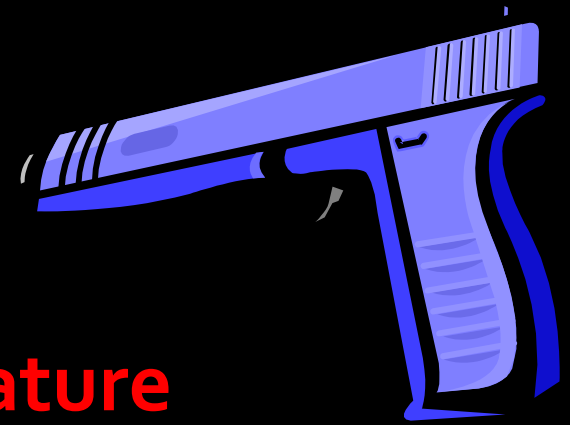


# Extreme Risk Protective Orders (ERPO)



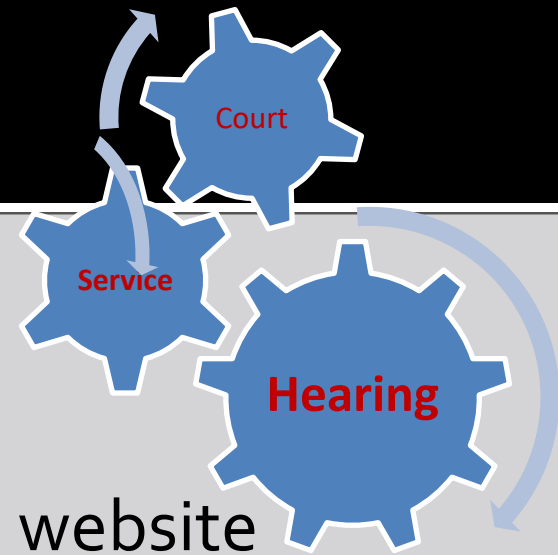
**SB 719, 2017 Oregon Legislature**

Hon. Maureen McKnight,  
Chief Family Court Judge  
April 13, 2018

## NEW PROTECTIVE ORDER

- Focuses on imminent risk of suicide or harm to others from **firearms** or **other deadly weapons**
- Effective 1/1/18
- Codified at ORS 167.525 -.543
  - in the criminal statutes but is not a criminal proceeding

# Process



- Forms available on local and state OJD website
- *Ex parte* appearance daily at 1:30 (Judge name/courtroom #) posted in 211
- Brief sworn *ex parte* appearance
- Service on Respondent
- 30 days to contest
- If contested, hearing must be held w/in 21 days
- Can also be challenged by other side 1 x during year
- Can be renewed but not *ex parte*

- **Sole relief:**

Dispossession of **deadly weapons (includes firearms)** & surrender of concealed handgun license

- **Who Can Petition:**

- Law Enforcement Officer\*

- Narrower than “peace officer” definition in ORS

- “Family or Household Member:” not = FAPA def.

- *Current* spouse or intimate partner,
- Parent, child, or sibling, or
- Person living in same household ( no “cohabitation/sexual intimacy” req'd)
- *Not include: former spouses, former cohabitants, unmarried parents, former sexual intimates w/in 2 years, adults related by blood or marriage*

- **Showing:**

Whether Respondent presents a risk in the near future, including an imminent risk, of suicide or causing physical injury to another person

- **No other relief available:**

- Just surrender of firearms & concealed handgun license
- No: ouster, restraint from premises, ban on contact, child custody or parenting time terms,



- Like FAPA *except*:
  - Standard of proof is **Clear & Convincing** (highly likely)
  - Judge must consider certain, non-exclusive factors:
    - History of suicide attempts/violence/use of force;
    - prior convictions for Assault IV, Menacing, Strangulation, Recklessly Endangering, Intimidation II, Stalking, DV, DUII, cruelty to animals
    - recent substance abuse;
    - prior use/display of deadly weapon;
    - prior FAPA violation;
    - recent acquisition of weapon



**Findings – at all points –  
cannot include MH diagnosis or nexus  
between risk and mental illness**

So . . . . describe behaviors and statements  
and find nexus – if any -- between those  
and risk



## FAPA-procedures EXCEPT (continued)

- **Ex Parte order must contain certain detail**
  - summary of evidence, date/time ordered; surrender details
- At contested hearing on the ex parte order (and on motion to review), **affidavits can be considered in lieu of examination**
  - **NOTE: Statute states that *Court* may examine the parties/witness**
- In addition to Respondent's right to initial challenge, (request hrg w/in 30 days; hold w/in 21 days), **each party may request termination 1/year**
  - 5 day advance notice; no deadline for holding hearing





## FAPA-procedures EXCEPT (continued)

### ■ **Renewal is not done ex parte;**

- Motion must be filed w/in 90 days pre-expiration;
- Requires minimum 5 days advance notice; no deadline but expiration
- New hearing demand for courts



### ■ **Standing for Renewal**

- Original petitioner
- *Any* family or household member
  - NOTE: could be dispute between original Petitioner and movant for renewal

## Court Implementation Issues:

- **Forms**
  - Statewide **forms** are available on state & local website
    - Personal Data section is being missed as placed on order. Better if on Petition so Petitioner fills it out.
- **Developing detailed **surrender protocols w/LEA.****
  - Multnomah County using FAPA protocol re location & return of surrendered weapons
  - Notice is included in documents served on Respondent
  - **Counties w/o existing protocols have collaborations to build**



# Filed so far?

| <i>As of 4/9/18</i>                       | Statewide  | Multnomah County    |
|---|--|---------------------|
| # filed                                   | 21 (88 projected for yr)   | 4 (average 1/month) |
| # granted                                 | 18   | 4                   |
| Petition from LEA                         | 14 (67%)   | 3 (75%)             |
| Petition from Family/<br>Household Member | 7 (Wife, Mother, adult<br>Daughter, Girlfriend,<br>Husband, Sister-in-law,<br>co-worker) | 1 (sister-in-law)   |
| Contested hearings                        | None yet.<br>4/26/18 scheduled   | None yet            |
| MH vs. DV                                 | Slightly more MH vs.<br>MH + DV  | 2 MH, 2 DV + MH     |

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