

# House Bill 2634

Sponsored by Representative SANCHEZ; Representative GOMBERG (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**.

Provides that sexual assault restraining order is of indefinite duration and continues until order is terminated by court.

## A BILL FOR AN ACT

1  
2 Relating to the duration of sexual abuse restraining orders; creating new provisions; and amending  
3 ORS 163.765, 163.767, 163.773 and 163.775.

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

5 **SECTION 1.** ORS 163.765 is amended to read:

6 163.765. (1) When a petition is filed in accordance with ORS 163.763, the circuit court shall hold  
7 an ex parte hearing in person or by telephone on the day the petition is filed or on the following  
8 judicial day. Upon a finding that it is objectively reasonable for a person in the petitioner's situation  
9 to fear for the person's physical safety if an order granting relief under ORS 163.760 to 163.777 is  
10 not entered and that the respondent has subjected the petitioner to sexual abuse within the 180 days  
11 preceding the filing of the petition, the circuit court:

12 (a) Shall enter an order restraining the respondent from contacting the petitioner and from in-  
13 timidating, molesting, interfering with or menacing the petitioner, or attempting to intimidate, mo-  
14 lest, interfere with or menace the petitioner.

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

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

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

20 (C) That the respondent be restrained from intimidating, molesting, interfering with or menacing  
21 any children or family or household members of the petitioner, or attempting to intimidate, molest,  
22 interfere with or menace any children or family or household members of the petitioner;

23 (D) That the respondent be restrained from entering, or attempting to enter, any premises and  
24 a reasonable area surrounding the premises when necessary to prevent the respondent from intim-  
25 idating, molesting, interfering with or menacing the petitioner or the petitioner's children or family  
26 or household members; and

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

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

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

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

4 (a) The clerk of the court shall provide, without charge, the number of certified true copies of  
 5 the petition and the restraining order necessary to provide the petitioner with one copy and to effect  
 6 service and shall have a true copy of the petition and the restraining order delivered to the county  
 7 sheriff for service upon the respondent, unless the circuit court finds that further service is unnec-  
 8 essary because the respondent appeared in person before the court. In addition and upon request  
 9 by the petitioner, the clerk of the court shall provide the petitioner, without charge, two exemplified  
 10 copies of the petition and the restraining order.

11 (b) The county sheriff shall serve the respondent personally unless the petitioner elects to have  
 12 the respondent served personally by another party. Proof of service shall be made in accordance  
 13 with ORS 163.773. When the restraining order does not contain the respondent's date of birth and  
 14 service is effected by the sheriff, the sheriff shall verify the respondent's date of birth with the re-  
 15 spondent and shall record that date on the restraining order or proof of service entered into the  
 16 Law Enforcement Data System under ORS 163.773.

17 (5) If the county sheriff:

18 (a) Determines that the restraining order and petition are incomplete, the sheriff shall return  
 19 the restraining order and petition to the clerk of the court. The clerk of the court shall notify the  
 20 petitioner, at the address provided by the petitioner, of the error or omission.

21 (b) Cannot complete service within 10 days after accepting the restraining order and petition,  
 22 the sheriff 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 sheriff shall hold the  
 24 restraining order and petition for future service and file a return to the clerk of the court showing  
 25 that service was not completed.

26 (6)(a) Within 30 days after a restraining order is served under this section, the respondent may  
 27 request a circuit court hearing upon any relief granted.

28 (b) If the respondent requests a hearing under paragraph (a) of this subsection, the clerk of the  
 29 court shall notify the petitioner of the date and time of the hearing and shall supply the petitioner  
 30 with a copy of the respondent's request for a hearing. The petitioner shall give the clerk of the court  
 31 information sufficient to allow such notification.

32 (7) If the respondent fails to request a hearing within 30 days after a restraining order is served,  
 33 the restraining order is confirmed by operation of law.

34 (8) A restraining order entered under this section is effective *[for a period of one year, unless]*  
 35 **until** the restraining order is *[renewed,]* modified or terminated in accordance with ORS 163.760 to  
 36 163.777.

37 **SECTION 2.** ORS 163.767 is amended to read:

38 163.767. (1) If the respondent requests a hearing under ORS 163.765 (6), the circuit court shall  
 39 hold the hearing within 21 days after the request. At the hearing, the circuit court may terminate  
 40 or modify the restraining order issued under ORS 163.765.

