

FAMILY ABUSE PREVENTION ACT (FAPA) PROTECTION ORDER Benchbook

Revised and updated March 2024 by the Domestic Violence Subcommittee of the State Family Law Advisory Committee and approved by the State Family Law Advisory Committee. The mission of the SFLAC Domestic Violence Subcommittee is to promote survivor safety and offender accountability by increasing access to justice and procedural fairness from a survivor-centric perspective. Our work includes:

- Serving as a resource to courts on domestic violence issues and legislation.
- Providing input on procedures and forms for restraining orders and matters involving intrafamily and intimate partner violence.
- Creating written materials for self-represented litigants, abuse survivors, judges and OJD staff
- Advocating for improvements in protective orders, the process by which they are obtained, and their enforcement.
- Advancing the use of trauma informed procedures and best practices.

The Domestic Violence Subcommittee would like to thank the previous contributors for their significant work on previous versions of this Benchbook.

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Introduction

In preparing this revision of the Benchbook, the SFLAC Domestic Violence Subcommittee was mindful of the issues unique to judges in weighing competing goals and interests such as:

- judicial intervention in domestic violence cases as a function of leadership
- neutrality of the judicial role
- judicial education
- administrative responsibilities

The *Center for Court Innovation Guide to Court Intervention in Domestic Violence Benchbooks*, (found [here](#)) raises the potential judicial concern for conflict between taking a stance against domestic violence and judicial neutrality. The guide notes the various approaches taken by several Benchbooks, including calls for reduction of systemic barriers in domestic violence cases as a function of administrative responsibility, encouragement of the bench to utilize their authority to encourage coordination between various players within the judicial system (courts, prosecutors, advocates) noting that some resources provide scripts and checklists to ensure consistency and thoroughness. The DV Subcommittee has attempted to provide a statute- and practice-focused Benchbook rather than a dynamics-focused resource at this time. For this reason, the statistics provided in Appendix D are derived primarily from court and judicial associations rather than advocacy organizations. Moreover, the editorial approach to that section was to emphasize statistical data with minimal commentary.

Note: The term *victim* rather than the term *survivor* is used throughout this Benchbook with the recognition that many who have been subjected to domestic violence do not identify with either term or identify with these terms at different points in experience. Within the criminal justice system, the immigration system, and the federal Violence Against Women Act (VAWA) (*see* Pub L 103-322, 108 Stat 1796 (1994)), among other areas, the term *victim* serves as a legal status that provides certain legal rights.

Note: All cases cited in this Benchbook do so with the petitioner's initials as per Joint Order Establishing Updated Procedures Under the Violence Against Women Act; Chief Justice Order 23-012 and 23-01, and 28 e-CFR -90.1 et seq. 34 USC 10441 et seq., (requires at the time cases are issued to protect the privacy and safety of petitioners/survivors and reduce any perceived stigma that could pose a barrier to those seeking FAPA protection).

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I. The Petition

A. Venue - ORS 107.728

A Family Abuse Prevention Act (FAPA) petition must be filed in the county where either party resides. No minimum period of residence is required. As of July 1, 2024, a FAPA can also be filed in the county in which the abuse occurred. 2024's HB 4146; ORS 107.728(1).

ORS 107.718(7) requires that the Oregon State Court Administrator (OSCA) prescribe the forms described by FAPA. Throughout this document we will refer to these as "OSCA Forms."

Note on Jurisdiction:

The location (*i.e.*, the state) of the abuse can be significant for the purpose of determining whether sufficient minimum contacts exist to establish personal jurisdiction. However, for purposes of subject matter jurisdiction, the abuse need not have occurred in Oregon.

Personal jurisdiction may not be required if the relief does not require any affirmative obligation on the part of respondent (for example only includes no contact provisions and custody to petitioner). At the time of the update of this Benchbook, no Oregon Court has addressed whether the restraining-order proceeding is merely declaring the protected "status" of the petitioner such that only "in rem" jurisdiction is required, not "in personam" jurisdiction. At least one other court has explicitly found this "status" exception argument unpersuasive. Regardless, personal jurisdiction is necessary for the Order to be entitled to Full Faith and Credit in other states. Lack of jurisdiction is a defense that respondent may, or may not, raise. "The trial court's sua sponte dismissal for lack of personal jurisdiction over Defendant was error. The defense may not be raised on the court's own motion." [Geer and Geer, 225 Or App 213, 213 \(2009\)](#).

B. Showing Required in the Petition - ORS 107.710; 107.718

The petition must allege:

1. “Abuse” has occurred, between family or household members within the preceding 180 days;
2. Petitioner is in imminent danger of further abuse by respondent, AND
3. Respondent represents a credible threat to the physical safety of petitioner or petitioner’s child/ren.

Note that **ORS 107.710(6)** excludes from the 180-day period:

- any time during which respondent was incarcerated, and
- any time during which respondent has a principal residence more than 100 miles from the petitioner’s principal residence.

NOTE: The petition must particularly describe the nature of the abuse and the dates the abuse occurred.

Definition of “Abuse” ORS 107.705(1)

Definition of “family or household members” ORS 107.705(4)

Note: a showing of “imminent danger of further abuse” is required only at *ex parte*; at the contested (or exceptional circumstances hearing) this element is replaced with “petitioner reasonably fears for petitioner’s physical safety” ORS 107.716(3)(a)(B)

C. Definitions ORS 107.705

“Abuse” - ORS 107.705(1):

Abuse is the occurrence of one or more of the following acts between family or household members:

- attempting to cause or intentionally, knowingly, recklessly causing bodily injury,
- intentionally, knowingly, or recklessly placing another in fear of imminent bodily injury, or
- causing another to engage in involuntary sexual relations by force or threat of force.

Fear of Imminent Bodily Injury & Totality of the Circumstances:

The test is whether a reasonable person faced with such behavior would be placed in fear of imminent bodily injury. [W.J.F. v. Fielder, 211 Or App 688 \(2007\)](#). The “placed in fear” element is established by consideration of the totality of the circumstances, and neither overt threats nor physical violence is required. [W.J.F., 211 Or App at 694](#); *see also, DRM v. Woods, 294 Or App 135 (2018)* (single phone call in which the respondent said he “should have

gotten rid of [petitioner] when he had the chance” sufficient to create “fear of reasonable bodily injury” in light of the totality of the circumstances when she understood this statement in the context of earlier threats by respondent to feed her body to his pigs so no one would ever be able to find her.)

Imminency:

The Court of Appeals interpreted “imminent” to mean “near at hand,” “impending,” or “menacingly near.” [*J.M.H. \(Holbert\) v. Noon*, 245 Or App 328, 334-336 \(2011\)](#). Evidence outside the 180-day window may be considered. [*K.G.G. v. Lucarelli*, 310 Or App 835, 837 \(2021\)](#) (threats of physical violence on the phone earlier in the day, second call in which he made repeated expressions of hostility coupled with beating and kicking on petitioner’s door were sufficient to put a reasonable person in fear of imminent bodily injury); [*E.M.S. and Strother*, 130 Or App 624 \(1994\) rev den](#), 320 Or 508 (1995) (abuse found where verbal statements respondent made during six-month window were the same as those that preceded battering during much earlier period of the relationship). *See also* [*J.E.L. v. Lefebvre*, 165 Or App 297 \(2000\)](#) (behavior that is “erratic, intrusive, volatile, and persistent” may be sufficiently fear-inducing) and [*M.A.B. v. Buell*, 366 Or. 553 \(2020\) \(M.A.B. II\)](#) (finding that record was sufficient to support imminent risk where the trial court found respondent “reasonably likely” to abuse petitioner in the near future based on its conclusions about past behavior from which to draw factual inferences about respondent’s

intentions and future state of mind. There was no requirement that the trial court find that the respondent had a specific plan).

Compare [*D.A.R. \(Roshto\) v. McVein*, 207 Or App 700 \(2006\)](#) (inundation of e-mail and phone messages and asking institutions to send petitioner junk mail without threat of physical harm is insufficient); [*H.M.H. v. Hess*, 305 Or App 801, 810 \(2020\)](#) (single act of physically moving petitioner and pushing her down, coupled with cursing and name calling, insufficient without more to establish imminent danger of further abuse); [*T.K. v. Stutzman*, 281 Or App 388, 392 \(2016\)](#) (isolated incident of aggressive and primarily verbal conduct involving petitioner's aunt grabbing petitioner's arm was insufficient to satisfy burden to prove respondent posed an imminent danger); and [*I.T. v. Solis*, 303 Or App 297 \(2020\)](#) (single incident of choking petitioner was insufficient under the totality of the circumstances to establish imminent danger of further abuse where the parties had continued to communicate and exchange the children without incident).

Verbal abuse:

Abuse may be claimed solely or partially on the basis of verbal threats placing one in fear of imminent bodily injury. Although the Oregon appellate courts have not held that the more rigorous scrutiny applied to speech-based conduct in stalking cases applies also to FAPA proceedings, footnotes in two Court of Appeals decisions signal appellate interest in the issue. See [*J.M.H. \(Holbert\) v. Noon*, 245 Or](#)

	<p>App 328, 338 n 6 (2011), and D.A.R. (Roshto) v. McVein, 207 Or App 700, 705 n 2 (2006) (comments in both cases noting that respondent did not assert such a constitutional claim).</p> <p>Though a case on an Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA) restraining order, in I.R.S. v. Hanington, 319 Or App 805 (2022); rev. dismissed, 370 Or 404 (2022), the Court of Appeals held that abuse caused by speech in that type of protection order are not overbroad such that a limiting construction is required, in the same way that the <i>Rangel</i> test [per State v. Rangel, 328 Or 294 (1999)] applies to expressive contacts in stalking matters.</p>
<p>“Family or household members” - ORS 107.705(4):</p> <ul style="list-style-type: none"> - Spouses - Former Spouses - Adult Persons related by blood, marriage, adoption - Persons who are or who have cohabitated together - Persons who have been involved in a sexually intimate relationship within two years immediately preceding the filing - Unmarried parents of a child 	<p>The statute does not define “cohabitation.” A test of common residence and sexual intimacy should be assumed based on legislative history (“roommates” were not intended to be covered by FAPA) and related case law.</p> <p>In a juvenile court case, the Court of Appeals held that the definition of “persons cohabiting with each other”, as used in ORS 135.230(3), (4), “refers to persons living in the same residence in a relationship akin to that of spouses.” State ex rel Juv. Dept. v. C.M.C., 243 Or App 335, 339 (2011) (interpreting the definition of “persons cohabiting with each other” in the criminal code for purposes of applying OEC 803(26), the domestic violence exception to the hearsay rule). The court also cited its holding in Edwards and Edwards, 73 Or App 272 (1985), that focused on a</p>

	<p>common domicile, shared living expenses, and a sexual relationship when interpreting the term “cohabitation” in a spousal support modification case.</p> <p>See also E.H. v. Byrne, 311 Or App 415 (2021) in this SAPO case the Court of Appeals found that brief period of consensual kissing does not qualify as “sexually intimate partners”, and therefore, does NOT qualify as “family or household members” for purposes FAPA’s definition in ORS 107.705</p>
<p>‘Child’ - ORS 107.705(2): Unmarried person under 18 years of age</p>	
<p>“Imminent Danger of Further Abuse” – ORS 107.718(1) and (5)</p> <p>“Imminent danger under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with additional bodily harm.” ORS 107.718(5)</p>	<p>Totality of the Circumstances:</p> <p>In addition to its relevance in determining the “placed-in-fear” element of a definition of abuse under 107.705(1)(b), the totality of the circumstances is also relevant to determining the element of “imminent danger of further abuse.” Abuse outside the 180-day window may be considered. J.E.L. (Lefebvre) v. Lefebvre, 150 Or App 297 (2000) (previous obsession with killing employer is relevant to whether petitioner is currently in immediate danger of further abuse).</p> <p>A recent line of decisions from the Court of Appeals that culminated in M.A.B. v. Buell, 296 Or App 380 (2019) (M.A.B. I), rev’d, 366 Or 553, (M.A.B. II), adopted an approach to imminent danger that focused in significant part on a respondent’s conduct after the parties separated: These decisions have recognized that, situationally, the post-separation period can be a time for safety</p>

mitigation as well as increased risk: “Although there might be cases where the parties’ separation necessarily represents a change in circumstances that mitigates the risk of further abuse, there are also likely to be many cases where a trial court would be entitled to conclude that the parties’ separation could be the impetus for further abuse. ... [A]buse is frequently the result of one party attempting to control the other party... In those cases, the parties’ separation might heighten the risk of further abuse.” [*M.A.B. v. Buell*, 366 Or 553, 566 \(2020\) \(*M.A.B. II*\)](#).

An overt threat of physical violence is not required to provide imminent danger of further abuse. [*J.E.L. \(Lefebvre\) v. Lefebvre*, 150 Or App 297, 303 \(2000\)](#). See also [*T.L.M. \(Maffey\) and Muchka*, 244 Or App 308 \(2011\)](#) (order upheld based on the past pattern of abusive behavior, now escalating, and respondent’s violation of the order before the contested hearing); [*T.J.H. \(Hubbell\) v. Sanders*, 245 Or App 321 \(2011\)](#) (Respondent chasing petitioner in his car, persistent trespasses on her property, and a threat to her friend even after issuance of the order held sufficient). Compare [*H.D.B. \(Baker\) and Baker*, 216 Or App 205 \(2007\)](#) (lack of evidence of petitioner’s current fear of respondent or his concern about a repeat of events fatal to the “imminency” element).

Two cases clarify that subjective assertions of fear alone do not establish the element of “imminent danger of further abuse.” [*C. J. P. v. Lempea*, 251 Or App 656 \(2012\)](#); [*T.J.H. \(Hubbell\) v. Sanders*, 245 Or](#)

	<p>App 321, 330 (2011). A petitioner’s subjective fear, even when reasonable, is insufficient to show that respondent posed an imminent danger and a credible threat to petitioner’s physical safety. T.K. v. Stutzman, 281 Or App 388 (2016).</p>
<p>“Credible Threat” - ORS 107.718</p> <p>The “credible threat” language was added to FAPA to harmonize Oregon law with federal law imposing criminal liability on a respondent who possesses or uses firearms or ammunition while subject to qualifying protective order. 18 USC § 922(g)(8). See Appendix C.</p>	<p>Credible threat is not defined but is similar to the “imminent danger” prong. Evidence for one often satisfies the other. See, e.g., T.J.H. (Hubbell) v. Sanders, 245 Or App 321, 327 (2011). See also M.A.B. v. Buell, 308 Or App 98 (2020) (M.A.B. III): “the same evidence available to show that a petitioner is in imminent danger of further abuse may be used to demonstrate that a respondent represents a credible threat to petitioner’s physical safety. [...] As a practical matter, it is hard to imagine concluding that Petitioner is in imminent danger of further abuse from Respondent if Respondent does not also present a credible threat to her safety” M.A.B. III, 308 Or App at 103.</p> <p>Credible threat does not require additional acts of violence. N.F.M. v. Al Khalidi, 315 Or App 668, 671-672 (2021) (violation of restraining order after co-habitation coupled with abuse during the relationship supports inference of a credible threat). In addition, the court must consider the totality of the circumstances in determining whether a respondent posed a credible threat to a petitioner’s safety. M.A.B. III, 308 Or App at 103-104; citing M.A.B. v. Buell, 366 Or 553 (2020) (M.A.B. II); (despite the parties’ separation, respondent’s history of abuse, threats to kill petitioner if they separated, continued</p>

volatile behavior and the fact that parties were required to remain in contact to facilitate the exchange of their child, were sufficient to support a finding that respondent posed a credible threat to petitioner's safety). See [Totality of Circumstances](#) See also [N.F.M v. Khalidi, 315 OR App 688, 671-672 \(2021\)](#), (even a "nonviolent" violation of a restraining order issued *ex parte* may support a finding that respondent represents a credible threat to the physical safety of petitioner).

The court can infer from a pattern of abuse from violations of restraining order. [P.K.W. v. Steagall, 299 Or App 820 \(2019\)](#) (facts included volatile interactions, respondent tracked petitioner with a GPS device, required petitioner to surrender her paychecks and denied her access to funds, sexually penetrated her after being asked to stop during consensual sex, and hit her twice, knocked her down and took her phone). No **credible threat** was established where several episodes of abuse occurring the first four months of a romantic relationship were followed by two-month cohabitation without abusive incidents, the relationship ended without any threats or further contact occurred. [A.L.J. v. Croft, 211 Or App 574 \(2021\)](#). The Court of Appeals compared the facts of this case to similar circumstances in *D.A.R. D.A.R. (Roshto) v. McVein, 207 Or App 700 (2006)* (in which no credible threat to petitioner's safety was established).

D. When Minors May Petition - ORS 107.726

A person under the age of 18 may petition for a FAPA protection order if:

- Respondent is 18 years of age or older, and
- Petitioner is
 - the spouse or former spouse of respondent, or
 - a person who has been in a sexually intimate relationship with respondent.

