TITLE 13

PROTECTIVE PROCEEDINGS; POWERS OF ATTORNEY; TRUSTS

Chapter 124. Abuse of the Elderly, Disabled and Incapacitated
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Chapter 124

2003 EDITION

Abuse of the Elderly, Disabled and Incapacitated

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ELDERLY PERSONS AND PERSONS WITH DISABILITIES ABUSE PREVENTION ACT

124.005 Definitions for ORS 124.005 to 124.040. As used in ORS 124.005 to 124.040:

(1) "Abuse" means one or more of the following:

(a) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(b) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(c) Abandonment, including desertion or willful forsaking of an elderly person or a person with disabilities or the withdrawal or neglect of duties and obligations owed an elderly person or a person with disabilities by a caregiver or other person.

(d) Willful infliction of physical pain or injury.

(e) Use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to threaten significant physical or emotional harm to the elderly person or person with disabilities.

(f) Causing any sweepstakes promotion to be mailed to an elderly person or a person with disabilities who had received sweepstakes promotional material in the United States mail, spent more than $500 in the preceding year on any sweepstakes promotions, or any combination of sweepstakes promotions from the same service, regardless of the identities of the originators of the sweepstakes promotion and who represented to the court that the person felt the need for the court's assistance to prevent the person from incurring further expense.

(2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) "Guardian petitioner" means a guardian or guardian ad litem for an elderly person or a person with disabilities who files a petition under ORS 124.005 to 124.040 on behalf of the elderly person or person with disabilities.

(4) "Interfere" means to interpose in a way that hinders or impedes.

(5) "Intimidate" means to compel or deter conduct by a threat.

(6) "Menace" means to act in a threatening manner.

(7) "Molest" means to annoy, disturb or persecute with hostile intent or injurious effect.

(8) "Person with disabilities" means a person described in:

(a) ORS 410.040 (5) if the person meets a criterion listed in ORS 410.040 (5)(b); or

(b) ORS 410.715.

(9) "Petitioner" means an elderly person or a person with disabilities who files a petition under ORS 124.005 to 124.040.

(10) "Sweepstakes" means:

(a) A procedure for awarding a prize that is based on chance;

(b) A procedure in which a person is required to purchase anything, pay anything of value or make a donation as a condition of winning a prize or of receiving or obtaining information about a prize; or

(c) A procedure that is advertised in a way that creates a reasonable impression that a payment of anything of value, purchase of anything or making a donation is a condition of winning a prize or receiving or obtaining information about a prize.

(11) "Sweepstakes promotion" means an offer to participate in a sweepstakes. [1995 c.666 §§3,3a; 1999 c.738 §1; 1999 c.875 §6; 2003 c.257 §1a; 2003 c.264 §1]

124.010 Petition for relief; time limitation; information to be provided petitioner. (1)(a) An elderly person or a person with disabilities who has been the victim of abuse within the preceding 180 days or a guardian or guardian ad litem of an elderly person or a person with disabilities who has been the victim of abuse within the preceding 180 days may petition the circuit court for relief under ORS 124.005 to 124.040, if the elderly person or person with disabilities is in immediate and present danger of further abuse from the abuser.

(b) The elderly person or person with disabilities or the guardian or guardian ad litem of the elderly person or person with disabilities may seek relief by filing a petition with the circuit court alleging that the elderly person or person with disabilities is in immediate and present danger of further abuse from the respondent, alleging that the elderly person or person with disabilities has been the victim of abuse committed by the respondent within the 180 days preceding the filing of the petition and describing the nature of the abuse and the approximate dates thereof. The abuse must have occurred not more than 180 days before the filing of the petition.

(c) A petitioner or guardian petitioner is not required to provide in the petition information regarding the relationship between the elderly person or person with disabilities and the respondent.

(d) Allegations in the petition must be made under oath or affirmation. The circuit court has jurisdiction over all proceedings under ORS 124.005 to 124.040.

(2) The petitioner or guardian petitioner has the burden of proving a claim under ORS 124.005 to 124.040 by a preponderance of the evidence.

(3) The right to petition for relief under ORS 124.005 to 124.040 is not affected by the fact that the elderly person or person with disabilities has left the residence or household to avoid abuse.

(4) A petition filed under ORS 124.005 to 124.040 must disclose the existence of any Elderly Persons and Persons With Disabilities Abuse Prevention Act proceedings, any Abuse Prevention Act proceedings or any marital annulment, dissolution or separation proceedings pending between the parties.

(5) Upon the filing of a petition under ORS 124.005 to 124.040, the clerk of the court shall give the petitioner or guardian petitioner information provided by the Department of Human Services about local adult protective services, domestic violence shelters and local legal services available.

(6) For purposes of computing the 180-day period in this section and ORS 124.020, any time during which the respondent is incarcerated or has a principal residence more than 100 miles from the principal residence of the elderly person or person with disabilities is not counted as part of the 180-day period.

