GETTING A FAMILY ABUSE PREVENTION ACT (FAPA) RESTRAINING ORDER

INSTRUCTIONS

Procedures vary from court to court. Check with your local court for filing instructions.

IMPORTANT NOTE

INFORMATION THAT MUST BE KEPT CONFIDENTIAL

You must keep certain information ("confidential personal information") out of any papers you file or submit to the court and, instead, provide that information in a Confidential Information Form (CIF). "Confidential Personal Information" includes social security number; date of birth; former legal names, driver license numbers; and employer's name, address, and telephone number. It also applies to information regarding a party or a party's child. On the pleading or document where that confidential personal information would otherwise appear, you must note that the information has been separately provided under **UTCR 2.130**.

Relevant Rules and Forms
UTCR **2.130**. – Family Law Confidential Information Forms
UTCR **Form 2.130.1** – Family Law Confidential Information Form
UTCR **Form 2.130.2** – Notice of Filing Confidential Information Form

WHAT IS A RESTRAINING ORDER?

A restraining order is a court order that tells the person who hurt you (the respondent) to leave you and your children alone. It can tell the respondent to move from your home and can deal with temporary custody and parenting time of your children. You can ask the judge to add other orders (listed in the restraining order papers) that you think will help you stay safe. You also can ask the court to include an order that says the respondent cannot have guns. A restraining order can deal with custody and parenting time issues only temporarily. To get "permanent" custody and parenting time orders, you will need to a file a family law case, such as a divorce or a custody case.

WHAT ARE THE REQUIREMENTS FOR GETTING A RESTRAINING ORDER?

1. Age You must be at least 18 years old **or**
You are younger than 18 and the person who abused you is at least 18 and
- you are (or were) married to that person or
- you have been in a sexual relationship with that person.

2. Relationship The person who abused you is:
- your husband, wife or domestic partner
- your former husband, wife, or domestic partner
- an adult with whom you are living (or did live) in a sexual relationship
- an adult with whom you have been in a sexual relationship in the last two years
- an adult related to you by blood, marriage, or adoption
- the parent of your child

3. Abuse In the last 180 days*, the person who abused you must have:

- physically injured you **or**
- tried to physically injure you **or**
- made you afraid that he or she was about to physically injure you **or**
- made you have sexual relations against your wishes by using force or threats of force

(*Any time period when the person who abused you was in jail or lived more than 100 miles from your home does not count as part of the 180 day period. This means you may still be able to get a restraining order even if it has been more than 180 days since you were abused.)

4. Ongoing Danger You are in danger of more abuse very soon, and the person who abused you is a threat to the physical safety of you or your children.

NOTE: *A judge cannot give you a restraining order solely for threats to take your children, rude behavior, verbal or emotional abuse, or damaged property unless you were in fear that you were about to be* ***physically injured****.*

WHERE DO I FILE FOR A RESTRAINING ORDER AND HOW MUCH DOES IT COST?

You must file for a restraining order in the courthouse in the county where either you or the respondent live. Getting a restraining order is free.

HOW DO I FILL OUT THE PAPERS TO GET A RESTRAINING ORDER?

Use a blue or black ballpoint pen and write clearly. Answer each question carefully and tell the truth. Do not write in the part of the papers that say "Judge's Initials". You will need to sign in front of a notary or court clerk. Bring ID (photo ID is best). If available, a court facilitator or advocate may be able to help you with the forms. They cannot answer legal questions.

WHAT HAPPENS AFTER I FILL OUT THE PAPERS?

A time will be set for the judge to look over your papers. The judge may ask you some questions. If the judge gives you the restraining order, court staff will make copies for you. You will need to have one of the copies hand-delivered to the other person by a sheriff's deputy (free in Oregon), a private process server, or any adult, as long as the server lives in the state where the papers are served. You cannot serve the papers yourself. The server is required to complete and file with the court a declaration of service. There is a form in the packet, but some servers use their own forms. Talk to the court clerk about ways to get the respondent served. The respondent cannot be punished for violating (not following) the restraining order until after service.

WILL A HEARING BE SCHEDULED?

In a few cases, the judge may wait to make a custody order and will set a hearing to get more information about the children from you and the respondent. You must go to that hearing or the order will probably be dismissed (dropped).

