

OREGON LAW



IMPROVING RESPONSE TO PARTNER VIOLENCE



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ORS 133.005

GUIDELINES FOR MANDATORY ARREST

Oregon Revised Statutes require that the police arrest the perpetrator in domestic violence cases. Police must arrest in cases which involve family or household members as defined in the RO section, and they have probable cause to believe that abuse has occurred or that the perpetrator has placed the victim in fear of imminent serious physical injury.

Abuse is defined as:

- attempting to cause or intentionally, knowingly or recklessly causing physical injury or serious physical injury;
- intentionally attempting to place another in fear of imminent serious bodily injury; and
- causing another to engage in involuntary sexual relations by force or threat of force.

If you wish the police to arrest the assailant, you will need to provide evidence that you have been assaulted or that you are afraid of an imminent assault, and what your relationship with the assailant is. This evidence might include:

- showing them injuries, broken furniture or dishes,
- providing them with the names of neighbors who witnessed the assault,
- telling them what your relationship with the assailant is,
- making statements about threats that the assailant has made and why you believe he would carry them out,
- stating that you are afraid of the assailant.

The calmer you are and the more detailed the account you give the police, the more likely they will arrest. It may be helpful to indicate if children were present at the time of the assault, or if weapons are kept in the household. If the perpetrator has left the scene, the police may be willing to look for him, if you tell them where he has gone.

Police should only arrest one person, the "primary" assailant, at a domestic violence incident. Who is the primary assailant is determined by comparing the extent of injuries or seriousness of threats; the history of domestic violence; whether the assault was in self-defense; and the potential for future assaults.

Police are mandated to arrest if someone has violated a restraining or a no contact order. It is helpful to show the police a copy of the restraining order. Officers are also required to provide the victim with referral information.

There have been cases, in which the perpetrator has not been arrested, despite evidence of an assault. If it does not further endanger you, ask the officers for their names and badge numbers. You can call either the District Attorney's office (District Attorney's Domestic Violence Unit at (503)988-3873 or the Portland Police Bureau Domestic Violence Reduction Unit at (503)823-0961 the following day, to ask for assistance in protecting yourself from assault or to press charges.

Following arrest, the perpetrator is usually released from jail (bail, own recognizance, due to overpopulation or following arraignment) **with a "no contact order"** which bars him from contacting the victim. You can call the jail (503-988-3689) to ask them to call you

ORS 133.005

before they release the abuser. In theory, perpetrators are to be held in jail until the next (or Monday) morning after arraignment, unless they are released on bail or their own recognizance.

The Multnomah County District Attorney has a policy to review and prosecute all domestic violence cases that can be proven, whether the victim participates or not. If you wish to participate in prosecution, call the District Attorney's office (503-988-3162). If the perpetrator has been arrested and you call before noon the next business day, the District Attorney can act on the case while the perpetrator is in custody. You can also call the District Attorney's office at any time after an assault to press charges, whether the police have written a report or not. However, if the perpetrator is no longer in custody, there will be delays in charging.

To prosecute the assailant, either at that time or later on, you can **take the following steps** to assist the District Attorney in their case:

- Request that the police or health care provider take pictures of any injuries you received. The District Attorney's Victim Assistants and the Portland Police Bureau's Domestic Violence Reduction Unit can also take pictures. Bruises are best photographed 2-3 days after the assault.
- Request that the police or health care provider include specific statements by you or the assailant in their report. These statements might include things like "John, my husband, hit me in the face with his closed fist." The more explicit you are in describing the assault, the better case the District Attorney can make, whether you are able to participate in the prosecution or not.
- Keep a log of threats, harassment, menacing or assaults, and who might have witnessed them.
- Call the police every time there's an assault or violation of a restraining order.
- Call the DA as early as possible after an assault.

If a child is injured in an assault against you, call the Child Abuse Reporting Line at (503)731-3100 immediately. This not only provides additional evidence of an assault, but indicates that you have taken steps to protect your child.

Note: Perpetrators sometime retaliate after the police have been called or if the victim participates in the police investigation or the District Attorney's prosecution. Perpetrators frequently threaten or coerce victims to recant or refuse to participate in prosecution. The police or District Attorney can not guarantee safety during an investigation or trial. Only the survivor can determine if it is safe enough to participate in the criminal proceedings. Employers or others providing support should never require a police report or prosecution. Safety planning is essential for the survivor during this time.

from "*Domestic Violence Resource Manual*", January 1997, issued by Multnomah County Department of Community and Family Services

ORS 133.055

CRIMINAL CITATIONS - DOMESTIC DISTURBANCE**Oregon Revised Statute - ORS 133.055****133.055 Criminal citation; exception for domestic disturbance; notice of rights.**

- (1) A peace officer may issue a criminal citation to a person if the peace officer has probable cause to believe that the person has committed a misdemeanor or has committed any felony that is subject to misdemeanor treatment under ORS 161.705. The peace officer shall deliver a copy of the criminal citation to the person. The criminal citation shall require the person to appear at the court of the magistrate before whom the person would be taken pursuant to ORS 133.450 if the person were arrested for the offense.
- (2)
 - (a) Notwithstanding the provisions of subsection (1) of this section, when a peace officer responds to an incident of domestic disturbance and has probable cause to believe that an assault has occurred between family or household members, as defined in ORS 107.705, or to believe that one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest and take into custody the alleged assailant or potential assailant.
 - (b) When the peace officer makes an arrest under paragraph (a) of this subsection, the peace officer is not required to arrest both persons.
 - (c) When a peace officer makes an arrest under paragraph (a) of this subsection, the peace officer shall make every effort to determine who is the assailant or potential assailant by considering, among other factors:
 - (A) The comparative extent of the injuries inflicted or the seriousness of threats creating a fear of physical injury;
 - (B) If reasonably ascertainable, the history of domestic violence between the persons involved;
 - (C) Whether any alleged crime was committed in self-defense; and
 - (D) The potential for future assaults.
- (3) Whenever any peace officer has reason to believe that a family or household member, as defined in ORS 107.705, has been abused as defined in ORS 107.705 or that an elderly or disabled person has been abused as defined in ORS 124.005, that officer shall use all reasonable means to prevent further abuse, including advising each person of the availability of a shelter or other services in the community and giving each person immediate notice of the legal rights and remedies available. The notice shall consist of handing each person a copy of the following statement (*next page*):

ORS 133.055

CRIMINAL CITATIONS - DOMESTIC DISTURBANCE

Oregon Revised Statute - ORS 133.055

133.055 Criminal citation; exception for domestic disturbance; notice of rights.**IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE:**

You can ask the district attorney to file a criminal complaint. You also have the right to go to the circuit court and file a petition requesting any of the following orders for relief: (a) An order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household; (c) an order preventing your attacker from entering your residence, school, business or place of employment; (d) an order awarding you or the other parent custody of or parenting time with a minor child or children; (e) an order restraining your attacker from molesting or interfering with minor children in your custody; (f) an order awarding you other relief the court considers necessary to provide for your or your children's safety, including emergency monetary assistance. Such orders are enforceable in every state.

