

SENATE AMENDMENTS TO SENATE BILL 719

By COMMITTEE ON JUDICIARY

April 26

1 In line 2 of the printed bill, before the period insert “; creating new provisions; and amending
2 ORS 419B.812, 419B.848 and 419B.851”.

3 Delete lines 4 through 6 and insert:

4 **“SECTION 1. As used in sections 1 to 8 of this 2017 Act:**

5 **“(1) ‘Deadly weapon’ means:**

6 **“(a) Any instrument, article or substance specifically designed for and presently capable
7 of causing death or serious physical injury; or**

8 **“(b) A firearm, whether loaded or unloaded.**

9 **“(2) ‘Family or household member’ means a spouse, intimate partner, mother, father,
10 child or sibling of the respondent, or any person living within the same household as the
11 respondent.**

12 **“(3) ‘Gun dealer’ has the meaning given that term in ORS 166.412.**

13 **“(4) ‘Law enforcement agency’ means an agency or department of the State of Oregon
14 or of a political subdivision of the State of Oregon whose principal function is the appre-
15 hension of criminal offenders.**

16 **“(5) ‘Law enforcement officer’ means a member of the Oregon State Police, a sheriff, a
17 municipal police officer or an authorized tribal police officer as defined in ORS 181A.680.**

18 **“(6) ‘Petitioner’ means a person who petitions for an order under sections 1 to 8 of this
19 2017 Act.**

20 **“(7) ‘Respondent’ means a person against whom an order is filed under sections 1 to 8
21 of this 2017 Act.**

22 **“SECTION 2. (1) A law enforcement officer or a family or household member of a person
23 may file a petition requesting that the court issue an extreme risk protection order enjoining
24 the person from having in the person’s custody or control, owning, purchasing, possessing
25 or receiving, or attempting to purchase or receive, a deadly weapon.**

26 **“(2) An extreme risk protection order petition shall be heard by the court and issued or
27 denied on the same day the petition is submitted to the court or on the judicial business day
28 immediately following the day the petition is filed.**

29 **“(3) The petition for an extreme risk protection order must be supported by a written
30 affidavit signed by the petitioner under oath, or an oral statement taken under oath by the
31 petitioner or any other witness the petitioner may produce.**

32 **“(4) In determining whether to issue an extreme risk protection order, the court shall
33 consider the following:**

34 **“(a) A history of suicide threats or attempts or acts of violence by the respondent di-
35 rected against another person;**

1 “(b) A history of use, attempted use or threatened use of physical force by the respond-
2 ent against another person;

3 “(c) A previous conviction for:

4 “(A) A misdemeanor involving violence as defined in ORS 166.470;

5 “(B) A stalking offense under ORS 163.732 or 163.750, or a similar offense in another ju-
6 risdiction;

7 “(C) An offense constituting domestic violence as defined in ORS 135.230;

8 “(D) Driving under the influence of intoxicants under ORS 813.010 or 813.011; or

9 “(E) An offense involving cruelty or abuse of animals;

10 “(d) Evidence of recent unlawful use of controlled substances;

11 “(e) Previous unlawful and reckless use, display or brandishing of a deadly weapon by the
12 respondent;

13 “(f) A previous violation by the respondent of a court order issued pursuant to ORS
14 107.716 or 107.718;

15 “(g) Evidence of an acquisition or attempted acquisition within the previous 180 days by
16 the respondent of a deadly weapon; and

17 “(h) Any additional information the court finds to be reliable, including a statement by
18 the respondent.

19 “(5)(a) The petitioner has the burden of proof at the ex parte hearing.

20 “(b) The petitioner may appear in person or by electronic video transmission.

21 “(c) The court may continue a hearing under this section upon a showing of good cause.

22 “(6)(a) The court shall issue an extreme risk protection order if the court finds by clear
23 and convincing evidence, based on the petition and supporting documentation and after con-
24 sidering a statement by the respondent, if provided, that the respondent presents a risk in
25 the near future, including an imminent risk, of suicide or of causing physical injury to an-
26 other person. The court may not include in the findings any mental health diagnosis or any
27 connection between the risk presented by the respondent and mental illness.

28 “(b) Upon making the findings described in paragraph (a) of this subsection, the court
29 shall issue an extreme risk protection order prohibiting the respondent from having in the
30 respondent’s custody or control, owning, purchasing, possessing or receiving, or attempting
31 to purchase or receive, a deadly weapon.

