

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: HB 2311 Proposal to Add Language to Stalking and Family Abuse Prevention Act (FAPA) Statutes Clarifying that Legal Service of Process, Not Done for Purpose of Harrassment, is Not a Violation of Court Orders

Submitted by: Family Law Staff Counsel, Oregon Judicial Department

Legislative Contact: Susan Grabe
Phone : (503) 431-6380
E-mail: sgrabe@osbar.org

1. **Does this amend current law or program?** No.

2. **PROBLEM PRESENTED** (including level of severity):

Most stalking and FAPA orders bar the respondent from contacting the petitioner, among other ways, in writing and/or through third parties. When a respondent files a legal pleading in a circuit court (e.g., a dissolution proceeding or modification request) or appeals, by statute and court rule, the respondent must serve a copy of the legal documents on the petitioner. Even if such service is done through counsel, especially when the petitioner is proceeding without counsel, that results in a violation of the stalking or restraining order. There have been instances where a respondent who is exercising the statutory right to file a legal proceeding or appeal, and who serves the petitioner as required by law, has been found to have violated the stalking or restraining order and, at least in one instance, sentenced to time in jail.

The level of severity is low. It is believed that most prosecutors and/or judges do not find the act of having legal documents served in accordance with the law to be violations of court orders.

However, clarification is needed to prevent an egregious consequence of defining restricted contact too narrowly.

3. **SOLUTION:**

Amend ORS 163.730 and 107.716 to include language that clarifies that service of process done in accordance with the law and not to harass the petitioner is not to be considered a violation of court orders.

4. **PUBLIC POLICY IMPLICATION** of this proposed legislative change:

This proposal does not create or change public policy. The proposal is intended to assure the right to exercise legal rights without undue consequences.

5. Could the problem be addressed through a **NON-LEGISLATIVE SOLUTION**, such as administrative rule or education?

No.

6. **COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL?** If so, have you suggested it to the section or group?

No. Issues regarding FAPA and stalking orders are typically considered family law mailers.

7. **IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED** or interested in this change. Who would support it and who would oppose it?

The persons most impacted by this proposal are individual litigants and their counsel, if any. Practitioners representing respondents in stalking and FAPA matters, who wish to file legal proceedings and/or appeals on behalf of their clients, would cause their client to violate existing stalking or restraining orders were service of legal documents attempted on petitioners. Respondents attempting to serve legal process through an authorized process server or the sheriff would also be in danger of being found in contempt for violating an existing stalking or FAPA order.

The domestic violence advocate community would be interested in this legislation. It is anticipated that there would be concerns that service of process were being used to harass petitioners. The limiting language in the proposed statutes may adequately address this concern.

8. **Has this been introduced in a prior session?** No.