

Senate Bill 1547

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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**.

Creates exception to requirement that court proceeding involving person in custody be transferred from court facility in Gresham to Portland if defendant is not in custody and certain warrants have been vacated or executed.

Clarifies court procedure for proponent of decedent's will.

Requires notice of court order of appointment of guardian be provided in manner reasonably calculated to be received and understood by protected person. Permits provision of notice verbally or in writing and delivered in person, by telephone or by mail.

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 courts; creating new provisions; amending ORS 3.014, 112.238, 125.082, 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 3.014 is amended to read:

6 3.014. (1) One of the judges of the fourth judicial district shall hold court in the City of Gresham,
7 Multnomah County, as directed by the Chief Justice of the Supreme Court but in no event less than
8 one day a week. All proceedings resulting from alleged state traffic offenses or misdemeanors oc-
9 ccurring east of 122nd Avenue extended to the north and south boundaries of Multnomah County
10 shall be conducted in the court in Gresham unless the accused at first appearance in each action
11 requests trial in Portland.

12 (2) A proceeding to be conducted in Gresham as provided in subsection (1) of this section shall
13 be transferred without further order of the court to a court facility in Portland for all purposes if:

14 (a) The accused person is in the custody of a county sheriff or the Department of Corrections
15 at the time set for any scheduled proceeding; or

16 (b) A circuit court in the fourth judicial district issues a bench warrant or a warrant of arrest
17 against the accused for any criminal action pending before the court.

18 **(3) Notwithstanding subsection (2) of this section, upon motion of any party, a proceeding**
19 **to be conducted in Gresham as provided in subsection (1) of this section shall, unless good**
20 **cause is shown, remain with the court in Gresham if the defendant is not in custody and all**
21 **warrants issued by the fourth judicial district for the defendant have been vacated or exe-**
22 **cuted.**

23 [(3)] (4) Multnomah County shall provide facilities in the City of Gresham for a court judge to
24 hold court as described under subsection (1) of this section.

25 **SECTION 2.** ORS 112.238 is amended to read:

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.

1 112.238. (1) Although a writing was not executed in compliance with ORS 112.235, the writing
 2 may be treated as if it had been executed in compliance with ORS 112.235 if the proponent of the
 3 writing establishes by clear and convincing evidence that the decedent intended the writing to
 4 constitute:

- 5 (a) The decedent's will;
- 6 (b) A partial or complete revocation of the decedent's will; or
- 7 (c) An addition to or an alteration of the decedent's will.

8 (2) A writing described in subsection (1) of this section may be filed with the court for admin-
 9 istration as the decedent's will pursuant to ORS 113.035. The proponent of the writing shall give
 10 notice of the filing of the petition under ORS 113.035 to those persons identified in ORS 113.035 (5),
 11 (7), (8) and (9). Persons receiving notice under this subsection shall have 20 days after the notice
 12 was given to file written objections to the petition. The court may make a determination regarding
 13 the decedent's intent after a hearing or on the basis of affidavits.

14 (3) The proponent of a writing described in subsection (1) of this section may file a petition with
 15 the court to establish the decedent's intent that the writing was to be [*the decedent's will,*] a partial
 16 or complete revocation of the decedent's will[,] or an addition to or an alteration of the decedent's
 17 will. The proponent shall give notice of the filing to any personal representative appointed by the
 18 court, the devisees named in any will admitted to probate and those persons identified in ORS
 19 113.035 (5). Persons receiving notice under this subsection shall have 20 days after the notice was
 20 given to file written objections to the petition. The court may make a determination regarding the
 21 decedent's intent after a hearing or on the basis of affidavits.

22 (4)(a) If the court determines that clear and convincing evidence exists showing that a writing
 23 described in subsection (1) of this section was intended by the decedent to accomplish one of the
 24 purposes set forth in subsection (1) of this section, the court shall:

25 (A) Prepare written findings of fact in support of the determination; and

26 (B) Enter a limited judgment that admits the writing for probate as the decedent's will or oth-
 27 erwise acknowledges the validity and intent of the writing.

28 (b) A determination under this subsection does not preclude the filing of a will contest under
 29 ORS 113.075, except that the will may not be contested on the grounds that the will was not exe-
 30 cuted in compliance with ORS 112.235.

31 (5) The fee imposed and collected by the court for the filing of a petition under this section shall
 32 be in accordance with ORS 21.135.

33 **SECTION 3.** ORS 125.082 is amended to read:

34 125.082. (1)(a) Upon appointment, a guardian shall deliver or mail to the persons described in
 35 ORS 125.060 (3) a notice of the order of appointment.