The court may appoint a guardian ad litem if the petitioner under the age of 18 is unemancipated, not married to, or does not have a joint child with respondent. ORCP 27.

Note that a two-year limitation does not exist for minors who have been in a sexually intimate relationship with respondent.

Upon being married, minors are “deemed to have arrived at the age of majority” ORS 109.520.

II. Immediate (*Ex Parte*) Hearing

A. *Ex Parte* Hearing Required - ORS 107.718(1)

An *ex parte* hearing is required to be held in person or by telephone either on the day the petition is filed or the next judicial day.

[*State ex rel Marshall v. Hargreaves*, 302 Or 1, 5 \(1986\)](#) (*ex parte* hearing required when FAPA petition filed).

As the statute specifically authorizes *ex parte* appearances, application without notice to the adverse party – even with a parallel domestic relations proceeding pending – is allowable. *See* Oregon Code of Judicial Conduct Rule 3.9; ORPC 3.5(b).

Note: ORS 107.718(1) states that the “circuit court *shall* hold an *ex parte* hearing in person or by telephone” (emphasis added). Many courts require in-person appearances at *ex parte* hearings and allow hearings by telephone or other remote means when appropriate. Reviewing the petition and proposed order without in-person or telephone contact with petitioner has no grounding in the statute and deprives the judge of the opportunity

	to observe demeanor and ask questions.
B. Standard of Proof is Preponderance of the Evidence - ORS 107.710(2)	
<p>C. Required Showing at <i>ex parte</i> - ORS 107.718</p> <p>A petitioner is entitled to relief under FAPA when:</p> <ol style="list-style-type: none"> 1. “Abuse” has occurred <ol style="list-style-type: none"> a. within the preceding 180 days, b. between “family or household members”; 2. Petitioner is in imminent danger of further abuse by respondent, AND 3. Respondent represents a credible threat to the physical safety of petitioner or petitioner’s child/ren. 	<p>See definitions of “abuse” and “family or household members” at ORS 107.705 and discussion of these and other definitions and related case law at Section I.C. above “Abuse”</p> <p>Note: a showing of “imminent danger of further abuse” is required only at <i>ex parte</i>; at the contested (or exceptional circumstances hearing) this element is replaced with the requirement that “petitioner reasonably fears for petitioner’s physical safety” ORS 107.716(3)(a)(B).</p>
III. Relief	
A. Mandatory (Not Discretionary) Relief - ORS 107.716; 107.718 (1-7)	
At the <i>ex parte</i> hearing, petitioners are entitled to certain relief as long as they request it and makes the required showing. At a contested hearing or exceptional circumstances hearing, however, the court has the authority to cancel or change any order issued <i>ex parte</i> . See ORS 107.716(3(b) and ORS 107.718(10).	
<u>Required Showing</u> - ORS 107.710; 107.718	
The court shall order the relief described in subsections 1 through 6 below if requested by petitioner and if the following showing is made:	
<ol style="list-style-type: none"> A. Petitioner with an eligible relationship requests it, and B. The court finds at the hearing that <ol style="list-style-type: none"> 1. Respondent abused petitioner within 	

<p>the preceding 180 days,</p> <ol style="list-style-type: none"> 2. Petitioner is in imminent danger of further abuse by respondent, and 3. Respondent represents a credible threat to the physical safety of petitioner or petitioner’s children. 	
<p>1. <u>Restraint from Abuse</u> - ORS 107.718(e),(f)</p> <p>Restrain respondent from doing the following to petitioner and any child/ren in petitioner's custody:</p> <ol style="list-style-type: none"> a. Intimidating: “act[ing] in a manner that would reasonably be expected to threaten a person in petitioner’s situation, thereby compelling or deterring conduct on the part of the person.” b. Molesting: “act[ing], with hostile intent or injurious effect, in a manner that would reasonably be expected to annoy, disturb or persecute a person in petitioner’s position.” c. Interfering with: “interpos[ing] in a manner that would reasonably be expected to hinder or impede a person in petitioner’s situation.” d. Menacing: “act[ing] in a manner that would reasonably be expected to threaten a person in petitioner’s situation.” e. Attempting to: intimidate, molest, interfere with, or menace. 	<p>Definitions in ORS 107.705</p>
<p>2. <u>Temporary Custody and Parenting Time</u> - ORS 107.716(2); 107.718(1)</p> <p>Award temporary custody to petitioner, subject to reasonable parenting time unless parenting time is not in the best interests of the child/ren; or award temporary custody to respondent, if requested by petitioner, except:</p> <p>If the court determines that “<u>exceptional circumstances</u>” exist that affect the custody of the child/ren, the court:</p> <ol style="list-style-type: none"> a. Shall order the parties to appear at an “exceptional circumstances” hearing within 14 days to determine custody and other contested issues and 	<p>If the court determines that a custody order should not be made at the <i>ex parte</i> hearing due to “exceptional circumstances,” a hearing must be scheduled and the parties ordered to appear. The purpose of the “exceptional circumstances” hearing is to consider additional evidence regarding custody and parenting time and to provide respondent with an opportunity to contest the restraining order. In the interim, the court has the authority to make appropriate orders regarding the residence of the child/ren and each party’s contact with the child/ren. The court will consider</p>

<p>b. May make interim orders regarding the child/ren’s residence and the parties’ contact with the child/ren that are appropriate to provide for the child/ren’s welfare and the safety of the parties pending the “exceptional circumstances” hearing.</p>	<p>all contested issues at the exceptional circumstances hearing, and it is respondent’s only opportunity to contest the underlying restraining order.</p> <p>Note: Although mediation is required in most family law cases involving children [ORS 107.755(1)(c)], “[n]either the existence of nor the provisions of” a FAPA restraining order may be mediated. ORS 107.755(1)(d)(B). “Neither mediation nor mediation orientation can be encouraged or provided in” FAPA proceedings. ORS 107.755(2). <i>See also</i> ORS 36.185.</p>
<p>3. <u>Ouster</u> - ORS 107.718(1)(b) and (c)</p> <p>Require respondent to move from petitioner’s residence if</p> <ul style="list-style-type: none"> a. The residence is solely in petitioner’s name, b. The parties jointly own or rent the residence, or c. The parties are married to each other. <p>The order may not affect title to any real property.</p> <p>If the court requires respondent to move from petitioner’s residence, the order can also restrain respondent from entering or attempting to enter a reasonable area surrounding petitioner’s current or subsequent residence.</p>	<p>A typical order might use a 150-foot limitation.</p>
<p>4. <u>Restraint from Entry onto Specified Premises</u> - ORS 107.718(1)(g)</p> <p>Restrain respondent from entering onto any premises and a reasonable surrounding area when the court considers such restraint necessary to prevent abuse. Such a surrounding area must be specifically described.</p> <p>Specified premises may include</p>	<p>A typical order might use a 150-foot “safety zone” surrounding listed premises or addresses, such as a parking lot that petitioner uses. When petitioner requests restraint from a place where both parties have a significant interest in being present, such as a location where a party’s faith is practiced, drafting the order as narrowly as possible, after inquiring</p>

<p>1. Petitioner’s current or future business or place of employment, 2. Petitioner’s current or future school, 3. A relative’s home that petitioner frequently visits.</p> <p>The OSCA forms anticipate that when children are involved, the following premises might be addressed:</p> <ol style="list-style-type: none"> 1. The children’s school, 2. The children’s daycare provider. 	<p>into the availability and timing of services and any safety issues, is desirable. Options might include specifying times respondent may be present at the premises or reduce the “surrounding area” radius solely on such premises if both parties practice their faith at the same location and the timing of services is problematic.</p> <p>A similar adjustment (perhaps 50 feet) might be practical for a child’s school events if respondent can safely attend.</p>
<p>5. <u>“No Contact” by Telephone or Mail</u> - ORS 107.718(1)(i)</p> <p>Specify what contact, if any, respondent is restrained from having with petitioner. The court must order, if requested,</p> <ol style="list-style-type: none"> 1. No contact in person, 2. No contact by phone, 3. No contact by mail. <p>Broader restraints on contact are discretionary and are authorized under ORS 107.718(1)(h) (“other relief the court considers necessary”). See III.B.1. (pg. 8). Restraining written communication not otherwise addressed in the form of order might be appropriate under this section.</p>	<p>The statute explicitly mandates (if requested) bans on contact that is in person, by telephone, or by mail. The OSCA form, implements the statute by including options that forbid respondent from having contact with petitioner by email, social media, or other electronic transmission, by cell phone, or by text message. In addition, options include prohibitions against respondent having in-person and other specified contact with petitioner through third parties. It should be noted that communications technology changes rapidly and the court may consider inquiring of petitioners if there is a specific means of communication that needs to be mentioned in the order. Such expansion of prohibited contact is authorized by the “other relief” clause at ORS 107.718(1)(h)(A). See III.B. Discretionary Relief</p> <p>The OSCA restraining order form states that nothing in the order prevents respondent from appearing at or participating in a court or administrative hearing (such as child</p>

	<p>support) as a party or witness in a case involving petitioner. Respondent must stay a certain distance of feet from petitioner as determined by the order (blank space provided in OSCA form) and is required to abide by any other protective terms ordered.</p> <p>Note that service of process per ORCP 7 or 9 is not a violation of a FAPA order. ORS 107.718(12).</p>
<p><u>6. Police “Standby” for Essential Personal Property</u> - ORS 107.718(1)(d); 107.719</p> <p>Order that a peace officer accompany the party moving from the residence when that party removes essential personal items (or property of the child/ren) from the residence.</p> <p>a. Such items include clothing, diapers, medications, social security cards, birth certificates, tools of the trade, and other identification.</p> <p>b. The “standby” time is not required to exceed 20 minutes and usually does not in most jurisdictions. A police “standby” is required to be available on only one occasion. (ORS 107.719(1), (2))</p> <p>c. The court’s only other authority to divide property between the parties under FAPA is the section authorizing “other relief that the court considers necessary” to provide for the safety and welfare of petitioner or any child/ren in petitioner’s custody. ORS 107.718(1)(h) See III.B. Discretionary Relief</p>	<p>Note that OSCA Restraining Order Form requires the court to check the relevant box if ordering the “standby.”</p>
<p><u>7. Firearm Prohibitions</u> - ORS 166.255</p> <p>All FAPA Orders that remain in effect after a contested hearing or by operation of law will be subject to an automatic/mandatory firearm prohibition. Firearm Prohibitions requirements</p>	<p>NOTE: At the time this Benchbook was finalized, the Supreme Court had under review the 5th Circuit ruling in United States v. Rahimi, 61 F.4th 443 (5th Cir. 2023), cert granted 143 US 2688 (2023), that addresses the</p>

<p>are complex. For detailed information, see Appendix C. Firearms Benchsheet</p>	<p>constitutionality on 2nd Amendment grounds of the federal statute (18 USC 922(g)(8)) criminalizing possession of firearms or ammunition by specified restraining order respondents. Judges and practitioners are urged to track the outcome of this case for issues involving firearms in protection orders.</p>
<p>B. Discretionary Relief - ORS 107.718(1)(h)</p> <p>The court may order any relief it considers necessary to provide for the safety and welfare of petitioner and any child/ren in petitioner’s custody. This relief may include but is not limited to emergency monetary assistance paid by respondent to petitioner. This could include money to change locks, replace damaged doors or windows, replace a telephone, or move to a new residence. The court may also order that respondent immediately surrender any firearms or ammunition. ORS 107.718(1)(h)(A)</p> <p>The court may also make orders it considers necessary to prevent the neglect of and protect the safety of any service or therapy animal or any animal kept for personal protection or companionship. This does not include an animal kept for business, commercial or agricultural purposes. ORS 107.718(1)(h)(B)</p>	<p>Due process concerns arguably support an effective date for an award of emergency monetary assistance that coincides or post-dates the opportunity for hearing by respondent, so the OSCA restraining order form includes provision that payment be made by the 45th day after service of the order.</p> <p>An ongoing award of support under this section is problematic, given the temporary and expedited nature of the order and the procedural requirements for awarding continuing support.</p> <p>Note: all FAPA Orders that remain in effect after a contested hearing or by operation of law will be subject to an automatic/mandatory firearm prohibition. ORS 166.255. See Appendix C. Firearms Benchsheet for mandatory/automatic Firearm Prohibitions. This does not affect a Judge’s authority under 107.718(1)(h)(A) to order immediate dispossession and surrender of firearms in the <i>ex parte</i> order.</p> <p>If respondent is ordered to relinquish an animal to petitioner, the court should consider making provisions for how petitioner will take possession of the animal.</p> <p>At a hearing with both parties present</p>

	<p>and if the parties agree, a judge may add language to facilitate the exchange of property through a third party. Such specifically prescribed contact or communication would not violate the terms of the order.</p>
<p>C. Mutual Restraining Orders Only if Parties Separately Petition - ORS 107.716(6) (Only if Parties Separately Petition)</p> <p>“Mutual” restraining orders are prohibited, except when each party files a petition and independently meets the statutory criteria. This requirement is consistent with federal VAWA (Violence Against Women Act) law compelling full faith and credit only in such circumstance.</p>	<p>18 USC § 2265</p>
<p>D. Complex Child Custody Issues (1-7)</p>	<p>(See also IV.B.12.b. and c. Award)</p>
<p>1. <u>Temporary Custody</u> - ORS 107.718(1)(a), (2)</p> <p>The court shall make a temporary custody award at the <i>ex parte</i> hearing (except as discussed in Section 2, <u>Exceptional Circumstances Affecting the Custody of a Child</u>) if:</p> <ol style="list-style-type: none"> 1. Petitioner has met the statutory criteria, and 2. Petitioner requests the custody award. <p>The court shall grant custody to whichever party the petitioner requests.</p> <p>Only the parties’ joint children are subject to the custody award.</p>	<p>The subject-matter jurisdiction requirements of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) apply. ORS 109.701 to 109.834. Even if Oregon is not the home state or does not have modification jurisdiction, it very probably can exercise temporary emergency jurisdiction because of the child/ren’s presence here and the need to prevent abuse to petitioner. ORS 109.751. Communication with a judge in another state may be required.</p> <p>After considering petitioner’s safety needs, a FAPA order may be drafted narrowly to permit respondent to be at restricted locations at specified times solely to exercise parenting time rights. The order may also include specific exceptions for communication necessary to effectuate parenting time if such communication is safe. For example, such communication could be limited</p>

	<p>to written means.</p> <p>Reminder: Despite the requirement of ORS 107.755(1)(c) that mediation be provided in disputed family law cases involving children, neither mediation nor mediation orientation can be encouraged or provided in proceedings under ORS 107.700 to 107.732. <i>See</i> ORS 107.755(1)(d)(B) and (2).</p>
<p>2. <u>Exceptional Circumstances Affecting the Custody of a Child</u>- ORS 107.716(2); 107.718(2)</p> <p>As discussed in the previous section, the court shall make a temporary custody order as requested by the petitioner, at the <i>ex parte</i> hearing unless the court determines that exceptional circumstances exist that affect the custody of the child/ren.</p> <p>If exceptional circumstances exist, the court must order the parties to appear and provide additional evidence regarding temporary custody and to resolve other contested issues.</p> <p>Pending the hearing, the court may make any orders regarding the child/ren’s residence and the parties’ contact with the child/ren that are appropriate to provide for the child/ren’s welfare and the safety of the parties.</p> <p>The court must schedule the hearing within 14 days of issuance of the restraining order and issue a notice of the hearing at the same time the restraining order is issued. Respondent may ask for an earlier hearing.</p>	<p>When an exceptional circumstances hearing is scheduled, respondent is not entitled to request a contested hearing pursuant to ORS 107.718(10); <i>i.e.</i>, an additional hearing. If respondent contests the issuance or other provisions of the restraining order, respondent must raise these at the “exceptional circumstances” hearing. <i>See</i> ORS 107.716(2)(b) and IV.A.1. Exceptional Circumstances.</p> <p>EXAMPLES of “exceptional circumstances” may include the following:</p> <ol style="list-style-type: none"> 1. The petition reflects that the 4-year-old child of the parties has never resided with petitioner. In response to the court’s inquiries, petitioner acknowledges seeing the child only rarely and for short periods of time. 2. The petition shows that the parties’ two school-age children have lived with respondent in an Oregon community that is 125 miles from the home of petitioner since the beginning of the school year. School will be out in 6 weeks. 3. The petition alleges that the parties’ child is six weeks old. Upon being

