

B-Engrossed
House Bill 2779

Ordered by the House July 1
Including House Amendments dated March 25 and July 1

Sponsored by Representatives GELSER, OLSON; Representatives BARKER, BARTON, BERGER, GARRETT, GOMBERG, HICKS, KENY-GUYER, KOMP, TOMEI

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.

Authorizes issuance of restraining order protecting certain persons subjected to sexual abuse.
Increases, for biennium beginning July 1, 2013, appropriation from General Fund to Judicial Department to implement provisions of Act.
Becomes operative January 1, 2014.
Declares emergency, effective July 1, 2013.

A BILL FOR AN ACT

1
2 Relating to protective orders for victims of sexual abuse; creating new provisions; amending ORS
3 21.245, 36.185, 40.210, 107.835, 133.310, 133.381 and 659A.270 and ORCP 79 E; appropriating
4 money; and declaring an emergency.

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

6 **SECTION 1. As used in sections 1 to 8 of this 2013 Act:**

7 (1) **“Family or household members,” “interfere,” “intimidate,” “menace” and “molest”**
8 **have the meanings given those terms in ORS 107.705.**

9 (2) **“Sexual abuse” means sexual contact with:**

10 (a) **A person who does not consent to the sexual contact; or**

11 (b) **A person who is considered incapable of consenting to a sexual act under ORS 163.315,**
12 **unless the sexual contact would be lawful under ORS 163.325 or 163.345.**

13 (3) **“Sexual contact” has the meaning given that term in ORS 163.305.**

14 **SECTION 2. (1) A person who has been subjected to sexual abuse and who reasonably**
15 **fears for the person’s physical safety may petition the circuit court for a restraining order**
16 **if:**

17 (a) **The person and the respondent are not family or household members;**

18 (b) **The respondent is at least 18 years of age; and**

19 (c) **The respondent is not prohibited from contacting the person pursuant to a foreign**
20 **restraining order as defined in ORS 24.190, an order issued under ORS 30.866, 124.015, 124.020,**
21 **163.738 or 419B.845 or an order entered in a criminal action.**

22 (2)(a) **A petition seeking relief under sections 1 to 8 of this 2013 Act must be filed in the**
23 **circuit court for the county in which the petitioner or the respondent resides. The petition**
24 **may be filed, without the appointment of a guardian ad litem, by a person who is at least 12**
25 **years of age or by a parent or lawful guardian of a person who is under 18 years of age.**

26 (b) **The petition must allege that:**

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 (A) The petitioner reasonably fears for the petitioner's physical safety with respect to the
2 respondent; and

3 (B) The respondent subjected the petitioner to sexual abuse within the 180 days preceding
4 the filing of the petition.

5 (c) Statements in the petition must be made under oath or affirmation.

6 (d) The petitioner has the burden of proving a claim under sections 1 to 8 of this 2013
7 Act by a preponderance of the evidence.

8 (3) The following periods of time may not be counted for the purpose of computing the
9 180-day period described in this section and section 3 of this 2013 Act:

10 (a) Any time during which the respondent is incarcerated.

11 (b) Any time during which the respondent has a principal residence more than 100 miles
12 from the principal residence of the petitioner.

13 (c) Any time during which the respondent is subject to an order described in subsection
14 (1)(c) of this section.

15 **SECTION 3.** (1) When a petition is filed in accordance with section 2 of this 2013 Act, the
16 circuit court shall hold an ex parte hearing in person or by telephone on the day the petition
17 is filed or on the following judicial day. Upon a finding that it is objectively reasonable for a
18 person in the petitioner's situation to fear for the person's physical safety if an order
19 granting relief under sections 1 to 8 of this 2013 Act is not entered and that the respondent
20 has subjected the petitioner to sexual abuse within the 180 days preceding the filing of the
21 petition, the circuit court:

22 (a) Shall enter an order restraining the respondent from contacting the petitioner and
23 from intimidating, molesting, interfering with or menacing the petitioner, or attempting to
24 intimidate, molest, interfere with or menace the petitioner.

