

HB 3117 -2 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 3/29, 4/3

WHAT THE MEASURE DOES:

Extends the time period from 180 days to two years after the date of the abuse for elderly persons or persons with disability, persons who have been sexually assaulted, or persons filing a restraining order under the Family Abuse Prevention Act (FAPA) to petition for a restraining order. Declares an emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 Replaces the measure. Removes requirement that court must find imminent danger of further abuse in order to continue a Family Abuse Protection Order (FAPA) under ORS 107.718. States that a court may continue any order issued under ORS 107.718 if the court finds that: the abuse has occurred within 180 days; the petitioner reasonably fears for the petitioner's physical safety; and the respondent represents a credible threat to the physical safety of the petitioner or the petitioner's child.

BACKGROUND:

Oregon's Family Abuse Prevention Act (FAPA) restraining order statutes are set out in ORS 107.700 et seq. 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 petitioner has been a victim of qualifying abuse by a family or household member within the 180 days before filing the order; the petitioner 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 immanency that was required on issuance.

A recent decision by the Court of Appeals, *M.A.B. v. Buell*, 3-6 2019 found that the immanency requirement was not met in a case where a 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. The Court of Appeals reasoned that because a 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 even when the respondent had conceded the finding of abuse.

House Bill 3117 -2 eliminates the imminent danger requirement when a court is considering continuing an existing FAPA order if and requires the court find that the respondent represents a credible threat to the physical safety of the petition or the petitioner's child.