32 “(7) An extreme risk protection order issued under this section must include:

33 “(a) A statement of the evidence and the court’s findings supporting issuance of the or-
34 der;

35 “(b) The date and time the order was issued;

36 “(c) A description of the manner in which the respondent may request a hearing de-
37 scribed in subsection (9) of this section;

38 “(d) The address of the court to which a request for a hearing must be sent;

39 “(e) A description of the requirements for surrender of deadly weapons in the
40 respondent’s possession under section 6 of this 2017 Act; and

41 “(f) A statement in substantially the following form:

42 “
43 _____

44 To the subject of this protection order: An extreme risk protection order has been issued
45 by the court and is now in effect. You are required to surrender all deadly weapons in your

1 custody, control or possession. You may not have in your custody or control, purchase,
2 possess, receive, or attempt to purchase or receive, deadly weapons while this order is in
3 effect. You must, within 24 hours, surrender all deadly weapons in your custody, control or
4 possession to (insert name of local law enforcement agency), a gun dealer or a third party
5 who may lawfully possess the deadly weapons. You must, within 24 hours, surrender to (in-
6 sert name of local law enforcement agency) any concealed handgun license issued to you.
7 You may request a hearing to contest this order. If you do not request a hearing, the ex-
8 treme risk protection order against you will be in effect for one year unless terminated by
9 the court. You have the right to request one hearing to terminate this order during the 12
10 months that this order is in effect starting from the date of this order. You may seek the
11 advice of an attorney as to any matter connected with this order.

12 “

13
14 “(8)(a) The respondent shall be personally served with both a copy of the extreme risk
15 protection order and a hearing request form described in subsection (9) of this section.

16 “(b) Whenever an extreme risk protective order is served on a respondent, the person
17 serving the order shall immediately deliver to the county sheriff a true copy of proof of
18 service, on which it is stated that personal service of the order was made on the respondent,
19 and a copy of the order. Proof of service may be made by affidavit or by declaration under
20 penalty of perjury in the form required by ORCP 1 E.

21 “(c) If the person serving the order cannot complete service within 10 days, the person
22 shall notify the petitioner, at the address provided by the petitioner, that the documents
23 have not been served. If the petitioner does not respond within 10 days, the person shall hold
24 the order and petition for future service and file a return to the clerk of the court showing
25 that service was not completed.

26 “(d) Upon receipt of a copy of the order and notice of completion of service by a member
27 of a law enforcement agency, the county sheriff shall immediately enter the order into the
28 Law Enforcement Data System maintained by the Department of State Police and request
29 that the order be entered into the databases of the National Crime Information Center of the
30 United States Department of Justice. If the order was served on the respondent by a person
31 other than a member of a law enforcement agency, the county sheriff shall enter the order
32 into the Law Enforcement Data System, and shall request that the information be entered
33 into the databases of the National Crime Information Center, upon receipt of a true copy of
34 proof of service. The sheriff shall provide the petitioner with a true copy of the proof of
35 service. Entry into the Law Enforcement Data System constitutes notice to all law enforce-
36 ment agencies of the existence of the order. Law enforcement agencies shall establish pro-
37 cedures adequate to ensure that an officer at the scene of an alleged violation of the order
38 may be informed of the existence and terms of the order. The order is fully enforceable in
39 any county in this state.

40 “(9)(a) Within 30 days after an extreme risk protection order is served on the respondent
41 under this section, the respondent may request a court hearing using a form prescribed by
42 the State Court Administrator.

43 “(b) If the respondent requests a hearing under paragraph (a) of this subsection, the
44 clerk of the court shall notify the petitioner and the respondent of the date and time of the
45 hearing and shall supply the petitioner with a copy of the respondent’s request for a hearing.

1 The petitioner and the respondent shall give to the clerk of the court information sufficient
2 to allow such notification.

3 “(c) The hearing shall occur within 21 days of the date of the respondent’s request for a
4 hearing.

5 “(10) If the respondent fails to request a hearing within 30 days after an extreme risk
6 protection order is served, the protection order is confirmed by operation of law and is ef-
7 fective for a period of one year from the date the original order was issued or until the order
8 is terminated, whichever is sooner.

9 “(11) A filing fee, service fee or hearing fee may not be charged for proceedings under
10 this section or section 3 or 4 of this 2017 Act.

