

# Senate Bill 396

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Sheriff's Civil Command Council)

## 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**.

Authorizes sheriff to serve copy of protective order transmitted by electronic communication device from court or law enforcement agency.

Provides that sheriff shall serve copy of order that modifies restraining order to be less restrictive by mail.

Limits removal of essential personal effects by restrained person in dependency proceeding to one occasion, for up to 20 minutes, with accompaniment by peace officer.

## A BILL FOR AN ACT

1  
2 Relating to protective orders; creating new provisions; and amending ORS 107.720, 107.723, 107.730,  
3 124.022, 124.030, 163.741, 419B.845 and 419B.846.

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

5 **SECTION 1.** ORS 107.720 is amended to read:

6 107.720. (1)(a) Whenever a restraining order, as authorized by ORS 107.095 (1)(c) or (d), 107.716  
7 or 107.718 [*which*], **that** includes a security amount and an expiration date pursuant to ORS 107.095,  
8 107.716 or 107.718 and this section, is issued and the person to be restrained has actual notice  
9 [*thereof*] **of the order**, the clerk of the court or any other person serving the petition and order shall  
10 deliver [*forthwith*] to a county sheriff a true copy of the affidavit of proof of service, on which it is  
11 stated that personal service of the petition and order was served on the respondent, [*a copy*] **and**  
12 **copies** of the petition and [*a true copy of the*] order. If an order entered by the court recites that  
13 the respondent appeared in person before the court, the necessity for [*further*] service of the order  
14 **and an affidavit of proof of service** is waived [*and an accompanying proof of service is not neces-*  
15 *sary*]. Upon receipt of a [*true*] copy of the order and **notice of completion** of any required service  
16 **by a member of a law enforcement agency**, the county sheriff shall [*forthwith*] enter the order  
17 into the Law Enforcement Data System maintained by the Department of State Police and into the  
18 databases of the National Crime Information Center of the United States Department of Justice. **If**  
19 **the petition and order were served on the respondent by a person other than a member of**  
20 **a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement**  
21 **Data System and databases of the National Crime Information Center upon receipt of a true**  
22 **copy of the affidavit of proof of service.** The sheriff shall [*also*] provide the petitioner with a true  
23 copy of [*the*] **any required** proof of service. Entry into the Law Enforcement Data System consti-  
24 tutes notice to all law enforcement agencies of the existence of [*such*] **the** order. Law enforcement  
25 agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged  
26 violation of [*such*] **the** order may be informed of the existence and terms of [*such*] **the** order.  
27 [*Such*] **The** order [*shall be*] **is** fully enforceable in any county or tribal land in [*the*] **this** state. [*The*  
28 *petitioner may elect to deliver documents personally to a county sheriff or to have them delivered by a*

**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 *private person for entry into the Law Enforcement Data System and the databases of the National*  
 2 *Crime Information Center of the United States Department of Justice.]*

3 (b) When a restraining order has been entered into the Law Enforcement Data System and the  
 4 databases of the National Crime Information Center of the United States Department of Justice  
 5 under paragraph (a) of this subsection, a county sheriff shall cooperate with a request from a law  
 6 enforcement agency from any other jurisdiction to verify the existence of the restraining order or  
 7 to transmit a copy of the order to the requesting jurisdiction.

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

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

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

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

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

24 107.723. (1) A sheriff may serve a restraining order **issued** under ORS [*107.718*] **107.700 to**  
 25 **107.735** in the county in which the sheriff was elected and in any [*other*] county that is adjacent to  
 26 the county in which the sheriff was elected.

