



PARTNERSHIP FOR
SAFETY & JUSTICE



Oregon Coalition
Against Domestic & Sexual Violence



**TO: Chair Janelle Bynum
Members of House Judiciary Committee**

RE: Domestic & Sexual Violence Safety Package for Executive Order/Special Session

May 26, 2020

We write urging you to consider the following components in your Special Session package to provide immediate relief to our Oregonians facing immediate safety decisions under the threat of domestic and sexual violence.

Specifically, we ask that you include:

#1 PRIORITY: Allow FAPA, EPPDAPA, and SAPO Orders that have expired or will expire during [CV19 date range] to be Revived after expiration via the Renewal Process. Given the limitations the pandemic has placed on survivors' access to the courts and advocacy programs, including the knowledge of what resources remain available, survivors wanting their restraining orders to continue after their expiration date may need more time to renew them.

Extending the timeframe to request this step helps recognize that even after we reach the apex of the curve we still have significant health risks to contend with for months afterwards and provides needed extended protection to those petitioners without putting the additional burden on what will likely already be an overextended civil docket.

Presently, the renewal provisions of FAPA, EPPDAPA and SAPO do not explicitly state that a request to renew the order be filed prior to the expiration of the order [See ORS 107.725, 124.035 and 163.775(1) respectively]. However, because each statute refers to a 'renewal' procedure rather than a 'revival' procedure, Courts have consistently instructed petitioners to file for the renewal before the prior Order expires. [See *Court Instructions for renewal*].

ASK:

Amend ORS 107.725 (FAPA):

(5) The court may revive an order entered under ORS 107.716 or 107.718 that expired between April 1, 2020, and July 1, 2020, on the ex parte application of a petitioner filed prior to September 1, 2020 and alleging facts made under oath or affirmation or a declaration under penalty of perjury. The court may revive such order upon the finding set out in subsection (1) of this section regardless of whether a further act of abuse has occurred during the pendency of

the order or after its expiration. Subsection (4) of this section applies to this application and revived order.

Amend ORS 124.035 (EPPDAPA):

(1) *Present statute* [currently no subsections]

(2) The court may revive an order entered under ORS 124.015 or 124.020 that expired between April 1, 2020, and July 1, 2020, on the ex parte application of a petitioner filed prior to September 1, 2020 and alleging facts made under oath or affirmation or a declaration under penalty of perjury. The court may revive such order upon a finding of good cause and regardless of whether a further act of abuse has occurred during the pendency of the order or after its expiration. ORS 124.015 applies to such revived order.

Amend ORS 163.775 (SAPO):

(1)(c) The court may revive an order entered under ORS 163.760 to 163.777 that expired between April 1, 2020, and July 1, 2020, on the ex parte application of a petitioner filed prior to September 1, 2020, and alleging facts made under oath or affirmation or declaration of penalty of perjury. The court may revive such order upon the finding set out in ORS 163.775(1)(a) and regardless of whether the respondent has subjected the petitioner to additional sexual abuse during the pendency of the order or after its expiration. The provisions of subsection (1)(b) of this of this section apply to such revived order.

#2 PRIORITY: Emergency Protective Order (EPO) Expiration Extension

The encouragement of all individuals to remain in their domiciles has created a dramatic uptick in domestic and sexual violence related calls. The lack of access to the courts has made it much harder for victims and survivors to pursue emergency protective orders, and a person who is symptomatic or positive for COVID may have no choice but to appear in court or risk the expiry of the order, an impossible choice for a survivor.

A temporarily extending expiration date of Emergency Protective Order (ORS 133.035) from 7 days (ORS 133.035(7)(a)) to 21 days would provide immediate relief and address the current realities of this crisis. This is a reasonable adjustment of time given the reduction in court accessibility at present making it difficult for some to seek a more permanent protective order. This extension would also encourage people to ensure they are well before coming to courthouse. This extension provides for an appropriate length of time for someone who may have symptoms to self-quarantine and still have time to seek a more permanent order from the court. Structure outlined below:

ASK:

Emergency Protective Order (ORS 133.035)	
Who	Respondent must be "family or household member" (defined ORS 133.035(1)(a)(B), ORS 107.705(4)) **Peace officer applies for order on behalf of victim of abuse. The parties are the "protected person" and the respondent.
Qualifications	-The circumstances for mandatory arrest exist (an assault between family or household members, OR one person has placed the other in fear of imminent serious physical injury) OR the person is in immediate danger of abuse by a family or household member (defined ORS 133.055(2)).

	-Emergency protective order must be necessary to prevent further abuse.
Hearing	No hearing required - peace officer submits proposed order and supporting declaration exparte to the on-call judge (ORS 133.035(1), (9))
Duration	Expires 7 days after the judge signs the order (ORS 133.035(7)(a)).

#3

#3 PRIORITY: Temporarily Revise Warrant Arrest – “Shall” to “May” Except Domestic Violence Crimes and Class C Felony Person Crimes & Clarify Sheriff Release Authority

As all attempt to respond to the new COVID era your sheriffs and county jails need flexibility in the ability to prioritize new in-custody arrests. However, there remains a need to protect our most vulnerable victims, by continuing the mandatory arrest process for all crimes involving domestic violence and for “Person” Class C Felony’s, such as rape and child abuse.

ASK:

- (1) **Notwithstanding any other provision of law, a sheriff may release any adult in custody who is being held on a Misdemeanor or Class C Felony, as the sheriff deems necessary to ensure the safety of staff or adults in custody.**
 - (a) **This subsection does not apply to domestic violence or Class C Felony “Person” crimes as defined in OAR 213-003-0001(14).**

- (2) **Notwithstanding any other provision of law, a peace officer is not required to arrest a person on a warrant if the underlying criminal charge is a Misdemeanor or Class C felony. If the peace officer does not arrest a person pursuant to a warrant described in this subsection, the peace officer shall issue and serve a criminal citation in lieu of arrest. 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.**
 - (a) **This subsection does not apply to arrests under ORS 133.055(2) relating to domestic violence, to arrests under ORS 133.310 (3) through (6), or to Class C Felony “Person” crimes as defined in OAR 213-003-0001(14).**

- (3) **Notwithstanding any other provision of law, a peace officer is not required to arrest a person on a warrant for a violation of probation, parole, or post-prison supervision. If the peace officer does not arrest a person pursuant to a warrant described in this subsection, the peace officer shall issue and serve a citation in lieu of arrest. The peace officer shall deliver a copy of the criminal citation to the person, as well as to the supervising authority that issued the warrant. The 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.**
 - (a) **This subsection does not apply to arrests under ORS 133.055(2) relating to domestic violence, to arrests under ORS 133.310 (3) through (6), or to Class C Felony “Person” crimes as defined in OAR 213-003-0001(14).**