

D R A F T

SUMMARY

Creates exception to requirement that court proceeding involving person in custody be transferred from court facility in Gresham to Portland if defendant is not in custody and certain warrants have been vacated or executed.

Clarifies court procedure for proponent of decedent's will.

Requires notice of court order of appointment of guardian be provided in manner reasonably calculated to be received and understood by protected person. Permits provision of notice verbally or in writing and delivered in person, by telephone or by mail.

Modifies date of expiration of sexual abuse restraining order for orders entered when petitioner was under 18 years of age. Specifies procedures when service on respondent of sexual abuse restraining order is completed by alternative service.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to courts; creating new provisions; amending ORS 3.014, 112.238,
3 125.082, 163.765 and 163.773; and declaring an emergency.

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

5 **SECTION 1.** ORS 3.014 is amended to read:

6 3.014. (1) One of the judges of the fourth judicial district shall hold court
7 in the City of Gresham, Multnomah County, as directed by the Chief Justice
8 of the Supreme Court but in no event less than one day a week. All pro-
9 ceedings resulting from alleged state traffic offenses or misdemeanors oc-
10 ccurring east of 122nd Avenue extended to the north and south boundaries
11 of Multnomah County shall be conducted in the court in Gresham unless the
12 accused at first appearance in each action requests trial in Portland.

13 (2) A proceeding to be conducted in Gresham as provided in subsection

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 (1) of this section shall be transferred without further order of the court to
2 a court facility in Portland for all purposes if:

3 (a) The accused person is in the custody of a county sheriff or the De-
4 partment of Corrections at the time set for any scheduled proceeding; or

5 (b) A circuit court in the fourth judicial district issues a bench warrant
6 or a warrant of arrest against the accused for any criminal action pending
7 before the court.

8 **(3) Notwithstanding subsection (2) of this section, upon motion of**
9 **any party, a proceeding to be conducted in Gresham as provided in**
10 **subsection (1) of this section shall, unless good cause is shown, remain**
11 **with the court in Gresham if the defendant is not in custody and all**
12 **warrants issued by the fourth judicial district for the defendant have**
13 **been vacated or executed.**

14 [(3)] (4) Multnomah County shall provide facilities in the City of Gresham
15 for a court judge to hold court as described under subsection (1) of this
16 section.

17 **SECTION 2.** ORS 112.238 is amended to read:

18 112.238. (1) Although a writing was not executed in compliance with ORS
19 112.235, the writing may be treated as if it had been executed in compliance
20 with ORS 112.235 if the proponent of the writing establishes by clear and
21 convincing evidence that the decedent intended the writing to constitute:

22 (a) The decedent's will;

23 (b) A partial or complete revocation of the decedent's will; or

24 (c) An addition to or an alteration of the decedent's will.

25 (2) A writing described in subsection (1) of this section may be filed with
26 the court for administration as the decedent's will pursuant to ORS 113.035.
27 The proponent of the writing shall give notice of the filing of the petition
28 under ORS 113.035 to those persons identified in ORS 113.035 (5), (7), (8) and
29 (9). Persons receiving notice under this subsection shall have 20 days after
30 the notice was given to file written objections to the petition. The court
31 may make a determination regarding the decedent's intent after a hearing

1 or on the basis of affidavits.

2 (3) The proponent of a writing described in subsection (1) of this section
3 may file a petition with the court to establish the decedent's intent that the
4 writing was to be [*the decedent's will,*] a partial or complete revocation of
5 the decedent's will[,] or an addition to or an alteration of the decedent's will.
6 The proponent shall give notice of the filing to any personal representative
7 appointed by the court, the devisees named in any will admitted to probate
8 and those persons identified in ORS 113.035 (5). Persons receiving notice
9 under this subsection shall have 20 days after the notice was given to file
10 written objections to the petition. The court may make a determination re-
11 garding the decedent's intent after a hearing or on the basis of affidavits.

12 (4)(a) If the court determines that clear and convincing evidence exists
13 showing that a writing described in subsection (1) of this section was in-
14 tended by the decedent to accomplish one of the purposes set forth in sub-
15 section (1) of this section, the court shall:

16 (A) Prepare written findings of fact in support of the determination; and

17 (B) Enter a limited judgment that admits the writing for probate as the
18 decedent's will or otherwise acknowledges the validity and intent of the
19 writing.

