

Senate Bill 766

Sponsored by COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of Oregon Law Center)

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**.

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 sexual abuse restraining orders; creating new provisions; amending ORS 163.765 and
3 163.773; and declaring an emergency.

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, the circuit court:

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

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

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

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

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

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

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

28 (2) If the respondent is restrained from entering or attempting to enter an area surrounding the
29 petitioner's residence or any other premises, the restraining order must specifically describe the
30 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 unne-
8 cessary 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)(a) 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 (b) If a petitioner receives notice of incomplete service under paragraph (a)(B) of this subsection
27 and cannot effect service on the respondent within 30 days after the granting or renewal of the re-
28 straining order, the circuit court may order service by an alternative method in accordance with
29 ORCP 7 D(6) on proof of the petitioner's due diligence in attempting to effect service.

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

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

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

38 (8)(a) A restraining order entered under this section is effective for a period of five years or, if
39 the petitioner is under 18 years of age at the time of entry, until [*the person attains 19 years of*
40 *age*] **January 1 of the year following the petitioner's 18th birthday**, whichever occurs later, ex-
41 cept as otherwise provided in paragraph (b) or (c) of this subsection or unless the restraining order
42 is renewed, modified or terminated in accordance with ORS 163.760 to 163.777.

43 (b) The circuit court shall enter a permanent restraining order if, at the time of the petition or
44 renewal of the order, the respondent has been convicted of a crime described in ORS 163.355 to
45 163.445 committed against the petitioner.

1 (c) The circuit court may enter a permanent restraining order if the court finds that it is ob-
 2 jectively reasonable for a person in the petitioner’s situation to fear for the person’s physical safety
 3 and that the passage of time or a change in circumstances would not dissipate that fear. In making
 4 the finding, the court shall consider any information offered by the petitioner to support the request
 5 for a permanent restraining order, including but not limited to:

6 (A) Information that the respondent has a history of engaging in sexual abuse or domestic vi-
 7 olence as defined in ORS 135.230;

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

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

11 **SECTION 2.** ORS 163.765, as amended by section 1 of this 2021 Act, is amended to read:

12 163.765. (1) When a petition is filed in accordance with ORS 163.763, the circuit court shall hold
 13 an ex parte hearing in person or by telephone on the day the petition is filed or on the following
 14 judicial day. Upon a finding that it is objectively reasonable for a person in the petitioner’s situation
 15 to fear for the person’s physical safety if an order granting relief under ORS 163.760 to 163.777 is
 16 not entered and that the respondent has subjected the petitioner to sexual abuse, the circuit court:

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

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

21 (A) That the respondent be restrained from contacting the petitioner’s children or family or
 22 household members;

23 (B) That the respondent be restrained from entering, or attempting to enter, a reasonable area
 24 surrounding the petitioner’s residence;

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

28 (D) That the respondent be restrained from entering, or attempting to enter, any premises and
 29 a reasonable area surrounding the premises when necessary to prevent the respondent from intim-
 30 idating, molesting, interfering with or menacing the petitioner or the petitioner’s children or family
 31 or household members; and

32 (E) Other relief necessary to provide for the safety and welfare of the petitioner or the
 33 petitioner’s children or family or household members.

34 (2) If the respondent is restrained from entering or attempting to enter an area surrounding the
 35 petitioner’s residence or any other premises, the restraining order must specifically describe the
 36 area or premises.

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

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

40 (a) The clerk of the court shall provide, without charge, the number of certified true copies of
 41 the petition and the restraining order necessary to provide the petitioner with one copy and to effect
 42 service and shall have a true copy of the petition and the restraining order delivered to the county
 43 sheriff for service upon the respondent, unless the circuit court finds that further service is unnec-
 44 essary because the respondent appeared in person before the court. In addition and upon request
 45 by the petitioner, the clerk 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 petitioner elects to have
3 the respondent served personally by another party. Proof of service shall be made in accordance
4 with ORS 163.773. When the restraining order does not contain the respondent's date of birth and
5 service is effected by the sheriff, the sheriff shall verify the respondent's date of birth with the re-
6 spondent and shall record that date on the restraining order or proof of service entered into the
7 Law Enforcement Data System under ORS 163.773.