25 (b) If the petitioner requests, may order:

26 (A) That the respondent be restrained from contacting the petitioner's children or family
27 or household members;

28 (B) That the respondent be restrained from entering, or attempting to enter, a reason-
29 able area surrounding the petitioner's residence;

30 (C) That the respondent be restrained from intimidating, molesting, interfering with or
31 menacing any children or family or household members of the petitioner, or attempting to
32 intimidate, molest, interfere with or menace any children or family or household members
33 of the petitioner;

34 (D) That the respondent be restrained from entering, or attempting to enter, any prem-
35 ises and a reasonable area surrounding the premises when necessary to prevent the re-
36 spondent from intimidating, molesting, interfering with or menacing the petitioner or the
37 petitioner's children or family or household members; and

38 (E) Other relief necessary to provide for the safety and welfare of the petitioner or the
39 petitioner's children or family or household members.

40 (2) If the respondent is restrained from entering or attempting to enter an area sur-
41 rounding the petitioner's residence or any other premises, the restraining order must spe-
42 cifically describe the area or premises.

43 (3) When the circuit court enters a restraining order under this section, the court shall
44 set a security amount for the violation of the order.

45 (4) If the circuit court enters a restraining order under subsection (1) of this section:

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

8 (b) The county sheriff shall serve the respondent personally unless the petitioner elects
9 to have the respondent served personally by another party. Proof of service shall be made
10 in accordance with section 6 of this 2013 Act. When the restraining order does not contain
11 the respondent's date of birth and service is effected by the sheriff, the sheriff shall verify
12 the respondent's date of birth with the respondent and shall record that date on the re-
13 straining order or proof of service entered into the Law Enforcement Data System under
14 section 6 of this 2013 Act.

15 (5) If the county sheriff:

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

19 (b) Cannot complete service within 10 days after accepting the restraining order and pe-
20 tition, the sheriff shall notify the petitioner, at the address provided by the petitioner, that
21 the documents have not been served. If the petitioner does not respond within 10 days, the
22 sheriff shall hold the restraining order and petition for future service and file a return to the
23 clerk of the court showing that service was not completed.

24 (6)(a) Within 30 days after a restraining order is served under this section, the respond-
25 ent may request a circuit court hearing upon any relief granted.

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

30 (7) If the respondent fails to request a hearing within 30 days after a restraining order
31 is served, the restraining order is confirmed by operation of law.

32 (8) A restraining order entered under this section is effective for a period of one year,
33 unless the restraining order is renewed, modified or terminated in accordance with sections
34 1 to 8 of this 2013 Act.

35 **SECTION 4.** (1) If the respondent requests a hearing under section 3 (6) of this 2013 Act,
36 the circuit court shall hold the hearing within 21 days after the request. At the hearing, the
37 circuit court may terminate or modify the restraining order issued under section 3 of this
38 2013 Act.

39 (2)(a) If service of a notice of hearing is inadequate to provide a party with sufficient
40 notice of the hearing, the circuit court may extend the date of the hearing for up to five days
41 so that the party may seek representation.

42 (b) If one party is represented by an attorney at the hearing, the circuit court may ex-
43 tend the date of the hearing for up to five days at the other party's request so that the other
44 party may seek representation.

45 (3) If the circuit court continues the restraining order issued under section 3 of this 2013

1 Act, with or without modification, at a hearing about which the respondent received actual
2 notice and the opportunity to be heard, the court shall include in the restraining order a
3 certificate in substantially the following form in a separate section immediately above the
4 signature of the judge:

5
6
7 **CERTIFICATE OF COMPLIANCE**
8 **WITH THE**
9 **VIOLENCE AGAINST WOMEN ACT OF 1994**

10
11 **This protective order meets all full faith and credit requirements of the Violence Against**
12 **Women Act of 1994, 18 U.S.C. 2265. This court has jurisdiction over the parties and the sub-**
13 **ject matter. The respondent was afforded notice and timely opportunity to be heard as**
14 **provided by the law of this jurisdiction. This protective order is valid and entitled to**
15 **enforcement in this and all other jurisdictions.**

16
17
18 (4) The circuit court may approve a consent agreement if the court determines that the
19 agreement provides sufficient protections to the petitioner. The circuit court may not ap-
20 prove a term in a consent agreement that provides for restraint of a party to the agreement
21 unless the other party petitioned for and was granted a restraining order issued under sec-
22 tion 3 of this 2013 Act.

