

# STALKING

1. Oregon Stalking Law and Related Federal Provisions Overview
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Stalking Law Benchbook

Final April 2021 by the Domestic Violence Subcommittee  
of the State Family Law Advisory Committee

## **USING THIS BENCHBOOK**

Terminology: Throughout this benchbook, we use the term “victim” rather than “survivor” to describe the person being stalked. Both terms are applicable, but national sexual and domestic violence organizations differentiate between “victims” as those who have recently been affected by violence and “survivors” as those who have gone through the recovery process, or when discussing the short- or long-term effects of sexual/domestic violence or stalking. We have also chosen to use the term “stalker” in the introduction to refer to those who engage in stalking behaviors discussed above. “Defendant” or “Respondent” are used throughout the benchbook where the statute or case law use those terms.

## INTRODUCTION

While stalking is a crime under the laws of all 50 states and U.S. territories, the definitions of stalking and related crimes vary from state to state. Stalking is generally defined as repeated and unwanted conduct directed at a specific person that would cause a reasonable person to feel fear or apprehension. Stalking is a serious, often violent crime that affects an estimated 7.5 million women and men each year. Despite its prevalence, stalking behaviors are often nuanced and seen as difficult to prove. Victims can have a difficult time recounting all the behaviors in a context that allows others to understand why it makes them fearful. Because of the ambiguity of stalking behaviors, the crime is not often charged or prosecuted. Judges play a critical role in holding offenders accountable and intervening before stalking escalates to more violent behavior.

Stalking behaviors may initially seem harmless, but often escalate and result in long-lasting emotional and psychological harm. Stalking can involve severe, even lethal violence. Seventy-six percent of intimate partner femicide victims have been stalked by their intimate partner. Weapons are used to harm or threaten victims in 1 out of every 5 cases.

A stalker can be someone whom the victim knows well or not at all. Most stalkers have dated or been involved with the people they stalk. Stalking is a way to maintain or regain control over a victim. Intimate partner stalkers frequently approach their targets, and their behaviors escalate quickly.

For example, if calling and sending messages isn't getting the results they desire, the stalker can then escalate to following their victim using GPS or a third party. Almost a third of stalkers have stalked before, 78% of stalkers use more than one means of approach, and two-thirds of stalkers pursue their victims at least once per week, many daily, using more than one method. Once legal action has been taken, this fear of loss of control is often at its most dangerous point. An important point to keep in mind is that stalking is a serious and often lethal crime characterized by repeated, unwanted contacts with another person that can quickly escalate.<sup>1</sup>

### **Stalking and Intimate Partner Femicide:**

- 76% of intimate partner femicide victims have been stalked by their intimate partner.
- 67% had been physically abused by their intimate partner.
- 89% of femicide victims who had been physically assaulted had also been stalked in the 12 months before their murder.
- 79% of abused femicide victims reported being stalked during the same period that they were abused.
- 54% of femicide victims reported stalking to police before they were killed by their stalkers.

### **Additional Training Available:**

Stalkers often use technology to assist them in stalking their victims. This self-paced, interactive online training will increase the ability of judges and other criminal justice professionals to recognize how stalkers use technology. (<https://victimsofcrime.org/our-programs/past-programs/stalking-resource-center/stalking-information/the-use-of-technology-to-stalk>)

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<sup>1</sup> The statistics on this page are taken from The Stalking Resource Center's Stalking Fact Sheet: [https://members.victimsofcrime.org/docs/src/stalking-fact-sheet\\_english.pdf](https://members.victimsofcrime.org/docs/src/stalking-fact-sheet_english.pdf)

Advocates who regularly work with victims of domestic/sexual violence and stalking remind us of the following important considerations in stalking cases:

1. Threats made by stalkers are often implicit and may appear benign to outsiders. Allowing a victim to provide a narrative may provide information that is more complete, provide important context and better frames their experience.
2. Fear manifests in a variety of ways. When stalked, some people experience anxiety, insomnia, and/or severe depression. Other people may shut down or dissociate because of the trauma. When giving testimony, some people may discuss incidents with a flat affect, while others may sound agitated or excited. Presentation is not necessarily a reliable indicator of whether or not someone is afraid.
3. Even stalkers with no criminal history can still pose a threat to a stalking victim.
4. Stalkers often use technology to track or spy on victims.
5. Stalkers may use children they share with the victim as justification for their stalking behavior (e.g., frequently “checking in” on the well-being of the children during the victim’s parenting time.)
6. Stalkers often have additional opportunities to threaten, track, and/or spy on their intimate partners due to parenting time exchanges, previously shared technology, known passwords or security questions, etc.

Most commonly reported stalking-related behaviors:

- Follow victims, drive by, hang out or show up wherever they are including home, school or work
- Have a third-party follow or contact the victim
- Send unwanted gifts, letters, cards, messages, or e-mails
- Call and send messages from multiple phone numbers
- Make unwanted phone calls, including hang-ups, and leave unwanted voicemails and text messages
- Damage homes, cars, or other property
- Monitor phone calls or computer use
- Use technology, like hidden cameras or global positioning systems (GPS), to track where victims go
- Threaten to hurt victims, their family, friends, or pets.
- Find out about their victims by using public records or online search services, hiring investigators, going through garbage, or contacting friends, family, neighbors, or co-workers
- Post information or spread rumors about their victims on the Internet, in a public place, at their workplace, or by word of mouth
- Other actions that control, track, or frighten their victims

NOTE: Behaviors that are oppressive, socially unacceptable, possibly illegal, or cause apprehension may not meet the statutory and legal qualifications that are required for the issuance of a stalking protective order.

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## OREGON STALKING LAW

<b>ORS 163.730</b>	Definitions in Stalking Laws
<b>ORS 163.732</b>	Crime of Stalking
<b>ORS 163.750</b>	Crime of Violating Stalking Protective Order
<b>ORS 163.735-744</b>	Police Citation and Court Issuance of Stalking Protective Order
<b>ORS 30.866</b>	Civil Action for Stalking Protective Order
<b>ORS 133.310(3)</b>	Mandatory Arrest for Violation of Stalking Protective Order

### OVERVIEW

The basic statutory framework for stalking protective orders is set forth in two separate areas of Oregon statutes: a civil-petition process for a petitioner to obtain a stalking protective order, and a process for courts to issue a stalking protective order after a law enforcement officer has issued a citation. This benchbook will cover both processes for issuing a stalking protective order.

ORS 30.866 provides authority for a petitioner to obtain a stalking protective order via an *ex parte*, civil-petition process.

ORS 163.730-755 provides authority for issuing a stalking protective order after a law enforcement officer has issued a citation as a result of a citizen complaint. The citation does not charge a defendant with the crime of stalking under ORS 163.732 or prohibit contact, but rather initiates a process that can lead to a court-issued stalking protective order. [Note that ORS 30.866(2) and (11) cross reference ORS 163.730 and ORS 163.732, statutes that are part of the officer citation process.]

Under ORS 163.732, stalking is also a crime. The elements for the crime of stalking differ slightly from those required for issuance of a stalking protective order. The mandatory arrest statute, ORS 133.310(3), applies to violations of stalking protective orders. Violation of a court's stalking protective order is a class A misdemeanor or, if the respondent has a prior conviction for stalking or violating a court's stalking protective order, a class C felony. ORS 163.750(2).

A summary of Oregon appellate stalking cases follows this outline, and review of the summaries is essential since these cases are very fact specific. **The cases make clear that the trial court record must contain facts that support each element of a claim.**

**Stalking (Civil Petition) ORS 30.866**

<p>ORS 30.866 – Issuance or Violation of a Stalking Protective Order          ORS 163.730 – Definitions          ORS 163.738 – Effect of Citation          ORS 163.741 – Service of Stalking Protective Order          (entry of order into law enforcement data systems)</p>	
<p><b>I. THE PETITION</b></p>	
<p><b>Venue (ORS 14.080(1))</b>          A Stalking Protective Order (SPO) petition must be filed in the county where the respondent lives or where the unwanted contacts took place. No minimum period of residence is required.</p>	
<p><b>Relationship Between the Parties (ORS 30.866)</b>          Any person may petition for a court’s stalking protective order or damages, or both.</p>	
<p><b>Minor Petitioners</b>          A person under the age of 18 may petition for a SPO.          The court will need to appoint a <i>guardian ad litem</i> if the petitioner is an unemancipated minor child. The person who will be the <i>guardian ad litem</i> must first file an application for a <i>guardian ad litem</i>.</p>	
<p><b>Timing of the Conduct (ORS 30.866(6))</b>          Stalking contacts must have occurred within the last 2 years.</p>	
<p><b>Showing Required (ORS 30.866(1))</b>          A petitioner may bring a civil action for a stalking protective order or for damages, or both, if:</p> <p>a) The respondent intentionally, knowingly, or recklessly engaged in repeated and unwanted contact with the petitioner or a member of the petitioner’s immediate family or household thereby alarming or coercing the petitioner.</p>	

<p>b) It is objectively reasonable for a person in the petitioner’s situation to have been alarmed or coerced by the contact, <i>and</i></p> <p>c) The repeated and unwanted contact causes the petitioner reasonable apprehension regarding the personal safety of the petitioner or a member of the petitioner’s immediate family or household.</p>	
<p><b>II. DEFINITIONS (ORS 163.730)</b></p>	
<p>“Alarm” means to cause apprehension or fear resulting from the perception of danger.</p>	<p><b>Case Law – “Alarm”</b></p> <p>A contact is alarming if it causes apprehension or fear resulting from the perception of danger, which means a threat of physical injury, and not merely a threat of annoyance or harassment. <i>C.O.R. v. Wafula</i>, 305 Or App 344 (2020); <i>C.J.R. v. Fleming</i>, 265 Or App 342 (2014); <i>S.A.B. v. Roach</i>, 249 Or App 579 (2012).</p> <p>Facts are insufficient with contact that is unwanted and makes Petitioner uncomfortable but is not the sort of behavior that would objectively cause apprehension or fear resulting from the perception of danger, and Petitioner did not indicate concern about personal safety. <i>K.A.L. v. Hinkle</i>, 288 Or App 341 (2017).</p> <p>There must be subjective alarm. See <i>Cress v. Cress</i>, 175 Or App 599 (2001) (contacts “unnerved” and made Petitioner “extremely upset,” which did not satisfy burden of proving she was afraid for her physical safety); <i>V.L.M. v. Miley</i>, 264 Or App 719 (2014) (court reversed because Petitioner did not testify she was scared and there was no history of violence or abuse in the relationship with Respondent); <i>Pike v. Knight</i>, 234 Or App 128 (2010) (court found significant in reversing issuance of SPO the fact that Petitioner was annoyed and irritated by Respondent’s behavior, but did not testify she was alarmed or coerced).</p> <p>Instances may arise where the other person initially believes a contact to be innocuous and later understands the contact in a new light and only then becomes alarmed. See <i>Schiffner v. Banks</i>, 177 Or App 86 (2001).</p> <p>Alarm as used in the stalking statute ultimately contemplates a reasonable apprehension of physical harm. See <i>Schiffner v. Banks</i>, 177 Or App 86 (2001).</p>



<p><b>“Coerce”</b> means to restrain, compel or dominate by force or threat.</p>	
<p><b>“Immediate family”</b> means father, mother, child, sibling, spouse, grandparent, stepparent, and stepchild.</p> <p><i>Note:</i> The definition of immediate family members does not require that they “cohabit.”</p>	
<p><b>“Household member”</b> means any person residing in the same residence as the victim.</p> <p><i>Note:</i> This is <i>not</i> the same as the “family or household member” definition for purposes of “domestic violence” or eligibility for FAPA protection order.</p>	
<p><b>“Repeated”</b> means two or more times.</p>	<p><b>Case Law – “Repeated”</b></p> <p>A single contact cannot become multiple contacts, even if it could count as a contact under more than one section of the statutory definition of “contact.” <a href="#">Goodness v. Beckham</a>, 224 Or App 565 (2008).</p> <p>Each contact must independently cause subjective and objective harm. <a href="#">K.M.V. v. Williams</a>, 271 Or App 466 (2015).</p>
<p><b>“Unwanted”</b> means there must be reasonable notice to the respondent that the contact is not wanted.</p> <p>To distinguish unwanted contact from innocent misunderstandings, the court should consider the context of the parties’ entire history.</p> <p>Even when there is clearly some wanted or permitted contact, there can be a finding that contact is unwanted if the contact exceeded the scope of permission and the respondent knew or should have known it was unwanted.</p>	<p><b>Case Law- “Unwanted”</b></p> <p>(For civil order), the person doing the contacting was subjectively aware of a substantial and unjustifiable risk that the contact was unwanted by the recipient, and then consciously and unreasonably disregarded that risk. <a href="#">Giri v. C.S.D.</a>, 232 Or App 62 (2009).</p> <p>See <a href="#">C.O.R. v. Wafula</a>, 305 Or App 344, 471 P3d 786 (2020); <a href="#">Pinkham v. Brubaker</a>, 178 Or App 360 (2001) (contacts that “might appear innocuous when viewed in isolation often take on a different character” when viewed in context); <a href="#">Boyd v. Essin</a>, 170 Or App 509 (2000) (where Petitioner had FAPA against Respondent, driving by the family home and watching it with binoculars were reasonably alarming contacts in this context); see also, <a href="#">Weatherly v. Wilkie</a>, 169 Or App 257 (2000); <a href="#">Schiffner v. Banks</a>, 177 Or App 86 (2001).</p> <p>Can look at conduct outside of the two years for context. See <a href="#">Smith v. Di Marco</a>, 207 Or App 558 (2006) (threat to break Petitioner’s legs well over two years prior can be considered as context for</p>