You may also request an order awarding support for minor children in your care or for your support if the other party has a legal obligation to support you or your children.

You also have the right to sue for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other out-of-pocket expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is under \$3,500.

Similar relief may also be available in tribal courts.

Family Violence Guide Sheet

RESTRAINING ORDERS (RO)

Restraining Orders

Restraining orders are "granted" by a judge to a "petitioner" if the judge determines the petitioner has been abused or threatened and is in immediate danger of further abuse. The abuse or threats of abuse must have been within the past 180 days.

The petitioner *can request temporary custody* of children and the terms of visitation, as long as no other permanent custody or visitation orders exist

The RO is an important step in establishing personal safety, but will not necessarily stop the respondent from hurting the petitioner. It is important that the petitioners plan how to protect themselves if the respondent violates the RO

Eligibility

To be eligible for a RO, the petitioner must have had one of the following relationships with the abuser:

- Current or former spouse
- Be related by blood marriage, or adoption
- A person, of the same or opposite sex, with whom you have been in a sexually intimate relationship in the past two years
- A person, of the same or opposite sex, with whom you are living with or have lived with, in a sexually intimate relationship
- Unmarried parents of a minor child
- You are a minor who has been involved in a sexually intimate relationship with the respondent (abuser) who is 18 years or older

Effective Use of a Restraining Order

The petitioner should carry a copy of the RO at all times. She should make copies for her employer and her children's school.

- Inviting the respondent onto her property does not invalidate the RO or prohibit the police from arresting the respondent. **ONLY** a judge can dismiss the RO.
- The RO expires in one year from the date signed, unless it is renewed.
- The police are required to arrest an abuser if he/she assaults the petitioner or violate the RO. Call 911 when the respondent is violating the RO and show the RO to the police officer.

How to Get a Restraining Order

- To apply for a RO (request or renew), the petitioner must go to The Multnomah County Courthouse, Room 112, 1021 SW 4th Avenue before 12:30pm weekdays.
- Advocates are there from 11:00 am – 1:00 pm to assist filling out the forms.
- The phone number for the restraining order office is (503) 988-3022. The RO requests are heard at 1:30 pm each weekday.
- The process generally takes 2-3 hours.
- The RO is usually served to the respondent by the County Sheriff.

The respondent can contest the RO. The court would then schedule a hearing within a relatively short period of time. Hearing notices would then be mailed to the petitioner. The court should always have a current and valid mailing address. If the petitioner does not appear, the judge will dismiss the RO or make changes requested by the respondent

ORS 107.700-107.732

RESTRAINING ORDERS

Oregon Revised Statute - ORS 107.700-107.732

107.700 Family Abuse Prevention Act.

107.700 Short title. ORS 107.700 to 107.732 shall be known and may be cited as the “Family Abuse Prevention Act.” [1977 c.845 s.4; 1995 c.637 s.1]

107.705 Definitions for ORS 107.700 to 107.732. As used in ORS 107.700 to 107.732:

- (1) "Abuse" means the occurrence of one or more of the following acts between family or household members:
 - (a) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.
 - (b) Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury.
 - (c) Causing another to engage in involuntary sexual relations by force or threat of force.
- (2) "Child" means an unmarried person who is under 18 years of age.
- (3) "Family or household members" means any of the following:
 - (a) Spouses.
 - (b) Former spouses.
 - (c) Adult persons related by blood, marriage or adoption.
 - (d) Persons who are cohabiting or who have cohabited with each other.
 - (e) Persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing by one of them of a petition under ORS 107.710.
 - (f) Unmarried parents of a child.
- (4) "Interfere" means to interpose in a manner that would reasonably be expected to hinder or impede a person in the petitioner's situation.
- (5) "Intimidate" means to act in a manner that would reasonably be expected to threaten a person in the petitioner's situation, thereby compelling or deterring conduct on the part of the person.
- (6) "Menace" means to act in a manner that would reasonably be expected to threaten a person in the petitioner's situation.
- (7) "Molest" means to act, with hostile intent or injurious effect, in a manner that would reasonably be expected to annoy, disturb or persecute a person in the petitioner's position. [1977 c.845 s.5; 1979 c.161 s.1; 1981 c.780 s.1; 1985 c.629 s.1; 1987 c.331 s.3; 1987 c.805 s.1; 1993 c.643 s.1; 1995 c.637 s.2; 1997 c.863 s.8; 1999 c.617 s.6; 1999 c.1052 s.12]

107.710 Petition to circuit court for relief; burden of proof.

- (1) Any person who has been the victim of abuse within the preceding 180 days may petition the circuit court for relief under ORS 107.700 to 107.732, if the person is in imminent danger of further abuse from the abuser. The person may seek relief by filing a petition with the circuit court alleging that the person is in imminent danger of abuse from the respondent, that the person has been the victim of abuse committed by the respondent within the 180 days

ORS 107.700-107.732

RESTRAINING ORDERS**Oregon Revised Statute - ORS 107.700-107.732****107.700 Family Abuse Prevention Act.**

