

# How to Prove your Family Abuse Prevention Act Restraining Order Case in Court

A legal guide for unrepresented petitioners written by Legal Aid Services of Oregon, current May 2022



## What do you have to prove at a contested hearing?

1. **Abuse in last 180 days.** You must prove that Respondent committed at least one act of “abuse” against you in the last 180 days. “Abuse” has a specific legal definition, it includes incidents where Respondent:
  - Physically injured you or attempted to physically injure you,
  - Placed you in fear of imminent bodily injury OR
  - Made you have sexual relations against your wishes by using force or threats of force.
3. **Fear of further abuse.** You also must prove that you reasonably fear further acts of abuse, and Respondent represents a “credible threat” to your physical safety.

## How do you prove your case?

You must prove your case by offering evidence to prove that Respondent abused you and that you are still in danger of further abuse. Evidence consists of the testimony of witnesses (including you) as well as other tangible evidence, such as photos, videos, text messages, and other documents.

## What is the “burden of proof?”

In a restraining order hearing, you, the petitioner, have the burden of proving your case. The court will not present evidence or call witnesses for you. You must prove your case by a “preponderance of the evidence.” This means that you must have slightly more evidence than Respondent in order to win your case. For example, if both you and Respondent testify, you will likely get to keep your restraining order if you have corroborating (supporting) evidence to backup your story, but Respondent does not.

# WITNESS TESTIMONY

## Witness testimony

Witnesses are an important form of evidence in restraining order hearings. **YOU** are the most important witness in your case because most domestic violence happens in secret. Although you may not have witnesses who saw abuse, you may still have witnesses who can corroborate (support) your testimony by backing up certain parts of your story. For example, you may have witnesses who saw injuries on you or who saw you right after a fight.

## Stages of a witness' testimony

When a witness testifies, there are three stages in their testimony: (1) direct examination, (2) cross examination, (3) rebuttal.

### Direct examination

The first stage of a witness's testimony is direct testimony. If you are the witness, direct testimony is your opportunity to tell your story. You should tell the judge everything you want them to know about your case. If you are calling a witness, you will have to ask your witness questions during their direct examination. Don't expect the judge to do this for you. If it's the other party calling the witness, you should simply sit and listen quietly. Do not make faces or respond to the direct testimony of the other party or their witnesses. You will have an opportunity to respond later.

### Cross examination

The second stage of witness testimony is cross-examination. Cross-examination is optional. When you call a witness (including yourself), the other party gets to ask you or your witness questions after they finish giving their direct testimony. When the other party calls a witness, you can ask their witness questions as well. It is fine to skip cross examination. This usually will not hurt your case. In fact, many parties often hurt their case by asking cross-examination questions because they give the witness the opportunity to keep talking to explain their actions.

## Rebuttal testimony

Rebuttal is the last stage in witness testimony. This stage is also optional. This is the opportunity for the person who called the witness to clarify or respond to any information that came out during cross-examination. Sometimes the judge will skip this stage.

If you were the witness and the respondent asked you questions on cross-examination that you were not fully able to explain, you can respond and explain your answers during cross-examination.

## Possible witnesses

There are many people who may possibly be witnesses in your case, below are some examples:

- You
- Friends or family
- Police officers
- Child protective services caseworkers
- Neighbors
- Co-workers or supervisors
- Daycare providers or teachers
- Anyone else with first-hand knowledge about any events in your case

## Professional witnesses

Professional witnesses, such as police officers or caseworkers are generally considered the most reliable by judges because they are neutral parties who are more likely to provide unbiased testimony.

If professional witnesses are involved in your case, you will likely need to subpoena the professional witness to have them appear in court. You can get a blank subpoena from the courthouse. You will need to fill it out and personally deliver the subpoena to your witness (unless they agree to accept the subpoena in a different way). You will also need to pay the witness a witness fee of \$30.

# Preparing your testimony for the hearing

**YOU are the most important witness in your case. Most domestic violence happens behind closed doors. It is normal for there to be no witnesses to acts of physical abuse, other than yourself. You can still win even if no one saw your abuse.**

To prepare your testimony, it is helpful to write notes or create an outline of what you want to tell the judge at your restraining hearing. **DO NOT** write down your testimony word for word. The judge will not want you to read from a piece of paper. They will want to hear your story in your own words. Do not submit your outline as an exhibit. The outline is just for your own personal use.

