

A Legal Guide for Oregon Advocates

A reference tool for advocates who work with domestic violence, sexual assault, and stalking survivors in Oregon.



Legal Aid Services of Oregon
& Oregon Law Center

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The information contained in this booklet is accurate as of July 2017. Please remember that the law is always changing through the actions of the courts, the legislature and agencies. For any updates to this publication, please visit our web site at www.oregonlawhelp.org.

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Introduction

This guide is intended to be a resource for advocates who work with domestic violence and sexual assault survivors. It was created as a companion to the domestic violence trainings conducted throughout Oregon in 2017 by Legal Aid Services of Oregon. The information in this guide is accurate as of March 2017.

Although advocates cannot provide their clients with legal advice, advocates are valuable sources of legal information for their clients. Advocates can also help attorneys by doing initial fact gathering, issue spotting, and then referring cases to attorneys when complicated legal issues are present.

The information in this guide is intended to provide advocates with a framework of the laws and procedures that impact their clients and will help advocates

issue spot. Please note, this manual is intended to provide only general legal information, and it is not a substitute for individual legal advice. *(Please see the Unauthorized Practice of Law section on page 11 for more information on legal advice versus legal information.)*

A word about language: Throughout this manual, the words “survivor” and “victim” are used interchangeably. The word “victim” is usually only used in reference to the criminal justice system or where it is specifically used in a particular law, such as the Violence Against Women Act (VAWA). The term “abuser” is used to refer to perpetrators of physical, sexual and emotional abuse, and stalking.

Protecting Survivor Information

The advocate's role in protecting client information

Why protect survivor information?

Protecting survivor information is key to a successful relationship between advocate and survivor. Confidentiality makes survivors more likely to share information that is necessary for effective safety planning and response. Confidentiality also addresses a survivor's fear of humiliation, blame, or rejection by friends, family, and community, and makes them more willing to access services. Lastly, knowing that their information will remain confidential gives survivors control—they get to choose if, how, and when that information can be disclosed.

The disclosure of survivor information can have many negative ramifications. Disclosures may impact a survivor's safety and escalate violence by an abuser. If a survivor is involved in a legal proceeding, such as a divorce or custody, child welfare, or a criminal case, disclosures may hurt their case. Moreover, disclosures may embarrass a survivor or negatively impact their relationships, employment, or housing.

Basic rule of confidentiality

The decision to share or not to share survivor information is the survivor's choice. An advocate cannot release or share information without the informed consent of the survivor.

Explaining confidentiality to clients

Survivors should be provided with clear, easy to understand information about program confidentiality policies and protocols before they are asked to make disclosures. Advocates should discuss any exceptions to confidentiality, which will be discussed in more detail in the following sections.

Types of survivor information

Survivor information is separated into two categories—personal identifying information and contact information.

Personal identifying information

Personal identifying information refers to personal facts about survivors, not including contact infor-

mation, such as their Social Security number, driver's license number, credit card numbers, bank or other financial account numbers or locations, maiden name, birth date, and place of birth. This also includes any other information that would serve to identify a person (such as demographic information in combination with geographic location). This information can be used by abusers to commit financial fraud or identity theft against the victim.



Protecting survivor information is key to a successful relationship between advocate and survivor. Confidentiality makes survivors more likely to share information that is necessary for effective safety planning and response.

Contact information

Contact information includes information about the survivor such as their name, address, telephone number, or employer's name and address. This information can be used by abusers to track down victims in order to harass, stalk, or abuse them.

Where to find survivor information

Abusers can find survivors' personal identifying and contact information in public records and on the internet. Public records such as mortgage and deed records, records of school districts, state agencies, offices, and governing bodies often contain survivor's contact information as well as their personal identifying infor-

mation. A lot of information is also available online on survivor's social media profiles or other websites.

VAWA confidentiality

The Violence Against Women Act (VAWA) incorporates the basic rule of confidentiality and requires grantees and subgrantees to protect the confidentiality and privacy of persons receiving services. Any shelter, rape crisis center, domestic violence program, or other victim service program that receives VAWA funds may not disclose, reveal, or release personal identifying information or contact information in connection with services requested, utilized, or denied through grantees' and subgrantees' programs, regardless of whether the information has been encoded, encrypted, hashed or otherwise protected.

Disclosing confidential information

VAWA allows a survivor's personal identifying information or contact information to be disclosed in only three circumstances (which are discussed in more detail in the following sections):

1. Voluntary disclosure accompanied by a signed release of information;
2. Pursuant to a statutory mandate (e.g. child abuse or elder abuse reporting), or
3. Pursuant to a court mandate.

Voluntary disclosures

Advocates may disclose confidential information if a survivor voluntarily consents to the disclosure. However, advocates must obtain the **informed, written, reasonably time-limited consent** of the person about whom information is sought.

Informed consent

Informed consent means the survivor, understanding the alternatives to and risks and benefits of disclosure, decides to allow the advocate to share survivor information with a third party.

If the client is an unemancipated minor, then the minor **and** the parent or legal guardian must provide consent to release. For incapacitated persons, a court-appointed guardian must provide consent to release information. Consent for release may not be given by the abuser of the minor, incapacitated person, or the abuser of the parent of the minor. Furthermore, if a minor or person with a legally appointed guardian is permitted by law to receive services without the

parent's or guardian's consent, the minor or person with a guardian may give informed consent to release information without the participation of their parent or guardian.

Written permission required

Verbal releases are inconsistent with the requirements of VAWA. In an emergency, an advocate may obtain a verbal release to provide urgent services to the survivor. If the verbal release is made over the phone, advocates should confirm the identity of the speaker. Advocates should obtain written consent as soon as possible. In a true emergency, where consent cannot be obtained, advocates should give out as little information as possible and provide first responders with only enough information to respond to the situation.

Informed consent means the survivor must make a knowing and informed decision to waive privilege or confidentiality and disclose information.

Reasonably time limited

The consent to release survivor information must be for a reasonable time frame taking into consideration the needs of the survivor and the purpose of release. An ideal timeframe is 15-30 days, but the release can be for longer if necessary. Advocates should balance the inconvenience of signing a new release against the safety concerns of the survivor.

Documenting consent

The best practice for documenting informed consent is to have survivors sign a Release of Information (ROI) form. ROIs should contain:

- A description of the information to be released, the date, the name of the agency designated to receive the information, and the purpose and duration of consent
- A statement acknowledging that the survivor:
 - has read the form, been informed of the alternatives to and risks and benefits of disclosure, and
 - understands the consequences of authorizing the release of information to third parties

- A statement informing the survivor that the ROI is revocable
- A statement informing the survivor that disclosure is not required as a condition of receiving services

The National Network to End Domestic Violence has created a sample VAWA-compliant ROI form. The NNEDV ROI form is included at the end of this section and is also available for download in Word format at: <http://nnedv.org/resources/safetynetdocs/survivor-confidentiality/client-limited-release-of-information-form.html>.

Disclosure of confidential information pursuant to statutory mandate

Advocates must disclose confidential information when required by statutory mandate. This means that if a statute (law) requires disclosure of information, the advocate must comply with the statute. The most common examples of statutory mandates are child abuse and elder abuse reporting requirements.

When making a disclosure pursuant to a statutory mandate, advocates should:

- Make reasonable attempts to notify survivors that disclosure is required, and
- Take steps necessary to protect the privacy and safety of the persons affected by the release of information. For example, redacting personal identifying or contact information when disclosing client records, if possible.

Child abuse reporting

If an advocate is a “public or private official” under Oregon law, they have a duty to report suspected child abuse with a few exceptions (for example, when disclosures are made within the context of a privileged attorney/client conversation). Public or private officials include physicians, nurses, school employees, psychologists, clergy members, licensed clinical social workers, attorneys, licensed professional counselors, emergency medical technicians, and DHS employees, among others. (see Oregon 419B.005(5) for a complete list.) These individuals must report suspected child abuse whenever they come into contact with a person they have reasonable cause to believe was a victim or perpetrator of abuse. Abuse includes assault, rape, sexual abuse, negligent treatment, and endangering the health and welfare of a child (see ORS 419B.005(1)).

Generally, advocates are not mandatory reporters of abuse, unless they are also a public or private officials.

A common example of an advocate who is a mandatory reporter would be a licensed clinical social worker who works as an advocate in a shelter.

Non-mandatory reporters

Advocates who are *not* mandatory reporters *may not* disclose confidential information for the purposes of reporting child abuse without a signed ROI premised on informed consent. The best thing an advocate can do if they suspect abuse is discuss with their supervisor how reporting will likely affect the survivor and advise survivor accordingly. Remember, a program cannot require a survivor to sign a release of information as a condition of receiving services.

Advocates who are not mandatory reporters may not disclose confidential information for the purposes of reporting child abuse without a signed ROI premised on informed consent.

Responsibilities of mandatory reporters

Advocates who are mandatory reporters should disclose their reporting obligations and the possible implications of these obligations with the survivor. If possible, advocates should provide the survivor with the option of speaking to an advocate who is not a mandatory reporter.

Program responsibilities

Programs that receive VAWA funds need to understand the difference between mandatory and non-mandatory child abuse reporters. The program also has a responsibility to know who among their staff and volunteers is a mandatory reporter.

Disclosure of confidential information pursuant to a court mandate

Advocates may also be compelled to disclose confidential information pursuant to a court mandate. A court mandate is a judicial command, order or precept, written or oral, from a court. When making a disclosure pursuant to a statutory mandate, advocates should:

- Seek legal advice before responding, if possible
- Make reasonable attempts to notify survivors that disclosure is required

- Not disclose more than is demanded by the court
- Take steps necessary to protect the privacy and safety of the persons affected by the release of information. For example, redacting personal identifying or contact information when disclosing client records, if possible.

- Non-personal identifying data in the aggregate regarding services to clients, unless providing such information would identify individual clients, and
- Non-personal identifying demographic information in order to comply with reporting, evaluation, or data collection requirements.

Responding to subpoenas

A **subpoena** is an order that requires a person to appear and provide testimony. A **subpoena duces tecum** is an order that requires a person to turn over or “produce” documents. Subpoenas are not always court mandates. Advocates who receive a subpoena should inform their supervisor and obtain legal advice as soon as possible. There are potential penalties for failing to respond to a subpoena promptly.

If served with a subpoena, an advocate should not disclose any information to the person serving the subpoena. The advocate should record how the subpoena was served (e.g. in person, by mail), by whom, the date and time of service, and whether the advocate was offered payment for obeying the subpoena.

Finally, advocates should ask an attorney to help them take resist a subpoena, for example, by asking the court to protect the survivor’s information from disclosure. The most common method of objecting to a subpoena is by filing a Motion to Quash and Motion for a Protective Order.

Privilege is a legal protection that empowers the survivor to decide whether or not their confidential communications with an advocate will be disclosed to a third party.

Information not protected by confidentiality and privilege

Not all survivor information is protected by privilege and confidentiality. The following information can be disclosed without a ROI or court order for the purpose of grant reporting, as long as revealing such information does not identify any particular individual served by the program:

Oregon laws

Oregon confidentiality requirements

In Oregon, information maintained by sexual assault crisis centers, crisis lines, shelter homes, or safe houses relating to survivors is confidential (ORS 409.273(2)(b); ORS 409.292). This means that employees of these organizations must protect information about and shared by clients.

Maintaining client confidentiality requires employees to:

- Avoid disclosing survivor information to people outside the organization
- Take preventative measures to avoid inadvertent disclosures of survivor information
- Challenge requests from outside parties for survivor information
- Notify the survivor when someone requests access to their confidential information

Oregon advocate privilege

Privilege is a legal protection that empowers the survivor to decide whether or not their confidential communications with an advocate will be disclosed to a third party. The privilege applies to “confidential communications” between a “certified advocate” and a “victim” (defined in the next section). When the privilege applies, this means:

- A court cannot force a survivor or their advocate to disclose the contents of confidential communications, and
- Neither the advocate nor the survivor can be punished for refusing to disclose the information.

When does privilege apply?

In order for Oregon’s advocate privilege protections to apply, two conditions must be met:

1. The communication must be between a “victim” and a “certified advocate,” and

- **Victim:** a person who is seeking safety planning, counseling, support or advocacy services related to domestic violence, sexual assault or stalking at a “qualified victims services program” (see definition below).
- **Certified advocate:** a person who has completed at least 40 hours of attorney general approved training in advocacy for survivors of domestic violence, sexual assault or stalking, and is an employee or volunteer of a “qualified victim services program.”
- **Qualified victim services program** means:
 - * A nongovernmental, nonprofit, community-based program receiving moneys administered by the state Department of Human Services or the Oregon or United States Department of Justice that offers safety planning, counseling, support or advocacy services to victims of domestic violence, sexual assault or stalking; or
 - * A sexual assault center, victim advocacy office, women’s center, student affairs center, health center or other program providing safety planning, counseling, support or advocacy services to victims that is on the campus of or affiliated with a two- or four-year post-secondary institution that enrolls one or more students who receive an Oregon Opportunity Grant.

2. The communication must be “confidential”

- *Confidential communication:* communications not intended for further disclosure, except to: (1) persons who are present to further the interests of the victim in seeking safety planning, counseling, support or advocacy services; (2) an interpreter; or (3) other persons, in the context of group counseling.

Who does privilege belong to?

The right to assert or waive the privilege belongs to the survivor alone. Only a survivor can decide whether to disclose privileged information. With rare exceptions such as mandatory reporters of child abuse, an advocate cannot override the survivor’s decision on whether to disclose privileged information.

Waiver of privilege

A survivor can destroy or “waive” privilege by disclosing the content of a confidential communication to a third party (other than those persons listed in the section

“When does privilege apply?” on pg. 7). After the privilege is waived, the survivor must comply with requests for information about communications between the survivor and advocate. Disclosure of such information may jeopardize a client’s safety.

Warn clients about the risk of unintentionally waiving privilege by discussing program services with third parties. For example, a survivor could confide in a neighbor about an incident of abuse without waiving privilege. However, if the survivor tells the neighbor about the contents of a conversation with an advocate, they

A survivor can destroy or “waive” privilege by disclosing the content of a confidential communication to a third party.

may have waived privilege.

Record keeping

Programs should keep the least amount of survivor records for the shortest amount of time that is necessary. Programs must balance the need for documentation with potential risks to the survivor such as a subpoena that demands sensitive information.

Here are some best practices when it comes to record keeping:

- Develop a program policy to keep minimal survivor records
- Identify a custodian of records for the purpose of responding to subpoenas
- Limit access to survivor files within program staff
- Consider keeping survivor files locked
- Program records should only include:
 - What is necessary to the delivery of services
 - Non-personally identifying information required by funders
- Records should not include:
 - Casual comments, verbatim statements made by or concerning a survivor (including emails, letters), opinions, criticisms, observations or speculations, information from other sources or information unrelated to providing services
 - Photos

- Anything that would compromise survivor safety if released

Additional steps survivors can take to protect their information

Keeping survivor information out of public records

Oregon Address Confidentiality Program

The Oregon Address Confidentiality Program (ACP) is available for survivors of domestic violence, sexual assault, and stalking whose safety is at risk and who have moved to a place in the state that is unknown to their abusers. This program provides a “substitute address” that can be used in place of a residential or contact address and provides a mail forwarding service. The substitute address can be used for:

- Delivery of first class, certified and registered mail
- Obtaining an Oregon driver’s license or ID card
- Receiving or paying child support
- Applying for a marriage license
- Enrolling dependents in public school
- Participating in a divorce, child custody, or other legal proceeding

For more information on ACP, visit: <http://www.doj.state.or.us/victims/confidentiality.shtml>.