41 (2)(a) If service of a notice of hearing is inadequate to provide a party with sufficient notice of  
 42 the hearing, the circuit court may extend the date of the hearing for up to five days so that the  
 43 party may seek representation.

44 (b) If one party is represented by an attorney at the hearing, the circuit court may extend the  
 45 date of the hearing for up to five days at the other party's request so that the other party may seek

1 representation.

2 (3) If the circuit court continues the restraining order issued under ORS 163.765, with or without  
 3 modification, at a hearing about which the respondent received actual notice and the opportunity  
 4 to be heard, the court shall include in the restraining order a certificate in substantially the fol-  
 5 lowing form in a separate section immediately above the signature of the judge:

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6  
 7  
 8 CERTIFICATE OF COMPLIANCE  
 9 WITH THE VIOLENCE  
 10 AGAINST WOMEN ACT OF 1994  
 11

12 This protective order meets all full faith and credit requirements of the Violence Against Women  
 13 Act of 1994, 18 U.S.C. 2265. This court has jurisdiction over the parties and the subject matter. The  
 14 respondent was afforded notice and timely opportunity to be heard as provided by the law of this  
 15 jurisdiction. This protective order is valid and entitled to enforcement in this and all other juris-  
 16 dictions.

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17  
 18  
 19 (4) The circuit court may approve a consent agreement if the court determines that the agree-  
 20 ment provides sufficient protections to the petitioner. The circuit court may not approve a term in  
 21 a consent agreement that provides for restraint of a party to the agreement unless the other party  
 22 petitioned for and was granted a restraining order issued under ORS 163.765.

23 (5) A restraining order entered under this section, or a consent agreement entered into under  
 24 this section, shall continue [*for a period of one year from the date of the restraining order issued*  
 25 *under ORS 163.765, unless*] **until** the restraining order is [*renewed,*] modified or terminated in ac-  
 26 cordance with ORS 163.775.

27 **SECTION 3.** ORS 163.773 is amended to read:

28 163.773. (1)(a) When a restraining order is issued in accordance with ORS 163.760 to 163.777 and  
 29 the person to be restrained has actual notice of the restraining order, the clerk of the court or any  
 30 other person serving the petition and the restraining order shall immediately deliver to a county  
 31 sheriff copies of the petition and the restraining order and a true copy of proof of service on which  
 32 it is stated that the petition and the restraining order were served personally on the respondent.  
 33 Proof of service may be made by affidavit or by declaration under penalty of perjury. If a restraining  
 34 order entered by the circuit court recites that the respondent appeared in person before the court,  
 35 the necessity for service of the restraining order and proof of service is waived.

36 (b) Upon receipt of a copy of the restraining order and notice of completion of any required  
 37 service by a member of a law enforcement agency, the county sheriff shall immediately enter the  
 38 restraining order into the Law Enforcement Data System maintained by the Department of State  
 39 Police and the databases of the National Crime Information Center of the United States Department  
 40 of Justice. If the petition and the restraining order were served on the respondent by a person other  
 41 than a member of a law enforcement agency, the county sheriff shall enter the restraining order into  
 42 the Law Enforcement Data System and the databases of the National Crime Information Center  
 43 upon receipt of a true copy of proof of service. The sheriff shall provide the petitioner with a true  
 44 copy of any required proof of service.

45 (c) Entry into the Law Enforcement Data System constitutes notice to all law enforcement

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

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

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

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

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

22 (4) When a circuit court enters an order terminating a restraining order issued under ORS  
 23 163.760 to 163.777 [*before the expiration date*], the clerk of the court shall immediately deliver a copy  
 24 of the termination order to the county sheriff with whom the original restraining order was filed.  
 25 Upon receipt of the termination order, the county sheriff shall promptly remove the original re-  
 26 straining order from the Law Enforcement Data System and the databases of the National Crime  
 27 Information Center of the United States Department of Justice.