23 (5) A restraining order entered under this section, or a consent agreement entered into
24 under this section, shall continue for a period of one year from the date of the restraining
25 order issued under section 3 of this 2013 Act, unless the restraining order is renewed, modi-
26 fied or terminated in accordance with section 7 of this 2013 Act.

27 **SECTION 5.** (1) A party may file a motion under ORS 45.400 requesting that the circuit
28 court allow the appearance of the party or a witness by telephone or by other two-way
29 electronic communication device in a proceeding under sections 1 to 8 of this 2013 Act.

30 (2) In determining whether to allow written notice less than 30 days before the proceed-
31 ing under ORS 45.400 (2), the circuit court shall consider the expedited nature of a proceeding
32 under sections 1 to 8 of this 2013 Act.

33 (3) In addition to the factors listed in ORS 45.400 (7) that would support a finding of good
34 cause, the circuit court shall consider whether the safety or welfare of the party or witness
35 would be threatened if testimony were required to be provided in person at a proceeding
36 under sections 1 to 8 of this 2013 Act.

37 (4) A motion or good cause determination is not required for ex parte hearings held by
38 telephone under section 3 of this 2013 Act.

39 **SECTION 6.** (1)(a) When a restraining order is issued in accordance with sections 1 to 8
40 of this 2013 Act and the person to be restrained has actual notice of the restraining order,
41 the clerk of the court or any other person serving the petition and the restraining order
42 shall immediately deliver to a county sheriff copies of the petition and the restraining order
43 and a true copy of the affidavit of proof of service on which it is stated that the petition and
44 the restraining order were served personally on the respondent. If a restraining order en-
45 tered by the circuit court recites that the respondent appeared in person before the court,

1 the necessity for service of the restraining order and an affidavit of proof of service is
2 waived.

3 (b) Upon receipt of a copy of the restraining order and notice of completion of any re-
4 quired service by a member of a law enforcement agency, the county sheriff shall imme-
5 diately enter the restraining order into the Law Enforcement Data System maintained by the
6 Department of State Police and the databases of the National Crime Information Center of
7 the United States Department of Justice. If the petition and the restraining order were
8 served on the respondent by a person other than a member of a law enforcement agency, the
9 county sheriff shall enter the restraining order into the Law Enforcement Data System and
10 the databases of the National Crime Information Center upon receipt of a true copy of the
11 affidavit of proof of service. The sheriff shall provide the petitioner with a true copy of any
12 required proof of service.

13 (c) Entry into the Law Enforcement Data System constitutes notice to all law enforce-
14 ment agencies of the existence of the restraining order. Law enforcement agencies shall es-
15 tablish procedures adequate to ensure that an officer at the scene of an alleged violation of
16 the restraining order may be informed of the existence and terms of the restraining order.
17 The restraining order is fully enforceable in any county or tribal land in this state.

18 (d) When a restraining order has been entered into the Law Enforcement Data System
19 and the databases of the National Crime Information Center of the United States Depart-
20 ment of Justice under this subsection, a county sheriff shall cooperate with a request from
21 a law enforcement agency from any other jurisdiction to verify the existence of the re-
22 straining order or to transmit a copy of the restraining order to the requesting jurisdiction.

23 (2) A sheriff may serve a restraining order issued under sections 1 to 8 of this 2013 Act
24 in the county in which the sheriff was elected and in any county that is adjacent to the
25 county in which the sheriff was elected.

26 (3)(a) A sheriff may serve and enter into the Law Enforcement Data System a copy of a
27 restraining order issued under sections 1 to 8 of this 2013 Act that was transmitted to the
28 sheriff by a circuit court or law enforcement agency through an electronic communication
29 device. Before transmitting a copy of a restraining order to a sheriff under this subsection
30 through an electronic communication device, the person transmitting the copy must receive
31 confirmation from the sheriff's office that an electronic communication device is available
32 and operating.