Asking “public bodies” to keep survivor information confidential

Oregon law allows survivors to ask “public bodies” to keep their home address and telephone number private, if the release of that information would endanger the survivor or a family member they live with (see ORS 192.445). A “public body” is a school district, a state agency (such as the Department of Human Services or DMV), a county, city, or state governing body, or any other public agency (like a public utility district).

To ask for confidentiality from a public body, survivors must send a request for confidentiality directly to each public body from which they want protection. Survivors should call or write the public body or agency to find out about its forms and procedures for keeping information confidential. If the request for confidentiality is granted by a public body, the survivor’s information will be kept confidential for five years. After that time, the survivor must make a new request.

Survivors should be prepared to provide evidence in support of their request. Evidence may include police reports, court records, medical reports, the survivor’s own statements, or a court order that shows releasing information may put the survivor in danger.

If survivors are asking for or getting benefits from DHS, such as TANF, TA-DVS, or food stamps and are worried

Most court proceedings require that survivors disclose personal identifying and contact information in court papers. This can be problematic because most court proceedings and court records are open to the public.

about their safety, they should speak with their case-worker. There are several ways that DHS can help survivors protect their personal identifying information.

Asking courts to keep survivor information private

Most court proceedings require that survivors disclose personal identifying and contact information in court papers. This can be problematic because most court proceedings and court records are open to the public.

Survivors can keep their contact information confidential by:

- Using a contact address and telephone number in place of their home address or home phone number. Survivors do not need special permission to do this. The contact address should be an address that the survivor is able to monitor frequently and will be able to receive important court notices at.
- Asking the victim’s assistant in the DA’s office to keep their address and phone number private from the defendant in a criminal case.

Survivors can protect their personal identifying information in court cases in a number of ways:

- In family law cases:
 - Parties are required to use a confidential information form (CIF). This form contains driver’s license and social security numbers, birthdate, employment information, and former legal names. This form is filed into the case, but is not available to the public. If the other party wishes to see the CIF, they must

ask for a hearing and a judge will decide whether the CIF can be disclosed.

- Survivors can also request to keep other personal identifying information out of the public record with the help of an attorney. If this protection is granted, the information cannot be released except after a hearing, at which the court must consider the safety risks to the survivor and/or their children.
- In other civil cases (such as landlord-tenant or small claims):
 - Survivors may request additional protections from the court in extreme situations, but they should talk to an attorney for assistance in making this request.

Protecting survivor information in child support proceedings

When survivors receive state benefits, such as TANF or OHP, the state automatically tries to collect child support from the other parent to reimburse the state. Unfortunately, in trying to collect child support payments, the State may compromise a survivor's safety by disclosing the survivor's contact information or other personal identifying information to the abuser.

To protect their information, survivors should ask their caseworker or the district attorney's office (if they are trying to establish a child support case on their own) for a "Client Safety Packet" and then they should fill out a "Claim of Risk" form. This will allow the survivor to use a contact address and to keep their personal information private.

In some cases of abuse, survivors can request that the state not attempt to collect child support. The survivor must have "good cause" for such a request. Situations involving rape, incest, sexual assault, or domestic violence can support "good cause." If a survivor has a "good cause" situation, they should tell their child case-worker and ask for a "Client Safety Packet."

Technology and privacy

Abusers often use technology to stalk their victims. Abusers may use survivors' cell phones and social media accounts to find out their location and follow their activity. The ways that technology can be used to harass, stalk, or abuse survivors is far too complex to be covered in this manual. For more information on technology safety for survivors, check out the National Network to End Domestic Violence's Technology Safety & Privacy Toolkit: <https://www.techsafety.org/resources-survivors>.

Unauthorized Practice of Law

What is the practice of law?

Anytime you apply the law to a person's specific situation, you are practicing law or providing legal advice. Only attorneys admitted to practice in Oregon are allowed to provide individuals with legal advice.

Restricting UPL protects survivors. The legal system is immensely complicated. Attorneys are trained to identify the legal significance of the facts of a case. Without such training, non-lawyers, such as advocates, may miss the significance of unusual situations or fail to appreciate the interrelationship of certain legal issues. Additionally, unlike attorneys, advocates do not have to carry malpractice insurance, which protects the attorney and client in case the attorney makes a mistake.



Anytime you apply the law to a person's specific situation, you are practicing law or providing legal advice.

Legal information versus legal advice

Only attorneys, who are licensed to practice law in Oregon, may offer their clients "legal advice." Non-attorneys, such as domestic violence or sexual assault advocates may only provide their clients with "legal information." Thus, it is important to differentiate which activities fall into each category.

Legal information

Legal information is generic information about the law and court procedures that apply to all people in a particular situation. For example:

- Providing information about resources and services in the local community;
- Providing information about Oregon's laws, including where to find applicable laws and rules;
- Sharing general information about court processes, including where to find necessary forms and paperwork, how to file a case, or how to request a hearing; and
- Notifying survivors of upcoming hearings in their civil cases or their abuser's criminal cases, or providing information about the abuser's release date (if known).

Legal advice

Legal advice involves applying the law to a specific set of facts or recommending a particular course of action. For example:

- Applying the law to a person's individual situation or interpreting the law;
- Offering an opinion about what a litigant should do or which option they should take in a legal proceeding;
- Recommending whether to raise an issue in court, how best to present an issue, or predicting how the judge is likely to decide a case.

Avoiding the unauthorized practice of law

To avoid UPL, advocates should be clear up front about what they can and cannot do for survivors. Advocates should try to speak in general terms or refer to common patterns and practices. They should avoid giving situation-specific responses to survivors' questions.

Here are some things advocates can say to avoid providing legal advice to clients:

- "Only a lawyer is allowed to interpret the law or help you decide what to do."
- "I can only tell you your options and show you where to find forms, but I can't recommend that you use a particular form or pursue a particular course of action, because I'm not a lawyer."
- "You'll have to use your judgment on that."

- “I can’t predict what the Judge will decide.”
- “I wish there were more I could do to help you.”
- “Now you’re getting beyond my knowledge.”
- “I’ve observed a lot of restraining orders hearings and I’ve noticed that generally...”

Additional examples of permissible and impermissible activities for advocates

Here are a few more examples that illustrate what advocates may and may not do to help survivors:

- **Advocates may** show survivors where to find applicable laws and rules;
 - **But may not:** conduct legal research for a client to help them answer legal questions the advocate doesn’t know the answer to.
- **Advocates may** tell survivors how to file pleadings with the court and help survivors find legal forms;
 - **But may not:** recommend that survivors use a specific form or help survivors draft new pleadings or other legal document.
- **Advocates may** answer questions about how to complete forms, write information provided by the survivor on the forms if they are not capable of filling out the form themselves, and check forms for completeness;
 - **But may not:** recommend filing a particular type of form, who to name as a party to the case, which damages or remedies to seek, or what arguments to include.
- **Advocates may** recommend that a survivor seek the advice of an attorney or refer the survivor to a legal services program (see next section on “Legal Aid Partnerships” or Appendix A);
 - **But may not:** recommend survivors hire a specific lawyer in order to get a particular result.
- **Advocates may** sit with a survivor in court to offer comfort and support;
 - **But may not:** represent a survivor in court, examine witnesses before or during trial; advocate for the client in front of the judge.
- **Advocates may** provide litigants with pamphlets or information on how to represent themselves or present evidence in court;

- **But may not:** recommend specific questions to ask witnesses, ways to present evidence, objections to raise, or motions to make.

Legal aid partnerships

It may be helpful for domestic violence and sexual assault centers to partner with a local legal aid office so they can easily refer clients to attorneys when more complicated legal issues arise. Appendix A contains a list of the legal aid offices and other legal resources in Oregon.

Consequences for the unauthorized practice of law

Incorrect legal advice can impact a client’s safety. The most serious concern with the unauthorized practice of law is that advocates may unknowingly give their clients incorrect legal advice, which can impact their safety. In addition, advocates do not carry malpractice insurance. If an advocate’s legal advice ultimately harms the client, then the advocate (and possibly the program) could be sued and ordered to pay damages. Lawyers carry malpractice insurance to ensure that clients are compensated for the consequences of bad legal advice.

Notario fraud

Advocates should especially be on the alert for notario fraud. Notarios are individuals who target immigrant communities and promise to help them with their immigration paperwork. These individuals are not attorneys and they usually charge a lot of money for their services. Notarios may cause immigrants to lose opportunities to pursue immigration relief because their immigration case has been irreparably damaged.

Reporting the unauthorized practice of law

To report the unauthorized practice of law, advocates may submit a form to the Oregon State Bar General Counsel’s Office. The form is available online at: <https://www.osbar.org/upl>.

Once a complaint is filed, the Oregon State Bar Unauthorized Practice of Law Committee (UPLC) has authority to investigate. After investigating, the UPLC can recommend that the state bar file a lawsuit if a member of the public has been harmed. The UPLC can also refer the results of its investigation to another department, another state bar, the Oregon Attorney General, or other regulatory or law enforcement agency.

Overview of Protective Orders in Oregon

Protective orders in Oregon

Oregon has five types of restraining or protective orders, which we will refer to as “protective orders.” Protective orders are court orders that limit the amount of contact an abuser can have with their victim (survivor). Protective orders may also contain other provisions that protect the survivor, such as temporary custody and parenting time orders, monetary relief, or firearms dispossession. If an abuser violates a protective order, they can be arrested and face fines or jail time.

The person applying for a protective order (typically, the survivor) is the **petitioner** because they are asking (or petitioning) the court for a protective order. The person the protective order is against (typically, the abuser) is the **respondent** because they are responding to the allegations in the petition. (See pg. 22 for the requirements for each protective order and pg. 26 for the relief available under each protective order.)

Family Abuse Prevention Act (FAPA)

Restraining Order

FAPA restraining orders protect survivors from abuse by “family or household members.” FAPA orders can require an abuser to move out of a shared residence, stay away from the survivor and the survivor’s children, and stop contacting them. A FAPA restraining order can also address temporary custody and parenting time for joint children. FAPAs last for one year, unless they are dismissed earlier at the petitioner’s request, or at the conclusion of the contested court hearing. There is also an option to renew the order at the end of the year, if the survivor is still at risk.

Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA)

Restraining Order

EPPDAPA restraining orders are intended to protect the elderly and individuals with disabilities from a variety of abuses including physical, verbal, and financial abuse. The definition of abuse is broader under EPPDAPA than under FAPA because elderly persons and individuals with disabilities have enhanced vulnerability. Like FAPAs, EPPDAPAs also last for one year, unless dismissed earlier by a judge or the petitioner, with the option to renew at the end of the year.

Stalking Protective Order (SPO)

SPOs are intended to protect victims from repeated, unwanted stalking contacts that cause the victim to fear for their or their children’s safety. Unlike other protective orders, SPOs may not have any set expiration date and can be in place indefinitely. However, since the stalker’s constitutional rights are implicated, a SPO can sometimes be difficult for a victim to obtain.



Protective orders are court orders that limit the amount of contact an abuser can have with their victim (survivor).

Sexual Abuse Protective Order (SAPO)

SAPOs are intended to provide protection to certain survivors who do not qualify for any other type of protective order. SAPOs can provide protection for survivors of adult sexual abuse by a non-intimate partner, or to minors who were sexually abused by a family member or intimate partner. SAPOs also last for one year, with the option to renew for another year.

Emergency Protective Order (EPO)

This is the newest type of protective order in Oregon. Unlike other protective orders in Oregon, only a police officer responding to a domestic violence incident may apply for an EPO. The officer must have the victim’s permission to apply. An EPO expires after seven days. EPOs provide victims with short-term relief from domestic abuse until another protective order can be obtained by the victim.

Applying for a protective order

General procedure: To obtain a protective order, the survivor must complete and then file a Petition for a protective order in the circuit court in the county where either the survivor or the abuser live. In the case of stalking, a petition can also be filed in the county in which the stalking occurred. In some counties, survivors may go to a domestic violence resource center to fill out their paperwork and file it with the court.

Exceptions: There are three exceptions to the above procedure for obtaining a protective order:

- 1. Stalking citation:** In stalking cases, victims have another option for obtaining a SPO. Stalking victims may go to the police and ask them to file a stalking complaint. If the police find probable cause that stalking has occurred, they will issue a stalking citation and serve it on the respondent. The citation will require the respondent to appear at a hearing within 3 judicial days. The petitioner is also required to appear at the hearing to testify. At the hearing, the court can grant or deny the SPO or enter a temporary SPO and postpone the hearing until a later date. If the victim uses this method for obtaining a SPO they skip the ex parte hearing (discussed in the next section).
- 2. Emergency protective orders:** As previously mentioned, survivors cannot apply for EPOs on their own. Only police officers may obtain this type of protective order on a survivor's behalf. To apply, the officer submits an application and declaration either in person or by electronic transmission to a circuit court judge (similar to the process for applying for a warrant). Each county must have an on-call judge who is reasonably available to review applications for EPOs when court is not in session.
- 3. Guardians may apply for EPPDAPAs:** Guardians of mentally or physically incapacitated survivors may also apply for an EPPDAPA on behalf of the survivor. If a guardian obtains a protective order, the protected person must be given notice of the filing within 72 hours and they may object to the order.

Note: The rest of this section does not apply to Emergency Protective Orders since survivors cannot apply for these orders on their own.

Protective order forms

Survivors may obtain the forms to apply for a FAPA, EPPDAPA, SPO, or SAPO at their local courthouse or online at <http://www.courts.oregon.gov/programs/family/forms/Pages/protective-orders.aspx>.

There are several forms that are part of an application for a FAPA, EPPDAPA, SPO, or SAPO. These are:

1. Petition for Protective Order
2. Confidential Information Form
3. Notice of Filing Confidential Information Form
4. Protective Order

1. Petition for a Protective Order

A petition is a formal request to a court to grant a particular type of relief. The petition for a protective order includes the information the judge needs to decide whether the petitioner qualifies for a protective order, and whether the order will include the specific protections that the petitioner requested.

The petition includes a section for the survivor to describe the abuse that occurred. Although it is important for the survivor to be specific when filling out this section, survivors do not need to provide every detail of an incident. For example, the survivor can use approximate instead of precise dates.

The petition is not confidential. A copy of the petition is served on the abuser and made available to the public once it is filed with the court. A survivor who does not wish to let their abuser know where they live should not put their physical address on the petition (or on any other documents to be filed with the court, except the confidential information form). Survivors may use a contact address, such as a friend or family member's address or a PO Box, so long as it is a reliable address where they can receive important court notices. Survivors should be cautious about using PO boxes, however, as the USPS can sometimes be required to turn over the box-holder's residential address. *(For more on how survivors can protect their information, see pg. 9.)*

2. Confidential Information Form (CIF)

The petitioner must file two confidential information forms which provide the court with the names and dates of birth of the petitioner, the respondent, and their children (if applicable). These forms are not available to the public and are not served on the opposing party.

3. Notice of Filing CIF

The petitioner must file a Notice of Filing a Confidential Information Form, in addition to the CIF itself. This is a form that simply states the CIF was filed. The Notice does not contain any confidential information. Unlike the CIF, this document is filed publicly in the case and also gets served on the opposing party, providing them with notice that the CIF was filed.

