

**FAMILY ABUSE PREVENTION ACT**  
**RESTRAINING ORDERS**  
**Procedures may vary by county**

*The content of this document is based on "Family Abuse Prevention Act Instructions and Forms For Obtaining A Restraining Order"/Office of the State Court Administrator, Salem, Oregon/October 1999*

A "Restraining Order" is an order of the court that orders the person named in the Restraining Order (the respondent) to stop threatening or abusing you (the petitioner) and to stay away from you. The order may also give you temporary custody of the children, order the respondent to move out of or stay away from your home and stay away from your job or school. The police are required to enforce a Restraining Order. A person who violates a Restraining Order can be arrested, charged with contempt of court or any crimes committed, and if found guilty, can be fined or put in jail.

The Family Abuse Prevention Act (FAPA) is intended to protect you from abuse by family and household members. Not everyone is eligible for a restraining order. You cannot use FAPA forms and procedures for disputes or conflicts you have with persons who are not family or household members.

If you are a minor (a person age 17 or younger), you may use the restraining order forms to obtain a Restraining Order against an adult person (a person age 18 or older) who is a spouse, former spouse, or a person with whom you have been involved in a sexually intimate relationship. However, you may need a guardian ad litem (adult, temporary guardian) appointed for you if you seek a Restraining Order against someone other than a spouse or former spouse. You should talk to an attorney about whether you need a guardian and how to get one, or your local court may have a form you can use.

**ELIGIBILITY**

You can get a Restraining Order if you are a victim of abuse committed within the 180 days\* before the filing of the petition. The abuse must have occurred in one or more of the following ways:

- (1) you have been physically injured
- (2) an attempt has been made to injure you physically
- (3) you have been placed in fear of imminent bodily injury; or
- (4) you have been forced (by actual force or threat of force) to engage in sexual relations against your will.

(\*Note: Any period of time after the abuse occurred during which the respondent was incarcerated (in jail or prison) or lived more than 100 miles from your home does not count as part of the 180-day time period, and you may be still eligible for a Restraining Order.)

**AND**

If you are an ADULT (age 18 or older) and the abuse was committed intentionally, knowingly, or recklessly by any one of the following persons:

- (1) the person you are married to;
- (2) a person you used to be married to;
- (3) the person with whom you presently cohabit or with whom you have cohabited;
- (4) a person with whom you have been involved in a sexually intimate relationship anytime within the last two years before you file the petition;
- (5) adults related to you by blood, marriage, or adoption (including in-laws, parents, adult children, aunts, uncles, adult grandchildren, and other relatives); or
- (6) a person not married to you with whom you have a child who is unmarried and under 18 years of age, OR

If you are a MINOR (age 17 or younger) and the abuse was committed intentionally, knowingly, or recklessly by any one of the following persons who are 18 years of age or older:

- (1) the person you are married to;
- (2) a person you used to be married to; or
- (3) a person with whom you have been involved in a sexually intimate relationship.

#### **A. Filing Papers and Where to File**

You should file your papers with the court in the county where you or the respondent reside, i.e., in the county you consider your or respondent's permanent residence and where you or respondent intend to live for more than a temporary period of time. There is no fee for filing papers under FAPA.

#### **B. First Hearing**

The court is required to hold a hearing on the day you file your papers or the next day that the court is open for business. The respondent does not need to be at the hearing. There is no hearing fee.

#### **C. Issuing the Restraining Order**

If the judge decides that you are eligible and are in imminent danger of further abuse, the judge will issue a Restraining Order. What protection the judge includes in the Restraining Order depends on what you ask for in the Restraining Order and the information the judge receives at the hearing.

**VERY IMPORTANT: If the judge grants you the restraining order, the judge will order that temporary custody be granted as you have requested, UNLESS the court decides there are "exceptional circumstances affecting the child." If the court finds there are "exceptional circumstances", the court will order a hearing to be held within 14 days. Before this "exceptional circumstances" hearing, the court may make temporary orders regarding your child's residence and the contact you and the respondent will each have with the child as necessary for your and the child's welfare and safety.**