33 (b) For purposes of this subsection, "electronic communication device" means a device
34 by which any kind of electronic communication can be made, including but not limited to
35 communication by telephonic facsimile and electronic mail.

36 (4) When a circuit court enters an order terminating a restraining order issued under
37 sections 1 to 8 of this 2013 Act before the expiration date, the clerk of the court shall im-
38 mediately deliver a copy of the termination order to the county sheriff with whom the ori-
39 ginal restraining order was filed. Upon receipt of the termination order, the county sheriff
40 shall promptly remove the original restraining order from the Law Enforcement Data Sys-
41 tem and the databases of the National Crime Information Center of the United States De-
42 partment of Justice.

43 (5)(a) A contempt proceeding for an alleged violation of a restraining order issued under
44 sections 1 to 8 of this 2013 Act must be conducted by the circuit court that issued the re-
45 straining order or by the circuit court for the county in which the alleged violation of the

1 restraining order occurs. If contempt proceedings are initiated in the circuit court for the
2 county in which the alleged violation of the restraining order occurs, the person initiating
3 the contempt proceedings shall file with the court a copy of the restraining order that is
4 certified by the clerk of the court that originally issued the restraining order. Upon filing
5 of the certified copy of the restraining order, the circuit court shall enforce the restraining
6 order as though that court had originally issued the restraining order.

7 (b) Pending a contempt hearing for an alleged violation of a restraining order issued un-
8 der sections 1 to 8 of this 2013 Act, a person arrested and taken into custody pursuant to
9 ORS 133.310 may be released as provided in ORS 135.230 to 135.290.

10 (c) Service of process or other legal documents upon the petitioner is not a violation of
11 a restraining order entered under sections 1 to 8 of this 2013 Act if the petitioner is served
12 as provided in ORCP 7 or 9.

13 **SECTION 7.** (1)(a) A circuit court may renew a restraining order entered under sections
14 1 to 8 of this 2013 Act upon a finding that it is objectively reasonable for a person in the
15 petitioner's situation to fear for the person's physical safety if the restraining order is not
16 renewed. A finding that the respondent has subjected the petitioner to additional sexual
17 abuse is not required.

18 (b) A circuit court may renew a restraining order on the basis of a sworn, ex parte pe-
19 tition alleging facts supporting the required finding. If the renewal order is granted, the
20 provisions of sections 3 (4) to (8) and 4 (3) of this 2013 Act apply, except that the court may
21 hear no issue other than the basis for renewal, unless requested in the hearing request form
22 and thereafter agreed to by the petitioner. The circuit court shall hold a hearing required
23 under this paragraph within 21 days after the respondent's request.

24 (2) At any time after the time period set forth in section 3 (6) of this 2013 Act:

25 (a) A party may request that the circuit court modify terms in the restraining order for
26 good cause shown.

27 (b) A petitioner may request that the circuit court remove terms in the restraining order
28 or make terms in the order less restrictive. Application to the circuit court under this par-
29 agraph may be by ex parte motion.

30 (3) The clerk of the court shall provide without charge the number of certified true
31 copies of the request for modification of the restraining order and notice of hearing neces-
32 sary to effect service and, at the election of the party requesting the modification, shall have
33 a true copy of the request and notice delivered to the county sheriff for service upon the
34 other party.

35 (4) The county sheriff shall serve the other party with a request for modification of a
36 restraining order under subsection (2)(a) of this section by personal service, unless the party
37 requesting the modification elects to have the other party personally served by a private
38 party or unless otherwise ordered by the circuit court.

39 (5) The provisions of section 4 (3) of this 2013 Act apply to a modification of a restraining
40 order under this section.

41 (6) The clerk of the court shall deliver a copy of an order of modification entered under
42 this section to the county sheriff for service and entry into the Law Enforcement Data
43 System as provided in section 6 of this 2013 Act.

44 (7)(a) The county sheriff shall serve a copy of an order of modification:

45 (A) Entered under subsection (2)(a) of this section by personal service on the

1 nonrequesting party.

2 (B) Entered under subsection (2)(b) of this section by mailing a copy of the order of
3 modification to the respondent by first class mail.

