

J. R. PERKINS, III, P.C.

LAWER

109 EAST FIFTH STREET
THE DALLES, OREGON 97058

TELEPHONE 541-296-1127

email: jrperkinsiii@charter.net

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Senator Sara Gelser, Chair
Senate Committee on Human Services, Members
Oregon State Legislature
Salem, OR 97301

RE: SB 652

Dear Chair Gelser and Members;

I am offering this as relevant to your consideration of the subject bill. By way of background, I have been in the active practice of law since I graduated from Willamette University College of Law in 1971 and was admitted to the bar of Oregon in that year. I have worked in Federal, State and local government and in private practice in a small firm and most recently in solo private practice in The Dalles since 1982.

Given my bar admission date, it is obvious that I practiced law prior to the enactment of the Family Abuse Protection Act. I have been asked to relate cases involving FAPA restraining order violations where contact was initiated by the restraining order petitioner. In my experience, this is a frequent occurrence. That is, a party will obtain a restraining order, then, for a multitude of reasons, seek out contact with the restrained party outside of the terms of the Order. This contact will then come to the attention of law enforcement and an arrest will ensue. Pursuant to ORS 133.310, the respondent is taken into custody.

Obviously, this seems one-sided and unfair! Frequently, the petitioner will represent to the respondent in these situations that the petitioner has withdrawn the Order, or is in the process of withdrawing the order. Of course, the petitioner does not have the ability to withdraw or otherwise terminate the order but respondents rarely know this. Only the Court issuing the Order can modify or terminate the order, and judge's are very wary of acting on such a request from a petitioner. Terminating the Order is not automatic with the request of the petitioner. The matter is closely reviewed by the judge involved.

I have had many violation of restraining order cases, both at trial level and on appeal. These come on as an accusation of contempt of court. Of those cases that involve situations that are precipitated by the petitioner, the following is a particularly egregious example.

My client was in a relationship with a particularly unstable partner. Eventually the partner sought an FAPA restraining order, falsely alleging facts supporting it. My client had timely requested a hearing to contest the order. Well before the hearing, my client was walking a dog on the local streets. Client's estranged partner stopped my client on

the street and tried to engage in conversation. My client told the estranged partner that the order was in place and that they should not have any contact. The estranged partner was told not to try further contact and departed the scene. My client was concerned that the other party would pursue and attempt further contact. My client felt the right thing to do was report the contact to law enforcement right away. Said client went directly to the local police department and made a report of the contact. Whereupon, my client was arrested and lodged in jail for having violated the restraining order for having talked to the petitioner.

Fortunately my client was able to post bail. At the hearing on the order, the petitioner did not appear, so the court dismissed the order. In light of the dismissal of the order, the state declined to prosecute the violation. Nevertheless, my client was arrested, lodged in jail and incurred legal fees in dealing with the issue, which was caused completely by the FAPA petitioner. This incident occurred over the Christmas holidays of 2006-07.

The point of this story is that FAPA petitioners are human. They do not always act reasonably or tell the truth. Given that ORS 133.310 requires that a respondent be taken into custody for an alleged violation, the respondent is in a difficult position, being deprived of freedom on untested allegations. Providing a legal and statutory defense of some sort would be a reasonable thing to do. I hope this is of some assistance to the committee.

Respectfully submitted;

J. R. Perkins, III

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