

# Enrolled House Bill 2779

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

CHAPTER .....

AN ACT

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

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

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

- (1) “Family or household members,” “interfere,” “intimidate,” “menace” and “molest” have the meanings given those terms in ORS 107.705.**
- (2) “Sexual abuse” means sexual contact with:**
  - (a) A person who does not consent to the sexual contact; or**
  - (b) A person who is considered incapable of consenting to a sexual act under ORS 163.315, unless the sexual contact would be lawful under ORS 163.325 or 163.345.**
- (3) “Sexual contact” has the meaning given that term in ORS 163.305.**

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

- (a) The person and the respondent are not family or household members;**
- (b) The respondent is at least 18 years of age; and**
- (c) The respondent is not prohibited from contacting the person pursuant to a foreign restraining order as defined in ORS 24.190, an order issued under ORS 30.866, 124.015, 124.020, 163.738 or 419B.845 or an order entered in a criminal action.**

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

- (b) The petition must allege that:**
  - (A) The petitioner reasonably fears for the petitioner’s physical safety with respect to the respondent; and**
  - (B) The respondent subjected the petitioner to sexual abuse within the 180 days preceding the filing of the petition.**
- (c) Statements in the petition must be made under oath or affirmation.**
- (d) The petitioner has the burden of proving a claim under sections 1 to 8 of this 2013 Act by a preponderance of the evidence.**

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

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

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

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

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

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

(b) If the petitioner requests, may order:

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

(B) That the respondent be restrained from entering, or attempting to enter, a reasonable area surrounding the petitioner's residence;

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

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

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

(2) If the respondent is restrained from entering or attempting to enter an area surrounding the petitioner's residence or any other premises, the restraining order must specifically describe the area or premises.

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

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

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

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

(5) If the county sheriff:

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

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

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

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

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

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

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

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

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

(3) If the circuit court continues the restraining order issued under section 3 of this 2013 Act, with or without modification, at a hearing about which the respondent received actual notice and the opportunity to be heard, the court shall include in the restraining order a certificate in substantially the following form in a separate section immediately above the signature of the judge:

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**CERTIFICATE OF COMPLIANCE  
WITH THE  
VIOLENCE AGAINST WOMEN ACT OF 1994**

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

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(4) The circuit court may approve a consent agreement if the court determines that the agreement provides sufficient protections to the petitioner. The circuit court may not approve a term in a consent agreement that provides for restraint of a party to the agreement

unless the other party petitioned for and was granted a restraining order issued under section 3 of this 2013 Act.

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

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

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

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

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

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

(b) Upon receipt of a copy of the restraining order and notice of completion of any required service by a member of a law enforcement agency, the county sheriff shall immediately enter the restraining order into the Law Enforcement Data System maintained by the Department of State Police and the databases of the National Crime Information Center of the United States Department of Justice. If the petition and the restraining order were served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the restraining order into the Law Enforcement Data System and the databases of the National Crime Information Center upon receipt of a true copy of the affidavit of proof of service. The sheriff shall provide the petitioner with a true copy of any required proof of service.

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

(d) 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 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 restraining order to the requesting jurisdiction.

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

(3)(a) A sheriff may serve and enter into the Law Enforcement Data System a copy of a restraining order issued under sections 1 to 8 of this 2013 Act that was transmitted to the

sheriff by a circuit court or law enforcement agency through an electronic communication device. Before transmitting a copy of a restraining order to a sheriff under this subsection through an electronic communication device, the person transmitting the copy must receive confirmation from the sheriff's office that an electronic communication device is available and operating.

(b) 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.

(4) When a circuit court enters an order terminating a restraining order issued under sections 1 to 8 of this 2013 Act before the expiration date, the clerk of the court shall immediately deliver a copy of the termination order to the county sheriff with whom the original restraining order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original restraining order from the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

(5)(a) A contempt proceeding for an alleged violation of a restraining order issued under sections 1 to 8 of this 2013 Act must be conducted by the circuit court that issued the restraining order or by the circuit court for the county in which the alleged violation of the restraining order occurs. If contempt proceedings are initiated in the circuit court for the county in which the alleged violation of the restraining order occurs, the person initiating the contempt proceedings shall file with the court a copy of the restraining order that is certified by the clerk of the court that originally issued the restraining order. Upon filing of the certified copy of the restraining order, the circuit court shall enforce the restraining order as though that court had originally issued the restraining order.

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

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

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

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

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

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

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

(3) The clerk of the court shall provide without charge the number of certified true copies of the request for modification of the restraining 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *[After obtaining the approval of the Chief Justice of the Supreme Court of the forms and instructional brochures produced pursuant to this subsection, the Attorney General's Sexual Assault*

*Task Force*] **The State Court Administrator** shall provide the forms and copies of the instructional brochure to the clerks of the circuit court who shall make the forms and brochures available to the public.