- preceding the filing of the petition and particularly describing the nature of the abuse and the dates thereof. The abuse must have occurred not more than 180 days before the filing of the petition. Allegations in the petition shall be made under oath or affirmation. The circuit court shall have jurisdiction over all proceedings under ORS 107.700 to 107.732.
- (2) The petitioner has the burden of proving a claim under ORS 107.700 to 107.732 by a preponderance of the evidence.
 - (3) A person's right to relief under ORS 107.700 to 107.732 shall not be affected by the fact that the person left the residence or household to avoid abuse.
 - (4) A petition filed under ORS 107.700 to 107.732 shall disclose the existence of any custody, Family Abuse Prevention Act or Elderly and Disabled Person Abuse Prevention Act proceedings, or any marital annulment, dissolution or separation proceedings, or any filiation proceeding, pending between the parties, and the existence of any other custody order affecting the children of the parties.
 - (5) When the petitioner requests custody of any child, the petition shall comply with ORS 109.767 and disclose:
 - (a) The child's present residence and the length of time the child has resided at the residence;
 - (b) The county and state where the child resided for the five years immediately prior to the filing of the petition;
 - (c) The name and address of the party or other responsible person with whom the child is presently residing;
 - (d) The name and current address of any party or other responsible person with whom the child resided for the five years immediately prior to the filing of the petition;
 - (e) Whether the party participated as a party, witness or in any other capacity, in any other litigation concerning the custody of the child in this or any other state;
 - (f) Whether the party has information of any custody proceeding concerning the child pending in a court of this or any other state; and
 - (g) Whether the party knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody, parenting time or visitation rights with respect to the child.
 - (6) For purposes of computing the 180-day period in this section and ORS 107.718, any time during which the respondent is incarcerated or has a principal residence more than 100 miles from the principal residence of the petitioner shall not be counted as part of the 180-day period. [1977 c.845 s.6; 1981 c.780 s.2; 1985 c.629 s.2; 1987 c.805 s.2; 1993 c.375 s.1; 1995 c.637 s.3; 1995 c.666 s.19; 1997 c.707 s.14; 1999 c.617 s.4; 1999 c.649 s.50; 1999 c.738 s.7; 1999 c.1 052 s.13]

ORS 107.715-107.716

RESTRAINING ORDERS

Oregon Revised Statute - ORS 107.715-107.716

107.700 Family Abuse Prevention Act.

107.715 [1977 c.845 s.7; repealed by 1981 c.780 s.5 (107.716 enacted in lieu of 107.715)]

107.716 Hearing; additional relief; certificate of compliance; effect on title to real property; no undertaking required.

- (1) If the respondent requests a hearing pursuant to ORS 107.718 (8), the court shall hold the hearing within 21 days following the request, and may cancel or change any order issued under ORS 107.718.
- (2) In addition to the relief available under ORS 107.718, the court, in a hearing held pursuant to subsection (1) of this section, may assess against either party a reasonable attorney fee and such costs as may be incurred in the proceeding.
- (3) Where temporary custody is contested, the hearing shall be held within five days of the respondent's request. If the respondent is represented by an attorney, time for the hearing may be extended for up to five days at the request of the petitioner so that the petitioner may seek representation.
- (4) If the court continues the order, with or without changes, at a hearing about which the respondent received actual notice and the opportunity to participate, the court shall include in the order a certificate in substantially the following form in a separate section immediately above the signature of the judge:

CERTIFICATE OF COMPLIANCE WITH THE VIOLENCE AGAINST WOMEN ACT

This protective order meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. 2265 (1994). This court has jurisdiction over the parties and the subject matter. The respondent was afforded notice and timely opportunity to be heard as provided by the law of this jurisdiction. This order is valid and entitled to enforcement in this and all other jurisdictions.

- (5) The court shall have the further power to approve any consent agreement to bring about a cessation of abuse of the parties. However, the court may not approve a term in a consent agreement that provides for restraint of a party to the agreement unless the other party petitioned for and was granted an order under ORS 107.710. An order or consent agreement made under this section may be amended at any time and shall continue in effect for a period of one year from the date of the order issued under ORS 107.718, or until superseded as provided in ORS 107.722.
- (6) No order or agreement made under ORS 107.705 to 107.720, 133.310 and 133.381 shall in any manner affect title to any real property.
- (7) No undertaking shall be required in any proceeding under ORS 107.700 to 107.732.
- (8) Any proceeding under ORS 107.700 to 107.732 shall be in addition to any other available civil or criminal remedies. [1981 c.780 s.6 (enacted in lieu of 107.715); 1985 c.629 s.3; 1987 c.805 s.3; 1995 c.637 s.4; 1995 c.794 s.2; 1997 c.707 s.15; 1999 c.617 s.5; 1999 c.1052 s.14]

RESTRAINING ORDERS

Oregon Revised Statute - ORS 107.718

107.700 Family Abuse Prevention Act – Petition for relief

107.718 Petition for relief when petitioner in danger of abuse; forms; restraining order; request for hearing.

- (1) When a person files a petition under ORS 107.710, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a showing that the petitioner has been the victim of abuse committed by the respondent within 180 days preceding the filing of the petition, that there is an imminent danger of further abuse to the petitioner and that the respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child, the court shall, if requested by the petitioner, order, for a period of one year or until the order is withdrawn or amended, or until the order is superseded as provided in ORS 107.722, whichever is sooner:
 - (a) That temporary custody of the children of the parties be awarded to the petitioner or, at the request of the petitioner, to the respondent, subject to reasonable parenting time rights of the noncustodial parent, which the court shall order, unless such parenting time is not in the best interest of the child;
 - (b) That the respondent be required to move from the petitioner's residence, if in the sole name of the petitioner or if it is jointly owned or rented by the petitioner and the respondent, or if the parties are married to each other;
 - (c) That the respondent be restrained from entering, or attempting to enter, a reasonable area surrounding the petitioner's current or subsequent residence if the respondent is required to move from petitioner's residence;
 - (d) That a peace officer accompany the party who is leaving or has left the parties' residence to remove essential personal effects of the party or the party's children, or both, including but not limited to clothing, toiletries, diapers, medications, social security cards, birth certificates, identification and tools of the trade;
 - (e) That the respondent be restrained from intimidating, molesting, interfering with or menacing the petitioner, or attempting to intimidate, molest, interfere with or menace the petitioner;
 - (f) That the respondent be restrained from intimidating, molesting, interfering with or menacing any children in the custody of the petitioner, or attempting to intimidate, molest, interfere with or menace any children in the custody of the petitioner;
 - (g) That the respondent be restrained from entering, or attempting to enter, on any premises and a reasonable area surrounding the premises when it appears to the court that such restraint is necessary to prevent the respondent from intimidating, molesting, interfering with or menacing the petitioner or children whose custody is awarded to the petitioner;
 - (h) Other relief that the court considers necessary to provide for the safety and welfare of the petitioner and the children in the custody of the petitioner including, but not limited to, emergency monetary assistance from the respondent; or
 - (i) That the respondent have no contact with the petitioner in person, by telephone or by mail except as described in parenting time ordered under this section.

