

A-Engrossed
Senate Bill 995

Ordered by the Senate May 1
Including Senate Amendments dated May 1

Sponsored by COMMITTEE ON JUDICIARY

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.

Modifies provisions relating to restraining orders.

[Directs State Court Administrator to study issues relating to civil proceedings and report to committee or interim committee of Legislative Assembly no later than December 31, 2020.]

A BILL FOR AN ACT

1
2 Relating to civil proceedings; creating new provisions; and amending ORS 163.763, 163.765 and
3 163.767.

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

5 **SECTION 1.** ORS 163.763 is amended to read:

6 163.763. (1) A person who has been subjected to sexual abuse and who reasonably fears for the
7 person's physical safety may petition the circuit court for a restraining order if:

8 (a) The person and the respondent are not family or household members;

9 (b) The respondent is at least 18 years of age; and

10 (c) The respondent is not prohibited from contacting the person pursuant to a foreign restraining
11 order as defined in ORS 24.190, an order issued under ORS 30.866, 124.015, 124.020, 163.738 or
12 419B.845 or an order entered in a criminal action.

13 (2)(a) A petition seeking relief under ORS 163.760 to 163.777 must be filed in the circuit court
14 for the county in which the petitioner or the respondent resides. The petition may be filed, without
15 the appointment of a guardian ad litem, by a person who is at least 12 years of age or by a parent
16 or lawful guardian of a person who is under 18 years of age.

17 (b) The petition must allege that:

18 (A) The petitioner reasonably fears for the petitioner's physical safety with respect to the re-
19 spondent; and

20 (B) The respondent subjected the petitioner to sexual abuse [*within the 180 days preceding the*
21 *filing of the petition*].

22 (c) The petition must include allegations made under oath or affirmation or a declaration under
23 penalty of perjury.

24 (d) The petitioner has the burden of proving a claim under ORS 163.760 to 163.777 by a pre-
25 ponderance of the evidence.

26 [(3) *The following periods of time may not be counted for the purpose of computing the 180-day*
27 *period described in this section and ORS 163.765;*]

28 [(a) *Any time during which the respondent is incarcerated.*]

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 **[(b) Any time during which the respondent has a principal residence more than 100 miles from the**
2 **principal residence of the petitioner.]**

3 **[(c) Any time during which the respondent is subject to an order described in subsection (1)(c) of**
4 **this section.]**

5 **SECTION 2.** 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.

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

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

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

42 (b) The county sheriff shall serve the respondent personally unless the petitioner elects to have
43 the respondent served personally by another party. Proof of service shall be made in accordance
44 with ORS 163.773. When the restraining order does not contain the respondent's date of birth and
45 service is effected by the sheriff, the sheriff shall verify the respondent's date of birth with the re-

1 spondent and shall record that date on the restraining order or proof of service entered into the
2 Law Enforcement Data System under ORS 163.773.

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

4 [(a)] (A) Determines that the restraining order and petition are incomplete, the sheriff shall re-
5 turn the restraining order and petition to the clerk of the court. The clerk of the court shall notify
6 the petitioner, at the address provided by the petitioner, of the error or omission.

7 [(b)] (B) Cannot complete service within 10 days after accepting the restraining order and peti-
8 tion, the sheriff shall notify the petitioner, at the address provided by the petitioner, that the docu-
9 ments have not been served. If the petitioner does not respond within 10 days, the sheriff shall hold
10 the restraining order and petition for future service and file a return to the clerk of the court
11 showing that service was not completed.

12 **(b) If a petitioner receives notice of incomplete service under paragraph (a)(B) of this**
13 **subsection and cannot effect service on the respondent within 30 days after the granting or**
14 **renewal of the restraining order, the circuit court may order service by an alternative**
15 **method in accordance with ORCP 7 D(6)(a) on proof of the petitioner's due diligence in at-**
16 **tempting to effect service.**

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

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

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

25 (8)(a) A restraining order entered under this section is effective for a period of [*one year*] **five**
26 **years or, if the petitioner is under 18 years of age at the time of entry, until the person at-**
27 **tains 19 years of age, whichever occurs later, except as otherwise provided in paragraph (b)**
28 **or (c) of this subsection or** unless the restraining order is renewed, modified or terminated in ac-
29 cordance with ORS 163.760 to 163.777.

30 **(b) The circuit court shall enter a permanent restraining order if, at the time of the pe-**
31 **tion or renewal of the order, the respondent has been convicted of a crime described in ORS**
32 **163.355 to 163.445 committed against the petitioner.**

33 **(c) The circuit court may enter a permanent restraining order if the court finds that it**
34 **is objectively reasonable for a person in the petitioner's situation to fear for the person's**
35 **physical safety and that the passage of time or a change in circumstances would not dissi-**
36 **pate that fear. In making the finding, the court shall consider any information offered by the**
37 **petitioner to support the request for a permanent restraining order, including but not limited**
38 **to:**

39 **(A) Information that the respondent has a history of engaging in sexual abuse or do-**
40 **mestic violence as defined in ORS 135.230;**

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

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

44 **SECTION 3.** ORS 163.767 is amended to read:

45 163.767. (1) If the respondent requests a hearing under ORS 163.765 (6), the circuit court shall

1 hold the hearing within 21 days after the request. At the hearing, the circuit court may terminate
2 or modify the restraining order issued under ORS 163.765.

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

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

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

13
14
15 CERTIFICATE OF COMPLIANCE
16 WITH THE VIOLENCE
17 AGAINST WOMEN ACT OF 1994
18

19 This protective order meets all full faith and credit requirements of the Violence Against Women
20 Act of 1994, 18 U.S.C. 2265. This court has jurisdiction over the parties and the subject matter. The
21 respondent was afforded notice and timely opportunity to be heard as provided by the law of this
22 jurisdiction. This protective order is valid and entitled to enforcement in this and all other juris-
23 dictions.
24

25
26 (4) The circuit court may approve a consent agreement if the court determines that the agree-
27 ment provides sufficient protections to the petitioner. The circuit court may not approve a term in
28 a consent agreement that provides for restraint of a party to the agreement unless the other party
29 petitioned for and was granted a restraining order issued under ORS 163.765.

30 (5) A restraining order entered under this section, or a consent agreement entered into under
31 this section, shall continue for a period of [one year] **five years** from the date of the restraining
32 order issued under ORS 163.765 **or, if the petitioner is under 18 years of age at the time of is-**
33 **suance, until the petitioner attains 19 years of age, whichever occurs later**, unless the **court**
34 **enters a permanent order under ORS 163.765 (8) or the** restraining order is renewed, modified
35 or terminated in accordance with ORS 163.775.

36 **SECTION 4. The amendments to ORS 163.763, 163.765 and 163.767 by sections 1 to 3 of this**
37 **2019 Act apply to petitions for sexual abuse restraining orders filed on or after the effective**
38 **date of this 2019 Act.**
39