11 “(12) If the court declines to issue an extreme risk protection order under this section,
12 the court shall state with particularity the reasons for the denial on the record.

13 “SECTION 3. (1) At a hearing on an extreme risk protection order requested by the re-
14 spondent under section 2 (9) of this 2017 Act, the court may:

15 “(a) Examine under oath the petitioner, the respondent and any witness either party may
16 produce, including a mental health professional selected by the respondent, or, in lieu of ex-
17 amination, consider sworn affidavits of the petitioner, the respondent or a witness of either
18 party; and

19 “(b) Ensure that a reasonable search has been conducted for criminal history records
20 related to the respondent.

21 “(2)(a) The Oregon Evidence Code shall apply in a hearing under this section.

22 “(b) The court may continue a hearing under this section upon a showing of good cause.
23 If the court continues a hearing under this paragraph, the extreme risk protection order
24 shall remain in effect until the next hearing date.

25 “(3)(a) At the hearing, the court shall determine:

26 “(A) Whether to terminate the extreme risk protection order or continue the order for
27 a duration of one year; and

28 “(B) Whether any deadly weapons surrendered to a law enforcement agency pursuant to
29 section 6 of this 2017 Act shall be returned to the respondent or retained by the law
30 enforcement agency.

31 “(b) The petitioner has the burden of proving, by clear and convincing evidence, that the
32 respondent presents a risk in the near future, including an imminent risk, of suicide or of
33 causing physical injury to another person.

34 “(c) If the court finds that the petitioner has met the burden of proof, the court shall:

35 “(A) Order that the extreme risk protection order continue for the duration of one year
36 from the date the original order was issued.

37 “(B) Order that any deadly weapons surrendered to a law enforcement agency pursuant
38 to section 6 of this 2017 Act remain in the custody of the law enforcement agency while the
39 order is in effect.

40 “(d) The court may not include in findings made under this subsection any mental health
41 diagnosis or any connection between the risk presented by the respondent and mental illness.

42 “(4) An extreme risk protection order continued under this section must include:

43 “(a) A statement of the evidence and the court’s findings supporting issuance of the or-
44 der;

45 “(b) The date and time the order was issued;

1 “(c) The date and time of the expiration of the order;

2 “(d) A description of the requirements for surrender of deadly weapons in the
3 respondent’s possession under section 6 of this 2017 Act; and

4 “(e) A statement in substantially the following form:

5 “

6
7 To the subject of this protection order: This order is valid until the date and time noted
8 above. If you have not done so already, you are required to surrender all deadly weapons in
9 your custody. You must immediately surrender all deadly weapons in your custody, control
10 or possession to (insert name of local law enforcement agency), a gun dealer or a third party
11 who may lawfully possess the deadly weapons. You must immediately surrender to (insert
12 name of local law enforcement agency) any concealed handgun license issued to you. You
13 may not have in your custody or control, purchase, possess, receive, or attempt to purchase
14 or receive, a deadly weapon while this order is in effect. You have the right to request one
15 hearing to terminate this order during the 12 months that this order is in effect starting
16 from the date of this order. You may seek the advice of an attorney as to any matter con-
17 nected with this order.

18 “

19
20 “(5) When the court continues an extreme risk protection order under this section, the
21 court shall inform the respondent that the respondent is entitled to request termination of
22 the order in the manner described in section 4 of this 2017 Act. The court shall provide the
23 respondent with a form with which to request a termination hearing.

24 “(6) The respondent need not be served if an order of the court indicates that the re-
25 spondent appeared in person before the court.

26 “(7) If the court terminates an extreme risk protection order after a hearing under this
27 section:

28 “(a) The court shall state with particularity the reasons for the termination on the re-
29 cord.

30 “(b) The clerk of the court shall immediately deliver a copy of the termination order to
31 the county sheriff with whom the original order was filed. Upon receipt of the termination
32 order, the county sheriff shall promptly remove the original order from the Law Enforce-
33 ment Data System and shall request that the order be removed from the databases of the
34 National Crime Information Center of the United States Department of Justice.

35 “SECTION 4. (1) The petitioner or the respondent of an extreme risk protection order
36 issued or continued under section 2 or 3 of this 2017 Act may each submit a written request
37 once during the 12-month effective period of the order, and once during any 12-month effec-
38 tive period of an order renewed under section 5 of this 2017 Act, for a hearing to terminate
39 the order. A hearing under this section is in addition to any hearing requested under section
40 2 of this 2017 Act.

