

FILING FOR A RESTRAINING ORDER

UNDER THE FAMILY ABUSE PREVENTION ACT (FAPA)

IMPORTANT NOTE: PROCEDURES FOR GETTING RESTRAINING ORDERS VARY FROM COURT TO COURT. CHECK WITH YOUR LOCAL COURT FOR MORE INFORMATION.



WHAT IS A RESTRAINING ORDER?

A restraining order is a court order to protect your physical safety. It can tell the other person (the “respondent”) to move. The order can also specify locations where the respondent cannot go. The *Petition* includes other things that you can ask for if you think they will help you stay safe. You can ask the court to order that the respondent cannot have guns.

A restraining order can order *temporary* custody and parenting time. To get long-term custody and parenting time orders, including child support, you will need to file a family law case, such as a divorce or a custody case. Check with your court for forms to file a family law case or go to www.courts.oregon.gov.

WHAT ARE THE REQUIREMENTS FOR GETTING A RESTRAINING ORDER?

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| 1. | Age | <p>You and the respondent must both be at least 18 years old or</p> <p>If you are younger than 18, the respondent must be at least 18 and be</p> <ul style="list-style-type: none"> • your current or former spouse or Registered Domestic Partner or • someone who has (or had) a sexually intimate relationship with you |
| 2. | Relationship | <p>The respondent must be:</p> <ul style="list-style-type: none"> • your current or former spouse or Registered Domestic Partner or • someone you live with in a sexually intimate relationship (or used to) or • someone you have a sexually intimate relationship with (or did within the past 2 years) or • related to you by blood, marriage, or adoption or • the parent of your child |
| 3. | Abuse | <p>In the last 180 days*, the respondent must have:</p> <ul style="list-style-type: none"> • physically injured you or • tried to physically injure you or • made you afraid that he or she was about to physically injure you or • made you have sexual relations against your wishes by using force or threats of force <p><i>(*Any time period when the respondent was in jail or lived more than 100 miles from your home does not count as part of the 180-day period. This means you may still be able to get a restraining order even if it has been more than 180 days since you were abused.)</i></p> |
| 4. | Ongoing Danger | <p>You must be in ongoing danger of abuse very soon (“imminent danger”). The respondent must be a threat to the physical safety of you or your children.</p> |

NOTE: A judge may not give you a restraining order solely to get a temporary custody order or for threats to take your children, rudeness, or meanness without physical threat to you.

WHERE DO I FILE FOR A RESTRAINING ORDER?

File in the county where either you or the respondent lives. File at the Circuit Court courthouse. Go to www.courts.oregon.gov/courts/Pages/default.aspx to find court contact information. **NOTE:** your address may be closer to a court in a different county, and some towns may be in 2 counties. Call the court or talk to a lawyer if you are not sure where to file.

HOW MUCH DOES IT COST?

There is no cost to file for a restraining order

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

Use blue or black ink and print clearly. Answer each question carefully and truthfully. Your court may have a facilitator or advocate available to help you with the forms. They cannot answer legal questions. BE SURE TO FILL IN THE “COUNTY” SPOT AT THE TOP OF EACH FORM.

File the following forms:

- *Petition for Restraining Order to Prevent Abuse*
 - *Confidential Information Form (CIF)*
 - File one for you and one for the respondent. This form is confidential – meaning that no one but the person it’s about can see it. Do not put the confidential information in any other form.
 - *Notice of Filing of Confidential Information Form (CIF)*
 - *Restraining Order to Prevent Abuse*
- **Address and phone number** You must give the court a contact mailing address and phone number where the court and sheriff can reach you. Your contact address must be in the state where you live. This information will be public and the respondent will also see it. You do NOT have to use your residential address or phone number. If you don’t want the respondent to know where you live or have your phone number, you can use a safe contact address and contact phone number.
- The court will assume you receive all communications at the contact address and phone number. Make sure you check both regularly so you know if the court has set hearings or needs information from you. If you do not appear for a hearing, any order may be changed or your case may be dismissed completely.
- **Other cases** The court needs to know if there are any other restraining order or family cases between you and the respondent, whether they are pending or have been completed. Be prepared to give as much information as you have about any other cases.
- **Parentage** Parentage (who the parents of the minor children are) must be legally established before you can use these forms if you want the court to order custody, parenting time, or child support for minor children.

- Parentage is established if both biological parents sign and file a birth certificate or Voluntary Acknowledgment of Paternity (a statement that says who the parents are) with the State Registrar of Vital Statistics. This is usually signed in the hospital when the child is born.
 - Parentage can also be established through the Oregon Child Support Program or through the courts before you file these forms. Contact the Oregon Child Support Program (www.oregonchildsupport.gov) or a lawyer.
 - Parentage is presumed if you and the other parent were married at the time of the child’s birth or if the child was born within 300 days after the marriage ended. This presumption can be rebutted (challenged).
- **The Restraining Order to Prevent Abuse** Fill out the order with the terms you want the court to grant. The terms must be the same as what you put in the *Petition*. Do not write in the right-hand column that says “Judge’s initials.” If the *Restraining Order* is granted, the judge may make changes or additions and will initial the terms that are included. You will get a copy of the *Order* after it is signed.

