

House Bill 2965

Sponsored by Representative HOLVEY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires court to order, if requested by petitioner, that respondent in Family Abuse Prevention Act proceeding be restrained from electronic tracking of petitioner or petitioner's children. Defines "electronic tracking" for purposes of contact that can be prohibited in stalking order.

Declares emergency, effective on passage.

A BILL FOR AN ACT

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

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

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

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

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

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

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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

5 (h) Other relief that the court considers necessary to:

6 (A) Provide for the safety and welfare of the petitioner and the children in the custody of the
 7 petitioner, including but not limited to emergency monetary assistance from the respondent; and

8 (B) Prevent the neglect and protect the safety of any service or therapy animal or any animal
 9 kept for personal protection or companionship, but not an animal kept for any business, commercial,
 10 agricultural or economic purpose; [or]

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

14 **(j) That the respondent be restrained from engaging in, or attempting to engage in,**
 15 **electronic tracking of the petitioner or of any children in the custody of the petitioner. As**
 16 **used in this paragraph, “electronic tracking” means determining the location of the**
 17 **petitioner, or the location of any children in the custody of the petitioner, by any techno-**
 18 **logical means, including but not limited to the use of cellular phones, the Internet, cameras,**
 19 **videotape, a global positioning system or interception of wire, electronic or oral communi-**
 20 **cations.**

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

28 (3) The court’s order under subsection (1) of this section is effective for a period of one year or
 29 until the order is withdrawn or amended, or until the order is superseded as provided in ORS
 30 107.722, whichever is sooner.

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

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

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

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

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

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

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

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

3 (f) That no overnight parenting time occur.

4 (7) The State Court Administrator shall prescribe the content and form of the petition, order and
 5 related forms for use under ORS 107.700 to 107.735. The clerk of the court shall make available the
 6 forms and an instructional brochure explaining the rights set forth under ORS 107.700 to 107.735.

7 (8) If the court orders relief:

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

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

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

24 (9) If the county sheriff:

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

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

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

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

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

45 (11) If the respondent fails to request a hearing within 30 days after a restraining order is

1 served, the restraining order is confirmed by operation of law. The provisions of this section are
 2 sufficient to meet the due process requirements of 18 U.S.C. 922(g) in that the respondent received
 3 actual notice of the right to request a hearing and the opportunity to participate at the hearing but
 4 the respondent failed to exercise those rights.

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

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

8 163.730. As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

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

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

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

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

13 (b) Following the other person;

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (6) "Law enforcement officer" means:

39 (a) A person employed in this state as a police officer by:

40 (A) A county sheriff, constable or marshal;

41 (B) A police department established by a university under ORS 352.383; or

42 (C) A municipal or state police agency; or

43 (b) An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011.

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

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

1 **SECTION 3.** ORS 163.730, as amended by section 73, chapter 644, Oregon Laws 2011, is
2 amended to read:

3 163.730. As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

4 (1) “Alarm” means to cause apprehension or fear resulting from the perception of danger.

5 (2) “Coerce” means to restrain, compel or dominate by force or threat.

6 (3) “Contact” includes but is not limited to:

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

8 (b) Following the other person;

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

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

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

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

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

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

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

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

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

22 (L) Service of process or other legal documents unless the other person is served as provided
23 in ORCP 7 or 9[.]; **or**

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

29 (4) “Household member” means any person residing in the same residence as the victim.

30 (5) “Immediate family” means father, mother, child, sibling, spouse, grandparent, stepparent and
31 stepchild.

32 (6) “Law enforcement officer” means a person employed in this state as a police officer by:

33 (a) A county sheriff, constable or marshal;

34 (b) A police department established by a university under ORS 352.383; or

35 (c) A municipal or state police agency.

36 (7) “Repeated” means two or more times.

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

38 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**
39 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
40 **on its passage.**