You can use the worksheet on pages 5-6 to create an outline for your testimony at the restraining order hearing. Creating an outline will help you stay organized and focused at your hearing. It will ensure you do not forget to tell the judge important details about your case.

## Direct testimony

During your direct testimony, you should focus primarily on incidents of abuse that happened in the last 180 days before you applied for a restraining order.

However, you should also tell the judge about things that happened outside of the 180 days if you think it will help the judge understand why you are afraid of the respondent. For example, in domestic violence relationships, sometimes abusive partners commit serious violence early in the relationship, but then, as the relationship continues, they use other means to maintain control and power. It can be helpful to tell the judge about earlier incidents of violence to help the

judge understand your relationship dynamic.

During your direct testimony, you should tell the judge about all of the following:

1. **Physical abuse or threats to harm you.** Tell the judge about any incidents where Respondent physically injured you or attempted to physically injure you, including:
  - Strangling or choking you
  - Hitting, kicking, slapping, or punching you
  - Pushing or shoving you
  - Using an object to hurt you or try to hurt you (including guns, weapons, knives, vehicles, or other household objects)
2. **Incidents that made you fear for your physical safety.** Tell the judge about any incidents where Respondent made you fear for your physical safety, including:
  - Threatening to physically injure you
  - Threatening to kill you
  - Pointing a gun at you, shooting a gun near you, or having a gun out during a fight
  - Driving recklessly in a vehicle with you
  - Breaking or throwing things in anger
  - Other acts that make you fear you are likely to be injured by Respondent
3. **Forced sex.** Although it's very private and may be uncomfortable to talk about, it is important to tell the judge about any forced sexual encounters between you and the Respondent. Tell the judge about any incidents where Respondent forced you to have sex or threatened to hurt you if you did not have sex in the last 180 days.
4. **Fear of further abuse.** Explain to the judge why you are fearful that Respondent will hurt you in the future. In answering this question, be sure to tell the judge:
  - If there is a history of abusive behaviors by Respondent, including abuse that occurred out-

side the 180-day period.

- If Respondent has stalked you, held you captive, or has made threats to hurt you if you end the relationship.
  - If Respondent has a problem with drinking and / or drugs and whether Respondent was drinking or using drugs during any of the incidents of abuse.
  - If Respondent has a history of violence toward others, including a violent criminal history, prior restraining orders, or other specific incidents where Respondent has been violent.
  - If Respondent has access to firearms.
  - If Respondent has expressed suicidal thoughts or made attempts to commit suicide.
  - If Respondent engaged in an ongoing pattern of control / emotional abuse toward you (including name calling, manipulation, controlling your actions, monitoring your spending, and other non-physical abuse.)
  - If Respondent has an untreated mental illness that is contributing to his violent behaviors.
4. **In cases involving children.** Tell the judge about what type of parenting time (visitation) you want Respondent to have any why you think this is best for your children. For more information on custody and parenting time issues in restraining orders, see our brochure, [\*Parenting Time in Your Family Abuse Prevention Act Restraining Order\*](#).

### **Include details about each incident**

For each incident of abuse, be sure to provide the judge with details about what happened, including:

- A detailed description of what happened.
- Date and location of incident.
- Whether you were injured?
- Whether any property was damaged?
- Whether your children were present?
- Whether you were pregnant at the time?
- Were the police called?
- Was the Respondent arrested, charged or convicted of a crime following the incident?

### **Legal protections you want the judge to order**

Lastly, be sure you tell the judge what protections you want them to order, including locations where the respondent cannot go, types of contact that should be prohibited, etc. If you need the judge to modify any provisions in your initial restraining order, be sure to request that as well.