	<p>questioned by the court, petitioner states that respondent is breast-feeding the baby.</p> <p>4. Petitioner appears to be impaired by drugs at the <i>ex parte</i> hearing and acknowledges a problem with substance abuse. The children have lived with respondent for the last 6 months.</p> <p>5. Dueling restraining orders could be a circumstance but often the existence of dueling orders produces dual objections that can be consolidated for simultaneous hearing.</p>
<p>3. <u>Modifications of Pre-existing Domestic Relations Orders or Judgments</u> - ORS 107.722(2)</p> <p>The FAPA court may modify the custody or parenting time provisions of a pre-existing order or judgment under ORS 107.095(1)(b), 107.105, 107.135, or 109.155, or similar order or judgment from another jurisdiction, if necessary to protect the safety and welfare of the child/ren.</p> <p>If the court modifies the custody provisions of a pre-existing order or judgment (from Oregon or elsewhere), the FAPA order must specify a period of time the court considers adequate under the circumstances during which petitioner may obtain a modification of the pre-existing order or judgment. Upon expiration of that period of time, if no modification has been obtained, the custody provisions of the FAPA order expire, and the provisions of the pre-existing order or judgment become effective immediately. (If the order being modified is a foreign order, the UCCJEA requires that the FAPA state that intent.) In practice, the expiration date of the FAPA order itself may be the appropriate expiration date given the timeline for modification proceedings.</p>	<p>ORS 107.722(2)(a) permits modification of custody only if necessary to protect the safety and welfare of the child/ren or petitioner.</p> <p>See also Section VII. Effects of FAPA Orders on Dissolution of Marriage Proceedings [LINK]</p> <p>The UCCJEA applies if the court is modifying an order or judgment from another jurisdiction. ORS 107.722(2)(c)</p> <p>In order to be compliant with the UCCJEA, a court of this state may need to communicate with a court of another state with custody jurisdiction upon being notified that the court has made a custody determination.</p>

<p>If the court modifies only parenting time provisions of a pre-existing order, the statute does not require that petitioner seek modification of the pre-existing parenting time order or judgment. ORS 107.722(2)(b), unless that pre-existing order is a foreign one, in which case the UCCJEA imposes this requirement.</p> <p>If the court modifies a pre-existing order or judgment of another jurisdiction, ORS 109.701 to 109.834 (UCCJEA) applies.</p>	
<p>4. <u>Paternity/Parentage</u> - ORS 109.094</p> <p>If parentage has not been established, the court has no authority to order custody or parenting time to the putative parent.</p> <p>The court may note on the protection order that the reason no custody or parenting time order is being entered is because parentage has not been established.</p>	<p>A person’s rights as a legal parent are contingent upon the establishment of parentage.</p> <p>If parentage is not established, but both parties are willing to stipulate to that finding in the FAPA case, statutory filiation procedures must still be met, including a verified writing. ORS 109.155(1). Given the temporary effectiveness of a FAPA “order,” parentage establishment independent of the FAPA filing is preferable. Parentage can be resolved by voluntary acknowledgment (<i>i.e.</i>, voluntary acknowledgement of paternity form referred to in ORS 109.070(4)) or referring the parties to the state child support program.</p>
<p>5. <u>Parenting Time</u> - ORS 107.718(1)(a)</p> <p>Once a custody award is made, the court must set a parenting time schedule unless the court finds that parenting time is not in the best interests of the child/ren.</p> <ol style="list-style-type: none"> 1. The fact that one parent has abused the other parent is relevant to the issue of the best interests of the child/ren. 2. The court is not limited to a “traditional” parenting time schedule. 	<p>See also IV.B.12.c (Parenting Time)</p> <p>A Safety-Focused Parenting Plan Guide is available, along with several other Parenting Plan Guides, on the Oregon Judicial Department website.</p> <p><i>See</i> ORS 107.137(1)(d) and (2).</p> <p>ORS 107.718(6). The OSCA form contains several options for addressing the issue of parenting time. After considering petitioner’s safety</p>

<p>If the court awards parenting time to a parent who committed abuse, the court must include adequate provisions in its order to protect and provide for the safety of petitioner and the child/ren. The protections under ORS 107.718(6) include, but are not limited to, requiring one or more of the following:</p> <ul style="list-style-type: none"> • exchange of child/ren taking place at a protected location; • parenting time being supervised; • perpetrator of the abuse attending and completing a program of intervention for perpetrators of domestic violence or other counseling program designated by the court; • perpetrator of abuse not possessing or consuming alcohol or controlled substances during parenting time and for 24 hours before; • the perpetrator of abuse paying the costs of supervision of parenting time and any other program designated by the court as a condition of parenting time; and • no overnight parenting time occurring. 	<p>needs, a FAPA order may be drafted narrowly to permit respondent to be at otherwise restricted locations at specified times solely to exercise parenting time rights.</p>
<p>6. <u>Recovery of Child/ren</u> - ORS 107.732(1)</p> <p>On request of a party awarded custody, the court shall include a provision ordering a peace officer to assist that parent in obtaining physical custody of the child/ren of the parties.</p>	<p>ORS 107.732(1). A specific address identified by petitioner where the child/ren might be found provide the particularity that supports the reasonableness of the seizure. <i>Waters vs. Williams, Huston, Treat, and Multnomah County</i>, No. 98-241-HA (U.S. District Court Opinion dated May 18, 1999) (unreported) (discussion of 4th Amendment issues in context of execution of writ of assistance in family law matter).</p>
<p>7. <u>Interstate Custody Issues</u> - ORS 109.701-109.990</p> <p>The UCCJEA applies to parenting time and custody orders in FAPA proceedings.</p> <p>When the child/ren may not be subject to Oregon court jurisdiction under the UCCJEA,</p>	

<p>the temporary emergency provisions may apply. If there is a pending or final custody determination in another state, communication with a judge in the other state may be required.</p>	<p>ORS 109.751</p>
<p>E. Other Provisions (1-6)</p>	
<p>1. <u>Security Amount</u> - ORS 107.720(1)(a)</p> <p>The order must specify the amount of security to be posted after arrest for violation of the restraining order. The Court form indicates the security amount is \$5,000 “unless otherwise specified.” The order cannot be entered into the Law Enforcement Data System (LEDS) without a security amount.</p>	
<p>2. <u>Duration of Relief</u> - ORS 107.718(3)</p> <p>The order must provide that the court grant the relief until the sooner of</p> <ol style="list-style-type: none"> a. one year (prior to Jan. 1, 2024)/ two years (beginning Jan. 1, 2024), or b. the date the order is withdrawn, amended (dismissed/terminated) or superseded under ORS 107.722. 	<p>Beginning January 1, 2024, FAPA Orders will be effective for two years. 2023’s SB 816; ORS 107.718(3).</p>
<p>3. <u>Notice of Right to a Hearing</u> - ORS 107.718(7), (10)(a)</p> <p>A hearing request form must be served on respondent with the order. The OSCA form includes a notice of rights and procedures for this purpose. See Section IV. (The Contested Hearing)</p>	<p>OSCA form is Notice to Respondent/Request for Hearing.</p>
<p>4. <u>Copies for Petitioner</u> - ORS 107.718(8)(a)</p> <p>The clerk must provide petitioner, at no cost, the number of certified copies of the petition and order necessary to effect service on respondent. If petitioner requests an exemplified copy (usually for registration in another state), up to two such copies must be provided without charge.</p>	

<p>5. <u>Service on Petitioner</u> - ORS 107.718(12)</p> <p>Service of process or other legal documents on petitioner is not a violation of a FAPA order if service is accomplished as provided in ORCP 7 or 9.</p>	
<p>6. <u>Fees</u> - ORS 107.718(8)(c)</p> <p>No filing fee, service fee, or hearing fee can be charged if the only relief ordered is that authorized by ORS 107.700 to 107.735.</p>	<p>For attorney fees, see [Assess Attorney Fees] Section IV.B.12.e.</p>
<p>F. Subsequent Relief: Termination and Amendments</p>	<p>For a discussion of Renewals, see Section VI. Renewals [LINK]</p>
<p>1. <u>Termination</u> - ORS 107.720(2)(a), (b)</p> <p><u>By Written Order</u>: The court may terminate a restraining order on the request of petitioner at any time, but only by written order. FAPA provides no specific standard or guidance for terminating restraining orders, and court practices vary considerably.</p> <p><u>Notarized Signature Required</u>: If petitioner moves for dismissal of the restraining order, the request must include petitioner's notarized signature.</p>	<p>It is common practice to refer to dismissing rather than terminating a restraining order. This terminology probably arises from the statutory reference in ORS 107.720(2)(b) to petitioner's motion to dismiss.</p> <p>The variation in judicial practice is the result of attempts to balance safety concerns with respect for victim-litigant autonomy.</p> <p>Termination of an order may enhance a party's safety in some circumstances.</p> <p>Practices to consider in this scenario – among the most challenging decisions in FAPA cases – include the following:</p> <ul style="list-style-type: none"> • consider clearing the physical and/or virtual courtroom, and other privacy protections, to the extent recording and open-court procedures allow; • concerns of intimidation and coercion issues; • opportunity to speak with a victim

	<p>advocate;</p> <ul style="list-style-type: none"> • encouragement of safety planning and referrals to community resources; • notice of alternatives to termination that might more effectively address a petitioner’s safety needs, such as modifying for less restrictive terms on existing restrictions; and • encouragement to return if petitioner’s safety needs change. <p>See also: Appendix B: Trauma Informed Script for the Courtroom [LINK]</p>
<p>2. <u>Amendments</u> Courts handle requests to amend FAPA pleadings (both petitions and orders) differently.</p> <p>If petitioner requests to amend the petition or order <i>prior</i> to service or before the response time has expired, in order to add information regarding the abuse or request additional relief, many courts will allow amended pleadings pursuant to ORCP 23. Courts may want to consider a title of “Corrected Order.” See ORS 18.107 and ORCP 71B.</p> <p>Amendments often include an attorney fee claim, which seems to be well-grounded, since it does not affect the <i>ex parte</i> order already issued.</p> <p>Note: ORS 107.730 addresses only the court’s modification authority after the response time has lapsed. See Section V. [LINK]</p>	<p>For a full discussion on attorney fees generally, see Section IV.B.12.e. [LINK]</p>
<h2>IV. The Contested Hearing</h2>	
<p>A. Summary of the Five Types of Contested Hearings:</p>	

1. **“Exceptional Circumstances”**: the Court may set a hearing to determine temporary custody and resolve other contested issues if there are exceptional circumstances affecting child custody.

2. Objection Hearing Requested by

Respondent: Respondent may request a hearing within 30 days of being served the order **to object to the order itself** including any relief granted therein. After 30 days, the right to an objection hearing lapses.

3. **Modification Hearing** (either party’s request): Either party can request modification of the order’s terms regarding child custody and/or parenting time, restrictions from certain locations (including ouster from the residence), or restrictions on contact for **good cause shown**. The other party may contest this request at a show cause hearing. Modification hearings can be requested at any time while the order is in effect.

4. **Modification Hearing to Ease Restrictions** (petitioner only): Petitioner may request a modification by *ex parte* motion to make the order less restrictive as to restricted locations (including ouster from the residence) and/or contact. Respondent may object and request a hearing on the modification.

5. **Renewal Hearing**: Respondent may request

Depending on local practice, courts either set a show cause hearing or require a written response from the opposing party before a hearing on a request to modify is set. The OSCA forms allow for either practice.

No explicit authority gives respondent the right to a hearing on petitioner’s *ex parte* motion to make the order less restrictive. ORS 107.730(2) indicates that a notice of hearing must be included in service of modifications, and this section does not distinguish between *ex parte* modification and modification for good cause shown. If respondent objects to the motion to make the order less restrictive, although the likelihood is nominal since the motion would ostensibly benefit respondent, due process and fairness principles argue in favor of granting a hearing.

The OSCA form [Notice to Respondent/Request for Hearing - Less Restrictive Order](#) is served on respondent with petitioner’s [Ex Parte Motion for Less Restrictive Terms & Declaration in Support](#)

<p>a hearing to challenge renewal of the order. <i>See Section VI. (Renewal)</i></p> <p>Each type of hearing is reviewed in detail below as follows:</p> <ul style="list-style-type: none"> • <i>Ex Parte</i> hearings, Section II. Link • Exceptional Circumstances and Objection hearings, Section IV.B. Link • Modification hearing, Section V.B. Link • Renewal hearing, Section VI. Link 	
<p>B. Exceptional Circumstances and Objection/Contested Hearings (1-12)</p>	
<p>1. <u>Exceptional Circumstances Hearings</u> - ORS 107.716(2)(a), ORS 107.718(2)</p> <p>If there are “exceptional circumstances” that affect child custody, the court must hold a hearing to determine temporary custody. The hearing must be set and a hearing notice delivered to the parties when the <i>ex parte</i> order is issued. The hearing must occur within 14 days after issuance of the FAPA order.</p>	
<p>2. <u>Respondent’s Hearing Request (Contested Hearing)</u> - ORS 107.716(2)(b), ORS 107.718(10(a))</p> <p>If respondent contests the <i>ex parte</i> order, they must ask for a hearing within 30 days after being served unless an “exceptional circumstances” hearing was scheduled. Even if an exceptional circumstances hearing is scheduled, respondent may ask for an earlier hearing.</p> <p>Respondent’s failure to request a hearing within 30 days after being served confirms the <i>ex parte</i> order by operation of law.</p> <p>At a hearing held pursuant to respondent’s request to contest the restraining order, the</p>	<p>OSCA’s forms include the hearing request forms and instructions/brochure, available on the Oregon Judicial Department Family Abuse Prevention Act webpage.</p>

<p>Court can change any term in the <i>ex parte</i> order. The Court is also not limited to the issues raised by respondent in the hearing request form and may grant additional relief requested by petitioner. A continuance of the hearing may be appropriate where a party has not had adequate notice of the relief requested. ORS 107.716(3)(b), ORS 107.718(10)(c).</p>	
<p>3. <u>Scheduling the Hearing Requested by Respondent</u> - ORS 107.716(1)</p> <p>If custody is contested, the court must set a hearing within five (5) days after respondent’s hearing request.</p> <p>If custody is not contested, the court must set a hearing within 21 days after respondent’s request.</p> <p>A hearing held outside the statutory time frame is not error when respondent causes or contributes to the delay.</p>	<p>For purposes of calculating when a hearing must be held, <i>see</i> ORS 174.120 (computation of time), not ORCP 10. Unlike ORCP 10, ORS 174.120 excludes the weekend days only if a weekend day is the last day of the period.</p> <p><i>See E.M.S. and Strother, 130 Or App 624, 630 (1994) rev den, 320 Or 508 (1995)</i> (denying relief to respondent who alleged that the trial court erred by holding hearing on the 33rd day, when the respondent had disqualified a judge, reducing by one-half the number of judges available to conduct the hearing, and respondent’s lawyer was not available on 10 of 21 possible hearing dates).</p>
<p>4. <u>Continuances</u> - ORS 107.716(4)(a), ORS 107.718(10)</p> <p>If service of the notice of hearing is inadequate to provide a party with enough notice of either an exceptional circumstances hearing or a hearing on respondent’s objections, the court may continue the hearing for up to 5 days to permit the party to seek representation. ORS 107.716(4)(a)</p> <p>If one party is represented by an attorney at an exceptional circumstances hearing or a hearing on respondent’s objections, the court may continue the hearing for up to five (5) days to enable the unrepresented party to seek representation. ORS 107.716(4)(b)</p>	<p>If a party does not appear at a scheduled hearing, the court should review the file to ensure that the hearing notice went to the correct address and gave the party sufficient notice of hearing.</p> <p>The court may also exercise its discretion to allow a continuance to give a party time to arrange for witnesses to appear.</p>

<p>If respondent raises an issue at the hearing that was not raised in the hearing request form, or if petitioner seeks relief at that hearing that was not granted in the original order, the other party shall be entitled to a reasonable continuance to prepare a response to the issue. ORS 107.718 (10)(c)</p>	
<p>5. <u>The Hearing Notice</u> - ORS 107.718 (10)(b), ORS 25.011</p> <p>Court Clerk’s Duties: The clerk must notify petitioner of the date and time of the hearing, and the clerk must provide petitioner with a copy of respondent’s request for hearing.</p> <p>Petitioner’s Responsibilities: Petitioner must give the clerk information to allow the clerk to give notice of the hearing. A physical address is not required. Some petitioners participate in Oregon’s address confidentiality program or use contact addresses, such as a local domestic violence services program, a friend or relative’s home, or a post office box. Petitioners are responsible for ensuring that they will receive notices delivered to the contact address.</p>	<p>Note: When a person is required to provide an address in ORS 107, “address” means a residence, mailing or contact address in the same state as the person’s home. ORS 25.011</p> <p>For more information on Oregon’s address confidentiality program, <i>see</i> the Oregon Department of Justice Address Confidentiality Program webpage.</p>
<p>6. <u>Settlement</u> - ORS 107.716(6)</p> <p>The court may approve a consent agreement that will stop the abuse, with a few exceptions.</p> <p>a. The settlement may not restrain a party unless that party petitioned for and was granted an order under ORS 107.710. Thus, mutual restraining orders can only be part of the settlement if each party petitioned for and was granted an order under ORS 107.710.</p> <p>b. The settlement may not in any manner affect title to real property.</p>	<p>Beginning January 1, 2024, consent agreements will be effective for two years. SB 816 (2023); ORS 107.716(6).</p>
<p>7. <u>Mediation Prohibited</u> - ORS 36.185, ORS 107.755(2)</p> <p>The court may not order mediation in a FAPA proceeding.</p>	

8. Discovery

Applicability to FAPA: The ORCP applies to special proceedings such as FAPA cases “except where a different procedure is specified by statute or rule.” Given the conflicts between the timeframes set out in FAPA and many of the timeframes in the discovery rules, discovery in FAPA cases rarely is feasible. If a FAPA hearing is delayed for some legitimate reason and discovery can be fairly conducted before the next scheduled hearing date, it may be reasonable to permit discovery after considering the basis for respondent’s request and issues of safety.

