

# Oregon's Implementation of Extreme Risk Protection Orders

## -- Judicial Perspective



Hon. Maureen McKnight  
Multnomah County Circuit Court

Joint Judiciary Committees  
September 26, 2018

# Asked to Cover:

- Privately Initiated Petitions
  - i.e., those not filed by Law Enforcement
- Training
- Court Experience/ Issues Noted

# Context

- 56 ERPO petitions filed statewide through 8/31/18
  - If current #s hold, **would be 84 in first year**
- Average: 7/month
- Compare 2017 filings for:

■ FAPA	9336
■ Elder/Disabled	2708
■ Stalking	2620
■ Sexual Abuse Protection Order	86

*Compare:*

Filing pattern for newest protection order, SAPO, effective 1/1/15

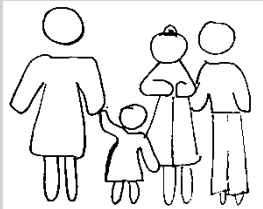
2014	22		
2015	46		
2016	102		
2017	86		
2018	77	as of 8/31/18	≈116/year

# Privately Initiated Petitions

*Through 8/31/18, of the 56 filings,*



35 filed by Law Enforcement 63%



21 filed by "Family/Household Member" 37%

1st quarter:	5 of 19 privately filed =	26%
2 <sup>nd</sup> quarter:	6 of 24 privately filed =	25%
July + August:	10 of 13 privately filed =	77%
2018 thru August:	21 of 56 " " =	<b>37%</b>

# "Family or Household Member"

- ERPO definition is more limited than FAPA definition. Latter applies in:
  - Latter applies in ORS 133.055, 135.230, & 132.586
  - A training issue

- Covered are:

- ***Current* spouse or intimate partner**
- **Parent, child, or sibling or**
- **Person living in same household**  
(no "cohabitation/sexual intimacy" required), so roommates OK)

## Breakout of Private ERPO Filers thru 8/31/18

4 Current spouses

3 Current intimate partners

5 Parents

0 Children

2 Siblings

+

0 Person living in same household

= 14 of the 21 Private Filers

Other Private Filers thru August 31, 2018  
Who did **NOT meet statutory definition** of  
“family/household member

- 1 Employer
- 1 *Former Spouse*
- 4 *Former Intimate Partners*
- 1 Former sister-in-law



## Intimate Partner Violence

Approximately 25% of the *private* filings involved intimate partner violence

And approximately **1/3** of the total filings did

## Suicidal threats/ideation/attempts

Approximately 81% of the *private* filings involved suicide attempts, threats, or ideation

And **75%** of the *total* filings did

## Grant/Denial rate by Privately-Filed Petitions

	GRANTED ex parte	DENIED ex parte
Initiated by Family/ Household Member	13	8
Initiated by Law Enforcement Officer	33	2
TOTAL	<b>46 of 56 (82%)</b>	<b>10 of 56 (18%)</b>

# Training

- Covered at OJD legislative update at conference and materials, plus additional webinar
- Covered at New Judge Training
- Statewide court forms developed & instructional brochure for filers.
  - Available on OJD website
- Various community trainings
- McKnight training slides attached



# Issues from Court Practice

- Definition of “family/household member” varies from other ORS definitions of term.
- Definition of “peace officer” in ERPO is narrower than in ORS 133.005(3)
  - Excludes “police officer commissioned by university . . .”

- Court Practice Issues noted:
  - No “cumulative remedies” clause
    - Statement that ERPO relief is available *in addition to* other civil or criminal remedies
    - Training issue – judges & court staff, also legal issue for judges
  - Options for standing (relationship) could be listed on petition and proposed order for easier screening by applicants (and judges)
    - They are in the instructions but not in the court forms

■ Data for LEDS is sometimes not being filled out probably because it is on the order, rather than on the petition where the applicant would fill it out

(DOB, ODL, physical descriptions, etc.)

Verified Correct Copy of Original 2/28/2018

Additional Orders: \_\_\_\_\_

**NOTICE TO RESPONDENT**  
An extreme risk protection order has been issued by the court and is now in effect. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, deadly weapons while this order is in effect. You must, within 24 hours, surrender all deadly weapons in your custody, control or possession to a local law enforcement agency, a gun dealer, or a third party who may lawfully possess the deadly weapons. You must, within 24 hours, surrender to a local law enforcement agency any concealed handgun license issued to you. If you do not request a hearing, the extreme risk protection order against you will be in effect for one year unless terminated by the court. You have the right to request one hearing to terminate this order during the 12 months that this order is in effect starting from the date of this order.

A copy of this order was given to  Petitioner  Respondent in court today

**If you have any questions talk to a lawyer**

**RESPONDENT: You have the right to challenge this order by filing a Request for Hearing form with this court (attached)**

If you do not request a hearing to challenge the order, the order will be in effect for one year unless terminated by the court. You have the right to request one additional hearing to terminate this order during the 12 months that this order is in effect starting from the date of this order.

Judge Signature: (date and time)

*WJ* [Redacted Signature] \_\_\_\_\_  
Time: 2/2/18 1:40 pm \_\_\_\_\_  
CIRCUIT COURT JUDGE

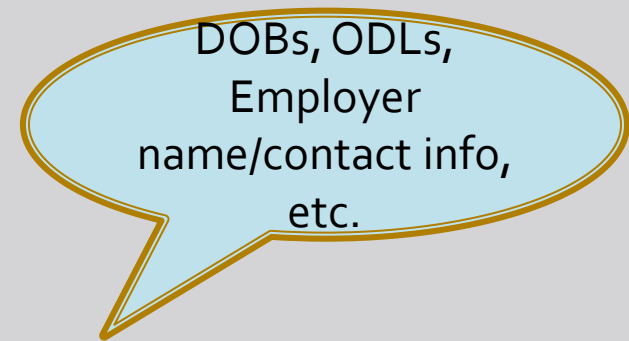
LEDS DATA re RESPONDENT: \_\_\_\_\_ (name)

SID#	DOB:	ODL #:		
Sex:	Race:	Hair:		
Height:	Weight:			
Address:				
Other:	Street	City	State	Zip

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## ■ Confidential Information

- ERPO cases are treated as **VAWA-protected**
  - Not available to public through *internet*-accessed route to OJD's case management system
  - Available in person at courthouse



## ■ “Confidential personal information”

is not currently protected in a separate court document (Confidential Information Form – “CIF”) available to law enforcement but not the public, as with other restraining orders. UTCR 2.130

- Apparent Drafting Error:

ORS 166.533(3)(a) allows *either* party to seek termination during the year the order is in effect and states that this movant has the burden of proof

- but subsection (4) refers to only the "*petitioner's*" burden of proof at this hearing rather than the "*movant's*" burden



- **Issues related to Law Enforcement noted:**

- Some officers unclear re application process

- Believe similar to search warrant request (assume chambers discussion rather than court hearing on the record)



- Some officers not receiving notice of hearing, though sent

- Court sends notice to officer's address provided in the petition but in some communities, officers are used to centralized notice of hearings/witness duty

- Issues related to Law Enforcement noted (continued):
  - Officer may not have arranged, or know to arrange, for **witness/es\* with first-hand knowledge** at contested hearings
    - (\***or affidavits**, since allowed by ERPO statutes)
    - Some officers have **no first-hand knowledge** of events, only reports from concerned person
    - If objection to hearsay, dismissal may result due to insufficient proof

- Issues related to Community noted:
  - Need collaboration with Law Enforcement on protocol for storage and return of firearms and licenses
  - Difficult conversation in some communities

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