It is very important for the survivor to keep a copy of the court order with them at all times. If the respondent violates any portion of the order, the survivor may call the police and report the violation.

4. Protective Order / Restraining Order

This is the document that the Judge will sign if a protective order is granted. This document tells the respondent what they can or cannot do. The first part of the order contains a section for the judge to make findings that the petitioner has met the requirements for obtaining a protective order, while the next section contains the restrictions the respondent must follow. The petitioner gets to offer input about the restrictions imposed on the respondent. For example, a petitioner may want to carve out limited exceptions to the no contact requirements or they may need special restrictions imposed.

It is very important for the survivor to keep a copy of the court order with them at all times. If the respondent violates any portion of the order, the survivor may call the police and report the violation. If the police have probable cause to believe that the protective order was violated, they must arrest the respondent.

Costs for applying for a protective order

There is no cost or filing fee to obtain a protective order in Oregon, or for the sheriff to personal serve the respondent.

Ex parte hearing

After the petitioner files their petition for a FAPA, EPPDAPA, SAPO, or SPO, the court will schedule an “ex parte hearing.” An ex parte hearing is one where the opposing party is not given notice of the hearing and,

therefore, is usually not present. The ex parte hearing generally takes place the same day that the petitioner files their petition (or the next judicial day if the petition is submitted too late in the day).

At the hearing, the judge reviews the petition and verifies that the requirements for a protective order appear to be met. (Again, if a petitioner chooses to use the police citation route for obtaining a stalking order, there is no ex parte hearing.) The survivor is usually not the only person in the courtroom. There will typically be other people present who are also waiting for the judge to review their own protective order petitions. During the hearing, the judge may ask the petitioner to provide more information or answer questions about their petition. The petitioner must put forth sufficient facts in their petition and at the ex parte hearing to show that they qualify for the particular type of protective order they are applying for. (*See the protective order checklists on pg. 22 for the requirements for each protective order.*) If the judge does not grant the protective order, the petitioner may only file a new petition if the respondent abuses them again.

It is important to note that each county handles the ex parte process somewhat differently. Some counties require petitioners to watch a video that explains the process for obtaining a protective order before filing their petition or have strict deadlines for when petitions must be submitted. Advocates should familiarize themselves with their local county’s procedures.

Service of protective order

If the judge grants the protective order, the respondent must be properly served with the protective order. Service is the procedure for giving the other party notice that a case was filed against them in court. A restraining order isn’t enforceable against respondent until it is served, because it wouldn’t be fair to hold someone responsible for following an order they haven’t seen.

Usually a sheriff’s deputy will complete service, but any resident of Oregon who is over 18 and not a party to the case can also serve the respondent. The server must complete a Declaration of Proof Service and file this with the court. This form is available online at the Oregon Judicial Department website. If the respondent is served by a sheriff’s deputy, the sheriff’s office must provide the petitioner with proof of service (sometimes the sheriff will file the Proof of Service with the court as well.) The date of service triggers the respondent’s 30-day deadline to request a hearing.

Contested hearing

Right to a hearing

General rule: In most protective order cases, the court does not automatically set a contested hearing. The respondent only gets a contested hearing if they file a completed “Request for a Hearing” form within 30 days of being served with the protective order. A blank version of this form will be served on the respondent with the other protective order paperwork. If the respondent does not file a hearing request, they lose the opportunity to object to the existence of the protective order. However, the respondent may still be able to modify certain portions of the protective order even after the 30-day deadline expires.

Exceptions: There are two major exceptions to the general rule that respondents must request a hearing before the court will set a contested hearing:

- 1. Stalking cases:** In stalking cases, the court always sets a contested hearing automatically. Since SPOs may be permanent, and the respondents’ Constitutional rights are implicated, respondents are afforded more protections than in other protective order cases.
 - Note: In some counties, the court may set a “first appearance” hearing before the contested hearing. Advocates should call their local courthouse and familiarize themselves with their county’s procedures in stalking cases.
- 2. FAPA cases where “exceptional circumstances” exist:** In FAPA cases, if a judge finds at the ex parte hearing that exceptional circumstances exist that affect the custody of a child, the court will automatically set an exceptional circumstances (EC) hearing. Here are some common examples of when the judge will set an EC hearing:
 - the proposed FAPA order would cause a change in the physical custody of the joint children,
 - there are mental health issues, or
 - the petitioner seeks temporary custody of children being nursed by the other parent

The judge may make interim orders regarding the child’s residence and the parties’ contact with the child during the time before the EC hearing. The EC hearing is also the respondent’s only opportunity to contest the restraining order.

What happens at the contested hearing

The contested hearing is the opportunity for the petitioner and the respondent to tell their stories to a judge. Each side will be able to testify, call witnesses, and present evidence such as photos or text messages.

At the hearing, the petitioner must present enough evidence to show they are entitled to a protective order. Depending on the type of order the victim is trying to obtain, there are different things they must prove at the hearing. (*Refer to the checklists on pgs. 23-26 to see the requirements for each type of protective order.*)



The contested hearing is the opportunity for the petitioner and the respondent to tell their stories to a judge.

Timing of contested hearing

General rule: If the respondent requests a hearing, the court must hold a contested hearing within 21 calendar days of receiving the hearing request. (When calculating the number of days, exclude the first day and include the last day, unless the last day falls upon any legal holiday or on Saturday, in which case the last day is also excluded.)

Exceptions: There are several exceptions to the 21-day rule above:

- 1. FAPA cases with children:** The court must hold a hearing within 5 days of receiving the respondent’s hearing request if there are joint children involved and the respondent is objecting to the custody provisions in the order.
- 2. EC hearing in FAPA case:** As previously mentioned, if the court determines exceptional cir-

circumstances exist, it will set an EC hearing / contested hearing automatically, to be held within 14 days. However, the respondent may request an earlier hearing date. In such cases, the court must hold the hearing within 5 days.

3. **Stalking citation hearing:** If a stalking victim obtains a stalking protective order via the law enforcement citation process, the stalking hearing is held within 3 judicial days of the issuance of the citation.

Notice of hearing

If the court sets a hearing—either at the respondent’s request or automatically—the court will mail a Notice of Hearing form or call both the respondent and the petitioner to notify them of the upcoming hearing. It is important for survivors to make sure the court always has valid contact information- including both a phone number and (contact) address, so that they can receive notifications of upcoming hearings. If a notice is mailed, the notice will state the date, time, and location of the hearing.

The court will usually send a copy of the respondent’s Request for Hearing form so the petitioner can see which part of the restraining order the respondent is objecting to (not all Oregon courts do this.) If, at the contested hearing, the respondent objects to different aspects of the ex parte protective order than was noted on the hearing request form, the petitioner may ask the judge to postpone the contested hearing so that the petitioner has more time to prepare.

If the petitioner has concerns about being in physical proximity to the respondent in or around the courthouse, then the petitioner should contact the courthouse as early as possible to discuss security at the contested hearing. For example, the petitioner might ask the court to require the respondent to remain in the courtroom for five or ten minutes after the petitioner leaves.

Evidence at the hearing

Petitioners should begin contacting witnesses and gathering evidence as soon as they receive notice that a contested hearing is scheduled.

Witnesses

Witnesses are a common source of evidence at a contested hearing. Potential witnesses might include:

- Friends, relatives, neighbors, or co-workers who witnessed abuse or who were told about the

abuse (NOTE: in most circumstances, witnesses cannot testify about what was said to them, only things they personally observed, such as the victim’s demeanor and reaction. There are some limited exceptions to this rule. Refer the survivor to an attorney for more information.)

- Police officers who responded to an abuse incident
- Child care providers or teachers who can talk about the petitioner or respondent’s parenting abilities if custody or parenting time is at issue
- Caregivers of elderly or disabled persons who witnessed abuse

Other evidence

Besides witnesses, these are examples of other evidence that may be used at a contested hearings:

- Photos of injuries or property damage resulting from abuse
- Text, email, or Facebook messages from the abuser that contain threats, confirm that an abusive incident occurred, or provide evidence of stalking contacts
- Audio or video recordings of abuse
- Medical records that document abuse
- Torn clothing or broken items from an abusive incident
- Journal or diary entries that document abuse or stalking behavior (Note: the respondent has a right to see any evidence offered in court)
- Recordings of 911 calls
- Certified copies of criminal convictions or prior protective orders against the respondent

Opposing party requests for evidence

Sometimes, the opposing party will request documents from a survivor in preparation for the hearing. If a survivor has questions about responding to such requests or other evidentiary issues, advocates should refer them to an attorney.

Rape shield laws

In a SAPO contested hearing *only*, if the respondent tries to introduce evidence of a survivor’s past sexual behaviors, the petitioner may object on the basis of relevance. It is important to note there are some exceptions to rape shield laws. Thus, if a respondent is represented by an attorney, the survivor should also

consult with an attorney regarding rape shield law protections. (See Appendix A for legal resources).

Structure of the contested hearing

Contested hearings are typically organized into the following parts:

1. Opening statements
2. Testimony and evidence
3. Closing arguments
4. Judge's ruling

The judge will generally follow this format, but they control their courtroom and can conduct the hearing differently if they choose to.

Opening statements

An opening statement is the opportunity for the petitioner and the respondent to briefly summarize their case, including the evidence they will be presenting, and make brief arguments as to why the protective order should be upheld. This is not the time to get into the details of the case. If a judge is pressed for time, they may skip opening statements, but the petitioner should still prepare one just in case. The petitioner will generally get to make their statement first, and then the respondent will have an opportunity to make their statement.

Testimony and evidence

The petitioner and the respondent may testify, call witnesses, and present other evidence to prove their case. Usually the petitioner goes first. After the petitioner finishes testifying or questioning each witness, the respondent or their attorney may choose to cross-examine the petitioner or the witness. If the respondent is unrepresented, the judge may require the respondent to direct their questions to the judge who then repeats the questions to the petitioner in order to avoid conflict in the courtroom. Petitioner could also request this.

After the petitioner finishes, the respondent presents testimony and evidence in the same way. After each witness (including the respondent) testifies, the petitioner may choose to cross-examine the witness to point out weaknesses in their testimony.

Sometimes, particularly if the parties are not represented, the judge will ask the parties or their witnesses questions.

Closing arguments

After the parties present their evidence, most judges do not want to hear anything else. However, some judges will let the parties summarize or argue the facts of their case in a closing argument. The parties cannot present new evidence or testimony at this point. They can only argue for their side based on what has already been presented.



At the hearing, the petitioner and the respondent may testify, call witnesses, and present other evidence to prove their case.

Judge's ruling

At the end of the hearing, the judge will make a decision based on the evidence presented. They may do any of the following things:

- Dismiss the protective order if they find that the petitioner does not meet the requirements for obtaining the protective order;
- Continue the protective order in its entirety;
- Continue the protective order, but modify some of the terms of the order (often the portion regarding parenting time, when joint children are involved);
- Continue the hearing to another date to allow the parties more time to prepare or to hire an attorney. Either party may make a request to continue the contested hearing to another day. If the judge continues your hearing, the protective order will remain in effect until the judge makes a decision at the next hearing; or

- **In FAPAs only:** Modify pre-existing custody and parenting time orders if necessary to protect the safety and welfare of a child or the petitioner.

Failure of either party to attend the hearing

General rule: If the respondent fails to show up to the contested hearing, the court will uphold the protective order and the respondent will lose their opportunity to object. If the petitioner fails to show up to their contested hearing, the judge may dismiss their order (in which case the petitioner may re-file based upon the same facts).

Exception: In a stalking case initiated by a petition, if the respondent fails to show up, the judge can issue a warrant for the respondent's arrest, temporarily continue the SPO, set another contested hearing, or grant a permanent SPO. (In a stalking case initiated by a police citation, the judge *must* issue a warrant for the respondent's arrest, it is not discretionary.)

After the Hearing

After the hearing, if the order is upheld, the protective order is entered into a statewide database called LEDS (for "Law Enforcement Data System"). This allows law enforcement to access the protective order anywhere in Oregon. As an additional precaution, petitioners should still keep a copy of their protective order with them at all times.

If the respondent violates the order, the petitioner may call the police to report the violation. The police must arrest the respondent if they believe that the respondent has violated the order.

Violations of the protective order

It is important to note that the no contact provisions of a protective order restrain the respondent only. Although it is almost never a good idea for the petitioner to initiate contact with the respondent, they cannot violate their own protective order by doing so.

Violations by the respondent

If the respondent violates the order, the petitioner may call the police to report the violation. The police must

arrest the respondent if they believe that the respondent has violated the order. A report then goes to the district attorney's (DA) office. The DA may or may not choose to file charges against the respondent based on the violation. It is important to note that in reality, respondents are usually only arrested and taken to jail for violent or "scary" violations of restraining orders. Petitioners should not rely on the respondent being arrested for every violation.

Criminal consequences

For violations of a FAPA, EPPDAPA, SAPO, or EPO the DA can file a contempt case against the respondent. If a violation is found, the maximum punishment for a violation (which is rarely seen) is six months in jail or a fine of up to \$500 or 1% of the respondent's gross annual income—whichever is greater. The judge may also impose other sanctions.

Violations of a FAPA, can also be prosecuted as a Class C felony if the respondent recklessly created a substantial risk of injury or intentionally placed the victim in fear of imminent physical injury by violating the order.

For SPOs, the first violation is a Class A misdemeanor. If the respondent already has a conviction for violating a SPO or violating another protective order, any subsequent violation is a Class C Felony.

If the respondent violates a protective order while on parole or probation in a separate criminal case, there can be consequences in that case as well. A general condition of parole or probation is that defendants must obey all laws and court orders. Therefore, a violation of a protective order can also be treated as a parole or probation violation.

State & federal gun restrictions

State and federal laws make it a crime for the respondent in a protective order case to possess a firearm or ammunition when the following circumstances are present:

1. The respondent is the subject of a court order that was issued or continued after a hearing for which the respondent had actual notice and an opportunity to be heard;
2. The person protected by the order was the respondent's intimate partner, a child of an intimate partner or the respondent's own child;
3. The order restrains the respondent from stalking, intimidating, molesting or menacing an intimate

partner, a child of an intimate partner or the respondent's own child; and

4. The order includes a finding that the respondent represents a "credible threat" to the physical safety of an intimate partner, a child of an intimate partner or the respondent's own child.

For purposes of these laws, a respondent's "intimate partner" is the respondent's spouse or former spouse, the parent of the respondent's child, or someone who does or did cohabit (live in a sexually intimate relationship) with the respondent.

In general, most FAPA orders that are entered after a contested hearing on statutorily-mandated forms will trigger state and federal gun dispossession laws.

In general, most FAPA orders that are entered after a contested hearing on statutorily-mandated forms will trigger state and federal gun dispossession laws. Some EPPDAPA orders and SAPO orders may also trigger state and federal gun dispossession if the above requirements are met.

Judges can restrict a respondent from possessing firearms at the ex parte hearing when they grant the initial protective order. In those circumstances, if respondent possesses a gun before any contested hearing has been scheduled or held, they are not subject to state or federal criminal liability (because the first requirement above has not been met). They will still be in violation of the protective order, however, and can be held in contempt.

Modification of a protective order

(Note: Only FAPA and SAPO are modifiable by statute; for questions about potential modifications of the other protective orders, speak with an attorney.)

Any party may ask to modify certain terms of a FAPA or SAPO protective order, for "good cause shown," after expiration of the initial 30-day period to request a hearing on the original order.

