Oregon Law Center
WORKING TOGETHER TO ACHIEVE JUSTICE FOR LOW INCOME OREGONIANS

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OLC Proposed Amendment to HB 3117
House Judiciary Committee
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Chair Williamson, Vice-Chairs Gorsek and Sprenger, and Members of the Committee:

On behalf of the Oregon Law Center, I submit this testimony in support of an amendment to HB 3117 to address a statutory fix to Oregon's restraining order statute for which the need arises due to recent case law. This amendment is necessary to protect victim safety and the integrity of Oregon's Family Abuse Prevention Act, and is a reasonable and well-tailored response to a recent appellate court decision.

Background:
Oregon's Family Abuse Prevention Act (FAPA) restraining order statutes are set out in ORS 107.700 et.seq. This set of statutes is one of the most important forms of protection that Oregon offers victims of domestic violence seeking safety from abuse. Under current law, ORS 107.710 and 107.718 provide that a victim of abuse may apply for and receive an *ex parte* emergency protection order if:

- The victim has been a victim of qualifying abuse by a family or household member within the 180 days before filing the order;
- The victim is in imminent danger of further abuse; *and*
- The respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child.

The emergency order becomes a final order good for one year if the order is upheld at a contested hearing, or if there is no contested hearing requested within the 30 day response time.

If there is a contested hearing after the issuance of the emergency order, ORS 107.716 currently requires that the petitioner meet the same standard (qualifying abuse within the time frame, imminent danger, and credible threat) that was required on issuance.

Problem:
A petitioner who is lucky enough to experience a reduction in abuse after issuance of the initial order – perhaps because the order has had its intended effect, or because the petitioner has successfully safety-planned - may have difficulty showing "imminent danger of further abuse" at the contested hearing stage of a restraining order. None-the-less, the petitioner may still be in very real and reasonable fear of further abuse, and in need of the continued protection of the court order.

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This concern was recently illustrated by a decision by the Court of Appeals, *M.A.B. v. Buell, 3-6-2019*https://cdm17027.contentdm.oclc.org/digital/pdf.js/web/viewer.html?file=/digital/api/collection/p17027coll5/id/22271/download#page=1&zoom=auto. In this case, the trial court found that the Respondent had sexually assaulted the victim twice, threatened to kill her and take their child, and subsequently repeatedly intimidated and threatened her during ongoing divorce mediation proceedings. On appeal, the Respondent conceded the finding of abuse, but denied that the victim was in imminent danger of further abuse. The Court of Appeals agreed with the Respondent, finding (in summary) that because the victim had not experienced additional sexual abuse after moving out of the Respondent's home and in with her parents, she was not in imminent danger of the same form of abuse.

The trauma and danger of sexual assault and other forms of physical violence within a family or household relationship are well-documented and destructive. It is also well-documented that when a victim takes the brave step of trying to leave a violent intimate relationship, the lethality and danger of abuse are escalated. Oregon has one of the highest rates of sexual violence in the nation, according to recent CDC analysis, and in 2017, 32 Oregonians (men, women, and children) died as a result of domestic violence.

Issuance of an emergency order in the first instance ought to (and does) require a finding of imminent danger. But if a Respondent seeks to dismiss a protection order after the initial findings, the victim ought not to have to show ongoing imminent danger of further abuse in order to uphold the order. A reasonable ongoing fear for the victim's physical safety ought to be enough to continue the order, in addition to the findings of abuse and objective credible threat.

Protection orders have been found to be an effective tool in reducing violence and establishing safety for victims and their children. It is contrary to public policy and practical sense for our statute to require that a protection order have failed, or that a petitioner not have succeeded in safety planning, in order for a protection order to be upheld. Oregon's Sexual Assault Protection Orders, which are available only to non-family or household members, has already codified this "reasonable fear for the petitioner's physical safety" standard, in ORS 163.765. It is time to ensure that victims of family violence are provided a similar standard.

Proposed Amendment: Amend ORS 107.716 (the statute governing the standard for continuing a restraining order at a contested hearing) to remove the "imminence of further abuse" requirement. Provide instead a requirement that the petitioner be in "reasonable fear for the petitioner's physical safety." Language is below:

107.716 Hearing; order; certificate of compliance; effect on title to real property; no undertaking required.
(1) If the respondent requests a hearing pursuant to ORS 107.718 (10), the court shall hold the hearing within 21 days after the request. However, if the respondent contests the order granting temporary child custody to the petitioner, the court shall hold the hearing within five days after

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the request.

(2)(a) If the court determines under ORS 107.718 (2) that exceptional circumstances exist that affect the custody of a child, the court shall hold a hearing within 14 days after issuance of the restraining order. The clerk of the court shall provide a notice of the hearing along with the petition and order to the petitioner and, in accordance with ORS 107.718 (8), to the county sheriff for service on the respondent.

(b) The respondent may request an earlier hearing, to be held within five days after the request. The hearing request form shall be available from the clerk of the court in the form prescribed by the State Court Administrator under ORS 107.718 (7). If the respondent requests an earlier hearing, the clerk of the court shall notify the parties of the scheduled hearing date by mailing a notice of the time and place of hearing to the addresses provided in the petition or, for the respondent, to the address provided in the request for hearing, or as otherwise designated by a party.

(c) When the court schedules a hearing under this subsection, the respondent may not request a hearing under ORS 107.718 (10).

(3)In a hearing held pursuant to subsection (1) or (2) of this section:

(a) The court may continue any order issued under ORS 107.718 if the court finds that:

(i) Abuse has occurred within the time period specified in 107.710(1);

(ii) Petitioner reasonably fears for petitioner's physical safety; and

(iii) Respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child.

(b) The Court may cancel or change any order issued under ORS 107.718 and may assess against either party a reasonable attorney fee and such costs as may be incurred in the proceeding.

(4)(a) If service of a notice of hearing is inadequate to provide a party with sufficient notice of the hearing held pursuant to ORS 107.718 (2) or (10), the court may extend the date of the hearing for up to five days so that the party may seek representation.

(b) If one party is represented by an attorney at a hearing held pursuant to ORS 107.718 (2) or (10), the court may extend the date of the hearing for up to five days at the other party's request so that the other party may seek representation.

(5) 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:……..