	<p>other contacts); <a href="#">Jones v. Lindsey</a>, 193 Or App 674 (2004) (physical altercation which occurred more than two years before the petition cannot be the sole basis of the alarm required to issue the SPO; at most, incident can be considered to determine if subsequent conduct might take on a different character when viewed against the backdrop of the prior behavior).</p> <p>Expressive contacts may be used as relevant context. <a href="#">Van Buskirk v. Ryan</a>, 233 Or App 170 (2010) (communication-based contacts that do not in and of themselves establish the basis for the SPO can provide context for other noncommunicative contacts); <a href="#">Wood v. Trow</a>, 228 Or App 600 (2009) (same). <a href="#">Amarillas v. White</a>, 253 Or App 754 (2012) (same); <a href="#">Farris v. Johnson</a>, 222 Or App 377 (2008) (same); <a href="#">Castro v. Heinzman</a>, 194 Or App 7 (2004) (same).</p>
<p><b>“Contact”</b> includes but is not limited to:</p> <ol style="list-style-type: none"> <li>a) coming into the visual or physical presence of the other person;</li> <li>b) following the other person;</li> <li>c) sending or making written or electronic communications in any form to the other person*;</li> <li>d) speaking with the other person by any means*;</li> <li>e) communicating with the other person through a third person*;</li> <li>f) committing a crime against the other person;</li> <li>g) communicating with a third person who has some relationship to the other person with the intent of affecting the third person’s relationship with the other person*;</li> <li>h) communicating with business entities with the intent of affecting some right or interest of the other person*;</li> <li>i) damaging the other person’s home, property, place of work or school;</li> <li>j) delivering directly or through a third person any object to the home, property, place of work or school of the other person; or</li> <li>k) service of process or other legal documents unless the other person is served as provided in ORCP 7 or 9.</li> </ol>	<p><b>Case Law – “Contact”</b></p> <p>Not an exclusive list of types of contact that can qualify for purposes of repeated and unwanted contacts. <a href="#">A.A.C. v. Miller-Pomlee</a>, 296 Or App 816 (2019).</p> <p>Following Petitioner by car and watching with binoculars at a distance qualify as unwanted contacts. <a href="#">Smith v. Di Marco</a>, 207 Or App 558 (2006).</p> <p>Shredding clothing of Petitioner is an unwanted contact. <a href="#">Pinkham v. Brubaker</a>, 178 Or App 360 (2001).</p> <p><b>Case Law – “Expressive Contact” (denoted with a * in the left column)</b></p> <p>If stalking contacts are purely communicative, contact must contain an unambiguous, unequivocal, and specific threat, and Petitioner must believe the respondent intends to carry out the threat. <a href="#">State v. Rangel</a>, 328 Or 294 (1999).</p> <p>A speech-based contact counts only if it constitutes a threat and a proscribable threat is a communication that instills in the addressee a fear of imminent and serious personal violence from the speaker, is unequivocal, and is objectively likely to be followed by unlawful acts. <a href="#">State v. Rangel</a>, 328 Or 294 (1999).</p> <p>Expressive contacts must cause reasonable apprehension or alarm in the victim and must involve unequivocal threats that instill a fear of imminent and serious personal violence and are objectively likely to</p>

	<p>be followed by unlawful acts. <a href="#">State v. Ryan</a>, 237 Or App 317 (2010).</p> <p>Even if communications do not meet the standard set forth in <i>State v. Rangel</i>, they can be used to provide context for other contacts. Expressive contacts may be used as relevant context. <a href="#">Van Buskirk v. Ryan</a>, 233 Or App 170 (2010); <a href="#">Wood v. Trow</a>, 228 Or App 600 (2009); <a href="#">Amarillas v. White</a>, 253 Or App 754 (2012); <a href="#">Farris v. Johnson</a>, 222 Or App 377 (2008); <a href="#">Castro v. Heinzman</a>, 194 Or App 7 (2004).</p> <p>A “threat” for purposes of determining whether speech constitutes actionable contact is a communication that instills in the addressee a fear of imminent and serious personal violence from the speaker, is unequivocal, and is objectively likely to be followed by unlawful acts. <a href="#">T.B. v. Holm</a>, 248 Or App 414 (2012)</p> <p>Taunting and inciting to fight through purely expressive conduct does not constitute a “threat.” Communication that is hyperbole, rhetorical excess, and impotent expressions of anger or frustration can sometimes be privileged even if it alarms the addressee. <a href="#">State v. Jackson</a>, 259 Or App 248 (2013).</p> <p>Phone calls during which defendant did not speak are not expressive acts and are sufficient to be a contact under ORS 163.730. <a href="#">State v. Shields</a>, 184 Or App 505 (2002).</p>
<p><b>“Reasonable”</b></p>	<p><b>Case Law – “Reasonable”</b></p> <p>The reasonable person standard should take into account the reality of the petitioner’s life, <i>see, e.g.</i>, <a href="#">Bryant v. Walker</a>, 190 Or App 253 (2003), <i>rev granted</i> May 2004 (based on the realities of men’s and women’s lives, reasonable women are likely to experience fear in situations where reasonable men would not); <a href="#">T.B. v. Holm</a>, 248 Or App 414 (2012) (trial court found it was reasonable for a person who wore a leg brace and walked with the assistance of a cane to be intimidated by a person riding a lawnmower beside them); <a href="#">D.W.C. v. Carter/Bosket</a>, 261 Or App 133 (2014) (consolidated with <i>Christensen v. Bosket</i>) (approaching with clenched fists and angrily yelling might not have met the objectively reasonable alarm requirement, but did when considered in context with Respondent’s use of homophobic slurs against the gay petitioner).</p>

	<p>The fear must be objectively reasonable: Utilize the Reasonable Person standard.</p> <ul style="list-style-type: none"> <li>- Conduct may appear benign when viewed in isolation but can take on a different character when viewed either in combination with or against the backdrop of one party’s aggressive behavior toward the other. <a href="#">E.T. v. Belete</a>, 266 Or App 650 (2014).</li> <li>- Gender may be considered. <a href="#">Bryant v. Walker</a>, 190 Or App 253 (2003)</li> <li>- Disability may be considered. <a href="#">T.B. v. Holm</a>, 248 Or App 414 (2012)</li> <li>- Although each contact must give rise to alarm, the contacts should be viewed in context in order to determine whether they give rise to objectively reasonable alarm. <a href="#">C.J.R. v. Fleming</a>, 265 Or App 342 (2014)</li> </ul> <p><i>See, e.g.,</i> <a href="#">E.T. v. Belete</a>, 266 Or App 650 (2014) (Petitioner was objectively alarmed where Respondent attempted to assault Petitioner and threw trash can while yelling and told Petitioner “you will depart this church either dead or alive”); <a href="#">C.P. v. Mittelbach</a>, 304 Or App 569, 579 (2020) (Petitioner’s apprehension was objectively reasonable where Respondent, a recently fired and emotionally distraught former employee who was increasingly fixated on and angry at Petitioner, repeatedly engaged in unwanted contacts at place of worship despite police warnings and presence where Petitioner “was reliably informed[] stalker behavior was particularly brazen”).</p> <p><i>But see,</i> <a href="#">K.A.L. v. Hinkle</a>, 288 Or App 341 (2017) (merely waiting outside home or leaving bottle of wine on doorstep are not objectively alarming); <a href="#">J.D.K. v. W.T.F.</a>, 276 Or App 533 (2016) (unwanted romantic overtures in the absence of inherently threatening contacts are not objectively alarming without something more); <a href="#">J.L.B. v. K.P.B.</a>, 250 Or App 122 (2012) (not reasonable to be alarmed where Respondent repeatedly drove past Petitioner’s house and took photographs because parties had to communicate about parenting time and financial matters, and there was no violence or abuse in the record).</p>
<p><b>“Personal Safety”</b></p>	<p><b>Case Law – “Personal Safety”</b></p> <p>“Personal safety” is the state of a particular individual being free from danger or harm. <a href="#">Delgado v. Souders</a>, 334 Or 122 (2002).</p>

	<p><a href="#"><i>Delgado v. Souders</i></a>, 334 Or 122, 151-52 (2002) (the term personal safety does not encompass apprehension of harm other than physical harm); <a href="#"><i>Osborne v. Fadden</i></a>, 225 Or App 431 (2009) (applying less stringent standard for non-expressive contacts, Court of Appeals found that sending 2000 emails, harassing phone calls to family and friends, opening credit accounts, signing up for subscriptions and mail order services would not cause Petitioners to have reasonable apprehension about their personal safety).</p> <p>Reasonable apprehension regarding personal safety must be pleaded and proved. See <a href="#"><i>Cress v. Cress</i></a>, 175 Or App 599 (2001) and <a href="#"><i>Lowrance v. Trow</i></a>, 225 Or App 250 (2009) (must actually have apprehension regarding personal safety).</p> <p>But see, e.g., <a href="#"><i>Osborne v. Fadden</i></a>, 225 Or App 431 (2009); <a href="#"><i>K.E.A. v. Halvorson</i></a>, 267 Or App 374 (2014) (Petitioner’s apprehension regarding personal safety was not reasonable where Respondent drove and weaved through cul-de-sac, had car in neighbor’s driveway, and did not use threatening language); <a href="#"><i>W.M. v. Muck</i></a>, 267 Or App 368 (2014) (Petitioner’s reasonable apprehension for father’s safety not reasonable where Respondent said things like “the war was on” and “what goes around comes around”); <a href="#"><i>Soderholm v. Krueger</i></a>, 204 Or App 409 (2006) (being tearful or upset is insufficient proof of apprehension about personal safety).</p>
<p><b>III. HEARING PROCESS (ORS 30.866)</b></p>	
<p><b>Initial Uncontested <i>Ex Parte</i> Hearing</b></p> <p>Unlike the FAPA statute, SPO statute ORS 30.866 does not specifically authorize <i>ex parte</i> appearances. The statute does state, however, that the court must enter a temporary order upon the required showing “at the time the petition is filed” and that service on the respondent must then occur, so the <i>ex parte</i> nature of the request is strongly supported. In practice, most courts consider SPO petitions at <i>ex parte</i> hearings on the same docket as FAPA petitions. Most courts require in-person appearances at <i>ex parte</i> hearings and allow telephone hearings when appropriate.</p>	

<p>The standard of proof is probable cause based on the petitioner’s allegations.</p> <p>The court <i>must</i> enter a temporary SPO if the following showing is met:</p> <ul style="list-style-type: none"> <li>a) The respondent intentionally, knowingly, or recklessly engaged in repeated and unwanted contact with the petitioner or a member of the petitioner’s immediate family or household thereby alarming or coercing the petitioner;</li> <li>b) It is objectively reasonable for a person in the petitioner’s situation to have been alarmed or coerced by the contact, and</li> <li>c) The repeated and unwanted contact causes the petitioner reasonable apprehension regarding the personal safety of the petitioner or a member of the petitioner’s immediate family or household; <i>and</i></li> <li>d) There are at least two contacts giving rise to the claim that occurred within two years of the filing of the petition.</li> </ul>	
<p><b>Relief Granted at Initial <i>Ex Parte</i> Hearing</b></p> <p>The relief may include, but is not limited to, prohibiting all contact as defined by ORS 163.730. <i>(See examples of prohibited contact in Section II: Definitions above)</i></p> <p>The court <i>must</i> issue an order to show cause why the temporary order should not be continued for an indefinite time.</p> <p><i>Note:</i> There is no statutory authority which requires a show cause hearing to be held within a certain amount of time.</p>	<p>ORS 30.866(2). <i>But see, K.H. v. Mitchell</i>, 174 Or App 262 (2001) (where Respondent lived next to Petitioner, an SPO prohibiting all contact was overly broad and Court of Appeals modified order to prohibit intentional contact); <i>O’Neil v. Goldsmith</i>, 177 Or App 164 (2001), <i>rev den</i> 333 Or 595 (2002) (where parties live in a very small town, it was overly burdensome to prohibit from “intentionally, knowingly, or recklessly” coming into Petitioner’s physical or visual presence, so Court of Appeals modified to prohibit only “intentionally” doing so).</p>