41 “(2) Upon receipt of a request described in subsection (1) of this section, the court shall
42 schedule a termination hearing and provide notice of the hearing to both parties at least five
43 days before the hearing.

44 “(3)(a) The person filing the termination request has the burden of proving, by clear and
45 convincing evidence, that the respondent no longer presents a risk in the near future, in-

1 cluding an imminent risk, of suicide or of causing physical injury to another person.

2 “(b) The Oregon Evidence Code shall apply in a hearing under this section.

3 “(c) The court may continue a hearing under this section upon a showing of good cause.
4 If the court continues a hearing under this paragraph, the extreme risk protection order
5 shall remain in effect until the next hearing date.

6 “(4)(a) If the court finds that the petitioner has met the burden of proof as described in
7 subsection (3) of this section, the court shall terminate the extreme risk protection order.

8 “(b) The court may not include in findings made under this subsection any mental health
9 diagnosis or any connection between the risk presented by the respondent and mental illness.

10 “(5) When an extreme risk protection order is terminated by order of the court, the clerk
11 of the court shall immediately deliver a copy of the termination order to the county sheriff
12 with whom the original order was filed. Upon receipt of the termination order, the county
13 sheriff shall promptly remove the original order from the Law Enforcement Data System and
14 shall request that the order be removed from the databases of the National Crime Informa-
15 tion Center of the United States Department of Justice.

16 “SECTION 5. (1) A law enforcement officer or a family or household member of a re-
17 spondent, including but not limited to the law enforcement officer or family or household
18 member who petitioned the court for the original extreme risk protection order issued under
19 section 2 of this 2017 Act, may request a renewal of the order within 90 days before the ex-
20 piration date of the order by filing a written request with the court.

21 “(2) Upon receipt of the request for renewal described in subsection (1) of this section,
22 the court shall schedule a hearing and provide notice of the hearing to both parties at least
23 14 days before the hearing.

24 “(3) At a hearing to determine whether to renew an extreme risk protection order under
25 this section, the court may:

26 “(a) Examine under oath the petitioner, the respondent and any witness either party may
27 produce or, in lieu of examination, consider sworn affidavits of the petitioner, the respondent
28 or a witness of either party; and

29 “(b) Ensure that a reasonable search has been conducted for criminal history records
30 related to the respondent.

31 “(4) The person requesting the renewal of the extreme risk protection order has the
32 burden of proving, by clear and convincing evidence, that the respondent continues to pres-
33 ent a risk in the near future, including an imminent risk, of suicide or of causing physical
34 injury to another person.

35 “(5)(a) The Oregon Evidence Code shall apply in a hearing under this section.

36 “(b) The court may continue a hearing under this section upon a showing of good cause.
37 If the court continues a hearing under this paragraph, the original extreme risk protection
38 order shall remain in effect until the next hearing date.

39 “(c) The petitioner may appear in person or by electronic video transmission.

40 “(6)(a) If the court finds that the petitioner has met the burden of proof, the court may
41 renew the extreme risk protection order for a duration of up to one year.

42 “(b) The court may not include in findings made under this subsection any mental health
43 diagnosis or any connection between the risk presented by the respondent and mental illness.

44 “(7) An extreme risk protection order renewed under this section must include:

45 “(a) A statement of the evidence and the court’s findings supporting issuance of the or-

1 der;

2 “(b) The date and time the order was issued;

3 “(c) The date and time of the expiration of the order;

4 “(d) A description of the requirements for surrender of deadly weapons in the
5 respondent’s possession under section 6 of this 2017 Act; and

6 “(e) A statement in substantially the following form:

7 “

8
9 To the subject of this protection order: This renewed order is valid until the date and
10 time noted above. If you have not done so already, you are required to surrender all deadly
11 weapons in your custody. You must immediately surrender all deadly weapons in your cus-
12 tody, control or possession to (insert name of local law enforcement agency), a gun dealer
13 or a third party who may lawfully possess the deadly weapons. You must immediately sur-
14 render to (insert name of local law enforcement agency) any concealed handgun license is-
15 sued to you. You may not have in your custody or control, purchase, possess, receive, or
16 attempt to purchase or receive, a deadly weapon while this order is in effect. You have the
17 right to request one hearing to terminate this renewed order every 12 months that this order
18 is in effect, starting from the date of this order. You may seek the advice of an attorney as
19 to any matter connected with this order.