28 (5)(a) A contempt proceeding for an alleged violation of a restraining order issued under ORS  
 29 163.760 to 163.777 must be conducted by the circuit court that issued the restraining order or by the  
 30 circuit court for the county in which the alleged violation of the restraining order occurs. If con-  
 31 tempt proceedings are initiated in the circuit court for the county in which the alleged violation of  
 32 the restraining order occurs, the person initiating the contempt proceedings shall file with the court  
 33 a copy of the restraining order that is certified by the clerk of the court that originally issued the  
 34 restraining order. Upon filing of the certified copy of the restraining order, the circuit court shall  
 35 enforce the restraining order as though that court had originally issued the restraining order.

36 (b) Pending a contempt hearing for an alleged violation of a restraining order issued under ORS  
 37 163.760 to 163.777, a person arrested and taken into custody pursuant to ORS 133.310 may be re-  
 38 leased as provided in ORS 135.230 to 135.290.

39 (c) Service of process or other legal documents upon the petitioner is not a violation of a re-  
 40 straining order entered under ORS 163.760 to 163.777 if the petitioner is served as provided in ORCP  
 41 7 or 9.

42 **SECTION 4.** ORS 163.775 is amended to read:

43 163.775. [(1)(a) A circuit court may renew a restraining order entered under ORS 163.760 to  
 44 163.777 upon a finding that it is objectively reasonable for a person in the petitioner's situation to fear  
 45 for the person's physical safety if the restraining order is not renewed. A finding that the respondent

1 *has subjected the petitioner to additional sexual abuse is not required.]*

2 *[(b) A circuit court may renew a restraining order on the basis of an ex parte petition alleging facts*  
 3 *supporting the required finding. The petition must include allegations made under oath or affirmation*  
 4 *or a declaration under penalty of perjury. If the renewal order is granted, the provisions of ORS*  
 5 *163.765 (4) to (8) and 163.767 (3) apply, except that the court may hear no issue other than the basis*  
 6 *for renewal, unless requested in the hearing request form and thereafter agreed to by the petitioner.*  
 7 *The circuit court shall hold a hearing required under this paragraph within 21 days after the*  
 8 *respondent's request.]*

9 [(2)] (1) At any time after the time period set forth in ORS 163.765 (6):

10 (a) A party may request that the circuit court modify terms in the restraining order for good  
 11 cause shown.

12 (b) A petitioner may request that the circuit court remove terms in the restraining order or  
 13 make terms in the order less restrictive. Application to the circuit court under this paragraph may  
 14 be by ex parte motion.

15 [(3)] (2) The clerk of the court shall provide without charge the number of certified true copies  
 16 of the request for modification of the restraining order and notice of hearing necessary to effect  
 17 service and, at the election of the party requesting the modification, shall have a true copy of the  
 18 request and notice delivered to the county sheriff for service upon the other party.

19 [(4)] (3) The county sheriff shall serve the other party with a request for modification of a re-  
 20 straining order under subsection [(2)(a)] (1)(a) of this section by personal service, unless the party  
 21 requesting the modification elects to have the other party personally served by a private party or  
 22 unless otherwise ordered by the circuit court.

23 [(5)] (4) The provisions of ORS 163.767 (3) apply to a modification of a restraining order under  
 24 this section.

25 [(6)] (5) The clerk of the court shall deliver a copy of an order of modification entered under this  
 26 section to the county sheriff for service and entry into the Law Enforcement Data System as pro-  
 27 vided in ORS 163.773.

28 [(7)(a)] (6)(a) The county sheriff shall serve a copy of an order of modification:

29 (A) Entered under subsection [(2)(a)] (1)(a) of this section by personal service on the  
 30 nonrequesting party.

31 (B) Entered under subsection [(2)(b)] (1)(b) of this section by mailing a copy of the order of  
 32 modification to the respondent by first class mail.

33 (b) If the order of modification recites that the respondent appeared in person before the circuit  
 34 court, the necessity for service of the order and proof of service is waived.

35 [(8)] (7) A restraining order entered under ORS 163.760 to 163.777 may not be terminated on  
 36 motion of the petitioner, unless the motion is notarized.

37 **SECTION 5. The amendments to ORS 163.765, 163.767, 163.773 and 163.775 by sections 1**  
 38 **to 4 of this 2019 Act apply to petitions for sexual abuse restraining orders filed on or after**  
 39 **the effective date of this 2019 Act.**