(7) If a guardian or guardian ad litem files a petition under this section on behalf of an elderly person or a person with disabilities, the elderly person or person with disabilities retains the right to:

(a) Contact and retain counsel;

(b) Have access to personal records;

(c) File objections to the restraining order;

(d) Request a hearing; and

(e) Present evidence and cross-examine witnesses at any hearing. [1995 c.666 §4; 1999 c.738 §2; 1999 c.1052 §11; 2003 c.257 §2a; 2003 c.264 §2]

124.012 Filing of petitions; where contempt proceedings must be conducted. A petition under ORS 124.010 may be filed only in a county in which the petitioner or respondent resides. Any contempt proceedings for violation of a restraining order issued under ORS 124.005 to 124.040 must be conducted by the court that issued the order, or by the circuit court for a county in which a violation of the restraining order occurs. If contempt proceedings are initiated in the circuit court for a county in which a violation of the restraining order occurs, the person initiating the contempt proceedings shall file with the court a copy of the restraining order, certified by the clerk of the court that issued the order. Upon filing of the certified copy of the restraining order, the court shall enforce the order as though that court had issued the order. [2003 c.289 §4]

Note: Section 7 (2), chapter 289, Oregon Laws 2003, provides:

Sec. 7. (2) Section 4 of this 2003 Act [124.012] applies to all restraining orders issued under ORS 124.005 to 124.040, whether issued before, on or after the effective date of this 2003 Act [June 11, 2003]. Section 4 of this 2003 Act applies only to violations of restraining orders issued under ORS 124.005 to 124.040 that occur on or after the effective date of this 2003 Act. [2003 c.289 §7(2)]

124.015 Hearing upon request of respondent; relief; settlement; effect of proceedings. (1) The court shall hold a hearing within 21 days following the request, and may cancel or change any order issued under ORS 124.020 if the respondent, elderly person or person with disabilities requests a hearing pursuant to ORS 124.020 (8).

(2) In addition to the relief granted under ORS 124.020, the court, in a hearing held pursuant to subsection (1) of this section, may:

(a) Require either party to move from any residence whose title or right to occupy such premises is held jointly by the parties; and

(b) Assess against any party reasonable attorney fees and such costs as may be incurred in the hearing.

(3)(a) If the respondent is represented by an attorney, time for the hearing may be extended for up to five days at the request of the petitioner or guardian petitioner so that the petitioner or guardian petitioner may seek representation.

(b) If the elderly person or person with disabilities is represented by an attorney, time for the hearing may be extended for up to five days at the request of the respondent or guardian petitioner so that the respondent or guardian petitioner may seek representation.

(4) The court may approve any consent agreement to bring about a cessation of abuse of the parties. However, the court may not approve a term in a consent agreement that provides for restraint of a party to the agreement unless the other party petitioned for and was granted an order under ORS 124.010. An order or consent agreement made

under this section may be amended at any time and shall continue in effect for a period of one year from the date of the order issued under ORS 124.020.

(5) An order or agreement made under ORS 124.005 to 124.040 or ORS 133.310 and 133.381 may not in any manner affect title to any real property.

(6) No undertaking shall be required in any proceeding under ORS 124.005 to 124.040.

(7) Any proceeding under ORS 124.005 to 124.040 shall be in addition to and not in lieu of any other available civil or criminal remedies.

(8) Notwithstanding any right or remedy established in ORS chapter 90 or ORS 105.105 to 105.168, a petitioner or guardian petitioner may enforce an order issued under ORS 124.005 to 124.040. [1995 c.666 §§5,5a; 2003 c.257 §3a]

124.020 Ex parte hearing; required findings; forms; request by respondent for hearing. (1) When a petitioner or guardian petitioner files a petition under ORS 124.010, the circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day. Upon a showing that the elderly person or person with disabilities named in the petition has been the victim of abuse committed by the respondent within 180 days preceding the filing of the petition and that there is an immediate and present danger of further abuse to the elderly person or person with disabilities, the court shall, if requested by the petitioner or guardian petitioner, order, for a period of one year or until the order is withdrawn or amended, whichever is sooner:

(a) That the respondent be required to move from the residence of the elderly person or person with disabilities, if in the sole name of the elderly person or person with disabilities or if jointly owned or rented by the elderly person or person with disabilities and the respondent, or if the parties are married to each other;

(b) That a peace officer accompany the party who is leaving or has left the parties' residence to remove essential personal effects of the party;

(c) That the respondent be restrained from abusing, intimidating, molesting, interfering with or menacing the elderly person or person with disabilities, or attempting to abuse, intimidate, molest, interfere with or menace the elderly person or person with disabilities;

(d) That the respondent be restrained from entering, or attempting to enter, on any premises when it appears to the court that such restraint is necessary to prevent the respondent from abusing, intimidating, molesting, interfering with or menacing the elderly person or person with disabilities;

(e) That the respondent be:

(A) Restrained, effective on a date not less than 150 days from the date of the order, from mailing the elderly person or person with disabilities any sweepstakes promotion;

(B) Required to remove the elderly person or person with disabilities from the respondent's sweepstakes promotion mailing list or place the elderly person or person with disabilities on a list of persons to whom sweepstakes promotions may not be mailed; and

(C) Required to promptly refund any payment received in any form from the elderly person or person with disabilities after the date the order is entered by the court; or

(f) Other relief that the court considers necessary to provide for the safety and welfare of the elderly person or person with disabilities.

(2) The showing required under subsection (1) of this section may be made by testimony of:

(a) The elderly person or person with disabilities;

(b) The guardian or guardian ad litem of the elderly person or person with disabilities;

(c) Witnesses to the abuse; or

(d) Adult protective services workers who have conducted an investigation.

(3) Immediate and present danger under this section includes but is not limited to situations in which the respondent has recently threatened the elderly person or person with disabilities with additional abuse.

(4) When a guardian petitioner files a petition on behalf of an elderly person or a person with disabilities, the guardian petitioner shall provide information about the elderly person or person with disabilities and not the guardian petitioner where the petition, order or related forms described in subsection (5) of this section require information about the petitioner.