20 “

21
22 “(8) When the court renews an extreme risk protection order, the court shall inform the
23 respondent that the respondent is entitled to request termination of the renewed order in
24 the manner described in section 4 of this 2017 Act. The court shall provide the respondent
25 with a form with which to request a termination hearing.

26 “(9)(a) Service of a renewed extreme risk protective order shall be made by personal de-
27 livery of a copy of the order to the respondent. The respondent need not be served if an order
28 of the court indicates that the respondent appeared in person before the court.

29 “(b) Whenever a renewed extreme risk protective order is served on a respondent, the
30 person serving the order shall immediately deliver to the county sheriff a true copy of proof
31 of service, on which it is stated that personal service of the order was made on the re-
32 spondent, and a copy of the order. Proof of service may be made by affidavit or by declara-
33 tion under penalty of perjury in the form required by ORCP 1 E.

34 “(c) If service of the order is not required under paragraph (a) of this subsection, a copy
35 of the order must be delivered to the sheriff by the court.

36 “(d) Upon receipt of a copy of the order and notice of completion of any required service
37 by a member of a law enforcement agency, the county sheriff shall immediately enter the
38 order into the Law Enforcement Data System maintained by the Department of State Police
39 and request that the order be entered into the databases of the National Crime Information
40 Center of the United States Department of Justice. If the order was served on the respond-
41 ent by a person other than a member of a law enforcement agency, the county sheriff shall
42 enter the order into the Law Enforcement Data System and request that the order be en-
43 tered into the databases of the National Crime Information Center upon receipt of a true
44 copy of proof of service. The sheriff shall provide the petitioner with a true copy of any re-
45 quired proof of service. Entry into the Law Enforcement Data System constitutes notice to

1 all law enforcement agencies of the existence of the order. Law enforcement agencies shall
2 establish procedures adequate to ensure that an officer at the scene of an alleged violation
3 of the order may be informed of the existence and terms of the order. The order is fully
4 enforceable in any county in this state.

5 “(10) If the court declines to renew an extreme risk protection order, the court shall
6 state with particularity the reasons for the denial on the record.

7 “(11) A renewed extreme risk protection order may be further renewed as described in
8 this section.

9 “SECTION 6. (1) Upon issuance of an extreme risk protection order under section 2 of
10 this 2017 Act, the court shall further order that the respondent:

11 “(a) Within 24 hours surrender all deadly weapons in the respondent’s custody, control
12 or possession to a law enforcement agency, a gun dealer or a third party who may lawfully
13 possess the deadly weapons; and

14 “(b) Within 24 hours surrender to a law enforcement agency any concealed handgun li-
15 cense issued to the respondent under ORS 166.291 and 166.292.

16 “(2) Upon continuance of an extreme risk protection order after a hearing under section
17 3 of this 2017 Act, or renewal of an extreme risk protection order under section 5 of this 2017
18 Act, the court shall further order that the respondent:

19 “(a) Immediately surrender all deadly weapons in the respondent’s custody, control or
20 possession to a law enforcement agency, a gun dealer or a third party who may lawfully
21 possess the deadly weapons; and

22 “(b) Immediately surrender to a law enforcement agency any concealed handgun license
23 issued to the respondent under ORS 166.291 and 166.292.

24 “(3)(a) A law enforcement officer serving an extreme risk protection order issued under
25 section 2 of this 2017 Act shall request that the respondent immediately surrender to the
26 officer all deadly weapons in the respondent’s custody, control or possession and any con-
27 cealed handgun license issued to the respondent under ORS 166.291 and 166.292. The law
28 enforcement officer shall take possession of all deadly weapons appearing to be in the cus-
29 tody, control or possession of the respondent that are surrendered by the respondent. If the
30 respondent indicates an intention to surrender the deadly weapons to a gun dealer or a third
31 party, the law enforcement officer shall request that the respondent identify the gun dealer
32 or third party.

33 “(b) A law enforcement officer serving an extreme risk protection order continued after
34 a hearing under section 3 of this 2017 Act, or renewed under section 5 of this 2017 Act, shall
35 request that the respondent immediately surrender to the officer all deadly weapons in the
36 respondent’s custody, control or possession and any concealed handgun license issued to the
37 respondent under ORS 166.291 and 166.292. The officer may conduct any search permitted by
38 law for deadly weapons in the custody, control or possession of the respondent and shall take
39 possession of all deadly weapons appearing to be in the custody, control or possession of the
40 respondent that are surrendered, in plain sight or discovered pursuant to a lawful search.