27 (2) A sheriff may serve and enter into the Law Enforcement Data System a [*facsimile of a cer-*  
 28 *tified true*] copy of a restraining order under ORS [*107.718*] **107.700 to 107.735** that was transmitted  
 29 to the sheriff by a [*trial court administrator or another sheriff using a telephonic facsimile communi-*  
 30 *cation device*] **court or law enforcement agency using an electronic communication device.** [*A*  
 31 *copy of the facsimile must be attached to the sheriff's return of service.*] Before transmitting **a copy**  
 32 **of** a restraining order to a sheriff under this subsection, the person sending the [*facsimile*] **copy** must  
 33 receive confirmation [*by telephone*] from the sheriff's office that [*a telephonic facsimile*] **an electronic**  
 34 communication device is available and operating.

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

36 107.730. (1) At any time after an order has been issued under ORS 107.700 to 107.735 and after  
 37 the time period set forth in ORS 107.718 (10)(a):

38 (a) A party may request that the court modify terms in the order that were entered under ORS  
 39 107.718 (1)(a), (b), (g) or (i) for good cause shown.

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

43 (2) The clerk of the court shall provide without charge the number of certified true copies of  
 44 the request for modification of the order and notice of hearing necessary to effect service and, at  
 45 the election of the party requesting the modification, shall have a true copy of the request and no-

1 tice delivered to the county sheriff for service upon the other party.

2 (3) Service **of the request under subsection (1) of this section** shall be in the manner pro-  
3 vided by law for service of summons. The county sheriff shall serve the other party [*personally*]  
4 unless the party requesting the modification elects to have the other party served [*personally*] by a  
5 private party.

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

7 (5) **The clerk of the court shall deliver a copy of an order of modification entered under**  
8 **subsection (1) of this section to the county sheriff for service and entry into the Law**  
9 **Enforcement Data System as provided in ORS 107.723. The county sheriff shall serve a copy**  
10 **of an order of modification entered under subsection (1)(a) of this section by personal service**  
11 **on the nonrequesting party.**

12 (6) **The county sheriff shall serve a copy of an order of modification entered under sub-**  
13 **section (1)(b) of this section by mailing a copy of the order of modification to the**  
14 **nonrequesting party by first class mail. If the order recites that the respondent appeared in**  
15 **person before the court, the necessity for service of the order and an affidavit of proof of**  
16 **service is waived.**

17 [(5)] (7) The court may assess against either party a reasonable attorney fee and [*such*] costs  
18 [*as*] **that** may be incurred in the proceeding.

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

20 124.022. (1) A sheriff may serve a restraining order **issued** under ORS 124.020 in the county in  
21 which the sheriff was elected and in any [*other*] county that is adjacent to the county in which the  
22 sheriff was elected.

23 (2) A sheriff may serve and enter into the Law Enforcement Data System a [*facsimile of a cer-*  
24 *tified true*] copy of a restraining order under ORS 124.020 that was transmitted to the sheriff by a  
25 [*trial court administrator or another sheriff using a telephonic facsimile communication device*] **court**  
26 **or law enforcement agency using an electronic communication device.** [*A copy of the facsimile*  
27 *must be attached to the sheriff's return of service.*] Before transmitting a restraining order to a sheriff  
28 under this subsection, the person sending the [*facsimile*] **copy** must receive confirmation [*by tele-*  
29 *phone*] from the sheriff's office that [*a telephonic facsimile*] **an electronic** communication device is  
30 available and operating.

31 **SECTION 5.** ORS 124.030 is amended to read:

32 124.030. (1) Whenever a restraining order, as authorized by ORS 124.015 or 124.020, that includes  
33 a security amount and an expiration date pursuant to ORS 124.015 and 124.020 and this section, is  
34 issued and the person to be restrained has actual notice [*thereof*] **of the order**, the clerk of the court  
35 or any other person serving the petition and order shall deliver [*forthwith*] to a county sheriff a true  
36 copy of the affidavit of proof of service, on which it is stated that personal service of the petition  
37 and order was served on the respondent, [*a copy*] **and copies** of the petition and [*a true copy of*  
38 *the*] order. If an order entered by the court recites that the respondent appeared in person before  
39 the court, the necessity for [*further*] service of the order **and an affidavit of proof of service** is  
40 waived [*and an accompanying proof of service is not necessary*]. Upon receipt of a [*true*] copy of the  
41 order and **notice of completion of any required service by a member of a law enforcement**  
42 **agency**, the county sheriff shall [*forthwith*] enter the order into the Law Enforcement Data System  
43 maintained by the Department of State Police. **If the petition and order were served on the re-**  
44 **spondent by a person other than a member of a law enforcement agency, the county sheriff**  
45 **shall enter the order into the Law Enforcement Data System upon receipt of a true copy of**