RESTRAINING ORDERS

Oregon Revised Statute - ORS 107.718

107.700 Family Abuse Prevention Act – Petition for relief

- (2) If respondent is restrained from entering, or attempting to enter, an area surrounding petitioner's residence or any other premises, the order restraining respondent shall specifically describe the area.
- (3) Imminent danger under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with additional bodily harm.
- (4) If the court awards parenting time to a parent who committed abuse, the court shall make adequate provision for the safety of the child and of the petitioner. The order of the court may include, but is not limited to, the following:
 - (a) That exchange of a child between parents shall occur at a protected location.
 - (b) That parenting time be supervised by another person or agency.
 - (c) That the perpetrator of the abuse be required to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators or any other counseling program designated by the court as a condition of the parenting time.
 - (d) That the perpetrator of the abuse not possess or consume alcohol or controlled substances during the parenting time and for 24 hours preceding the parenting time.
 - (e) That the perpetrator of the abuse pay all or a portion of the cost of supervised parenting time, and any program designated by the court as a condition of parenting time.
 - (t) That no overnight parenting time occur.
- (5) An instruction brochure shall be available from the clerk of the circuit court explaining the rights set forth under ORS 107.700 to 107.732. The petition, order and related forms shall be available from the clerk of the court.

You can obtain the required forms at the Multnomah County Courthouse, Room 211.

GUIDELINES FOR OBTAINING STALKING ORDERS

Stalking is defined under the Oregon Revised Statutes: 30.866 and 163.730 to 163.750.

- **If you are being followed, harassed, threatened or menaced by an individual, you may be able to obtain a stalking order to assist you in staying safe.** Stalking orders have been successful in deterring some perpetrators from continuing harassment. Stalking orders can be issued if there has been more than one unwanted contact that would put a reasonable person in fear of his or her safety. There does not need to have been verbal threats of injury or a prior assault.
- Stalking cases frequently involve a person following, harassing, or otherwise contacting another person he or she has only seen, and has never met. Stalking orders can also be useful in situations where there has been no sexual relationship; i.e., only a dating relationship existed. In addition, a parent or guardian may file a stalking order to protect his or her children or dependents.
- **There are two ways to obtain a stalking order.** In Multnomah County, the more common way is for the petitioner to request it from the Court. The second way is for police to issue a citation to the perpetrator. A police citation is more common in other counties.
- **If you wish to request a stalking order,** go to Room 211 in the Multnomah County Courthouse (1021 SW 4th), and request the appropriate forms. You can obtain assistance in filling out the forms from the volunteers in Room 211. It is important to be as specific and as truthful as possible on the complaint form. Including the day, date, location, witnesses, specific conduct of the respondent and why that conduct makes you afraid for your safety. There is no fee for filing, serving or having a court hearing about the stalking order.
- **Once you have filed a complaint, you will appear before a judge, who will ask questions about the incidents.** If the judge determines that the requirements of the law have been met, he or she will issue a temporary stalking order which bars the respondent from further contact with you. At that time, the Court will schedule a 30-day hearing at which a permanent order may be issued.
- **The Multnomah County Sheriff's Office serves the temporary order, and it is not binding on the respondent until it has been served.** At the end of the 30 days, the order expires unless it has been extended at the scheduled 30-day hearing. It is strongly recommended that petitioners appear at this hearing, because some judges refuse to issue a second temporary order if the petitioner did not appear at the 30-day hearing. You may be allowed to testify at this 30-day hearing by telephone, if you request to do so.
- **If the police have issued a citation at the scene of the incident, you and the perpetrator will be required to appear at a hearing scheduled within 3 business days.** Again, you can testify by telephone. At the time of the hearing, the judge can extend the temporary stalking order. Many stalking orders have no expiration date. If a court issues a permanent order, it is in force until it is vacated by the Court.

ORS 30.866 and 163.730-163.750

- **If the respondent fails to appear at either hearing (following a petition filed to the court or citation issued by a police officer), the judge will issue an arrest warrant and grant the protective order.** Stalking orders have restrictions based on constitutional issues, so that the judge can not limit the respondent from going to a public place. If appropriate, the petitioner may be referred for an RO. Getting a stalking order does not keep you from getting an RO in cases of domestic violence.
- Stalking orders first became available in Oregon in June of 1993, and the law was changed in 1995. Issuance and enforcement have not been standardized. Police and court practices vary county-to-county. Violation of a stalking order is a crime, and you should report this to the police. The police must arrest the respondent when they learn a stalking order has been violated. The first conviction of a violation is a misdemeanor; subsequent convictions are felonies.

from *"Domestic Violence Resource Manual"*, January 1997, issued by Multnomah County Department of Community and Family Services

ORS 163.730-163.750

STALKING DEFINITION

Oregon Revised Statute - ORS 163.730 to ORS 163.750

STALKING – 163.730 – Definitions for ORS 30.866 and 163.730 to 163.750.