41 “(4) At the time of the surrender of any deadly weapons or concealed handgun licenses
42 under subsection (3) of this section, the law enforcement officer taking possession shall issue
43 a receipt identifying all surrendered items and provide a copy of the receipt to the respond-
44 ent. Within 72 hours after service of the order, the law enforcement officer serving the order
45 shall file the original receipt with the court and shall ensure that the law enforcement

1 agency employing the law enforcement officer retains a copy of the receipt.

2 “(5) If a third party claims lawful ownership or right of possession of a deadly weapon
3 surrendered pursuant to this section, the law enforcement agency may return the deadly
4 weapon to the third party if the third party provides proof of lawful ownership or right of
5 possession of the deadly weapon, in a sworn affidavit, affirms that:

6 “(a) The third party may lawfully possess the deadly weapon;

7 “(b) The third party did not consent to the prior possession of the deadly weapon by the
8 respondent; and

9 “(c) The third party will prevent the respondent from accessing or possessing the deadly
10 weapon in the future.

11 “SECTION 7. (1) If an extreme risk protection order is terminated or expires without
12 renewal, a law enforcement agency holding any deadly weapon or concealed handgun license
13 that has been surrendered pursuant to the order shall return the surrendered items as re-
14 quested by the respondent of the order only after:

15 “(a) Confirming through a criminal background check, if the deadly weapon is a firearm,
16 that the respondent is legally eligible to own or possess firearms under state and federal law;
17 and

18 “(b) Confirming that the extreme risk protection order is no longer in effect.

19 “(2) The owner of a deadly weapon, if the deadly weapon is a firearm, in the custody of
20 a law enforcement agency pursuant to section 6 of this 2017 Act who does not wish to have
21 the firearm returned is entitled to sell or transfer title of any firearm to a licensed gun
22 dealer as defined in ORS 166.412, provided that the firearm is lawful to own or possess and
23 the person has a legal right to transfer title of the firearm.

24 “(3) A deadly weapon surrendered by a person pursuant to section 6 of this 2017 Act that
25 remains unclaimed by the owner shall be disposed of in accordance with the law enforcement
26 agency’s policies and procedures for the disposal of deadly weapons in the agency’s custody.

27 “SECTION 8. (1) A person commits a Class A misdemeanor if:

28 “(a) The person knowingly possesses a deadly weapon; and

29 “(b) The person is prohibited from possessing deadly weapons pursuant to an extreme
30 risk protection order:

31 “(A) Issued after notice and a hearing under section 3 of this 2017 Act;

32 “(B) Confirmed by operation of law after the person failed to request a hearing under
33 section 2 (9) of this 2017 Act; or

34 “(C) Renewed under section 5 of this 2017 Act.

35 “(2) A person convicted under subsection (1) of this section shall be prohibited from
36 having in the person’s custody or control, owning, purchasing, possessing or receiving, or
37 attempting to purchase or receive, any firearms for a five-year period beginning when the
38 extreme risk protection order expires or is terminated, or the judgment of conviction is en-
39 tered, whichever occurs later.

40 “(3) A person who files a petition for any extreme risk protection order under sections
41 1 to 8 of this 2017 Act with the intent to harass the respondent, or knowing that the infor-
42 mation in the petition is false, is guilty of a Class A misdemeanor.

43 “SECTION 9. ORS 419B.851 is amended to read:

44 “419B.851. (1) Except as otherwise provided in ORS 419B.800 to 419B.929, every order, every
45 petition and answer subsequent to the original petition, every written motion other than one that

1 may be heard ex parte and every written request and similar paper must be served upon each of the
2 parties.