WHAT HAPPENS AFTER I FILL OUT THE PAPERS?

When you file your *Petition*, the clerk will tell you when and where to go for your hearing. The judge will look over your papers and may ask you questions. If the judge grants your restraining order, court staff will make copies for you.

The Restraining Order is in effect as soon as it is signed. A copy of the Order must be delivered (“served”) to the respondent. The respondent cannot be found in violation of the Order until they have been served. The court will send the *Order* to a sheriff for service. The sheriff will notify you if they are not able to complete service.

You can also have a private process server or any competent¹ adult serve the *Order*, as long as the server lives in the state where the papers are served. **You cannot serve the papers yourself.** The server is required to complete a certificate of service and file it with the court. There is a form in the packet, but some servers use their own forms. Talk to the court clerk about ways to get the respondent served.

The respondent has **30 days** from the date of service to request a hearing objecting to (“contesting”) the restraining order. If the respondent does not request a hearing, the restraining order will stay in effect. After the 30 days, the only type of hearing a party can request is to change custody and parenting time, respondent’s removal from the home, respondent’s restrictions from other places, or contact between you and respondent.

In a few cases, the judge may set an “Exceptional Circumstances” hearing to get more information about custody. The date and time of the hearing will be written on the first page of the Order.

WHAT IF THE RESPONDENT REQUESTS A HEARING?

If the respondent does request a hearing, it will be held very quickly. You may have as little as 2 days to prepare. If the hearing is scheduled more than a few days away, the court will send you notice of the time and date of the hearing in the mail. If there is not

¹ “Competent” means that a person who can understand, remember, and tell others about an event

enough time to mail you a notice, the court may contact you by phone. **Be sure the court always has your current contact address and contact phone number so you get notice of any hearing.** You also can call the court to see if a hearing has been set.

You must go to all scheduled hearings or the order may be dismissed. If you cannot go to a hearing due to an emergency, call the court clerk right away. It may be helpful to have a lawyer represent you at the hearing, but it is not required. You may be able to appear by phone or video in some courts. Contact the court for more information.

If you are worried about your safety, you can ask for a sheriff's deputy to be present in the courtroom. Call the court before the hearing.

If the court scheduled an Exceptional Circumstances hearing, any objections the respondent has will be heard at that hearing.

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

At the hearing, you must prove that you have been abused and that you are in danger of further abuse. Be ready to give your own testimony, call witnesses, and give the judge any evidence you have (such as photos of your injuries). In some cases, if the restraining order stays in effect, it will be against the law for the respondent to have guns.

HOW LONG DOES A RESTRAINING ORDER LAST?

A restraining order lasts for 2 years from the date the judge signed it, unless it is dismissed or cancelled by the court.

Orders can be renewed for 2 years at a time, if the judge believes you are likely still in danger. To renew the order, you must file paperwork *before* the order ends. Forms to renew a restraining order are available at the court or online (*see below*).

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

You can call the police (**call 911**). The officer must arrest the respondent if the officer believes a violation happened. If the court finds a violation, the respondent can be fined, put on probation, or put in jail.

A restraining order does not guarantee your safety. You can take other steps to stay safe. A domestic violence or sexual assault program can help. For information about domestic violence resources, please visit our website - www.courts.oregon.gov/dv

WHAT IF I WANT TO DROP THE RESTRAINING ORDER?

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

CAN I CHANGE THE TERMS OF THE RESTRAINING ORDER?

Any time after a restraining order has been entered, you or the respondent can file papers to ask the court to modify (change) or remove terms affecting custody and parenting time, respondent's removal from the house, respondent's restrictions from other places, or contact between you and the respondent. Forms to modify a restraining order are available at the courthouse or online (*see below*). If you ask for a change that removes or makes a term less restrictive, the judge may sign an order changing the terms without requiring a hearing. Otherwise, the judge will sign an order for the other party to appear ("Order to Show Cause"). Some courts set a hearing when you file the papers. Some courts do not set a hearing until the respondent has been served and given 30 days to respond. Check with the court that issued the order to be sure you follow the right process.

DO I NEED A LAWYER?

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

WHAT IF I NEED AN ACCOMMODATION OR AN INTERPRETER?

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

COURT FORMS

Forms that can be used in all Oregon courts are available here:

www.courts.oregon.gov/forms

**It is best that you carry a copy of the restraining order
with you at all times**