

Enrolled
House Bill 2776

Sponsored by Representatives PARRISH, TAYLOR; Representatives BENTZ, ESQUIVEL, HEARD, LININGER, OLSON, POST, SPRENGER, WEIDNER, WHISNANT, Senators JOHNSON, THATCHER (Pre-session filed.)

CHAPTER

AN ACT

Relating to emergency protective orders; creating new provisions; and amending ORS 133.310.

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

SECTION 1. (1) A peace officer may inform a person in danger of abuse of the officer's ability to apply for an ex parte emergency protective order and, with the person's consent or permission, may apply to a circuit court for the order when the peace officer has probable cause to believe:

(a)(A) The peace officer has responded to an incident of domestic disturbance and the circumstances for mandatory arrest as described in ORS 133.055 (2)(a) exist; or

(B) The person is in immediate danger of abuse by a family or household member; and

(b) An emergency protective order is necessary to prevent the person from suffering the occurrence or recurrence of abuse.

(2)(a) An application for an emergency protective order described in subsection (1) of this section shall consist of the proposed emergency protective order and the peace officer's declaration under penalty of perjury setting forth the facts and circumstances underlying entry of the order.

(b) The proposed emergency protective order and the declaration may be sent to the court by electronic transmission that delivers a complete printable image of the order and signed declaration.

(3) Upon examination of the application, a circuit court may enter an emergency protective order if the court finds there is probable cause that:

(a)(A) The peace officer has responded to an incident of domestic disturbance and the circumstances for mandatory arrest as described in ORS 133.055 (2)(a) exist; or

(B) A person is in immediate danger of abuse by a family or household member; and

(b) An emergency protective order is necessary to prevent a person from suffering the occurrence or recurrence of abuse.

(4) An emergency protective order entered under subsection (3) of this section shall:

(a) Restrain the respondent from contacting the person protected by the order and from intimidating, molesting, interfering with or menacing the person, or attempting to intimidate, molest, interfere with or menace the protected person;

(b) Include the findings of probable cause authorizing issuance of the order;

(c) State the date that the order expires; and

(d) State a security amount for a violation of the order.

(5) If the circuit court enters an emergency protective order under subsection (3) of this section:

(a) The peace officer shall provide, without charge, a certified true copy of the emergency protective order to the protected person and shall ensure that certified true copies of the order and the declaration are filed with the court.

(b) A peace officer shall serve the respondent personally. Upon completion of service, the peace officer shall prepare a declaration under penalty of perjury of proof of service verifying that the emergency protective order was served personally on the respondent, file a copy of the declaration with the court and enter the order into the Law Enforcement Data System maintained by the Department of State Police.

(c) If the peace officer cannot complete service within one day of the emergency protective order's entry, the peace officer shall notify the court that the documents have not been served.

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

(7)(a) An emergency protective order expires seven calendar days from the date the court signs the order.

(b) An emergency protective order shall remain in effect until the order expires or is terminated by court order. If the order is terminated by court order, the clerk of the court shall immediately cause to be delivered a copy of the termination order to the peace officer who originally applied for the order. Upon receipt of the termination order, the peace officer shall promptly remove the emergency protective order from the Law Enforcement Data System.

(8)(a) A contempt proceeding for an alleged violation of an emergency protective order must be conducted by the circuit court that issued the order or by the circuit court for the county in which the alleged violation of the order occurs.

(b) Pending a contempt hearing for an alleged violation of an emergency protective order, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290.

(9) The presiding judge of the circuit court in each county shall designate at least one judge to be reasonably available to enter, in person or by electronic transmission, ex parte emergency protective orders at all times whether or not the court is in session.

(10) A peace officer acting in good faith shall not be liable in any civil action for applying to or not applying to a circuit court for an ex parte emergency protective order under this section.

(11) A filing fee, service fee or hearing fee may not be charged for proceedings for ex parte emergency protective orders under this section.

(12) The Department of State Police shall develop forms for emergency protective orders and declarations and shall submit the forms for approval by the State Court Administrator, the Oregon State Sheriffs' Association and the Oregon Association Chiefs of Police. After obtaining approval, the department shall ensure that the forms are appropriately distributed and available for use.

(13) As used in this section, "peace officer" has the meaning given that term in ORS 161.015.

SECTION 2. 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, 163.765, 163.767 or 419B.845 **or section 1 of this 2015 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, 163.773 or 419B.845 **or section 1 of this 2015 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.
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Passed by House April 30, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 26, 2015

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State