3 “(2)(a) Whenever under ORS 419B.800 to 419B.929 service is required or permitted to be made
4 upon a party, and that party is represented by an attorney, the service must be made upon the at-
5 torney unless otherwise ordered by the court. Service upon the attorney or upon a party must be
6 made by:

7 “(A) Delivering a copy to the attorney or party[.];

8 “(B) [by] Mailing [it] a copy to the attorney’s or party’s last known address; [or,]

9 “(C) If the party is represented by an attorney, [by] facsimile communication device as provided
10 in subsection (6) of this section;

11 “(D) **Electronic mail as provided in subsection (7)(a) of this section; or**

12 “(E) **Electronic service through the court’s electronic filing system under subsection**
13 **(7)(b) of this section.**

14 “(b) As used in [this] paragraph (a) of this subsection, ‘delivery of a copy’ means:

15 “(A) Handing it to the person to be served;

16 “(B) Leaving it at the person’s office with the person’s clerk or a person apparently in charge
17 of the office or, if there is no one in charge, leaving it in a conspicuous place in the office; or

18 “(C) If the office is closed or the person to be served has no office, leaving it at the person’s
19 dwelling house or usual place of abode with a person who is over 14 years of age and who resides
20 at the dwelling house or usual place of abode.

21 “[b] (c) A party who has appeared without providing an appropriate address for service may
22 be served by placing a copy of the paper required to be served in the court file. Service by mail is
23 complete upon mailing. Service of any notice or other paper to bring a party into contempt may only
24 be upon such party personally.

25 “(3) When a petition is filed under subsection (1) of this section alleging that a child who is a
26 foreign national is within the jurisdiction of the court, or when a motion is filed requesting imple-
27 mentation of a plan other than return of a ward to the ward’s parent, a copy of the petition or
28 motion shall be served on the consulate for the child or ward’s country.

29 “(4)(a) All papers required to be served upon a party under subsection (1) of this section must
30 be filed with the court within a reasonable time after service.

31 “(b) Except as otherwise provided in ORS 419B.812 to 419B.839 and 419B.845, proof of service
32 of all papers required or permitted to be served may be by:

33 “(A) Written acknowledgment of service[.];

34 “(B) [by] An affidavit of the person making service; [or by]

35 “(C) A certificate of an attorney[.];

36 “(D) **When service is made by facsimile communication device, an affidavit or declaration**
37 **of the person making service or a certificate of an attorney with the printed confirmation**
38 **of receipt of the message that is generated by the facsimile machine attached to the affidavit**
39 **or certificate;**

40 “(E) **When service is made by electronic mail under subsection (7)(a) of this section, an**
41 **affidavit or declaration of the person making the service, or certificate of an attorney, stat-**
42 **ing either that the party consented to service by electronic mail or that the person received**
43 **confirmation that the message and attachment were received by the party and specifying the**
44 **method by which the person received confirmation from the party; or**

45 “(F) **If service is made by electronic service under subsection (7)(b) of this section, an**

1 **affidavit or declaration of the person making service, or by certificate of an attorney, speci-**
2 **fyng that service was completed by electronic service.**

3 **“(c) The proof of service required under paragraph (b)(E) or (F) of this subsection may**
4 **not be by receipt of an automatically generated message indicating that the party is out of**
5 **the office or an automatically generated delivery status notification.**

6 **“(d)** Proof of service may be made upon the papers served or as a separate document attached
7 to the papers. [*When service is made by facsimile communication device, proof of service must be made*
8 *by an affidavit of the person making service or by a certificate of an attorney. The printed confirmation*
9 *of receipt of the message generated by the facsimile machine must be attached to the affidavit or cer-*
10 *tificate.*]

11 **“(5)** The filing of any papers with the court must be made by filing them with the clerk of the
12 court or the person exercising the duties of that office. The clerk or the person exercising the duties
13 of that office shall indorse the time of day, day of the month, month and year upon the paper. The
14 clerk or person exercising the duties of that office is not required to receive any paper for filing
15 unless:

16 **“(a)** The contents of the paper are legible; and

17 **“(b)** All of the following are legibly indorsed on the front of the paper:

18 **“(A)** The name of the court;

19 **“(B)** The title of the cause and the paper;

20 **“(C)** The names of the parties; and

21 **“(D)** If there is one, the name of the attorney for the parties requesting filing.

22 **“(6)** Whenever under ORS 419B.800 to 419B.929 service is required or permitted to be made upon
23 a party and that party is represented by an attorney, the service may be made upon the attorney
24 by means of a facsimile if the attorney maintains such a device at the attorney’s office and the de-
25 vice is operating at the time service is made.