## THINGS THE JUDGE CAN ORDER AS PART OF THE RESTRAINING ORDER

- The judge can order the respondent to move out of the house if certain conditions exist
- The judge can allow the respondent, with the assistance of law enforcement or a peace officer, to remove his/her clothes and other necessary or important personal property or clothing and personal property of any children in respondent's custody. Examples of possessions that may be taken include clothing, toiletries, diapers, medications, social security cards, birth certificates, identification, tools of the trade, etc. The respondent may **NOT** take property items such as televisions, furniture, or the personal effects of the petitioner.
- The judge can order temporary custody of the children and specify temporary parenting time arrangements.
- The judge can order transportation arrangements for parenting time.
- The judge can specify what contact is allowed between you and the children, or the respondent and the children.
- The judge can order a law enforcement or peace officer to assist in recovering custody of the children awarded to you.
- The judge can order other conditions the judge considers necessary to provide for your or your child's safety and welfare. For example, the court may require the respondent to not possess firearms or ammunition, to pay the cost of supervised parenting time (visitation), to pay for and attend a parent education class as a condition of parenting time, to pay an amount necessary to provide you with emergency monetary assistance, to return certain possessions such as social security cards or keys. If you would like these or other conditions to be considered by the court, you must inform the court.
- The judge can order respondent to provide funds to change locks, pay rent, or pay expenses. You need to let the court what amounts you need, what the funds are for and indicate whether it would be better for respondent to pay you (if assistance is ordered by the judge) by check or money order. **NOTE: Please understand that although the judge may order respondent to pay you emergency monetary assistance, if respondent does NOT pay you, you are responsible for taking the necessary legal steps to collect the money from respondent, you may need the assistance of an attorney to do this.**
- **Child or Spousal Support CANNOT Be Ordered in a FAPA Case:** If you need funds to support yourself or your and respondent's children, you will need to apply for a support award in a separate case such as in a divorce or a custody case.

### D. Order Lasts One Year

Once the judge signs the Restraining Order, it is in effect for one year unless it is (1) dismissed earlier by the court at your request; (2) until the order is vacated or modified, or (3) unless the court renews it at your request, whichever occurs first.

Additionally, if and when a judgment in dissolution (divorce), separation, annulment, or unmarried parents' custody case is entered, the provisions of the judgment take the place of the conflicting provisions in the Restraining Order. Often a subsequent judgment will

change the custody and parenting time orders that may be entered in an earlier Restraining Order.

#### **E. Serving a Copy on Respondent**

A copy of the Restraining Order must be given to (“served on”) the respondent. **The order is enforceable against the respondent ONLY once he/she has been served.** The order must be given to the respondent personally by the sheriff or other person who is qualified to serve legal papers unless the court finds that further service is unnecessary because the respondent appeared in person before the court and received the papers.

#### **F. Hearing on Respondent’s request**

Unless an “exceptional circumstances” hearing has already been scheduled by the court, the respondent has the right to ask for a hearing **within 30 days after receiving the Restraining Order.** If the respondent requests a hearing, the court must hold a hearing within 21 days following the request, unless the respondent contests the temporary child custody provisions of the Restraining Order. Then a hearing must be held within 5 judicial days of the request.

The respondent may request a hearing by filling out the “Respondents Request For Hearing” portion of the “Notice To Respondent/Request for Hearing” form and filing that form with the court clerk.

If the respondent is contesting all or part of the Restraining Order, you will need to show (provide information) why you are eligible for a Restraining Order and why the Restraining Order’s terms should continue. This is the time to present evidence and witnesses that support your case.

#### **G. “Exceptional Circumstances” Hearing**

**If the court has scheduled an “exceptional circumstance” hearing, a hearing will be held within 14 days. You will receive notice of that date at the first hearing. The respondent must receive copies of the Restraining Order papers before the date of the scheduled hearing. At the hearing, you will be asked to provide information about your children and your request for temporary custody.**

**If the respondent is contesting all or part of the Restraining Order, you will need to show (provide information) why you are eligible for a Restraining Order and why the Restraining Order’s terms should continue. This is the time to present evidence and witnesses that support your case.**

**On the other hand, if the respondent receives the papers and wants an earlier hearing than the date scheduled, the respondent can request an earlier hearing to be held within 5 days of their request. The court will notify you of an earlier hearing date if this happens.**

## **H. Continuance to Get An Attorney**

The court may, upon your or the respondent's request, extend the time for hearing for up to 5 days to enable either party to get an attorney.