As used in ORS 30.866 and 163.730 to 163.750, unless the context requires otherwise:

- (1) "Alarm" means to cause apprehension or fear resulting from the perception of danger.
- (2) "Coerce" means to restrain, compel or dominate by force or threat.
- (3) "Contact" includes but is not limited to:
 - (a) Coming into the visual or physical presence of the other person;
 - (b) Following the other person;
 - (c) Waiting outside the home, property, place of work or school of the other person or of a member of that person's family or household;
 - (d) Sending or making written communications in any form to the other person;
 - (e) Speaking with the other person by any means;
 - (f) Communicating with the other person through a third person;
 - (g) Committing a crime against the other person;
 - (h) 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;
 - (i) Communicating with business entities with the intent of affecting some right or interest of the other person;
 - (j) Damaging the other person's home, property, place of work or school; or
 - (k) Delivering directly or through a third person any object to the home, property, place of work or school of the other person.
- (4) "Household member" means any person residing in the same residence as the victim.
- (5) "Immediate family" means father, mother, child, sibling, parent, spouse, grandparent, stepparent and stepchild.
- (6) "Law enforcement officer" means any person employed in this state as a police officer by a county sheriff, constable, marshal or municipal or state police agency.
- (7) "Repeated" means two or more times.
- (8) "School" means a public or private institution of learning or a child care facility.

[1993 c.626 s.1; 1995 c.278 s.27; 1995 c.353 s.1]

Note: 163.730 to 163.753 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 163 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

STALKING CRIME

Oregon Revised Statute - ORS 163.732

163.732 Stalking.

- (1) A person commits the crime of stalking if:
 - (a) The person knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person;
 - (b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and
 - (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.
- (2)
 - (a) Stalking is a Class A misdemeanor.
 - (b) Notwithstanding paragraph (a) of this subsection, stalking is a Class C felony if the person has a prior conviction for:
 - (A) Stalking; or
 - (B) Violating a court's stalking protective order.
 - (c) When stalking is a Class C felony pursuant to paragraph (b) of this subsection, stalking shall be classified as a person felony and as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission. [1993 c.626 s.2; 1995 c.353 s.2]

Note: See note under 163.730.

ORS 163.735

STALKING CITATION FORM

Oregon Revised Statute - ORS 163.735

163.738 Effect of citation; contents; bearing; court's stalking protective order.

- (1) (a) 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:
 - (A) The name of the court at which the respondent is to appear;
 - (B) The name of the respondent;
 - (C) A copy of the stalking complaint;
 - (D) The date, time and place at which the citation was issued;
 - (E) The name of the law enforcement officer who issued the citation; (F) The time, date and place at which the respondent is to appear in court;
 - (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
 - (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.
- (b) The officer shall notify the petitioner in writing of the place and time set for the hearing.
- (2) (a) The hearing shall be held as indicated in the citation. At the hearing, the petitioner may appear in person or by telephonic appearance. The respondent shall be given the opportunity to show cause why a court's stalking protective order should not be entered. The hearing may be continued for up to 30 days. 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.

ORS 163.735

STALKING CITATION FORM**Oregon Revised Statute - ORS 163.735***(continued)*

- (b) 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 D.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.
- (3) The circuit court may enter an order under this section against a minor respondent without appointment of a guardian ad litem.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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. [1993 c.626 s.4; 1995 c.353 s.4; 1997 c.863 s.6; 1999 c.1052 s.2]

Note: See note under 163.730.

ORS 163.738

STALKING CITATION EFFECT

Oregon Revised Statute - ORS 163.738

163.738 Effect of citation; contents; hearing; court's stalking protective order.

- (1) (a) 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:
 - (A) The name of the court at which the respondent is to appear;
 - (B) The name of the respondent;
 - (C) A copy of the stalking complaint;
 - (D) The date, time and place at which the citation was issued;
 - (E) The name of the law enforcement officer who issued the citation;
 - (F) The time, date and place at which the respondent is to appear in court;
 - (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
 - (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.
- (b) The officer shall notify the petitioner in writing of the place and time set for the hearing.
- (2) (a) The hearing shall be held as indicated in the citation. At the hearing, the petitioner may appear in person or by telephonic appearance. The respondent shall be given the opportunity to show cause why a court's stalking protective order should not be entered. The hearing may be continued for up to 30 days. 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.

ORS 163.738

STALKING CITATION EFFECTOregon Revised Statute - ORS 163.738 *(continued)*

- (b) 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.
- (3) The circuit court may enter an order under this section against a minor respondent without appointment of a guardian ad litem.
- (4) 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.
- (5) 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.
- (6) 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.
- (7) 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. [1993 c.626 s.4; 1995 c.353 s.4; 1997 c.863 s.6; 1999 c.1 052 s.2]

Note: See note under 163.730.

ORS 163.741

STALKING SERVICE OF ORDER

Oregon Revised Statute - ORS 163.741

163.741 Service of order; entry of order into law enforcement data systems.

- (1) Whenever a stalking protective order, as authorized by ORS 163.735 or 163.738, is issued and the person to be restrained has actual notice thereof, the person serving the order shall deliver forthwith to the county sheriff a true copy of the order and an affidavit of proof of service on which it is stated that personal service of the order was made on the respondent. If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service of the order is waived and accompanying proof of service is not necessary. Upon receipt of proof of service, when required, and a true copy of the order, the county sheriff shall forthwith enter the order into the Law Enforcement Data System maintained by the Department of State Police and into the databases of the National Crime Information Center of the United States Department of Justice. The sheriff shall also provide the complainant with a true copy of the proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of such order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order. Such order shall be fully enforceable in any county in the state. The complainant may elect to deliver documents personally to a county sheriff or to have them delivered by a private person for entry into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.
- (2) When a stalking protective order has been entered into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice under subsection (1) of this section, a county sheriff shall cooperate with a request from a law enforcement agency from any other jurisdiction to verify the existence of the stalking protective order or to transmit a copy of the order to the requesting jurisdiction.
- (3) When a stalking protective order described in subsection (1) of this section is terminated by order of the court, the clerk of the court shall deliver forthwith a true 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. [1993 c.626 s.5; 1999 c.1052 s.3]

Note: See note under 163.730.

ORS 163.750

VIOLATION OF COURT STALKING PROTECTIVE ORDER

Oregon Revised Statute - ORS 163.750

163.750 Violating court's stalking protective order.

- (1) A person commits the crime of violating a court's stalking protective order when:
 - (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;
 - (b) The person, subsequent to the service of the order, has engaged intentionally, knowingly or recklessly in conduct prohibited by the order; and
 - (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.
- (2)
 - (a) Violating a court's stalking protective order is a Class A misdemeanor.
 - (b) Notwithstanding paragraph (a) of this subsection, violating a court's stalking protective order is a Class C felony if the person has a prior conviction for:
 - (A) Stalking; or
 - (B) Violating a court's stalking protective order.
 - (c) When violating a court's stalking protective order is a Class C felony pursuant to paragraph (b) of this subsection, violating a court's stalking protective order shall be classified as a person felony and as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission. [1993 c.626 s.8; 1995 c.353 s.7]

Note: See note under 163.730.

