Legal Aid Services of Oregon
& Oregon Law Center

You've been served.

Information for respondents in Family Abuse Prevention Act (FAPA) restraining order cases.

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You've been served with a restraining order, now what?

If you have recently been served with a Family Abuse Prevention Act (FAPA) Restraining Order, the first thing you should do is read the order carefully. Each provision (part) of the order must be obeyed.

What is a restraining order?

A restraining order is an order from the court used to protect a person in a situation involving domestic violence, harassment, sexual assault, or stalking.

A restraining order affects your rights and may include orders regarding custody and parenting time of your children. It is a serious matter.

As a result of this order, or any order continuing or changing this order, it may be unlawful for you to possess or purchase a firearm or ammunition based on state and federal law. If you have any questions about whether this law applies to you, you should consult an attorney.

What rights do you have?

If you disagree with the allegations in the restraining order, you believe the order is not necessary, or you disagree with any of the terms of the order, including custody or parenting time, you have the right to contest (object) to the restraining order. To do this, you must fill out the Request for Hearing form. This form should have been served on you along with the other restraining order paperwork. To learn more about how to contest a restraining order, see the "Contesting (objecting to) the Restraining Order" section.

What if you choose not to contest the restraining order?

If you do not object to the Restraining Order, it will continue for one year from the date the judge signed it. It can also be renewed (extended) at the request of the petitioner. Even if you do not object to the order, you can still request to modify certain portions of the restraining order at a later date (see page 8).

What happens if you violate the order?

The petitioner (the person who got the restraining order against you) may call the police to report violations of the restraining order. A police officer or sheriff who believes that you have violated any part of a restraining order must arrest you.

Willful violation (disobedience) of the restraining order may result in civil and/or criminal penalties, including a jail sentence of up to 6 months and a fine of $500 or 1% of your annual gross income, whichever is more.

What if the petitioner tries to contact you?

You should ignore the petitioner if they invite you to have contact or tell you it is all right to ignore the order. The restraining order does not prevent the petitioner from contacting you. However, you have to follow every term in order until the order expires, is dismissed by the petitioner, or modified by a future court order.

A restraining order is an order from the court used to protect a person in a situation involving domestic violence, harassment, sexual assault, or stalking.

Who should you talk to for legal help?

If you have any questions about the Restraining Order or your rights, you should consult an attorney. The clerks at the courthouse cannot give you any legal advice. You do not have to have a lawyer to contest (object to) the Restraining Order, but you may have a lawyer represent or help you.

If you would like to speak with an attorney, you may call the Oregon State Bar's Lawyer Referral Service at **(503) 684-3763** or toll-free by dialing **1-800-452-7636**. If you cannot afford a lawyer, ask the court staff if your area has a legal services (legal aid) program that might help you.

Contesting (objecting to) the restraining order

Requesting a hearing

If you disagree with the restraining order and an exceptional circumstances hearing has not automatically been set (see next section), you should fill out a Request for Hearing form. This is the only way you can object to the restraining order. This form is part of the court paper that says "Notice to Respondent/Request for Hearing" at the top, right-hand side of the page. You should have received a copy of this form when the restraining order was served on you.

You must mail or deliver this form to the court within 30 days of the date you were served with the restraining order paperwork. The court's address should be on the form.

If the court does not receive you Request for Hearing form within 30 days, the restraining order automatically remains in place for one year from the date the judge signed the initial restraining order.

Exceptional circumstances hearing

Occasionally when a party applies for a restraining order, the judge will automatically set a second hearing called an "exceptional circumstances hearing." The judge will do this if they need more information to decide which parent should get temporary custody. If an exceptional circumstances hearing was set, you do not have to request a contested hearing. The exceptional circumstances hearing is your only opportunity to contest the restraining order. Read all of the paperwork carefully to see if an exceptional circumstances hearing was scheduled.

If you want to be heard about the custody of your children and parenting time (visitation) or to contest the Restraining Order, you must go to the hearing. If you do not go to the hearing, the restraining order may be upheld (continued) and all matters decided against you.

Timing of hearing

If the judge has not set an exceptional circumstances hearing, the timing of the hearing will depend on what part of the restraining order you are objecting to. If you are objecting to the part of the Restraining Order that has to do with custody of your children, the court must schedule a hearing **within 5 business days** of receiving your request. If you are not contesting the custody portions of the Restraining Order or custody is not at issue in the restraining order, the court must schedule a hearing **within 21 days** of receiving your request.

