

# FAMILY ABUSE PREVENTION ACT (FAPA) RESTRAINING ORDER

## ● INSTRUCTIONS ●

### WHAT IS A RESTRAINING ORDER?

A restraining order is a court order that tells the person who hurt you or threatened to hurt you to leave you and your minor children alone. It may tell the respondent to move from your home and may deal with temporary custody and parenting time of your children. You may ask the judge to add other orders (listed in the restraining order papers) that you think will help you stay safe. To get “permanent” custody and parenting time orders, you will need to file a family law case, such as a divorce or a custody case.

A restraining order will not provide for spousal/child support. For information and forms regarding spousal and/or child support go to: [www.dcs.state.or.us](http://www.dcs.state.or.us) or you may contact Oregon Department of Justice – Division of Child Support, 4600 25<sup>th</sup> Ave. NE, Suite 180, Salem, OR 97301; phone: (503) 373-7300, or Toll Free (800) 850-0288.

### WHAT ARE THE REQUIREMENTS FOR GETTING A RESTRAINING ORDER?

- 1. Age** You must be at least 18 years old\* **or**  
You are younger than 18 and the person who abused you is at least 18 and
  - you are (or were) married to that person or
  - you have been in a sexual relationship with that person.\*A person under 18 years of age cannot get a restraining order against another person under 18 years of age.
- 2. Relationship** The person who abused you is:
  - your husband, wife or domestic partner
  - your former husband, wife or domestic partner
  - an adult with whom you are living (or did live) in a sexual relationship
  - an adult with whom you have been in a sexual relationship in the last two years
  - an adult related to you by blood, marriage, or adoption
  - the parent of your child
- 3. Abuse** In the last 180 days\*, the person who abused you must have:
  - physically injured you **or**
  - tried to physically injure you **or**
  - made you afraid that he or she was about to physically injure you **or**
  - made you have sexual relations against your wishes by using force or threats of force\*Any time period when the person who abused you was in jail or lived more than 100 miles from your home does not count as part of the 180 day period. This means you may still be able to get a restraining order even if it has been more than 180 days since you were abused.
- 4. Ongoing Danger** You are in danger of more abuse very soon and the person who abused you is a threat to the physical safety of you or your children.

***NOTE:** A judge cannot give you a restraining order solely for threats to take your children, rude behavior, verbal or emotional abuse, or damaged property unless you were in fear that you were about to be **physically injured** and the judge believes that fear was reasonable under the circumstances.*

## **WHERE DO I FILE FOR A RESTRAINING ORDER AND HOW MUCH DOES IT COST?**

You must file for a restraining order in the courthouse in the county where either you or the respondent live. Getting a restraining order is free.

## **HOW DO I FILL OUT THE PAPERS TO GET A RESTRAINING ORDER?**

Use a blue ballpoint pen and write clearly. Answer each question carefully and tell the truth as what you write is a sworn statement. Do not write in the part of the papers that say “Judge’s Initials.” You will need to sign in front of a notary or court clerk. **Bring photo ID.** If available, a court facilitator or advocate may be able to help you with the forms. They cannot answer legal questions.

## **WHAT HAPPENS AFTER I FILL OUT THE PAPERS?**

A time will be set for the judge to look over your papers. The judge may swear you in and ask you some questions. If the judge grants the restraining order, court staff will make certified copies for you. You will need to have one of the copies hand-delivered to the other person by a sheriff’s deputy (free in Oregon), a private process server or any person over the age of 18 who is not a party in the order, as long as the person lives in the state where the papers are served. You cannot serve the papers yourself. The server is required to complete and file with the court a declaration of service. There is a form in the packet, but some servers use their own forms. Talk to the court clerk or Victim Services about ways to get the respondent served. The respondent cannot be punished for violating (not following) the restraining order until after the order is served.

## **WILL A HEARING BE SCHEDULED?**

In a few cases, the judge may wait to make a custody order and will set a hearing to get more information about the children from you and the respondent. You must go to that hearing or the order may be dismissed.