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

7 (8) A restraining order entered under sections 1 to 8 of this 2013 Act may not be termi-
8 nated on motion of the petitioner, unless the motion is notarized.

9 **SECTION 8.** (1)(a) A filing fee, service fee or hearing fee may not be charged for pro-
10 ceedings seeking only the relief provided under sections 1 to 8 of this 2013 Act.

11 (b) An undertaking may not be required in any proceeding under sections 1 to 8 of this
12 2013 Act.

13 (2) A proceeding under sections 1 to 8 of this 2013 Act is in addition to any other available
14 civil or criminal remedies.

15 (3)(a) After obtaining the approval of the Chief Justice of the Supreme Court, the At-
16 torney General's Sexual Assault Task Force shall produce:

17 (A) The forms for petitions and restraining orders, hearing requests and any related
18 forms for use under sections 1 to 8 of this 2013 Act; and

19 (B) An instructional brochure explaining the rights set forth in sections 1 to 8 of this
20 2013 Act.

21 (b) After obtaining the approval of the Chief Justice of the Supreme Court of the forms
22 and instructional brochures produced pursuant to this subsection, the Attorney General's
23 Sexual Assault Task Force shall provide the forms and copies of the instructional brochure
24 to the clerks of the circuit court who shall make the forms and brochures available to the
25 public.

26 **SECTION 9.** The amendments to section 8 of this 2013 Act by section 10 of this 2013 Act
27 become operative on July 1, 2021.

28 **SECTION 10.** Section 8 of this 2013 Act is amended to read:

29 **Sec. 8.** (1)(a) A filing fee, service fee or hearing fee may not be charged for proceedings seeking
30 only the relief provided under sections 1 to 8 of this 2013 Act.

31 (b) An undertaking may not be required in any proceeding under sections 1 to 8 of this 2013
32 Act.

33 (2) A proceeding under sections 1 to 8 of this 2013 Act is in addition to any other available civil
34 or criminal remedies.

35 (3)(a) [*After obtaining the approval of the Chief Justice of the Supreme Court, the Attorney*
36 *General's Sexual Assault Task Force*] **The State Court Administrator** shall produce:

37 (A) The forms for petitions and restraining orders, hearing requests and any related forms for
38 use under sections 1 to 8 of this 2013 Act; and

39 (B) An instructional brochure explaining the rights set forth in sections 1 to 8 of this 2013 Act.

40 (b) [*After obtaining the approval of the Chief Justice of the Supreme Court of the forms and in-*
41 *structional brochures produced pursuant to this subsection, the Attorney General's Sexual Assault*
42 *Task Force*] **The State Court Administrator** shall provide the forms and copies of the instructional
43 brochure to the clerks of the circuit court who shall make the forms and brochures available to the
44 public.

45 **SECTION 11.** ORS 21.245 is amended to read:

1 21.245. (1) The State Court Administrator may prescribe and charge a reasonable price, covering
2 the costs of labor and material, for any forms provided by the courts of this state. The sums so
3 collected shall be paid over to the State Treasurer and credited to the Court Forms Revolving Fund.

4 (2) Notwithstanding subsection (1) of this section, no charge shall be made for forms made
5 available under the provisions of ORS 107.700 to 107.735 or 124.005 to 124.040 **or sections 1 to 8**
6 **of this 2013 Act.**

7 **SECTION 12.** ORS 36.185 is amended to read:

8 36.185. After the appearance by all parties in any civil action, except proceedings under ORS
9 107.700 to 107.735 or 124.005 to 124.040 **or sections 1 to 8 of this 2013 Act**, a judge of any circuit
10 court may refer a civil dispute to mediation under the terms and conditions set forth in ORS 36.185
11 to 36.210. When a party to a case files a written objection to mediation with the court, the action
12 shall be removed from mediation and proceed in a normal fashion. All civil disputants shall be pro-
13 vided with written information describing the mediation process, as provided or approved by the
14 State Court Administrator, along with information on established court mediation opportunities.
15 Filing parties shall be provided with this information at the time of filing a civil action. Responding
16 parties shall be provided with this information by the filing party along with the initial service of
17 filing documents upon the responding party.