Notice of hearing

If you request a hearing, the court will mail you a Notice of Hearing form. You need to make sure the court has your current address and phone number so you can receive notifications from the court. The notice will state the date, time, and location of the contested hearing. The petitioner also receives a Notice of Hearing, as well as your Request for Hearing form so they know what parts of the restraining order you are objecting to. For example, you may agree that a restraining order should be in place, but disagree with the petitioner getting full custody of your children.

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Contested hearing

The contested hearing is the opportunity for you and the petitioner to tell your side of the story to a judge. You will be able to present evidence, such as photos or text messages, and call witnesses. At the end of the hearing, after all the evidence has been presented, the judge may do any of the following things:

- Reschedule the hearing to another date to allow the parties more time to prepare or to hire an attorney;
- Dismiss the restraining order if he/she finds that the petitioner has not met the requirements for obtaining a FAPA restraining order;
- Uphold (continue) the restraining order in its entirety; **or**
- Uphold (continue) the restraining order, but modify some of the terms of the restraining order.

Preparing for the contested hearing

Do I need an attorney?

An attorney can be very helpful, especially if you are contesting custody or parenting time or if the petitioner has a lawyer representing them at the hearing. It is best to have an attorney if possible, but it is also very common for one or both parties to be unrepresented. The judge will be prepared for cases that do not involve attorneys.

If you would like to have a lawyer but do not know one, you can call the Oregon State Bar (toll-free) at 1-800-452-7636 for a referral to a lawyer in your area.

If you are low-income and cannot afford a lawyer, contact your local legal aid office to see if free representation is available to you. A directory of legal aid offices can be found at: *http://oregonlawhelp.org//resource/oregon-legal-aid-offices*.

When should I start gathering evidence?

You should begin gathering evidence as soon as possible. If you have witnesses, they may also need to clear their schedule in order to appear at your hearing. If you have an attorney, they will help you decide what evidence to present in court, but you should still begin collecting evidence as soon as possible.

What if I need an interpreter?

If you do not speak English very well, or have trouble understanding legal terminology because of language barriers, the court must provide you with an interpreter. If you know that you or any of your witnesses will need an interpreter, make sure to indicate this on Page 1 of the restraining order petition. It is a good idea to contact the court prior to your hearing date to confirm that an interpreter has been scheduled. Usually, an interpreter can also be requested by calling the court as early as possible in the process to explain that you will need an interpreter for your contested restraining order hearing. Be sure to tell the court clerk your name, your case number, and the date and time of your hearing. The clerk will let you know if there are any special or additional procedures for asking the court for an interpreter in that county.

Can the hearing date be rescheduled?

Sometimes, the judge will allow you to reschedule your hearing, but it depends on the circumstances. A judge may allow you to reschedule if you need more time to find an attorney or if a key witness is unavailable.

You should call the courthouse where the hearing is scheduled to find out their process for rescheduling a court hearing. In most counties, you will want to contact the family law department. Usually, the court will require you to show up for your hearing, and make your request for a new hearing date at that time. If you do this, you should be prepared to go forward with your evidence just in case the judge denies your request.

An attorney can be very helpful, especially if you are contesting custody or parenting time or if the petitioner has a lawyer representing them at the hearing.

What if you have an emergency and cannot make it to the hearing?

If you have an emergency that is going to cause you to miss the hearing, make sure that you contact the court immediately to explain the situation. Also, if you miss the hearing because you did not get notice from the court in time, call the court immediately.

What if one party does not show up to the hearing?

If you do not show up for the hearing, the judge will continue the restraining order and it will remain in effect. If the petitioner fails to show up for the hearing, the judge will likely dismiss the restraining order.

What to expect when going to court?

What do I wear to court?

When going to court, your clothes should be clean and nice. Wear something that you might wear to a job interview or to church. Do not wear clothes with large symbols or pictures or words that would be distracting from your testimony. Do not wear sleeveless shirts. Hats and head coverings are not allowed unless they are worn for religious reasons.