<p><b>IV. SERVICE (ORS 163.741)</b></p>	
<p>Service on the respondent is by personal delivery of a copy of the order unless the order notes that the respondent appeared at the initial hearing in person before the court.</p> <p>Entry of a final SPO is improper without service of the petition and temporary SPO.</p> <p>When a stalking protective order is terminated by order of the court, the clerk of the court shall immediately deliver a copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original order from the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.</p>	<p><i>Note:</i> ORS 30.866 does not include the “unless Respondent appeared at the initial hearing” exception to personal service. However, if Petitioner and Respondent are both before the court <i>ex parte</i> in an SPO application (under ORS 30.866), the exception to service in ORS 163.741 would reasonably be applicable.</p>
<p><b>V. SHOW CAUSE HEARING (ORS 30.866)</b></p>	
<p><b>Standard of Proof</b></p> <p>The standard of proof is preponderance of the evidence.</p>	<p>The petition is not evidence without testimony. <a href="#">Jones v. Lindsey</a>, 193 Or App 674 (2004) and <a href="#">Falkenstein v. Falkenstein</a>, 236 Or App 445 (2010); <a href="#">Lomax v. Carr</a>, 194 Or App 518 (2004 (averments of statutory citation do not allege all the elements required for a permanent SPO and they do not conclusively prove those elements, thus requiring an evidentiary hearing).</p> <p>If the petitioner testifies that everything in the petition is true, however, it is sufficient to bring all of the allegations of the petition into evidence. <a href="#">Lowrance v. Trow</a>, 225 Or App 250 (2009); <i>but see</i> <a href="#">Faulkenstein v. Faulkenstein</a>, 236 Or App 445 (2010) (the evidentiary record is limited to the evidence received at the SPO hearing and does not include the factual allegations in the petition unless those allegations are admitted by the respondent).</p> <p>While the respondent has the right to present witnesses and cross-examine adverse witnesses, there is no authority for the proposition that the court must advise a respondent of these rights. <i>See</i> <a href="#">Miller v. Leighty</a>, 158 Or App 218 (1999); <i>see also</i> <a href="#">J.D. v. S.K.</a>, 282 Or App</p>

	<p>243 (2016) (Respondent’s failure to request cross-examination does not constitute a denial of the right to cross-examine).</p>
<p><b>Ordering a Permanent Stalking Protective Order</b></p> <p>The court may enter a permanent SPO if the following showing is met:</p> <ul style="list-style-type: none"> <li>a) The respondent intentionally, knowingly, or recklessly engaged in repeated and unwanted contact with the petitioner or a member of the petitioner’s immediate family or household thereby alarming or coercing the petitioner;</li> <li>b) It is objectively reasonable for a person in the petitioner’s situation to have been alarmed or coerced by the contact, and</li> <li>c) The repeated and unwanted contact causes the petitioner reasonable apprehension regarding the personal safety of the petitioner or a member of the petitioner’s immediate family or household; <i>and</i></li> <li>d) There are at least two contacts giving rise to the claim that occurred within two years of the filing of the petition.</li> </ul>	<p>Except for purposes of impeachment, a statement made by the respondent at a hearing under this section may not be used as evidence in a prosecution for stalking as defined in ORS 163.732, or for violation of a court’s stalking protective order. ORS 30.866(12)</p> <p>The petitioner may appear by phone as there is no constitutional right to confront the petitioner. Article 1, Section 11, of the Oregon Constitution states that the right to confront witnesses face to face applies in a criminal prosecution. At a contested hearing on a stalking protective order under ORS 30.866, the protections for “criminal prosecutions” set forth in Article 1, Section 11, do not apply; accordingly, respondent is not entitled to the constitutional safeguards set out in that provision (such as a right to a jury trial) <i>Delgado v. Souders</i>, 334 Or 122. Additionally, at a contested hearing, the court may take any action provided in ORS 163.738. ORS 30.866(3)(a). ORS 163.738(2)(a) permits the petitioner to testify by phone.</p>
<p><b>Failure of Respondent to Appear</b></p> <p>If the respondent fails to appear for the show cause hearing after being served, the court may issue a warrant for arrest.</p>	
<p><b>VI. RELIEF GRANTED IN PERMANENT SPO</b></p>	
<p>The relief may include, but is not limited to:</p> <ul style="list-style-type: none"> <li>a) Prohibiting all contact as defined by ORS 163.730;</li> <li>b) Ordering the respondent to undergo mental health evaluation and treatment if indicated by the evaluation. If the respondent does not have the resources to do either, the Court may refer the</li> </ul>	<p>ORS 163.738(4). Respondents are not entitled to a jury trial for SPO, <i>see Delgado v. Souders</i>, 334 Or 122 (2002), however they are entitled to a jury trial on any claims for damages. <i>M.K.F. v. Miramontes</i>, 352 Or 401 (2012).</p> <p>Appeals relating solely to the award of attorney costs and fees must be submitted after the supplemental</p>



<p>respondent to the mental health agency designated by the community mental health director for evaluation or treatment, or both;</p> <p>c) If the Court, the mental health evaluator, or any other persons have probable cause to believe the respondent is dangerous to self or others, or is unable to provide for basic personal needs, the court is required to initiate commitment procedures per ORS 426.070;</p> <p>d) Plaintiff may recover both special and general damages, including damages for emotional distress; punitive damages; and reasonable attorneys’ fees and costs; and</p> <p>e) Remedies provided by the SPO statute are in addition to any other remedy, civil or criminal, provided by law for the conduct giving rise to the claim;</p>	<p>judgment containing the amount of fees and costs is issued. See <a href="#">Matthews v. Hutchcraft</a>, 221 Or App 479 (2008).</p> <p>For example, relief under the Family Abuse Prevention Act is available concurrently with relief under the SPO statute. However, the court does not have the authority to impose a SPO <i>sua sponte</i> where a FAPA was originally filed. See <a href="#">N.R.J. v P.K.</a>, 256 Or App 514 (2013).</p> <p>Some remedies may constitute an abuse of discretion. See, e.g., <a href="#">State v. Baker</a>, 235 Or App 321 (2010) (extending defendant’s probation in telephonic harassment case to avoid a related SPO hearing without the agreement of both parties constituted an abuse of discretion).</p> <p>“The legislature’s use of the word ‘shall’ requires a court to enter a stalking protective order if it finds a violation of the statute, but its use of the word ‘may’ makes clear that the scope of the order remains discretionary. See <a href="#">Shook v. Ackert</a>, 152 Or App 224, 230, (1998) (recognizing that discretion). In exercising its discretion, a court should weigh the need to protect the victim against the restrictions placed on the respondent. Cf. <a href="#">Martin v. Board of Parole</a>, 327 Or 147, 160 n. 5 (1998). On <i>de novo</i> review, we modify the reach of the court’s order. See <a href="#">PGE v. Duncan, Weinberg, Miller &amp; Pembroke, P.C.</a>, 162 Or App 265 (1999) (modifying the scope of a permanent injunction that swept too broadly).” See also <a href="#">K.H. v. Mitchell</a>, 174 Or App 262, 269 (2001)</p>
<p><b>VII. FIREARM PROHIBITIONS (18 U.S.C. 921(a)(32); 18 U.S.C. 922(g)(8); ORS 166.255(1)(a) and (c))</b></p>	
<p><b>Federal Firearm Prohibition</b> <a href="#">See Firearms section</a></p>	
<p><b>State Firearm Prohibition</b> <a href="#">See Firearms section</a></p>	
<p><b>VIII. ENFORCEMENT (ORS 133.210(3))</b></p>	
<p><b>Mandatory Arrest</b></p> <p>An officer <i>must</i> arrest and take a respondent into custody when the officer has probable cause to believe:</p> <p>a) A SPO exists, regardless of whether it is a SPO subsequent to an officer’s citation or</p>	

<p>a SPO resulting from an independent civil action;</p> <p>b) A true copy of the order and proof of service was entered into LEDS; and</p> <p>a) c) The respondent violated the terms of the order.</p>	
<p><b>IX. TERMINATION OF STALKING PROTECTIVE ORDERS</b></p> <p>Though there is no statutory authority to terminate a stalking protective order, in <a href="#">Edwards v. J.B.</a>, 203 Or App 271 (2005), the Oregon Court of Appeals held that the court may terminate a stalking protective order under ORS 163.741(3) when, “on the respondent’s motion, a court finds that the criteria for issuing the order under [the statute] are no longer present.” <a href="#">Edwards</a>, 203 Or App at 277. In situations in which no new contacts causing objectively reasonable apprehension have occurred, the court must determine the subjective prong, <i>i.e.</i>, “whether petitioner continues to suffer ‘reasonable apprehension’ due to the past acts of the respondent under ORS 163.738(2)(a)(B)(iii).” <a href="#">Edwards</a>, 203 Or App at 277.</p> <p>Speech constitutionally protected under <a href="#">State v. Rangel</a>, 328 Or 294 (1999) can be considered in examining the objective and subjective “apprehension” elements in a termination hearing. <a href="#">C.L.C. v. Bowman</a>, 249 Or App 590 (2012)</p>	<p>Denials of Respondent’s motion to terminate SPOs were upheld in <a href="#">J.S.E. v. Cubic</a>, 305 Or App 826 (2020) (despite Respondent having no contact with Petitioner, Respondent failed to address whether the petitioner continues to have a reasonable apprehension for her safety based on the conduct that justified the order); <a href="#">Stuart v. Morris</a>, 231 Or App 26 (2009) (although Respondent was incarcerated, Respondent’s friends had threatened Petitioner, and she continued to suffer reasonable apprehension as a result of the conduct that was the basis of the order); <a href="#">Benaman v. Andrews</a>, 213 Or App 467 (2007) (Respondent had violated the order and was found not credible by the trial court).</p>

**Stalking (“Criminal Stalking”) ORS 163.730 – 163.755**

<p>ORS 163.730 – Definitions          ORS 163.732 – Stalking          ORS 163.735 – (Stalking) Citation (form)          ORS 163.738 – Effect of Citation          ORS 163.741 – Service of Stalking Protective Order (entry of order into law enforcement data systems)          ORS 163.744 – Initiation of Action Seeking Citation (complaint form)          ORS 163.750 – Violating a Court’s Stalking Protective Order</p>	
<p><b>I. CRIME OF STALKING (ORS 163.732)</b></p>	
<p>A person commits the crime of stalking if:</p> <ol style="list-style-type: none"> <li>1) The person knowingly alarms or coerces another person or a members of that person’s immediate family or household by engaging in repeated and unwanted contact with the person;</li> <li>2) It is objectively reasonable for a person in the victim’s situation to have been alarmed or coerced by the contact; <i>and</i></li> <li>3) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim’s immediate family or household.</li> </ol> <p>Stalking is a Class A misdemeanor.</p> <p>If the person has a prior conviction for stalking or violating a court’s stalking protective order, stalking is a Class C felony and shall be classified as a person felony and as crime category 8 of the sentencing guidelines of the Oregon Criminal Justice Commission.</p>	
<p><b><u>II. DEFINITIONS (ORS 163.730)</u></b></p>	
<p>“<b>Alarm</b>” means to cause apprehension or fear resulting from the perception of danger.</p>	<p><b>Case Law – “Alarm”</b>          A contact is alarming if it causes apprehension or fear resulting from the perception of danger, which means a</p>

	<p>threat of physical injury, and not merely a threat of annoyance or harassment. <a href="#">C.J.R. v. Fleming</a>, 265 Or App 342 (2014); <a href="#">S.A.B. v. Roach</a>, 249 Or App 579 (2012).</p> <p>Contact that is unwanted and makes Petitioner uncomfortable but is not the sort of behavior that would objectively cause apprehension or fear resulting from the perception of danger, and Petitioner did not indicate concern about personal safety is not sufficient. <a href="#">K.A.L. v. Hinkle</a>, 288 Or App 341 (2017).</p> <p>There must be subjective alarm. See <a href="#">Cress v. Cress</a>, 175 Or App 599 (2001) (contacts “unnerved” and made Petitioner “extremely upset,” which did not satisfy burden of proving she was afraid for her physical safety); <a href="#">V.M. v. Miley</a>, 264 Or App 719 (2014) (court reversed because Petitioner did not testify she was scared and there was no history of violence or abuse in the relationship with Respondent); <a href="#">Pike v Knight</a>, 234 Or App 128 (2010) (court found significant in reversing issuance of SPO the fact that Petitioner was annoyed and irritated by Respondent’s behavior but did not testify she was alarmed or coerced).</p> <p>Instances may arise where the other person initially believe a contact to be innocuous and later understands the contact in a new light and only then becomes alarmed. See <a href="#">Schiffner v. Banks</a>, 177 Or App 86 (2001).</p> <p>Alarm as used in the stalking statute ultimately contemplates a reasonable apprehension of physical harm. See <a href="#">Schiffner v. Banks</a>, 177 Or App 86 (2001).</p>
<p><b>“Coerce”</b> means to restrain, compel or dominate by force or threat.</p>	
<p><b>“Immediate family”</b> means father, mother, child, sibling, spouse, grandparent, stepparent, and stepchild.</p> <p><i>Note:</i> The definition of immediate family members does not require that they “cohabit.”</p>	
<p><b>“Household member”</b> means any person residing in the same residence as the victim.</p> <p><i>Note:</i> This is <i>not</i> the same as the “family or household member” definition for purposes of “domestic violence” or eligibility for FAPA protection order.</p>	