18 **SECTION 13.** ORS 40.210 is amended to read:

19 40.210. (1) Notwithstanding any other provision of law, in a prosecution for a crime described
20 in ORS 163.355 to 163.427, [or] in a prosecution for an attempt to commit one of these crimes **or in**
21 **a proceeding conducted under sections 1 to 8 of this 2013 Act**, the following evidence is not
22 admissible:

23 (a) Reputation or opinion evidence of the past sexual behavior of an alleged victim [*of the*
24 *crime*] or a corroborating witness; or

25 (b) Reputation or opinion evidence presented for the purpose of showing that the manner of
26 dress of an alleged victim [*of the crime*] incited the crime **or, in a proceeding under sections 1 to**
27 **8 of this 2013 Act, incited the sexual abuse**, or indicated consent to the sexual acts **that are** al-
28 leged [*in the charge*].

29 (2) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS
30 163.355 to 163.427, [or] in a prosecution for an attempt to commit one of these crimes **or in a pro-**
31 **ceeding conducted under sections 1 to 8 of this 2013 Act**, evidence of [a] **an alleged** victim's past
32 sexual behavior other than reputation or opinion evidence is also not admissible, unless the evidence
33 other than reputation or opinion evidence:

34 (a) Is admitted in accordance with subsection (4) of this section; and

35 (b) Is evidence that:

36 (A) Relates to the motive or bias of the alleged victim;

37 (B) Is necessary to rebut or explain scientific or medical evidence offered by the state; or

38 (C) Is otherwise constitutionally required to be admitted.

39 (3) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS
40 163.355 to 163.427, [or] in a prosecution for an attempt to commit one of these crimes **or in a pro-**
41 **ceeding conducted under sections 1 to 8 of this 2013 Act**, evidence, other than reputation or
42 opinion evidence, of the manner of dress of the alleged victim or a corroborating witness, presented
43 by a person accused of committing the crime **or, in a proceeding conducted under sections 1 to**
44 **8 of this 2013 Act, by the respondent**, is also not admissible, unless the evidence is:

45 (a) Admitted in accordance with subsection (4) of this section; and

1 (b) Is evidence that:

2 (A) Relates to the motive or bias of the alleged victim;

3 (B) Is necessary to rebut or explain scientific, medical or testimonial evidence offered by the
4 state;

5 (C) Is necessary to establish the identity of the **alleged** victim; or

6 (D) Is otherwise constitutionally required to be admitted.

7 (4)(a) If the person accused of committing rape, sodomy or sexual abuse or attempted rape,
8 sodomy or sexual abuse, **or the respondent in a proceeding conducted under sections 1 to 8 of**
9 **this 2013 Act**, intends to offer evidence under subsection (2) or (3) of this section, the accused **or**
10 **the respondent** shall make a written motion to offer the evidence not later than 15 days before the
11 date on which the trial in which the evidence is to be offered is scheduled to begin, except that the
12 court may allow the motion to be made at a later date, including during trial, if the court determines
13 either that the evidence is newly discovered and could not have been obtained earlier through the
14 exercise of due diligence or that the issue to which the evidence relates has newly arisen in the
15 case. Any motion made under this paragraph shall be served on all other parties[,] and, **in a crim-**
16 **inal proceeding**, on the alleged victim through the office of the prosecutor.

17 (b) The motion described in paragraph (a) of this subsection shall be accompanied by a written
18 offer of proof. If the court determines that the offer of proof contains evidence described in sub-
19 section (2) or (3) of this section, the court shall order a hearing in camera to determine if the evi-
20 dence is admissible. At the hearing the parties may call witnesses, including the alleged victim, and
21 offer relevant evidence. Notwithstanding ORS 40.030 (2), if the relevancy of the evidence that the
22 accused **or the respondent** seeks to offer in the trial depends upon the fulfillment of a condition
23 of fact, the court, at the hearing in camera or at a subsequent hearing in camera scheduled for the
24 same purpose, shall accept evidence on the issue of whether the condition of fact is fulfilled and
25 shall determine the issue.