Getting to your hearing

When you arrive at the courthouse, you will need to find parking and go through security. To give yourself sufficient time, plan to arrive at least 30 minutes before your hearing starts. Do not bring anything that could be used as a weapon. If you do, security will confiscate these items or turn you away from the courthouse to dispose of them prior to entry.

If you are unsure of which courtroom your hearing will be in, you can ask court staff for assistance. Once you find the correct courtroom, sit quietly and wait for the judge to come in. When the judge or clerk calls your case, stand and let the judge know you are there. Then wait for the judge to give you further instructions.

How should I act in court?

Here are some tips on how to behave in court:

- Do not speak to the Petitioner or approach them if you see them in the courthouse. You are allowed to be in the same room as the Petitioner for the hearing, but you cannot harass them. You should only speak to them during the hearing, when the judge tell you to.
- When talking to the judge, stand up, and address the judge as "your honor."
- Be polite. Do not interrupt anyone during the hearing. Stop speaking if the judge interrupts you.
- The judge or the Petitioner (or their attorney) may ask you questions. If you do not understand a question, tell the judge. Do not answer a question until you fully understand it.
- If you do not know the answer to a question, you can say, "I don't know."
- Take your time when answering questions and explain your answers if you think it is necessary.
- Be truthful on all matters, even if you think the truth might hurt you in one or more instances. The truth can help you overall. The judge is more likely to believe the testimony of individuals who do not try to appear perfect or to hide information.
- Be sincere. Do not be sarcastic or appear angry with the judge or the other side.
- Remain calm. Do not use the hearing to badmouth the Petitioner.
- Avoid making faces or reacting when the Petitioner or the judge says something you disagree with.
- Avoid bringing your children to court. If you have to bring your children, arrange for a friend or relative to sit outside the courtroom with your children. You may want to pack a bag with toys and snacks. Some counties offer free child care. Contact the courthouse to find out if child care is available in your county.
- Do not bring any weapons, such as knives, guns, mace, or pepper spray into the courthouse.
- Do not bring food or drinks into the courtroom.
- Do not chew gum in the courtroom.
- Do not bring anyone who might "confront" the Petitioner.
- Do bring friends, advocates, and relatives with you for support, *but* ask them to avoid talking to the Petitioner or the Petitioner's witnesses. Anyone who will be testifying as a witness for you should remain outside the courtroom. Support persons who are not testifying as witnesses can stay in the courtroom with you, but will generally

not be allowed to sit next to you at "counsel table" during the hearing.

Who will be at the hearing?

- The judge and the judge's staff will be there.
- The Petitioner, their witnesses and their lawyer may be there.
- Your witnesses should also be there. Again, your witnesses will likely be asked to leave the courtroom at the beginning of the hearing. If a witness remains in the courtroom during the hearing, the judge may not allow them to testify on anyone's behalf. Explain this to your witnesses ahead of time.
- Do not be surprised if there are a number of other people in the courtroom. They may be waiting for their own hearings. It is not unusual for several hearings to be scheduled at the same time in the same courtroom.

What does the petitioner need to prove at the hearing?

In order for a judge to uphold the petitioner's restraining order, the petitioner must prove three things at the contested hearing:

1. The nature of your relationship with the petitioner qualifies him/her for protection under the FAPA restraining order laws;
2. You abused the petitioner within the last 180 days (six months); and
3. The petitioner is in serious danger of further abuse by you.

1. Qualifying relationship

The petitioner and you must have one of the following types of relationships in order for the petitioner to qualify for a FAPA restraining order:

- You are currently or were formerly married to or in a registered domestic partnership with the petitioner;
- You are an adult related by blood, marriage, or adoption to the petitioner;
- You and the petitioner are lovers who currently or formerly lived together (includes same-sex relationships);
- The petitioner is someone with whom you have had a sexually intimate relationship in the last two years (includes same-sex relationships); or
- The petitioner is your children's legally established parent.

If the petitioner is a minor, they may only get a restraining order against you if you are over 18 and you have one of the following types of relationships:

- The petitioner is your spouse or former spouse, or
- You currently or formerly had a sexually intimate relationship with the petitioner

2. Abuse within the last 180 days

The petitioner needs to prove that you abused them within the last 180 days (6 months). Under the FAPA restraining order laws, abuse occurred if you:

- Physically hurt the petitioner or attempted to physically hurt him/her;
- Threatened the petitioner's physical safety or made them reasonably afraid that they would be imminently harmed by you; **or**
- Made the petitioner have sex against his/her wishes by using force or threats of force.