Otherwise, the respondent has 30 days from the date of service to request a hearing contesting the restraining order. If the respondent does not request a hearing, the restraining order will stay in effect for one year from the date the order was signed. After 30 days from the date of service, if the restraining order has not been dismissed, the only type of hearing a party may request is to make changes to custody and/or parenting time, respondent’s removal from the home, respondent’s restrictions from other premises, or contact by the respondent in person, by telephone, or otherwise. However, at any time, a petitioner may request a modification to remove or make less restrictive those terms involving respondent’s removal from the home, respondent’s restrictions from other

premises, or contact by the respondent in-person, by telephone or otherwise for good cause shown. If the respondent does request a hearing, it may be held very quickly. You may have as little as two days to get ready to go to the hearing. If the hearing is scheduled more than a few days away, the court will send you notice of the time and date of the hearing in the mail. If there is not enough time to mail you a notice, the court may contact you by telephone.

**Be sure the court always has your current contact addresses and contact phone numbers so you get notice of any hearing.** You also can call the court to check to see if a hearing has been set.

You must go to the hearing or the order will likely be dismissed. If you cannot go to the hearing due to an emergency, call the court clerk right away and request a postponement. It may be helpful to have an attorney represent you at the hearing, but it is not required.

### **WHAT HAPPENS AT THE HEARING REQUESTED BY THE RESPONDENT?**

The purpose of the hearing is to decide whether or not the restraining order will remain in effect, and if it does remain in effect, if the order will stay the same or change in some way. The judge may decide not to change the order even if both sides agree that they want the same changes.

At the hearing, you must prove that you have been abused and that you are in danger of further abuse. You should be ready to give your own testimony, call witnesses, and give the judge any evidence you have (such as photos of your injuries). In some cases, if the restraining order stays in effect, it will be against the law for the respondent to have guns. If you are worried about your safety, you may ask for a sheriff's deputy to be present in the courtroom.

### **HOW LONG DOES A RESTRAINING ORDER LAST?**

A restraining order lasts for one year from the date the judge signed it or until it is dismissed by a judge. It can be renewed for one year at a time, if the judge believes you are likely still in danger. To renew the order, you must file the court paperwork before the order ends. If a restraining order is modified, the modification date does not affect the renewal date. The modified restraining order must be renewed before the expiration date of the original order.

### **WHAT CAN I DO IF THE RESPONDENT VIOLATES (DOES NOT FOLLOW) THE RESTRAINING ORDER?**

You can call the police. The officer must arrest the respondent if there is a good reason to believe a violation has happened. The respondent may be charged with contempt of court. If found guilty of contempt, the respondent may be fined, placed on probation, and put in jail. The restraining order is enforceable in all 50 states. It is best that you carry a copy of the restraining order with you at all times and that you not contact the other party. **A restraining order does not guarantee your safety.** You can take other steps to stay safe. A domestic violence or sexual assault program can help. For information regarding domestic violence resources in the State of Oregon and links to Lane County domestic violence resources, go to: <http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/index.page> and under "Family Law Topics" click on the "Domestic Violence" link for Domestic Violence resources.

### **WHAT IF I WANT TO DISMISS THE RESTRAINING ORDER?**

You must file papers at the courthouse to ask the judge to dismiss the order. The order remains in effect until the judge dismisses it. It may take a few days for law enforcement to get notice of the dismissal.

### **DO I NEED A LAWYER?**

If you have questions about how the law works or what it means, you may want to talk to a lawyer. You are not required to have a lawyer to obtain the restraining order, but you can have a lawyer represent or help you if you wish. If you need help finding a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or (800) 452-7636. If you believe you cannot afford a lawyer, ask court staff if your area has a legal services (legal aid) program that might help you.

### **WHAT IF I NEED AN ACCOMMODATION OR AN INTERPRETER?**

If you have a disability and need an accommodation, or you are unable to speak English and need a foreign language interpreter, you must tell the court as soon as possible, but at least two days before your hearing. Tell the clerk that you have a disability and what type of assistance you need or prefer, or which language you speak.