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

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

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

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

36.185. After the appearance by all parties in any civil action, except proceedings under ORS 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 court may refer a civil dispute to mediation under the terms and conditions set forth in ORS 36.185 to 36.210. When a party to a case files a written objection to mediation with the court, the action shall be removed from mediation and proceed in a normal fashion. All civil disputants shall be provided with written information describing the mediation process, as provided or approved by the State Court Administrator, along with information on established court mediation opportunities. Filing parties shall be provided with this information at the time of filing a civil action. Responding parties shall be provided with this information by the filing party along with the initial service of filing documents upon the responding party.

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

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

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

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

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

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

(b) Is evidence that:

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

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

(C) Is otherwise constitutionally required to be admitted.

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

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

(b) Is evidence that:

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

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

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

(D) Is otherwise constitutionally required to be admitted.

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

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

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

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

(5) For purposes of this section:

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

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

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

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

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

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

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

107.835. (1) When a court enters a judgment, order or modification of a judgment or order under ORS chapter 25, 107, 108, 109, 110 or 416 **or sections 1 to 8 of this 2013 Act**, the court shall allow any party to the judgment or order to include in the judgment or order a waiver of personal service in a subsequent contempt proceeding in order to maintain the confidentiality of the party’s residential address. In the waiver, the party shall give a contact address for service of process and select one of the following methods of substituted service:

(a) Mailing address;

(b) Business address; or

(c) Specified agent.



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

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

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

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

(a) A felony.

(b) A misdemeanor.

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

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

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

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

(a) There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c) or (d), 107.716, 107.718, 124.015, 124.020, 163.738 or 419B.845 **or section 3 or 4 of this 2013 Act** restraining the person;

(b) A true copy of the order and proof of service on the person has been filed as required in ORS 107.720, 124.030, 163.741 or 419B.845 **or section 6 of this 2013 Act**; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) "Protective order" means an order authorized by ORS 30.866, 107.095 (1)(c), 107.700 to 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 order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.

(4) "Victim of domestic violence" means:

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

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

(5) "Victim of harassment" means:

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

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

(6) "Victim of sexual assault" means:

(a) An individual against whom a sexual offense has been committed as described in ORS 163.305 to 163.467 or 163.525; or

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

(7) "Victim of stalking" means:

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

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

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

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

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

**E Scope of rule.**

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

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

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

**SECTION 19. Notwithstanding any other provision of law, the General Fund appropriation made to the Judicial Department by section 1 (2), chapter \_\_\_\_\_, Oregon Laws 2013 (En-**

rolled House Bill 5016), for the biennium beginning July 1, 2013, as modified by legislative or Emergency Board action, is increased by \$85,000 for the purpose of implementing the provisions of sections 1 to 8 of this 2013 Act.

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

**SECTION 21.** If Senate Bill 673 becomes law, section 13 of this 2013 Act (amending ORS 40.210) is repealed and ORS 40.210, as amended by section 5, chapter \_\_, Oregon Laws 2013 (Enrolled Senate Bill 673), is amended to read:

40.210. (1) Notwithstanding any other provision of law, in a prosecution for a crime described in ORS 163.266 (1)(b) or (c), 163.355 to 163.427, 163.670 or 167.017, [or] in a prosecution for an attempt to commit one of those crimes **or in a proceeding conducted under sections 1 to 8 of this 2013 Act**, the following evidence is not admissible:

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

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

(2) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime listed in subsection (1) of this section **or in a proceeding conducted under sections 1 to 8 of this 2013 Act**, evidence of [a] **an alleged** victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless the evidence other than reputation or opinion evidence:

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

(b) Is evidence that:

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

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

(C) Is otherwise constitutionally required to be admitted.

(3) Notwithstanding any other provision of law, in a prosecution for a crime or an attempt to commit a crime listed in subsection (1) of this section **or in a proceeding conducted under sections 1 to 8 of this 2013 Act**, evidence, other than reputation or opinion evidence, of the manner of dress of the alleged victim or a corroborating witness, presented by a person accused of committing the crime **or, in a proceeding conducted under sections 1 to 8 of this 2013 Act, by the respondent**, is also not admissible, unless the evidence is:

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

(b) Is evidence that:

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

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

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

(D) Is otherwise constitutionally required to be admitted.

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

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

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

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

(5) For purposes of this section:

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

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

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

(A) The sexual behavior with respect to which the crime or attempt to commit the crime listed in subsection (1) of this section is alleged[.]; **or**

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

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

**SECTION 22.** If Senate Bill 673 becomes law, section 20 of this 2013 Act is amended to read:

**Sec. 20.** Sections 1 to 8 of this 2013 Act and the amendments to ORS 21.245, 36.185, 40.210, 107.835, 133.310, 133.381 and 659A.270 and ORCP 79E by sections 11, **12, 14** to 18 **and 21** of this 2013 Act become operative on January 1, 2014.

**SECTION 23.** **This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.**

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**Passed by House July 1, 2013**

**Repassed by House July 7, 2013**

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate July 6, 2013**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2013

**Approved:**

.....M,....., 2013

.....  
John Kitzhaber, Governor

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

.....M,....., 2013

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Kate Brown, Secretary of State