

Enrolled Senate Bill 816

Sponsored by Senators MANNING JR, THATCHER; Senators LIEBER, PATTERSON, SMITH DB, SOLLMAN, Representatives BOICE, GAMBA, GOODWIN, GRAYBER, HUDSON, KROPF, LEVY B, MANNIX, NERON, RESCHKE, RUIZ

CHAPTER

AN ACT

Relating to the duration of restraining orders; creating new provisions; and amending ORS 107.716, 107.718 and 107.725.

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

SECTION 1. ORS 107.718 is amended to read:

107.718. (1) When a person files a petition under ORS 107.710, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a showing that the petitioner has been the victim of abuse committed by the respondent within 180 days preceding the filing of the petition, that there is an imminent danger of further abuse to the petitioner and that the respondent represents a credible threat to the physical safety of the petitioner or the petitioner’s child, the court shall, if requested by the petitioner, order:

(a) Except as provided in subsection (2) of this section, that temporary custody of the children of the parties be awarded to the petitioner or, at the request of the petitioner, to the respondent, subject to reasonable parenting time rights of the noncustodial parent, which the court shall order, unless such parenting time is not in the best interest of the child;

(b) That the respondent be required to move from the petitioner’s residence, if in the sole name of the petitioner or if it is jointly owned or rented by the petitioner and the respondent, or if the parties are married to each other;

(c) That the respondent be restrained from entering, or attempting to enter, a reasonable area surrounding the petitioner’s current or subsequent residence if the respondent is required to move from petitioner’s residence;

(d) That a peace officer accompany the party who is leaving or has left the parties’ residence to remove essential personal effects of the party or the party’s children, or both, including but not limited to clothing, toiletries, diapers, medications, Social Security cards, certified copies of records of live birth, identification and tools of the trade;

(e) That the respondent be restrained from intimidating, molesting, interfering with or menacing the petitioner, or attempting to intimidate, molest, interfere with or menace the petitioner;

(f) That the respondent be restrained from intimidating, molesting, interfering with or menacing any children in the custody of the petitioner, or attempting to intimidate, molest, interfere with or menace any children in the custody of the petitioner;

(g) That the respondent be restrained from entering, or attempting to enter, on any premises and a reasonable area surrounding the premises when it appears to the court that such restraint is

necessary to prevent the respondent from intimidating, molesting, interfering with or menacing the petitioner or children whose custody is awarded to the petitioner;

(h) Other relief that the court considers necessary to:

(A) Provide for the safety and welfare of the petitioner and the children in the custody of the petitioner, including but not limited to emergency monetary assistance from the respondent; and

(B) Prevent the neglect and protect the safety of any service or therapy animal or any animal kept for personal protection or companionship, but not an animal kept for any business, commercial, agricultural or economic purpose; or

(i) Except as described in subsection (12) of this section or parenting time ordered under this section, that the respondent have no contact with the petitioner in person, by telephone or by mail.

(2) If the court determines that exceptional circumstances exist that affect the custody of a child, the court shall order the parties to appear and provide additional evidence at a hearing to determine temporary custody and resolve other contested issues. Pending the hearing, the court may make any orders regarding the child's residence and the parties' contact with the child that the court finds appropriate to provide for the child's welfare and the safety of the parties. The court shall set a hearing time and date as provided in ORS 107.716 (2) and issue a notice of the hearing at the same time the court issues the restraining order.

(3) The court's order under subsection (1) of this section is effective for a period of *[one year]* **two years** or until the order is withdrawn or amended, or until the order is superseded as provided in ORS 107.722, whichever is sooner.

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

(5) Imminent danger under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with additional bodily harm.

(6) If the court awards parenting time to a parent who committed abuse, the court shall make adequate provision for the safety of the child and of the petitioner. The order of the court may include, but is not limited to, the following:

(a) That exchange of a child between parents shall occur at a protected location.

(b) That parenting time be supervised by another person or agency.

