [~~such~~] costs [~~as~~] **that** may be incurred in the proceeding.

**SECTION 4.** ORS 124.022 is amended to read:

124.022. (1) A sheriff may serve a restraining order **issued** 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~~] **court or law enforcement agency using an electronic 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 **by telephonic facsimile or electronic mail**, the person sending the [~~facsimile~~] **copy** must receive confirmation [~~by telephone~~] from the sheriff's office that [~~a telephonic facsimile~~] **an electronic communication device** is available and operating. **For purposes of this subsection, "electronic communication device" means a device by which any kind of electronic communication can be made, including but not limited to communication by telephonic facsimile and electronic mail.**

**SECTION 5.** 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~~] **of the order**, the clerk of the court or any other person serving the petition and order shall **immediately** 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~~] **and copies** 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 **and an affidavit of proof of service** is waived [~~and an accompanying proof of service is not necessary~~]. Upon receipt of a [~~true~~] copy of the order and **notice of completion** of any required service **by a member of a law enforcement agency**, the county sheriff shall [~~forthwith~~] **immediately** enter the order into the Law Enforcement Data System maintained by the Department of State Police. **If the petition and order were served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System upon receipt of a true copy of the affidavit of proof of service.** Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of [~~such~~] **the** order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of [~~such~~] **the** order may be informed of the existence and terms of [~~such~~] **the** order. [~~Such~~] **The** order [~~shall be~~] **is** fully enforceable in any county in [~~the~~] **this** 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 **immediately** deliver *[forthwith]* a *[true]* copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of *[such]* **the** 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]* **under** 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]* **a** restraining order is issued **under ORS 124.015 or 124.020**, the issuing court shall set a security amount for the violation of *[such]* **the** order.

**SECTION 6.** ORS 163.741 is amended to read:

163.741. (1) Service of a stalking protective order shall be made by personal delivery of a copy of the order to the respondent. The respondent need not be served if an order of the court indicates that the respondent appeared in person before the court.

(2) Whenever a stalking protective order, as authorized by ORS 163.735 or 163.738, is served on a respondent, the person serving the order shall **immediately** 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, **and a copy of the order**. If service of the order is not required under subsection (1) of this section, a copy of the order *[shall]* **must** be delivered to the sheriff by the court. Upon receipt of **a copy of the order and notice of completion of** any required *[proof of]* service **by a member of a law enforcement agency**, the county sheriff shall *[forthwith]* **immediately** 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. **If the order was served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System and databases of the National Crime Information Center upon receipt of a true copy of the affidavit of proof of service.** The sheriff shall *[also]* provide the complainant with a true copy of any required proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of *[such]* **the** order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of *[such]* **the** order may be informed of the existence and terms of *[such]* **the** order. *[Such]* **The** order *[shall be]* **is** fully enforceable in any county in *[the]* **this** 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.]*

(3) 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.

(4) When a stalking protective order is terminated by order of the court, the clerk of the court shall **immediately** 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 7.** 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.] **the person's essential personal effects including, but not limited to, clothing, toiletries, medications, Social Security cards, birth certificates, identification and tools of the trade. The restrained person is entitled to remove the person's essential personal effects under this paragraph on one occasion only and is required to be accompanied by a peace officer. The restrained person and the peace officer shall remain for no longer than 20 minutes and the peace officer may temporarily interrupt the removal of essential personal effects at any time. Nothing in this paragraph affects a peace officer's duty to arrest under ORS 133.055 and 133.310. A peace officer who accompanies a restrained person under this paragraph has immunity from any liability, civil or criminal, for any actions the person commits during the removal of the person's essential personal effects.**

(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 **a copy of the order and notice of completion of any required service by a member of a law enforcement agency**, the sheriff shall immediately enter the order into the Law Enforcement Data System maintained by the Department of State Police. **If the order was served on the person to be restrained by a person other than a member of a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System upon**

**receipt of a true copy of the affidavit of proof of service.** 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]* **is** 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]* **immediately** 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 8.** ORS 419B.846 is amended to read:

419B.846. (1) A sheriff may serve a restraining order **issued** 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]* **court or law enforcement agency using an electronic 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 **by telephonic facsimile or electronic mail**, the person sending the *[facsimile]* **copy** must receive confirmation *[by telephone]* from the sheriff's office that *[a telephonic facsimile]* **an electronic** communication device is available and operating. **For purposes of this subsection, "electronic communication device" means a device by which any kind of electronic communication can be made, including but not limited to communication by telephonic facsimile and electronic mail.**

**SECTION 9.** The amendments to ORS 107.720, 107.723, 107.730, 124.022, 124.030, 163.741, 419B.845 and 419B.846 by sections 1 to 8 of this 2011 Act apply to protective orders entered on or after the effective date of this 2011 Act.

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**Passed by Senate March 23, 2011**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 25, 2011**

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

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**Approved:**

.....M,....., 2011

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John Kitzhaber, Governor

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

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Kate Brown, Secretary of State