

INFORMATION FOR RESPONDENTS

In Family Abuse Prevention Act Cases

- You have been served with a Family Abuse Prevention Act Restraining Order. Read it carefully. Each part of the order must be obeyed. The petitioner is the person who asked for the restraining order. You are the respondent - the respondent is the person who will respond and answer the claim that he/she has committed abuse.
- The Restraining Order has been issued by the court and is now in effect.
- The Restraining Order affects your rights and may include orders regarding custody and parenting time of your children. It is a serious matter.
- **You have the right to contest (object to) the Restraining Order.** Information about how to contest the restraining order is in the box below.
- As a result of this order, or any order continuing or changing this order, it may be unlawful for you to possess or purchase a firearm or ammunition based on federal law under 18 U.S.C. § 992(g)(8). If you have any questions about whether this law applies to you, you should consult an attorney.
- If you do not object to the Restraining Order, it will continue for one year from the date the judge signed it, unless the Petitioner dismisses it earlier. It can also be renewed. More information about renewal is below.
- A police officer or sheriff who believes that you have violated any part of a Restraining Order must arrest you based on ORS 133.310(3).
- Violation of the Restraining Order may result in civil and/or criminal penalties, including a jail sentence of up to 6 months and a fine of \$500 or 1% of your annual gross income, whichever is more.
- It is your responsibility to strictly obey all the parts of the Restraining Order, even if the Petitioner invites you to have contact or says it is all right for you to ignore the order. This also means you should not contact the Petitioner to let him/her know you've received the restraining order or to ask questions about the restraining order
- If you have any questions about the Restraining Order or your rights, you should consult an attorney. Scroll down the page to "Important Notice – Right to Consult With or Obtain An Attorney."

INFORMATION ABOUT HEARINGS

Contesting (Objecting To) the Restraining Order

- If you disagree with the whole Restraining Order or if you disagree with some of parts of the Restraining Order, you have the right to a hearing before a judge.
- If a hearing has not been scheduled already (see box about “Exceptional Circumstances Hearings” below), you must ask in writing that the hearing take place.
- To ask for a hearing, you must fill out the form called “Request for Hearing” and mail or deliver it to the court before the end of **30 days** from the date you were served with the Restraining Order. The court’s address should be on the form.
- This form is part of the court paper that says “Notice to Respondent/Request for Hearing” at the top, right hand side of the page. You should have received a copy of this form when you were served with the Restraining Order.
- If you are objecting to the part of the Restraining Order that has to do with custody of your children, the court must schedule a hearing within **5** judicial days of receiving your request. You will receive notice of the hearing from the court by mail or telephone. The notice will include the date, time and location of the hearing.
- If you are not contesting the custody parts of the Restraining Order, the court must schedule a hearing within **21** days of receiving your request. You will receive notice of the hearing from the court by mail.
- If you request a hearing and then do not go to the hearing, the Restraining Order may be up continued and all matters decided against you.

Exceptional Circumstances Hearing

- If the judge has decided that there are exceptional circumstances affecting your child(ren), a hearing to decide temporary custody will be ordered.
- If a hearing has been ordered, **paragraph 15** of the Restraining Order will be initialed by the judge and the Notice on the top of page 1 of the Restraining Order and on the top of the Notice to Respondent form will be filled out with the time, place and location of the hearing. Read all of the paperwork carefully to see if a hearing has been scheduled.
- **IMPORTANT:** If you disagree with any other part of the Restraining Order, you must go to the scheduled exceptional circumstances hearing and let the court know what you object to. This will be your **only** chance to contest the issuance of the Restraining Order or any of its terms.
- The hearing will be set within **14** days after the restraining order is signed by the judge.
- If you want a hearing before that date, you must fill out the “Request for Hearing” form and mail or deliver it to the court. The address of the court should be on the form. Otherwise, you do not need to file a Request for Hearing.
- If you want to be heard about the custody of your children and parenting time (visitation) or to contest the Restraining Order, you must go to the hearing
- If you do not go to the hearing, the Restraining Order may be upheld (continued) and all matters decided against you.

IMPORTANT NOTICE - RIGHT TO CONSULT WITH OR OBTAIN AN ATTORNEY

If you have questions about how the law works or what it means, you may need to see a lawyer. The court clerk cannot give you any legal advice.

You do not have to have a lawyer to object to the Restraining Order, but you may have a lawyer represent or help you. If you do not know a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free by dialing 1-800-452-7636. If you believe you cannot afford a lawyer, ask the court staff if your area has a legal aid program that might help you.