20 (b) A determination under this subsection does not preclude the filing of
21 a will contest under ORS 113.075, except that the will may not be contested
22 on the grounds that the will was not executed in compliance with ORS
23 112.235.

24 (5) The fee imposed and collected by the court for the filing of a petition
25 under this section shall be in accordance with ORS 21.135.

26 **SECTION 3.** ORS 125.082 is amended to read:

27 125.082. (1)(a) Upon appointment, a guardian shall deliver or mail to the
28 persons described in ORS 125.060 (3) a notice of the order of appointment.

29 **(b) The notice provided to the protected person under this sub-**
30 **section must be reasonably calculated to be received and understood**
31 **by the protected person and may be provided:**

1 (A) **Verbally in person or by telephone; or**

2 (B) **In writing and delivered in person or by first class mail.**

3 (2) A notice under this section must include:

4 (a) The title of the court in which the protective proceeding is pending
5 and the clerk's file number;

6 (b) The name and address of the protected person and the attorney for the
7 protected person, if any;

8 (c) The name and address of the guardian and the attorney for the
9 guardian, if any;

10 (d) The date of the appointment of the guardian;

11 (e) A statement describing the authority awarded to the guardian and any
12 limitations placed on the guardian's authority; and

13 (f) A statement advising the protected person or other interested person
14 of the right of the protected person to seek removal of the guardian or ter-
15 mination of the guardianship.

16 (3) Proof of the giving of notice under this section must be filed in the
17 protective proceeding not later than 30 days following the date of the
18 guardian's appointment **and must include a statement describing the**
19 **manner in which notice was given.**

20 **SECTION 4.** ORS 163.765 is amended to read:

21 163.765. (1) When a petition is filed in accordance with ORS 163.763, the
22 circuit court shall hold an ex parte hearing in person or by telephone on the
23 day the petition is filed or on the following judicial day. Upon a finding that
24 it is objectively reasonable for a person in the petitioner's situation to fear
25 for the person's physical safety if an order granting relief under ORS 163.760
26 to 163.777 is not entered and that the respondent has subjected the petitioner
27 to sexual abuse, the circuit court:

28 (a) Shall enter an order restraining the respondent from contacting the
29 petitioner and from intimidating, molesting, interfering with or menacing the
30 petitioner, or attempting to intimidate, molest, interfere with or menace the
31 petitioner.

1 (b) If the petitioner requests, may order:

2 (A) That the respondent be restrained from contacting the petitioner's
3 children or family or household members;

4 (B) That the respondent be restrained from entering, or attempting to
5 enter, a reasonable area surrounding the petitioner's residence;

6 (C) That the respondent be restrained from intimidating, molesting, in-
7 terfering with or menacing any children or family or household members of
8 the petitioner, or attempting to intimidate, molest, interfere with or menace
9 any children or family or household members of the petitioner;

10 (D) That the respondent be restrained from entering, or attempting to
11 enter, any premises and a reasonable area surrounding the premises when
12 necessary to prevent the respondent from intimidating, molesting, interfering
13 with or menacing the petitioner or the petitioner's children or family or
14 household members; and

15 (E) Other relief necessary to provide for the safety and welfare of the
16 petitioner or the petitioner's children or family or household members.

17 (2) If the respondent is restrained from entering or attempting to enter
18 an area surrounding the petitioner's residence or any other premises, the
19 restraining order must specifically describe the area or premises.

20 (3) When the circuit court enters a restraining order under this section,
21 the court shall set a security amount for the violation of the order.

22 (4) If the circuit court enters a restraining order under subsection (1) of
23 this section:

24 (a) The clerk of the court shall provide, without charge, the number of
25 certified true copies of the petition and the restraining order necessary to
26 provide the petitioner with one copy and to effect service and shall have a
27 true copy of the petition and the restraining order delivered to the county
28 sheriff for service upon the respondent, unless the circuit court finds that
29 further service is unnecessary because the respondent appeared in person
30 before the court. In addition and upon request by the petitioner, the clerk
31 of the court shall provide the petitioner, without charge, two exemplified

1 copies of the petition and the restraining order.