Protection Orders: To the extent discovery can be appropriately accommodated in terms of FAPA-mandated timeframes, courts may consider crafting protection orders to address safety issues, harassment of victims by alleged perpetrators, and possible restraining order violations (*e.g.*, presence of respondent at a deposition). ORCP 36

ORCP 1A.

FAPA was meant to provide a speedy and straightforward remedy to domestic violence. Discovery may be inconsistent with the statutory purpose and result in protracted proceedings. Also, respondents may use discovery to continue to harass or deter victims or to obtain information not otherwise discoverable in a pending criminal case stemming from the same acts of domestic violence.

In the unusual case where discovery is appropriate, limiting respondent to telephonic participation in a deposition may be advisable. ORCP 36

Victims in criminal cases have a constitutional and a statutory right to refuse to submit to a deposition or other discovery requests by a criminal defendant or any person acting on behalf of that defendant. As of the writing of this Benchbook, it is unclear/unsettled whether this right precludes the criminal defendant/respondent from deposing the victim/petitioner in a FAPA proceeding when a parallel criminal case is pending. Article 1, section 42, of the Oregon Constitution provides, in part, that a victim has “[t]he right to refuse an interview, deposition or other discovery request by the criminal defendant or other person acting on behalf of the criminal [defendant.]” *See also* ORS 135.970(3).

9. Scope of the Hearing - ORS 107.716(3), ORS 107.718(10)(c)

The court may cancel or change any order issued under ORS 107.718. The court may assess reasonable attorney fees and costs incurred in the proceeding against either party.

The hearing is not limited to issues raised in respondent's request for hearing. The court is also not limited to the issues raised by respondent in the hearing request form and may grant additional relief requested by petitioner. A continuance of the hearing may be appropriate where a party has not had adequate notice of the relief requested. ORS 107.716(3)(b), ORS 107.718(10)(c).

In a hearing contesting the renewal of a FAPA order, the only issue that may be heard is the basis for renewal, unless respondent requests consideration of other issues in the request for hearing and petitioner agrees that those issues should be heard.

10. The Contested Hearing - ORS 107.718(10), 107.717

Hearing Procedures: FAPA statutes do not specify what takes place at the "contested hearing." Appellate decisions have held that the FAPA hearing should be similar to a trial, with both parties being allowed to testify, present evidence, and examine witnesses under oath.

Telephone or Other Remote Testimony:

a. *Ex parte* hearing: A motion or good cause determination are not required to hold the *ex parte* hearing by remote means.

b. Contested Hearing: A party may file a motion asking to testify remotely or to have a witness testify remotely. The court shall consider the expedited nature of the FAPA process in determining whether to allow a

For a full discussion on attorney fees generally, see Section IV.B.12.e.

[\[Link\]](#)

See [Hemingway v. Mauer, 247 Or App 603 \(2012\)](#) (trial court denied respondent a fair trial when it did not allow him to cross-examine petitioner's witness); [B.E.M. v. Miller, 128 Or App 433 \(1994\)](#) (a party contesting a restraining order is entitled to a full hearing on the merits and parties are entitled to call witnesses). See also [A.K.N. v. Nelson, 142 Or App 367 \(1996\)](#).

<p>motion for remote location testimony with less than 30 days’ notice. In addition to the factors in ORS 45.400(3)(b), the court shall consider the safety and the welfare of the party or witness in determining whether good cause for remote location testimony exists. ORS 107.717</p>	
<p>11. <u>Evidentiary Issues</u></p> <p>a. If petitioner fails to appear at the hearing and the court terminates the <i>ex parte</i> restraining order, petitioner may file a second petition alleging the same occurrences, since the termination was not based on the merits.</p> <p>b. Evidence: The Oregon Evidence Code applies to hearings held under ORS 107.716.</p> <p>c. Burden of Proof: Petitioner has the burden of proving a claim by a preponderance of the evidence. ORS 107.710(2)</p> <p>d. Showing Required at Contested Hearing:</p> <ol style="list-style-type: none"> 1. “Abuse” as defined in ORS 107.705(1), within the 180 days preceding the filing of the petition, between family or household members as defined in ORS 107.705(4), 2. Petitioner reasonably fears for petitioner’s physical safety, 3. Respondent represents a credible threat to the physical safety of petitioner or petitioner’s child/ren. <p>e. Prior Abuse History: Evidence of abuse that occurred prior to the 180-day limit cannot qualify as abuse to satisfy the first prong, but may be relevant to explain the existence or degree of current fear and whether respondent is a credible threat to the safety of petitioner and/or petitioner’s children. This analysis is part of the totality of the circumstances.</p>	<p><i>See L.L.O. (Obrist) v. Harmon, 150 Or App 173 (1997)</i> (dismissal of a FAPA due to petitioner’s failure to appear at the contested hearing is not a decision on the merits or a final judgment for purposes of issue preclusion or claim preclusion).</p> <p>As noted by the Court of Appeals, “Whether a FAPA restraining order is legally available always depends on the totality of the circumstances of the individual case.” <i>H.M.H. v. Hess, 305 Or. App. 801 (2020)</i>.</p> <p>Reasonable Fear for Physical Safety: The “objective reasonableness requirement of a petitioner’s fear” is measured through the totality of the circumstances test. The Supreme Court has expressly noted that a totality-of-circumstances analysis may include considerations of such factors as whether the parties no longer live together but noted that a single fact such as this do not, as a matter of law, preclude a finding of imminent risk. <i>M.A.B. v. Buell, 366 Or 553, 566 (2020) (M.A.B. II)</i>. An overt threat is not required as the court may look to the totality of the circumstances to determine that a respondent has placed a petitioner in fear. <i>DRM v. Woods, 294 Or App 135, 140 (2018)</i> (troubling statement evaluated in the</p>

<p>f. Renewal: In a hearing contesting the renewal of a FAPA, petitioner must prove that a person in petitioner’s situation would reasonably fear further acts of abuse from respondent. Petitioner is not required to prove new acts of abuse to renew the order.</p>	<p>totality of circumstances, including behavior outside FAPA’s jurisdictional window, was sufficient to find petitioner was placed in fear of imminent bodily injury).</p> <p>In examining the “reasonable fear for one’s physical safety” element in a recent Sex Abuse Protection Order (SAPO) case, E. H. v. Byrne, 311 Or App 415 (2021), the court considered “whether the totality of circumstances make it objectively reasonable for Petitioner to fear for her physical safety.” In that case, the violence of the acts, physical force used, and statement by respondent that he could exploit a medical condition to injure the petitioner if he wanted, coupled with his admission of his knowledge of where she lives and goes to school, and his stated desire to see her again, supported a finding that petitioner reasonably feared for her physical safety.</p> <p>See also discussion of totality of the circumstances and credible threat at Section I.C., pg. 12-14 [Link]</p> <p>NOTE: Imminent danger of further abuse is required to get an <i>ex parte</i> order, but not to continue an order at the contested hearing. Credible threat is distinct from imminent danger, although the two elements are closely related. See M.A.B. v Buell, 308 Or App 98 (2020) (M.A.B. III); ORS 107.718(1).</p>
<p>12. <u>Available Relief</u> - ORS 107.716(3)(b), ORS 107.718(10)(c)</p> <p>The court may cancel or change any order issued <i>ex parte</i>. Even if not granted <i>ex parte</i>,</p>	<p>NOTE: If the showing for the order itself cannot be made, the court lacks</p>

relief that is authorized under ORS 107.718 may be ordered by the court at a contested hearing. At a contested hearing, the court may do any of the following:

a. **Terminate the Restraining Order:**

Terminate the restraining order if the court finds from the evidence presented that petitioner has not proven a claim for relief under the statute.

b. **Award or Modify Temporary Custody:**

At the hearing, respondent may contest the temporary custody award. The statutes do not specify a basis for awarding temporary custody at this hearing; courts generally follow the “best interests of the child” standard articulated in ORS 107.137 guiding custody matters.

c. **Award or Modify Parenting Time:**

The court may award respondent parenting time different from that provided for in the restraining order if the court found earlier that parenting time was not in the child’s best interests.

d. **Require Respondent to Move Out:**

The court may require respondent to move out of petitioner’s residence if the residence is solely in petitioner’s name, jointly owned or rented by petitioner and respondent, or if petitioner and respondent are married.

e. **Assess Attorney Fees and Costs:**

The court may assess against either party reasonable attorney fees and costs incurred in an exceptional circumstances hearing or a contested hearing within 30 days after service of the order or a hearing for modification of an existing order. ORS 107.716 (3)(b)

f. **Allow Waiver of Later Personal Service:**

If requested, the court must allow a party to waive personal service in any subsequent contempt proceeding to maintain the confidentiality of the party’s address. ORS

authority to order *any* terms that the court could otherwise address under FAPA.

Ouster:

The court may remove the ouster provision if petitioner moves. The court may want to consider the application of ORS Chapter 90 in determining whether the residence is jointly “rented” by petitioner and respondent.

Attorney Fees:

ORCP 68 rules regarding the pleading, proof, and recovery of attorney fees do *not* apply in FAPA cases, because FAPA relief is “granted by order rather than entered as part of a judgment.” ORCP 68C(1)(b). Even though ORCP 68 does not apply, ORS 20.075 mandates a set of factors that the judge must consider whenever a request for attorney fees is authorized

107.835

g. Order Emergency Monetary Assistance:
Both the evidentiary and due process bases support ordering financial awards which may be stronger at the contested hearing stage. ORS 107.718 (1)(h)(A) See Section III. ([Link](#)).

h. Protect Service or Companion Animals:
The court may make orders necessary to prevent the neglect of or protect animals kept for service, therapy, protection, or companionship. ORS 107.718 (1)(h)(B)

i. Other Available Remedies:
Any relief available under ORS 107.700 to 107.732 is in addition to any other available civil or criminal remedy.

by statute. Moreover, using the ORCP 68 procedure is not banned if the court finds it appropriate to do so in a particular FAPA case.

The statute authorizes only recovery of attorney fees and costs incurred for an exceptional circumstances hearing or the contested hearing within 30 days after service of the order [C.R. v. Gannon, 281 Or App 1 \(2016\)](#) (where petitioner voluntarily dismissed the *ex parte* order at the contested hearing, there was no legal basis for the trial court to award fees as none of the ORS 107.718(1) issues were reached nor was an ORS 107.718(10) hearing held). No statutory authority exists to assess attorney fees and court costs for a renewal hearing or if a contested hearing is never held (due to stipulation or petitioner's dismissal, for example). See also [N.F.M. v. Khalidi, 315 OR App 668 \(2021\)](#) (a finding of bad faith was not a prerequisite for awarding petitioner attorney fees per ORS 107.716(3)(b)).

OSCA FAPA forms do not contain provisions requesting attorney fees, so frequently no notice is provided to the other party that, in the event of a contested hearing, attorney fees may be awarded. Best practice and statutory construction would appear to require that, at a minimum, a party requesting fees do so prior to the close of the hearing on the merits. Failure to provide such notice *before* the hearing could be relevant to a court's determination on the appropriateness or amount of fees given that a party might have chosen to change their position had the risk of fees been known.

This position allows for two results if attorney fees are requested: (1) a set-over under ORS 107.718(10)(c) for an issue raised at hearing but not granted *ex parte* or mentioned in respondent's hearing request form, or (2) a directive from the judge that ORCP 68 procedures will be followed regarding submission of fee statements and objections. Each choice allows a method for eliciting fee-relevant facts not tried at the hearing on the merits. The second choice is preferable from the standpoint of judicial efficiency, but the set-over is required if a party elects a postponement to address an issue not raised by the pleadings.

See also Section III.F.2. Amendments ([Link](#))

V. Modifying the Order

A. *Ex Parte* Modification for Less Restrictive Terms ORS 107.730

After respondent's 30-day period to request a hearing has lapsed, petitioner may ask the court to remove or make less restrictive provisions concerning ouster, restraint from certain specified areas, or provisions regarding prohibited contact with petitioner. Petitioner may do this by *ex parte* motion. Petitioner must show good cause for the request. ORS 107.703 (1)(b)

Service of the order:

- a. The court clerk must provide, without charge, the number of certified copies of the modified order and notice of hearing necessary to effect service.
- b. The sheriff must serve respondent with the

<p>less restrictive order and notice to respondent/request for hearing by first class mail. ORS 107.730 (6)(a)(B)</p> <p>c. If the order recites that respondent appeared in person before the court, the order need not be served.</p> <p>Respondent may request a hearing on the less restrictive order.</p>	
<p>B. Show Cause Modification ORS 107.730</p> <p>Once 30 days from service have passed, either petitioner or respondent can ask to change the order’s terms regarding custody, parenting time, restriction from certain locations (including ouster from the residence), or provisions regarding contact. The party requesting the modification must show good cause to modify the order. ORS 107.730 (1)(a)</p> <p><i>Limited Relief:</i> Respondent cannot object to the order itself after the 30-day period has lapsed. Only modifications specifically authorized under ORS 107.730(1)(a) are allowed.</p> <p><i>Service of Request:</i></p> <p>a. The court clerk must provide, without charge, the number of certified copies of the request for modification and notice of hearing necessary to effect service.</p> <p>b. If requested by the party, the clerk must deliver the modification request and notice of hearing to the sheriff for service.</p> <p>c. The sheriff must personally serve the request for modification and notice of hearing unless the party elects to have service accomplished by a private party. ORS 107.730(6)(a)(A)</p>	<p>Within 30 days of service, respondent may ask for a hearing on the order itself and/or custody and parenting time provisions in the order. <i>See</i> IV.A.2. (Link).</p>
<p>C. Modification Hearings</p> <p>The statute allows <i>ex parte</i> relief only when petitioner wants less restrictive terms in the FAPA order. For all other modifications, the</p>	<p>Depending on local practice, courts either set a show cause hearing or</p>

<p>opposing party must be served a copy of the request for modification and provide a hearing opportunity.</p>	<p>require a written response from the opposing party before a hearing is set. The OSCA forms allow for either practice.</p>
<p>D. Attorney Fees in Modification Proceedings</p> <p>The court may assess against either party reasonable attorney fees and costs that may be incurred in the proceeding. ORS 107.730(7)</p>	<p>For a full discussion on attorney fees generally, see [Link] Section IV.B.12.e.</p>

VI. Renewal

<p>Renewals - ORS 107.725</p> <p>1. Renewal of an Order by Petitioner:</p> <p>The court may renew an order if the court finds that a person in petitioner’s situation would reasonably fear further acts of abuse by respondent. The court may renew the order on the basis of a sworn <i>ex parte</i> petition alleging the factual basis that supports the required finding.</p> <ul style="list-style-type: none"> • No further acts of abuse are required for the restraining order to be renewed. ORS 107.725(2) • The statute does not limit the number of times a restraining order can be renewed. • Beginning January 1, 2024, the renewal will be for a period of two years. ORS 107.725(1) <p>2. Renewal of an Order by Formerly Protected Child Now 18:</p> <p>A former minor child who was in the custody of the original petitioner, was protected under the restraining order, and is now 18 years old, may ask the court to renew the provisions of the restraining order protecting them for another year.</p> <p>a. The court can issue the order regardless of whether the original petitioner agrees to or seeks renewal of the order.</p>	<p>Renewal petitions must be filed before the existing order expires. The statute refers to a “renewal” procedure rather than a “revival.”</p> <p>NOTE: Prior to January 1, 2024, the statute was silent about the duration of a renewed order, but as it is a renewal of the previous order, the duration of the renewed order is the same as the original order: 1 year. Beginning January 1, 2024, FAPA orders will be effective for two years and renewed “for an additional two years.” SB 816 (2023) .</p> <p>The only requirement for a renewal is that the petitioner fear further acts of abuse if the order is not renewed. A finding of “imminent danger” is not required to renew a FAPA order. K.E.B. v. Bradley, 327 Or App 39, 45 (2023), (overruling J.N.D. v. Dehkordi, 309 Or App 198 (2020)).</p>
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- b. If the original petitioner does not agree to or ask for renewal of the order concurrently with the request of the now 18-year-old, the court may remove petitioner as a protected person in the renewed order.
- c. The now 18-year-old person is not required to file a petition under ORS 107.710.
- d. A now-18-year-old needs to show that they reasonably fear further acts of abuse if the order is not renewed. ORS 107.725(1)(b), (3).