WHAT YOU SHOULD KNOW ABOUT RESTRAINING ORDER HEARINGS

❖ HOW SHOULD YOU ACT AT THE HEARING?

- Be prepared.
- Stand when the judge enters the room.
- Sit down after the judge or clerk instructs you to sit.
- When talking to the judge, call her or him "Your Honor."
- The judge, as well as the Petitioner's attorney or the Petitioner, if they have no attorney, may ask you questions. If you do not understand a question, tell the judge. Do not answer a question until you fully understand it.
- If you don't know the answer to a question, say so.
- Take your time when answering questions and explain your answers if you think it is necessary.
- Be truthful on all matters, even if you think the truth might hurt you in one or more instances.
- Be brief when you can.
- Be polite and respectful to everyone involved in your case.

❖ WHAT IS THE LAYOUT OF THE COURTROOM?

The "bench" is where the judge sits. The judge's clerk usually sits off to the judge's side or in front of the judge. Across from the judge are two tables where the parties (you and the Petitioner) and their lawyers sit (if either of you has one).

❖ WHO WILL BE AT THE HEARING?

- The judge and the judge's clerk will be there.
- A sheriff may be present. The Petitioner, his/her witnesses, and his/her lawyer may be there.
- Your witnesses should also be there, if you have any.
- Don't be surprised if there are a number of other people in the courtroom. They are probably waiting for their own hearings. It is not unusual for several hearings to be scheduled at the same time in the same courtroom.

❖ HOW WILL YOU KNOW WHEN YOUR HEARING BEGINS?

The judge or clerk will call your case. When you hear your name called, stand up and let the judge know that you are there and wait for the judge to give you further instructions.

❖ WHAT HAPPENS AT THE HEARING?

The issues that you checked off in your hearing request form will be addressed by the judge. Be ready to tell the judge whether you object to all of the order or just to some parts of the order. The order will be dismissed if you object to the entire order and the petitioner does not prove to the judge that he or she is entitled to a restraining order.

❖ WHO GOES FIRST?

Who goes first is different from judge to judge. Usually, the Petitioner goes first, but don't be surprised if the judge asks you to begin.

❖ WHAT DOES THE PETITIONER HAVE TO PROVE?

The restraining order law requires that certain facts be shown by the Petitioner before a Restraining Order will be issued or upheld. These are: **1)** that a certain relationship with the Petitioner exists that qualifies for protection under the restraining order law; **2)** that you have abused the Petitioner within the last 180 days (approximately six months); and **3)** that the Petitioner continues to be in imminent danger of abuse from you and that you are a credible threat to the physical safety of the Petitioner or the children (if any).

❖ HOW DO YOU SHOW THAT THE RESTRAINING ORDER SHOULD BE DISMISSED?

Your Own Testimony

You are probably the most important witness in your case. When it is your turn to talk, you should testify about the facts that prove (show) that there is not a basis for upholding the restraining order. Use as much detail as possible to explain why the Petitioner has not proved the required facts. Also, if you disagree with the custody and parenting time parts of the Restraining Order, you should testify as to why you should be awarded custody or different parenting time, if the judge decides to continue the Restraining Order.

Other Witnesses

People who know about your situation may be very important to your case. Try to find people who have personal knowledge about the things you need to prove. Having personal knowledge means that these persons saw or heard something directly. They cannot testify to rumors or opinions, or to what other people told them (unless the other person is the Petitioner).

Be sure you know what your witnesses will say before they testify. You cannot ask your witnesses to lie, but you can find out ahead of time what they will say. If their statements will hurt your case, don't use these witnesses.

If you or the petitioner ask, the court may require that witnesses stay outside the courtroom when they are not testifying.

Other Kinds of Evidence

In addition to testimony of witnesses, you may wish to have the judge consider physical evidence such as photos, reports, letters, voice mail messages or pieces of clothing or household goods. Generally, you need a witness to explain each piece of evidence. That witness could be you. You need to explain why the item is relevant to the case, and how the item came into your custody. For writings you need to have the person who wrote it testify about it. For photos you need to have the person who took the photo or anyone else who was there when the picture was taken explain when and where it was taken and what the photo shows. Getting the court to consider physical evidence involves several technical rules and it would be good to get legal advice if these items are very important to telling your story.

❖ WHAT ARE THE PARTS OF THE HEARING?

