



**The Oregon Law Center, the Oregon Association of Community Corrections Directors,
and the Oregon District Attorneys Association Support the Dash Two Amendment to HB 3117
House Judiciary Committee 4/3/19**

The Dash 2 replaces the measure

Background:

Oregon's Family Abuse Prevention Act (FAPA) restraining order statutes sets out 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.

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 in order to continue the order.

Problem:

Under the current law, 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 hearing on whether to continue a recently issued order. None-the-less, the petitioner may still be in very real and reasonable fear of further abuse, and in need of continued protection.

Issuance of an emergency order in the first instance ought to (and does) require a finding of imminent danger. But the victim ought not to have to show ongoing imminent danger of further abuse in order to keep the order in place. The order is meant to protect; if the order does its job, that should not be grounds for dismissal.

Note: This concern was recently illustrated by a decision by the Court of Appeals, *M.A.B. v. Buell*, 3-6- 2019. 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. On appeal, even though the Respondent conceded the finding of abuse, the Court found that the victim was no longer in imminent danger of further abuse because the victim had not experienced additional sexual abuse after moving out of the Respondent's home and in with her parents.

Solution:

- Amend ORS 107.716 to provide that in order to continue an emergency order after a contested hearing, the standard should be:
 - 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 reasonably fears for their physical safety; *and*
 - The respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child.



The “reasonable fear for physical safety” standard is the same standard that is in Oregon’s Sexual Assault Protection Orders, as set out in ORS 163.765. It is time to ensure that victims of family violence are provided a similar standard when courts are deciding whether to continue an order that was entered during imminent danger. Please pass the Dash 2 amendments to HB 3117.