26 (c) If the court determines on the basis of the hearing described in paragraph (b) of this sub-
27 section that the evidence the accused **or the respondent** seeks to offer is relevant and that the
28 probative value of the evidence outweighs the danger of unfair prejudice, the evidence shall be ad-
29 missible in the trial to the extent an order made by the court specifies evidence that may be offered
30 and areas with respect to which a witness may be examined or cross-examined.

31 (d) An order admitting evidence under this subsection **in a criminal prosecution** may be ap-
32 pealed by the [government] state before trial.

33 (5) For purposes of this section:

34 (a) **“Alleged victim” includes the petitioner in a proceeding conducted under sections 1**
35 **to 8 of this 2013 Act.**

36 [(a)] (b) “In camera” means out of the presence of the public and the jury.[]; and]

37 [(b)] (c) “Past sexual behavior” means sexual behavior other than:

38 (A) The sexual behavior with respect to which rape, sodomy or sexual abuse or attempted rape,
39 sodomy or sexual abuse is alleged.[]; **or**

40 (B) **In a proceeding conducted under sections 1 to 8 of this 2013 Act, the alleged sexual**
41 **abuse.**

42 (d) **“Trial” includes a hearing conducted under sections 1 to 8 of this 2013 Act.**

43 **SECTION 14.** ORS 107.835 is amended to read:

44 107.835. (1) When a court enters a judgment, order or modification of a judgment or order under
45 ORS chapter 25, 107, 108, 109, 110 or 416 **or sections 1 to 8 of this 2013 Act**, the court shall allow

1 any party to the judgment or order to include in the judgment or order a waiver of personal service
2 in a subsequent contempt proceeding in order to maintain the confidentiality of the party's resi-
3 dential address. In the waiver, the party shall give a contact address for service of process and se-
4 lect one of the following methods of substituted service:

- 5 (a) Mailing address;
- 6 (b) Business address; or
- 7 (c) Specified agent.

8 (2) Any time after a party has waived personal service under subsection (1) of this section, the
9 party may file an amended waiver designating a different method of substituted service or a different
10 address for substituted service. The party shall give notice of the amendment to all other parties.

11 (3) The State Court Administrator shall prescribe the content and form of the waiver and
12 amended waiver described in this section.

13 **SECTION 15.** ORS 133.310 is amended to read:

14 133.310. (1) A peace officer may arrest a person without a warrant if the officer has probable
15 cause to believe that the person has committed any of the following:

- 16 (a) A felony.
- 17 (b) A misdemeanor.
- 18 (c) An unclassified offense for which the maximum penalty allowed by law is equal to or greater
19 than the maximum penalty allowed for a Class C misdemeanor.
- 20 (d) Any other crime committed in the officer's presence.

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

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

- 27 (a) There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c) or (d), 107.716, 107.718,
28 124.015, 124.020, 163.738 or 419B.845 **or section 3 or 4 of this 2013 Act** restraining the person;
- 29 (b) A true copy of the order and proof of service on the person has been filed as required in
30 ORS 107.720, 124.030, 163.741 or 419B.845 **or section 6 of this 2013 Act**; and
- 31 (c) The person to be arrested has violated the terms of that order.

32 (4) A peace officer shall arrest and take into custody a person without a warrant if:

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

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

39 (5) A peace officer shall arrest and take into custody a person without a warrant if:

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

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

1 (6) A peace officer shall arrest and take into custody a person without a warrant if the peace
2 officer has probable cause to believe:

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

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

6 **SECTION 16.** ORS 133.381 is amended to read:

7 133.381. (1) When a peace officer arrests a person pursuant to ORS 133.310 (3) or pursuant to
8 a warrant issued under ORS 33.075 by a court or judicial officer for the arrest of a person charged
9 with contempt for violating an order issued under ORS 107.095 (1)(c) or (d), 107.716, 107.718, 124.015
10 or 124.020 **or section 3 or 4 of this 2013 Act**, if the person is arrested in a county other than that
11 in which the warrant or order was originally issued, the peace officer shall take the person before
12 a magistrate as provided in ORS 133.450. If it becomes necessary to take the arrested person to the
13 county in which the warrant or order was originally issued, the costs of such transportation shall
14 be paid by that county.

