

WHAT IS A FAPA RESTRAINING ORDER?

A FAPA Restraining Order is a protective order issued by a Court to prohibit an abuser from intimidating, molesting, or menacing Petitioner (the protected person) and any children in Petitioner's custody.

WHO CAN GET A FAPA RESTRAINING ORDER?

A QUALIFYING RELATIONSHIP BETWEEN PETITIONER AND RESPONDENT (THE ABUSER) IS REQUIRED.

Petitioner may only get a Restraining Order against a "family or household member" who has committed abuse.

Petitioner can get a Restraining Order against:

- A spouse or former spouse;
- An adult related by blood, marriage, or adoption;
- A partner (of the same or opposite sex) who is living or has lived with Petitioner;
- A person (of the same or opposite sex) who has had a sexually intimate relationship with Petitioner within the past two years; or
- The other parent of Petitioner's child(ren).

WHAT JUSTIFIES THE ISSUANCE OF A FAPA ORDER?

1. ONLY ONE INSTANCE OF ABUSE IS REQUIRED. Within the last six months, the abuser must have abused Petitioner in any one of the following ways:

- Physical Injury:** Attempting to cause or intentionally, knowingly, or recklessly causing physical injury;
 - Fear of Physical Injury:** Intentionally, knowingly, or recklessly placing Petitioner in fear of imminent bodily injury; or
 - Forced Sexual Relations:** Causing Petitioner to have involuntary sexual relations by using force or threat of force.
- 2. THE ABUSE MUST HAVE TAKEN PLACE WITHIN THE LAST 180 DAYS (6 MONTHS).** Any time the abuser spent

in jail or lived more than 100 miles away from Petitioner does not count against the 180 day time period. Abuse which took place before the 180 day period is relevant to the Court, but is not qualifying abuse by itself.

3. THE PETITIONER MUST BE IN IMMINENT DANGER OF FURTHER ABUSE. Petitioner must tell the Court why she or he fears further abuse in the very near future.

WHAT CAN A RESTRAINING ORDER DO?

A restraining Order can:

- Require that the abuser stay away from and not molest, intimidate, interfere with or menace Petitioner or children in Petitioner's custody;
- Require that the abuser move out of Petitioner's home (if Petitioner is married to the abuser or on the title or lease to the home);
- Allow the person who is leaving the home the right to a 20 minute police stand by to retrieve essential personal items for the person and any children in the person's custody;
- Require that the abuser stay away from Petitioner's home, job, school, or other places;
- Prohibit Respondent from calling, writing, or contacting Petitioner;
- Give Petitioner (or the abuser if Petitioner requests) temporary custody of joint children;
- Give appropriate visitations to the parent who does not have custody;
- Order things to help protect Petitioner, like that the abuser not have guns, or that the abuser give emergency monetary assistance.

OTHER RELIEF AVAILABLE FOR VICTIMS:

- A victim may be entitled to request a landlord to change the locks on a home (at Petitioner's expense) if necessary for safety.
- A victim may be entitled to a release from a rental agreement if moving will protect safety.

- A victim may qualify for temporary assistance for domestic violence survivors (TA-DVS) from the state.
- Contact an attorney for more information.

ELIGIBILITY OF MINORS

- **A Petitioner under 18 may get a Restraining Order IF the abuser is over 18 AND:**
 - Petitioner is or was married to the abuser; or
 - Petitioner has been in a sexually intimate relationship with the abuser.
- **A Petitioner may not get a Restraining Order against an abuser who is under the age of 18.**

WHAT PROCEDURE IS USED TO GET A RESTRAINING ORDER?

Petition:

1. Petitioner fills out and signs Petition for Restraining Order to Prevent Abuse.
2. Petitioner files Petition with Court clerk at appropriate time.
3. Petitioner may use a contact address instead of a residential address to keep the residential address confidential.

Ex Parte Hearing:

4. Petitioner goes to brief hearing with Judge. (The Petitioner may ask to speak to the Judge by telephone, if there are health or safety or other good reasons not to appear in person.)
5. Judge reads Petition and may ask questions of Petitioner.
6. The abuser does not get advanced notice of this hearing and is usually not present.
7. The Judge signs or denies the Restraining Order.

Service:

8. The Petition for Restraining Order and the signed Restraining Order must be served on the abuser.
9. Service is provided by the Sheriff for free.

Thirty Days to File a Request for Hearing:

10. The abuser has 30 days from the date of service to contest the Restraining Order by requesting a hearing.
11. If custody or parenting time is contested, the hearing must be held within 5 days of the hearing request. Otherwise, the hearing must be held within 21 days.

Contested Hearing:

12. The Court will hear testimony from both sides of the case.
13. Petitioner may request a continuance of the hearing date in order to consult with an attorney, but the Court is not required to give a continuance.
14. Petitioner should bring any witnesses and other evidence (photos of injuries, etc.).
15. If Petitioner does not appear at the hearing (in person or by telephone with permission), the Order will be dismissed.

Final Order Issued:

16. The Court will make a decision after hearing evidence from both sides. The Court must uphold the Order if Petitioner proves the case by a preponderance of the evidence.

HOW LONG DOES A RESTRAINING ORDER LAST?

- Once final, a Restraining Order lasts for one year from the date of issuance, unless it is dismissed by Petitioner before that date. Once final, a Restraining Order may be modified by either party, but only as to custody and parenting time provisions.
- A Restraining Order may be renewed if Petitioner submits a request for renewal before the expiration of the initial order, and if the Court finds that Petitioner reasonably fears further abuse if the order is not renewed. No further acts of abuse are

required.

SAFETY CONCERNS:

- The Petitioner should let the Court know of any special safety concerns about the Respondent (for example, mis-use of guns or weapons, mental health issues, etc.)
- Petitioner may ask the Court to specifically address the special safety concerns.

ENFORCEMENT:

- Violation of a restraining order is cause for mandatory arrest of the Respondent.
- The Petitioner cannot violate the restraining order; only the Respondent can violate the order.
- A violation of a restraining order is punishable by contempt of court and can be referred to the district attorney's office for prosecution.

FEDERAL GUN LAWS:

- If the Respondent has been married to the Petitioner, is the co-parent of Petitioner's child, or has cohabited with Petitioner, the Respondent is prohibited by federal law from using or possessing firearms or ammunition while subject to a restraining order that has been upheld after a contested hearing.
- If the order is subject to federal gun laws, it is helpful if a Court attaches a 'Brady Certificate' to the order after a contested hearing.

For more information, consult www.oregonlawhelp.org

FAMILY ABUSE PREVENTION ACT (FAPA) RESTRAINING ORDERS

A GUIDE FOR ADVOCATES ORS 107.700-107.732

Legal Aid Services of Oregon
Oregon Law Center
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