

Enrolled
Senate Bill 995

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

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

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

SECTION 1. ORS 163.763 is amended to read:

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

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

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

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

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

(b) The petition must allege that:

(A) The petitioner reasonably fears for the petitioner's physical safety with respect to the respondent; and

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

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

(d) The petitioner has the burden of proving a claim under ORS 163.760 to 163.777 by a preponderance of the evidence.

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

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

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

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

SECTION 2. ORS 163.765 is amended to read:

163.765. (1) When a petition is filed in accordance with ORS 163.763, 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 finding that it is objectively reasonable for a person in the petitioner's situation to fear for the person's physical safety if an order granting relief under ORS 163.760 to 163.777 is not entered and that the respondent has subjected the petitioner to sexual abuse [*within the 180 days preceding the filing of the petition*], the circuit court:

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

(b) If the petitioner requests, may order:

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

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

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

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

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

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

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

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

(a) The clerk of the court shall provide, without charge, the number of certified true copies of the petition and the restraining order necessary to provide the petitioner with one copy and to effect service and shall have a true copy of the petition and the restraining order delivered to the county sheriff for service upon the respondent, unless the circuit 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 of the court shall provide the petitioner, without charge, two exemplified copies of the petition and the restraining order.

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

(5)(a) If the county sheriff:

[(a)] (A) Determines that the restraining order and petition are incomplete, the sheriff shall return the restraining 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)] (B) Cannot complete service within 10 days after accepting the restraining order and petition, 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 restraining order and petition for future service and file a return to the clerk of the court showing that service was not completed.

(b) If a petitioner receives notice of incomplete service under paragraph (a)(B) of this subsection and cannot effect service on the respondent within 30 days after the granting or renewal of the restraining order, the circuit court may order service by an alternative

method in accordance with ORCP 7 D(6)(a) on proof of the petitioner's due diligence in attempting to effect service.

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

(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 the clerk of the court information sufficient to allow such notification.

(7) 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.

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

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

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

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

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

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

SECTION 3. ORS 163.767 is amended to read:

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

(2)(a) If service of a notice of hearing is inadequate to provide a party with sufficient notice of the hearing, the circuit 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 the hearing, the circuit 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.

(3) If the circuit court continues the restraining order issued under ORS 163.765, with or without modification, at a hearing about which the respondent received actual notice and the opportunity to be heard, the court shall include in the restraining 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 OF 1994

This protective order meets all full faith and credit requirements of the Violence Against Women Act of 1994, 18 U.S.C. 2265. 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 protective order is valid and entitled to enforcement in this and all other jurisdictions.

(4) The circuit court may approve a consent agreement if the court determines that the agreement provides sufficient protections to the petitioner. The circuit 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 a restraining order issued under ORS 163.765.

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

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

Passed by Senate May 6, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 3, 2019

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2019

Approved:

.....M.,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2019

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Bev Clarno, Secretary of State