(5) An instruction brochure shall be available from the clerk of the court explaining the rights set forth under ORS 124.005 to 124.040. The petition, order and related forms shall be available from the clerk of the court and shall be in substantially the following form:

_____

IN THE CIRCUIT COURT OF
THE STATE OF OREGON FOR
THE COUNTY OF _____

_____, Petitioner (your name)	) PETITION FOR) RESTRAINING ORDER) TO PREVENT ABUSE) OF ELDERLY) PERSONS OR) PERSONS WITH
vs.	) DISABILITIES)
	) NO. _____)
_____, Respondent (person to be restrained)	)))

YOU MUST PROVIDE COMPLETE AND TRUTHFUL INFORMATION. IF YOU DO NOT, THE COURT MAY DISMISS ANY RESTRAINING ORDER AND MAY ALSO HOLD YOU IN CONTEMPT OF COURT.

If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the Court and the Sheriff can reach you if necessary.

ATTACH ADDITIONAL PAGES IF NECESSARY.

I am the Petitioner and I state that the following information is true:

I am a resident of _____ County, Oregon.

Respondent is a resident of _____ County, Oregon.

I am either 65 years of age or older (I am _____ years of age) or I am a person with disabilities (CIRCLE THE ONE THAT DESCRIBES YOU).

1. CHECK AND FILL OUT ANY SECTION(S) that apply to you and respondent:

___ A. Respondent and I have been living together since _____, _____(year).

___ B. Respondent and I lived together from _____, _____(year), to _____, _____(year).

___ C. I have been under the care of respondent since _____, _____(year).

___ D. I was under the care of respondent from _____, _____(year), to _____, _____(year).

___ E. Respondent has sent me sweepstakes promotions.

___ F. None of the above.

2. To qualify for a restraining order, respondent must have done one or more of the following:
Within the last 180 days, respondent has:

___ A. Caused me physical injury by other than accidental means.

___ B. Attempted to cause me physical injury by other than accidental means.

___ C. Placed me in fear of immediate serious physical injury.

___ D. Caused me physical harm by withholding services necessary to maintain my health and well-being.

___ E. Abandoned or deserted me by withdrawing or neglecting to perform duties and obligations.

___ F. Used derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to place me in fear of significant physical or emotional harm.

___ G. Sent me sweepstakes promotions, and I feel the need for the court's assistance to protect me from further expense. I am an elderly person or a person with disabilities. In the past year, I spent more than $500 on sweepstakes promotions that I received in the United States mail.

NOTICE TO PETITIONER: Sweepstakes companies are allowed up to 150 days to stop sending you sweepstakes entry materials. For a time after the court issues a restraining order, you may receive additional solicitations from respondent. However, beginning on the date the restraining order is issued, the respondent must immediately reject any further orders from you and must return any money you send to the company after the date the restraining order is issued.

3. Any period of time after the abuse occurred during which respondent was incarcerated (in jail or prison) or lived more than 100 miles from your home is not counted as part of the 180-day period, and you may still be eligible for a restraining order.
Respondent was incarcerated from _____, _____(year), to _____, _____(year).
Respondent lived more than 100 miles from my home from _____, _____(year), to _____, _____(year).

4. Did the abuse happen within the last 180 days not including the times respondent was incarcerated (in jail or prison) or lived more than 100 miles from your home? Yes No

Date and location of abuse:
_____
_____

How did respondent injure or threaten to injure you?
_____
_____
_____

5. Are there incidents other than those described in question 4 above, in which respondent injured or threatened to injure you? If yes, explain:
_____
_____
_____

6. The abuse I am complaining about was witnessed by _____ (affidavit attached). Other persons with knowledge of the abuse are _____ (affidavit attached).

7. I am in immediate and present danger of further abuse by respondent because:
_____
_____
_____

8. In any of the above incidents:

Were drugs, alcohol or weapons involved? Yes No
Did you need medical help? Yes No
Were the police or the courts involved? Yes No

If you have circled yes to any of the above questions, explain:
_____
_____

9. A. There (is) (is not) another Elderly Persons and Persons With Disabilities Abuse Prevention Act or Abuse Prevention Act proceeding pending between respondent and me. It is filed in _____ (County), _____ (State), and I am (Petitioner) or (Respondent) in that case.
The case number of the case is: _____

B. There (is) (is not) another lawsuit pending between respondent and me for divorce, annulment or legal separation.
If yes, type of lawsuit: _____
It is filed in _____ (County), _____ (State).

10. Respondent may be required to move from your residence if it is in your sole name, or if it is jointly owned or rented by you and respondent, or if you and respondent are married.
I (do) (do not) want respondent to move from my residence.
My residence is:
Owned Leased Rented
By: _____

PETITIONER ASKS THE COURT TO GRANT THE RELIEF INDICATED IN THE "PETITIONER'S REQUEST" COLUMN OF THE PROPOSED RESTRAINING ORDER, WHICH IS ATTACHED.

PETITIONER MUST NOTIFY THE COURT
OF ANY CHANGE OF ADDRESS.

ALL NOTICES OF HEARING WILL
BE SENT TO THIS ADDRESS
AND DISMISSALS MAY BE
ENTERED IF YOU DO NOT APPEAR
AT A SCHEDULED HEARING.

If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the Court and the Sheriff can reach you if necessary.

_____
PETITIONER

STATE OF OREGON)

County of _____) ss.
)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2____.

_____
NOTARY PUBLIC FOR OREGON
My commission expires: _____

RELEVANT DATA

RESPONDENT _____
Sex ____ Telephone # _____
Residence Address _____
City/State/Zip _____
County _____
Birthdate _____ Age ____
Race _____
Height _____ Weight _____
Eye Color _____
Hair Color _____

PETITIONER (you) _____
Sex _____ *Telephone # _____
*Residence Address _____
City/State/Zip _____
County _____
Birthdate _____ Age _____
Race _____
Height _____ Weight _____
Eye Color _____
Hair Color _____

GUARDIAN PETITIONER
Name _____
Address _____
_____
Telephone # _____

*If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so the Court and the Sheriff can reach you if necessary.

