



From the desk of Jeff Barker

### The Above Entities Urge Support for HB 3117-A

#### Background:

Oregon’s Family Abuse Prevention Act (FAPA) restraining order statutes provide one of the most important forms of protection for victims of domestic violence seeking safety from abuse. Under current law, a victim may apply for and receive an 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 about whether to make the order final, the law currently applies this same standard.

#### 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 keep the order in place. None-the-less, the petitioner may still be 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 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. A survivor taking steps to protect his/herself- such as leaving a dangerous relationship or obtaining a protection order, should not limit a survivor’s ability to continue such protections.

**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 because the victim had not experienced additional sexual abuse after moving out of the Respondent’s home and in with her parents.

#### Solution:

**HB 3117-A makes one change to ORS 107.716, to say that to keep an order in place at a contested hearing, the victim need not prove she remains in imminent danger.**

- The victim must still prove they have been a victim of qualifying abuse in the 6 months prior to applying for the order;
- The victim must still prove that the Respondent is a objectively a credible threat to the physical safety of the victim or the victim’s child;
- The victim must show that they have a reasonable fear for their physical safety.
  - *Note: 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 to victims of sexual assault, when courts are deciding whether to continue an order that was entered during imminent danger.**

Please Support HB 3117A

4/16/19