To modify a FAPA or SAPO protective order, the party wanting a modification files a "motion for order to show cause" with the court and then appears at an ex parte hearing.

If the Petitioner files a request for *less restrictive terms*, the judge may sign an order granting the request without a hearing, and the new terms are in effect as soon as the modification is served upon the respondent. The Respondent can ask for a hearing within 30 days after the Order with less restrictive terms is served.

For all other requests, the Judge will review the documents and either deny or grant the motion. If the motion is granted, the judge will sign an order that requires the parties to appear and "show cause" as to why the modification should (or should not) happen. The "show cause" order does not change the current protective order, it merely provides the other party with notice that a modification has been requested. The order to show cause must be served on the other party. In some counties, the court will automatically set a modification hearing after the judge signs the show cause order. In those counties, the modification only goes into effect after the hearing if the judge finds "good cause" to modify the order. In other counties, the court will only set a hearing if requested by the other party. In those counties, the modification is granted if the other side does not request a hearing within 30 days.

Modifications in FAPA cases

In FAPA cases, only certain terms of the restraining order can be modified. These terms are:

- Custody and parenting time of the children;
- Respondent's ouster from the home;
- Respondent's restrictions from other premises; and
- Contact by the respondent in-person, by telephone, or by mail.

Renewal of a protective order

FAPAs, EPPDAPAs and SAPOs last for one year from the date the original order is signed—unless they were dismissed at a contested hearing or at the petitioner's request. (Remember, SPOs are permanent and thus do not need to be renewed annually). The petitioner must file a petition to renew the order **before** the current order expires. The process for renewing the order is similar to the process for obtaining the original order. The petitioner appears before the judge at an ex parte hearing, and the judge reviews the petition. If the renewal order is signed, the respondent has to be served with the new order. The respondent then has 30 days to request a contested hearing. The hearing is limited

to the issue of renewal unless the respondent’s hearing request identifies other issues to be addressed *and* the petitioner agrees to allow those issues to be heard at the hearing. The hearing will be held within 21 days of the respondent’s hearing request.

The court will renew a protective order under the following circumstances:

- **FAPA:** The court finds that a person in the petitioner’s situation would reasonably fear additional acts of abuse by the respondent if the order is not renewed. The petitioner does not have to show that there have been any new incidents of abuse. A child protected by a FAPA, who turns 18 during the duration of the order, may also apply to renew the order.
- **EPPDAPA:** Court finds “good cause” to renew the order. There do not need to have been further acts of abuse.
- **SAPO:** The court finds that it is objectively reasonable for a person in the petitioner’s situation to fear for their physical safety if the protective order is not renewed. A finding that the respondent has subjected the petitioner to additional sexual abuse is not required.

Finding legal advice

Remember, advocates cannot give legal advice. They may explain general rules and court procedures, show survivors where to find forms, and provide some assistance in filling out the forms. Advocates may not recommend that the survivor use a specific form, pursue a particular legal action (such as recommending a particular type of protective order), or offer advice about how the law relates to an individual’s unique situation.

Although judges are prepared to deal with self-represented parties (also called “*pro se*” parties), survivors in cases with complicated legal issues, such as custody and parenting time, or survivors who have trouble advocating for themselves, should try to find legal representation. There are many complicated rules and it can be daunting for a survivor to navigate the court system on their own—especially if they have experienced severe trauma. *See Appendix A for a list of legal resources in Oregon.*

Reasonable accommodations and interpretation services

If the petitioner has a disability and needs an accommodation or has limited English proficiency and needs an interpreter, they should notify the court clerk right away, so the court can provide them with appropriate services as required by state and federal laws.

For individuals with disabilities, reasonable accommodations could include:

- Using assistive devices at the hearing
- Requesting that the hearing occur by phone
- Requesting that the hearing be held at the petitioner’s residential or nursing facility

Restraining Order Checklists

Family Abuse Prevention Act Restraining Order Checklist

- Age** (check one):
 - Survivor is at least 18 years old, or
 - If survivor is under 18, abuser is over 18 *and* victim was either married to or involved in a sexually intimate relationship with the abuser
- Relationship.** Abuser and survivor must be “*family or household members,*” which includes any of the following types of relationships (check one):
 - Spouses or former spouses
 - Cohabiting (or formerly cohabiting) sexually intimate partners
 - Sexual partners within the last two years
 - Adults (both Petitioner and Respondent) related by blood, marriage, or adoption
 - Unmarried parents of a child
- Abuse in the last 180 days*** (check one):
 - Attempting to cause or causing bodily injury to another person
 - Placing another in fear of imminent bodily injury
 - Causing another to engage in involuntary sexual relations by force or threat of force
- Continued threat of abuse** (must meet both requirements):
 - Victim is in immediate danger of further abuse, and
 - Abuser is a threat to victim or victim’s children’s physical safety.

* Any time period when the abuser was in jail or lived more than 100 miles from the victim’s home does not count as part of the 180-day period .

Emergency Protective Order Checklist

- Relationship.** Abuser must be a “family or household member,” which includes any of the following types of relationships (check one):
 - Spouse or former spouse
 - Cohabiting (or formerly cohabiting) sexually intimate partner
 - Sexual partner within the last two years
 - An adult related to the victim by blood, marriage, or adoption
 - Person with whom petitioner has a child
- Abuse.** Peace officer responding to a domestic disturbance must have probable cause to believe that:
 - Either:
 - An assault between family or household members occurred, or victim was placed in fear of imminent, serious physical injury, **or**
 - Person to be protected by the order is in immediate danger of further abuse,
 - Emergency protective order is necessary to prevent further abuse

Elderly Persons and Persons with Disabilities Abuse Prevention Act Restraining Order Checklist

- Age or Disability.** Petitioner must meet one of the following criteria:
 - 65 years or older
 - A person with a disability (must satisfy one of the following definitions):
 - A physical or mental impairment that substantially limits one or more major life activities, or
 - A brain injury caused by extrinsic forces that results in loss of function for a sufficient time so as to affect your ability to perform activities of daily living
 - The guardian of a protected person who meets either of the above requirements
- Abuse in the last 180 days*** (check one):
 - Physical injury or infliction of pain
 - Neglect, resulting in physical harm
 - Abandonment, neglect, or desertion (if abuser was victim’s caregiver and had a duty to care for them)
 - Threats, offensive or derogatory name calling, cursing, inappropriate sexual comments, or other verbal abuse of such a nature as to threaten physical or emotional harm
 - Nonconsensual sexual contact (either due to force or lack of capacity to consent)
 - Wrongful taking of money or property
- Survivor must be in immediate and present danger of further abuse.**
- Respondent is not the victim’s guardian**

* Any time period when the abuser was in jail or lived more than 100 miles from the victim’s home does not count as part of the 180 day period.

Sexual Assault Protective Order Requirements

Relationship:

- Adult petitioners:** abuser *cannot* be household or family member as defined by FAPA (see FAPA requirements, pg. 22)
- Minor petitioners:** the abuser may be a family member in some circumstances

Age:

- Survivor can be any age. If under 12, court will appoint a guardian ad litem
- Abuser must be at least 18

Sexual abuse in the last 180 days* (check one):

- Sexual contact** with a person who does not consent to the sexual contact; or
- Sexual contact** with a person who is incapable of consenting to a sexual act due to age or mental incapacity

Victim has reasonable fear for their physical safety

- Victim is not protected by another restraining or no contact order.** A victim cannot apply for a SAPO if they are protected by a FAPA, EPPDAPA, SPO, or a criminal or juvenile no contact order*

* Any time period when the abuser was in jail, lived more than 100 miles from the victim's home, **or** was restrained by another no contact order does not count as part of the 180-day period.

** Sexual contact means any touching of the sexual or other intimate parts of a person, or causing such person to touch the sexual or other intimate parts of the actor, for the purpose of arousing or gratifying the sexual desire of either party.

Stalking Protective Order Checklist

- **Age.** There is no age requirement for the victim or for the abuser, however:
 - If the victim is a minor, the victim may apply for the stalking order through a parent or guardian ad litem
- **Two or more unwanted stalking contacts within the last two years** (must satisfy all the following requirements):
 - Stalker must intentionally, knowingly, or recklessly contact the victim
 - Contacts must have been with the victim or a member of the victim's immediate family or household
 - Contacts must have been unwanted
- **Contacts must alarm or coerce** (must satisfy all the following requirements):
 - Contacts caused victim to feel alarmed (fearful of danger) or coerced (forced)
 - It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contacts; and
 - Contacts cause the victim reasonable apprehension for their personal safety or the safety of an immediate family or household member
- **Must satisfy *Rangel* test if stalking behaviors involve verbal or written communications.** To be counted as stalking contacts, verbal or written contacts must satisfy all the following requirements:
 - Instill a fear of imminent and serious personal violence
 - Be unequivocal, and
 - Be objectively likely that the threats will be followed by unlawful acts

Relief Available Under Each Protective Order

	Family Abuse Prevention Act Restraining Order (FAPA)	Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA)	Sexual Assault Protective Order (SAPO)	Stalking Protective Order (SPO)	Emergency Protective Order (EPO)
No contact provisions	<p>Restraint from intimidating, molesting, interfering with, or menacing Petitioner or Petitioner’s children</p> <p>Restraint from going to, or near, specific locations such as Petitioner’s home, work or school; or the children’s school or day care</p>	<p>Restraint from intimidating, molesting, interfering with, or menacing protected person or attempting to do so</p> <p>Restraint from going to, or near, specific locations such as Petitioner’s home</p>	<p>Order shall specify the type of contact respondent is to refrain from in order to keep petitioner safe. Often includes contacts such as coming into visual presence of the petitioner or sending or making written or electronic communications to petitioner.</p>	<p>Restraint from contact with petitioner, petitioner’s children or household members and restraint from intimidating, molesting, interfering with, or menacing protected person or attempting to do so</p> <p>Restrictions from entering other premises and surroundings</p>	<p>Restraint from contact or from intimidating, molesting, interfering with, or menacing protected person or attempting to do so</p>
Temporary custody / parenting time orders	<p>Temporary custody as requested by petitioner unless exceptional circumstances exist (i.e. change in physical custody, mental health issues, nursing infant)</p> <p>Reasonable parenting time rights to respondent unless not in the best interest of the child</p>	Not available	Not available	Not available	Not available
Monetary relief	Available if it is necessary for the safety of the petitioner or petitioner’s children	Relief as necessary to prevent or remedy the wrongful taking or appropriation of the protected person’s property or money.	The survivor may petition for special and general damages (including damages for emotional distress), and punitive damages within a SPO under certain circumstances.	Not available.	Not available

	Family Abuse Prevention Act Restraining Order (FAPA)	Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA)	Stalking Protective Order (SPO)	Sexual Assault Protective Order (SAPO)	Emergency Protective Order (EPO)
Ouster (removal from residence)	<p>Respondent can be required to move from a shared residence if:</p> <ul style="list-style-type: none"> – Residence is solely in petitioner’s name, – Residence is jointly owned/rented by petitioner and respondent, or – Parties are married to each other <p>Civil standby for either party to remove essential personal effects from residence (up to 20 minutes)</p>	<p>Respondent can be required to move from petitioner’s residence if:</p> <ul style="list-style-type: none"> – Residence is solely in petitioner’s name, – Residence is jointly owned/rented by petitioner and respondent, or – Parties are married to each other <p>Civil standby for either party to remove essential personal effects from residence (up to 20 minutes)</p>	<p>Not available. However, because of the restrictions on entering or attempting to enter the premises and surrounding area when necessary to prevent the abuse, a respondent can still be restrained from petitioner’s property</p>	<p>Not available because of the restrictions on entering or attempting to enter the premises and surrounding area when necessary to prevent the abuse, however, a respondent can still be restrained from petitioner’s property</p>	<p>Not available.</p>
Other relief available:	<p>Order other relief as necessary for the safety and welfare of petitioner or petitioner’s children, family, or household members</p> <p>Order other relief as necessary to prevent the neglect and protect the safety of a service animal or pet (not animals kept for economic purposes)</p> <p>Ban on purchasing or possessing firearms or ammunition in certain circumstances (see gun dispossession section)</p>	<p>Order Respondent to return money and property, divest control of property, or follow instructions given by a guardian or conservator</p>	<p>Order respondent to undergo mental health evaluation and treatment.</p> <p>Initiate civil commitment proceedings if respondent is dangerous to self or others</p>	<p>Order “other relief” as necessary for the safety and welfare of petitioner or petitioner’s children, family, or household members</p> <p>Firearm relief may be available (in very limited circumstances and only with a minor petitioner with proper findings)</p>	<p>No other relief available</p>

Overview of Divorce & Custody

Introduction

This section is intended to provide advocates with an overview of the divorce and custody laws in Oregon. As a reminder, advocates are allowed to provide survivors with general information on divorce and custody laws and procedures, but advocates should not advise their clients to pursue a particular course of action, and should not attempt to apply the law to their clients' facts.

Challenges for survivors in divorce and custody cases

The presence of domestic violence complicates divorce and custody cases. Survivors may be hesitant to talk about their abuse in a divorce or custody case because they may be concerned with protecting their children, embarrassed about their abuse becoming public, or afraid of further angering their partner. Survivors may also be worried that they will not be believed, and concerned about the perception that they are using abuse allegations to gain an advantage in their custody case. Parents may also fear child welfare involvement and accusations of failing to protect their children if they make their abuse public.

Survivors may be hesitant to talk about their abuse in a divorce or custody case because they may be concerned with protecting their children, embarrassed about their abuse becoming public, or afraid of further angering their partner.

Additionally, survivors may be particularly vulnerable to ongoing financial abuse by their partners. Although a survivor may be entitled to receive child support or spousal support, survivors may be unaware of their partner's financial situation. This can make the process of obtaining a support order difficult. Filing a child support case may put the survivor at risk because it may anger the perpetrator and it may give the perpetrator access to the survivor's contact information. Furthermore, even if the survivor manages to get a child sup-

port or spousal support order, the abuser may use financial leverage to continue to exert control.

Parenting time (visitation) also poses unique problems for survivors. Judges prefer to maintain a child's relationship with both parents (when it is safe for the children to do so), which means the survivor more than likely will be forced to have ongoing contact with their abuser. Perpetrators often use this ongoing contact to continue or further the abuse. Additionally, in cases where supervised parenting time is necessary, it can be hard to find an affordable parenting time supervisor. Few counties offer free parenting time supervision services (or any professional supervision options at all), and friends and relatives may not be willing to provide ongoing supervision because of the burden it imposes on them.

Good news for survivors

Although survivors face unique challenges in divorce and custody cases, there is some good news. First, the law creates a rebuttable presumption that perpetrators should not have joint or sole custody of children *if* the court has found that the perpetrator has abused the survivor. This means that the judge must start with the assumption that the perpetrator should not get custody of the children and the perpetrator must overcome this presumption with sufficient evidence.

Judges are also required to consider a number of factors when deciding which parent should have custody (discussed later). As noted above, one factor judges are required to consider is whether one parent abused the other parent. At the same time, judges must also consider each parent's willingness to facilitate a relationship with the other parent. When domestic violence is present, however, the law states that judges should disregard this factor and instead prioritize the health and safety of the abused parent and the child.

Additionally, if the parents were married and are now divorcing, the court will divide the assets "equitably." This means the court will divide all marital property (bank accounts, real property, retirement accounts) and marital debts in a manner that is fair to both parties. Survivors who were prevented from working and earning an income are still entitled to a fair distribution of the marital assets.