Renewal Hearing - ORS 107.725(4):

ORS 107.716(5) and 107.718(8) to (10) apply when a renewal order is granted, (*See* IV.A. ([Link](#))). (Respondent may request a hearing within 30 days of being served with a renewal order), **except** that the court may hear no issue other than the basis for renewal unless requested in the hearing form and agreed to by petitioner (or the now 18-year-old, formerly protected child).

The court shall hold a hearing within 21 days of respondent’s request.

VII. Effect of FAPA Orders on Dissolution of Marriage Proceedings

A. FAPA Order Followed by Final Domestic Relations Judgment - ORS 107.722, ORS 24.115

Provisions of an original or modified judgment of dissolution of marriage under ORS 107.105 or 107.135, custody or parenting time judgment under ORS 109.103, or filiation judgment under ORS 109.155 supersede contrary provisions in a pre-existing FAPA custody or parenting time order.

Final domestic relations judgments from other states filed under ORS 24.105 *et seq.* also will supersede conflicting terms in an earlier Oregon FAPA order.

B. FAPA Order Followed by Temporary Domestic Relations Order - ORS 107.722

A temporary custody or parenting time order made pursuant to ORS 107.095(1)(b) in a subsequent dissolution, annulment, separation, or unmarried parent’s proceeding supersedes a contrary provision of a pre-existing FAPA order **only if** the party requesting temporary relief in the dissolution action:

1. Consolidates the subsequently filed dissolution action with the preexisting FAPA proceeding **and**
2. Provides the nonmoving party notice of the requested temporary order under ORS 107.095(1)(b) and an opportunity for a hearing in the domestic relations case.

C. FAPA Order Modifies Pre-existing Custody Order or Judgment - ORS 107.722(2)

In a FAPA proceeding, the court may modify the custody provisions of a pre-existing order or judgment issued under ORS 107.095(1)(b), 107.105, 107.135, 109.103, or 109.155, or a similar order or judgment issued by the tribunal of another jurisdiction, if necessary to protect the safety and welfare of the child or petitioner.

If the court modifies the **custody** provisions of a pre-existing order or judgment issued under one of the above statutes, the court shall specify in the FAPA order a period of time that the court considers adequate under the circumstances within which the party seeking relief may obtain a modification of the pre-existing order or judgment. When this period of time expires, if a modification of the pre-existing custody order has not been obtained, the custody and parenting time provisions of the FAPA expire and the original custody and parenting time provisions of the pre-existing order become immediately effective. ORS

Like UCCJEA, if the FAPA order modifies the CUSTODY portion, the court must specify a time period for the petitioner to modify the underlying order (this time period could be FAPA expiration date). If the FAPA order only modifies the PARENTING TIME, the time period is not necessary. ORS 107.722(2)(c).

<p>107.722(2)(b). (If the order being modified is a foreign order, the UCCJEA requires that the FAPA state that intent).</p> <p>If the court modifies only parenting time provisions of a pre-existing order, the statute does not require that petitioner seek modification of the pre-existing parenting time order or judgment, ORS 107.722(2)(b), unless that pre-existing order is a foreign one, in which case the UCCJEA imposes this requirement.</p> <p>If the court modifies a pre-existing order or judgment of another jurisdiction (Foreign Order), UCCJEA applies. ORS 107.722(2)(c)</p>	
<p>D. FAPA Impacts on Mandatory Mediation for Domestic Relations Proceedings</p> <p>ORS 107.755 requires that each judicial district have a plan that addresses domestic violence issues and other power imbalance issues in the context of mediation orientation sessions and mediation. One of these guidelines is that mediation may not be appropriate in all cases. A subsequent guideline is that mediators have a provision for allowing a party to opt out of mediation. If the SLRs require parties to participate in mandatory mediation for domestic relations proceedings, please be aware that cases involving FAPAs may need additional screening to determine if they are appropriate for domestic relations mediation.</p>	

VIII. Foreign Restraining Orders

A. Entitled to Full Faith and Credit ORS 24.190, 18 USC § 2265

The definition of a foreign restraining order that is entitled to full faith and credit is an injunction or other order issued for the purpose of preventing:

1. Violent or threatening acts or harassment against another person;
2. Sexual violence against another person;
3. Contact or communication with another person; or
4. Physical proximity to another person. ORS 24.190(1)(b)(A)

Under the Full Faith and Credit provisions of VAWA and pursuant to Oregon statutes, a foreign restraining order is enforceable in Oregon if:

1. The issuing court had subject matter and personal jurisdiction over respondent;
2. Respondent was given notice and an opportunity to be heard under the law of the issuing state or, in the case of an *ex parte* order, respondent will be given notice and an opportunity to be heard within a reasonable period of time; and
3. If the order restrains petitioner as well as respondent, the respondent must have filed a separate pleading seeking a restraining order and the court must have made specific findings that respondent was entitled to the order. ORS 24.190(2)(b)

A restraining order from another state or tribal court is enforceable immediately upon the protected person's arrival in Oregon. Registration with the court or law enforcement is not required. Federal law prohibits states from requiring registration as a condition of full faith and credit. ORS 24.190(2)(a)

Protection orders entitled to Full Faith and Credit under VAWA may be civil or criminal and are not limited to those protecting intimate partners. "Foreign restraining orders" include those from other states, as well as orders of a tribal court. 18 USC §§ 2265, 2266; ORS 24.190(1)(b)(B).

B. Optional Registration of Foreign Restraining Order - ORS 24.190

A restraining order from another state or tribal court is enforceable immediately upon the protected person’s arrival in Oregon.

Registration with the court or law enforcement is not required. Federal law prohibits states from requiring registration as a condition of full faith and credit. 18 USC §2265(d)(2); ORS 24.190(2)(a).

The protected person may choose to register the foreign restraining order with law enforcement or the circuit court.

Optional Registration with Law Enforcement:
A person (including the petitioner, a protected party, a person on their behalf, or any other agency representative) may choose to register the foreign order with law enforcement. Any person may present a copy of a foreign restraining order to the sheriff’s office for entry into LEDS. Law enforcement must promptly verify the validity of the restraining order and that it is the most recent order and that the restrained person was personally served or has actual notice of the order. ORS 24.190(3)

“Personal service” and “actual notice” include alternative forms of service or notice that are permitted by the issuing jurisdiction to constitute service or notice. ORS 24.190(3)(c)

Federal law prohibits the state from notifying respondent of the registration unless petitioner requests this step. 18 USC 2265(d)

Entry into the Law Enforcement Data System (LEDS) assists all police agencies statewide in having notice of the order.

Optional Registration with the Courts:
The protected person or a person acting on their behalf may file a certified copy of the

A foreign restraining order is enforceable in Oregon without the necessity of filing with the court or any further action by the protected person. ORS 24.190(2)(a). *See* ORS 24.190(3)(a).

<p>foreign order and proof of service with the clerk in any court in Oregon at no charge. ORS 24.190(6).</p> <p>Federal law prohibits the state from notifying respondent of the filing unless petitioner requests this notice. 18 USC 2265(d)</p> <p>When filed, a foreign order is enforceable the same as an Oregon order.</p>	
<p>C. Violation of Foreign Orders</p> <p>A foreign restraining order that is entitled to full faith and credit is subject to contempt proceedings. In general, venue for punitive contempt cases for violations of FAPA orders exists in either the county of issuance or the county of violation. Given the fact of issuance outside of Oregon, contempt cases for violation of foreign restraining orders should proceed in the county of violation. The person initiating the contempt action must file a certified copy of the order with the court in which the contempt action is initiated. ORS 107.728</p>	<p>ORS. 24.190(4). <i>See</i> VIII.A. (Link) regarding “enforceable” orders.</p>
<p>IX. Mandatory Arrest for Violation of Protection Orders</p>	
<p>A. Oregon Restraining Orders - ORS 133.310(3)</p> <p>Arrest is mandatory for violation of an Oregon-issued restraining order when a law enforcement officer has probable cause to believe that:</p> <ul style="list-style-type: none"> • A court has issued a FAPA, EPPDAPA; SAPO or stalking order; • Respondent (called “defendant” in the contempt proceeding) has been served with the FAPA, EPPDAPA, SAPO or Stalking order; • A true copy of the FAPA, EPPDAPA, SAPO or Stalking order has been 	

<p>properly filed with law enforcement and entered into the LEDS or NCIC; and</p> <ul style="list-style-type: none"> • Respondent has violated the protection order. 	
<p>B. Foreign Restraining Orders - ORS 133.310(4) and (5)</p> <p>Arrest is mandatory for violation of a foreign restraining order under two circumstances:</p> <ol style="list-style-type: none"> 1. Presentation of Foreign Restraining Order <ul style="list-style-type: none"> • A protected person presents to a law enforcement officer a copy of a foreign restraining order that is entitled to full faith and credit (as defined by ORS 24.190); • The protected person represents that the order is the most recent order in effect and that respondent has been personally served with a copy of the order or has actual notice of the order; and • The law enforcement officer has probable cause to believe that respondent has violated the foreign restraining order. 2. Existence of Order in LEDS/NCIC <ul style="list-style-type: none"> • The protected person has filed a copy of the foreign restraining order with the court or the foreign restraining order has been entered into Oregon’s Law Enforcement Database System (LEDS) or the National Crime Information Center (NCIC) database; and • The officer has probable cause to believe that respondent has violated the terms of the order. 	
<p>C. Mandatory Arrest for Violating Certain Release Agreements ORS 133.310(6), ORS 135.250(2)</p> <p>Arrest is mandatory where:</p> <ul style="list-style-type: none"> • A person has been released on a charge involving a domestic violence offense; and 	

- The officer has probable cause to believe that the person has violated a no contact condition of the release agreement.

X. Contempt - Remedial and Punitive

A. Statutory Authority

FAPA restraining orders are enforced through contempt proceedings under ORS Chapter 33 and UTCR chapter 19. Contempt proceedings are *sui generis*, being neither civil nor criminal.

1. Remedial Sanctions Under ORS 33.015(4)

A party, city attorney, district attorney, or the Attorney General may seek remedial sanctions.

2. Punitive Sanctions Under ORS 33.015(3)

Only a public prosecutor (city attorney, district attorney, or the Attorney General) may seek punitive sanctions.

[*State v. Reynolds*, 239 Or App 313, 316 \(2010\)](#) (citing [*State ex rel Hathaway v. Hart*, 300 Or 231 \(1985\)](#) *aff'd* [*70 Or App 541 \(1984\)*](#)). See also [*Ferguson v. PeaceHealth*, 245 Or App 249, 253-4 \(2011\)](#); accord [*State v. Campbell*, 246 Or App 683 \(2011\)](#).

Note that service of process per ORCP 7 or 9 is not a violation of a FAPA order. ORS 107.718(12). See cases cited in III.E.5. ([Link](#)).

Actions that may be prohibited by a FAPA order are set forth in ORS 107.718(1) and (2). The definitions of “interfere,” “intimidate,” “menace,” and “molest” are set forth in ORS 107.705(5) to (8). See also I.C. ([Link](#)) and III.A.1. ([Link](#)).

B. Applicability of Procedural Rules - UTCR 19.040(1), ORS 33.055(12), ORS 33.065(5) and (6)

1. Remedial Contempt

The Oregon Rules of Civil Procedure do not apply to remedial contempt proceedings unless specifically provided in statute or UTCR Chapter 19.

2. Punitive Contempt

Generally, criminal procedure and defendants’ constitutional and statutory protections apply in punitive contempt proceedings; however, defendants are not entitled to a jury trial.

[*State ex rel Hathaway v. Hart*, 300 Or 231 \(1985\)](#) *aff'd* [*70 Or App 541 \(1984\)*](#).

It is error for the judgment to refer to finding of contempt as convictions or misdemeanors. [*State v. Shamsud-Din*, 295 Or App 271 \(2018\)](#) (remanded for entry of judgment finding defendant in contempt); Compare [*State v. McVein*, 305 Or App 525 \(2020\)](#) (defendant entitled to expungement of public record that reflecting criminal conviction of a crime even if such designation was an error).

<p>C. Venue - ORS 107.728</p> <p>A contempt proceeding may be filed in either the county of issuance or the county of violation.</p>	
<p>D. Trial - ORS 33.055, ORS 33.065</p> <p>1. Burden of Proof and Elements of Charge</p> <p>To sustain a finding of contempt, the party initiating the contempt must prove that an order existed, that defendant had knowledge of the order, and that defendant willfully violated the order.</p> <p>a. The party initiating the contempt must prove each element beyond a reasonable doubt if punitive sanctions or confinement are sought. If confinement is not sought, the burden of proof in remedial cases is by clear and convincing evidence.</p> <p>b. To sustain a finding of contempt, the party initiating the contempt proceeding must prove a defendant violated specific terms of the order.</p> <p>c. Defendant’s knowledge of the order may be proven by evidence that defendant was served with the order.</p>	<p><i>See Couey and Couey, 312 Or 302 (1991).</i></p> <p>Although private parties may bring remedial contempt proceedings (<i>see X generally Link</i>), these rarely are filed, as typically the district attorney will seek punitive contempt sanctions instead. Although most of the cases cited and some of the statutory references in this section specifically apply to punitive contempt, these may apply to remedial contempt by analogy.</p> <p>“Actual knowledge” is not refuted by the use of a married name on a case caption where the respondent was served and complied with the order. State v. Arnold, 301 Or App 642 (2020) (EPPDAPA case citing FAPA caselaw)</p> <p>State v. Trivitt, 247 Or App 199 (2011) (discussing meaning of “interfere with” in context of defendant’s actions in holding a sign at the end of a third party’s driveway stating that petitioner had genital herpes); T.M.G. (Gerlack) v. Roberts, 152 Or App 40 (1998) (Defendant coming within 150 feet of petitioner in store not a violation, as FAPA order only prohibited defendant from coming within 150 feet of petitioner in certain other designated locations). OEC 803(8)(b), (d) (ORS</p>

40.460(8)(b), (d)) allows proof of service to be established by introduction of a sheriff's return of service.

The Court of Appeals analyzed the meaning of "contact" to confirm its plain meaning in rejecting defendant's contention that it should be narrowed to exclude third parties as was done with the definition of interference. [*State v. Harrison*, 290 Or App 766 \(2018\)](#) (distinguishing [*State v. Trivitt*, 247 Or App 199 \(2011\)](#))

OEC 803(8)(d) (ORS 40.460(8)(d)) allows introduction of a sheriff's return of service without necessity of officer testifying.) Return of service is sufficient to find that defendant was served and to infer beyond a reasonable doubt that defendant's violation of the restraining order was knowing. [*J.L.F. v. Frady*, 185 Or App 245 \(2002\)](#). However, *see* commentary to X.A. ([Link](#)) regarding applicability in punitive contempt proceedings.

[*State v. Welch*, 295 Or App 410, at 419 \(2018\)](#), Defendant's failure to promptly leave a restaurant that petitioner entered while he was eating dinner constituted contempt as he did not leave promptly after payment of his bill but remained until the police arrived ("failure to more promptly leave the restaurant does not appear to have been the consequence of any other person's behavior.")

[*State v. Simmons*, 314 Or App 507 \(2021\)](#) (reversing contempt for violation of no contact order where petitioner initiated contact to tell respondent that he was at the

2. Willfulness

Defendant's conduct must be a willful violation of a court order. Voluntary noncompliance with the order is sufficient to establish "willfulness." "Bad intent" is not an element of contempt separate from the requirement of "willfulness." "Bad faith" is not required. However, "merely accidental" conduct does not establish "willfulness."

3. Defenses

a. *Vagueness of Order*

To sustain the finding of contempt, the party initiating the contempt must prove a violation of specific terms of the order.

courthouse dismissing the FAPA order and respondent believed him in good faith)

ORS 33.015(2)(b) (contempt includes "willful" disobedience of a court order or judgment).

"**Willful**" intent for violation of a FAPA order, as with any contempt, requires that the violative conduct be both intentional and done with knowledge the act is forbidden conduct. [State v Nicholson, 282 Or App 51 \(2016\)](#). See also [State v. Guzman-Vera, 305 Or App 161, 166 \(2020\)](#) ("willfulness can be shown through proof that the Defendant knew about the order but chose to ignore it, and then failed to comply with the order's requirements in that state of elective ignorance") [Couey and Couey, 312 Or 302 \(1991\)](#) ("willfulness" and "bad intent" are the same). [State v. Montgomery, 216 Or App 221 \(2007\)](#) ("mere accident" not "willful").

