

107.097 Ex parte temporary custody or parenting time orders; temporary protective order of restraint; hearing

**107.097 Ex parte temporary custody or parenting time orders; temporary protective order of restraint; hearing.** (1) Except as otherwise provided in subsection (3) of this section, a court may not enter ex parte a temporary order under ORS 107.095, 109.103 or 109.119 providing for the custody of, or parenting time with, a child.

(2)(a) A party may apply to a court for a temporary protective order of restraint by filing with the court an affidavit or a declaration under penalty of perjury in the form required by ORCP 1 E, conforming to the requirements of ORS 109.767.

(b) Upon receipt of an application under this subsection, the court may issue a temporary protective order of restraint restraining and enjoining each party from:

(A) Changing the child's usual place of residence;

(B) Interfering with the present placement and daily schedule of the child;

(C) Hiding or secreting the child from the other party;

(D) Interfering with the other party's usual contact and parenting time with the child;

(E) Leaving the state with the child without the written permission of the other party or the permission of the court; or

(F) In any manner disturbing the current schedule and daily routine of the child until custody or parenting time has been determined.

(c) A copy of the order and the supporting affidavit or declaration under penalty of perjury must be served on the other party in the manner of service of a summons under ORCP 7. The order must include the following statement:

Notice: You may request a hearing on this order as long as it remains in effect by filing with the court a request for a hearing. In the request you must tell the court and the other party that you object to the order and specifically why you disagree with the representation of the status quo described in the order. In the request you must also inform the court of your telephone number or contact number and your current residence, mailing or contact address.

(3)(a) A court may enter ex parte a temporary order providing for the custody of, or parenting time with, a child if:

(A) The party requesting an order is present in court and presents an affidavit or a declaration under penalty of perjury, alleging that the child is in immediate danger; and

(B) The court finds, based on the facts presented in the party's testimony, the party's affidavit or declaration under penalty of perjury and the testimony of the other party, if the other

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party is present, that the child is in immediate danger.

(b) The party requesting an order under this subsection shall provide the court with telephone numbers where the party can be reached at any time during the day and a contact address.

(c) A copy of the order and the supporting affidavit or declaration under penalty of perjury must be served on the other party in the manner of service of a summons under ORCP 7. The order must include the following statement:

Notice: You may request a hearing on this order as long as it remains in effect by filing with the court a request for a hearing. In the request you must tell the court and the other party that you object to the order on the ground that the child was not in immediate danger at the time the order was issued. In the request you must also inform the court of your telephone number or contact number and your current residence, mailing or contact address.

(4)(a) A party against whom an order is entered under subsection (2) or (3) of this section may request a hearing by filing with the court a hearing request described in subsection (2) or (3) of this section at any time while the order is in effect.

(b) The court shall make reasonable efforts to hold a hearing within 14 days and shall hold a hearing no later than 21 days after receipt of the request for the hearing. The court shall notify each party of the time, date and place of the hearing.

(c) An order issued under subsection (2) or (3) of this section remains in effect through the date of the hearing. If the party against whom the order was entered fails to appear at the hearing without good cause, the court shall continue the order in effect. If the party who obtained the order fails to appear at the hearing without good cause, the court shall vacate the order.

(d) The issue at a hearing to contest:

(A) A temporary protective order of restraint is limited to a determination of the status quo at the time the order was issued. If the child's usual place of residence cannot be determined, the court may make any further order the court finds appropriate in the best interests of the child.

(B) A temporary order for the custody of, or parenting time with, a child is limited to whether the child was in immediate danger at the time the order was issued.

(5) The State Court Administrator shall prescribe the content and form of a request for a hearing described in subsections (2) and (3) of this section.

(6) As used in this section:

(a) "Child's usual place of residence" has the meaning given that term in ORS 107.138.

(b) “Party’s usual contact and parenting time,” “present placement and daily schedule of the child” and “current schedule and daily routine of the child” have the meanings given “parent’s usual contact and parenting time,” “present placement and daily schedule of the child” and “current schedule and daily routine of the child” in ORS 107.138. [1995 c.792 §1; 1997 c.136 §1; 1997 c.386 §3; 1997 c.707 §6; 1999 c.59 §19; 1999 c.649 §44; 2007 c.11 §1; 2015 c.121 §4]

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