PLEASE FILL OUT THIS INFORMATION
TO AID IN SERVICE OF
THE RESTRAINING ORDER

Where is respondent most likely to be located?

Residence Hours _____
Employment Hours _____
Address: _____
_____

Employment Hours _____
Address: _____
_____

Description of vehicle _____
_____

Does respondent have any weapons or access to weapons? Explain:
_____
_____

Has respondent ever been arrested for or convicted of a violent crime? Explain:
_____
_____

Is there anything about respondent's character, past behavior or the present situation that indicates that respondent may be a danger to self or other? Explain:

_____

_____

_____

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____,	)	
Petitioner	)	
(your name)	)	RESTRAINING ORDER
	)	TO PREVENT ABUSE
	)	OF ELDERLY PERSONS
vs.	)	OR PERSONS WITH
	)	DISABILITIES
	)	
	)	NO. _____
_____,	)	
Respondent	)	
(person to be restrained)	)	
	)	

TO THE RESPONDENT:
VIOLATION OF THIS RESTRAINING ORDER
MAY RESULT IN YOUR ARREST AND IN
CIVIL AND/OR CRIMINAL PENALTIES.
REVIEW THIS ORDER CAREFULLY.
EACH PROVISION MUST BE OBEYED.
SEE YOUR RIGHTS TO A HEARING.

The Court, having reviewed the petition, makes the following findings:

Judge's Initials

__ Petitioner been abused by respondent as defined by ORS 124.005;
__ The abuse of petitioner by respondent occurred within the last 180 days as provided in ORS 124.010;
__ There is an immediate and present danger of further abuse to petitioner.

IT IS HEREBY ORDERED that:

Petitioner's Request			Judge's Initials
[ ]	1.	Respondent is restrained (prohibited) from intimidating, molesting, interfering with or menacing petitioner, or attempting to intimidate, molest, interfere with or menace petitioner.	_____
[ ]	2.	Respondent is restrained (prohibited) from entering, or attempting to enter:	_____
		(Include names and address unless withheld for safety reasons.)	
	[ ]	Petitioner's residence.	_____
	[ ]	Petitioner's business or place of employment.	_____
	[ ]	Petitioner's school.	_____
	[ ]	Other locations.	_____
[ ]	3.	Respondent is restrained (prohibited) from:	
	[ ]	Contacting, or attempting to contact, petitioner by telephone.	_____
	[ ]	Contacting, or attempting to contact, petitioner by mail.	_____
[ ]	4.	Respondent shall move from and not return to the residence located at _____ except with a peace officer in order to remove essential personal effects of the respondent, including, but not limited to: clothing, toiletries, medications, Social Security cards, birth certificates, identification and tools of the trade.	_____
[ ]	5.	A peace officer shall accompany the petitioner to the parties' residence in order to remove essential personal effects of petitioner, including, but not limited to: clothing, toiletries, medications, Social Security cards, birth certificates, identification and tools of the trade.	_____
[ ]	6.	Beginning on a date not less than 150	_____

days from the date of this order, the respondent shall not mail the petitioner any further sweepstakes promotions.

[ ] 7. Respondent shall remove the petitioner from the respondent's sweepstakes promotion mailing list or shall place the petitioner on the respondent's list of persons to whom sweepstakes promotions may not be mailed. _____

[ ] 8. Respondent shall refund any payment received in any form from the petitioner after the date this order is entered by the court. _____

[ ] 9. Other relief: _____ _____

_____

_____

[ ] 10. No further service is necessary because respondent appeared in person before the Court. _____

IT IS FURTHER ORDERED that:

SECURITY AMOUNT FOR VIOLATION OF ANY PROVISION OF THIS ORDER IS $5,000 unless otherwise specified.

Other Amount ($)

THE ABOVE PROVISIONS OF THIS RESTRAINING ORDER ARE IN EFFECT FOR A PERIOD OF ONE YEAR OR UNTIL THE ORDER IS VACATED, MODIFIED OR SUPERSEDED, WHICHEVER OCCURS FIRST.

DATED this _____ day of _____, 2____.

_____
CIRCUIT COURT JUDGE (signature)

_____
CIRCUIT COURT JUDGE (printed)

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____, Petitioner, vs. _____, Respondent.	) NO. _____) AFFIDAVIT OF PROOF) OF SERVICE
STATE OF OREGON County of _____	) ss.

I am a resident of the State of Oregon. I am a competent person 18 years of age or older. I am not an attorney for or a party to this case, or an officer, director or employee of any party to this case.

On the _____ day of _____, 2____, I served the Restraining Order to Prevent Abuse of Elderly Persons or Persons With Disabilities and the Petition for Restraining Order to Prevent Abuse of Elderly Persons or Persons With Disabilities in this case personally upon the above-named respondent in _____ County by delivering to the respondent a copy of those papers, each of which was certified to be a true copy of each original.

_____
Signature of _____

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2____.

_____
NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____, Petitioner, vs. _____, Respondent.	) NO. _____) MOTION AND ORDER) OF DISMISSAL

Comes now petitioner, _____, and moves this Court for an order allowing the voluntary withdrawal and dismissal of the Restraining Order on file herein.

_____
Petitioner

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2____.

_____
NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

IT IS SO ORDERED this _____ day of _____, 2____.