Belief that order was dismissed was not defense where the defendant admitted that no one from the court system had told him he could resume contact and the petitioner informed the defendant she was calling the police. Under the circumstances, a rational trier of fact could find that defendant willfully violated the order by remaining on the premises. [State v. Mohammed, 301 Or App 367, 371 \(2019\)](#)

ORS 161.055(2): Burden of proof as to defenses

<p>b. <i>Inability to Comply</i> Inability to comply with the restraining order is an affirmative defense. Defendant has the burden of proof to establish their inability to comply by a preponderance of the evidence. In punitive contempt cases, defendant must file and serve prior notice of the defense on the prosecutor not less than five (5) days before trial.</p> <p>c. <i>Petitioner’s Conduct Irrelevant</i> Petitioner’s conduct is not relevant in a contempt proceeding.</p> <p>d. <i>Asserting Parenting Time Rights</i> Parenting time with minor children often puts defendant in the vicinity of petitioner, which may result in an arrest for violation of the restraining order if a disagreement arises. In such cases, defendant may be found in contempt if defendant's behavior exceeded the parameters of defendant's parenting time or was otherwise intimidating, interfering, or menacing within the meaning of the FAPA statutes.</p> <p>e. <i>Mental Illness</i> Mental illness is a defense to the same extent that it would constitute a defense or mitigate liability in a criminal case.</p> <p>f. <i>NOT a Defense- Invalidity of Underlying Order</i> The fact that petitioner’s situation did not qualify for the underlying restraining order is not a defense to contempt, as that is an impermissible collateral attack when argued in the contempt case.</p>	<p>Inability to comply is an affirmative defense. ORS 33.055(10); ORS 33.065(7). State v. Keller, 246 Or App 105, 108 (2011); State ex rel Mikkelsen v. Hill, 315 Or 452, 459 (1993).</p> <p><i>See, e.g., State ex rel Mix v. Newland, 277 Or 191 (1977).</i> (Invalidity of underlying order is not a defense to contempt where there was opportunity to contest the order)</p>
<p>E. Remedial Contempt</p> <p>1. Procedure - ORS 33.055(2)-(5)</p> <p>a. A proceeding for remedial sanctions is commenced by a separate action with supporting affidavits or other documentation</p>	<p>Prior to HB 2225 in the 2023 session, remedial contempt was to be initiated by motion in the related case. The</p>

sufficient to give defendant notice of the specific acts alleged as contempt.

b. The court may issue an order directing the defendant to appear.

c. The complaint must be personally served unless:

- Defendant waives personal service under ORS 107.835 as part of the order allegedly violated;
- The court orders substitute service; **or**
- The court issues an arrest warrant upon motion, affidavit, and a finding that defendant cannot be served.

d. The complaint must state the sanctions sought. UTCR 19.020

2. Defendant's Rights - ORS 33.055(7)-(8)

a. Defendant has only those rights afforded a defendant in a civil action **unless** the sanction of confinement is sought.

b. Where the sanction of confinement is sought, the court must not impose confinement unless, **before** the hearing, defendant is

- informed that the sanction of confinement may be imposed; **and**
- afforded the right to court-appointed counsel, if eligible.

c. If defendant is not represented by counsel when coming before the court, then the court shall inform defendant of the right to counsel. The court also shall advise defendant of the right to have counsel appointed by the court if confinement is sought and defendant qualifies financially for appointed counsel.

3. Opportunity for Hearing - ORS 33.055, ORS 33.105

The court must afford defendant an

new legislation, effective October 1, 2023, requires a separate action, as with contempt actions seeking punitive sanctions have required. The UTCRs effective October 1, 2023, that implement this legislative change refer to a "complaint" as initiating a contempt seeking remedial sanctions. UTCR 19.020(1)

opportunity for a hearing before imposing sanctions unless defendant waives the right to a hearing by stipulated order.

a. *Burden of Proof*: For remedial contempt, the standard of proof is clear and convincing evidence, unless confinement is sought. If confinement is sought, proof must be beyond a reasonable doubt.

b. *Defenses*: The same defenses may apply to punitive contempt and remedial contempt.

c. *Available Sanctions*: Sanctions should be imposed to change behavior or compensate for damage, not to punish. The court may impose one or more of the following sanctions:

- Restitution,
- confinement, which may be imposed for so long as the contempt continues or six months, whichever is the shorter period,
- a fine, which may be imposed as a compensatory fine of up to \$500 or 1 percent of defendant's annual gross income, whichever is greater,
- an order designed to ensure compliance with the FAPA order that was violated, including probation,
- payment of attorney fees, and
- any other sanction that the court determines would be an effective remedy for the contempt.

F. Punitive Contempt

1. No Contact with Victim While Lodged - ORS 135.247

When defendant is lodged, the release assistance officer or deputy shall enter an order prohibiting defendant from contacting the victim while in custody.

2. Release from Custody - ORS 107.720(4), ORS 135.245(3)

Pending a contempt hearing, a person arrested for a FAPA violation is subject to release decisions under ORS 135.230 to 135.290.

Including a provision for “no contact” with the victim should be considered. If “no contact with the victim” is ordered, the court should consider waiving that provision only if

- The victim petitions the court for a waiver; **and**
- The court finds, after a hearing on the petition, that waiving the condition is in the best interest of the parties and the community.

The usual security for violation of the restraining order is \$5,000. The court may set a different amount, *e.g.*, higher, if the court concludes that the higher amount will ensure that respondent/defendant later appears and “does not engage in domestic violence while on release.”

To release on recognizance, the court should review the record for any history of domestic violence.

The court should consider working with law enforcement, release officers, and prosecutors to ensure that victims receive notice of the release hearing, their right to appear personally at the hearing, their right to reasonably express any views relevant to the issues in the hearing, and to ensure that victims are notified that defendant will be released. *See* ORS 135.245(5)(b).

Although punitive contempt is not a crime ([*State v. Reynolds*, 239 Or App 313 \(2010\)](#)), ORS 135.247 may apply to these proceedings pursuant to ORS 107.720(4) and ORS 33.065(5) (same requirements and laws applicable to an accusatory instrument in a criminal proceeding apply to punitive contempt cases).

ORS 135.250(2)(a) **requires** a “no contact” provision if defendant is charged with an offense that also constitutes domestic violence. The issue is whether a punitive contempt proceeding for violation of a FAPA order is “an offense that also constitutes domestic violence.” (*Note:* ORS 135.230(3) defines “domestic violence” as “abuse between family or household members.” This definition of “family or household members” is similar to the definition for FAPAs found at ORS 107.705(4)).

As with the requirement that a no contact order be entered while

<p>3. Accusatory Instrument Required ORS 33.065</p> <p>An accusatory instrument is required to initiate a punitive contempt proceeding.</p> <p>The prosecutor may initiate proceedings on their own initiative or on the request of a party or of the court.</p> <p>Generally, the accusatory instrument is subject to the same requirements and laws applicable to those in criminal proceedings. For example, the defendant must personally be served a copy of the instrument and be arraigned; and the defendant may move against the instrument by demurrer.</p> <p>In addition, the following information must be included in the initiating instrument:</p> <ul style="list-style-type: none">• the maximum sanctions sought;• whether those sanctions include incarceration; and• for each sanction sought, whether the moving party considers it punitive or remedial. <p>The instrument should set out a separate count for each violation to be proved.</p> <p>4. Defendant’s Rights - ORS 33.065(6)</p> <p>Except for the right to a jury trial, defendant</p>	<p>defendant is in custody, it is unclear whether ORS 107.720(4) or ORS 33.065(5) requires the application of ORS 135.250(2)(a) and (b) re: imposition of no contact with victim and waiver of “no contact” provision by victim to punitive contempt proceedings.</p> <p>ORS 135.250(2)(b) sets forth the considerations for waiver of the “no contact with victim” order if imposed pursuant to ORS 135.250(2)(a).</p> <p>UTCR 19.020(1): initiating instrument.</p>
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has all rights accorded to criminal defendants, including the following:

- the presumption of innocence,
- the right to counsel, including court-appointed counsel if indigent,
- the right to a speedy trial, **and**
- the right to discovery.

5. Pleas and Sanctions

Admit, Deny and No Contest Pleas:

The court may take an admission or a denial to allegations. Some, but not all, courts allow a “no contest” plea.

Time for Imposition of Sanctions/Entry of Judgment:

The time period between plea/adjudication and imposition of sanctions/entry of judgment is subject to the restrictions of ORS 137.020.

Maximum Punitive Sanctions:

The maximum punitive sanctions are

- 1) A fine not to exceed \$500 or 1 percent of defendant’s gross annual income, whichever is greater;
- 2) Confinement of no more than six months;
- 3) Forfeiture of any proceeds or profits obtained through the contempt;
- 4) Probation, which may include a condition that defendant attend and complete a batterer intervention program; **and/or**
- 5) Community service.

[State ex rel Hathaway v. Hart, 300 Or 231 \(1985\) aff’d 70 Or App 541 \(1984\)](#); see also [A.M.B. v. Bachman \(consolidated with State v. Bachman\), 171 Or App 665 \(2000\)](#).

ORS 33.065(6) provides that, except for a jury trial, defendant in a punitive contempt proceeding is entitled to the constitutional protections that defendant is entitled to in a criminal proceeding.

It is reversible error for the court to allow defendant to represent himself without first determining whether defendant’s waiver of right to counsel is voluntary, knowing, and intelligent. [State v. Cervantes, 238 Or App 745 \(2010\)](#). Failure of court to warn defendant of risk and difficulties of self-representation warrants reversal of contempt adjudication. [Pearson and Pearson, 136 Or App 20 \(1995\)](#).

The defendant has confrontation rights in a punitive contempt case. In [State v. Tryon, 242 Or App 51 \(2011\)](#), the Court of Appeals held that a return of service of a restraining order was admissible to prove Defendant’s knowledge of the restraining order. The court’s holding was premised on its finding that a return of service is not testimonial in nature, despite objection based on the federal confrontation clause. However, the issue of state constitutional confrontation rights was not preserved for appeal in *Tryon*. [State v. Copeland, 353 Or 816 \(2013\)](#), held that a return of service is a public record that falls into a historical exception to Article 1, section 11, of

the Oregon Constitution. See also [State v. Johnson, 221 Or App 394 \(2008\)](#) (discussing in a probation violation context the balancing test regarding confrontation rights required under federal due process).

See ORS 135.335. Courts should enter pleas of “admit” or “deny,” not “guilty” or “not guilty” to distinguish contempt cases from criminal cases in accordance with [State v. Reynolds, 239 Or App 313, 316 \(2010\)](#).

ORS 33.105(2). Judgments for punitive contempt are not criminal judgments, therefore, using a criminal judgment form is reversible error. [State v. Reynolds, 239 Or App 313, 316 \(2010\)](#). *But see* [Diaz-Quirazco v. Barr, 931 F.3d 830 \(2019\)](#) (alien was removable under 8 USC 1227 after pleading guilty to violation of “no-contact” order of restraining order based on Board of Immigration Appeal’s interpretation of “conviction”). “Judgments Adjudicating (and Sanctioning) Contempt” are one alternative name.

APPENDIX A: Cases from the Oregon Appellate Courts¹
Cases from the Oregon Appellate Courts on or relating to FAPA (as of February 2024),
or cited in this Benchbook

CASE	PAGES CITED (if applicable)
<u>M.A. v. Mouktabis, 311 Or App 750 (2021)</u>	0
<u>K.E.B. v. Bradley, 327 Or App 39 (2023)</u>	43
<u>A.M.B. v. Bachman (consolidated w/ State v. Bachman), 171 Or App 665 (2000)</u>	60
<u>H.D.B. (Baker) v. Baker, 216 Or App 205 (2007)</u>	13
<u>M.A.B. v. Buell, 308 Or App 98 (2020) (M.A.B. III)</u>	14, 38
<u>M.A.B. v. Buell, 366 Or 553 (2020) (M.A.B. II)</u>	9, 12, 13, 14, 37
<u>M.A.B. v. Buell, 296 Or App 380 (2019) (M.A.B. I)</u>	12
<u>L.N.B. v. Boldt, 155 Or App 244 (1998)</u>	0
<u>Bergerson v. Salem-Keizer School Dist., 194 Or App 301 (2004),</u> <i>aff'd in part, rev'd in part by</i> 341 Or 401 (2006)	0
<u>Burks v. Lane County, 72 Or App 257 (1985)</u>	0
<u>S.K.C. v. Pitts, 258 Or App 676 (2013)</u>	0
<u>M.L.C. (Cottongim) v. Woods, 145 Or App 40 (1996)</u>	0
<u>Couey and Couey, 312 Or 302 (1991)</u>	52, 54
<u>J.N.D. v. Dehkordi, 309 Or App 198 (2021), (overruled in part by</u> <u>K.E.B. v. Bradley, 327 Or App 39 (2023)</u>	43
<u>M.D.D. v. Alonso, 285 Or App 620 (2017)</u>	0
<u>K.L.D. v. Daley, 280 Or App 448 (2016)</u>	0
<u>J.D. v. Klapatch, 275 Or App 992 (2015); (EPPDAPA case citing FAPA caselaw)</u>	0
<u>Diaz-Quirazco v. Barr, 931 F.3d 830 (2019)</u>	61
<u>A.M.E. (Edwards) v. Biehler, 203 Or App 271 (2005)</u>	0
<u>Edwards and Edwards, 73 Or App 272 (1985)</u>	11
<u>W.J.F. v. Fielder, 211 Or App 688 (2007)</u>	8
<u>J.L.F. v. Frady, 185 Or App 245 (2002)</u>	53
<u>Ferguson v. PeaceHealth, 245 Or App 249 (2011)</u>	51
<u>Fogh and McRill, 153 Or App 159 (1998)</u>	0
<u>K.G.G. v. Lucarelli, 310 Or App 835, 837 (2021)</u>	9
<u>S.N.G. v. I.D.W., 322 Or. App. 597 (2022)</u>	0
<u>T.M.G. (Gerlack) v. Roberts, 152 Or App 40 (1998)</u>	52
<u>Geer and Geer, 225 Or App 213, 213 (2009)</u>	7
<u>E.H. v. Byrne, 311 Or App 415 (2021); (SAPO case citing FAPA caselaw)</u>	12, 38
<u>H.M.H. v. Hess, 305 Or App 801 (2020)</u>	10, 37
<u>J.A.H. v. Heikkila, 355 Or 753 (2014)</u>	0
<u>S.M.H v. Anderson, 251 Or App 209 (2012)</u>	0
<u>J.M.H. (Holbert) v. Noon, 245 Or App 328 (2011)</u>	9, 10
<u>T.J.H. (Hubbell) v. Sanders, 245 Or App 321 (2011)</u>	13, 14
<u>C.H. v. Hayes, 212 Or App 188 (2007)</u>	0

¹ Cases are alphabetized according to petitioner’s surname’s or first initial of petitioner’s surname, and then by date.