1 **the affidavit of proof of service.** Entry into the Law Enforcement Data System constitutes notice  
 2 to all law enforcement agencies of the existence of *[such]* **the** order. Law enforcement agencies shall  
 3 establish procedures adequate to ensure that an officer at the scene of an alleged violation of  
 4 *[such]* **the** order may be informed of the existence and terms of *[such]* **the** order. *[Such]* **The** order  
 5 *[shall be]* **is** fully enforceable in any county in *[the]* **this** state. *[The petitioner or guardian petitioner*  
 6 *may elect to deliver documents personally to a county sheriff or to have them delivered by a private*  
 7 *person for entry into the Law Enforcement Data System.]*

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

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

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

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

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

24 163.741. (1) Service of a stalking protective order shall be made by personal delivery of a copy  
 25 of the order to the respondent. The respondent need not be served if an order of the court indicates  
 26 that the respondent appeared in person before the court.

27 (2) Whenever a stalking protective order, as authorized by ORS 163.735 or 163.738, is served on  
 28 a respondent, the person serving the order shall deliver *[forthwith]* to the county sheriff a true copy  
 29 of the *[order and an]* affidavit of proof of service, on which it is stated that personal service of the  
 30 order was made on the respondent, **and a copy of the order.** If service of the order is not required  
 31 under subsection (1) of this section, a copy of the order *[shall]* **must** be delivered to the sheriff by  
 32 the court. Upon receipt of **a copy of the order and notice of completion of** any required *[proof*  
 33 *of]* service **by a member of a law enforcement agency**, the county sheriff shall *[forthwith]* enter  
 34 the order into the Law Enforcement Data System maintained by the Department of State Police and  
 35 into the databases of the National Crime Information Center of the United States Department of  
 36 Justice. **If the order was served on the respondent by a person other than a member of a law**  
 37 **enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data**  
 38 **System and databases of the National Crime Information Center upon receipt of a true copy**  
 39 **of the affidavit of proof of service.** The sheriff shall *[also]* provide the complainant with a true  
 40 copy of any required proof of service. Entry into the Law Enforcement Data System constitutes  
 41 notice to all law enforcement agencies of the existence of *[such]* **the** order. Law enforcement agen-  
 42 cies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation  
 43 of *[such]* **the** order may be informed of the existence and terms of *[such]* **the** order. *[Such]* **The** order  
 44 *[shall be]* **is** fully enforceable in any county in *[the]* **this** state. *[The complainant may elect to deliver*  
 45 *documents personally to a county sheriff or to have them delivered by a private person for entry into*

1 *the Law Enforcement Data System and the databases of the National Crime Information Center of the*  
 2 *United States Department of Justice.]*

3 (3) When a stalking protective order has been entered into the Law Enforcement Data System  
 4 and the databases of the National Crime Information Center of the United States Department of  
 5 Justice under subsection (1) of this section, a county sheriff shall cooperate with a request from a  
 6 law enforcement agency from any other jurisdiction to verify the existence of the stalking protective  
 7 order or to transmit a copy of the order to the requesting jurisdiction.

8 (4) When a stalking protective order is terminated by order of the court, the clerk of the court  
 9 shall deliver *[forthwith]* a *[true]* copy of the termination order to the county sheriff with whom the  
 10 original order was filed. Upon receipt of the termination order, the county sheriff shall promptly  
 11 remove the original order from the Law Enforcement Data System and the databases of the National  
 12 Crime Information Center of the United States Department of Justice.