26 **“(7) Whenever under ORS 419B.800 to 419B.929 service is required or permitted to be**
27 **made upon a party, unless the party or the party’s attorney is exempted from service by**
28 **electronic mail or electronic service by an order of the court, the service may be made by**
29 **one of the following means:**

30 **“(a) Electronic mail. Service by electronic mail is complete under this subsection on**
31 **confirmation of receipt of the electronic mail or, if the party has consented to service by**
32 **electronic mail, on transmission of the electronic mail. A party or a party’s attorney must**
33 **provide the name and electronic mail address of that party or that attorney on any document**
34 **served by electronic mail. A party or attorney who has made service by electronic mail must**
35 **notify other parties in writing of any changes to that party’s or that attorney’s electronic**
36 **mail address.**

37 **“(b) Electronic service using the electronic filing system provided by the Judicial De-**
38 **partment in the manner prescribed in rules adopted by the Chief Justice of the Supreme**
39 **Court.**

40 **“SECTION 10.** ORS 419B.812 is amended to read:

41 **“419B.812. (1)** As used in this section and ORS 419B.815, 419B.819 and 419B.824, a ‘true copy’
42 of a summons or petition means an exact and complete copy of the original summons or petition
43 with a certificate upon the copy signed by an attorney of record or a party that indicates that the
44 copy is exact and complete.

45 **“(2)** A summons under ORS 419B.815 or 419B.819 must be titled ‘In the matter of _____, a

1 child' and must contain the name of the person to be served and the address at which the summons
2 and petition may be served.

3 “(3) The summons must be issued no later than 30 days after the filing of a petition alleging
4 jurisdiction under ORS 419B.100, a petition to establish a permanent guardianship under ORS
5 419B.365 or a petition seeking termination of parental rights under ORS 419B.500, 419B.502,
6 419B.504, 419B.506 or 419B.508.

7 “(4) The petitioner, the petitioner’s attorney, the juvenile department, the district attorney, the
8 Attorney General or the Department of Human Services may issue a summons.

9 “(5) The summons must be signed by the:

10 “(a) Petitioner;

11 “(b) Petitioner’s attorney;

12 “(c) Juvenile department;

13 “(d) District attorney;

14 “(e) Attorney General; or

15 “(f) Department of Human Services.

16 “(6) The summons must be served with a true copy of the petition.

17 “(7) The summons and petition may be served by any competent person 18 years of age or older
18 who is a resident of the state where service is made or of this state.

19 “(8) The summons and petition may be transmitted by telegraph, [or] facsimile **or electronic**
20 **mail** as provided in ORS 419B.848 (3).

21 “(9) The court shall fix the date and time for the hearing on a petition at a reasonable time after
22 service or, if service is by publication, final publication of the summons. The time may not be less
23 than 24 hours after service or, if service is by publication, final publication in a proceeding to es-
24 tablish jurisdiction under ORS 419B.100 and may not be less than 10 days after service or, if service
25 is by publication, final publication in a proceeding to establish permanent guardianship or terminate
26 parental rights.

27 “**SECTION 11.** ORS 419B.848 is amended to read:

28 “419B.848. (1) All process authorized to be issued by any court or officer of the court runs in
29 the name of the State of Oregon and must be signed by the officer issuing the process, and if the
30 process is issued by a clerk of the court, the seal of office of the clerk must be affixed to the pro-
31 cess. Summonses and subpoenas are not process.

32 “(2) A civil process may be served or executed on Sunday or any legal holiday. No limitation
33 or prohibition stated in ORS 1.060 applies to the service or execution of a civil process on a Sunday
34 or legal holiday.

35 “(3)(a) [*An order in any case, and all other*] **All** papers requiring service, may be transmitted
36 **from any place** by telegraph, [or] facsimile [*for service in any place*] **or electronic mail**.

37 “(b) The facsimile or telegraphic copy, as defined in ORS 165.840, of the order or paper trans-
38 mitted may be served or executed by the officer or person to whom it is sent for that purpose and
39 returned by the officer or person if any return is required in the same manner and with the same
40 force and effect in all respects as if the copy were the original. The officer or person serving or
41 executing the order or paper has the same authority and is subject to the same liabilities as if the
42 copy were the original. The original, if an order, must be filed in the court from which it was issued
43 and a certified copy of the order must be preserved in the office from which it was sent. The oper-
44 ator may use either the original or certified copy to transmit the order or paper.

45 “(4) Proof of service or execution of process must be made as provided in ORS **419B.851 or**

1 419B.833.

2 “SECTION 12. The amendments to ORS 419B.812, 419B.848 and 419B.851 by sections 9 to
3 11 of this 2017 Act apply to service of process made in court proceedings on or after the ef-
4 fective date of this 2017 Act.”.

5 _____