A hearing has different parts. They include:

Opening Statement

Some judges like to hear "opening statements." For this reason, it is best to have something prepared. Once you are before the judge, ask if he or she would like to hear your opening statement.

If so, your opening statement should be a short summary of what you want the court to do, what you intend to present, and how your evidence will support your position.

The Petitioner's Case

Usually the judge will have the Petitioner put on his/her evidence first. The Petitioner will likely testify and may call witnesses. You will have a chance to ask the Petitioner and the Petitioner's witnesses questions.

Your Case

This is your chance to put on your testimony and call your witnesses. The Petitioner will be allowed to ask you and your witnesses questions.

Direct Examination

Direct examination is your chance to ask your witnesses the questions that you have prepared. You should know how the witness is going to respond and only ask things that will support or relate to what you want the judge to do about the Restraining Order. Your questions should be simple and direct and should be aimed at explaining what happened as clearly as possible.

Cross-Examination

Cross-examination is your chance to ask the Petitioner and his or her witnesses any questions that you may have after listening to their testimony. It may be easiest if the Petitioner and his or her witnesses have to answer with a "yes" or "no" to most of the questions you ask. You do not have to ask the Petitioner or Petitioner's witnesses any questions.

Closing Argument

After the testimony of the parties and their witnesses, the judge may give you the opportunity to summarize the evidence that helps your case. This is called a closing argument.

Ruling

Once everyone has testified, the judge will give his or her decision. The judge might keep the Restraining Order as it is, change it, or dismiss it.

Other Laws May Also Apply To You

While the Restraining order, or any order continuing or changing this order, is in effect, federal law may prohibit you from:

- Possessing, receiving, shipping or transporting any firearm or firearm ammunition.
- Traveling across state lines or tribal land lines with the intent to violate the order and then violating the order.

- Causing the Petitioner to cross state lines or tribal land lines for the purpose of violating the order.

Whether or not a Restraining Order is in effect, federal law may prohibit you from:

- Traveling across state lines or tribal land lines with the intent to injure the Petitioner and then intentionally committing a crime of violence causing bodily injury to the Petitioner.
- Causing the Petitioner to travel across state lines or tribal land lines if your intent is to cause bodily injury to the Petitioner or if the travel results in you causing bodily injury to the Petitioner.

Effect of the Restraining Order

Keep in mind that the Restraining Order you have received is in effect and remains in effect until the court that issued the order modifies it or dismisses it or until it expires. If you are arrested for violating this order, the security amount (bail) is \$5,000, unless a different amount is ordered by the court.

The existence of a Restraining Order may affect pending (current) or future criminal, civil or family law cases, including cases involving custody and parenting time of your children. You may want to consult an attorney for more information about these and other effects the Restraining Order may have.

Enforceability of the Restraining Order

This Restraining Order, or any order continuing or changing this order, is enforceable throughout Oregon. It is also enforceable in all 50 states, the District of Columbia, tribal lands and territories of the United States.

Violation of the Restraining Order

Violation of any provision of this Restraining Order, or any order continuing or changing this order, constitutes contempt of court, punishable by a fine of up to \$500 or one percent of your annual gross income, whichever is greater, or a jail term of up to six months, or both. Other punishments may also be imposed for contempt.

Modification of the Restraining Order

At any time after a restraining order has been entered, you or the Petitioner may request that the court change, remove, or make less restrictive those parts of the order involving 1) custody and parenting time, 2) your removal from the house, 3) restrictions on your presence at certain places, or 4) your contact with the Petitioner in-person, by telephone or otherwise. To make a change, you must file paperwork at the courthouse. The paperwork is available at the courthouse or at: <http://www.obop.net/OJD/OSCA/cpsd/courtimprovement/familylaw/index.page>

A judge will sign an order for the other party to appear at a hearing. Some courts set a hearing when you file the papers. Some courts do not set a hearing until the other person has been served and given 30 days to respond. Check with the court clerk of the county that issued the order to be sure you follow the right process.

Note: if the Petitioner is asking for a change that removes or makes less restrictive the parts of the order involving your removal from the house, restrictions on your presence at certain places, or your contact with the Petitioner in-person by telephone or otherwise, the judge may sign an order changing the terms without requiring a hearing.

Renewal of the Restraining Order

The order may also be renewed for another year. For this to happen, the Petitioner must file papers asking the judge to do so and must show that a person in the Petitioner's situation would reasonably fear further acts of abuse by you if the order is not renewed. If the order is renewed, you will be served with the renewal papers and will have the right to request a hearing to contest the renewal.