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

19 **SECTION 17.** ORS 659A.270 is amended to read:

20 659A.270. As used in ORS 659A.270 to 659A.285:

21 (1) "Covered employer" means an employer who employs six or more individuals in the State
22 of Oregon for each working day during each of 20 or more calendar workweeks in the year in which
23 an eligible employee takes leave to address domestic violence, harassment, sexual assault or stalk-
24 ing, or in the year immediately preceding the year in which an eligible employee takes leave to
25 address domestic violence, harassment, sexual assault or stalking.

26 (2) "Eligible employee" means an employee who:

27 (a) Worked an average of more than 25 hours per week for a covered employer for at least 180
28 days immediately before the date the employee takes leave; and

29 (b) Is a victim of domestic violence, harassment, sexual assault or stalking or is the parent or
30 guardian of a minor child or dependent who is a victim of domestic violence, harassment, sexual
31 assault or stalking.

32 (3) "Protective order" means an order authorized by ORS 30.866, 107.095 (1)(c), 107.700 to
33 107.735, 124.005 to 124.040 or 163.730 to 163.750 **or sections 1 to 8 of this 2013 Act** or any other
34 order that restrains an individual from contact with an eligible employee or the employee's minor
35 child or dependent.

36 (4) "Victim of domestic violence" means:

37 (a) An individual who has been a victim of abuse, as defined in ORS 107.705; or

38 (b) Any other individual designated as a victim of domestic violence by rule adopted under ORS
39 659A.805.

40 (5) "Victim of harassment" means:

41 (a) An individual against whom harassment has been committed as described in ORS 166.065.

42 (b) Any other individual designated as a victim of harassment by rule adopted under ORS
43 659A.805.

44 (6) "Victim of sexual assault" means:

45 (a) An individual against whom a sexual offense has been committed as described in ORS 163.305

1 to 163.467 or 163.525; or

2 (b) Any other individual designated as a victim of sexual assault by rule adopted under ORS
3 659A.805.

4 (7) "Victim of stalking" means:

5 (a) An individual against whom stalking has been committed as described in ORS 163.732;

6 (b) An individual designated as a victim of stalking by rule adopted under ORS 659A.805; or

7 (c) An individual who has obtained a court's stalking protective order or a temporary court's
8 stalking protective order under ORS 30.866.

9 (8) "Victim services provider" means a prosecutor-based victim assistance program or a
10 nonprofit program offering safety planning, counseling, support or advocacy related to domestic vi-
11 olence, harassment, sexual assault or stalking.

12 **SECTION 18.** ORCP 79 E is amended to read:

13 E Scope of rule.

14 E(1) This rule does not apply to a temporary restraining order issued by authority of ORS
15 107.700 to 107.735 or 124.005 to 124.040 **or sections 1 to 8 of this 2013 Act.**

16 E(2) This rule does not apply to temporary restraining orders or preliminary injunctions granted
17 pursuant to ORCP 83 except for the application of section D of this rule.

18 E(3) These rules do not modify any statute or rule of this state relating to temporary restraining
19 orders or preliminary injunctions in actions affecting employer and employee.

20 **SECTION 19. Notwithstanding any other provision of law, the General Fund appropriation**
21 **made to the Judicial Department by section 1 (2), chapter _____, Oregon Laws 2013 (En-**
22 **rolled House Bill 5016), for the biennium beginning July 1, 2013, as modified by legislative or**
23 **Emergency Board action, is increased by \$85,000 for the purpose of implementing the pro-**
24 **visions of sections 1 to 8 of this 2013 Act.**

25 **SECTION 20. Sections 1 to 8 of this 2013 Act and the amendments to ORS 21.245, 36.185,**
26 **40.210, 107.835, 133.310, 133.381 and 659A.270 and ORCP 79E by sections 11 to 18 of this 2013**
27 **Act become operative on January 1, 2014.**

28 **SECTION 21. This 2013 Act being necessary for the immediate preservation of the public**
29 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
30 **July 1, 2013.**

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