36 **(b) The notice provided to the protected person under this subsection must be reasonably**
 37 **calculated to be received and understood by the protected person and may be provided:**

38 **(A) Verbally in person or by telephone; or**

39 **(B) In writing and delivered in person or by first class mail.**

40 (2) A notice under this section must include:

41 (a) The title of the court in which the protective proceeding is pending and the clerk's file
 42 number;

43 (b) The name and address of the protected person and the attorney for the protected person, if
 44 any;

45 (c) The name and address of the guardian and the attorney for the guardian, if any;

1 (d) The date of the appointment of the guardian;

2 (e) A statement describing the authority awarded to the guardian and any limitations placed on
3 the guardian's authority; and

4 (f) A statement advising the protected person or other interested person of the right of the
5 protected person to seek removal of the guardian or termination of the guardianship.

6 (3) Proof of the giving of notice under this section must be filed in the protective proceeding
7 not later than 30 days following the date of the guardian's appointment **and must include a**
8 **statement describing the manner in which notice was given.**

9 **SECTION 4.** ORS 163.765 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

45 (b) The county sheriff shall serve the respondent personally unless the petitioner elects to have

1 the respondent served personally by another party. Proof of service shall be made in accordance
2 with ORS 163.773. When the restraining order does not contain the respondent's date of birth and
3 service is effected by the sheriff, the sheriff shall verify the respondent's date of birth with the re-
4 spondent and shall record that date on the restraining order or proof of service entered into the
5 Law Enforcement Data System under ORS 163.773.

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

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

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

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

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

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

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

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

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

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

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

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

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

2 **SECTION 5.** ORS 163.773 is amended to read:

3 163.773. (1)(a) When a restraining order is issued in accordance with ORS 163.760 to 163.777 and
4 the person to be restrained has actual notice of the restraining order, the clerk of the court or any
5 other person serving the petition and the restraining order shall immediately deliver to a county
6 sheriff copies of the petition and the restraining order and a true copy of proof of service on which
7 it is stated that the petition and the restraining order were served personally on the respondent.
8 **If alternative service is ordered by the court, the person serving the summons may instead**
9 **deliver to the county sheriff a copy of the summons and a true copy of proof of service on**
10 **which it is stated that alternative service was completed in accordance with ORCP 7 D(6).**
11 Proof of service may be made by affidavit or by declaration under penalty of perjury. If a restraining
12 order entered by the circuit court recites that the respondent appeared in person before the court,
13 the necessity for service of the restraining order and proof of service is waived.

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

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

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

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

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

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

1 (4) When a circuit court enters an order terminating a restraining order issued under ORS
2 163.760 to 163.777 before the expiration date, the clerk of the court shall immediately deliver a copy
3 of the termination order to the county sheriff with whom the original restraining order was filed.
4 Upon receipt of the termination order, the county sheriff shall promptly remove the original re-
5 straining order from the Law Enforcement Data System and the databases of the National Crime
6 Information Center of the United States Department of Justice.

7 (5)(a) A contempt proceeding for an alleged violation of a restraining order issued under ORS
8 163.760 to 163.777 must be conducted by the circuit court that issued the restraining order or by the
9 circuit court for the county in which the alleged violation of the restraining order occurs. If con-
10 tempt proceedings are initiated in the circuit court for the county in which the alleged violation of
11 the restraining order occurs, the person initiating the contempt proceedings shall file with the court
12 a copy of the restraining order that is certified by the clerk of the court that originally issued the
13 restraining order. Upon filing of the certified copy of the restraining order, the circuit court shall
14 enforce the restraining order as though that court had originally issued the restraining order.

15 (b) Pending a contempt hearing for an alleged violation of a restraining order issued under ORS
16 163.760 to 163.777, a person arrested and taken into custody pursuant to ORS 133.310 may be re-
17 leased as provided in ORS 135.230 to 135.290.

18 (c) Service of process or other legal documents upon the petitioner is not a violation of a re-
19 straining order entered under ORS 163.760 to 163.777 if the petitioner is served as provided in ORCP
20 7 or 9.

21 **SECTION 6. The amendments to ORS 3.014, 112.238 and 125.082 by sections 1 to 3 of this**
22 **2020 Act become operative January 1, 2021.**

23 **SECTION 7. This 2020 Act being necessary for the immediate preservation of the public**
24 **peace, health and safety, an emergency is declared to exist, and this 2020 Act takes effect**
25 **on its passage.**

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