### **Cross-examination**

The Respondent will be able to ask you questions (cross examine you) after you testify. Often, the judge will require the Respondent to ask their questions of the judge and then the judge will repeat the questions to you. That way you do not have to talk directly to Respondent. Here are some pointers for answering cross examinations questions:

- Pause, take a breath, and think about your answer before you respond to the question.
- Answer questions truthfully and explain your answers, if necessary.
- It's ok to say "I don't know" if you do not know the answer to the question.
- It's ok to say "I do not understand the question" or "can you clarify what you are asking" or "can you repeat the question" if you did not understand it the first time.
- It's ok to say "I do not remember" instead of trying to make up details about an incident.
- If the judge interrupts you or Respondent, stop talking immediately until the judge tells you to continue talking.

### **Rebuttal testimony**

After the Respondent asks you questions, the judge will usually give you an opportunity to provide "rebuttal testimony." Providing rebuttal testimony is options. This is your opportunity to explain any of your answers that you provided during cross examination or to provide additional information related to the cross-examination questions.

# Outline for your testimony

You can fill in the blanks on this page to create an outline for your testimony at your restraining order hearing. Or use this page as a guide to create your own outline.

## Incidents in last 180 days

### Incident 1

Description of what happened: \_\_\_\_\_

\_\_\_\_\_

Date, time, and location of incident: \_\_\_\_\_

- Injuries? \_\_\_\_\_
- Children present? \_\_\_\_\_
- Police involvement / result? \_\_\_\_\_
- Drug or alcohol involved? \_\_\_\_\_
- Witnesses? \_\_\_\_\_
- Exhibits (write-in exhibits numbers to help you remember to offer exhibits) \_\_\_\_\_

### Incident 2

Description of what happened: \_\_\_\_\_

\_\_\_\_\_

Date, time, and location of incident: \_\_\_\_\_

- Injuries? \_\_\_\_\_
- Children present? \_\_\_\_\_
- Police involvement / result? \_\_\_\_\_
- Drug or alcohol involved? \_\_\_\_\_
- Witnesses? \_\_\_\_\_
- Exhibits (write-in exhibit numbers to help you remember to offer exhibits): \_\_\_\_\_

### Incident 3

Description of what happened: \_\_\_\_\_

\_\_\_\_\_

Date, time, and location of incident: \_\_\_\_\_

- Injuries? \_\_\_\_\_
- Children present? \_\_\_\_\_
- Police involvement / result? \_\_\_\_\_
- Drug or alcohol involved? \_\_\_\_\_
- Witnesses? \_\_\_\_\_
- Exhibits (write-in exhibit numbers to help you remember to offer exhibits): \_\_\_\_\_

## Why are you fearful of further abuse?

- Respondent has a history of physically abusing me (provide details about prior abuse outside 180 day time period):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Respondent has a history of being violent with others (provide information about criminal convictions or other incidents of violence involving other people) \_\_\_\_\_  
\_\_\_\_\_
- Respondent has threatened to hurt me if I leave or take the children (provide details about specific threats) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Respondent has access to firearms (provide details about number and type of firearms) \_\_\_\_\_  
\_\_\_\_\_
- Respondent has a problem with drinking / drugs and becomes more violent when using (provide details) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Respondent has expressed thoughts of suicide or attempted suicide (provide details) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Respondent controlled my behavior and monitored my activities during our relationship (explain) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Respondent has a history of violating court orders or not following the law (explain) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Custody / parenting time information

- Daily schedule / routine of children \_\_\_\_\_  
\_\_\_\_\_
- Concerns with Respondent's parenting (Drinking? Drug use? Abuse of the children?) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Safety concerns around exchanging the children? \_\_\_\_\_  
\_\_\_\_\_

## Legal protections you want the court to order

- What protections do you want? Does anything in your original restraining order need to be modified? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Proposed parenting plan \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# Testimony of other witnesses

## Who should you call as a witness?

People who personally witnessed your abuse, saw you immediately after you were abused, saw your injuries, have information about why Respondent is a threat to you, or have information related to you or Respondent's parenting abilities can testify for you. Any of the following people may be good witnesses for your case:

- Friends, relatives, neighbors, co-workers
- Law enforcement officers who responded to an incident of domestic violence
- Child welfare caseworkers
- Anyone else who witnessed the abuse
- People who have spent time with you or Respondent and your children.