Otherwise, the respondent has 30 days from the date of service to request a hearing contesting the restraining order. If the respondent does not request a hearing, the restraining order will stay in effect. After 30 days from the date of service, if the restraining order has not been dismissed, the only type of hearing a party may request is to make changes to custody and/or parenting time, respondent's removal from the home, respondent's restrictions from other premises, or contact by the respondent in-person, by telephone, or otherwise.

If the respondent does request a hearing, it will be held very quickly. You may have as little as two days to get ready to go to the hearing. If the hearing is scheduled more than a few days away, the court will send you

notice of the time and date of the hearing in the mail. If there is not enough time to mail you a notice, the court may contact you by telephone. **Be sure the court always has your current contact addresses and contact phone numbers so you get notice of any hearing.** You also can call the court to check to see if a hearing has been set.

You must go to the hearing or the order will probably be dropped. If you cannot go to the hearing due to an emergency, call the court clerk right away. It may be helpful to have an attorney represent you at the hearing, but it is not required.

WHAT HAPPENS AT THE HEARING REQUESTED BY THE RESPONDENT?

The purpose of the hearing is to decide whether or not the restraining order will remain in effect, and if it does remain in effect, if the order will stay the same or change in some way. The judge may decide not to change the order even if both sides agree that they want the same changes.

At the hearing, you must prove that you have been abused and that you are in danger of further abuse. You should be ready to give your own testimony, call witnesses, and give the judge any evidence you have (such as photos of your injuries). In some cases, if the restraining order stays in effect, it will be against the law for the respondent to have guns. If you are worried about your safety, you may ask for a sheriff's deputy to be present in the courtroom.

HOW LONG DOES A RESTRAINING ORDER LAST?

A restraining order lasts for one year from the date the judge signed it or until a judge orders it cancelled. It can be renewed for one year at a time, if the judge believes you are likely still in danger. To renew the order, you must file the court paperwork before the order ends.

WHAT CAN I DO IF THE RESPONDENT VIOLATES (DOES NOT FOLLOW) THE RESTRAINING ORDER?

You can call the police. The officer must arrest the respondent if there is a good reason to believe a violation has happened. The respondent can be charged with contempt of court. If found guilty of contempt, the respondent can be fined, placed on probation, or put in jail. It is best that you carry a copy of the restraining order with you at all times and that you not contact the other party. A restraining order does not guarantee your safety. You can take other steps to stay safe. A domestic violence or sexual assault program can help.

For information regarding domestic violence resources, please visit our website.
http://courts.oregon.gov/OJD/OSCA/cpsd/courtimprovement/familylaw/domesticviolence.page?

WHAT IF I WANT TO DROP THE RESTRAINING ORDER?

You must file papers at the courthouse to ask the judge to drop the order. The order remains in effect until the judge dismisses it. It may take a few days for law enforcement to get notice of the dismissal.

CAN THE RESTRAINING ORDER BE CHANGED WHILE IT IS IN EFFECT?

At any time after a restraining order has been entered, you may request that the court modify, remove, or make less restrictive those terms involving custody and parenting time, respondent's removal from the house, respondent's restrictions from other premises, or contact by the respondent in-person, by telephone or otherwise. The party (you or the respondent) who wants to make a change must file paperwork at the courthouse. If the Petitioner requests a change that removes or makes less restrictive the terms involving respondent's removal from the home, respondent's restrictions from other premises, or contact by the respondent in-person, by telephone or otherwise, the judge may sign an order changing the terms without requiring a hearing. Otherwise, the judge will sign an order for the other party to appear. Some courts set a hearing when you file the papers. Some courts do not set a hearing until the other person has been served and given 30 days to respond. Check with the court clerk of the county that issued the order to be sure you follow the right process.

DO I NEED A LAWYER?

If you have questions about how the law works or what it means, you may need to talk to a lawyer. You are not required to have a lawyer to obtain the restraining order, but you can have a lawyer represent or help you if you wish. If you need help finding a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at 503.684.3763 or 800.452.7636. If you believe you cannot afford a lawyer, ask court staff if your area has a legal services (legal aid) program that might help you.

WHAT IF I NEED AN ACCOMMODATION OR AN INTERPRETER?

If you have a disability and need an accommodation, or you are unable to speak English and need a foreign language interpreter, you must tell the court as soon as possible, but at least four days before your hearing. Tell the clerk that you have a disability and what type of assistance you need or prefer, or which language you speak.