Court forms

The Oregon Judicial Department (OJD) has a variety of family law forms available online for individuals who wish to proceed with their divorce or custody case without an attorney: courts.oregon.gov/programs/family/forms.

There are forms for filing for divorce or custody, modifying court orders, obtaining protective orders, obtaining status quo and temporary orders, enforcing existing court orders, and more. All of these forms are available as paper copies and many are also available as interactive forms.

Domestic violence advocates may advise their clients on where to find these forms, but should not tell their clients which forms to fill out or what to write on the forms. In some counties, the courthouse has court facilitators who are available to help pro se individuals select and fill out forms.

Terminology

Petition: the document that starts a divorce or custody case and lays out the party's positions on the issues in the case, such as custody, parenting time, child support, division of property, & spousal support. The Petition is more like a 'wish list' and does not, by itself, grant any relief.

Petitioner: the person who files a Petition and starts the divorce or custody case.

Respondent: the other party to the case who is responding to the petition.

Response (or Answer or Request for Hearing): a document filed by the Respondent that lays out their position on important issues in the case. This document lets the Petitioner and court know which issues are agreed upon and which are going to be contested.

Motion: a formal request to a judge to make a decision about some aspect of the case.

Order: a command from a judge that determines a preliminary issue in the case. A judge can enter an order after a party files a motion or a judge may issue an order on their own discretion.

Limited Judgment: a judgment that resolves some but not all contested issues in a case. Sometimes in a divorce a limited judgment is entered after the parties agree on custody and parenting time in mediation, but the case continues because financial issues must be resolved.

General Judgment: the document that concludes a divorce or custody case and lays out the rights and responsibilities of the parties. Once a judgment is signed by a judge it becomes a "final" judgment and can be legally enforced.

Supplemental judgment: a judgment that modifies or adds additional terms to a prior judgment.

Hearing: a court proceeding typically used to resolve preliminary issues or motions in divorce or custody cases. Hearings are typically shorter and less formal than a trial. Parties can usually call witnesses and present evidence to support their positions. After the hearing, the judge makes a decision which is typically formalized in a written order or supplemental judgment.

Trial: a court proceeding that is used to resolve any outstanding contested issues in a divorce or custody case. Parties can call witnesses and present evidence. At the end of the trial, the judge resolves the disputes issues. The judge's decision is formalized in a written judgment.

Legal custody: means having legal responsibility and decision-making authority for a child. Custody can be established with a temporary custody order or through a final judgment in a divorce or custody case.

Joint custody: is when parents share legal responsibility and decision-making authority for a child.

Sole custody: is when only one parent is granted sole decision-making authority for a child.

Parenting time: refers to the court-ordered schedule of when the child will spend time with each party.

Parenting plan: the part of a court order that sets out the parenting time for each parent.

Divorce and legal separation

Divorce

A divorce, referred to as "dissolution of marriage" in Oregon, is a way of legally ending (dissolving) a marriage. Parties do not need a reason other than "irreconcilable differences" to file for divorce, and one spouse cannot prevent the other from getting a divorce. Being the first to file for divorce also does not provide that party with a distinct advantage. The only time filing first may be beneficial is if the parties are in dispute about where the divorce case should proceed.

A divorce is concluded when a judge signs a final judgment. The judgment may contain provisions that address:

- The custody and parenting time arrangement for the children;
- Who pays child support and how much;
- If health insurance for the children will be provided and who will pay for it;
- How property (including the home, personal property and retirement benefits) will be divided;
- How debts will be divided;
- If one spouse must pay spousal support to the other;
- The change of either party's name back to a name held before the marriage; and
- Attorney fees (if appropriate).

Legal separation

A legal separation is a court judgment setting out enforceable terms for parties who remain married but no longer want to live together as a couple. Legal separation is sometimes used when religious beliefs prohibit divorce, or when a couple has not lived in Oregon long enough to file for divorce, or for tax or health insurance purposes.. (Generally, one of the parties must have resided in Oregon for six or more months before they can file for divorce.)

Separation judgment

A separation judgment addresses many of the same provisions as a divorce judgment, including custody and parenting time, child support, spousal support, and division of property. The court costs, timelines, and requirements for mediation and parenting classes are generally the same for a legal separation as they are with a divorce. During the first two years after a separation becomes final, the judgment of legal separation can be converted to a judgment of dissolution by either party. This involves minimal paperwork and a small filing fee. After two years, the parties can still obtain a divorce judgment, but they will have to file an entirely new dissolution case (and pay a new filing fee).

Differences between divorce and legal separation

The main difference between divorce and legal separation is that the parties are still married after a legal separation, so they cannot marry someone else. Also, each party still has the right to inherit property automatically from the other spouse until they are divorced.

Custody and parenting time

Custody

Custody refers to the legal responsibility and decision-making authority for a child. Parents can either share custody, by mutual agreement, (this is known as joint custody) or one parent can have sole custody.



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Establishing custody

Although parents often reach informal custody agreements between themselves regarding who shall care for the children, these agreements are not legally enforceable until there is a custody order or judgment.

If the parents were married, custody of their children can be established through a divorce or legal separation case. If the parents were unmarried, custody can be established through a separate custody case.

Long-term custody is established once a judge signs a final judgment in a divorce or custody case. Because this process usually takes several months to a year, there is also a process that allows parties to obtain court orders granting them temporary custody of their children. When a divorce or custody petition is filed, or at any time after, the parties can ask the court to establish temporary custody while the case is pending. Even after a final judgment is signed, parties can sometimes obtain temporary custody orders modifying the judgment in emergency situations. (Parties may re-

quest a post-judgment emergency custody order only if they are also requesting a more permanent custody modification based on a substantial change in circumstances.)

Once custody and parenting time are legally established, the parties are expected to obey the court orders—they are not merely a suggestion. If the parenting plan is not followed, either party can use legal remedies to enforce the court’s order or judgment (See “enforcing court orders” section on page 35).

Before either party can get a court or agency order that decides issues such as child custody, parenting time, and child support, the father or second parent of a child must be legally recognized as the parent.

Establishing paternity

Before either party can get a court or agency order that decides issues such as child custody, parenting time, and child support, the father or second parent of a child must be legally recognized as the parent. For children born to a man and a woman in a heterosexual relationship, this process is known as establishing paternity.

The law creates a presumption that a man is the legal father of a child born to a woman, if:

- the parties were married and the child was born during the marriage (or 300 days after the marriage is terminated)
- the father’s name is on the birth certificate, **or**
- the father signed a voluntary acknowledgment of paternity form.

If none of these circumstances exists, only the parent listed on the birth certificate has parental rights to the child. A parent not listed on the birth certificate must establish paternity before they can seek legal custody of, or parenting time with, their children. If a party needs to establish paternity, they should speak to an attorney or with the Division of Child Support.

Custody and parenting time factors

Custody factors

The court awards custody based on the best interests of the child(ren). In determining the best interests of the child(ren), the Court considers several factors:

- The emotional ties between the child and other family members
- The interest of the parties in and attitude toward the child
- The desirability of continuing an existing relationship
- The abuse of one parent by the other
- The preference for the primary caregiver of the child, if the caregiver is deemed fit by the court
- The willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child (remember, the judge may not consider this factor when abuse has occurred).
- A parent’s disability *only if* related behaviors or limitations are endangering or will likely endanger the health, safety or welfare of the child(ren).
- The conduct, marital status, income, social environment or lifestyle of a party *only if* any such factor is causing or may cause emotional or physical damage to the child(ren).

The court cannot determine the children’s best interests by isolating one of the factors listed above to the exclusion of the others. In practice, however, the last two factors listed above are often the most important. A judge is likely to feel comfortable awarding custody to the parent who is already the primary caretaker for the kids (e.g. cooking, dressing, helping with school, taking to medical appointments, etc.). Likewise, a judge will think twice before awarding custody to a parent who has unfairly denied the other parent contact with the child(ren).

Parenting time factors

The court considers the following factors in making a parenting time determination:

- Whether the parents are currently following a parenting time schedule, and if so, whether it is working
- Age of the children
- The children’s relationship with their parents

- Parenting roles
- Home environment of both parents
- Drug or alcohol use of either party
- Safety of the children (see next section)

Safety issues

The court will also consider whether there are any safety concerns in the case. The judge will be interested in hearing whether:

- Parenting time would put the survivor or their children in danger of further abuse
- The other parent has abused the children or is threatening to abuse them now
- The survivor was abused by the other parent in front of the kids
- The other parent has threatened to commit suicide
- The other parent has sexually abused someone
- The other parent has drug or alcohol problems that affect his or her ability to care for the children
- The other parent has mental health problems that affect his or her ability to care for the children
- The children are in danger when in the other party's care (for example, the other party does not supervise the children or has weapons that are not kept out of reach of the children)
- The other parent has hidden the children from the survivor in the past or is threatening to hide the children now
- The other parent has access to guns and has used them in the past against the survivor or someone else
- The other parent has injured or killed pets on purpose to threaten the survivor
- The other parent has stalked the survivor or anyone else, or has threatened to kill the survivor or anyone else
- The other parent has had a restraining or protective order against them

Child support

Child support is money that is regularly paid by one parent (usually the non-custodial parent) to help pay for the children's food, housing, clothing, medical care,

day care, and other costs. Responsibility for health insurance can also be ordered as a part of child support.

The only way to make a parent pay support is to get a support order, which must be signed by a judge or hearing officer. A promise or agreement to pay between parents is not enough, but a judge or hearing officer can approve an agreement or promise and make it a support order.

Obtaining a child support order

There are two ways to obtain a child support order:

1. In a legal proceeding that begins by filing a petition in court (e.g. for divorce, custody, or establishment of paternity)
2. In an administrative proceeding that begins by applying for services at the Division of Child Support

When the Division of Child Support (DCS) will file for child support

DCS will file a child support case and collect child support payments if the parent taking care of the children is receiving public benefits (TANF or OHP) or if that parent received TANF in the past and there is unpaid support from that time. The child support money that is collected is used to compensate the state for the public benefits received by the parent. If there is any excess child support, this money goes to the person taking care of the child. A parent not receiving public benefits can also apply for child support services through DCS by contacting their local child support office. In some counties, the District Attorney's office rather than DCS provides child support services. See <http://www.oregonchildsupport.gov/offices/pages/index.aspx>.

Amount of child support

Child support is determined through a calculation that follows legal guidelines. The guidelines take into account many factors, such as the incomes of the parents, whether the parents have other children to support, parenting time schedules, and work-related day-care costs for the children.

DCS has an online calculator that parents can use to determine the presumed amount of child support. The calculator is available at: <https://justice.oregon.gov/guidelines/>.

Divorce / custody case process

Starting the case

To start a divorce or custody case, without legal representation, one of the parties (the petitioner) must do three things:

1. **File petition:** Fill out and file a divorce or custody petition and supporting documents in the court of the county where either party lives. Forms for self-represented parties are available online at the OJD website.
2. **Pay fees:** Pay the filing fee or obtain a fee waiver or deferral.
 - The filing fee for filing a divorce or custody petition is \$273 under the current circuit court fee schedule. If the petitioner cannot afford the filing fee, they can fill out forms asking the judge to defer or waive the fees.
3. **Serve the other party:** The petition and summons must be served on the respondent. Service notifies the respondent that a divorce or custody action has begun and what the petitioner is requesting.
 - The respondent can agree to sign papers acknowledging that they were served. Otherwise, the respondent must be served by either the sheriff or another adult Oregon resident who is not a party to the case. The petitioner may not serve the respondent. There is a fee for the sheriff to serve papers, but the sheriff might waive it if the court filing fee was also waived. (For more on service, refer to the OJD guide “How to Serve (Deliver) Legal Papers in Oregon, <http://oregonlawhelp.org/resource/how-to-serve-deliver-legal-papers-in-oregon>.)

Responding to a divorce or custody petition

Once served, the respondent has two options:

1. **File a Response:** If the respondent wants to contest (disagree with) the petition, they must file a written response with the court within thirty days from the date they were served with the petition and summons.
 - There is a court fee of approximately \$273 to file a response in a divorce or custody case. The respondent must either pay the filing fee or obtain a fee waiver or deferral before the court will accept the response. If the

respondent cannot afford this fee, they can fill out forms requesting that the fees be waived or deferred.

- If a response is filed, the court will order the parties to attend a parenting class and mediation orientation (see “Mediation” section on page 34). If the parties do not reach an agreement to settle the case, the Court will schedule a trial date. The trial date is usually set several months after the response is filed.
2. **Do nothing.** If the respondent does not file a response within 30 days of service, the petitioner can file a motion requesting a final judgment by default (default judgment). The default judgment will include the same terms requested by the petitioner in their petition. The default judgment will conclude the divorce or custody case.

Motions and temporary orders

After the case begins, there are various motions that parties may file. For example, parties may ask the judge for a temporary order that says which parent has custody, parenting time, and/or pays child support while the case is pending. The parties can also request temporary exclusive use of the home or vehicles, the appointment of an attorney to represent the children, or an order for a custody evaluation. This is not an exhaustive list.

Depending on the county and the particular type of motion, the court may either set a hearing to decide the issues raised in the motion or it may decide the matter based on the written filings (“pleadings”) of the parties. Parties may also request a hearing if they want to argue their motion in front of a judge. The court’s decision on the motion will be in the form of a court order. This order is enforceable until another order or the final judgment modifies it.

“Status quo” orders

A common motion is a request for a Temporary Protective Order of Restraint (TPOR), sometimes referred to as a “status quo order.” If the children have established a “status quo” by living at a particular address for at least the last three months, this type of order requires the parties to maintain the children’s residence at that address pending further proceedings. It also requires the parties to continue following whatever informal parenting plan was already in place before the divorce or custody case was initiated.

“Immediate danger” orders

A party may also file a Motion for Temporary Custody based on Immediate Danger to the Child(ren). This type of order is granted in cases where one parent poses an immediate danger to the child. Usually, the court only grants this type of order where there are concerns about actual physical danger to the child while in care of the other parent. If an “immediate danger” order is granted to one parent, the other parent has the right to request a hearing at any time while the order is in effect. The scope of the hearing is limited to whether or not there was an immediate danger to the child(ren) at the time the order was issued.

Other pre-trial orders

The parties can also request a number of other temporary, pre-judgment orders. Although this is not an exhaustive list, the parties can request any of the following orders while the case is pending:

- Temporary exclusive use of the parties’ home or vehicles
- Temporary child support or spousal support
- Appointment of an attorney to represent the children
- Completion of a custody / parenting time evaluation

Depending on the county and the particular type of motion, the court may either set a hearing to decide the issues raised in the motion or it may decide the matter based on the written filings (“pleadings”) of the parties. Parties may also request a hearing if they want to argue their motion in front of a judge. The court’s decision on the motion will be in the form of a court order and/or limited judgment. This order or limited judgment is enforceable until modified by another order or by the final judgment.

Mediation

All counties require the parties to attend mediation orientation (or, in some counties a “status hearing.”). Mediators are trained professionals who may be able to help parties reach an agreement about custody and parenting time (and sometimes other issues). However, due to the power imbalance between abusers and victims, mediation may not be appropriate in every case for survivors of domestic violence. A survivor who believes that mediation is not appropriate, after attending the mediation orientation (or “status hearing”), may request that the court waive the mediation requirement. In some limited circumstances, waiver of media-

tion orientation is also possible. Note, however, that it may be possible for a survivor to participate in mediation without being in the same room with the other party. A survivor interested in this or other safety accommodations should speak with the court or with the mediator about their options.