163.753 Immunity of officer acting in good faith.

A law enforcement officer acting in good faith shall not be liable in any civil action for issuing or not issuing a citation under ORS 163.735. [1993 c.626 s.11; 1995 c.353 s.9]

Note: See note under 163.730.

163.755 Conduct protected by labor laws.

Nothing in ORS 30.866 or 163.730 to 163.750 shall be construed to permit the issuance of a court's stalking protective order under ORS 30.866 or 163.738, a citation under ORS 163.735, a criminal prosecution under ORS 163.732 or a civil action under ORS 30.866 for conduct that is authorized or protected by the labor laws of this state or of the United States. [1995 c.353 s.8]

Note: 163.755 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 163 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

from "Domestic Violence Resource Manual", January 1997, issued by Multnomah County Department of Community and Family Services

CHILD ABUSE REPORTING

The impact of witnessing Domestic Violence

Children who witness domestic violence can sometimes display the same emotional responses as children who have been physically and emotionally abused. These children frequently are anxious, depressed, or act out inappropriately. Their responses include feeling guilty for the abuse or for not being able to stop it; grieving for family and personal losses; fear of expressing emotions, abandonment, or the unknown. Their lives may be disrupted by attempts to escape violence.

What is *Threat of Harm*?

Threat of Harm is any action, statement, written, or non-verbal message which is serious enough to make a child believe s/he is in danger of being abused.

Threat of harm includes all activities, conditions and persons which place the child at substantial risk of physical or sexual abuse, neglect, or mental injury.

- Threat of harm includes all actions, statements, written or non-verbal messages conveying threats of physical or mental injury which are serious enough to unsettle the child's mind. It includes:
 - Expressions of intention to inflict pain, injury, evil, or punishment on the child.
 - An avowed determination to injure the child presently or in the future.
 - A caretaker regularly telling a child that if she/he tries to make decisions independent of the caretaker, or is too curious, then terrifying consequences, possibly death, will happen to the child.
- **Circumstances which expose children to acts of domestic violence.** Violence in the home threatens a child's emotional state as well as physical well being.

Mandatory Reporting

Mandatory Reporters must report any "reasonable suspicion" of child abuse, according to Oregon law. You need not be a mandatory reporter to contact Services to Children and Families (SCF) with concerns of possible child abuse. Services to Children and Families will assess the information you give us and take further action, if necessary. Your name will be kept confidential. Only a court of law can order a reporter's name released. More comprehensive information on the symptoms of abuse and the law is available from SCF. Each year in Oregon, about 25,000 reports of child abuse are made and many children die from abuse. You can help these kids. To report cases of suspected Child Abuse in Multnomah County, call the Child Abuse Prevention Hotline at: 503-731-3100.

from "Recognizing and Reporting Child Abuse & Neglect: An Explanation of Oregon's Mandatory Reporting Law. published by State Office for Services to Children and Families, Child Protective Services Section, Oregon Department of Human Services, PAM 1520 Rev. 10/99

CHILD ABUSE REPORTING

Who is required to report?

The Child Abuse Reporting Law, ORS 419B.005 to 419B.045, was enacted in 1971, making it mandatory for public or private officials to report any child whom they "have reasonable cause to believe" is being abused. Those officials include:

- Physicians and health care providers (nurses, dentists, optometrists, chiropractors, naturopath)
- Mental health care providers
- School employees
- All employees of government health, human services, and juvenile programs
- Peace officers and attorneys
- Social workers
- Day care providers
- Foster care providers
- Counselors and therapists
- Clergy
- Firefighters and Emergency Medical Technicians

from "Recognizing and Reporting Child Abuse & Neglect: An Explanation of Oregon's Mandatory Reporting Law" published by State Office for Services to Children and Families, Child Protective Services Section, Oregon Department of Human Services, PAM 1520 Rev. 10/99

ORS 419B.005

REPORTING OF CHILD ABUSE

Oregon Revised Statute - ORS 419B.005

Reporting of Child Abuse—419B.005 Definitions.

As used in ORS 418.747, 418.748, 418.749 and 419B.005 to 419B.050, unless the context requires otherwise:

(1) (a) "Abuse" means:

- (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.
 - (B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.
 - (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are defined in ORS chapter 163.
 - (D) Sexual abuse, as defined in ORS chapter 163.
 - (E) Sexual exploitation, including but not limited to:
 - (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and
 - (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution, as defined in ORS chapter 167.
 - (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the health or welfare of the child.
 - (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.
 - (H) Buying or selling a person under 18 years of age as described in ORS 163.537.
- (b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

ORS 419B.005

REPORTING OF CHILD ABUSE

Oregon Revised Statute - ORS 419B.005

- (2) "Child" means an unmarried person who is under 18 years of age.
- (3) "Public or private official" means:
- (a) Physician, including any intern or resident.
 - (b) Dentist.
 - (c) School employee.
 - (d) Licensed practical nurse or registered nurse.
 - (e) Employee of the Department of Human Services, State Commission on Children and Families, Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health and developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.
 - (f) Peace officer.
 - (g) Psychologist.
 - (h) Clergyman.
 - (i) Licensed clinical social worker.
 - (j) Optometrist.
 - (k) Chiropractor.
 - (l) Certified provider of foster care, or an employee thereof.
 - (m) Attorney.
 - (n) Naturopathic physician;
 - (o) Licensed professional counselor.
 - (p) Licensed marriage and family therapist.
 - (q) Firefighter or emergency medical technician.
 - (r) A court appointed special advocate, as defined in ORS 419A.004.
 - (s) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.A50.
- (4) "Law enforcement agency" means:
- (a) Any city or municipal police department.
 - (b) Any county sheriff's office.
 - (c) The Oregon State Police.
 - (d) A county juvenile department. [1993 c.546 s.12; 1993 c.622 s.1a; 1995 c.278 s.50; 1995 c.766 s.1; 1997 c.127 s.1; 1997 c.561 s.3; 1997 c.703 s.3; 1997 c.873 s.30; 1999 c.743 s.22; 1999 c.954 s.4]

ORS 419B.007 – 419B.015

REPORTING OF CHILD ABUSE

Oregon Revised Statute - ORS 419B.007 – 419B.015

419B.007 Policy.