## Children as witnesses

Sometimes, children are the only witnesses to the domestic violence. It is a case-by-case decision to call a child as a witness. There are no laws that prohibit you from calling a child as a witness. There is also no law that says a child must be a certain age to testify. However, if you call a child as a witness you risk a judge being displeased that you unnecessarily involved a child in your court case. Before calling a child as a witness, you should consider:

- **Age / maturity of child:** A witness must be deemed "competent" to testify. They must also be able to provide helpful testimony. Not all children, especially very young children, make good witnesses. You should consider your child's maturity and age when considering to call them as a witness. Is your child able to clearly articulate what they say? Can they provide details of what they witnessed? Do they understand the difference between a truth and a lie?
- **Child's desire to testify:** You should also consider whether the child has expressed a desire to participate in your court case. Some children have strong opinions and preferences and can clearly articulate those thoughts. Other children may be hesitant to testify in court, especially if they are testifying against their parent. Generally, it is not advisable to force a child to testify. This can be harmful to

the child, and it can harm your case if the judge learns you forced your child to testify.

- **Effect on child:** You should also consider the effect that testifying will have on the child. Some children may find it traumatic to participate in a court hearing. Other children feel strongly about speaking out against a parent who has harmed their other parent or who has abused them. They may find it empowering to participate in a court trial.
- **Availability of other witnesses:** Lastly, you should consider whether there are other witnesses who can testify instead of a child. If a child is the only witness to an act of abuse, that may be a good reason to call them as a witness. However, if there were multiple witnesses to an incident, it may be better to call the adults as witnesses instead of a child.

## Preparing questions for your witnesses

Generally, the judge will expect you to question your own witnesses. A judge is unlikely to question witnesses for you. You should think about what information you want the witness to provide to the judge and then prepare a list of questions for that witness.

Pages 8 to 9 contain a handout with sample questions for witnesses. Use this handout to generate a list of questions to ask your witnesses at your hearing.

Here are some rules for questioning witnesses:

- **Ask your witnesses open-ended questions.** The best questions begin with who, what, why, where, and how are good questions for your witnesses.
- **Do not ask leading questions.** A leading question is one that suggests the answer in the question.
- **Only ask witnesses about events they have observed directly.** Your witnesses cannot testify about things that other people told them.

- **Questions must be relevant to the issues at your hearing**, which are (1) whether Respondent abused you, (2) whether you reasonably fear further abuse, and (3) custody and parenting time.

### **Respondent's witnesses**

You likely will not know who Respondent calls as a witness until the day of your hearing. However, you can assume that Respondent will testify on their behalf.

The same rules apply to Respondent's witnesses as to yours. Witnesses must have personally observed events relevant to the restraining order hearing.

### **Cross-examining Respondent's witnesses**

After Respondent or their witnesses testify, you will have the opportunity to ask cross-examination questions. This is optional. It is unlikely to hurt your case if you skip asking cross-examination questions.

When it is your turn to cross-examine a witness, be sure you are asking the person questions and not making your own statements or testifying. The best cross-

examination questions usually start with: "Isn't it true that..." For example, "Isn't it true that you were convicted of Assault IV in 2021?"

Here are some rules and guidelines for cross-examining witnesses:

- You are allowed to ask leading questions. A leading question is one that suggests the answer in the question itself. For example, "You were convicted of assaulting me in 2020, weren't you?" is a leading question.
- You are not allowed to argue with a witness or tell the judge if the witness is lying. Thus, you should avoid asking questions that you think the Respondent or their witnesses will not answer truthfully.
- Ask questions that the Respondent or their witnesses cannot easily deny. Questions about a witness's criminal history or child welfare history are generally a good area of questioning.



# Sample questions for your witnesses

## Sample introductory questions to ask your witnesses:

- **All witnesses:** How do you know Respondent and me? How long have you known me? In the last year, how often have you seen me, either alone or with the Respondent? In the last year, how often have you seen me or respondent with our children?
- **Professional witnesses (police, DHS, teachers, etc.)** What is your current job? What is your educational background and training? What is your work experience? How long have you had your current job? Have you had training in domestic violence issues?