Any periods of time when you were in jail or prison or lived more than 100 miles from the petitioner do not count as part of the 6 months.

3. Fear of continued abuse

The last thing the petitioner has to prove is that they are in immediate danger of further abuse from you. Their fear of further abuse must seem reasonable to the judge. This means that the judge must believe that the average person in the petitioner's situation would feel as they do.

How is the contested hearing organized?

A contested hearing is usually organized into four parts:

1. Opening statements,
2. Evidence of both parties,
3. Closing statements, and
4. Judge's ruling.

The judge will generally follow the above format, but they control their courtroom and can conduct the hearing differently if they choose. Use the four-part progression described above as a guide to your hearing preparation, but do not be too surprised if the judge does things slightly differently.

The evidence part of the hearing is the opportunity for you to tell your version of events by testifying, calling any additional witnesses to the stand, and presenting any other helpful evidence, such as photos or text messages.

Opening statements

Opening statements are the opportunity for the Petitioner and you to summarize the issues in your case, to summarize the ***evidence*** you will be presenting, and to make brief arguments as to why the restraining order should not be upheld. If a judge is pressed for time, they may skip opening statements, but it is a good idea to prepare one just in case. Opening statements are not evidence.

The Petitioner will usually get to make their statement first. You will then have an opportunity to make your own statement. Do not interrupt the Petitioner when they are talking.

Evidence

The evidence part of the hearing is the opportunity for you to tell your version of events by testifying, calling any additional witnesses to the stand, and presenting any other helpful evidence, such as photos or text messages. Usually the judge will allow the Petitioner to present their case first. After the Petitioner is finished, you will have an opportunity to present your side.

Closing Arguments

After the parties present their evidence, most judges do not want to hear anything else. However, some judges will let you summarize or argue the facts of your case. This is called the "closing argument." If you have the opportunity, you should summarize your case in a closing argument.

Ruling

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

- Continue the restraining order in its entirety;
- Continue the restraining order, but modify some of its terms;
- Dismiss the restraining order if the Petitioner does not meet the legal requirements for obtaining a restraining order.

Other things to know about restraining orders

Other laws may apply to you

While the restraining order is in effect, state and federal law may prohibit you from possessing, receiving, shipping or transporting any firearm or firearm ammunition.

Effect of the restraining order

Keep in mind that the restraining order remains in effect until a judge modifies the order, dismisses it, or until it expires. If you violate the order, the police can arrest you and the district attorney's office can charge you with contempt. If you are found guilty of contempt, a judge can order you to pay a fine or do jail time.

The existence of a Restraining Order may affect pending (current) or future criminal, civil or family law cases, including cases involving custody and parenting time of your children. You may want to consult an attorney for more information about how the Restraining Order may affect those cases.

Enforceability of the restraining order

This Restraining Order is enforceable in every county in Oregon. It is also enforceable in all 50 states, the District of Columbia, tribal lands and territories of the United States.

Modification of the restraining order

At any time after a restraining order has been entered, you or the Petitioner may request that the court modify those parts of the order involving:

1. custody and parenting time
2. your removal from the house
3. restrictions on your presence at certain places, or
4. your contact with the Petitioner in-person, by telephone, or otherwise.

To make a change, you must file paperwork at the courthouse. The paperwork is available at the courthouse or at: courts.oregon.gov under the "Self Help" drop-down menu.

Some courts set a hearing when you file the papers, while other courts do not set a hearing until the other person has been served and given 30 days to respond. Check with the court staff in the county that issued the order to be sure you follow the right process.

If the Petitioner is asking for a change that makes the restraining order less restrictive, such as loosening the restrictions on your presence at certain places or allowing some types of contact with the Petitioner, the judge may sign an order changing the terms without requiring a hearing.

Keep in mind that the restraining order remains in effect until a judge modifies the order, dismisses it, or until it expires.

Renewal of the restraining order

The order may also be renewed (extended) for another year. For this to happen, the Petitioner must file papers asking the judge to do so. The Petitioner must show that a person in their situation would reasonably fear further acts of abuse by you if the order is not renewed. If the order is renewed, you will be served with the renewal papers and will have the right to request a hearing to contest the renewal.