_____
JUDGE

IN THE CIRCUIT COURT OF
THE STATE OF OREGON
FOR THE COUNTY OF _____

_____,	)
(D.O.B. _____)	) NOTICE TO RESPONDENT
Petitioner,	) (Elderly Persons and
	) Persons With Disabilities
	) Abuse Prevention Act)
	)
and	) NO. _____
	)
_____,	)
(D.O.B. _____)	)
Respondent.	)

THIS FORM MUST BE
ATTACHED TO SERVICE COPY
OF RESTRAINING ORDER

TO RESPONDENT: A TEMPORARY RESTRAINING ORDER HAS BEEN ISSUED BY THE COURT WHICH AFFECTS YOUR RIGHTS AND IS NOW IN EFFECT. THIS ORDER BECOMES EFFECTIVE IMMEDIATELY. IF YOU WISH TO CONTEST THE CONTINUATION OF THIS ORDER, YOU MUST COMPLETE THIS FORM AND MAIL OR DELIVER IT TO:

REQUESTS FOR HEARING MUST BE MADE WITHIN 30 DAYS AFTER YOU RECEIVE THE ORDER. YOU MUST INCLUDE YOUR ADDRESS AND TELEPHONE NUMBER WITH YOUR REQUEST FOR A HEARING. THE HEARING WILL BE HELD WITHIN 21 DAYS. AT THE HEARING, A JUDGE WILL DECIDE WHETHER THE ORDER SHOULD BE CANCELED OR CHANGED. THE ONLY PURPOSE OF THIS HEARING WILL BE TO DETERMINE IF THE TERMS OF THE COURT'S TEMPORARY ORDER SHOULD BE CANCELED, CHANGED OR EXTENDED.

Keep in mind that this order remains in effect until the court that issued the order modifies or dismisses it. If you are arrested for violating this order, the security amount (bail) is $5,000, unless a different amount is ordered by the court. Violation of this order constitutes contempt of court and is punishable by a fine of up to $500 or one percent of your annual gross income, whichever is greater, a jail term of up to six months, or both. Other sanctions may be imposed.

REQUEST FOR HEARING

I am the Respondent in the above-referenced action and I request a hearing to contest all or part of the order as follows (mark one or more):

___ The order restraining me from contacting, or attempting to contact, the petitioner.

___ Other _____

I (will) (will not) be represented by an attorney at the hearing.

Notice of the time and place of the hearing can be mailed to me at the address below my signature.

Date: _____

_____
SIGNATURE OF RESPONDENT

_____

_____
ADDRESS

_____
TELEPHONE NUMBER

(6) If the court orders relief:

(a) The clerk of the court shall provide without charge the number of certified true copies of the petition and order necessary to effect service and shall have a true copy of the petition and order delivered to the county sheriff for service upon the respondent, unless the court finds that further service is unnecessary because the respondent appeared in person before the court.

(b) The county sheriff shall serve the respondent personally unless the petitioner or guardian petitioner elects to have the respondent served personally by a private party or by a peace officer who is called to the scene of a domestic disturbance at which the respondent is present, and who is able to obtain a copy of the order within a reasonable amount of time. Proof of service shall be made in accordance with ORS 124.030.

(c) A respondent accused of committing abuse by means of a sweepstakes promotion may be served:

(A) Personally;

(B) By mailing certified true copies of the petition and order by certified mail to the address to which the elderly person or person with disabilities would have sent the payment for goods or services promoted in the sweepstakes promotion had the elderly

person or person with disabilities been ordering the goods or services; or

(C) In the manner directed by the court.

(d) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the relief provided under ORS 124.005 to 124.040.

(7) If the county sheriff:

(a) Determines that the order and petition are incomplete, the order and petition shall be returned to the clerk of the court. The clerk of the court shall notify the petitioner or guardian petitioner, at the address provided by the petitioner or guardian petitioner, of the error or omission.

(b) After accepting the order and petition, cannot complete service within 10 days, the sheriff shall notify the petitioner or guardian petitioner, at the address provided by the petitioner or guardian petitioner, that the documents have not been served. If the petitioner or guardian petitioner does not respond within 10 days, the county sheriff shall hold the order and petition for future service and file a return to the clerk of the court showing that service was not completed.

(8)(a) Within 30 days after a restraining order is served on the respondent under this section or within 30 days after notice is served on the elderly person or person with disabilities under ORS 124.024, the respondent, elderly person or person with disabilities may request a court hearing upon any relief granted. The hearing request form shall be available from the clerk of the court and shall be in substantially the form provided in subsection (5) of this section.

(b) If the respondent, elderly person or person with disabilities requests a hearing under paragraph (a) of this subsection, the clerk of the court shall notify the petitioner or guardian petitioner of the date and time of such hearing, and shall supply the petitioner or guardian petitioner with a copy of the request for a hearing. The petitioner or guardian petitioner shall give to the clerk of the court information sufficient to allow such notification.

(c) The hearing is not limited to the issues raised in the request for hearing form and may include testimony from witnesses to the abuse and adult protective services workers. The hearing may be held in person or by telephone. If the respondent, elderly person or person with disabilities seeks to raise an issue at the hearing not previously raised in the request for hearing form, the petitioner or guardian petitioner is entitled to a reasonable continuance for the purpose of preparing a response to the issue.

(d) The court shall exercise its discretion in a manner that protects the elderly person or person with disabilities from traumatic confrontation with the respondent. [1995 c.666 §§6,6a; 1997 c.249 §40; 1997 c.863 §5; 1999 c.738 §3; 1999 c.875 §7; 2003 c.257 §4a; 2003 c.264 §3]

124.022 Service of restraining order by sheriff. A sheriff may serve a restraining order under ORS 124.020 in the county in which the sheriff was elected and in any other county that is adjacent to the county in which the sheriff was elected. [2003 c.304 §12]

124.024 Notice to be given by guardian petitioner. (1) A guardian petitioner must give notice of the petition, order and related forms described in ORS 124.020 (5) to the elderly person or person with disabilities named in the petition.

