

# INFORMATION ON RESTRAINING ORDERS AND STALKING ORDERS

Revised October 27, 2004

## *Should I apply for a Restraining Order or a Stalking Order?*

If you feel threatened by someone there are a number of remedies that may assist you. This information sheet only explains two of them, when they might be appropriate, and when they are not. This is not legal advice and is not a substitute for competent legal advice. If you have questions about your legal rights, obligations or liability you should talk to a licensed attorney.

### **Domestic Violence Restraining Orders**

These are also called FAPA (from Family Abuse Prevention Act) orders or restraining orders. To obtain one of these orders you must fully fill out a petition that you obtain in Room 107 of the courthouse and the Linn County Circuit Court website: <http://www.ojd.state.or.us/linn> . You must come to Room 107 at least 30 minutes before the time for court. Do not use older versions that may be available in other offices. It is then filed in Room 107 and you will be told to go upstairs to a courtroom for a hearing at 8:30 AM. Monday through Thursday and at 9:00 AM on Fridays. **To obtain one of these orders you must meet the following criteria:**

-You must be a resident of Linn County, **and**

-You must be 18 years of age or older; and if you are under 18 you may only receive this order under very special circumstances. (See the information sheet for juveniles); **and**

-The person against whom you wish to have a restraining order must have done **one** of the four things listed below within the last six months:

-threatened to cause you physical injury, **or**

-attempted to cause you physical injury, **or**

-caused you physical injury, **or**

-forced you to have sexual relations against your will, **and**

-The other person's conduct must have created a reasonable fear of imminent physical harm for you and that fear must exist now, **and**

-The other person must be **one** of the following:

-related to you by blood, marriage or adoption; **or**

-a person who has lived with you now or in the past; **or**

-a person who is a parent of your child even if not married to you; **or**

-a person with whom you have been sexually intimate within the last two years;

It is important that you understand that the Court cannot grant a restraining order unless these criteria are satisfied. It will not matter how upset you might be, it will not matter if the other person has annoyed you, harassed you, threatened your children or others in your household, or otherwise been a problem for you, unless the criteria above apply you will not get a FAPA restraining order.

These restraining orders may not be obtained only to obtain custody of children, to prevent another from obtaining custody of children, or to gain any advantage in a divorce, annulment custody proceeding or legal separation.

If you do receive a restraining order the judge will ask you what provisions you want it to contain. It will prohibit the other person from intimidating, interfering, molesting or menacing you, and if you request, it may also prohibit the other person from contacting you by mail, telephone or in person. The order may, if evidence supports it, grant you temporary custody of your children, limit parenting time to the other person if they are a parent, and provide other remedies that are listed in the order. You can get a copy of an order from Room 107.

If you do not qualify for a restraining order as described above, then read on to see if you qualify for a Stalking Order.

### **Stalking Protective Orders**

To obtain a stalking protective order you should obtain an application at Room 107 of the courthouse or the Linn County Circuit Court website: <http://www.ojd.state.or.us/linn> . After completing it turn it in at Room 107 of the Linn County

Courthouse 30 minutes prior to appearing in Court. You will appear before a judge at 8:30 AM. Monday through Thursday or 9:00 AM on Fridays. **To obtain a stalking protective order you must meet the following criteria:**

-You must be a resident of Linn County

-The other person must have done the following:

- had repeated contact with you or a member of your immediate family or household that is not wanted (repeated means two or more times), **and**
- the repeated and unwanted contact reasonably alarmed and or coerced you, **and**
- a person in your situation would objectively and reasonably feel alarmed or coerced by the unwanted contact, **and**
- the repeated and unwanted contact must have caused you reasonable apprehension regarding your personal safety or the personal safety of a member of your household or immediate family.

There is no age limit for a stalking protective order.

If you do not qualify for either a FAPA restraining order or a stalking protective order you may have other remedies. You may contact your local law enforcement agency if you believe someone is illegally trespassing on your land or property and you may want to consult an attorney.

Be aware of two important points regarding these remedies:

1. If anyone lies under oath when seeking, defending or opposing a court order they may be charged with Perjury, a felony punishable by up to five years in prison and or a fine of up to \$100,000.
2. Restraining orders and stalking orders are only pieces of paper. If you are in fear for your safety you need to call law enforcement and take all lawful precautions to protect yourself and your family.

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