

# House Bill 2776

Sponsored by Representatives PARRISH, TAYLOR (Presession 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**.

Authorizes peace officer to apply for and circuit court to enter ex parte emergency protective order when court finds probable cause that person was victim of domestic disturbance or abuse and protective order is necessary to prevent abuse. Provides that emergency protective order expires five days after entry.

## A BILL FOR AN ACT

1  
2 Relating to emergency protective orders; creating new provisions; and amending ORS 133.310.

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

4 **SECTION 1. (1) A peace officer may apply to a circuit court judge for an ex parte emer-**  
5 **gency protective order when the peace officer has probable cause to believe:**

6 (a)(A) **The officer has responded to an incident of domestic disturbance and the circum-**  
7 **stances for mandatory arrest as described in ORS 133.055 (2)(a) exist; or**

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

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

11 (2)(a) **An application for an emergency protective order described in subsection (1) of this**  
12 **section shall consist of a proposed emergency protective order and an affidavit setting forth**  
13 **the facts and circumstances underlying entry of the order.**

14 (b) **Instead of the affidavit described in paragraph (a) of this subsection, a peace officer**  
15 **may provide to the circuit court judge an oral statement under oath. The oral statement**  
16 **shall be recorded and a copy of the recording submitted to the judge who took the oral**  
17 **statement. In such cases, the judge shall certify that the recording of the sworn oral state-**  
18 **ment is a true recording of the oral statement under oath and shall retain the recording as**  
19 **part of the record of proceedings for the issuance of the emergency protective order. The**  
20 **recording shall constitute an affidavit for the purposes of this section.**

21 (c) **The proposed emergency protective order and the affidavit may be sent to the court**  
22 **by electronic transmission that delivers a complete printable image of the order and signed**  
23 **affidavit.**

24 (3) **Upon examination of the application and any additional evidence offered, a circuit**  
25 **court may enter an emergency protective order if the court finds there is probable cause**  
26 **that:**

27 (a)(A) **The officer has responded to an incident of domestic disturbance and the circum-**  
28 **stances for mandatory arrest as described in ORS 133.055 (2)(a) exist; or**

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

30 (b) **An emergency protective order is necessary to prevent a person from suffering the**

**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 occurrence or recurrence of abuse.

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

3 (a) Restrain the respondent from contacting the person protected by the order and from  
4 intimidating, molesting, interfering with or menacing the person, or attempting to intim-  
5 idate, molest, interfere with or menace the protected person.

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

7 (c) State the date and time that the order expires.

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

10 (a) The clerk of the court shall provide, without charge, the number of certified true  
11 copies of the application and the emergency protective order necessary to provide the pro-  
12 tected person with one copy and to provide the peace officer who applied for the order with  
13 two copies.

14 (b) The peace officer who applied for the emergency protective order shall serve the re-  
15 spondent personally. Upon completion of service, the peace officer shall prepare an affidavit  
16 of proof of service verifying that the emergency protective order was served personally on  
17 the respondent, file a copy of the affidavit with the court and enter the order into the Law  
18 Enforcement Data System maintained by the Department of State Police.

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

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

28 (7) An emergency protective order expires at the close of judicial business on the fifth  
29 day following the day of its entry. At the expiration of the emergency protective order, the  
30 peace officer who applied for the order shall promptly remove the original order from the  
31 Law Enforcement Data System.

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

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

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

41 (10) As used in this section, "peace officer" has the meaning given that term in ORS  
42 161.015.

43 **SECTION 2.** ORS 133.310 is amended to read:

44 133.310. (1) A peace officer may arrest a person without a warrant if the officer has probable  
45 cause to believe that the person has committed any of the following:

- 1 (a) A felony.
- 2 (b) A misdemeanor.
- 3 (c) An unclassified offense for which the maximum penalty allowed by law is equal to or greater
- 4 than the maximum penalty allowed for a Class C misdemeanor.
- 5 (d) Any other crime committed in the officer's presence.
- 6 (2) A peace officer may arrest a person without a warrant when the peace officer is notified by
- 7 telegraph, telephone, radio or other mode of communication by another peace officer of any state
- 8 that there exists a duly issued warrant for the arrest of a person within the other peace officer's
- 9 jurisdiction.
- 10 (3) A peace officer shall arrest and take into custody a person without a warrant when the
- 11 peace officer has probable cause to believe that:
  - 12 (a) There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c) or (d), 107.716, 107.718,
  - 13 124.015, 124.020, 163.738, 163.765, 163.767 or 419B.845 **or section 1 of this 2015 Act** restraining the
  - 14 person;
  - 15 (b) A true copy of the order and proof of service on the person has been filed as required in
  - 16 ORS 107.720, 124.030, 163.741, 163.773 or 419B.845 **or section 1 of this 2015 Act**; and
  - 17 (c) The person to be arrested has violated the terms of that order.
  - 18 (4) A peace officer shall arrest and take into custody a person without a warrant if:
    - 19 (a) The person protected by a foreign restraining order as defined by ORS 24.190 presents a copy
    - 20 of the foreign restraining order to the officer and represents to the officer that the order supplied
    - 21 is the most recent order in effect between the parties and that the person restrained by the order
    - 22 has been personally served with a copy of the order or has actual notice of the order; and
    - 23 (b) The peace officer has probable cause to believe that the person to be arrested has violated
    - 24 the terms of the foreign restraining order.
    - 25 (5) A peace officer shall arrest and take into custody a person without a warrant if:
      - 26 (a) The person protected by a foreign restraining order as defined by ORS 24.190 has filed a copy
      - 27 of the foreign restraining order with a court or has been identified by the officer as a party pro-
      - 28 tected by a foreign restraining order entered in the Law Enforcement Data System or in the data-
      - 29 bases of the National Crime Information Center of the United States Department of Justice; and
      - 30 (b) The peace officer has probable cause to believe that the person to be arrested has violated
      - 31 the terms of the foreign restraining order.
      - 32 (6) A peace officer shall arrest and take into custody a person without a warrant if the peace
      - 33 officer has probable cause to believe:
        - 34 (a) The person has been charged with an offense and is presently released as to that charge
        - 35 under ORS 135.230 to 135.290; and
        - 36 (b) The person has failed to comply with a no contact condition of the release agreement.
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