13 **SECTION 7.** ORS 419B.845 is amended to read:

14 419B.845. (1)(a) When a petition has been filed alleging that the child has been physically or  
 15 sexually abused, the court may enter an order restraining the alleged perpetrator of the abuse from  
 16 having contact with the child or attempting to contact the child and requiring the alleged  
 17 perpetrator to move from the household in which the child resides. The court may issue a restrain-  
 18 ing order only if the court finds that:

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

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

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

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

28 (A) Name;

29 (B) Address;

30 (C) Age and birth date;

31 (D) Race;

32 (E) Sex;

33 (F) Height and weight; and

34 (G) Color of hair and eyes.

35 (d) The court may include in the order a provision that a peace officer accompany the restrained  
 36 person to the household when it is necessary for the *[restrained]* person to remove *[personal prop-*  
 37 *erty.]* **the person's essential personal effects including, but not limited to, clothing, toiletries,**  
 38 **medications, Social Security cards, birth certificates, identification and tools of the trade.**  
 39 **The restrained person is entitled to remove the person's essential personal effects under this**  
 40 **paragraph on one occasion only and is required to be accompanied by a peace officer. The**  
 41 **restrained person and the peace officer shall remain for no longer than 20 minutes and the**  
 42 **peace officer may temporarily interrupt the removal of essential personal effects at any**  
 43 **time. Nothing in this paragraph affects a peace officer's duty to arrest under ORS 133.055**  
 44 **and 133.310. A peace officer who accompanies a restrained person under this paragraph has**  
 45 **immunity from any liability, civil or criminal, for any actions the person commits during the**

1 **removal of the person's essential personal effects.**

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

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

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

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

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

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

19 (4) Upon receipt of **a copy of the order and notice of completion of any required service by a**  
20 **member of a law enforcement agency**, the sheriff shall [*immediately*] enter the order into the Law  
21 Enforcement Data System maintained by the Department of State Police. **If the order was served**  
22 **on the person to be restrained by a person other than a member of a law enforcement**  
23 **agency, the county sheriff shall enter the order into the Law Enforcement Data System upon**  
24 **receipt of a true copy of the affidavit of proof of service.** Entry into the Law Enforcement Data  
25 System constitutes notice to all law enforcement agencies of the existence of the order. Law  
26 enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of  
27 an alleged violation of the order may be informed of the existence and terms of the order. The order  
28 [*shall be*] **is** fully enforceable in any county in this state.

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

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

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

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

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

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

4 **SECTION 8.** ORS 419B.846 is amended to read:

5 419B.846. (1) A sheriff may serve a restraining order **issued** under ORS 419B.845 in the county  
6 in which the sheriff was elected and in any *[other]* county that is adjacent to the county in which  
7 the sheriff was elected.

8 (2) A sheriff may serve and enter into the Law Enforcement Data System a *[facsimile of a cer-*  
9 *tified true]* copy of a restraining order under ORS 419B.845 that was transmitted to the sheriff by a  
10 *[trial court administrator or another sheriff using a telephonic facsimile communication device]* **court**  
11 **or law enforcement agency using an electronic communication device.** *[A copy of the facsimile*  
12 *must be attached to the sheriff's return of service.]* Before transmitting a restraining order to a sheriff  
13 under this subsection, the person sending the *[facsimile]* **copy** must receive confirmation *[by tele-*  
14 *phone]* from the sheriff's office that *[a telephonic facsimile]* **an electronic** communication device is  
15 available and operating.

16 **SECTION 9.** The amendments to ORS 107.720, 107.723, 107.730, 124.022, 124.030, 163.741,  
17 419B.845 and 419B.846 by sections 1 to 8 of this 2011 Act apply to protective orders entered  
18 on or after the effective date of this 2011 Act.