<p><b>“Repeated”</b> means two or more times.</p>	<p><b>Case Law – “Repeated”</b>  A single contact cannot become multiple contacts, even if it could count as a contact under more than one section of the statutory definition of “contact.” <a href="#">Goodness v. Beckham</a>, 224 Or App 565 (2008).</p> <p>Each contact must independently cause subjective and objective harm. <a href="#">K.M.V. v. Williams</a>, 271 Or App 466 (2015).</p>
<p><b>“Unwanted”</b></p>	<p><b>Case Law – “Unwanted”</b>  (For civil order), the person doing the contacting was subjectively aware of a substantial and unjustifiable risk that the contact was unwanted by the recipient, and then consciously and unreasonably disregarded that risk. <a href="#">Giri v. C.S.D.</a>, 232 Or App 62 (2009).</p> <p><a href="#">McGinnis-Aitken v. Bronson</a>, 235 Or App 189 (2010) (sending text message stating “being away from you is the kind of thing I could do” did not put Respondent on notice that future contact was unwanted); <a href="#">Edwards v. Lostrom</a>, 224 Or App 253 (2008) (must prove mental state that Respondent knew his behavior would result in unwanted contact); <a href="#">Courtemanche v. Milligan</a>, 205 Or App 244 (2006) (same); <a href="#">Tumbleson v. Rodriguez</a>, 189 Or App 393 (2003) (contact not unwanted when Respondent arrived uninvited, was told to leave, and then was granted permission to stay for the night).</p> <p>Some contacts are so offensive, the court can infer that the respondent knew or should have known they were unwanted, <i>see e.g.</i>, <a href="#">K.H. v. Mitchell</a>, 174 Or App 262 (2001) (sexual phone calls that, if not consensual, would constitute the crimes of sodomy and rape).</p> <p>To distinguish unwanted contact from innocent misunderstandings, the court should consider the context of the parties’ entire history. <i>See</i> <a href="#">M.D.O. v. Desantis</a>, 302 Or App 751, 759, 461 P3d 1066, 1072 (2020) (“unwanted contacts must be consider in the context of the parties entire history...So viewed, contacts that ‘might appear innocuous in isolation often takes on a different character;’ highly acrimonious relationship rendered objectively reasonable fear of being closely followed for 15 miles in “farm country” with no one else around). <a href="#">Pinkham v. Brubaker</a>, 178 Or App 360 (2001) (contacts that “might appear innocuous when viewed in isolation often take on a different character” when viewed in context); <a href="#">Boyd v. Essin</a>, 170 Or App 509 (2000), (where Petitioner had FAPA against Respondent, driving by the family home and watching it with binoculars were reasonably</p>

	<p>alarming contacts in this context); <i>see also</i>, <a href="#">Weatherly v. Wilkie</a>, 169 Or App 257 (2000); <a href="#">Schiffner v. Banks</a>, 177 Or App 86 (2001).</p> <p>Can look at conduct outside of the two years for context. <i>See</i> <a href="#">Smith v. Di Marco</a>, 207 Or App 558 (2006) (threat to break Petitioner’s legs well over two years prior can be considered as context for other contacts); <a href="#">Jones v. Lindsey</a>, 193 Or App 674 (2004) (physical altercation which occurred more than two years before the petition cannot be the sole basis of the alarm required to issue the SPO; at most, incident can be considered to determine if subsequent conduct might take on a different character when viewed against the backdrop of the prior behavior).</p> <p>Even when there is clearly some wanted or permitted contact, there can be a finding that contact is unwanted if the contact exceeded the scope of permission and the respondent knew or should have known it was unwanted.</p>
<p><b>“Contact”</b> includes but is not limited to:</p> <ul style="list-style-type: none"> <li>a) coming into the visual or physical presence of the other person;</li> <li>b) following the other person;</li> <li>c) sending or making written or electronic communications in any form to the other person*;</li> <li>d) speaking with the other person by any means*;</li> <li>e) communicating with the other person through a third person*;</li> <li>f) committing a crime against the other person;</li> <li>g) communicating with a third person who has some relationship to the other person with the intent of affecting the third person’s relationship with the other person*;</li> <li>h) communicating with business entities with the intent of affecting some right or interest of the other person*;</li> <li>i) damaging the other person’s home, property, place of work or school;</li> <li>j) delivering directly or through a third person any object to the home, property, place of work or school of the other person; or</li> </ul>	<p><b>Case Law – “Contact”</b></p> <p>Not an exclusive list of types of contact that can qualify for purposes of repeated and unwanted contacts. <a href="#">A.A.C. v. Miller-Pomlee</a>, 296 Or App 816 (2019).</p> <p>Following Petitioner by car and watching with binoculars at a distance qualify as unwanted contacts. <a href="#">Smith v. Di Marco</a>, 207 Or App 558 (2006).</p> <p>Shredding clothing of Petitioner is an unwanted contact. <a href="#">Pinkham v. Brubaker</a>, 178 Or App 360 (2001).</p> <p><b>Case Law – “Expressive Contact” (denoted with a * in the left column)</b></p> <p>If the contact at issue involves speech, Article I, Section 8, of the Oregon Constitution requires the heightened inquiry set forth in <a href="#">State v. Rangel</a>, 328 Or 294 (1999).</p> <p><a href="#">SEE Rangel and First Amendment Section X., infra</a></p> <p>Even if communications do not meet the standard set forth in <a href="#">State v. Rangel</a>, they can be used to provide context for other contacts. Expressive contacts may be used as relevant context. <a href="#">Van Buskirk v. Ryan</a>, 233 Or App 170 (2010); <a href="#">Wood v. Trow</a>, 228 Or App 600 (2009); <a href="#">Amarillas v. White</a>, 253 Or App 754 (2012); <a href="#">Farris v. Johnson</a>, 222 Or App 377 (2008); <a href="#">Castro v. Heinzman</a>, 194 Or App 7 (2004).</p>

k) service of process or other legal documents unless the other person is served as provided in ORCP 7 or 9.

Expressive contacts include contact that must be evaluated in light of the constitutional protections for free speech.

- Expressive contacts must cause reasonable apprehension or alarm in the victim, **and** must involve unequivocal threats that instill a fear of imminent and serious personal violence and are objectively likely to be followed by unlawful acts. [State v. Ryan](#), 237 Or App 317 (2010).
- Expressive contacts are those that involve speech, either oral or written. [D.W.C. v. Carter](#), 261 Or App 133 (2014).
- A “threat” for purposes of determining whether speech constitutes actionable contact, is a communication that instills in the addressee a fear of imminent and serious personal violence from the speaker, is unequivocal, and is objectively likely to be followed by unlawful acts. [T.B. v. Holm](#), 248 Or App 414 (2012)
- A speech-based contact only counts if it constitutes a threat and a proscribable threat is a communication that instills in the addressee a fear of imminent and serious personal violence from the speaker, is unequivocal and is objectively likely to be followed by unlawful acts. [State v. Rangel](#), 328 Or 294 (1999).
- Taunting and inciting to fight through purely expressive conduct does not constitute a “threat.” Communication that is hyperbole, rhetorical excess, and impotent expressions of anger or frustration can sometimes be privileged even if it alarms the addressee. [State v. Jackson](#), 259 Or App 248 (2013).
- When based on an expressive contact, it must consist of a threat of imminent and serious physical violence that convincingly expresses to the addressee the intention that it will be carried out and that the actor has the ability to do so; it does not require establishment of “actual or substantive threat.” [State v. Shields](#), 184 Or App 505 (2002) rev denied 335 Or 355.
- Stalking statute required proof that alarm and threatened act be intended by the speaker. [State v. Rangel \(Court of Appeals\)](#), 146 Or App 571 (1997), affirmed [328 Or 294](#) (1999).

Phone calls during which defendant did not speak are not expressive acts and is sufficient to be a

	<p>contact under ORS 163.730. <a href="#">State v. Shields</a>, 184 Or App 505 (2002).</p> <p><i>See, e.g.,</i> <a href="#">C.J.R. v. Fleming</a>, 265 Or App 342 (2014) (court found that throwing a toy at Petitioner and lunging at Petitioner during parenting time exchange were qualifying non-expressive contacts). <i>But see,</i> <a href="#">Wayt v. Goff</a>, 153 Or App 347 (1999) (no finding contact was unwanted because Petitioner initiated the contact to provoke Respondent); <a href="#">Osborn v. Fadden</a>, 225 Or App 431 (2009) (child exchanges are considered voluntary contacts).</p>
<p><b>“Reasonable”</b></p>	<p><b>Case Law – “Reasonable”</b></p> <p>The state must prove that the victim was in fact alarmed or coerced as a result of the repeated and unwanted contacts and that the victim’s apprehension about personal safety was objectively reasonable. <a href="#">State v. Shields</a>, 184 Or App 505 (2002).</p> <p>The reasonable person standard should take into account the reality of the petitioner’s life, see, e.g., <a href="#">Bryant v. Walker</a>, 190 Or App 253 (2003), affirmed 337 Or 34 (2004) (“based on the realities of men’s and women’s lives, reasonable women are likely to experience fear in situations where reasonable men would not.”); <a href="#">T.B. v. Holm</a>, 248 Or App 414 (2012) (trial court found it was reasonable for a person who wore a leg brace and walked with the assistance of a cane to be intimidated by a person riding a lawnmower beside them); <a href="#">D.W.C. v. Carter/Bosket</a>, 261 Or App 133 (2014) (consolidated with <i>Christensen v. Bosket</i>) (approaching with clenched fists and angrily yelling might not have met the objectively reasonable alarm requirement, but did when considered in context with Respondent’s use of homophobic slurs against the gay petitioner).</p> <p><i>See, e.g.,</i> <a href="#">E.T. v. Belete</a>, 266 Or App 650 (2014) (Petitioner was objectively alarmed where Respondent attempted to assault Petitioner and threw trash can yelling, and told Petitioner “you will depart this church either dead or alive”).</p> <p><i>But see,</i> <a href="#">D.O. v. Richey</a>, 301 Or App 18, 34 (2019) (Respondent’s filming Petitioner police chief without obstructing passage and screaming without threat of violence did not support objectively reasonable fear); <i>see also,</i> <a href="#">K.A.L. v. Hinkle</a>, 288 Or App 341 (2017) (merely waiting outside home or leaving bottle of wine on doorstep are not objectively alarming); <a href="#">J.D.K. v. W.T.F.</a>, 276 Or App 533 (2016) (unwanted romantic overtures in the absence of inherently threatening contacts are not objectively alarming without</p>



	<p>something more); <a href="#">J.L.B. v. K.P.B.</a>, 250 Or App 122 (2012) (not reasonable to be alarmed where Respondent repeatedly drove past Petitioner’s house and took photographs because parties had to communicate about parenting time and financial matters and there was no violence or abuse in the record). ORS 30.866(6) and ORS 163.730(7). Each contact must independently cause subjective and objective harm. <a href="#">K.M.V. v. Williams</a>, 271 Or App 466 (2015).</p>
<p><b>“Personal Safety”</b></p>	<p><b>Case Law – “Personal Safety”</b>  <i>“Personal Safety”</i> is the state of a particular individual being free from danger or harm. <a href="#">Delgado v. Souders</a>, 334 Or 122 (2002).</p> <p><a href="#">Delgado v. Souders</a>, 334 Or 122, 151-52 (2002) (the term personal safety does not encompass apprehension of harm other than physical harm); <a href="#">Osborne v. Fadden</a>, 225 Or App 431 (2009) (applying less stringent standard for non-expressive contacts, Court of Appeals found that sending 2000 emails, harassing phone calls to family and friends, opening credit accounts, and signing up for subscriptions and mail order services would not cause Petitioners to have reasonable apprehension about their personal safety).</p> <p>Reasonable apprehension regarding personal safety must be pleaded and proved. See <a href="#">Cress v. Cress</a>, 175 Or App 599 (2001) and <a href="#">Lowrance v. Trow</a>, 225 Or App 250 (2009) (must actually have apprehension regarding personal safety).</p> <p><i>But see, e.g.</i>, <a href="#">Osborne v. Fadden</a>, 225 Or App 431 (2009); <a href="#">K.E.A. v. Halvorson</a>, 267 Or App 374 (2014) (Petitioner’s apprehension regarding personal safety was not reasonable where Respondent drove and weaved through cul-de-sac, had car in neighbor’s driveway, and did not use threatening language); <a href="#">W.M. v. Muck</a>, 267 Or App 368 (2014) (Petitioner’s reasonable apprehension for father’s safety not reasonable where Respondent said things like “the war was on” and “what goes around comes around”); <a href="#">Soderholm v. Krueger</a>, 204 Or App 409 (2006) (being tearful or upset is insufficient proof of apprehension about personal safety).</p>

<p><b>III. INITIATION OF ACTION SEEKING CITATION (ORS 163.744)</b></p>	
<p>A person may initiate an action seeking a citation under ORS 163.735 by presenting a complaint to a law enforcement officer or to any law enforcement agency. The complaint shall be a statement setting forth with particularity the conduct that is the basis for the complaint. The petitioner must affirm the truth of the facts in the complaint.</p>	
<p><b>IV. CITATION (ORS 163.735)</b></p>	
<p>Upon a complaint initiated as provided in ORS 163.744, a law enforcement officer shall issue a citation ordering the person to appear in court within three judicial days and show cause why the court should not enter a court's stalking protective order when the officer has probable cause to believe that:</p> <ul style="list-style-type: none"> <li>a) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a member of that person's immediate family or household thereby alarming or coercing the other person;</li> <li>b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and</li> <li>c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.</li> </ul>	
<p><b>V. CONTENTS OF THE CITATION (ORS 163.738)</b></p>	
<p>A citation shall notify the respondent of a circuit court hearing where the respondent shall appear at the place and time set forth in the citation. The citation shall contain:</p> <ul style="list-style-type: none"> <li>a) The name of the court at which the respondent is to appear;</li> </ul>	

<ul style="list-style-type: none"> <li>b) The name of the respondent;</li> <li>c) A copy of the stalking complaint;</li> <li>d) The date, time and place at which the citation was issued;</li> <li>e) The name of the law enforcement officer who issued the citation;</li> <li>f) The time, date and place at which the respondent is to appear in court;</li> <li>g) Notice to the respondent that failure to appear at the time, date and place set forth in the citation shall result in the respondent's arrest and entry of a court's stalking protective order; and</li> <li>h) Notice to the respondent of potential liability under federal law for the possession or purchase of firearms or firearm ammunition and for other acts prohibited by 18 U.S.C. 2261 to 2262.</li> </ul> <p>The officer shall notify the petitioner in writing of the place and time set for the hearing.</p>	
<b>VI. HEARING (ORS 163.738)</b>	
<p>The hearing shall be held as indicated in the citation.</p> <p>At the hearing, the petitioner may appear in person or by telephonic appearance.</p> <p>The respondent shall be given the opportunity to show cause why a court's stalking protective order should not be entered.</p> <p>The hearing may be continued for up to 30 days.</p>	
<b>VII. ISSUANCE OF STALKING PROTECTIVE ORDER (ORS 163.738; ORS 30.866)</b>	
<p>At the time a stalking petition is filed, the court <i>shall</i> enter:</p> <ul style="list-style-type: none"> <li>a) A temporary stalking protective order pending further proceedings</li> </ul>	

At the first hearing in the civil citation route, the court *may* enter:

- a) A temporary stalking protective order pending further proceedings; or
- b) A court's stalking protective order if the court finds by a preponderance of the evidence that:
  - i. The person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a member of that person's immediate family or household thereby alarming or coercing the other person;
  - ii. It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; *and*
  - iii. The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

In the order, the court shall specify the conduct from which the respondent is to refrain, which may include all contact listed in ORS 163.730 and any attempt to make contact listed in ORS 163.730. The order is of unlimited duration unless limited by law.