2 (b) The county sheriff shall serve the respondent personally unless the
3 petitioner elects to have the respondent served personally by another party.
4 Proof of service shall be made in accordance with ORS 163.773. When the
5 restraining order does not contain the respondent's date of birth and service
6 is effected by the sheriff, the sheriff shall verify the respondent's date of
7 birth with the respondent and shall record that date on the restraining order
8 or proof of service entered into the Law Enforcement Data System under
9 ORS 163.773.

10 (5)(a) If the county sheriff:

11 (A) Determines that the restraining order and petition are incomplete, the
12 sheriff shall return the restraining order and petition to the clerk of the
13 court. The clerk of the court shall notify the petitioner, at the address pro-
14 vided by the petitioner, of the error or omission.

15 (B) Cannot complete service within 10 days after accepting the restraining
16 order and petition, the sheriff shall notify the petitioner, at the address
17 provided by the petitioner, that the documents have not been served. If the
18 petitioner does not respond within 10 days, the sheriff shall hold the re-
19 straining order and petition for future service and file a return to the clerk
20 of the court showing that service was not completed.

21 (b) If a petitioner receives notice of incomplete service under paragraph
22 (a)(B) of this subsection and cannot effect service on the respondent within
23 30 days after the granting or renewal of the restraining order, the circuit
24 court may order service **of a summons** by an alternative method in ac-
25 cordance with ORCP 7 D(6) on proof of the petitioner's due diligence in at-
26 tempting to effect service. **The summons must include notice of where**
27 **the respondent may obtain a complete copy of the order.**

28 (6)(a) Within 30 days after a restraining order is served under this sec-
29 tion, the respondent may request a circuit court hearing upon any relief
30 granted.

31 (b) If the respondent requests a hearing under paragraph (a) of this sub-

1 section, the clerk of the court shall notify the petitioner of the date and time
2 of the hearing and shall supply the petitioner with a copy of the respondent's
3 request for a hearing. The petitioner shall give the clerk of the court infor-
4 mation sufficient to allow such notification.

5 (7) If the respondent fails to request a hearing within 30 days after a re-
6 straining order is served, the restraining order is confirmed by operation of
7 law.

8 (8)(a) A restraining order entered under this section is effective for a pe-
9 riod of five years or, if the petitioner is under 18 years of age at the time
10 of entry, until [*the person attains 19 years of age*] **January 1 of the year**
11 **following the petitioner's 18th birthday**, whichever occurs later, except
12 as otherwise provided in paragraph (b) or (c) of this subsection or unless the
13 restraining order is renewed, modified or terminated in accordance with ORS
14 163.760 to 163.777.

15 (b) The circuit court shall enter a permanent restraining order if, at the
16 time of the petition or renewal of the order, the respondent has been con-
17 victed of a crime described in ORS 163.355 to 163.445 committed against the
18 petitioner.

19 (c) The circuit court may enter a permanent restraining order if the court
20 finds that it is objectively reasonable for a person in the petitioner's situ-
21 ation to fear for the person's physical safety and that the passage of time
22 or a change in circumstances would not dissipate that fear. In making the
23 finding, the court shall consider any information offered by the petitioner to
24 support the request for a permanent restraining order, including but not
25 limited to:

26 (A) Information that the respondent has a history of engaging in sexual
27 abuse or domestic violence as defined in ORS 135.230;

28 (B) If the petitioner is a minor, the fact that the respondent is related to
29 the petitioner by blood or marriage; or

30 (C) Any vulnerability of the petitioner that is not likely to change over
31 time.

1 **SECTION 5.** ORS 163.773 is amended to read:

2 163.773. (1)(a) When a restraining order is issued in accordance with ORS
3 163.760 to 163.777 and the person to be restrained has actual notice of the
4 restraining order, the clerk of the court or any other person serving the pe-
5 tition and the restraining order shall immediately deliver to a county sheriff
6 copies of the petition and the restraining order and a true copy of proof of
7 service on which it is stated that the petition and the restraining order were
8 served personally on the respondent. **If alternative service is ordered by**
9 **the court, the person serving the summons may instead deliver to the**
10 **county sheriff a copy of the summons and a true copy of proof of**
11 **service on which it is stated that alternative service was completed in**
12 **accordance with ORCP 7 D(6).** Proof of service may be made by affidavit
13 or by declaration under penalty of perjury. If a restraining order entered by
14 the circuit court recites that the respondent appeared in person before the
15 court, the necessity for service of the restraining order and proof of service
16 is waived.