## Sample questions for witnesses to abuse and ongoing safety concerns

- **Witnesses who saw your physical abuse:** Do you recall witnessing an incident on [date]? Have you ever witnessed Respondent being violent towards me? What do you remember about this incident? Where did it happen? When did this incident occur? Where did this incident occur? Can you recall other incidents where Respondent was violent toward me? How did I respond to Respondent's abuse? Did I seem afraid?
- **Witnesses who saw injuries on you:** Have you ever seen any marks, bruises, or other injuries on me? When did you observe these injuries? Can you describe the injuries you saw?
- **Witnesses who heard threats toward you:** Has Respondent ever made threats to harm me? What did you hear? When did you hear this? Was I present or was this said behind my back? How did I react?
- **Witnesses who heard verbal abuse:** Have you ever heard Respondent call me names? What names? How often did you hear this? Have you ever heard Respondent saying mean things to me? What did they say this to me? How often did you hear them say this? Have you ever heard Respondent being controlling or emotionally abusive to me? Can you describe what you observed?
- **Witnesses who saw or heard controlling behaviors:** Would you say Respondent was controlling of me? Why do you say that? What have you witnessed that causes you to say that? Do any specific incidents stand out?
- **Witnesses who witnessed aftermath of your fights:** Did you see me on [date]? How was I acting? Did I seem worried or frightened? What did you observe about my physical appearance that makes you say that? Do you recall seeing our house on [date]? How would you describe the state of our house? Did you observe any broken items? Did you observe our children on [date]? How were they acting?
- **Witnesses to Respondent's access to guns / weapons:** Do you know if Respondent has guns? How do you know this? How many guns does Respondent have? Does respondent have other weapons? What weapons do they have? Have you seen Respondent use the weapons? When? How often?
- **Witnesses to substance use concerns:** Have you seen Respondent drink alcohol? Do you believe Respondent has a problem with alcohol or does he consume alcohol responsibly? What have you witnessed that causes you to have this opinion? Does Respondent get more or less aggressive when he drinks?
- **Witnesses who have seen Respondent's violence towards others:** Have you ever seen Respondent be violent or aggressive to anyone else other than me? What did you see or hear? When did that occur?

### Sample questions for your witnesses to custody / parenting time issues

- **Witnesses to substance use concerns:** Have you ever seen Respondent using alcohol or other controlled substances while with our children? Are there any incidents that stand out? What substances was Respondent using? How much did Respondent consume? How do you know how much Respondent consumed? How did Respondent act? Did Respondent do anything unsafe around our children?
- **Witnesses to verbal abuse of children:** Have you ever seen Respondent being verbally abusive with our children? What have you heard Respondent say? How many times have you heard him say things like this to our children? How did our children react?
- **Witnesses to physical abuse of children:** Have you ever seen Respondent being physically abusive to our children? What have you seen? How many times have you seen things like this? How did our children react?
- **Primary parent:** Who does most of the parenting tasks for our children? How many times have you seen Respondent alone with the children? How many times have you seen me alone with the children? What tasks have you seen me do? What tasks have you seen Respondent do?

### Sample questions to authenticate evidence

- **Photos / texts:** Can you turn to exhibit 4? What is this exhibit? How did you get this document to me for court? Does the exhibit appear altered in any way?
- **Written records:** Can you turn to exhibit 2? What is this exhibit? Who created this document? How did you get this to me for court? Does this document appear to be an accurate copy of your report?

### Sample cross examination questions

- **Questions for respondent:** You don't have your driver's license because you've had three DUIs, correct? Isn't it true that DHS child welfare determined that you neglected our child in 2021? You were fired from your last job due to drinking on the job, right? You spent two years in prison for beating up your last girlfriend, didn't you? You were previously convicted of assaulting me in 2019, right? Isn't it true that you have had other restraining orders against you in the past? Your current roommate, is a registered sex offender, isn't he? You were convicted of possession of meth in 2021, right?
- **Questions for respondent's witnesses:** Were you convicted of any felonies in the last 15 years? Were you convicted of any crimes involving dishonesty or false statements in the last 15 years? What crimes were you convicted of? Were you using alcohol or controlled substances during any of the events you testified about? How much did you drink? Isn't it true you're currently in a relationship with Respondent?