A mediator cannot enter a judgment regarding custody or parenting time. However, if a survivor signs an agreement produced by the mediator, that agreement is binding. A survivor should never sign an agreement unless they understand and agree with the provisions of the document.

Negotiation

In some cases, before trial, the parties or the parties’ attorneys may try to resolve their disagreements outside of court. If a survivor has questions about a possible settlement, they should speak with an attorney prior to signing an agreement.

Concluding a divorce or custody case

There are three main ways divorce and custody cases are resolved: (1) by default, (2) by agreement, or (3) by trial.

Default

As previously mentioned, if the respondent fails to contest the divorce within 30 days of the date of service, the petitioner can file forms requesting that the court sign a default judgment. The default judgment will contain the same terms that the petitioner requested in their divorce or custody petition.

Agreement

If the parties are able to resolve their disputes through mediation or negotiation, the parties can file a “stipulated” (agreed upon) judgment, signed by both parties, with the court. Once a judge approves and signs the stipulated judgment, the case is concluded.

Trial

If the parties do not reach an agreement on all disputed issues, then the court will schedule their case for trial and a judge will resolve the remaining disagreements. At trial, the judge will listen to witness testimony and consider any other evidence that is presented. At the end of the trial, the judge will determine what the terms of the divorce or custody case will be. The judge’s decision will be in the form of a general judgment. Once this final judgment is signed, the case is concluded. For more information on preparing for trial,

the OJD website has a helpful brochure that can be downloaded at the following link:

<http://www.courts.oregon.gov/help/Documents/famlawtrialbrochure.pdf>.

Enforcing court orders

After custody and parenting time are established through a court order or judgment, parents can use legal remedies to enforce the order or judgment. The OJD website has forms for parents to use to enforce the custody and parenting time provisions of court orders or judgments.

Order of Assistance

An Order of Assistance is an order that directs a peace officer in the city where the child(ren) are located to assist in recovering the custody of the children. This order can be used when a non-custodial parent is violating the parenting plan by refusing to return the children.

Enforcement Order

A Parenting Time Enforcement Order allows the court to provide the person requesting the order with a variety of remedies. The court can:

- Modify the parenting plan
- Order the violating party to post bond / security
- Order either / both parties to attend counseling or education sessions
- Award the prevailing party expenses
- Terminate, suspend, or modify spousal support or child support
- Schedule a custody modification hearing

If a parent has immediate concerns about the safety of their child should parenting time take place, they should consider filing for temporary custody based on immediate danger (*see "motions and temporary relief" section on pg. 34*). This can be filed before a general judgment has been signed and entered or after a general judgment has been entered. They can also contact a lawyer for advice or make a report to the police or to the Department of Human Services' Child Welfare Program.

Contempt

Parties can also file a contempt case if the other party is refusing to follow the court orders. The court can make any order necessary to ensure compliance with a prior order of the court. In extreme cases, the court can

even order jail time. However, jail time for contempt of court in this context is rare. A form for this purpose is

Parties can also file a contempt case if the other party is refusing to follow the court orders. The court can make any order necessary to ensure compliance with a prior order of the court.

available at <http://www.courts.oregon.gov/forms/Documents/EntirePacket19.pdf>

Modifying court orders

After establishing custody and parenting time, parties may occasionally need to go back to court to change the parenting plan because of changed circumstances. Parties can request that the court modify custody only if a substantial change in circumstances has occurred since the last judgment or order was signed. If the parties wish to change the parenting time schedule, however, the parties only have to show that the change is in the best interests of the children. The OJD website has forms for modifications available.

Interaction of restraining orders and divorce or custody cases

As previously discussed in the section on protective orders, FAPA restraining orders can contain temporary custody and parenting time orders. The temporary custody provisions in the FAPA order remain in place as long as the restraining order is in effect or until another order of the court modifies custody and parenting time.

If the parties have already established legal custody in a prior divorce or custody case, the court may change custody and parenting time with a FAPA order if it is necessary to protect the safety and welfare of the child or the victim of abuse. This change will remain in effect until the order expires or until the prior custody order is modified.

Sometimes a FAPA order is in effect at the time the divorce or custody case begins. When a general judgment issues at the end of the case, the custody and parenting time provisions will replace any conflicting provisions in the FAPA order, but will not affect the no

contact provisions of the FAPA order. A temporary order on custody or parenting time can also replace conflicting provisions in a prior FAPA order, but only if the FAPA and custody cases have been consolidated. A party can file a motion to ask the court to consolidate the cases or the court can do so on its own initiative.

When to seek legal advice

It is becoming increasingly common for parties to get divorced or establish custody without the assistance of an attorney. Parties who proceed without the assistance of an attorney are referred to as “pro se” or “self-represented litigants.” However, if any of the following circumstances exist, advocates should encourage their clients to speak with an attorney:

- The parties have significant assets, such as retirement accounts, real property, or investments;
- The other party has hired an attorney;

- Paternity has not been established yet;
- The parties recently moved to Oregon; or
- The parties’ children recently moved to Oregon, are the subject of any prior custody or parenting time orders from another state (whether or not those orders are still in effect), or were residents of another state for a long period of time

Informal Domestic Relations Trial

Because of the increase in pro se litigants, Oregon will soon be allowing parties to use a new type of trial, called the Informal Domestic Relations Trial (IDRT), to resolve their divorce and custody cases. Currently, the IDRT model is being tested in Deschutes County, but Oregon plans to make this option available statewide soon. The IDRT is aimed at simplifying traditional trial procedure by changing the rules that govern trials and limiting the types of witnesses who can testify. Both parties have to consent to using the IDRT format.

Employment protections for survivors

Protection from discrimination

Abusers often sabotage their partner's employment to increase control and power. However, maintaining employment is critical to a survivor's economic independence and safety. Oregon has laws that protect survivors and make it easier for them to escape abuse without losing their employment.



Oregon has laws that protect survivors and make it easier for them to escape abuse without losing their employment

Anti-discrimination laws

An employer may not treat survivors of domestic or dating violence, sexual assault or stalking differently than other employees. For example, an employer may not:

- Refuse to hire someone because they are a victim of domestic violence, sexual assault, or stalking;
- Fire, threaten to fire, demote, suspend or retaliate against someone because they are a victim of domestic violence, sexual assault, or stalking; or
- Refuse to make a reasonable safety accommodation for victims of domestic violence, sexual assault, or stalking.

Certification

Employers may ask for certification from survivors to establish that they were the victim of domestic vio-

lence, sexual assault, or stalking. A survivor may use any of the following documents to certify that they are a victim:

- A copy of a current restraining order, protective order, or criminal no contact order
- A police report from a domestic violence incident
- A letter or other document from an attorney, counselor, victim service provider, health care professional, or clergy member

Any information the survivor provides to the employer must be kept confidential.

Reasonable safety accommodations

Survivors of domestic violence, sexual assault or stalking have the right to ask for reasonable changes to a workplace rule or job requirement to help make them safer. This is called a "reasonable safety accommodation." Survivors should put their requests for safety accommodations in writing, if possible.

Examples of safety accommodations:

- A change in work schedule, work phone number, office placement, or job duties
- A transfer to a different office or location
- Having someone walk the survivor to and from the parking lot
- Time off to work with law enforcement, get a restraining order, move, or attend counseling
- Other changes that may keep a survivor safe

The employer must provide a reasonable safety accommodation unless it is an undue hardship to do so, which usually means that it would cause significant difficulty or expense for the employer. In determining whether an accommodation is reasonable or an undue hardship, a court compares the nature and cost of the accommodation requested with other factors such as the size and resources of the employer, the type of business operated by the employer, and the number, type and location of the employer's facilities.

Time off from work

Survivors of domestic violence, harassment, sexual assault or stalking may be eligible for reasonable time off

to attend to safety related matters. Safety related matters include attending court hearings, counseling sessions, moving to a safe home, or visiting a doctor. An employer must grant a request for reasonable time off unless it is excessively burdensome for the employer (see previous paragraph). Survivors should give advance notice to their employers when possible.

Survivors of domestic violence, harassment, sexual assault or stalking may be eligible for reasonable time off to attend to safety related matters.

Survivors may use vacation or other paid leave to cover their time off. Under Oregon’s new sick leave laws, employers with 10 or more employees (or in Portland, 6 or more employees) are required to provide paid sick leave (and the sick leave may be used for safety related matters). If the survivor does not have any paid leave, they may still take time off without pay.

Unemployment benefits

A survivor may be eligible for unemployment benefits if both of the following requirements are met:

- The survivor was forced to quit a job in Oregon because they or an immediate family member is or could be a victim of domestic violence, stalking or sexual assault, **and**
- The survivor left work to protect themselves or an immediate family member from domestic violence, stalking or sexual assault that they reasonably believed would take place if they stayed at the job.

Survivors should explain in their unemployment application how leaving work kept them or an immediate family member safe from domestic violence, sexual assault, or stalking.

If a survivor is denied unemployment benefits, they can request a hearing within 20 days of the denial. For assistance with the hearing, survivors may call the statewide Public Benefits Hotline at (800) 520-5292. For days and times the hotline is answered, go to: <http://oregonlawhelp.org//resource/oregon-legal-aid-offices>.

Violations of these laws

If any of these laws are violated, survivors may enforce their rights by:

- Filing a complaint with the state
 - Survivors can file a complaint with the Bureau of Labor and Industries (BOLI), which is the state agency that helps to enforce discrimination and other employment laws. The complaint must be filed within one year of the illegal act. Contact BOLI at: (971) 673-0761 or www.oregon.gov/boli.
- Hiring an attorney
 - An attorney can help by negotiating with a survivor’s employer, and if necessary, filing a lawsuit. An employment lawsuit must be filed within one year of the date the illegal act occurred. *See Appendix A for a directory of legal resources in Oregon.*

As noted above, there are strict deadlines for filing a lawsuit or BOLI complaint. Furthermore, if the survivor works for a “public body,” a tort claim notice must be filed within 180 days of the unlawful act. Public bodies include state or local governments as well as some private, non-profit entities that receive government funds. Advocates should encourage survivors to take action on their claim as soon as possible because of the strict timelines in employment cases.

Housing Protections for Survivors

Basic rights

Survivors of domestic violence, sexual assault, or stalking have the following rights:

- Survivors may end their lease early to move to safety;
- Survivors, living with an abuser, may ask their landlord to terminate the tenancy of the abuser without terminating their tenancy;
- Survivors may change their locks for safety;
- Survivors cannot be treated differently because they (or their children) have been the victim of domestic violence, sexual assault, or stalking; and
- Survivors cannot be held responsible for property damage caused by an abuser during a domestic violence incident.

Early termination of a survivor's tenancy

Survivors of dating or domestic violence, sexual assault, or stalking within the last 90 days, or survivors with a current protection order, can end their lease or rental agreement with 14-days written notice. Any time the abuser was incarcerated or residing more than 100 miles from the survivor's home does not count as part of the 90-day period.

Breaking a lease early because of abuse

To break a lease early to escape an abusive situation, a survivor should:

1. Make a request to their landlord in writing (*see Sample Letter 1 at the end of this section*), and
2. Provide their landlord with documentation showing that they were the victim of domestic violence, sexual assault, or stalking within the last 90 days.

Documentation of abuse

Any of the following documents can be used to prove to a landlord that a person was the victim of abuse:

- A copy of a court protective order, such as a restraining order, stalking order, emergency protective order, or criminal no contact order;

- A copy of a police report showing that they or a child living with them was the victim of dating or domestic violence, sexual assault, or stalking;
- A copy of a conviction for an act of dating or domestic violence, sexual assault, or stalking; or
- A statement from a law enforcement officer or other qualified third party (attorney, licensed health professional or victim advocate) stating the victim reported an act of dating or domestic violence, sexual assault or stalking (*See Sample Letter 2 at the end of this section*).

Removing other household members from a lease

Survivors can also end the tenancy of immediate family members that live with them so they can move too.

Immediate family members include:

- An adult who is related by blood, adoption, marriage or domestic partnership;
- A boyfriend or girlfriend;
- The other parent of a joint child; and
- Grandchildren or foster children.

Survivors should include the names of other household members who will be moving with them in their written request for early termination of the lease.

No fees allowed for early termination

If a survivor provides their landlord with the proper notice and documentation, they are only responsible for rent up to the termination date given in the notice. The landlord cannot charge them a lease break fee, early termination fee, or any other fee for breaking their lease due to abuse.

Security deposits

The survivor's security deposit will not be refunded until all the remaining tenants move out. If a survivor cannot afford the security deposit at a new rental unit, they may want to contact their local Department of Human Services Self-Sufficiency Office to see if they qualify for Temporary Assistance for Domestic Violence Survivors (TADVS). TADVS provides temporary financial assistance for families fleeing domestic violence situations.

Responsibility for rent payments & damage after termination of lease

Survivors are not responsible for rent or for additional damage that occurs after their termination date. They are also not responsible for damage that occurred prior to the move-out if the damage was related to abuse. However, the survivor does need to provide their landlord with verification of their abuse (see “Documentation of abuse” on page 39).

Terminating an abuser’s tenancy

Termination by landlord

If the survivor is cohabiting with their abuser, the landlord may terminate the abuser’s tenancy without terminating the survivor’s tenancy. For this to happen, the abuser must have committed a criminal act of physical violence related to dating or domestic violence, sexual assault or stalking against the survivor.

The survivor’s landlord must give 24 hours written notice of termination to the abuser and file an eviction if the abuser does not move out.

Termination of abuser’s tenancy by restraining order

If the survivor lives with their abuser, they may be able to get them out of their home by obtaining a Family Abuse Prevention Act (FAPA) or Elderly Persons and Persons with Disabilities Abuse Prevention Act (EPPDAPA) restraining order. To qualify for a FAPA or EPPDAPA restraining order, the survivor must have been abused (as defined by FAPA or EPPDAPA law) within the last 180 days and must be in danger of further abuse.

As part of the restraining order, a survivor can request that the judge order their abuser to move out of the residence if:

- The rental agreement is solely in the survivor’s name;
- The residence is jointly rented by the survivor and their abuser; **or**
- The survivor is married to the abuser.

If this provision is included in the survivor’s restraining order, the abuser’s tenancy is automatically terminated once the restraining order becomes “final.” A restraining order is considered final if the abuser fails to request a hearing within 30 days or if the order is up-

held by a judge after a contested hearing. (See “Overview of Protective Orders in Oregon” section on pgs. 13-27 for more information on FAPA and EPPDAPA restraining orders.)

Responsibility for rent and damage

The abuser, survivor, and all other tenants on the rental agreement are responsible for rent prior to the termination of the abuser’s tenancy. After the abuser moves out, the survivor and any remaining tenants are responsible for paying rent.

The abuser, survivor, and any other co-tenants also share responsibility for property damage that occurred to the unit during the tenancy—unless the damage was caused by the abuser and was related to abuse. If the property damage was caused by the abuser, the survivor will need to provide their landlord with verification of their abuse (see “Documentation of abuse” on page 39). Any property damage that occurs after the abuser moves out is the responsibility of the survivor and remaining tenants.

No fees allowed for early termination of an abuser’s lease

The landlord may not require the survivor or remaining tenants to pay additional money, such as a higher security deposit or increased rent, as a result of the abuser moving out.