(2) The guardian petitioner must also serve on the elderly person or person with disabilities a notice that contains a statement of the rights of an elderly person or a person with disabilities as follows:

(a) The right to contact and retain counsel;

(b) The right to have access to personal records;

(c) The right to file objections to the restraining order;

(d) The right to request a hearing to contest all or part of the restraining order; and

(e) The right to present evidence and cross-examine witnesses at any hearing.

(3) Notice provided under subsection (1) of this section must be similar to the notice provided to the respondent under ORS 124.020 (5) and must contain an objection form that the elderly person or person with disabilities may complete and mail to the court.

(4) Notice under this section must be personally served on the elderly person or person with disabilities. The date of personal service must be not later than 72 hours after the court issues a restraining order under ORS 124.020.

(5) Proof of service under this section must be filed in the proceeding before the court holds a hearing under ORS 124.015. [2003 c.257 §7; 2003 c.257 §7a]

124.025 Removal of personal effects; accompanying peace officer; limitation on liability. (1) A peace officer who accompanies a party removing essential personal effects pursuant to an order issued under ORS 124.020 shall remain for up to 20 minutes and may temporarily interrupt the removal of property at any time. Nothing in this sub-

section shall affect a peace officer's duty to arrest under ORS 133.055 and 133.310.

(2) The party removing essential personal effects from the residence pursuant to an order issued under ORS 124.020 is entitled to be accompanied by a peace officer on one occasion only.

(3) A peace officer who accompanies a party removing essential personal effects pursuant to an order issued under ORS 124.020 shall have immunity from any liability, civil or criminal, for any actions of the party committed during the removal of essential personal effects. [1995 c.666 §7]

124.030 Proof of service of restraining order to be delivered to sheriff; entry in LEDS; expiration of restraining order; release of respondent pending hearing. (1) Whenever a restraining order, as authorized by ORS 124.015 or 124.020, that includes a security amount and an expiration date pursuant to ORS 124.015 and 124.020 and this section, is issued and the person to be restrained has actual notice thereof, the clerk of the court or any other person serving the petition and order shall deliver forthwith to a county sheriff a true copy of the affidavit of proof of service on which it is stated that personal service of the petition and order was served on the respondent, a copy of the petition and a true copy of the order. If an order entered by the court recites that the respondent appeared in person before the court, the necessity for further service of the order is waived and an accompanying proof of service is not necessary. Upon receipt of a true copy of proof of service, when required, and a true copy of the order, the county sheriff shall forthwith enter the order into the Law Enforcement Data System maintained by the Department of State Police. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of such order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order. Such order shall be fully enforceable in any county in the state. The petitioner or guardian petitioner may elect to deliver documents personally to a county sheriff or to have them delivered by a private person for entry into the Law Enforcement Data System.

(2)(a) A restraining order shall remain in effect until the order expires or is terminated by court order.

(b) When a restraining order has been entered under ORS 124.020, the restraining order shall not be terminated upon a motion for dismissal by the petitioner or guardian petitioner unless the motion is notarized.

(3) In any situation where a restraining order described in subsection (1) of this section is terminated before the expiration date, the clerk of the court shall deliver forthwith a true copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of such termination order the county sheriff shall promptly remove the original order from the Law Enforcement Data System.

(4) Pending a contempt hearing for an alleged violation of a restraining order issued pursuant to ORS 124.015 or 124.020, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290. Whenever such restraining order is issued, the issuing court shall set a security amount for the violation of such order. [1995 c.666 §8; 2003 c.257 §5]

124.035 Renewal of restraining order. For good cause shown, the court may renew an order entered under ORS 124.015 or 124.020, and the court may do so regardless of whether there has been a further act of abuse. [1995 c.666 §9]

124.040 Short title. ORS 124.005 to 124.040 shall be known and may be cited as the "Elderly Persons and Persons With Disabilities Abuse Prevention Act." [1995 c.666 §2; 1999 c.738 §4; 2003 c.264 §4]

REPORTING OF ABUSE OF ELDERLY PERSONS

124.050 Definitions for ORS 124.050 to 124.095. As used in ORS 124.050 to 124.095:

(1) "Abuse" means one or more of the following:

(a) Any physical injury caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(b) Neglect which leads to physical harm through withholding of services necessary to maintain health and well-being.

(c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

(d) Willful infliction of physical pain or injury.

(2) "Department" means the Department of Human Services.

(3) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(4) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(5) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, chiropractor or podiatric physician and surgeon, including any intern or resident.

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health service.

(c) Employee of the Department of Human Services, county health department or community mental health and developmental disabilities program.

(d) Peace officer.

(e) Member of the clergy.

(f) Licensed clinical social worker.

(g) Physical, speech or occupational therapists.

(h) Senior center employee.

(i) Information and referral or outreach worker.

(j) Licensed professional counselor or licensed marriage and family therapist.