The Legislative Assembly finds that for the purpose of facilitating the use of protective social services to prevent further abuse, safeguard and enhance the welfare of abused children, and preserve family life when consistent with the protection of the child by stabilizing the family and improving parental capacity, it is necessary and in the public interest to require mandatory reports and investigations of abuse of children and to encourage voluntary reports. [1993 c.546 s.13]

419B.010 Duty of officials to report child abuse; exceptions; penalty.

- (1) Any public or private official having reasonable cause to believe that any child with whom the official comes in contact has suffered abuse or that any person with whom the official comes in contact has abused a child shall immediately report or cause a report to be made in the manner required in ORS 419B.OI5. Nothing contained in ORS 40.225 to 40.295 shall affect the duty to report imposed by this section, except that a psychiatrist, psychologist, clergyman or attorney shall not be required to report such information communicated by a person if the communication is privileged under ORS 40.225 to 40.295.
- (2) A person who violates subsection (1) of this section commits a Class A violation. Prosecution under this subsection shall be commenced at any time within 18 months after commission of the offense. [1993 c.546 s.14; 1999 c.1051 s.180]

419B.015 Report form and content; notice to law enforcement agencies and local office of State Office for Services to Children and Families.

A person making a report of child abuse, whether voluntarily or pursuant to ORS 419B.010, shall make an oral report by telephone or otherwise to the local office of the State Office for Services to Children and Families, to the designee of the State Office for Services to Children and Families or to a law enforcement agency within the county where the person making the report is located at the time of the contact. Such reports shall contain, if known, the names and addresses of the child and the parents of the child or other persons responsible for care of the child, the child's age, the nature and extent of the abuse, including any evidence of previous abuse, the explanation given for the abuse and any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator. When a report is received by the State Office for Services to Children and Families, the State Office for Services to Children and Families shall immediately notify a law enforcement agency within the county where the report was made. When a report is received by a designee of the State Office for Services to Children and Families, the designee shall notify, according to the contract, either the State Office for Services to Children and Families or a law enforcement agency within the county where the report was made. When a report is received by a law enforcement agency, the agency shall immediately notify the local office of the State Office for Services to Children and Families within the county where the report was made. [1993 c.546 s.15; 1993 c.734 s.1a]

ORS 419B.15 – 419B.020

REPORTING OF CHILD ABUSE

Oregon Revised Statute - ORS 419B.015 – 419B.020

419B.020 Duty of office or law enforcement agency receiving report; investigation; notice to parents; physical examination; child's consent.

- (1) Upon receipt of an oral report of child abuse, the State Office for Services to Children and Families or the law enforcement agency shall immediately:
 - (a) Cause an investigation to be made to determine the nature and cause of the abuse of the child; and
 - (b) Notify the Child Care Division if the alleged child abuse occurred in a child care facility as defined in ORS 657A.250.
- (2) If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the law enforcement agency shall notify by oral report followed by written report the local office of the State Office for Services to Children and Families. The State Office for Services to Children and Families shall provide protective social services of its own or of other available social agencies if necessary to prevent further abuses to the child or to safeguard the child's welfare.
- (3) If a child is taken into protective custody by the State Office for Services to Children and Families, the office shall promptly make reasonable efforts to ascertain the name and address of the child's parents or guardian.
- (4)
 - (a) If a child is taken into protective custody by the office or a law enforcement official, the office or law enforcement official shall, if possible, make reasonable efforts to advise the parents or guardian immediately, regardless of the time of day, that the child has been taken into custody, the reasons the child has been taken into custody and general information about the child's placement, and the telephone number of the local office of the State Office for Services to Children and Families and any after-hours telephone numbers.
 - (b) Notice may be given by any means reasonably certain of notifying the parents or guardian, including but not limited to written, telephonic or in-person oral notification. If the initial notification is not in writing, the information required by paragraph (a) of this subsection also shall be provided to the parents or guardian in writing as soon as possible.
 - (c) The State Office for Services to Children and Families also shall make a reasonable effort to notify the noncustodial parent of the information required by paragraph (a) of this subsection in a timely manner.
 - (d) If a child is taken into custody while under the care and supervision of a person or organization other than the parent, the State Office for Services to Children and Families, if possible, shall immediately notify the person or organization that the child has been taken into protective custody.

ORS 419B.020 – 419B.028

REPORTING OF CHILD ABUSE

Oregon Revised Statute - ORS 419B.020 – 419B.028

- (5) If a law enforcement officer or the State Office for Services to Children and Families, when taking a child into protective custody, has reasonable cause to believe that the child has been affected by sexual abuse and rape of a child as defined in ORS 419B.005 (1)(a)(C) and that physical evidence of the abuse exists and is likely to disappear, the court may authorize a physical examination for the purposes of preserving evidence. If the court finds that it is in the best interest of the child to have such an examination. Nothing in this section affects the authority of the State Office for Services to Children and Families to consent to physical examinations of the child at other times.
- (6) A minor child of 12 years of age or older may refuse to consent to the examination described in subsection (5) of this section. The examination shall be conducted by or under the supervision of a physician licensed under ORS chapter 677 or a nurse practitioner licensed under ORS chapter 678 and, whenever practicable, trained in conducting such examinations. [1993 c.546 s.16; 1993 c.622 s.7a; 1997 c.130 s.13; 1997 c.703 s.1; 1997 c.873 s.33]

419B.025 Immunity of person making report in good faith. Anyone participating in good faith in the making of a report of child abuse and who has reasonable grounds for the making thereof shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report. [1993 c.546 s.17]

419B.028 Photographing child during investigation; photographs as records.