(c) That the perpetrator of the abuse be required to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or any other counseling program designated by the court as a condition of the parenting time.

(d) That the perpetrator of the abuse not possess or consume alcohol or controlled substances during the parenting time and for 24 hours preceding the parenting time.

(e) That the perpetrator of the abuse pay all or a portion of the cost of supervised parenting time, and any program designated by the court as a condition of parenting time.

(f) That no overnight parenting time occur.

(7) The State Court Administrator shall prescribe the content and form of the petition, order and related forms for use under ORS 107.700 to 107.735. The clerk of the court shall make available the forms and an instructional brochure explaining the rights set forth under ORS 107.700 to 107.735.

(8) If the court orders relief:

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

(b) The county sheriff shall serve the respondent personally unless the petitioner elects to have the respondent served personally by a private party or by a peace officer who is called to the scene of a domestic disturbance at which the respondent is present, and who is able to obtain a copy of

the order within a reasonable amount of time. Proof of service shall be made in accordance with ORS 107.720. When the order does not contain the respondent's date of birth and service is effected by the sheriff or other peace officer, the sheriff or officer shall verify the respondent's date of birth with the respondent and shall record that date on the order or proof of service entered into the Law Enforcement Data System under ORS 107.720.

(c) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the relief provided under ORS 107.700 to 107.735.

(9) If the county sheriff:

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

(b) After accepting the order and petition, cannot complete service within 10 days, the sheriff shall notify the petitioner, at the address provided by the petitioner, that the documents have not been served. If the petitioner does not respond within 10 days, the sheriff shall hold the order and petition for future service and file a return to the clerk of the court showing that service was not completed.

(10)(a) Within 30 days after a restraining order is served under this section, the respondent therein may request a court hearing upon any relief granted. The hearing request form shall be available from the clerk of the court in the form prescribed by the State Court Administrator.

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

(c) The hearing shall not be limited to the issues raised in the respondent's request for hearing form. If the respondent seeks to raise an issue at the hearing not previously raised in the request for hearing form, or if the petitioner seeks relief at the hearing not granted in the original order, the other party shall be entitled to a reasonable continuance for the purpose of preparing a response to the issue.

(11) If the respondent fails to request a hearing within 30 days after a restraining order is served, the restraining order is confirmed by operation of law. The provisions of this section are sufficient to meet the due process requirements of 18 U.S.C. 922(g) in that the respondent received actual notice of the right to request a hearing and the opportunity to participate at the hearing but the respondent failed to exercise those rights.

(12) Service of process or other legal documents upon the petitioner is not a violation of this section if the petitioner is served as provided in ORCP 7 or 9.

SECTION 2. ORS 107.725 is amended to read:

107.725. (1) The court may renew **for a period of two years** an order entered under ORS 107.716 or 107.718 **or renewed under this section** upon a finding that:

(a) A person in the petitioner's situation would reasonably fear further acts of abuse by the respondent if the order is not renewed; or

(b) A person in the situation of a child who was in the petitioner's custody during the time the order existed, who was also included as a protected person in the order and who has reached 18 years of age since the date the order was entered would reasonably fear further acts of abuse by the respondent if the order is not renewed.

(2) A finding that there has been a further act of abuse is not required to renew an order under subsection (1) of this section.

(3) The court may renew an order under subsection (1)(b) of this section regardless of whether the original petitioner agrees to or seeks renewal of the order. If the petitioner does not agree to or seek renewal of the order concurrently with the request of the child who has reached 18 years of age, the court may modify the order upon renewal to exclude the petitioner as a protected person in the order. A child who has reached 18 years of age may seek renewal under this section without having to file a petition under ORS 107.710.