If the respondent was provided notice and an opportunity to be heard, the court shall also include in the order, when appropriate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) and (g)(8) to affect the respondent's ability to possess firearms and ammunition or engage in activities involving firearms.

The circuit court may enter an order under this section against a minor respondent without appointment of a guardian ad litem.

<p>If the respondent fails to appear at the time, date and place specified in the citation, the circuit court shall issue a warrant of arrest as provided in ORS 133.110 in order to ensure the appearance of the respondent at court and shall enter a court’s stalking protective order.</p> <p>The circuit court may also order the respondent to undergo mental health evaluation and, if indicated by the evaluation, treatment. If the respondent is without sufficient resources to obtain the evaluation or treatment, or both, the court shall refer the respondent to the mental health agency designated by the community mental health director for evaluation or treatment, or both.</p> <p>If the circuit court, the mental health evaluator or any other persons have probable cause to believe that the respondent is dangerous to self or others or is unable to provide for basic personal needs, the court shall initiate commitment procedures as provided in ORS 426.070 or 426.180.</p> <p>A law enforcement officer shall report the results of any investigation arising from a complaint under ORS 163.744 to the district attorney within three days after presentation of the complaint.</p> <p>Except for purposes of impeachment, a statement made by the respondent at a hearing under this section may not be used as evidence in a prosecution for stalking as defined in ORS 163.732 or for violating a court’s stalking protective order as defined in ORS 163.750.</p>	
<p><b>VIII. SERVICE OF STALKING PROTECTIVE ORDER (ORS 163.741)</b></p>	
<p>Service of a stalking protective order shall be made by personal delivery of a copy of the order to the respondent. The respondent need</p>	

<p>not be served if an order of the court indicates that the respondent appeared in person before the court.</p> <p>When a stalking protective order is terminated by order of the court, the clerk of the court shall immediately deliver a copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original order from the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.</p>	
<p><b>IX. VIOLATION OF STALKING PROTECTIVE ORDER (ORS 163.750)</b></p>	
<p>A person commits the crime of violating a court’s stalking protective order when:</p> <ul style="list-style-type: none"> <li>a) The person has been served with a court’s stalking protective order as provided in ORS 30.866 or 163.738 or if further service was waived under ORS 163.741 because the person appeared before the court;</li> <li>b) The person, subsequent to the service of the order, has engaged intentionally, knowingly or recklessly in conduct prohibited by the order; <i>and</i></li> <li>c) If the conduct is prohibited contact as defined in ORS 163.730 (3)(d), (e), (f), (h) or (i), the subsequent conduct has created reasonable apprehension regarding the personal safety of a person protected by the order.</li> </ul> <p>Violating a court’s stalking protective order is a Class A misdemeanor, or a Class C felony if the person has a prior conviction for stalking or violating a court’s stalking protective order.</p> <p>When violating a court’s stalking protective order is a Class C felony, it shall be classified</p>	

<p>as a person felony and as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.</p>	
<p><b>X. RANGEL AND FIRST AMENDMENT PROTECTIONS IN STALKING</b></p>	
<p><b>Communicative Contacts and the <i>Rangel</i> Test</b></p>	
<p>In both the criminal and civil context, Oregon case law has established that <b>expressive or communicative contacts</b> must meet a more stringent standard than what is set out in the statute, because speech is protected under Article 1, Section 8, of the Oregon Constitution. <a href="#">State v. Rangel</a>, 328 Or 294 (1999). The <i>Rangel</i> test requires proof that threats or contacts that involve expression:</p> <ol style="list-style-type: none"> <li>a) instill a fear of imminent and serious personal violence;</li> <li>b) are unequivocal; <i>and</i></li> <li>c) are objectively likely to be followed by unlawful acts.</li> </ol> <p>An objective standard applies to the court’s determination of whether the respondent intended to carry out a threat. See <a href="#">V.A.N. v. Parsons</a>, 253 Or App 768 (2012).</p>	<p>Numerous appellate cases have applied the <i>Rangel</i> test. See e.g., <a href="#">J.C.R. v. McNulty</a>, 304 Or App 286 (2020); <a href="#">K.A.L. v. Hinkle</a>, 288 Or App 341 (2017); <a href="#">D.M.G. v. Tepper</a>, 285 Or App 646 (2017); <a href="#">D.W.C. v. Carter</a>, 261 Or App 113 (2014); <a href="#">C.J.L. v. Langford</a>, 262 Or App 409 (2014); <a href="#">State v. Sierzega</a>, 236 Or App 630 (2010); <a href="#">Swarringim v. Olson</a>, 234 Or App 309 (2010); and <a href="#">Putzier v. Moos</a>, 193 Or App 80 (2004).</p> <p>Speech-based contact includes written communications, such as letters, text messages and messages through social media. <a href="#">K.A.L. v. Hinkle</a>, 288 Or App 341 (2017); <a href="#">J.D.K. v. W.T.F.</a>, 276 Or App 533 (2016); <a href="#">Johnson v. McNamara</a>, 240 Or App 347 (2011); <a href="#">McGinnis-Aitken v. Bronson</a>, 235 Or App 189 (2010); <a href="#">Michieli v. Morgan</a>, 192 Or App 550 (2004).</p>
<p>Expressive contacts may be considered contextually for purposes of determining whether other non-expressive contacts support issuance of an order. <a href="#">D.W.C. v. Carter/Bosket</a>, 261 Or App 133 (2014); <a href="#">Castro v. Heinzman</a>, 194 Or App 7 (2004). The court may consider “previous contacts as context about the parties’ relationship” in determining whether alarm and apprehension regarding personal safety are objectively reasonable. <a href="#">C.J.R. v. Fleming</a>, 265 Or App 342 (2014).</p>	
<p>Expressive or speech-based contacts must meet the higher standard even when the act of making the expressive contact—phone calls,</p>	

<p>sending text messages, mailing letters or leaving notes for someone—are non-expressive actions. In <a href="#">K.A.L. v. Hinkle</a>, 288 Or App 341 (2017), the Court of Appeals considered the letters and notes that the respondent left on the petitioner’s doorstep to be expressive contacts and held them to the higher <i>Rangel</i> standard. In <a href="#">State v. Shields</a>, 184 Or App 505 (2002), the Court of Appeals held that telephone calls the respondent made without speaking are non-expressive contacts. Thus, it is the fact of communication, <i>not</i> the action taken in order convey the communication, which makes a particular contact expressive.</p>	
<p><b>Violation of Stalking Protective Order by Communicative Contact</b></p>	
<p>Violation of a court’s stalking protective order is a crime. ORS 163.750.</p> <p>Elements:</p> <ol style="list-style-type: none"> <li>1. Intentionally, knowingly, or recklessly engaging in conduct prohibited by the court's stalking protective order after service of the order; and</li> <li>2. If the prohibited conduct is <b>communicating or speaking with a protected person</b>, even through a third party, or with a business entity, the conduct must have created reasonable apprehension regarding a protected person's personal safety. ORS 163.750(1). <a href="#">State v. Meek</a>, 266 Or App 550 (2014).</li> </ol> <p>When relying on expressive contact violations, the state is not required to present evidence of “an unequivocal threat of the sort that makes it objectively reasonable for the victim to believe that he or she is being threatened with imminent and serious physical harm,” as required by <a href="#">State v. Rangel</a>, 328 Or 294 (1999). Rather, the <i>Rangel</i> standard is only applicable at the time</p>	<p>Note that in <a href="#">State v. Meek</a>, 266 Or App 550 (2014), the court held that a letter is a “written communication” rather than an “object” for the purposes of a violation of a SPO and being held to the higher standard of ORS 163.750(1)(c). (see below)</p>



the underlying stalking protective order is obtained. <a href="#">State v. Ryan</a> , 350 Or 670 (2011).	
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<p><b>FIREARM PROHIBITIONS FOR A STALKING PROTECTIVE ORDER</b></p> <p><b>(18 U.S.C. 921(a)(32); 18 U.S.C. 922(g)(8); ORS 166.255(1)(a) and (c))</b></p>	
<p><b>I. FEDERAL LAW: Firearm and Ammunition Prohibition While Subject to a Stalking Protective Order</b></p> <p>A Stalking Protective Order issued under Oregon law <i>may</i> invoke the federal firearm prohibitions.</p>	
<p><b>18 U.S.C. 922(g)(8)</b></p> <p>The federal prohibition on possession of firearms or ammunition applies to a person subject to a court order where the following are true:</p> <ul style="list-style-type: none"> <li>a) Order was issued after a hearing where the respondent had actual notice and opportunity to participate;</li> <li>b) Order restrains the respondent from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; <i>and</i></li> <li>c) Either: <ul style="list-style-type: none"> <li>i. includes a finding that the person represents a credible threat to the physical safety of such intimate partner or child; or</li> <li>ii. by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause physical injury</li> </ul> </li> </ul>	<p><i>Note:</i> A temporary stalking protective order issued <i>ex parte</i> on the filing of a civil petition will not satisfy this requirement. Therefore, such an order will not subject the respondent to federal criminal liability for possession of firearms until and unless it is continued after a noticed hearing.</p> <p>Temporary stalking orders issued under the police-citation process and permanent stalking orders issued after a noticed hearing will satisfy the hearing requirement as long as the relationship requirements are met.</p> <p>In court stipulation to a SPO or request for a set-over is apparently enough to trigger this liability. <a href="#">U.S. v. Banks</a>, 339 F3d 267 (5th Cir. 2003); <a href="#">U.S. v. Lippman</a> 369 F3d 1039 (8th Cir. 2004); <a href="#">U.S. v. Calor</a>, 340 F3d 428 (6th Cir. 2003). However, a stipulation done out of court where no hearing was scheduled or occurred will likely not trigger this liability. <a href="#">U.S. v. Spruill</a>, 292 F3d 207 (5th Cir. 2002).</p> <p><b><u>Credible threat finding necessary</u></b></p> <p>For the federal (and Oregon) firearm prohibition to attach, the court must make additional findings required by firearms statutes that the respondent presents a credible threat to the petitioner.</p> <p>When a SPO respondent is provided with notice and an opportunity to be heard ORS 30.866(10) and 163.738(2)(b) require the court to “include in the order, when appropriate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) and (g)(8) to affect the respondent’s ability to possess firearms and ammunition or engage in activities involving firearms.”</p>

	<p><i>Note:</i> Under Oregon law, a <b>credible threat finding is not required in order for the court to issue a stalking protective order.</b></p> <p>If the order explicitly prohibits the use, attempted use, or threatened use of physical force against the petitioner or child that would reasonably be expected to cause physical injury, but does not include a credible threat finding, the federal firearm prohibition may attach, but the state prohibition will still not attach.</p>
<p><b>18 U.S.C. 921(a)(32)</b></p> <p><b>“Intimate Partner”:</b> means with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.</p>	<p><b><u>Federal “intimate partner” relationship necessary</u></b></p> <p>Stalking Protective Orders issued under Oregon law do not require that there be a defined relationship that exists between the petitioner and the respondent.</p> <p>However, in order for the federal firearm prohibition to attach, the order must specifically state the relationship between the parties as one of the eligible relationships defined as “intimate partner” under 18 U.S.C. 921(a)(32)</p>
<p><b>FEDERAL LAW: Official Use Exception</b></p> <p><b>18 U.S.C. 925(a)(1)</b></p> <p>Although the receipt and possession of firearms and ammunition by persons subject to restraining orders that meet the above requirements, federal law does not prohibit a law enforcement officer subject to a restraining order from receiving or possessing firearms or ammunition for use in performing official duties. Possession of the firearm for official purposes while off duty would be lawful if such possession is required or authorized by law or by official departmental policy. An officer subject to a disabling restraining order would violate the law if the officer received or possessed a firearm or ammunition for other than official use.</p>	<p>For example, respondents in the military service, or employed as police officers, may use their service weapons in the course of their employment despite the existence of a restraining order. The exemption, however, does not extend to their personal use of firearms.</p> <p><i>Note:</i> There is no official use exception under Oregon law for prohibitions under ORS 166.255 (see below).</p>
<p><b>II. STATE LAW: Firearm and Ammunition Prohibition While Subject to a Stalking Protective Order</b></p> <p>A Stalking Protective Order issued under Oregon law <i>may</i> invoke the Oregon firearm prohibitions.</p>	

