

# House Bill 2628

Sponsored by Representative LININGER, Senator GELSER; Representatives BARKER, BOONE, BUCKLEY, GREENLICK, LIVELY, SMITH WARNER (Pre-session filed.)

## 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**.

Disallows all filing fees, service fees and hearing fees in action for court's protective stalking order, even if stalking order is not only relief sought in action.

Allows court to include in court's protective stalking order relief necessary to protect children and animals.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to court's protective stalking orders; amending ORS 30.866 and 163.738; and declaring an  
3 emergency.

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

5 **SECTION 1.** ORS 30.866 is amended to read:

6 30.866. (1) A person may bring a civil action in a circuit court for a court's stalking protective  
7 order or for damages, or both, against a person if:

8 (a) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact  
9 with the other person or a member of that person's immediate family or household thereby alarming  
10 or coercing the other person;

11 (b) It is objectively reasonable for a person in the victim's situation to have been alarmed or  
12 coerced by the contact; and

13 (c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the  
14 personal safety of the victim or a member of the victim's immediate family or household.

15 (2) At the time the petition is filed, the court, upon a finding of probable cause based on the  
16 allegations in the petition, shall enter a temporary court's stalking protective order that may in-  
17 clude, but is not limited to, all contact listed in ORS 163.730. The petition and the temporary order  
18 shall be served upon the respondent with an order requiring the respondent to personally appear  
19 before the court to show cause why the temporary order should not be continued for an indefinite  
20 period.

21 (3)(a) At the hearing, whether or not the respondent appears, the court may continue the hear-  
22 ing for up to 30 days or may proceed to enter a court's stalking protective order and take other  
23 action as provided in ORS 163.738.

24 (b) If respondent fails to appear after being served as required by subsection (2) of this section,  
25 the court may issue a warrant of arrest as provided in ORS 133.110 in order to ensure the appear-  
26 ance of the respondent in court.

27 (4) The plaintiff may recover:

28 (a) Both special and general damages, including damages for emotional distress;

29 (b) Punitive damages; and

**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 (c) Reasonable attorney fees and costs.

2 (5) The court may enter an order under this section against a minor respondent without ap-  
3 pointment of a guardian ad litem.

4 (6) An action under this section must be commenced within two years of the conduct giving rise  
5 to the claim.

6 (7) Proof of the claim shall be by a preponderance of the evidence.

7 (8) The remedy provided by this section is in addition to any other remedy, civil or criminal,  
8 provided by law for the conduct giving rise to the claim.

9 (9) No filing fee, service fee or hearing fee *[shall]* **may** be charged for a proceeding under this  
10 section *[if a court's stalking order is the only relief sought]*.

11 (10) If the respondent was provided notice and an opportunity to be heard, the court shall also  
12 include in the order, when appropriate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) and  
13 (g)(8) to affect the respondent's ability to possess firearms and ammunition or engage in activities  
14 involving firearms.

15 (11) ORS 163.741 applies to protective orders issued under this section.

16 (12) Except for purposes of impeachment, a statement made by the respondent at a hearing un-  
17 der this section may not be used as evidence in a prosecution for stalking as defined in ORS 163.732  
18 or for violating a court's stalking protective order as defined in ORS 163.750.

19 **SECTION 2.** ORS 163.738 is amended to read:

20 163.738. (1)(a) A citation shall notify the respondent of a circuit court hearing where the re-  
21 spondent shall appear at the place and time set forth in the citation. The citation shall contain:

22 (A) The name of the court at which the respondent is to appear;

23 (B) The name of the respondent;

24 (C) A copy of the stalking complaint;

25 (D) The date, time and place at which the citation was issued;

26 (E) The name of the law enforcement officer who issued the citation;

27 (F) The time, date and place at which the respondent is to appear in court;

28 (G) Notice to the respondent that failure to appear at the time, date and place set forth in the  
29 citation shall result in the respondent's arrest and entry of a court's stalking protective order; and

30 (H) Notice to the respondent of potential liability under federal law for the possession or pur-  
31 chase of firearms or firearm ammunition and for other acts prohibited by 18 U.S.C. 2261 to 2262.

32 (b) The officer shall notify the petitioner in writing of the place and time set for the hearing.

33 (2)(a) The hearing shall be held as indicated in the citation. At the hearing, the petitioner may  
34 appear in person or by telephonic appearance. The respondent shall be given the opportunity to  
35 show cause why a court's stalking protective order should not be entered. The hearing may be  
36 continued for up to 30 days. The court may enter:

37 (A) A temporary stalking protective order pending further proceedings; or

38 (B) A court's stalking protective order if the court finds by a preponderance of the evidence  
39 that:

40 (i) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact  
41 with the other person or a member of that person's immediate family or household thereby alarming  
42 or coercing the other person;

43 (ii) It is objectively reasonable for a person in the victim's situation to have been alarmed or  
44 coerced by the contact; and

45 (iii) The repeated and unwanted contact causes the victim reasonable apprehension regarding

1 the personal safety of the victim or a member of the victim's immediate family or household.

2 (b) In the order, the court shall specify the conduct from which the respondent is to refrain,  
3 which may include all contact listed in ORS 163.730 and any attempt to make contact listed in ORS  
4 163.730. The order is of unlimited duration unless limited by law. If the respondent was provided  
5 notice and an opportunity to be heard, the court shall also include in the order, when appropriate,  
6 terms and findings sufficient under 18 U.S.C. 922 (d)(8) and (g)(8) to affect the respondent's ability  
7 to possess firearms and ammunition or engage in activities involving firearms.

8 (c) **The court may specify other relief in the order that the court finds necessary to:**

9 (A) **Provide for the safety and welfare of the victim and the children in the custody of**  
10 **the victim; and**

11 (B) **Prevent the neglect and protect the safety of a service or therapy animal kept by the**  
12 **victim or an animal kept by the victim for personal protection or companionship, but not an**  
13 **animal kept for a business, commercial, agricultural or economic purpose.**

14 (3) The circuit court may enter an order under this section against a minor respondent without  
15 appointment of a guardian ad litem.

16 (4) If the respondent fails to appear at the time, date and place specified in the citation, the  
17 circuit court shall issue a warrant of arrest as provided in ORS 133.110 in order to ensure the ap-  
18 pearance of the respondent at court and shall enter a court's stalking protective order.

19 (5) The circuit court may also order the respondent to undergo mental health evaluation and,  
20 if indicated by the evaluation, treatment. If the respondent is without sufficient resources to obtain  
21 the evaluation or treatment, or both, the court shall refer the respondent to the mental health  
22 agency designated by the community mental health director for evaluation or treatment, or both.

23 (6) If the circuit court, the mental health evaluator or any other persons have probable cause  
24 to believe that the respondent is dangerous to self or others or is unable to provide for basic per-  
25 sonal needs, the court shall initiate commitment procedures as provided in ORS 426.070 or 426.180.

26 (7) A law enforcement officer shall report the results of any investigation arising from a com-  
27 plaint under ORS 163.744 to the district attorney within three days after presentation of the com-  
28 plaint.

29 (8) Except for purposes of impeachment, a statement made by the respondent at a hearing under  
30 this section may not be used as evidence in a prosecution for stalking as defined in ORS 163.732 or  
31 for violating a court's stalking protective order as defined in ORS 163.750.

32 **SECTION 2. This 2015 Act being necessary for the immediate preservation of the public**  
33 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
34 **on its passage.**

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