<u>Hemingway v. Mauer</u> , 247 Or App 603 (2012)	36
<u>Hetfeld v. Bostwick</u> , 136 Or App 305 (1995)	0
<u>Heusel v. Multnomah County District Attorney’s Office</u> , 163 Or App 51 (1999) ...	0
<u>Housing and Community Services Agency of Lane County v. Long</u> , 196 Or App 205 (2004)	0
<u>A.L.J. v. Croft</u> , 311 Or App 574 (2021)	15
<u>K.E.J. v. Jessee</u> , 312 Or App 171 (2021)	0
<u>K.M.J. v. Captain</u> , 281 Or App 360 (2016); (EPPDAPA case citing FAPA caselaw)	0
<u>N.R.J. v. P.K.</u> , 256 Or App 514 (2013)	0
<u>In re Jagger</u> , 357 Or 295 (2015)	0
<u>J.K. v. Kargol</u> , 295 Or App 529 (2019)	0
<u>T.K. v. Stutzman</u> , 281 Or App 388 (2016)	10, 14
<u>In re Knappenberger</u> , 338 Or 341 (2005)	0
<u>F.C.L. v. Agustin</u> , 271 Or App 149 (2015)	0
<u>J.E.L. (LeFebvre) and LeFebvre</u> , 165 Or App 297 (2000)	9, 12
<u>K.R.M. v. Baker</u> , 321 Or App 313 (2022)	0
<u>N.F.M. v. Al Khalidi</u> , 315 Or App 668 (2021)	14, 15, 40
<u>D.R.M. v. Woods</u> , 294 Or App 135 (2018).....	8, 38
<u>T.L.M. (Maffey) and Muchka</u> , 244 Or App 308 (2011)	13
<u>N.M. v. Martinez</u> , 234 Or App 289 (2010).....	0
<u>S.M. v. Weinstein</u> , 211 Or App 86 (2007).....	0
<u>J.M.M. v. Maher</u> , 192 Or App 173 (2004)	0
<u>B.E.M. and Miller</u> , 128 Or App 433 (1994)	36
<u>J.J.N. v. Neuman</u> , 292 Or App 402 (2018)	0
<u>A.K.N. v. Nelson</u> , 142 Or App 367 (1996)	36
<u>Nearing v. Weaver</u> , 295 Or 702 (1983)	0
<u>T.P.O v. Jeffries</u> , 267 Or App 118 (2014)	0
<u>L.L.O. (Obrist) v. Harmon</u> , 150 Or App 173 (1997)	37
<u>G.M.P. v. Patton</u> , 278 Or App 720 (2016)	0
<u>C.J.P. v. Lempea</u> , 251 Or App 656 (2012)	13
<u>F.P. (Pavon) v. Miano</u> , 232 Or App 533 (2009)	0
<u>Pearson and Pearson</u> , 136 Or App 20 (1995).....	60
<u>Pefley v. Pefley</u> , 107 Or App 243 (1991)	0
<u>Pooler and Pooler</u> , 206 Or App 447 (2006)	0
<u>Pyle and Pyle</u> , 111 Or App 184 (1992)	0
<u>A.A.R. v Rustad</u> , 319 Or App 844 (2022)	0
<u>C.R. v. Gannon</u> , 281 Or App 1 (2016).....	40
<u>E.R.-F. v. Browning</u> , 208 Or App 600 (2006)	0
<u>D.A.R. (Roshto) v. McVein</u> , 207 Or App 700 (2006)	10, 11, 15
<u>Ringler and Ringler</u> , 221 Or App 43 (2008)	0
<u>I.R.S. v. Hanington</u> , 319 Or. App. 805 (2022); <i>rev. dismissed</i> , 370 Or 404 (2022); (EPPDAPA case citing FAPA caselaw)	11
<u>S.L.S. v. Tippery</u> , 306 Or App 487 (2020)	0
<u>M.S. (Sacomano) v. Burns</u> , 245 Or App 35 (2011)	0
<u>P.M.S. v. Strother</u> , 177 Or App 709 (2001)	0
<u>E.M.S. and Strother</u> , 130 Or App 624 (1994)	9, 33

<u>State ex rel Delisser v. Hardy, 89 Or App 508 (1988)</u>	0
<u>State ex rel DHS v. L.S. and J.L.W., 211 Or App 221 (2007)</u>	0
<u>State ex rel Emery v. Andisha, 105 Or App 473 (1991)</u>	0
<u>State ex rel Hathaway v. Hart, 300 Or 231 (1985), aff'd 70 Or App 541 (1984).</u>	51, 60
<u>State ex rel Juv. Dept. v. C.M.C., 243 Or App 335 (2011)</u>	11
<u>State ex rel Langehennig v. Long, 142 Or App 486 (1996)</u>	0
<u>State ex rel Marshall v. Hargreaves, 302 Or 1 (1986)</u>	16
<u>State ex rel Mikkelsen v. Hill, 315 Or 452 (1993)</u>	55
<u>State ex rel Mix v. Newland, 277 Or 191 (1977)</u>	55
<u>State v. Arnold, 301 Or App 642 (2020); (EPPDAPA case citing FAPA caselaw)</u>	52
<u>State v. Bachman, (consolidated w/ A.M.B. v. Bachman) 171 Or App 665 (2000)</u>	60
<u>State v. Balero, 287 Or App 678 (2017)</u>	0
<u>State v. Campbell, 246 Or App 683 (2011)</u>	51
<u>State v. Cervantes, 238 Or App 745 (2010)</u>	60
<u>State v. Copeland, 353 Or 816 (2013)</u>	60
<u>State v. Copeland, 247 Or App 362 (2011)</u>	0
<u>State v. Crombie, 267 Or App 705 (2014)</u>	0
<u>State v. Delker, 123 Or App 129 (1993)</u>	0
<u>State v. Dragowsky, 215 Or App 377 (2007), rev denied 343 Or 690 (2007)</u>	0
<u>State v Feyko, 290 Or App 159 (2018)</u>	0
<u>State v. Guzman-Vera, 305 Or App 161 (2020)</u>	54
<u>State v Harrison, 290 Or App 766 (2018)</u>	53
<u>State v. Heal, 298 Or App 806 (2019)</u>	0
<u>State v. Johnson, 221 Or App 394 (2008)</u>	61
<u>State v. Keller, 246 Or App 105 (2011).</u>	55
<u>State v. Maxwell, 213 Or App 162 (2007)</u>	0
<u>State v. McDougal, 299 Or App 96 (2019).</u>	0
<u>State v. McVein, 305 Or App 525 (2020)</u>	51
<u>State v. Merritt 318 Or App 7 (2022).</u>	0
<u>State v. Mohammed, 301 Or App 367 (2019).</u>	54
<u>State v. Montgomery, 216 Or App 221 (2007).</u>	54
<u>State v Nicholson, 282 Or App 51 (2016).</u>	54
<u>State v. Rangel, 328 Or 294 (1999).</u>	11
<u>State v. Reynolds, 239 Or App 313 (2010).</u>	51, 58, 61
<u>State v. Shamsud-Din, 295 Or App 271 (2018)</u>	51
<u>State v. Simmons, 314 Or App 507 (2021)</u>	53
<u>State v. Smith, 71 Or App 205 (1984).</u>	0
<u>State v. Steinke, 88 Or App 626 (1987).</u>	0
<u>State v. Stolz, 106 Or App 144 (1991).</u>	0
<u>State v. Trivitt, 247 Or App 199 (2011).</u>	52, 53
<u>State v. Tryon, 242 Or App 51 (2011)</u>	60
<u>State v. Ulgade, 283 Or App 612 (2017)</u>	0
<u>State v. Welch, 295 Or App 410 (2018)</u>	53
<u>I.T. v. Solis, 303 Or App 297 (2020)</u>	10
<u>Travis and Travis, 236 Or App 563 (2010)</u>	0
<u>United States v. Rahimi, 61 F.4th 443 (5th Cir. 2023), cert granted</u>	

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<u>J.V.-B. v. Burns, 284 Or App 366 (2017)</u>	0
<u>C.M.V. (Valenti) v. Ackley, 261 Or App 491 (2014)</u>	0
<u>P.K.W. (Walton) v. Steagall, 299 Or App 820 (2019)</u>	15
<i>Waters vs. Williams, Huston, Treat, and Multnomah County</i> , No. 98-241-HA (U.S. District Court Opinion dated May 18, 1999) (unreported)	28
<u>Weismandel-Sullivan and Sullivan, 228 Or App 41 (2009)</u>	0
<u>Wilson and Wilson, 199 Or App 242 (2005)</u>	0

NONPRECEDENTIAL FAPA OPINIONS²

<u>A.L.B. v. Dalby, 327 Or App 322 (2023) nonprecedential opinion</u>	0
<u>R.C. v. Brady, 323 Or App 488 (2022) nonprecedential opinion</u>	0
<u>O.D. v. Ranel, 226 Or App 559 (2023) nonprecedential opinion</u>	0
<u>D.G. v. Marks, 324 Or App 195 (2023) nonprecedential opinion</u>	0
<u>F.A.S.K. v. Aljundi, 323 Or App 477 (2022) nonprecedential opinion</u>	0
<u>T.M.S. v. Stanfill, 327 Or App 286 (2023) nonprecedential opinion</u>	0
<u>State v. Boyum, 322 Or App 365 (2022) nonprecedential opinion</u>	0

² Nonprecedential memorandum opinions may be cited (1) if no precedent addresses the issue before the court, (2) in briefing to argue that a precedential decision is warranted because of conflicting nonprecedential memorandum opinions, or (3) in a petition for reconsideration where a nonprecedential opinion should be designated as precedential under the factors for precedential consideration under subsection (2)(b) of this rule. Citing party SHALL (i) Explain the reason for citing the nonprecedential opinion and how it is relevant to the issues presented; and (ii) Include a parenthetical as part of the case citation indicating that the case is a nonprecedential opinion.

APPENDIX B: Trauma-Informed Scripts for the Courtroom

WHY IS TRAUMA-INFORMED COURTROOM PRACTICE IMPORTANT?

By implementing trauma-informed courtroom skills, a judge can spot red flags arising from past trauma, engage in effective communication, and receive better evidence to make better decisions to change the trajectory of generations.³ “Trauma-informed judicial interactions begin with good judicial practice, treating individuals who come before the court with dignity and respect.”⁴

The goal of trauma-informed courtroom practice is to increase successful interactions and outcomes in court, which ultimately lead to confidence and trust in the legal system.⁵

REMINDER: If you have a litigant with an interpretation need, please refer to the Interpretation Script prior to commencing the hearing.



COURTROOM CONSIDERATIONS

- Consider the physical set-up of your courtroom:
full water pitchers, cups, tissues
- Visible signs for seating areas

If you are here for a
RESTRAINING ORDER HEARING,
please remember:

- The Respondent is still prohibited from communicating with the Petitioner.
- The Respondent must remain at least 10 feet away from the Petitioner while in the courthouse.

The courtroom doors will open about 5 minutes before the scheduled hearing:

- Petitioners should sit to the **right** when they enter the courtroom. 
- Respondents should sit to the **left** when they enter the courtroom. 

³ <https://www.flcourts.org/content/download/634473/file/Trauma-Informed-Justice.pdf>

⁴ https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf

⁵ [Id.](#)

“Ensuring that your words are trauma informed doesn’t necessarily mean the recipient of your messages will be happy with what is being said. However, if they respect you because of the way you’ve said something, they are more likely to remain regulated and able to engage.”

Trauma Informed Oregon, Components of a Trauma Informed Script

CONSIDERATIONS

Key Components of a Trauma Informed Script:

- **Validating or normalizing** conveys that you understand what else could be going on for someone.
- **Being clear and direct** is really important for a stressed brain. Complete information helps avoid misunderstanding and misinterpretation.
- **Providing the “why”** helps establish a sense of consistency and predictability.
- **Providing options** and choice helps empower and create hope.⁶

When communicating from the bench, the key is to be direct about what information is needed and offer a reason why. Judges should use words that feel natural to them.

⁶ <https://traumainformedoregon.org/wp-content/uploads/2020/04/The-Anatomy-of-a-Trauma-Informed-Script-TIP-Sheet.pdf>

Remember too that non-verbal communication, such as body language, facial expression, and tone, can impact how your message is received.⁷

PRE-HEARING CONSIDERATIONS

Seating: If you have a multi-case docket, consider designating seating areas for petitioners and respondents. (e.g., respondents instructed to sit in the jury chairs in the courtroom, and petitioners remain in the public gallery until their cases are called).

Pre-Hearing Motions: Will you *sua sponte* exclude witnesses or do you need a motion?

Law Enforcement Presence?: If no officer is available at the start of the hearing, ensure you know how to request their presence *if* needed.

SAMPLE SCRIPTS FOR PRESIDING OVER CONTESTED RESTRAINING ORDER HEARINGS

Introducing a Multi-Case Docket Hearing

“This is the time and place set for this court to hear evidence as it relates to restraining orders.

There are several cases on my schedule for this morning (or afternoon). These hearings are scheduled for 30 minutes each.

I will start by calling the names of those cases to see who is here, and who we might still be waiting for. When you introduce yourself, please let me know if you are ready to proceed, if you believe you will need more than 30 minutes for this hearing, or if you are seeking a postponement of this hearing. If you are seeking a postponement, please let me know. I don’t need to hear the reasons right now, but just flag that for me to come back to before we begin with hearing the evidence in your case.

If there are attorneys for the parties present, I expect you to introduce yourself and indicate the party you are here representing and if you are ready to proceed today.

I have [number] minutes to hear each case. If we do not finish within the time we have, we will try to schedule a time and date for the parties to return to finish the hearing.”

Introducing an Individual Case Hearing

This is the time and place set for this court to hear evidence as it relates to the restraining order Case No. [NUMBER], Petitioner Name versus Respondent Name.

We are scheduled to have [NUMBER] hours to hear the evidence in this case. If we do not finish in the time we have, we will schedule another time and date for the parties to return.

⁷ Id. See also <https://www.prainc.com/gains-promoting-justice-trauma-informed-courts/>

General Hearing Instructions

My job here today is to determine if the restraining order should be upheld, modified or dismissed.

The standard of proof in a civil case is different than a criminal case. After hearing the evidence from both parties, I will determine if it is more likely than not that:

- 1. There has been an incident of abuse within the past 180 days between household or family members,*
- 2. The petitioner reasonably fears for their physical safety, and*
- 3. The respondent poses a credible threat to the petitioner's physical safety or the physical safety of any children involved.*
- 4. (If children are involved) What an appropriate temporary custody and parenting time plan should be if I determine that the order should be continued.*

I know these cases can be very hard. I will do my best to ensure that you each have your time to tell me what you need so I understand the case.

I cannot give you legal advice about your circumstances. I will try to answer any questions you may have and can explain the court process, and I may also have questions for you to help me have a better understanding of the facts.

The petitioner will go first. This includes their testimony and the testimony of any witnesses. The Respondent will have the right(?) to ask the petitioner, and witnesses, questions about the testimony.

I will then hear the respondent's case, including their testimony and from their witnesses. The petitioner will have the right to ask the respondent, and witnesses, questions about the testimony.

I understand that you both are here to discuss serious and troubling events. Please know that you will be heard. I will listen to your testimony and take your testimony seriously. You are sworn under oath to tell the truth. That means what you say in this hearing is evidence and will be treated as the truth as to what has happened.

As I mentioned before, I may ask questions as you testify. These questions are not to challenge your experience, but to help me get a full understanding of the facts of the case.

After I make my ruling, I will ask that the petitioner leave once they are given the paperwork with my final order. Respondent, you will remain here for 15 minutes after the petitioner leaves.

DECISIONS

REMINDER: Try to review the factors for the litigants so they have an understanding of your findings and rulings. This script is designed to help you do that.

“The time for presenting evidence in support of your positions is now over. I thank you both for your testimony today. These are very hard cases and you have both shared really emotional and difficult things today. These kinds of hearings are stressful and have serious consequences.

Based on the testimony and evidence presented I find ...”

FINAL REVIEW OF ORDER

It is important to remember that litigants may not clearly understand a longer ruling. Circling back and making a clear statement about your ruling can help with better understanding of the litigants.

UPHOLD: *“I am going to uphold the restraining order, meaning it will stay in place. The order will end or expire one year/ two years* from the date the order was first granted.”*

*Note: beginning January 1, 2024, FAPA Orders will last two years. (2023 SB 816)

UPHOLD WITH MODIFICATIONS: *“I am going to uphold the restraining order, meaning it will stay in place. The following modifications, or changes, will apply moving forward:”*

DISMISS: *“I am going to dissolve the restraining order, meaning it will no longer be in place. That does not mean that you must have contact or that you even should. It does not mean that the normal criminal laws against abuse or other conduct are not still in place. It simply means that the restraining order entered in this case no longer applies.”*

TIPS FOR MANAGING TESTIMONY

Unrepresented Parties:

- ✓ Speak calmly
- ✓ Refrain from victim blaming
- ✓ Explain court processes in layman terms
- ✓ Create a respectful environment by respecting parties and expecting that the parties interact respectfully
- ✓ Avoid jokes and sarcasm
- ✓ Provide time to cool down and offer breaks
- ✓ Prompt individuals before asking an important question.

Begin by generally explaining the court process to parties who don’t have a lawyer:

“This is your time to tell me why you think you need this restraining order; I see you submitted evidence; did you want me to look at it?”

“Would you like to testify freely, or would you like me to start off with some questions?”

During testimony if party struggles talking about abuse and/or sexual assault:

“Do you need to take a moment to compose yourself? I know these are hard issues to talk about.”

“I know it’s hard to talk about such a personal issue, but you sharing with me helps me to make the best decision for your family that I can.”

When speaking with the survivor during a ruling and when the judge thinks it is necessary:

“Are you connected with the local DV agency? Do you have a safety plan in place?”

Navigating self-represented respondent cross examination:

Have the respondent ask their questions to the court, so that the court can then ask the petitioner.

Remind the parties that the questions on cross examination should be related only to the testimony offered by the petitioner.

“This is your time to ask questions, not to testify or argue with the petitioner. You will have an opportunity to offer other testimony and information in a moment.”

ADDITIONAL CONSIDERATIONS

In these cases, the petitioners with meritorious claims often wish to keep new home addresses confidential. Do not ask questions that would lead to revealing the physical address or safe/confidential residence of the parties.

Consider if the questions you ask from the bench are essential to determining the facts. Are the questions you ask, necessary or more out of curiosity?

Identify and think about your own bias. Take time to breathe and consider the facts presented. Consider if your interpretation of behavior is as objective as possible.

Practice ways to interrupt testimony in respectful ways.

Identify when you are feeling overwhelmed, or your own trauma is surfacing.

Take a break and offer breaks to the parties.

APPENDIX C: Federal and State Firearm Prohibitions

OREGON BENCH SHEET

Updated September 2022

OVERVIEW

Applicable to Respondents Subject to Protection Order: Persons who are subject to qualifying protective orders are prohibited under *state and federal law* from purchasing or possessing any firearm or ammunition. ORS 166.255, 18 USC 924(a)(2)

Qualifying Order: (ORS 166.255) An order that restrains a person from stalking, intimidating, molesting or menacing their child, a family or household member of the respondent or their children, and includes a finding that the person represents a credible threat to the physical safety of family or household member of the person, a child of the family or household member of the person, or a child of the person; and that was issued or continued after a hearing for which the person had

- actual notice during which the respondent had an opportunity to be heard OR
- received notice of the opportunity to request a hearing and EITHER
 - requested a hearing but did not attend or
 - withdrew the request before the hearing occurred or
 - did not request a hearing during the period in which the opportunity to do so was available.