(4) A court may renew an order on the basis of an ex parte petition alleging facts supporting the required finding. The petition must include allegations made under oath or affirmation or a declaration under penalty of perjury. If the renewal order is granted, the provisions of ORS 107.716 (5) and 107.718 (8) to (10) apply except that the court may hear no issue other than the basis for renewal unless requested in the hearing request form and thereafter agreed to by the petitioner or the child who has reached 18 years of age. The court shall hold a hearing required under this section within 21 days after the respondent's request.

SECTION 3. ORS 107.716 is amended to read:

107.716. (1) If the respondent requests a hearing pursuant to ORS 107.718 (10), the court shall hold the hearing within 21 days after the request. However, if the respondent contests the order granting temporary child custody to the petitioner, the court shall hold the hearing within five days after the request.

(2)(a) If the court determines under ORS 107.718 (2) that exceptional circumstances exist that affect the custody of a child, the court shall hold a hearing within 14 days after issuance of the restraining order. The clerk of the court shall provide a notice of the hearing along with the petition and order to the petitioner and, in accordance with ORS 107.718 (8), to the county sheriff for service on the respondent.

(b) The respondent may request an earlier hearing, to be held within five days after the request. The hearing request form shall be available from the clerk of the court in the form prescribed by the State Court Administrator under ORS 107.718 (7). If the respondent requests an earlier hearing, the clerk of the court shall notify the parties of the scheduled hearing date by mailing a notice of the time and place of hearing to the addresses provided in the petition or, for the respondent, to the address provided in the request for hearing, or as otherwise designated by a party.

(c) When the court schedules a hearing under this subsection, the respondent may not request a hearing under ORS 107.718 (10).

(3) In a hearing held pursuant to subsection (1) or (2) of this section:

(a) The court may continue any order issued under ORS 107.718 if the court finds that:

(A) Abuse has occurred within the period specified in ORS 107.710 (1);

(B) The petitioner reasonably fears for the petitioner's physical safety; and

(C) The respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child.

(b) The court may cancel or change any order issued under ORS 107.718 and may assess against either party a reasonable attorney fee and such costs as may be incurred in the proceeding.

(4)(a) If service of a notice of hearing is inadequate to provide a party with sufficient notice of the hearing held pursuant to ORS 107.718 (2) or (10), the court may extend the date of the hearing for up to five days so that the party may seek representation.

(b) If one party is represented by an attorney at a hearing held pursuant to ORS 107.718 (2) or (10), the court may extend the date of the hearing for up to five days at the other party's request so that the other party may seek representation.

(5) If the court continues the order, with or without changes, at a hearing about which the respondent received actual notice and the opportunity to participate, the court shall include in the order a certificate in substantially the following form in a separate section immediately above the signature of the judge:

CERTIFICATE OF COMPLIANCE
WITH THE VIOLENCE
AGAINST WOMEN ACT

This protective order meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. 2265 (1994). This court has jurisdiction over the parties and the subject matter. The

respondent was afforded notice and timely opportunity to be heard as provided by the law of this jurisdiction. This order is valid and entitled to enforcement in this and all other jurisdictions.

(6) The court may approve any consent agreement to bring about a cessation of abuse of the parties. However, the court may not approve a term in a consent agreement that provides for restraint of a party to the agreement unless the other party petitioned for and was granted an order under ORS 107.710. An order or consent agreement made under this section may be amended at any time and shall continue in effect for a period of [*one year*] **two years** from the date of the order issued under ORS 107.718, or until superseded as provided in ORS 107.722.

(7) No order or agreement made under ORS 107.705 to 107.720, 133.310 and 133.381 shall in any manner affect title to any real property.

(8) No undertaking shall be required in any proceeding under ORS 107.700 to 107.735.

(9) Any proceeding under ORS 107.700 to 107.735 shall be in addition to any other available civil or criminal remedies.

SECTION 4. The amendments to ORS 107.716, 107.718 and 107.725 by sections 1 to 3 of this 2023 Act apply to restraining orders entered or renewed on or after the effective date of this 2023 Act.

Passed by Senate April 17, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 16, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State