17 (b) Upon receipt of a copy of the restraining order and notice of com-
18 pletion of any required service by a member of a law enforcement agency,
19 the county sheriff shall immediately enter the restraining order into the Law
20 Enforcement Data System maintained by the Department of State Police and
21 the databases of the National Crime Information Center of the United States
22 Department of Justice. If the petition and the restraining order were served
23 on the respondent by a person other than a member of a law enforcement
24 agency, **or if alternative service was ordered by the court and com-**
25 **pleted in accordance with ORCP 7 D(6),** the county sheriff shall enter the
26 restraining order into the Law Enforcement Data System and the databases
27 of the National Crime Information Center upon receipt of a true copy of
28 proof of service. The sheriff shall provide the petitioner with a true copy of
29 any required proof of service.

30 (c) Entry into the Law Enforcement Data System constitutes notice to all
31 law enforcement agencies of the existence of the restraining order. Law

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

5 (d) When a restraining order has been entered into the Law Enforcement
6 Data System and the databases of the National Crime Information Center
7 of the United States Department of Justice under this subsection, a county
8 sheriff shall cooperate with a request from a law enforcement agency from
9 any other jurisdiction to verify the existence of the restraining order or to
10 transmit a copy of the restraining order to the requesting jurisdiction.

11 (2) A sheriff may serve a restraining order issued under ORS 163.760 to
12 163.777 in the county in which the sheriff was elected and in any county that
13 is adjacent to the county in which the sheriff was elected.

14 (3)(a) A sheriff may serve and enter into the Law Enforcement Data Sys-
15 tem a copy of a restraining order issued under ORS 163.760 to 163.777 that
16 was transmitted to the sheriff by a circuit court or law enforcement agency
17 through an electronic communication device. Before transmitting a copy of
18 a restraining order to a sheriff under this subsection through an electronic
19 communication device, the person transmitting the copy must receive con-
20 firmation from the sheriff's office that an electronic communication device
21 is available and operating.

22 (b) For purposes of this subsection, "electronic communication device"
23 means a device by which any kind of electronic communication can be made,
24 including but not limited to communication by telephonic facsimile and
25 electronic mail.

26 (4) When a circuit court enters an order terminating a restraining order
27 issued under ORS 163.760 to 163.777 before the expiration date, the clerk of
28 the court shall immediately deliver a copy of the termination order to the
29 county sheriff with whom the original restraining order was filed. Upon re-
30 ceipt of the termination order, the county sheriff shall promptly remove the
31 original restraining order from the Law Enforcement Data System and the

1 databases of the National Crime Information Center of the United States
2 Department of Justice.

3 (5)(a) A contempt proceeding for an alleged violation of a restraining or-
4 der issued under ORS 163.760 to 163.777 must be conducted by the circuit
5 court that issued the restraining order or by the circuit court for the county
6 in which the alleged violation of the restraining order occurs. If contempt
7 proceedings are initiated in the circuit court for the county in which the
8 alleged violation of the restraining order occurs, the person initiating the
9 contempt proceedings shall file with the court a copy of the restraining order
10 that is certified by the clerk of the court that originally issued the re-
11 straining order. Upon filing of the certified copy of the restraining order, the
12 circuit court shall enforce the restraining order as though that court had
13 originally issued the restraining order.

14 (b) Pending a contempt hearing for an alleged violation of a restraining
15 order issued under ORS 163.760 to 163.777, a person arrested and taken into
16 custody pursuant to ORS 133.310 may be released as provided in ORS 135.230
17 to 135.290.

18 (c) Service of process or other legal documents upon the petitioner is not
19 a violation of a restraining order entered under ORS 163.760 to 163.777 if the
20 petitioner is served as provided in ORCP 7 or 9.

21 **SECTION 6. The amendments to ORS 3.014, 112.238 and 125.082 by**
22 **sections 1 to 3 of this 2020 Act become operative January 1, 2021.**

23 **SECTION 7. This 2020 Act being necessary for the immediate pres-**
24 **ervation of the public peace, health and safety, an emergency is de-**
25 **clared to exist, and this 2020 Act takes effect on its passage.**

26