Duration of Prohibition: This prohibition is in effect while the person is subject to the order.

Official Use Exemption: Transporting, shipping, receiving, possessing, or importing any firearm or ammunition imported for, sold, shipped to, or issued for the use of the United States Government or any federal department or agency, or any state or department, agency or political subdivision of a state. ORS 166.255(2)

Violation: Violation of this prohibition is a state and federal offense punishable by a fine and/or imprisonment. 18 USC 924(a)(2); ORS 166.255, ORS 166.250(5)

Court Obligations When Granting a Qualifying Protective Order: (ORS 166.256)

When a respondent becomes subject to a qualifying order, the court shall:

- Indicate in the order that the respondent is prohibited from possessing firearms or ammunition while the order is in effect; and
- Ensure that the respondent is subject to an additional order that requires that the respondent transfer all firearms or ammunition in the respondent's possession within 24 hours of the court's order in accordance with ORS 166.256(2) and file a declaration with the court and district attorney within two judicial days of the court's order.

If the respondent becomes subject to the firearm prohibition order while the respondent is present in court, the court shall:

- Inform the respondent orally and in writing that the respondent is prohibited from possessing firearms or ammunition;
- Order in writing that the respondent transfer all firearms or ammunition in the respondent's possession within 24 hours of the court's order in accordance with ORS 166.256(2); and
- Order that the respondent file a declaration with the court and district attorney within two judicial days of the court's order.

FIREARM/ AMMUNITION PROHIBITIONS
WHEN SUBJECT TO QUALIFYING PROTECTIVE ORDER

Person Subject to Qualifying Protective Order (State and Federal)	
FEDERAL 18 USC §922(g)(8)	STATE ORS 166.255
“Qualifying Protective Order”	
<p>Qualifying Protective Order</p> <p>A person is the subject of a court order that:</p> <ul style="list-style-type: none"> - Was issued after a hearing for which the person had actual notice and opportunity to be heard; <p>AND</p> <ul style="list-style-type: none"> - The order restrains the person from stalking, intimidating, molesting, or menacing a person or a family or household member of the person or a child of the person; <p>AND</p> <ul style="list-style-type: none"> - Includes a finding that the person is a credible threat to the physical safety of a family or household member of the person, a child of a family or household member of the person or a child of the person. 	<p>Qualifying Protective Order</p> <p>A person is the subject of a court order that:</p> <ul style="list-style-type: none"> - Was issued or continued after a hearing for which the person had actual notice and during the course of which that person had an opportunity to be heard; <p>OR</p> <ul style="list-style-type: none"> - Was issued, continued, or remains in effect, by order or operation of law, after the person received notice of the opportunity to request a hearing on the order and either requested a hearing but did not attend the hearing or withdrew the request before the hearing; <p>OR</p> <ul style="list-style-type: none"> - Was issued, continued, or remains in effect, by order or operation of law, after the person received notice of the opportunity to request a hearing in which to be heard on the order and did not request a hearing during the time period in which the opportunity was available; <p>AND</p>

	<ul style="list-style-type: none"> - The order restrains the person from stalking, intimidating, molesting, or menacing a family or household member of the person, a child of a family or household member of the person or a child of the person; <p>AND</p> <ul style="list-style-type: none"> - Includes a finding that the person represents a credible threat to the physical safety of a family or household member of the person, a child of a family or household member of the person or a child of the person.
<p>Specific Kinds of “Qualifying Orders” Under Federal Law</p> <p>Federal law does not specifically enumerate certain kinds of orders as “qualifying orders;” rather requires only that the requirements listed above are met.</p>	<p>Specific Kinds of “Qualifying Orders” Under Oregon Law</p> <p>ORS 166.255 does not specifically designate which types of court orders trigger a firearm prohibition.</p> <p>Orders issued under Oregon law that <i>always</i> qualify based on findings inherent in the order:</p> <ul style="list-style-type: none"> - Family Abuse Prevention Act Restraining Orders issued under ORS 107.000 et seq. - Extreme Risk Protection Orders issued under ORS 166.527 <p>Orders issued under Oregon law which <i>MAY</i> qualify include, <i>but are not limited to</i>:</p> <ul style="list-style-type: none"> - Stalking Protective Orders issued under ORS 30.866 or ORS 163.738 - Elderly Persons or Persons with a Disability Protective Order issued under ORS 124.010 - Sexual Abuse Protection Order for minor petitioners in qualifying relationships under ORS 163.763
<p>Official Use Exception Under Federal Law 18 USC §925(a)(1)</p>	<p>Official Use Exception Under State Law ORS 166.255(2); ORS 166.260</p>

<p>There is an “official use exception” under federal law that firearms or ammunition prohibition do not apply to transporting, shipping, receiving, possessing, or importing any firearm or ammunition imported for, sold or shipped to or issued for the use of the United States Government or any federal department or agency, or any state or department, agency or political subdivision of a state.</p>	<p>There is an “official use exception” under Oregon law that states that the firearm or ammunition prohibition does not apply with respect to transporting, shipping, receiving, possessing, or importing any firearm or ammunition imported for, sold, shipped to, or issued for the use of the United States Government or any federal department or agency, or any state or department, agency or political subdivision of a state.</p>
<p>Duration of Prohibition 18 USC §922(g)(8)</p> <p>The prohibition against possession of firearms or ammunitions applies while the protective order is in effect.</p> <p>Upon expiration or termination of an order, the prohibition on firearms/ammunition is no longer in effect.</p>	<p>Duration of Prohibition ORS 166.255(1)(a); 166.256(1)(a)(A), (7)</p> <p>The prohibition against possess firearms or ammunitions applies while the protective order is in effect.</p> <p>Upon expiration or termination of an order, the prohibition on firearms/ammunition is no longer in effect.</p>
<p>Court Obligation Re: Notice of Firearm and Ammunition Prohibition and Court-Ordered Dispossession Order</p>	
<p>Court Obligation: Notice of Prohibition and Order to Dispossess</p> <p>No specific obligations are outlined under federal law regarding notice or dispossession order.</p>	<p>Court Obligation: Notice of Prohibition and Order to Dispossess ORS 166.256(1)(a), ORS 166.255</p> <p>When a respondent becomes subject to a qualifying order, the court shall:</p> <ul style="list-style-type: none"> - Indicate in the order that the respondent is prohibited from possessing firearms or ammunition while the order is in effect; and - Ensure that the respondent is subject to an additional order that requires that the respondent transfer all firearms or ammunition in the respondent’s possession within 24 hours of the court’s order in accordance with ORS 166.256(2) and file a declaration with the court and district attorney within two

	<p>judicial days of the court's order.</p> <p>If the respondent becomes subject to the firearm prohibition order while the respondent is present in court, the court shall:</p> <ul style="list-style-type: none"> - Inform the respondent orally and in writing that the respondent is prohibited from possessing firearms or ammunition; - Order in writing that the respondent transfer all firearms or ammunition in the respondent's possession within 24 hours of the court's order in accordance with ORS 166.256(2); and - Order that the respondent file a declaration with the court and district attorney within two judicial days of the court's order.
<p>Court Obligation: Written Order of Dispossession</p> <p>There are no specific obligations outlined under federal law.</p>	<p>Court Obligation: Written Order of Dispossession ORS 166.256</p> <p>The court must order in writing that respondent transfer all firearms and ammunition in the person's possession and order that the respondent file a declaration as described below.</p> <p>Within 24 hours of becoming subject to court order under subsection 1(a)(B) of ORS 166.256, respondent must:</p> <ul style="list-style-type: none"> - Surrender all firearms or ammunition in defendant's possession to a local law enforcement agency, a gun dealer; or a third party who does not reside with the respondent; <u>and</u> - Obtain a proof of transfer of the firearms or ammunition.
	<p>Court Obligation: Order to File Declaration ORS 166.256(4)</p> <p>Within two judicial (business) days of becoming subject to court order under subsection 1(a)(B)</p>

	<p>prohibited from possessing firearms and ammunition, the respondent must file with the court and the district attorney's office a declaration (under penalty of perjury) that:</p> <ul style="list-style-type: none">- All firearms or ammunition in the respondent's possession have been transferred to a law enforcement agency, gun dealer, or eligible third party;- The respondent has no firearms or ammunition; or- The respondent is asserting the constitutional right against self-incrimination.
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APPENDIX D: Domestic Violence & Protection Orders: National & Local Data

Domestic Violence Nationally-

According to the Centers for Disease Control's (CDC) National Intimate Partner and Sexual Violence Survey (NISVS)⁸, about 1 in 4 women and nearly 1 in 10 men have experienced contact sexual violence, physical violence, or stalking by an intimate partner during their lifetime and reported at least one impact of the violence (such as chronic conditions affecting the heart, muscles, bones, digestive, reproductive and nervous systems as well as mental health problems such as depression and PTSD symptoms).⁹ According to the CDC, 1 in 5 homicide victims are killed by an intimate partner and over half of female homicide victims in the United States are killed by a current or former male intimate partner.¹⁰ That same source fixes the lifetime economic costs associated with intimate partner violence at \$3.6 trillion dollars, including medical services for IPV-related injuries, lost productivity from work and criminal justice costs.¹¹ For the individual, the cost of IPV over a victim's lifetime is \$103,767 for women and \$23,414 for men.¹²

The lethality of domestic violence has recently reversed a decades-long trend. For almost four decades, on average, three women were killed each day by a current or former intimate partner, with numbers declining. Recently, that number has increased to over four per day.¹³ Domestic violence is the single greatest cause of injury to women in the United States, exceeding the combined total of rapes, muggings, and car accidents.¹⁴

LGBTQIA+ people are particularly vulnerable to intimate-partner violence experience higher rates than within the heterosexual community. For example, according to the NISVS, 44% of lesbians and 61% of bisexual women experience rape, physical violence, or stalking by an intimate partner, compared to 35% percent of heterosexual women. Similarly, 26% of gay men and 37% of bisexual men experience rape, physical violence, or stalking by an intimate partner, compared to 29% of heterosexual men.¹⁵ More than half (54%) of respondents to *The Report of the 2015 U.S. Transgender Survey* experienced some form of

⁸ <https://www.cdc.gov/violenceprevention/datasources/nisvs/index.html>

⁹ CDC Fast Facts on Intimate Partner Violence, <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See <https://www.nytimes.com/2019/04/12/us/domestic-violence-victims.html>? (citing Emma E. Fridel & James Alan Fox, *Gender Differences in Patterns and Trends in U.S. Homicide, 1976-2017*, published in *Violence and Gender*, Vol 6, Issue 1, March 2019).

¹⁴ See *Violence Against Women: A Week in the Life of America, A Majority Staff Report*, Committee on the Judiciary, United States Senate, 102nd Congress, October 1992, at <http://library.niwap.org/wp-content/uploads/2015/VAWA-Lghist-SenateJudiciary-10.92.pdf>. See also *United States Emergency Department Visits Coded for Intimate Partner Violence*, Danielle M. Davidov, Hollynn Larrabee & Stephen M. Davis, *J Emerg Med* 2015 Jan; 48(1): 94–100, at <https://pubmed.ncbi.nlm.nih.gov/25282121>

¹⁵ <https://www.cdc.gov/violenceprevention/datasources/nisvs/index.html>

intimate partner violence, with 35% experiencing physical violence and 24% experiencing “severe” physical violence by an intimate partner.¹⁶

Children are also at risk of abuse as a result of intimate partner violence.¹⁷ Studies support that children are at greater risk of being abused when one parent is abused by the other parent, with estimates placing them at a 30-60% greater risk.¹⁸ Research indicates that child maltreatment occurs in 30% to 60% of families where partner abuse takes place.¹⁹

Physical separation does not guarantee personal safety. To the contrary, the phenomenon referred to as “separation violence” stems from the fact that women²⁰ who are separated from their husbands are 25 times more likely to be victimized by spouses than are married women²¹ and 65% of all domestic violence homicides occurred after separation.²² This risk is also born by children who are at risk post-separation even if they were never directly abused by the abusive parent previously²³ after “the abusive parent may no longer has ready access to the other parent.”²⁴

Protection Orders Nationally-

The FBI receives for its registry over one million domestic-violence protection orders from state courts yearly, which does not include reports from all states or all counties within the states that do report.²⁵ “[R]esearch supports the conclusion that [restraining orders] are associated with reduced risk of violence

¹⁶ S. E. James, J. L. Herman, S. Rankin, M. Keisling, L. Mottet & M. Anafi, *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality 198 (2016), at <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

¹⁷ Civil Protection Orders: A Guide for Improving Practice: <https://www.ncjfcj.org/publications/civil-protection-orders-a-guide-for-improving-practice/> citing Stephanie Holt, Helen Buckley & Sathbh Whelan, The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature, 32 Child Abuse & Neglect 797, 800 (2008).

¹⁸ A judicial Guide to Child Safety in Custody Cases, National Council of Juvenile and Family Court Judges, p. 6. <https://www.ncjfcj.org/publications/a-judicial-guide-to-child-safety-in-custody-cases/>; see also Navigating Custody & Visitation Evaluations in Cases with Domestic Violence: A Judges Guide, State Justice Institute and the National Council of Juvenile and Family Court Judges, p. 14 and fn. 27.

¹⁹ <https://www.allianceforchildren.org/blog/2022/10/link-between-domestic-violence-and-child-abuse>, <https://preventchildabuse.org/latest-activity/child-abuse-and-domestic-violence-connections-and-common-factors/>, and <https://violence.chop.edu/domestic-violence-and-child-abuse#.XvIrg2hKgDU>

²⁰ At the time of writing, the subcommittee is not aware of any similar studies for non-heterosexual couples or male survivors of domestic violence.

²¹ A Guide for Effective Issuance and Enforcement of Protection Orders, page 1. <https://www.ncjfcj.org/publications/a-guide-for-effective-issuance-enforcement-of-protection-orders/>

²² *id.*

²³ A judicial Guide to Childs Safety in Custody Cases, National Council of Juvenile and Family Court Judges, p. 6. <https://www.ncjfcj.org/publications/a-judicial-guide-to-child-safety-in-custody-cases/>

²⁴ *id.*

²⁵ *Wider Opportunities for Women, Protection Orders and Survivors*, Just. Sys. Pol’y Series, 2 (Oct 2012) (citation not verified by publisher).

toward the victim.”²⁶ One study found that “having a permanent protection order in effect was associated with an 80% reduction in police-reported physical violence in the next year. Women with permanent protection orders were significantly less likely than those without protection orders to be physically abused.”²⁷

Domestic Violence and FAPA Protection Orders in Oregon-

According to the CDC’s NISVS, 39.8% of Oregon women and 36.2% of Oregon men experience intimate partner physical violence, intimate partner violence, and/or intimate partner stalking in their lifetimes.²⁸ Oregon Child Welfare statistics for 2016 and 2017 show that 33.7% and 26.5% (respectively) of child-protective cases with founded abuse had domestic violence as a “family stress indicator.”²⁹

From 2018 through 2022, 47,527 FAPAs were filed in Oregon, an average of 9,000 each year. Of those, 77% (36,738) were granted. Of those FAPAs granted 42% (15,282) were contested.³⁰ In addition to FAPA, Oregon law recognizes the need for protection orders in the following contexts addressed in this [Comparison Chart of Protective Orders in Oregon](#):³¹

- Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA) ORS 124.005–124.040 (from 2002-2016, more than half a million older adults were treated in the emergency department for nonfatal assaults and over 19,000 homicides occurred, of which men were at increasingly greater risk, with rates rising among men by 75% compared to 35% among women);³²
- Stalking Protection Orders (SPO) ORS 30.866; ORS 163.730–163.750;
- Sexual Abuse Protection Order (SAPO) ORS 163.760–163.777;
- Emergency Protection Order (EPO) ORS 133.310;
- Extreme Risk Protection Order (ERPO) ORS 166.525–166.543

²⁶ See Christopher T. Benitez, Dale E. McNiel, & Renée L. Binder, *Do Protection Orders Protect?*, 38 J Am Acad Psychiatry L 376, 385 (2010), <http://jaapl.org/content/jaapl/38/3/376.full.pdf>.

²⁷ Benitez *et al*, 38 J Am Acad Psychiatry L at 381.

²⁸ <https://www.cdc.gov/violenceprevention/datasources/nisvs/index.html>.

²⁹ See [2017 Child Welfare Data Book-revised 8-27-18 \(oregon.gov\)](#).

³⁰ Data provided by Oregon Judicial Department’s Behavior Health Data Analyst on February 8, 2023

³¹ [Comparison Chart](#)

³² <https://www.cdc.gov/violenceprevention/elderabuse/fastfact.html>