- (1) In carrying out its duties under ORS 419B.020, any law enforcement agency or the State Office for Services to Children and Families may photograph or cause to have photographed any child subject of the investigation for purposes of preserving evidence of the child's condition at the time of the investigation.
- (2) For purposes of ORS 419B.035, photographs taken under authority of subsection (1) of this section shall be considered records. [1993 c.546 s.18]

ORS 419B.030 – 419B.035

REPORTING OF CHILD ABUSE

Oregon Revised Statute - ORS 419B.030 – 419B.035

419B.030 Central registry of reports.

- (1) A central state registry shall be established and maintained by the State Office for Services to Children and Families. The local offices of the State Office for Services to Children and Families shall report to the state registry in writing when an investigation has shown reasonable cause to believe that a child's condition was the result of abuse even if the cause remains unknown. Each registry shall contain current information from reports catalogued both as to the name of the child and the name of the family.
- (2) When the State Office for Services to Children and Families provides specific case information from the central state registry, the office shall include a notice that the information does not necessarily reflect any subsequent proceedings that are not within the jurisdiction of the office. [1993 c.546 s.19]

419B.035 Confidentiality of records; when available to others.

- (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and are not accessible for public inspection. However, the State Office for Services to Children and Families shall make records available to:
 - (a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;
 - (b) Any physician, at the request of the physician, regarding any child brought to the physician or coming before the physician for examination, care or treatment;
 - (c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;
 - (d) Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to participants in case reviews;
 - (e) A court appointed special advocate in any juvenile court proceeding in which it is alleged that a child has been subjected to child abuse or neglect; and
 - (f) The Child Care Division for certifying, registering or otherwise regulating child care facilities.
- (2) The State Office for Services to Children and Families may make reports and records available to any person, administrative hearings officer, court, agency, organization or other entity when the office determines that such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for

REPORTING OF CHILD ABUSE

Oregon Revised Statute - ORS 419B.035 – 419B.045

research when the assistant director gives prior written approval. The office shall adopt rules setting forth the procedures by which it will make the disclosures authorized under this subsection and subsection (1) of this section. The names, addresses or other identifying information about the person who made the report shall not be disclosed pursuant to this subsection and subsection (1) of this section.

- (3) Any record made available to a law enforcement agency in this state or to a physician in this state, as authorized by subsections (1) and (2) of this section, shall be kept confidential by the agency or physician. Any record or report disclosed by the office to other persons or entities pursuant to subsections (1) and (2) of this section shall be kept confidential.
- (4) No officer or employee of the State Office for Services to Children and Families or any person or entity to whom disclosure is made pursuant to subsections (1) and (2) of this section shall release any information not authorized by subsections (1) and (2) of this section.
- (5) A person who violates subsection (3) or (4) of this section commits a Class A violation. [1993 c.546 ss.20,20a; 1995 c.278 s.51; 1997 c.328 s.8; 1999 c.1051 s.181]

419B.040 Certain privileges not grounds for excluding evidence in court proceedings on child abuse.

- (1) In the case of abuse of a child, the privileges created in ORS 40.230 to 40.255, including the psychotherapist-patient privilege, the physician-patient privilege, the privileges extended to nurses, to staff members of schools and to registered clinical social workers and the husband-wife privilege, shall not be a ground for excluding evidence regarding a child's abuse, or the cause thereof, in any judicial proceeding resulting from a report made pursuant to ORS 419B.010 to 419B.050.
- (2) In any judicial proceedings resulting from a report made pursuant to ORS 419B.010 to 419B.050, either spouse shall be a competent and compellable witness against the other. [1993 c.546 s.21]

419B.045 Investigation conducted on public school premises; notification; role of school personnel.

If an investigation of a report of child abuse is conducted on public school premises, the school administrator shall first be notified that the investigation is to take place, unless the school administrator is a subject of the investigation. The school administrator or a school staff member designated by the administrator may, at the investigator's discretion, be present to facilitate the investigation. The State Office for Services to Children and Families or the law enforcement agency making the investigation shall be advised of the child's handicapping conditions, if any, prior to any interview with the affected child. A school administrator or staff member is not authorized to reveal anything that transpires during an investigation in which the administrator or staff member participates nor shall the information become part of

REPORTING OF CHILD ABUSE

Oregon Revised Statute - ORS 419B.045 – 419B.050

the child's school records. The school administrator or staff member may testify at any subsequent trial resulting from the investigation and may be interviewed by the respective litigants prior to any such trial. [1993 c.546 s.22]

419B.050 Authority of health care provider to disclose information; immunity from liability.

- (1) Upon notice by either a law enforcement agency or the State Office for Services to Children and Families that a child abuse investigation is being conducted under ORS 419B.020, a health care provider may permit the law enforcement agency or the office to inspect and copy medical records, including, but not limited to, prenatal and birth records, of the child involved in the investigation without the consent of the child, or the parent or guardian of the child. A health care provider who in good faith disclosed medical records under this section is not civilly or criminally liable for the disclosure.
- (2) (a) As used in this section, "health care provider" means a person licensed by one of the following agencies, or any employee of a person licensed by one of the following agencies:
 - (A) State Board of Examiners for Speech-Language Pathology and Audiology;
 - (B) State Board of Chiropractic Examiners;
 - (C) State Board of Clinical Social Workers;
 - (D) Oregon Board of Licensed Professional Counselors and Therapists;
 - (E) Oregon Board of Dentistry;
 - (F) State Board of Denture Technology;
 - (G) Board of Examiners of Licensed Dietitians;
 - (H) State Board of Massage Therapists;
 - (I) State Mortuary and Cemetery Board;
 - (J) Board of Naturopathic Examiners;
 - (K) Oregon State Board of Nursing;
 - (L) Board of Examiners of Nursing Home Administrators;
 - (M) Oregon Board of Optometry;
 - (N) State Board of Pharmacy;
 - (O) Board of Medical Examiners;
 - (P) Occupational Therapy Licensing Board;
 - (Q) Physical Therapist Licensing Board;
 - (R) State Board of Psychologist Examiners; or
 - (S) Board of Radiologic Technology.
- (b) For the purposes of this section, "health care provider" includes a health care facility described in ORS 442.015 (14) and emergency medical technicians certified by the Health Division. [1997 c.873 s.27; 1999 c.537 s.3]

NOTES