### Sample rebuttal questions

- You were asked about [insert question], do you want to explain your answer further?
- You were asked on cross-examination about your conviction for [insert conviction]. Do you want to explain the circumstances surrounding that conviction?

# OTHER EVIDENCE

In addition to witness testimony, you may also have other evidence that you can use to corroborate (support) your testimony and the testimony of your witnesses. This evidence might include photos, videos, text messages, etc.

## What if you do not have other evidence of abuse?

It is common to not have other evidence of abuse besides witness testimony. Abusive people tend to be good at hiding their abuse. Additionally, you may not have documented any of your abuse until you finally decided to end the relationship. If you do not have other evidence of abuse, you can rely heavily on witness testimony to prove your case.

## Examples of evidence that CAN be used at your hearing

Some of the common types of physical evidence that petitioners can use to prove their case are:

- Photos of injuries or damage to property from an incident of abuse
- Screen shots of text messages from Respondent
- Printouts of email messages from the Respondent
- Audio or video recordings of the Respondent
- Torn clothing or broken items from an abuse incident
- “Certified copies” of the Respondent’s criminal records or prior restraining orders from your local courthouse

## Examples of physical evidence that you MAY NOT be able to use

Written evidence, reports, or other records, that were created by witnesses other than the Respondent, are difficult to use as evidence in court because of the rule of evidence known as the “hearsay” rule.

## The hearsay rule and written evidence

The hearsay rule is very, very complicated. In general, the hearsay rule prevents parties from using written evidence, created outside of court, as evidence in court. There are many exceptions to this rule. The biggest exception is you can use written statements made by the Respondent. There are other exceptions, but they are too complicated to explain in this handout.

Here are some examples of written evidence that the judge *may* not allow you to submit as evidence because of the hearsay rule:

- Police reports
- Child welfare records
- Letters from witnesses
- Medical records
- Visitation logs from supervised visits
- Texts or emails from other people who are not a party to your case
- Recordings of other people who are not a party to your case

## How do you avoid the hearsay rule?

The simplest way to avoid the hearsay rule is to have the person who wrote or said the hearsay statement testify in court. For example, instead of trying to use a police report as evidence, you can have the police officer testify (remember, you may need to get a subpoena). Similarly, instead of trying to use a letter from someone as evidence, have that person come to court and testify about things they’ve observed. This is the best way to ensure the judge will be able to consider the information contained in written records.

## What is an “exhibit?”

When physical evidence is presented at a court hearing, each piece of evidence is called an exhibit. You should label the first page of each exhibit with a number so the court can keep track of each piece of tangible evidence you offer. As the petitioner, you will num-

ber your exhibits “1, 2, 3, 4, etc.” The respondent numbers their exhibits “101, 102, 103, etc.”

## What is an “exhibit list?”

An exhibit list is a list of all the exhibits you may offer at your hearing. There is a blank exhibit list at the end of this booklet you can use to create your own exhibit list. You should file this with the court, along with your exhibits.

## How do you get your exhibits and exhibit list to the judge before the hearing?

### In-person hearings

At an in-person hearing, you will bring your exhibits and exhibit list with you to court. You should bring three copies. One for the judge, one for the respondent, and one for yourself. If you have video or audio evidence, you should call the court and ask for instructions on how to get that evidence to the court. Some courthouses may prefer that you put it in a thumb drive and file it several days before your hearing. You also have to show it to the other party before offering it as evidence.

### Remote (video / phone) hearings

Due to the pandemic, many court hearings and trials are occurring by phone. If you are having a remote hearing, you should file your exhibits several days in advance of the hearing. You should check with your local courthouse to see how many days in advance you must file your exhibits. You will also need to get the respondent a copy of your exhibits. You can email or mail your exhibits to the respondent or their attorney. If you have audio or video evidence, call the courthouse for instructions on how to submit this type of evidence.

## Getting evidence into the record at your restraining order hearing

In order for the court to receive a piece of evidence into the record, you must authenticate the evidence and then offer it into evidence.