Changing the locks

Changing the locks if the abuser and victim did not live together

If a survivor does not live with their abuser they can request to have their locks changed by providing the landlord with written notice that they (or a child living with them) are a victim of dating or domestic violence, sexual assault or stalking and want their locks changed. The landlord must promptly change their locks or allow the survivor to change their locks. The survivor does not need to provide their landlord with proof of the abuse. (See *Sample Letter 3* for a sample letter for tenants requesting to change locks.)

Changing the locks when the abuser and victim live together

If the abuser and victim are both on the rental agreement, before the landlord may change the locks, the victim must provide the landlord with a copy of a FAPA

or EPPDAPA restraining order or any other court order that requires the abuser to move out of the rental unit. Once the landlord receives this information and the request to change the locks, they must promptly change the victim's locks or allow the locks to be changed.

Changing the locks if landlord fails to act

If a landlord takes too long or refuses to change a survivor's locks, the survivor can change the locks on their own. However, they must provide a copy of the new key to the landlord.

Responsibility for costs

The survivor is responsible for the cost of the new locks. However, the landlord should not require the survivor to pay a fee before they change the locks.

Allowing the abuser access to the rental unit after termination of their lease

Once a survivor's locks are changed, the landlord should not give the abuser access to the rental unit unless ordered by a court—even if the abuser's personal property remains in the unit.

Unlawful discrimination against victims

A landlord may not treat survivors differently or have different rules or standards because they are a victim of domestic violence, dating violence, stalking, or sexual assault.

A landlord is not allowed to deny a rental application, evict or threaten to evict someone, increase rent, decrease services, or fail to renew a lease:

- Because that person or their child was a victim (present or past);
- Because of a violation of the rental agreement caused by an incident of domestic violence, dating violence, sexual assault, or stalking;
- Because of criminal activity or police response related to domestic violence, dating violence, stalking, or sexual assault where that person or their child was the victim; or
- Because of a bad landlord reference caused by that person having been a victim of or an incident of domestic violence, dating violence, stalking, or sexual assault.

Survivors can still be evicted for unrelated violations of their rental agreement. The protections against unlawful discrimination do not provide a blanket immunity against all evictions.

When survivors can be evicted for abuse

In rare situations, a landlord may lawfully evict a survivor for conduct related to domestic violence, sexual assault, or stalking in which they were the victim. In order for a landlord to do this, the following requirements must be met:

- The landlord gave the survivor a written warning about the actions of the abuser relating to domestic violence, sexual assault, or stalking; and
- The survivor either:
 - Permitted the abuser to remain on the premises and the abuser is an actual and imminent threat to the safety of others on the premises; or
 - Allowed the abuser to live with them without their landlord's permission.

What survivors should do if they experience unlawful discrimination

Unlawful discrimination is a defense to eviction and entitles a survivor to sue for money damages. Survivors who believe they have been discriminated against should contact an attorney to discuss their rights. If the survivor cannot afford an attorney, they can contact their local legal aid office.

Confidentiality requirement for landlords

In general, landlords are prohibited from disclosing any of the information survivors tell them about their abuse. The only time a landlord can disclose this information is if:

- The survivor consents to the disclosure in writing;
- Disclosure is required for use in an eviction proceeding; or
- The disclosure was required by law.

Sample Housing Letters

Sample Letter 1: 14-Day Notice to Landlord to Terminate Lease

(Date)

Dear _____ (landlord's name):

I am a tenant at _____ (your address). I (or a minor child who lives with me) am (choose one):

- a victim of dating or domestic violence, sexual assault or stalking within the past 90 days, not counting any time the abuser was in jail or was living more than 100 miles away, **or**
- a victim of dating or domestic violence, sexual assault or stalking and am currently protected by a restraining order

Pursuant to the Oregon Residential and Landlord Tenant Act (ORS 90.453), this is my 14-day notice to end my rental agreement on _____ (enter a date 14 days from today if you are personally delivering the notice to your landlord and a date 17 days from today if you are mailing the notice to your landlord).

Enclosed is (choose one):

- a copy of my protective order;
- a copy of a police report showing that I (or a minor child who lives with me) was the victim of an act of dating or domestic violence, sexual assault or stalking;
- a copy of a conviction for an act of dating or domestic violence, sexual assault or stalking; **or**
- a statement from a law enforcement officer or other qualified third party.

The following qualified household members will be ending their rental agreement along with me: _____ (list names of qualified household members moving with you).

Thank you,

(Your name)

Sample Letter 2: Qualified Third Party Verification

(Name of Qualified Third Party)

(Name of Tenant)

Part 1: Statement by Tenant:

- 1. I, (or a minor member of my household) have been a victim of domestic violence, sexual assault, or stalking.
- 2. The most recent incident(s) that I rely on in support of this statement occurred on the following date:
_____.
- 3. The time since the most recent incident took place is less than 90 days if periods when the perpetrator was incarcerated or was living more than 100 miles from my home are not counted. (If applicable): The perpetrator was incarcerated from _____ to_____. The perpetrator lived more than 100 miles from my home from _____ to_____.
- 4. I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Signature of Tenant

Date

Part 2: Statement by Qualified Third Party:

I, _____, (name of qualified third party), do hereby verify as follows:

- 1. I am a law enforcement officer, attorney, licensed health professional or victim’s advocate.
- 2. My name, business address, and business telephone are as follows: _____
- 3. I verify that the person whose signature is listed above has informed me that the person (or minor member of the person’s household) is a victim of domestic violence, sexual assault, or stalking, based on the incidents listed above.
- 4. I reasonably believe the statements of the person above. I understand that this document may be used as a basis for gaining release from a rental agreement with the person’s landlord.
- 5. I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

Signature of Qualified Third Party

Date

Sample Letter 3: Request to Change Locks

(Date)

Dear (landlord's name):

I am a tenant at _____ (your address). Pursuant to the Oregon Residential and Landlord Tenant Act ORS 90.459, I request that you promptly change the locks to my unit because I am a victim of dating or domestic violence, sexual assault, or stalking.

(Only include this section if the abuser is on the lease. If you are the only tenant on the lease you do not need to provide verification of the violence): Enclosed please find a copy of the restraining order that orders the abuser out of the dwelling unit ("ouster"). You may not give a new key to the abuser. You also may not allow the abuser back into the unit to collect his personal effects unless there is a court order requiring you to do so.

Please change my locks by _____ (date). If the locks are not changed by this date, I will change the locks myself and provide you with a key.

Thank you,

(Your Name)

Immigration Protections for DV Victims

Misuse of immigration status

Immigrant victims are especially vulnerable to abuse and exploitation. Abusers often use their victim's immigration status to increase power and control by:

- Failing or refusing to file the proper immigration papers for the victim or the victim's family;
- Threatening to or actually initiating deportation proceedings against the victim or the victim's family;
- Providing immigration officials with false information about the victim or the victim's family members; or
- Filing paperwork to allow the victim's family to come to the U.S. and then withdrawing it.

Violence Against Women Act (VAWA) self-petition

The Violence Against Women Act (VAWA) provides protection to victims who are unlawfully present in the U.S. by allowing them to file a petition for immigration relief on their own. This means the survivor does not have to depend on their abusive U.S. citizen (USC) or lawful permanent resident (LPR) spouse or family member to file a petition on their behalf.



The Violence Against Women Act (VAWA) provides protection to victims who are unlawfully present in the U.S. by allowing them to file a petition for immigration relief on their own.

If an advocate believes a survivor may be eligible for VAWA relief, they should encourage them to speak with an immigration attorney right away. (See *Appendix A* for a list of legal resources in Oregon.)

Who is eligible to self-petition?

The following people are eligible to self-petition for immigration relief under VAWA:

- An abused spouse of a USC or LPR
 - VAWA also protects “intended spouses,” which are spouses that unintentionally entered into a bigamous marriage believing in good faith they were lawfully married
 - Non-abused children of abused spouses can be included on the spouse's self-petition
- An abused child of a USC or LPR
 - Child means an unmarried person under the age of 21
 - Abused children of USCs may file until age 25 if the primary reason for delay is abuse
 - Abused children may also include their own unmarried children who are under 21 on their petition
- A non-abused spouse of a USC or LPR whose child is abused by the USC or LPR spouse
 - The child doesn't have to be the USC's or LPR's child
- An abused parent of a USC son or daughter over the age of 21

Eligibility requirements

In order for a self-petition to be approved, the petitioner has to prove that:

- The abuser is a USC or LPR
 - **Evidence:** US birth certificate, passport, LPR card, or other immigration papers
 - If the abuser was deported due to an incident of domestic violence, the abused spouse or child may self-petition within two years of the deportation

- The self-petitioner and abuser have a qualifying relationship (see “who is eligible to self-petition” section on pg. 45).
 - The self-petitioner does not have to be married to the abuser at the time of filing the petition, so long as the marriage ended because of the abuse within two years of the filing of the petition
 - **Evidence:** marriage license or birth certificates
 - The marriage was a “good faith” marriage
 - Self-petitioner cannot have entered into the marriage for the primary purpose of circumventing immigration laws. A key factor is whether self-petitioner was trying to establish a life with their spouse at the time of marriage.
 - **Evidence:** documents showing joint residence, income taxes, bills, etc.
 - Self-petitioner experienced battery or extreme cruelty by the abuser
 - Battery or extreme cruelty includes: threats or actual physical abuse, emotional abuse, forced sex, threats to deport the victim or take victim’s children away, controlling the victim’s movements and isolating her, and engaging in an abusive pattern of behavior.
 - **Evidence:** Affidavit of victim, letter from a counselor, police reports, divorce decrees, witnesses, restraining orders, etc.
 - Self-petitioner lived with abuser
 - The self-petitioner must have lived with the abuser at some time, although they do not have to be living together when the petition is submitted
 - **Evidence:** documents showing joint residence, income taxes, bills, etc.
 - Self-petitioner resides in the U.S.
 - With some exceptions, the self-petitioner must currently be living in the U.S.
 - Self-petitioner has good moral character for the three years prior to filing the petition
 - **Evidence:** police clearance letter or character reference letters
2. **Notice of Prima Facie Eligibility:** If the person appears to be eligible, United States Citizenship and Immigration Services (USCIS) will send a Notice of Prima Facie Eligibility within a few months. This notice can be used to obtain some public benefits.
 3. **Approval of petition:** If the petition is approved, USCIS sends the self-petitioner an approval notice and a *Notice of Deferred Action* which can be used to apply for work authorization.
 4. **Adjustment of status:** The amount of time a self-petitioner will need to wait to apply for legal permanent residence (also known as “adjusting status”) depends on the family immigration system.
 - For spouses, children, and parents of USCs, a visa is typically available immediately
 - For spouses of LPRs, a visa may not be available for several years. The length of the wait depends on which category an individual falls in under the USCIS’s “family preference system.”

U Visas

Another possible avenue for survivors to obtain immigration relief is through a U Visa. U Visa’s are intended to enhance the ability of law enforcement to investigate and prosecute designated crimes, and to provide additional protections to crime victims and their family members. If a survivor is a victim of a crime, and assists in the investigation and/or prosecution of the crime, the survivor may be eligible for a U Visa.

Eligibility requirements for U Visa

To be eligible for a U Visa, the following four requirements must be met:

1. The immigrant must have suffered substantial mental or physical abuse as a result of having been a victim of certain criminal activity;
2. The immigrant must possess information concerning that criminal activity (or if the victim is a child under 16, the parent or guardian must provide such information);
3. The criminal activity must violate U.S. law or have occurred in the U.S.; and
4. The immigrant has been helpful, is being helpful, or is planning to cooperate with a federal, state, or local authority in investigating or prosecuting the crime.

Immigration process

1. File petition and documentation.

Eligible crimes

If an immigrant was a victim of any of the following crimes and meets the above requirements, they are eligible for a U Visa:

- Rape, incest, sexual assault, or prostitution
- Torture, domestic violence, or female genital mutilation
- Trafficking, peonage, involuntary servitude, slave trade, kidnapping, abduction, being held hostage, or false imprisonment
- Perjury or obstruction of justice
- Attempts, conspiracies, or solicitation to commit any of these crimes or “similar activity”

Immigration process

1. File petition and documentation

- Certification form signed by an authorized law enforcement official indicating victim is cooperating with the investigation or prosecution of the crime
- A personal statement describing the criminal activity the person was a victim of
- Evidence to establish each eligibility requirement

2. **Wait for visa:** Since there are only 10,000 U Visas available per year, once the petition is approved, the petitioner has to wait for a visa to become available. When the cap is reached each year, applicants are placed on a waiting list and given priority for the following year.

- Crime victims are eligible to apply for work authorization while waiting for a U Visa

3. **Adjustment of status:** Once a U Visa is granted, the applicant must wait three years before applying for LPR status (this is also known as “adjustment of status”).

T Visas

T Visas are intended to strengthen the ability of law enforcement agencies to investigate and prosecute human trafficking, and also offer protection to trafficking victims. The T Visa allows victims to remain in the United States to assist federal authorities in the investigation and prosecution of human trafficking cases.

Eligibility requirements

To be eligible for a T Visa, the victim must:

1. Be a victim of trafficking, as defined by law
2. Live in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or are at a port of entry due to trafficking
3. Comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking, unless
 - you are under the age of 18, or
 - you are unable to cooperate due to physical or psychological trauma
4. Demonstrate that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States

What is human trafficking?

Human trafficking, also known as trafficking in persons, is a form of modern-day slavery. Traffickers often recruit individuals with false promises of employment and a better life. There are two categories of human trafficking—sex trafficking and labor trafficking. Both types of trafficking involve the use of force, fraud, or coercion for the purpose of inducing someone to perform sexual acts or involuntary labor.

Immigration process

1. File petition and documentation:

- A personal statement describing the trafficking activity the person was a victim of
- Evidence to establish each eligibility requirement

2. **Wait for visa:** There are only 5,000 T Visas available per year, so once the petition is approved, the petitioner has to wait for a visa to become available. When the cap is reached each year, applicants are placed on a waiting list and given priority in the next year.

- While waiting for a T Visa, victims of trafficking can be certified by the U.S. Department of Health and Human Services so they can receive public benefits.

3. When a T Visa is granted, the USCIS also automatically issues an Employment Authorization Document so the victim can work in the U.S.

4. **Adjustment of status:** Once a T Visa is granted, the applicant can apply for LPR status after three years.

Public Benefits for Survivors

Introduction

Escaping violence often requires survivors to access public benefits or make changes to existing benefits. This section is intended to provide advocates with an overview of the public benefits programs upon which survivors commonly rely.

Supplemental Nutrition Assistance Program (SNAP) benefits

SNAP (formerly known as food stamps) is a program that provides nutrition assistance to low-income individuals and families. SNAP benefits are distributed using the “Oregon Trail Card.” This card is similar to a debit card and benefits are automatically transferred to the card every month. Most stores will accept the Oregon Trail Card, however, SNAP benefits can only be used to purchase food. They cannot be used to purchase vitamins, medicine, alcohol, pet food, household items, or cigarettes.

Escaping violence often requires survivors to access public benefits or make changes to existing benefits.

Applying for benefits

In Oregon, the SNAP program is administered by the Oregon Department of Human Services (DHS). Individuals can apply online at <https://apps.state.or.us/onlineApplication> or they can contact their local DHS Self-sufficiency office (visit <https://www.oregon.gov/DHS/Offices/Pages/Self-Sufficiency.aspx> to find your local DHS office).