<p><b>ORS 166.255</b></p> <p>The Oregon prohibition on possession of firearms or ammunition applies to a person subject to a court order where the following are true:</p> <p>a) Order was either</p> <ul style="list-style-type: none"> <li>i. Issued or continued after a hearing for which the person had actual notice and during the course of which the person had an opportunity to be heard; or</li> <li>ii. Was issued, continued or remains in effect, by order or operation of law, after the person received notice of the opportunity to request a hearing in which to be heard on the order, and either requested a hearing but did not attend the hearing or withdrew the request before the hearing occurred, or did not request a hearing during the time period in which the opportunity was available;</li> </ul> <p>b) Restrains the person from stalking, intimidating, molesting or menacing a family or household member of the person, a child of a family or household member of the person or a child of the person; <i>and</i></p> <p>c) Includes a finding that the person represents a credible threat to the physical safety of a family or household member of the person, a child of a family or household member of the person or a child of the person</p>	<p><b><u>Opportunity to be heard</u></b></p> <p><i>Note:</i> Unlike the federal firearms prohibitions, no hearing is required for state firearms prohibitions to apply. The mere opportunity to request a hearing is sufficient. ORS 166.255(1)(a)(A)(ii)</p> <p>Temporary stalking orders issued under the police-citation process and permanent stalking orders issued after a noticed hearing will satisfy the hearing requirement as long as the relationship requirements are met.</p> <p>In court stipulation to a SPO or request for a set-over is apparently enough to trigger this liability. <a href="#">U.S. v. Banks</a>, 339 F3d 267 (5th Cir. 2003); <a href="#">U.S. v. Lippman</a>, 369 F3d 1039 (8th Cir. 2004); <a href="#">U.S. v. Calor</a>, 340 F3d 428 (6th Cir. 2003). However, a stipulation done out of court where no hearing was scheduled or occurred will likely not trigger this liability. <a href="#">U.S. v. Spruill</a>, 292 F3d 207 (5th Cir. 2002).</p> <p><b><u>Credible threat finding necessary:</u></b></p> <p>For the Oregon (and federal) firearm prohibition to attach, the court must make additional findings required by firearms statutes that the respondent presents a credible threat to the petitioner</p> <p><i>Note:</i> Under Oregon law, a credible threat finding <b>is not required in order for the court to issue a stalking protective order.</b></p>
<p><b>ORS 135.230</b></p> <p><b>“Family or household member”:</b> means spouses, former spouses, adult persons related by blood or marriage, persons cohabiting with each other, persons who have cohabited with</p>	<p><b>Oregon “family or household member” relationship necessary:</b></p> <p>In order for the Oregon firearm prohibition to attach, the order must specifically state the relationship between the parties as one of the eligible relationships defined as “family or household member” under ORS</p>

<p>each other or who have been involved in a sexually intimate relationship, or unmarried parents of a minor child.</p>	<p>135.230 or a child of a family or household member of the respondent or a child of the respondent.</p> <p><i>Note:</i> Stalking Protective Orders issued under Oregon law <b>do not require that there be any particular relationship between the petitioner and the respondent.</b></p>
<p><b>STATE LAW: Official Use Exception</b></p> <p>The prohibition that results from the protective order being a qualifying order under ORS 166.255(1)(a) applies to all use or possession of firearms and ammunition. Oregon does not have an official use exception that would allow for government employees to use or possess firearms in the course of their employment (as is the case under the <i>federal</i> official use exception, see above).</p> <p>ORS 166.260 provides an official use exception for persons otherwise prohibited from possessing firearms or ammunition under <i>ORS 166.250</i> only.</p>	
<p><b>III. OBLIGATIONS OF COURT IF THE STALKING PROTECTIVE ORDER INVOKES THE FIREARM/AMMUNITION PROHIBITIONS</b></p> <p><b>2019 “HB 2013”</b></p>	
<p><b>Notice to Respondent ORS 166.256(1)</b></p> <p>The court must indicate in the order that the respondent is prohibited from possessing firearms/ammunition while the order is in effect.</p> <p>If the respondent becomes subject to the Order while present in court, the court must also inform them orally and in writing that they are prohibited from possessing firearms and ammunition.</p>	
<p><b>Order to Dispossess/ Surrender Firearms ORS 166.256(1)(c) and (d)</b></p>	

<p>The court must ensure that the respondent is subject to an additional order requiring the respondent to follow dispossession/ surrender protocols (discussed below).</p>	
<p><b>IV. FIREARM DISPOSSESSION/ SURRENDER PROTOCOLS</b></p> <p>Beginning in 2020, SPO respondents subject to the firearms prohibitions discussed above are required to follow a detailed firearm and ammunition surrender protocol.</p>	
<p><b>Dispossession Process: ORS 166.256(2) and (3)</b></p> <p>Within 24 hours of being prohibited from possessing firearms and ammunition, respondents must:</p> <ul style="list-style-type: none"> <li>a) Surrender all firearms or ammunition in respondent’s possession to <ul style="list-style-type: none"> <li>i. A local law enforcement agency;</li> <li>ii. A gun dealer; or</li> <li>iii. A third party who does not reside with the respondent</li> </ul> </li> <li>b) Obtain a proof of transfer of the firearms/ ammunition.</li> </ul>	
<p><b>Transfer to Law Enforcement ORS 166.256(3)(a)</b></p> <p>Law enforcement may accept a firearm or ammunition transferred under this requirement.</p> <p><b>Proof of Transfer:</b> The law enforcement agency that receives the firearm or ammunition shall issue the respondent a written proof of transfer. The transfer must include the respondent’s name, the date of the transfer, and the serial number, make and model of each transferred firearm.</p>	

<p><b>Transfer to Gun Dealer</b> <b>ORS 166.256(3)(b)</b></p> <p>A gun dealer may purchase or may accept for storage a firearm or ammunition transferred under this requirement.</p> <p><b>Proof of Transfer:</b> The gun dealer that receives the firearm or ammunition shall issue the respondent a written proof of transfer. The transfer must include the respondent’s name, the date of the transfer, and the serial number, make and model of each transferred firearm.</p> <p><b>“Gun Dealer” ORS 166.412</b> A person engaged in the business of selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker, or otherwise.</p>	
<p><b>Transfer to Third Party</b> <b>ORS 166.256.(2)</b></p> <p>When transferring to a firearm or ammunition to a third party, the following is required:</p> <ul style="list-style-type: none"> <li>a) The third party must complete a background check,</li> <li>b) The third party must provide a proof of transfer; and</li> <li>c) The third party must complete a declaration</li> </ul>	
<p><b>Background Check Required:</b> When transferring a firearm to a third party pursuant to the prohibition order, the third party must complete a background check through the Department of State Police.</p> <p>The background check exceptions in ORS 166.435(4) do NOT apply to transfer to third parties that occur as a result of a dispossession order under ORS 166.256.</p>	

<p><b>ORS 166.435(4)</b> would otherwise allow for exemption from the background check requirement if</p> <ul style="list-style-type: none"> <li>a) The transfer of the firearm is by or to law enforcement agencies, officers, private security professional, or member of the Armed Forces of the United States within the scope of official duties; or</li> <li>b) The transfer of a firearm to the person’s spouse or domestic partner, parent or stepparent, child or stepchild, sibling, grandparent, grandchild, aunt or uncle, first cousin, niece or nephew or the spouse or domestic partner of any of the relationships listed.</li> </ul>	
<p><b>Proof of Transfer:</b> The third party that receives the firearm or ammunition shall issue the respondent a written proof of transfer. The transfer must include the respondent’s name, the date of the transfer, and the serial number, make and model of each transferred firearm.</p> <p>When transferred to a third party, the proof of transfer must also include the unique approval number from the Department of State Police from the criminal background check conducted under ORS 166.435.</p>	
<p><b>Third Party Declaration Required:</b> When transferred to a third party, the respondent is also required to obtain a declaration (under penalty of perjury) confirming receipt of the firearm or ammunition and attesting that:</p> <ul style="list-style-type: none"> <li>a) The third party understands that the respondent is prohibited from possessing firearms and ammunition; and</li> <li>b) The third party is subject to criminal penalties if the third party allows the respondent access to the firearm or ammunition during the prohibition.</li> </ul>	



<p><b>Respondent's Declaration and Proof of Transfer Required ORS 166.256(4) and (5)</b></p> <p>Within two judicial (business) days of being prohibited from possessing firearms and ammunition, the respondent must file with the court and the district attorney's office a declaration (under penalty of perjury) that:</p> <ul style="list-style-type: none"> <li>a) All firearms or ammunition in the respondent's possession have been transferred to a law enforcement agency, gun dealer, or eligible third party; or</li> <li>b) The respondent has no firearms or ammunition; or</li> <li>c) The respondent is asserting the constitutional right against self-incrimination.</li> </ul> <p>If the respondent transfers all firearms/ammunition to law enforcement, a gun dealer, or an eligible third party, the respondent must also file with their declaration a copy of the proof of transfer and a copy of the third-party declaration, if applicable.</p>	
<p><b>Consequences of Respondent's Failure to File Declaration ORS 166.256(8)</b></p> <p>If the respondent does not file a declaration described above, the district attorney may commence contempt proceedings under ORS 33.015 to 33.155.</p>	
<p><b>Grace Period for Dispossession ORS 166.256(6)</b></p> <p>A person who is subject to the firearm/ammunition prohibition and is in possession of a firearm or ammunition in violation of ORS 166.255(1)(a) may not be prosecuted under ORS 166.250 if:</p>	

<ul style="list-style-type: none"> <li>a) The respondent is in possession of the court order prohibiting possession of firearms/ ammunition that went into effect or was issued within the previous 24 hours;</li> <li>b) The firearm is unloaded; and</li> <li>c) The respondent is transporting the firearm or ammunition to a law enforcement agency, gun dealer or third party for transfer</li> </ul>	
<p><b>V. DURATION OF FIREARM AND AMMUNITION PROHIBITION: While Subject to a Stalking Protective Order</b></p> <p>Under both federal and state law, the prohibition remains in effect while the order is in effect.</p> <p><i>Note:</i> In Oregon, stalking orders become permanent after hearing. The prohibition remains in effect as long as the order is in effect.</p>	
<p><b>VI. RETURN OF FIREARMS/ AMMUNITION THAT HAVE BEEN SURRENDERED/ DISPOSSESSED</b></p> <p>The prohibition on firearms/ammunition lasts until the protective order (stalking protective order) expires or is terminated by the court.</p>	
<p><b>Return from Law Enforcement Agency ORS 166.256 / ORS 166.257</b></p> <p>If a law enforcement agency receives a request to return a firearm or ammunition that has been surrendered pursuant to the dispossession order due to a protective order (stalking protective order) the law enforcement agency must</p> <ul style="list-style-type: none"> <li>a) Notify the Department of Justice of the return request for the purposes of notifying the petitioner of the underlying order; and</li> </ul>	

<p>b) Hold the firearm or ammunition for 72 hours after receiving the request.</p> <p>Prior to returning the firearm or ammunition, the law enforcement agency must also:</p> <p>a) Confirm that the person to whom the return is to happen is the lawful owner of the firearm or ammunition or a person with a possessory right to the firearm or ammunition; and</p> <p>b) Perform a criminal background check as defined in ORS 166.432 to confirm that the person is not prohibited from possessing a firearm or ammunition under state or federal law.</p> <p><b>Criminal Background Check ORS 166.432</b></p> <p>The “criminal background check” requires review of state and federal databases, including but not limited to the Oregon computerized criminal history system, Oregon mental health data system, Law Enforcement Data System (LEDS), National Instant Criminal Background Check System, and stolen guns system.</p>	
<p><b>Return from Gun Dealer ORS 166.256</b></p> <p>If a gun dealer receives a request to return a firearm or ammunition that has been surrendered pursuant to the dispossession order due to a protective order (stalking protective order), the gun dealer shall return any stored firearms and ammunition to the respondent after performing a criminal background check to confirm that the respondent is not prohibited from possessing a firearm or ammunition under state or federal law.</p> <p><b>Criminal Background Check ORS 166.432</b></p>	

<p>The “criminal background check” requires review of state and federal databases, including but not limited to the Oregon computerized criminal history system, Oregon mental health data system, Law Enforcement Data System (LEDS), National Instant Criminal Background Check System, and stolen guns system.</p>	
<p><b>Return from Third Party</b> <b>ORS 166.256(7)(c)</b></p> <p>If a third party receives a request to return a firearm or ammunition that has been surrendered pursuant to the dispossession order due to a protective order (stalking protective order), the third party shall return any stored firearms and ammunition to the respondent only after requesting a criminal background check (and the exceptions of ORS 166.435(4) do not apply).</p> <p><b>Criminal Background Check Required:</b> The background check exceptions in ORS 166.435(4) do NOT apply to the return of firearms or ammunition from a third party to the respondent.</p> <p><b>ORS 166.435(4)</b> would otherwise allow for exemption from the background check requirement if:</p> <ul style="list-style-type: none"> <li>a) The transfer of the firearm is by or to law enforcement agencies, officers, private security professional, or member of the Armed Forces of the United States within the scope of official duties; or</li> <li>b) The transfer of a firearm to the person’s spouse or domestic partner, parent or stepparent, child or stepchild, sibling, grandparent, grandchild, aunt or uncle, first cousin, niece or nephew or the spouse or domestic partner of any of the relationships listed.</li> </ul>	