(k) Any public official who comes in contact with elderly persons in the performance of the official's official duties. [Formerly 410.610; 1999 c.463 §6; 2001 c.104 §36]

124.055 Policy. The Legislative Assembly finds that for the purpose of preventing abuse, safeguarding and enhancing the welfare of elderly persons, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused elderly persons. [Formerly 410.620]

124.060 Duty of officials to report. Any public or private official having reasonable cause to believe that any person 65 years of age or older with whom the official comes in contact, while acting in an official capacity, has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity has abused a person 65 years of age or older shall report or cause a report to be made in the manner required in ORS 124.065. [Formerly 410.630]

124.065 Method of reporting; content; notice to law enforcement agency and to department. (1) When a report is required under ORS 124.060, an oral report shall be made immediately by telephone or otherwise to the local office of the Department of Human Services or to a law enforcement agency within the county where the person making the report is at the time of contact. If known, such reports shall contain the names and addresses of the elderly person and any persons responsible for the care of the elderly person, the nature and the extent of the abuse (including any evidence of previous abuse), the explanation given for the abuse and any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

(2) When a report is received by the department under ORS 124.060, the department may notify the law enforcement agency having jurisdiction within the county where the report was made. If the department is unable to gain access to the allegedly abused elderly person, the department may contact the law enforcement agency for assistance and the agency shall provide assistance. When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall also immediately notify the local office of the department in the county where the report was made. [Formerly 410.640]

124.070 Duty to investigate; notice to department; evaluation. (1) Upon receipt of the report required under ORS 124.060, the Department of Human Services or the law enforcement agency shall cause an investigation to be commenced promptly to determine the nature and cause of the abuse.

(2) If the department or law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the department or law enforcement agency shall notify in writing the appropriate law enforcement agency or the local office of the department, respectively. The investigation shall include a visit to the named elderly person and consultation with those individuals having knowledge of the facts of the particular case. Upon completion of the evaluation of each case, written findings shall be prepared which shall include recommended action and a determination of whether protective services are needed. [Formerly 410.650]

124.075 Immunity of person making report in good faith; identity confidential. (1) Anyone participating in good faith in the making of a report pursuant to ORS 124.050 to 124.070 and who has reasonable grounds for the making thereof, shall have immunity from any civil liability that might otherwise be incurred or imposed with respect to the making or content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report.

(2) The identity of the person making the report shall be treated as confidential information and shall be disclosed only with the consent of that person or by judicial process,

or as required to perform the functions under ORS 124.070. [Formerly 410.660]

124.080 Photographing of victim; photograph as record. (1) In carrying out its duties under ORS 124.070 a law enforcement agency or the Department of Human Services may photograph or cause to have photographed any victim who is the subject of the investigation for purposes of preserving evidence of the condition of the victim at the time of the investigation.

(2) For purposes of ORS 124.090, photographs taken under authority of subsection (1) of this section shall be considered records. [Formerly 410.670]

124.085 Catalogue of abuse records; confidentiality. A proper record of complaints made under ORS 124.060 and 124.065 shall be maintained by the Department of Human Services. The department shall prepare reports in writing when investigation has shown that the condition of the elderly person was the result of abuse even if the cause remains unknown. The complaints and investigative reports shall be catalogued under the name of the victim but shall be treated as confidential information, and shall be disclosed only with the consent of that person or by judicial process. [Formerly 410.680]

124.090 Confidentiality of records; exceptions. Notwithstanding the provisions of ORS 192.410 to 192.505, the names of the public or private official who made the complaint, witnesses and the elderly persons compiled under the provisions of ORS 124.050 to 124.095 are confidential and are not accessible for public inspection. However, the Department of Human Services shall make the information and any investigative report available to any law enforcement agency, to any public agency that licenses or certifies residential facilities or licenses or certifies the persons practicing therein, to any public agency providing protective services for the elderly person and to the Long Term Care Ombudsman, if appropriate. The department shall also make the information and any investigative report available to any private nonprofit agency providing protective services for the elderly person. When this information and any investigative report is made available to the private agency, ORS 124.050 to 124.095 relating to confidentiality apply to the private agency. [Formerly 410.690; 2001 c.900 §21]

124.095 Spiritual treatment not abuse. An elderly person who in good faith is voluntarily under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, not be considered subjected to abuse by reason of neglect under ORS 124.050 to 124.095. [Formerly 410.700]

CIVIL ACTION FOR ABUSE OF ELDERLY OR INCAPACITATED PERSON

124.100 Action authorized; relief; qualifications for bringing action; service on Attorney General. (1) An elderly or incapacitated person who suffers injury, damage or death by reason of physical abuse or financial abuse may bring an action against any person who has caused the physical or financial abuse or who has permitted another person to engage in physical or financial abuse. The court shall award the following to a plaintiff who prevails in an action under this section:

(a) An amount equal to three times all economic damages, as defined in ORS 31.710, resulting from the physical or financial abuse, or $500, whichever amount is greater.

(b) An amount equal to three times all noneconomic damages, as defined by ORS 31.710, resulting from the physical or financial abuse.

(c) Reasonable attorney fees incurred by the plaintiff.

(d) Reasonable fees for the services of a conservator or guardian ad litem incurred by reason of the litigation of a claim brought under this section.

(2) An action may be brought under the provisions of this section only by a person who is 65 or more years of age, by an incapacitated person, by a guardian, conservator or attorney-in-fact for a person who is incapacitated or 65 or more years of age or by a personal representative for the estate of a decedent who was incapacitated or 65 or more years of age at the time the cause of action arose. A person shall be considered incapacitated for the purposes of ORS 124.100 to 124.140 if the person is either incapacitated as defined in ORS 125.005 or financially incapable as defined in ORS 125.005.

(3) An action may only be brought under the provisions of this section for physical abuse described in ORS 124.105 or for financial abuse described in ORS 124.110.

(4) An action may be brought under this section against a person for permitting another person to engage in physical or financial abuse if the person knowingly acts or fails to act under circumstances in which a reasonable person should have known of the physical or financial abuse.