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

9 (A) Determines that the restraining order and petition are incomplete, the sheriff shall return
10 the restraining order and petition to the clerk of the court. The clerk of the court shall notify the
11 petitioner, at the address provided by the petitioner, of the error or omission.

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

17 (b) If a petitioner receives notice of incomplete service under paragraph (a)(B) of this subsection
18 and cannot effect service on the respondent within 30 days after the granting or renewal of the re-
19 straining order, the circuit court may order service by an alternative method in accordance with
20 ORCP 7 D(6) on proof of the petitioner's due diligence in attempting to effect service. **If appropri-**
21 **ate, the court may order the use of a summons to effect service. The summons must include**
22 **notice of where the respondent may obtain a complete copy of the order.**

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

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

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

31 (8)(a) A restraining order entered under this section is effective for a period of five years or, if
32 the petitioner is under 18 years of age at the time of entry, until January 1 of the year following
33 the petitioner's 18th birthday, whichever occurs later, except as otherwise provided in paragraph (b)
34 or (c) of this subsection or unless the restraining order is renewed, modified or terminated in ac-
35 cordance with ORS 163.760 to 163.777.

36 (b) The circuit court shall enter a permanent restraining order if, at the time of the petition or
37 renewal of the order, the respondent has been convicted of a crime described in ORS 163.355 to
38 163.445 committed against the petitioner.

39 (c) The circuit court may enter a permanent restraining order if the court finds that it is ob-
40 jectively reasonable for a person in the petitioner's situation to fear for the person's physical safety
41 and that the passage of time or a change in circumstances would not dissipate that fear. In making
42 the finding, the court shall consider any information offered by the petitioner to support the request
43 for a permanent restraining order, including but not limited to:

44 (A) Information that the respondent has a history of engaging in sexual abuse or domestic vi-
45 olence as defined in ORS 135.230;

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

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

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

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

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

27 (c) Entry into the Law Enforcement Data System constitutes notice to all law enforcement
28 agencies of the existence of the restraining order. Law enforcement agencies shall establish proce-
29 dures adequate to ensure that an officer at the scene of an alleged violation of the restraining order
30 may be informed of the existence and terms of the restraining order. The restraining order is fully
31 enforceable in any county or tribal land in this state.

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

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

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

1 (b) For purposes of this subsection, “electronic communication device” means a device by which
2 any kind of electronic communication can be made, including but not limited to communication by
3 telephonic facsimile and electronic mail.

4 (4) When a circuit court enters an order terminating a restraining order issued under ORS
5 163.760 to 163.777 before the expiration date, the clerk of the court shall immediately deliver a copy
6 of the termination order to the county sheriff with whom the original restraining order was filed.
7 Upon receipt of the termination order, the county sheriff shall promptly remove the original re-
8 straining order from the Law Enforcement Data System and the databases of the National Crime
9 Information Center of the United States Department of Justice.

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

18 (b) Pending a contempt hearing for an alleged violation of a restraining order issued under ORS
19 163.760 to 163.777, a person arrested and taken into custody pursuant to ORS 133.310 may be re-
20 leased as provided in ORS 135.230 to 135.290.

21 (c) Service of process or other legal documents upon the petitioner is not a violation of a re-
22 straining order entered under ORS 163.760 to 163.777 if the petitioner is served as provided in ORCP
23 7 or 9.

24 **SECTION 4. The amendments to ORS 163.765 and 163.773 by sections 2 and 3 of this 2021**
25 **Act become operative on the 91st day after the date on which the 2021 regular session of the**
26 **Eighty-first Legislative Assembly adjourns sine die.**

27 **SECTION 5. This 2021 Act being necessary for the immediate preservation of the public**
28 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
29 **on its passage.**

30