<p><b>Violation of Firearm/Ammunition Prohibition</b></p> <p><b>Federal Law</b> A violation of the federal statute prohibiting possession of firearms/ ammunition is punishable by up to ten years imprisonment. 18 U.S.C. § 922(g)(8); see also 18 U.S.C. §§ 921(a)(32), 924(a)(2), and 925(a)(1).</p> <p><b>Oregon Law:</b> Possession of firearms in violation of ORS 166.255 prosecutable under ORS 166.250(H). It is a Class A misdemeanor and punishable by up to 1 year in jail and \$6250.</p>	<p><i>Note:</i> Apparently, due to a drafting error, possession of <i>ammunition</i> is not criminalized under ORS 166.250, although contempt of court remedies would apply.</p>
<p><b>FIREARMS PROHIBITIONS FOR A STALKING CONVICTION</b></p>	
<p><b>I. STATE LAW: Firearm and Ammunition Prohibition for Conviction of Stalking under ORS 163.732</b></p> <p><b>ORS 166.255</b></p> <p>The state prohibition on possession of firearms or ammunition applies to a person who has been convicted of the crime of stalking under ORS 163.732.</p> <p>There is no relationship requirement for the state prohibition to attach. Any conviction for stalking under ORS 163.732 results in a prohibition against firearms and ammunition under Oregon law.</p> <p>There is no equivalent firearm prohibition under federal law for conviction for stalking.</p>	<p><i>Note:</i> The conviction must specifically be under ORS 163.732. Violating a Court’s Stalking Protective Order under ORS 163.750 does not invoke the firearm and ammunition prohibitions.</p>

**STATE LAW: Stalking Conviction/  
Official Use Exception  
ORS 166.260**

The prohibition that results from the conviction of Stalking creates a prohibition under ORS 166.255(1)(c) and applies to all use or possession of firearms or ammunition.

ORS 166.260 provides an official use exception for persons otherwise prohibited from possessing firearms or ammunition under ORS 166.250.

**FEDERAL LAW: Stalking Conviction/  
Official Use Exception**

No official use exception exists for the prohibition that attaches to a conviction for stalking, because no federal prohibition exists.

**II. OBLIGATIONS OF COURT IF  
DEFENDANT CONVICTED OF  
STALKING UNDER ORS 163.732**

**2019 “HB 2013”**

Where a person is convicted of an offense described in ORS 166.255(1)(b) or (c), the court must provide notice that the person is prohibited from possessing firearms and ammunition and order that person transfer all firearms and ammunition in accordance with the statute (described below).

**ORS 166.255(1)(b):** a conviction for qualifying misdemeanor, and at the time of the offense the person was a family or household member of the victim of the offense or a parent or guardian of the victim of the offense

*Note:* There is no relationship requirement for a stalking conviction

<p><b>ORS 166.255(1)(c):</b> a conviction for stalking under ORS 163.732</p>	
<p><b>Order to Dispossess / Surrender Firearms ORS 166.259(1)(c) and (d)</b></p> <p>The court must order in writing that the defendant transfer all firearms and ammunition in the person’s possession and order that the defendant file a declaration as described below.</p>	
<p><b>III. FIREARM DISPOSSESSION/ SURRENDER PROTOCOLS</b></p> <p>Beginning in 2020, defendants convicted of Stalking (ORS 163.732) are subject to the firearms and ammunition prohibitions discussed above and are required to follow a detailed firearm and ammunition surrender protocol.</p> <p><b>Dispossession Process: ORS 166.259(2) and (3)</b></p> <p>Within 24 hours of being prohibited from possessing firearms and ammunition, defendant must:</p> <ul style="list-style-type: none"> <li>a) Surrender all firearms or ammunition in defendant’s possession to <ul style="list-style-type: none"> <li>i. A local law enforcement agency;</li> <li>ii. A gun dealer; or</li> <li>iii. A third party who does not reside with the defendant</li> </ul> </li> <li>b) Obtain a proof of transfer of the firearms/ ammunition.</li> </ul>	
<p><b>Transfer to Law Enforcement ORS 166.259(3)(a)</b></p> <p>Law enforcement may accept a firearm or ammunition transferred under this requirement.</p> <p><b>Proof of Transfer:</b> The law enforcement agency that receives the firearm or</p>	

ammunition shall issue the defendant a written proof of transfer. The transfer must include the defendant's name, the date of the transfer, and the serial number, make and model of each transferred firearm.

**Transfer to Gun Dealer**  
**ORS 166.259(3)(b)**

A gun dealer may purchase or may accept for storage a firearm or ammunition transferred under this requirement.

**Proof of Transfer:** The gun dealer that receives the firearm or ammunition shall issue the defendant a written proof of transfer. The transfer must include the defendant's name, the date of the transfer, and the serial number, make and model of each transferred firearm.

**“Gun Dealer” ORS 166.412**

A person engaged in the business of selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker, or otherwise.

**Transfer to Third Party**  
**ORS 166.259(2)(c)**

When transferring to a firearm or ammunition to a third party, the following is required:

- a) The third party must complete a background check,
- b) The third party must provide a proof of transfer; *and*
- c) The third party must complete a declaration

**Background Check Required:**

When transferring a firearm to a third party pursuant to the prohibition order, the third party must complete a background check through the Oregon State Police.

The background check exceptions in ORS 166.435(4) do *not* apply to transfer to third



parties that occur as a result of a dispossession order under ORS 166.259.

**ORS 166.435(4)** would otherwise allow for exemption from the background check requirement if:

- a) The transfer of the firearm is by or to law enforcement agencies, officers, private security professional, or member of the Armed Forces of the United States within the scope of official duties; or
- b) The transfer of a firearm to the person's spouse or domestic partner, parent or stepparent, child or stepchild, sibling, grandparent, grandchild, aunt or uncle, first cousin, niece or nephew or the spouse or domestic partner of any of the relationships listed.

**Proof of Transfer:** The third party that receives the firearm or ammunition shall issue the defendant a written proof of transfer. The transfer must include the defendant's name, the date of the transfer, and the serial number, make and model of each transferred firearm.

When transferred to a third party, the proof of transfer must also include the unique approval number from the Department of State Police from the criminal background check conducted under ORS 166.435.

**Third Party Declaration Required:**

When transferred to a third party, the defendant is also required to obtain a declaration (under penalty of perjury) confirming receipt of the firearm or ammunition and attesting that:

- a) The third party understands that the defendant is prohibited from possessing firearms and ammunition; and
- b) The third party is subject to criminal penalties if the third party allows the defendant access to the firearm or ammunition during the prohibition.

**Defendant's Declaration Required  
ORS 166.259(4) and (5)**

Within two judicial (business) days of being prohibited from possessing firearms and ammunition, the defendant must file with the court and the district attorney's office a declaration (under penalty of perjury) that:

- a) All firearms or ammunition in the defendant's possession have been transferred to a law enforcement agency, gun dealer, or eligible third party; or
- b) The defendant has no firearms or ammunition; or
- c) The defendant is asserting the constitutional right against self-incrimination.

If the defendant transfers all firearms/ammunition to law enforcement, a gun dealer, or an eligible third party, the defendant must also file with their declaration a copy of the proof of transfer and a copy of the third-party declaration, if applicable.

**Consequences of Defendant's Failure to File Declaration  
ORS 166.259(7)**

If the defendant does not file a declaration described above, the district attorney may commence contempt proceedings under ORS 33.015 to 33.155.

**Grace Period for Dispossession  
ORS 166.259(6)**

A person who is subject to the firearm/ammunition prohibition and is in possession of a firearm or ammunition in violation of ORS 166.255(1)(b) or (c) may not be prosecuted under ORS 166.250 if:

- a) The defendant is in possession of the court order prohibiting possession of firearms/ammunition that went into effect or was issued within the previous 24 hours;

<ul style="list-style-type: none"> <li>b) The firearm is unloaded; <i>and</i></li> <li>c) The defendant is transporting the firearm or ammunition to a law enforcement agency, gun dealer or third party for transfer</li> </ul>	
<p><b>IV. DURATION OF FIREARM AND AMMUNITION PROHIBITION: Conviction for Stalking under ORS 163.732</b></p> <p>The prohibition is a lifetime prohibition if the person remains “convicted.”</p> <p><b>“Convicted” under ORS 166.255(3)(a)</b> means:</p> <ul style="list-style-type: none"> <li>a) The person was represented by counsel or knowingly and intelligently waived the right to counsel;</li> <li>b) The case was tried to a jury, if the crime was one for which the person was entitled to a jury trial, or the person knowingly and intelligently waived the person’s right to a jury trial; <i>and</i></li> <li>c) The conviction has not been set aside or expunged, and the person has not been pardoned.</li> </ul>	
<p><b>V. RETURN OF FIREARMS/ AMMUNITION THAT HAVE BEEN SURRENDERED/ DISPOSSESSED</b></p> <p>The prohibition on firearms/ammunition is a lifetime prohibition and remains in place as long as the conviction stands and is not set aside or expunged, and the defendant has not been pardoned.</p> <p>There is no defined statutory process for the return of firearms after a conviction of Stalking.</p> <p><i>Note:</i> ORS 166.257 outlines a procedure for return of relinquished firearms if the prohibition resulted from being subject to a qualifying protective order and that order is no longer in effect.</p>	

<p><b>VIOLATION OF FIREARM/ AMMUNITION PROHIBITION</b></p> <p><b>Oregon Law:</b>  Possession of firearms in violation of ORS 166.255 prosecutable under ORS 166.250(H). It is a Class A misdemeanor and punishable by up to 1 year in jail and \$6250.</p>	<p><i>Note:</i> Apparently, due to a drafting error, possession of <i>ammunition</i> is not criminalized under ORS 166.250, although contempt of court remedies would apply.</p>
<p><b>Federal Prohibitions Against Purchase or Possession of Firearms or Ammunition in Stalking Protection Orders</b></p>	
<p>A respondent subject to a stalking protective order faces potential federal criminal liability for purchasing or possessing firearms or ammunition while the order is in effect. 18 U.S.C. 922(d)(8).</p> <p>For federal liability to attach to a respondent subject to a stalking protective order, the order must:</p> <ol style="list-style-type: none"> <li>a) Restrain the respondent from stalking the petitioner or engaging in other conduct that would place the petitioner in reasonable fear of bodily injury’.</li> <li>b) Protect an “intimate partner” of the respondent [as defined by 18 U.S.C. 921(a)(32)], or a child of the “intimate partner” or of the respondent. Thus, the order must protect persons with the following relationships with the respondent for the respondent to be criminally liable: <ol style="list-style-type: none"> <li>i. Spouse or former spouse</li> <li>ii. Other parent of respondent’s child</li> <li>iii. Person who does or did cohabit (live in a sexually intimate relationship) with respondent</li> <li>iv. Petitioner’s child.</li> </ol> </li> <li>c) Include either a finding that the respondent represents a credible threat to the physical safety of the petitioner or the petitioner’s child <i>or</i> contain an express prohibition against the use, attempted use, or threatened use of physical force against</li> </ol>	<p><b><u>Credible threat finding necessary (#3):</u></b>  For the federal (and Oregon) firearm prohibition to attach, the court must make additional findings required by firearms statutes that the respondent presents a credible threat to the petitioner.</p> <p>When a SPO respondent is provided with notice and an opportunity to be heard ORS 30.866(10) and 163.738(2)(b) require the court to “include in the order,</p>

<p>an intimate partner or child that reasonably can be expected to cause bodily injury; and</p> <p>i. Be issued after a hearing of which the respondent had notice and an opportunity to be heard.</p>	<p>when appropriate, terms and findings sufficient under 18 U.S.C. 922(d)(8) and (g)(8) to affect the respondent’s ability to possess firearms and ammunition or engage in activities involving firearms.”</p> <p><i>Note:</i> Under Oregon law, a credible threat finding is <b>not required in order for the court to issue a stalking protective order.</b></p> <p>“Opportunity to be heard” (#4)-</p> <ul style="list-style-type: none"> <li>• <i>Note:</i> A temporary stalking protective order issued <i>ex parte</i> on the filing of a civil petition will not satisfy this requirement. Therefore, such an order will not subject the respondent to federal criminal liability for possession of firearms until and unless it is continued after a noticed hearing.</li> <li>• Temporary stalking orders issued under the police-citation process and permanent stalking orders issued after a noticed hearing will satisfy the hearing requirement as long as the relationship requirements are met.</li> </ul> <p>In court stipulation to a SPO or request for a set-over is apparently enough to trigger this liability. <a href="#">U.S. v. Banks</a>, 339 F3d 267 (5th Cir. 2003); <a href="#">U.S. v. Lippman</a>, 369 F3d 1039 (8th Cir. 2004); <a href="#">U.S. v. Calor</a>, 340 F3d 428 (6th Cir. 2003). However, a stipulation done out of court where no hearing was scheduled or occurred will likely not trigger this liability. <a href="#">U.S. v. Spruill</a>, 292 F3d 207 (5th Cir. 2002).</p>
<p>When a SPO respondent is provided with notice and an opportunity be heard ORS 30.866(10) and 163.738(2)(b) require the court to “include in the order, when appropriate, terms and findings sufficient under 18 U.S.C. 922(d)(8) and (g)(8) to affect the respondent’s ability to possess firearms and ammunition or engage in activities involving firearms.”</p>	