Survivors without a photo ID

Applicants are required to prove who they are; however, applicants do not need a photo ID to receive food stamps. A survivor should not be denied food stamps simply because they do not have a photo ID. There are other ways applicants can prove their identity:

- Birth certificate, wage stubs, or school records, or
- “Collateral contacts” can also provide verification (Shelter employees, friends, and neighbors).

Survivors without a permanent address

Survivors also do not need a permanent address to receive food stamps. Survivors are eligible for food stamps even when living in a domestic violence shelter, homeless shelter, with a friend, or on the streets. Survivors cannot be denied food stamps simply because they lack a permanent address or because they fled from their home.

Survivors previously certified with their abuser

Even if a survivor was already certified for food stamps with their abuser as part of his household, they can still apply for food stamps for themselves and their children.

Undocumented survivors

There are immigration requirements for SNAP benefits. Children who meet these requirements are eligible for SNAP benefits even if their parents are undocumented. Undocumented parents can apply for SNAP benefits for their qualifying children even if they cannot apply for SNAP benefits for themselves. An undocumented parent does not have to reveal their immigration status to DHS in order to apply for benefits for other family members.

Emergency SNAP benefits

If a survivor’s income and resources are low enough, they may be eligible for what is called “expedited service.” Eligible survivors can receive their food stamps within seven days from the date that they applied (and even sooner in some situations).

Temporary Assistance for Needy Families (TANF)

Temporary Assistance for Needy Families (TANF) is an assistance program that provides short-term cash assistance, family services, and employment support to low-income families with children while they strive to become self-sufficient. The TANF program is intended to keep families stable, support the healthy development of children, help Oregonians transition to jobs, and break the cycle of poverty. Cash assistance can be used to meet a family's basic needs such as food, clothing, shelter and utilities. TANF cash benefits are also distributed via the Oregon Trail Card.

Eligibility

TANF benefits are only available for families with children (or expecting a child)—this includes caretakers who are living with a minor child. A person must also be a resident of Oregon and a USC or qualified alien, but these requirements can be waived for survivors of domestic violence. The family must earn below 38% of the federal poverty line (approximately \$616 / month). If the parents are not working, they must have a good reason to not be working. Families who qualify for TANF will also qualify for medical assistance under the Medicaid/OHP program.

Undocumented parents

Undocumented parents can apply for TANF benefits on behalf of their eligible USC or qualified alien children. An undocumented parent does not have to reveal their immigration status to DHS in order to apply for benefits for other family members.

TANF requirements

JOBS program

Generally, a family who receives TANF benefits, must cooperate with the Job Opportunity and Basic Skills (JOBS) program. The TANF-funded JOBS program is intended to help families return to work to increase self-sufficiency. The services available under the JOBS program include job searching, temporary employment, work experience, assistance in completing high school or obtaining a GED, vocational and on the job training, life skills, family stability services, and limited support payments. However, survivors can be exempted from most program requirements for good cause.

Child support and TANF

If a child receives TANF in Oregon, or received it in the past, as a general rule the Department of Justice, Division of Child Support (DCS) will provide child support services. DCS will establish child support and enforce the support order against the non-custodial parent. Most of the child support payments received will go directly to the state to compensate the state for the public assistance the family receives. The state will also keep any back child support collected from the other parent while the family is on assistance. However, the state cannot keep more than the total cash amount the family receives in public assistance. Survivors can be exempted from cooperation with DCS for good cause (if the survivor tells DCS that they believe asking for child support might result in physical or emotional harm to the family).

Waiver of Requirements

DHS can waive the JOBS program and Child Support requirements if it makes it more difficult for clients to escape domestic violence or puts them at risk of further or future domestic violence.

Temporary Assistance for Domestic Violence Survivors (TA-DVS)

About the program

Under the Temporary Assistance for Domestic Violence Survivors (TA-DVS) program, the Department of Human Services (DHS) supports survivors escaping domestic violence by providing them with a cash grant of up to \$1,200 over a 90-day eligibility period. TA-DVS money can be given in addition to a TANF grant or any other cash assistance, food stamps, or other benefits a survivor is getting from DHS.

TA-DVS assistance can be used for housing related payments, relocation costs, replacement of personal or household items left behind when the survivor fled, or to purchase other items that will make the survivor safer--such as new locks, a motion detector, or a PO box. TA-DVS cannot be used to pay for certain expenses, such as attorney fees, firearms, cars, or past due rent or utility bills. The money will usually not be given directly to the survivor but will be paid to the person or company providing the service, such as a landlord or utility company.



TANF is an assistance program that provides short-term cash assistance, family services, and employment support to low-income families with children while they strive to become self-sufficient.

Applying for TA-DVS

Survivors can apply over the telephone, in person, or in writing at their local DHS Self Sufficiency office. To find the closest DHS Self Sufficiency office go to: <https://www.oregon.gov/DHS/Offices/Pages/Self-Sufficiency.aspx>.

Eligibility for TA-DVS

To qualify for the TA-DVS program, a person must be:

- A victim of abuse. This may mean that the person's spouse, partner, the other parent of their child, or another household member hurt them, tried to hurt them, or threatened to hurt them. The survivor does not have to show proof of the abusive situation in the form of a restraining order, witnesses, or a police report. DHS will listen to the survivor's own words about the abuse.
- A parent or caregiver of a minor child or a pregnant woman.
- Income eligible. DHS will only look at the income that a survivor has on hand that is available to meet emergency needs. Thus, if a survivor is over the income limits, but their abuser controls all the money, they may still be eligible for this program.
- A resident of Oregon. This does not mean that the survivor has to be a U.S. citizen or "qualified non-citizen" to get TA-DVS. They simply must be residing in Oregon.

Waiver of TA-DVS Requirements

TA-DVS eligibility requirements may be waived or adjusted if they make it more difficult for a person to escape domestic violence or if they put a person at risk of harm by domestic violence. For example, DHS can waive the income requirements if a survivor's abuser controls her finances.

Timing of eligibility determination

DHS has 16 working hours after an application is submitted to decide if a person is going to be given TA-DVS benefits. If a decision is not made within 16 hours, the applicant has the right to a hearing.

Unemployment benefits

Survivors may also be eligible for unemployment benefits if they are forced to quit their job to escape abuse. Generally, survivors must not have quit their job without a good reason or not have been fired for

"misconduct" (violating your employer's reasonable expectations of you more than once). The survivor must also have worked a certain amount of time in the last year and a half and they must have work authorization. Once a survivor applies for benefits they are generally expected to be looking for jobs each week.

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Oregon protections for DV survivors

Survivors cannot be disqualified from receiving unemployment benefits or be considered unavailable for work if the survivor:

- Had to quit an Oregon job because they, or a member of their immediate family is, or could be, a victim of domestic violence, sexual assault or stalking, and
 - The survivor left work to protect themselves or their family member from domestic violence, sexual assault or stalking the survivor reasonably believed would happen if they stayed at their job, or
 - The survivor is getting unemployment benefits but cannot apply for work or accept a job because doing so would place themselves or their family members in danger of domestic violence, sexual assault or stalking.

Other benefit programs

Survivors may also be eligible for or receiving benefits from other benefit programs. This section is intended to provide a very brief overview of these programs so advocates can be familiar with the terminology and purpose of the programs.

Oregon Health Plan (Medicaid)

The Oregon Health Plan (OHP) is Oregon's medical program for low-income people. Adults with incomes under 138% of the federal poverty line (FPL) (or 180% FPL for pregnant adults) and kids up to 300% of the FPL qualify for OHP. Individuals must be a USC, a "qualified alien," or a child under 19 years who is "lawfully present" in the U.S. to receive full OHP benefits. However,

full coverage for care is provided to low income pregnant women and emergency health benefits are available to qualifying non pregnant adults regardless of immigration status under the CAWEM (Citizen Alien Waived Emergency Medical) program.

Supplemental Security Income (SSI)

SSI is a welfare program for individuals who are 65 or older, disabled, or blind. Eligibility is based on income and individuals typically receive \$735 per month or less. Non-citizens may qualify if they meet certain immigration criteria.

Social Security Disability Insurance (SSDI)

SSDI benefits are also intended to provide income to individuals with disabilities. However, unlike SSI bene-

fits, eligibility for SSDI benefits is based on a person's work history and past earnings. Most "lawfully present" people with work histories—this includes immigrants with permission to work in the U.S.—will qualify for SSDI.

Denials of public benefits based on immigration status

If a survivor is denied benefits due to immigration status, please contact your local legal aid office (see Appendix A) to discuss the denial. Many immigrants are wrongly denied public benefits.

Appendix A: Legal Resources for Survivors

Private attorneys

The Oregon State Bar Lawyer Referral Service can provide the names of three attorneys who practice in a given area of the law and a specific region of the state. Call 503-684-3763 or 800-452-7636.

Reduced rate legal services

Modest Means program

The Oregon State Bar's Modest Means program provides legal services to moderate-income Oregonians who cannot afford to pay the full market rate for legal services in the areas of family law, criminal defense, foreclosure, and landlord/tenant. Call 503-684-3763 or 800-452-7636.

St. Andrew's Legal Clinic

St. Andrews provides legal representation to individuals living in Multnomah, Washington, Yamhill, or Columbia county in family law matters. Clients pay based on a sliding scale basis. Multnomah County: 503-281-1500; Washington, Columbia, and Yamhill Counties: 503-648-1600

Free Civil Legal Help

In Oregon, the Oregon Law Center (OLC) and Legal Aid Services of Oregon (LASO) provide free legal services to low-income individuals in Oregon in the areas of family law, housing, employment, and public benefits. Additionally, some counties have their own legal service organizations providing free legal services.

Oregon Law Center (OLC) offices

OLC Coos Bay Office

Compass Building
455 S. 4th Street, Suite 5
PO Box 1098
Coos Bay, OR 97420-0241
Phone: (541) 269-1226
1-800-303-3638 (Toll free)

Serving: Coos County, Curry County, and Western Douglas County (Reedsport)

OLC Grants Pass Office

424 NW 6th Street, Suite 102
PO Box 429
Grants Pass, OR 97528
Phone: (541) 476-1058
(541) 471-3033 (Senior Law Hotline only on Thursdays from 1:00 p.m. - 4:00 p.m.)

Serving: Josephine County

OLC Hillsboro Regional Office

230 N.E. Second Ave, Ste. F
Hillsboro, OR 97124
Phone: (503) 640-4115
1-877- 296-4076 (Toll-free)
Serving: Clatsop County, Columbia County, Tillamook County, Washington County, Yamhill County

OLC Lane County Legal Aid and Advocacy Center

376 E. Eleventh Street
Eugene, OR 97401
Phone: (541) 485-1017
1-800-575-9283 (Toll free)
Serving: Lane County

OLC McMinnville Office

The Eagle Building
117 NE 5th Street
P.O. Box 141
McMinnville, OR 97128
Phone: (503) 472-9561
Serving: Yamhill County

OLC Columbia County Office

P.O. Box 1090
270 S. 1st Street
St. Helens, OR 97051
Phone: (503) 397-1628
Serving: Columbia County

OLC Ontario Office

35 SE 5th Avenue, Unit #1
Ontario, OR 97914-1727
Phone: (541) 889-3121 (1-888- 250-9877 (Toll-free)
Serving: Baker County, Grant County, Harney County, and Malheur County

OLC Portland Office

522 SW Fifth Avenue, Suite 812
Portland, OR 97204
Phone: (503) 295-2760
1-800- 898-5594 (Toll-free)

OLC Salem Office

494 State Street , Suite 410
Salem, OR 97301
Phone: (503) 485-0696
1-888- 601-7907 (Toll-free)

Legal Aid Services of Oregon (LASO) offices

LASO Albany Regional Office

433 Fourth Ave. SW
Albany, OR 97321
Phone: (541) 926-8678
Serving: Benton County, Linn County

LASO Central Oregon Regional Office

20360 Empire Avenue, Suite B3
Bend, OR 97703
Phone: (541) 385-6944
Toll-free: 800-678-6944
Serving: Crook County, Deschutes County, Jefferson County

LASO Klamath Falls Regional Office

832 Klamath Avenue
Klamath Falls, OR 97601
(541) 273-0533
Serving: Klamath County and Lake County

LASO Lincoln County Office

304 SW Coast Highway
(P.O. Box 1970)
Newport, OR 97365
Phone: (541) 265-5305
Toll-free: 1-800-222-3884
Serving: Lincoln County

LASO Pendleton Regional Office

365 SE 3rd Street
Pendleton, OR 97801
Phone: (541) 276-6685
Toll-free: (800) 843-1115
Serving: Gilliam County, Morrow County, Umatilla County, Union County, and Wallowa County

LASO Portland Regional Office

520 SW 6th Avenue, Suite 700
Portland, OR 97204

Phone: (503) 224-4086

Toll-free: 1-800-228-6958

Serving: Multnomah County, Clackamas County, Hood River County, Sherman County, Wasco County, and Wheeler County

LASO Roseburg Office

700 SE Kane Street
Roseburg, OR 97470

Phone: (541) 673-1181,

Toll-free: 1-888-668-9406

Serving: Douglas County

LASO Salem Regional Office

105 High Street SE
Salem, OR 97301

Phone: (503) 581-5265

Toll-free: (800) 359-1845

Serving: Marion County and Polk County

Center for Non-Profit Legal Services (CNPLS)

CNPLS provides crisis civil legal assistance to low income and elder residents of Jackson County who are experiencing problems in housing, public welfare, family dissolution, employment, immigration, and other major life situations.

225 W. Main Street
Medford, OR 97501

Phone: (541) 779-7291

Youth, Rights & Justice (YRJ)

YRJ is court-appointed to represent children in foster care, parents in the child dependency system and youth in the juvenile court system.

401 NE 19th Ave, Suite 200
Portland, OR 97232

Phone: 503-232-2540

Oregon Crime Victims Law Center

Non-profit, organization that advocates for crime victims in Oregon to ensure that their constitutional and statutory rights are protected.

7412 SW Beaverton-Hillsdale Hwy
Suite 209

Portland, OR 97225

Phone: 503-208-8160

Victim Rights Law Center

Provides legal representation to victims of rape and sexual assault.

520 SW Yamhill, Suite 200

Portland, OR 97204

Phone: (503) 274-5477

Free Immigration Legal Services**Catholic Charities of Portland**

Catholic Charities of Portland provides high quality immigration legal services to low-income immigrants and refugees.

2740 S.E. Powell Blvd, Suite 2

Portland, OR 97202

Phone: (503) 542-2855

Center for Non-Profit Legal Services (CNPLS)

CNPLS provides crisis civil legal assistance to low income and elderly residents of Jackson County with immigration issues.

225 W. Main Street
Medford, OR 97501

Phone: (541) 779-7291

Immigration Counseling Service (ICS)

ICS is a not-for-profit immigration law firm dedicated to improving the lives of Oregon's immigrant communities through access to affordable legal services and educational forums.

519 S.W. Park Ave, Suite 610

Portland, OR 97205

Phone: (503) 221-1689

SOAR

Sponsors Organized to Assist Refugees (SOAR) provides culturally competent immigration-related legal representation and education to low income immigrants and refugees in Oregon.

7931 NE Halsey St, Ste 302

Portland, OR 97213

Phone: (503) 384-2482

LASO & OLC

Some LASO and OLC offices also offer immigration legal assistance. Contact your local legal aid office for more information.