## **I. Arrest for Violating the Restraining Order**

The respondent can be arrested for violating the Restraining Order. The order will state the amount of security ("bail") to be posted if respondent is arrested for violating the order. The respondent will be released if he/she is able to post 10 percent of this bail amount but will still have to appear for trial. Violating a Restraining Order is contempt of court and is punishable by a fine of up to \$500 or 1 percent of respondent's annual gross income, whichever is greater, a jail term of up to six months, or both. Other sanctions may be imposed.

## **WHAT HAPPENS AFTER THE RESTRAINING ORDER IS SERVED**

### **Entering the Restraining Order Into the Law Enforcement Computer**

If the sheriff serves the papers on the respondent, the sheriff will enter the information from the Restraining Order into the law enforcement computer. After the information is entered in the law enforcement computer, police anywhere in the state can find out about the Restraining Order. If the Restraining Order meets certain federal requirements, the sheriff will also enter the Restraining Order into a national computer so that law enforcement officers anywhere in the country can find out about the Restraining Order.

If you have the papers served by someone other than the sheriff's office, you must make sure that the Affidavit of Proof of Service is filed with the court clerk. The court clerk will then forward the papers to the sheriff's office so that the information can be entered into the law enforcement computer. If you don't want to wait for the court clerk to forward the papers to the sheriff, you can deliver a true copy of the Affidavit of Proof of Service and a true copy of the Petition and Restraining Order yourself to the sheriff's office, or you can arrange to have these papers delivered to the sheriff's office by a private person.

### **Enforcement of the Restraining Order**

If the police have probable cause (good reason) to believe that the respondent has violated (disobeyed) the Restraining Order, they must arrest the respondent (even if you don't want the respondent arrested). It is not always necessary that the police see a violation of the Restraining Order before making an arrest. They can arrest based on other reliable information they may have. You can also ask the district attorney to prosecute (bring legal charges against) the respondent for violating a Restraining Order.

If you plan to travel to or move to another state and would like to take a copy of the Oregon Restraining Order with you, the court clerk will provide, on request and free of charge, two exemplified copies of the Restraining Order.

**Your restraining order, once served on the respondent, is enforceable in all other states.**

### **Conflicting Orders**

If you have requested, or the court makes, a temporary custody order that conflicts with a previous court order or judgment that has been entered in any other court proceeding IN THIS STATE, the judge will specify a period of time (perhaps 2-3 months) that the temporary custody order in the Restraining Order will last. Before that time ends, you must file a motion to modify custody in the other court proceeding. If you do not file such a motion and obtain an order for custody in the other court proceeding, the temporary custody order in the Restraining Order will expire (end) on the date indicated by the judge.

If the court makes a temporary custody order that conflicts with a previous court order or judgment that has been entered in another court proceeding IN ANOTHER STATE, the temporary custody order in the Restraining Order lasts only until a new order is issued in the pre-existing case, until the date indicated by the judge or until this order is dismissed, whichever occurs first.

**IMPORTANT: If the Restraining Order expires or is cancelled, or if a new order is not issued in the pre-existing case by the date indicated by the judge, the custody and parenting time provisions of the pre-existing order or judgment become IMMEDIATELY effective.**

### **FILLING OUT THE PETITIONER'S MOTION AND ORDER OF DISMISSAL**

You have the right to ask the court to end a Restraining Order early.

A Restraining Order under the Family Abuse Prevention Act lasts for one year (365 days) from the date the judge signs it. If you want the Restraining Order to end before the year's time is up, you can ask the judge to end it early.

### **MODIFYING (CHANGING) THE RESTRAINING ORDER**

You and the respondent each have the right to ask the court to modify (change) the Restraining Order provisions that deal with custody and parenting time (visitation) of minor children at any time.

The court clerk has forms and instructions for you to use if you want to modify (change) the Restraining Order.

### **RENEWING (CONTINUING) THE RESTRAINING ORDER**

Restraining orders under the Family Abuse Prevention Act last for a period of one year (365 days) from the date they are signed, unless it is ended earlier at your request or by the court. You may continue the Restraining Order beyond one year if you request the court to renew the order for another year. **IMPORTANT: You must request the renewal BEFORE your current order ends.**

Visit [www.merlinwilkinson.com](http://www.merlinwilkinson.com) for more information.

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The court clerk has forms and instruction for you to use if you want to renew (continue) the Restraining Order.

If you need assistance regarding any restraining order issue, please do not hesitate to contact our firm at 503.693.6641.