<p><b>State Prohibitions Against Purchase or Possession of Firearms or Ammunition in Stalking Protection Orders</b></p>	
<p>A respondent subject to a stalking protective order faces potential state criminal liability for purchasing or possessing firearms or ammunition while the order is in effect if:</p> <ul style="list-style-type: none"> <li>a) The protected person is the ‘family or household member’ of the respondent: current or former spouse, other parent of a joint child, current or former cohabitant (with sexual intimacy), current or past sexually intimate partner, and adult related to the respondent by blood or marriage;</li> <li>b) The order includes a specific finding that the respondent represents a credible threat to the physical safety of the petitioner or the petitioner’s child. ORS 166.255(1)(C);</li> <li>c) The order must restrain the respondent from stalking conduct against certain protected persons (outlined above).</li> </ul> <p><i>Note:</i> unlike the federal firearms prohibitions, <i>no hearing</i> is required for state firearms prohibitions to apply. The mere opportunity to request a hearing is sufficient. ORS 166.255(1)(a)(A)(ii)</p>	<p><i>Note:</i> the state definition of family or household member is different from the federal definition. ORS 135.230</p> <p>When a respondent is provided with notice and an opportunity be heard, ORS 30.866(10) and 163.738(2)(b) require the court to “include in the order, when appropriate, terms and findings sufficient under <i>federal law</i>—18 U.S.C. 922(d)(8) and (g)(8)—to affect the respondent’s ability to possess firearms and ammunition or engage in activities involving firearms.” Such finding includes the credible threat finding.</p> <p>State criminal firearms liability will apply even if no hearing occurs or if a noticed hearing occurred, but the respondent did not make the request for the hearing or did <i>not</i> attend: Actual notice of the hearing and opportunity to participate is enough. ORS 166.255(1)(A)(i). Since an SPO respondent is served with notice of a court hearing on an <i>ex parte</i> stalking order or as a follow-up to an officer’s citation, all post-<i>ex parte</i> SPOs should impose state criminal liability for firearms if they cover a qualified relationship (see above) and contain the required findings on relationship (see above). Even an SPO termination hearing, in which situation the respondent <i>does</i> request a hearing, should impose liability as a noticed hearing, even if the respondent fails to appear or withdraws the request. ORS 166.255(1)(a)(A)(ii).</p>
<p>The court must indicate in the order that the respondent is prohibited from possessing firearms/ammunition while the order is in effect. The court is also required to ensure that respondent is subject to an additional</p>	

<p>order requiring the respondent to follow surrender protocols (discussed below).</p> <p>If respondents become subject to the Order while present in court, the court must also inform them orally and in writing that they are prohibited from possessing firearms and ammunition. Section 4(1), Chapter 201 Oregon Laws 2019, Enrolled House Bill 2013 (“HB 2013”).</p>	
<p><b>Federal Firearm Prohibitions in Criminal Stalking Convictions</b></p>	<p>It is a federal crime for a person convicted of a “qualifying misdemeanor crime of domestic violence” (QCDV) to possess a firearm or ammunition. 18 U.S.C. 922(g)(9). A QCDV includes:</p> <ol style="list-style-type: none"> <li>a) Qualifying relationship between the parties: <ol style="list-style-type: none"> <li>i. Current or former spouse, parent, or guardian of the victim</li> <li>ii. A person with whom the victim shares a child in common</li> <li>iii. A person who was cohabiting or had cohabited with the victim as a spouse, parent, or guardian;</li> <li>iv. A person similarly situated to a spouse, parent, or guardian of the victim</li> <li>v. <b>Does not include dating partners</b></li> </ol> </li> <li>b) Statutory elements of the crime are met <ol style="list-style-type: none"> <li>i. Has as an <u>element</u>: <ul style="list-style-type: none"> <li>• The use or attempted use of physical force or</li> <li>• The threatened use of a deadly weapon.</li> </ul> </li> </ol> </li> <li>c) Procedural requirements <ol style="list-style-type: none"> <li>i. Represented by counsel or knowingly waived right to counsel</li> <li>ii. Jury trial or knowingly waived</li> <li>iii. Doesn’t apply if conviction expunged; person pardoned or rights restored</li> </ol> </li> </ol>
<p><b>State Firearm Prohibitions in Criminal Stalking Convictions</b></p> <p>It is a state crime for a person convicted of stalking under ORS 163.732 to knowingly possess firearms or ammunition. ORS 166.255(1)(c). Even a misdemeanor conviction for stalking triggers criminal liability for possession of firearms/ammunition. A defendant becomes subject to this prohibition at the time of conviction.</p>	

<p>Section 3, Chapter 201, Oregon Laws 2019, Enrolled House Bill 2013.</p>	
<p><b>State Firearm Surrender Protocols for Respondents in SPOs</b></p>	
<p>Beginning in 2020, SPO respondents subject to the firearms prohibitions discussed above are required to follow a detailed firearms surrender protocol. Chapter 201 Oregon Laws 2019, Enrolled House Bill 2013 (“HB 2013”).</p> <p>Within 24 hours of being prohibited from possessing firearms and ammunition, respondents must do one of the following:</p> <ul style="list-style-type: none"> <li>a) Surrender to a law enforcement agency or a licensed gun dealer all firearms and/or ammunition in their possession, control or custody; or</li> <li>b) Have an eligible third party (who does not reside with the respondent) take possession of any firearms and/or ammunition in the respondent’s possession, control or custody.</li> </ul> <p>If the respondent chooses to surrender firearms/ammunition to a third party, the respondent must arrange for an Oregon state police criminal background check on the third party. A fee is charged for such a background check. To be eligible to receive the firearms/ammunition, the third party cannot live with the respondent and must complete the <i>Third Party Recipient’s Declaration</i> and provide it to the respondent for filing, as discussed below.</p> <p>Within two judicial (business) days of being prohibited from possessing firearms and ammunition, the respondent must file with the court and the district attorney’s office a declaration attesting that:</p> <ul style="list-style-type: none"> <li>a) All firearms or ammunition in the respondent’s possession have been</li> </ul>	



<p>transferred to a law enforcement agency, gun dealer, or eligible third party; or</p> <p>b) The respondent has no firearms or ammunition; or</p> <p>c) The respondent is asserting the constitutional right against self-incrimination.</p> <p>If the respondent transfers all firearms/ammunition to law enforcement, a gun dealer, or an eligible third party, the respondent must also file with their declaration a copy of the proof of transfer and a copy of the third-party declaration, if applicable.</p> <p>If the respondent does not file a declaration described above, the district attorney may commence contempt proceedings under ORS 33.015 to 33.155.</p> <p>Section 4, Chapter 201 Oregon Laws 2019, Enrolled House Bill 2013 (“HB 2013”).</p>	
<p><b>Official Use Exemption</b></p> <p>The state firearm prohibition in qualifying <b>stalking order</b> cases does not apply to the official use of firearms by certain government employees. ORS 166.255(2). For example, respondents in the military service, or employed as police officers, may use their service weapons in the course of their employment despite the existence of a restraining order. The exemption, however, does not extend to their personal use of firearms.</p> <p>The firearms ban that results from Oregon <b>stalking convictions</b> applies to all use of firearms. No official use exemption applies allowing for the use of government employees in the course of their employment, as exists for prohibitions based on a qualifying restraining order ORS 166.255(2).</p>	

**FEDERAL LAW Subject to Protective Order / Official Use Exception**  
**18 USC 925(a)(1)**

Although the receipt and possession of firearms and ammunition by persons subject to restraining orders that meet the above requirements, federal law does not prohibit a law enforcement officer subject to a restraining order from receiving or possessing firearms or ammunition for use in performing official duties. Possession of the firearm for official purposes while off duty would be lawful if such possession is required or authorized by law or by official departmental policy. An officer subject to a disabling restraining order would violate the law if the officer received or possessed a firearm or ammunition for other than official use.

**STATE LAW: Subject to Protective Order / Official Use Exception**  
**ORS 166.260**

The prohibition that results from the protective order being a qualifying order under ORS 166.255(1)(a) applies to all use or possession of firearms and ammunition.

ORS 166.260 provides an official use exception for persons prohibited from possessing firearms or ammunition under *ORS 166.250*.

**STATE LAW: Stalking Conviction / Official Use Exception**  
**ORS 166.260**

The prohibition that results the conviction of Stalking creates a prohibition under ORS 166.255(1)(c) and applies to all use or possession of firearms or ammunition.

ORS 166.260 provides an official use exception for persons otherwise prohibited from possessing firearms or ammunition under *ORS 166.250*.

For example, respondents in the military service, or employed as police officers, may use their service weapons in the course of their employment despite the existence of a restraining order. The exemption, however, does not extend to their personal use of firearms.

<p>No official use exception exists for the prohibition that attaches to a conviction for stalking, because no federal prohibition exists.</p>	
<p><b>Return of Firearms/Ammunition - SPO</b>  The prohibition on firearms/ammunition lasts until the restraining order expires or is terminated by the court. Once the prohibition ends, a background check must be done on the respondent to confirm that the respondent is otherwise eligible to receive the firearms/ammunition. The law enforcement agency, gun dealer, or eligible third party holding the firearms/ammunition for the respondent may not return the firearms until such a background check is performed. Section 4(7) and Section 5, Chapter 201 Oregon Laws 2019, Enrolled House Bill 2013 (“HB 2013”).</p> <p>In addition, if the respondent transferred the firearms/ammunition to a law enforcement agency, that agency must notify the Oregon Department of Justice of the return request for the purposes of notifying the petitioner, and hold the firearms/ammunition for 72 hours after receiving the return request. Section 5, HB 2013.</p>	
<p><b>Return of Firearms/Ammunition- Stalking Conviction</b>  The prohibition on firearms/ammunition lasts as long as the stalking conviction is not overturned or expunged or the defendant pardoned. ORS 166.255(3)(C)</p>	

# Stalking Resources

## General Stalking Resources:

### Stalking Prevention, Awareness, and Resource Center (SPARC):

<https://www.stalkingawareness.org/> Includes resources for survivors, law enforcement, prosecution, corrections/probation; training/awareness education; and more, including:

- Stalking fact sheet ([https://www.stalkingawareness.org/wp-content/uploads/2019/01/SPARC StalkngFactSheet 2018 FINAL.pdf](https://www.stalkingawareness.org/wp-content/uploads/2019/01/SPARC_StalkngFactSheet_2018_FINAL.pdf)) and informational brochure (<https://www.stalkingawareness.org/wp-content/uploads/2019/09/Understanding-Stalking-Brochure.pdf>)
- Safety Planning (<https://www.stalkingawareness.org/wp-content/uploads/2018/11/Safety-Strategies.pdf>)
- Incident/behavior log [https://www.stalkingawareness.org/wp-content/uploads/2018/07/SPARC StalkingLogInstructions 2018 FINAL.pdf](https://www.stalkingawareness.org/wp-content/uploads/2018/07/SPARC_StalkingLogInstructions_2018_FINAL.pdf)

**National Council of Juvenile and Family Court Judges:** Fast Facts About Intimate Partner Stalking [http://www.ncdsv.org/images/NCJFCJ FastFactsAboutIPV 2011.pdf](http://www.ncdsv.org/images/NCJFCJ_FastFactsAboutIPV_2011.pdf)

**Checklist for LE Response to Stalking:** <https://www.familyjusticecenter.org/wp-content/uploads/2017/10/A-Checklist-for-Law-Enforcement-Response-to-Stalking.pdf>

**Prosecutor's Guide to Stalking:** <https://www.stalkingawareness.org/wp-content/uploads/2020/01/SPA-19.005-Prosecutors-Guide-to-Stalking-00000002.pdf> and <https://aequitasresource.org/wp-content/uploads/2018/09/Responding-to-Stalking-A-Guide-for-Prosecutors.pdf>

## Stalking and Children

**When Coercive Control Continues to Harm Children: Post-Separation Fathering, Stalking and Domestic Violence.** Katz, E., Nikupeteri, A., and Laitinen, M. (2020) *Child Abuse Rev.*, 29: 310–324. <https://doi.org/10.1002/car.2611>

**Responding to Stalking: A Guide for Supervised Visitation and Safe Exchange Programs** <http://www.inspireactionforsocialchange.org/resource-library/2015/12/8/responding-to-stalking-a-guide-for-supervised-visitation-and-safe-exchange-programs>

## Technology and Stalking

**National Network to End Domestic Violence (NNEDV) Technology Safety:**

<https://www.techsafety.org/resources-survivors>. Includes information on Spyware and Stalkerware (phone and computer surveillance), cell phone and online privacy and safety resources, a safety app, and more. Specifics on technology-facilitated stalking here: [https://nnedv.org/latest\\_update/technology-facilitated-stalking/](https://nnedv.org/latest_update/technology-facilitated-stalking/)

**The Internet Privacy Handbook:** <https://safeshepherd.com/handbook/privacy-basics>

**Coalition against Stalkerware:** <https://stopstalkerware.org/>