To authenticate evidence, you must have the witness who created the piece of evidence provide information to the court about why the evidence is authentic and

what it purports to be. In lawyer talk, this is called “laying a foundation” for the evidence.

To offer evidence into the record, you must formally ask the judge to receive the evidence. The next paragraphs provide more information and examples about how to do this.

### Authenticating your own evidence

Here is an example of how you might authenticate a photo you took that shows injuries Respondent gave you from an incident of abuse:

*“Your honor, I have a photo of the bruise that Respondent gave me after the incident on January 14, 2021. I marked this photo as exhibit 3. I took this photo the day after the incident on my phone. I saved the photo on my phone, then I emailed it to myself to print off for this hearing. This photo is an accurate representation of what my bruise looked like at that time. The photo has not been altered.”*

### How to have a witness authenticate evidence

Here is an example of how you can use a witness to authenticate evidence they created:

**You:** Can you turn to exhibit 2. What is this exhibit?

**Witness:** Exhibit 2 is a photo that I took of a bruise on your arm.

**You:** When did you take this photo?

**Witness:** On October 14, 2021

**You:** How did you take the photo?

**Witness:** I took it with my iPhone.

**You:** How did you get this photo to me for court?

**Witness:** I emailed it to you before court.

**You:** And Exhibit 2 is the same photo you emailed me; it does not appear altered in any way?

**Witness:** No.

**You:** Is this photo an accurate representation of the bruise on my arm on October 14, 2021?

**Witness:** yes

### Offering an exhibit into evidence

After you authenticate a piece of evidence, you must “offer” it as an exhibit and ask that the court receive it into the official court record. After you offer your piece of evidence, the judge will ask the Respondent if they have objections. If there are no objections, the exhibit

will be received into evidence. If there is an objection, the judge may ask you additional questions before deciding whether to receive the exhibit into evidence. Sometimes, a judge will not allow a piece of evidence into the record because it does not comply with the rules of evidence. Here is an example of how to offer an exhibit at a court hearing:

**You:** Your honor, I'd like to offer exhibit 4 into evidence.

**Judge:** Any objections?

**Respondent:** Yes, that exhibit contains hearsay statements and is inadmissible.

**Judge:** I'm going to allow the exhibit because the statements were made by the Respondent and so there is an exception to the hearsay rule. Exhibit 4 is received into evidence.

### Keeping track of your exhibits

Keep a copy of your exhibit list in front of you at the hearing and use this to keep track of the evidence the

court has received. If you have an advocate or support person with you at your hearing, you can ask them to help you keep track of your exhibits.

When you are done testifying and calling witnesses, before you let the Respondent present their case, you should go through your exhibit list and make sure you offered all the evidence you want the judge to consider. If you missed any important pieces of evidence, let the judge know and ask them to receive that exhibit into evidence.

Page 14 has a blank exhibit list you can use to create your exhibit list for your restraining order hearing.

## COURTROOM ETIQUETTE

### General rules for court hearings

- When talking to the judge, stand up, and address the judge as "your honor."
- Be polite. Do not interrupt anyone, especially the judge, during the hearing.
- Remain calm. Don't make faces or react if the other party says something you disagree with.
- Avoid bringing your children to the hearing. If you have to bring your children, try to find someone who can sit with them during the hearing.
- Bring friends, relatives, or domestic violence advocates to support you during the hearing.
- Do not bring anyone who might "confront" the other party.
- Dress professionally. Avoid clothing with words on it or clothing that is overly revealing.

### Special considerations for in-person hearings

- Stand when the judge enters the room and sit when you are told to.
- 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, or chew gum in the courtroom.

### Special considerations for remote hearings

- Make sure your background is free from unnecessary distractions.
- Keep your phone or video on mute when you are not speaking to the judge and during breaks.
- Always double check that you are on mute before speaking to anyone in the room with you.

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF \_\_\_\_\_

	}	Case No.: _____
Petitioner,	}	
vs.	}	<input type="checkbox"/> PETITIONER'S <input type="checkbox"/> RESPONDENT'S
	}	EXHIBIT LIST
	}	Trial date: _____
Respondent.	}	

Exhibit Number	Description of exhibit	Offered?	Objection?	Received?