(5) A person commencing an action under this section must serve a copy of the complaint on the Attorney General within 30

days after the action is commenced. [1995 c.671 §1; 1997 c.249 §41; 1999 c.305 §1; 2001 c.843 §3; 2003 c.211 §1]

124.105 Physical abuse subject to action. (1) An action may be brought under ORS 124.100 for physical abuse if the defendant engaged in conduct against an elderly or incapacitated person that would constitute any of the following:

(a) Assault, under the provisions of ORS 163.160, 163.165, 163.175 and 163.185.

(b) Menacing, under the provisions of ORS 163.190.

(c) Recklessly endangering another person, under the provisions of ORS 163.195.

(d) Criminal mistreatment, under the provisions of ORS 163.200 and 163.205.

(e) Rape, under the provisions of ORS 163.355, 163.365 and 163.375.

(f) Sodomy, under the provisions of ORS 163.385, 163.395 and 163.405.

(g) Unlawful sexual penetration, under the provisions of ORS 163.408 and 163.411.

(h) Sexual abuse, under the provisions of ORS 163.415, 163.425 and 163.427.

(i) Strangulation, under ORS 163.187.

(2) An action may be brought under ORS 124.100 for physical abuse if the defendant used any unreasonable physical constraint on the plaintiff or subjected the plaintiff to prolonged or continued deprivation of food or water.

(3) An action may be brought under ORS 124.100 for physical abuse if the defendant used a physical or chemical restraint, or psychotropic medication on the plaintiff without an order from a physician licensed in the State of Oregon or under any of the following conditions:

(a) For the purpose of punishing the elderly or incapacitated person.

(b) For any purpose not consistent with the purposes authorized by a physician.

(c) For a period significantly beyond that for which the restraint or medication was authorized by a physician. [1995 c.671 §2; 2003 c.577 §4]

124.110 Financial abuse subject to action. (1) An action may be brought under ORS 124.100 for financial abuse in the following circumstances:

(a) When a person wrongfully takes or appropriates money or property of an elderly or incapacitated person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the elderly or incapacitated person.

(b) When an elderly or incapacitated person requests that another person transfer to the elderly or incapacitated person any money or property that the other person holds or controls and that belongs to or is held in express trust, constructive trust or resulting trust for the elderly or incapacitated person, and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the money or property readily available to the elderly or incapacitated person when:

(A) The ownership or control of the money or property was acquired in whole or in part by the other person or someone acting in concert with the other person from the elderly or incapacitated person; and

(B) The other person acts in bad faith, or knew or should have known of the right of the elderly or incapacitated person to have the money or property transferred as requested or otherwise made available to the elderly or incapacitated person.

(c) When a person has at any time engaged in conduct constituting a violation of a restraining order regarding sweepstakes that was issued under ORS 124.020.

(2) A transfer of money or property that is made for the purpose of qualifying an elderly or incapacitated person for Medicaid benefits or for any other state or federal assistance program, or the holding and exercise of control over money or property after such a transfer, does not constitute a wrongful taking or appropriation under subsection (1)(a) of this section or the holding of money or property without good cause for the purposes of subsection (1)(b) of this section. [1995 c.671 §3; 1999 c.305 §2; 1999 c.875 §8]

124.115 Persons not subject to action. (1) Except as provided by subsection (2) of this section, an action under ORS 124.100 may not be brought against:

(a) Financial institutions, as defined by ORS 706.008;

(b) A health care facility, as defined in ORS 442.015;

(c) Any facility licensed or registered under ORS chapter 443; or

(d) Broker-dealers licensed under ORS 59.005 to 59.541.

(2) An action may be brought under ORS 124.100 against a person listed in subsection (1) of this section if:

(a) The person is convicted of one of the crimes specified in ORS 124.105 (1); or

(b) The person engages in conduct constituting financial abuse as described in ORS 124.110, and the person is convicted of a

crime by reason of the conduct. [1995 c.671 §3a; 1997 c.631 §408; 1999 c.305 §3]

124.120 Relief available. The court may restrain and remedy the conduct described in ORS 124.105 and 124.110 by issuing appropriate orders including but not limited to:

(1) A judgment for the remedies provided by ORS 124.100.

(2) Restraining orders, temporary injunctions or other actions as the court deems proper, including the acceptance of satisfactory performance bonds, the creation of receiverships, the appointment of qualified receivers and the enforcement of constructive trusts.

(3) Ordering any person to divest direct or indirect interest or contact with any person or enterprise.

(4) Imposing reasonable restrictions, including permanent injunctions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor or conduct to the extent permitted by the Constitution of the United States and this state. [1995 c.671 §4]

124.125 Action by Attorney General, Department of Human Services or district attorney; investigative demands. (1) The Attorney General, the Department of Human Services or any district attorney may bring an action against any person who engages in conduct described in ORS 124.105 and 124.110. In addition to remedies otherwise provided in ORS 124.100 to 124.140, upon prevailing in the action, the court shall award to the Attorney General, Department of Human Services or district attorney costs of investigation and penalties. Penalties awarded under this section may not exceed $25,000 per occurrence.

(2) The Attorney General may intervene in any civil action brought under ORS 124.100 if the Attorney General certifies that, in the opinion of the Attorney General, the action is of general public importance. In the action, the state shall be entitled to the same relief as if the Attorney General instituted the action under the provisions of this section.

(3) When it appears that a person is engaging in conduct described in ORS 124.105 or 124.110, the Attorney General or any district attorney may execute in writing and cause to be served an investigative demand upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation. The investigative demand shall require the person, under oath or otherwise, to appear and testify, to answer written interrogatories or to produce relevant documentary material or physical evidence for examination, at a reasonable time and place as stated in the investigative demand.

(4) At any time before the return date specified in an investigative demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, including a request for privileged material, may be filed in the appropriate court.

(5) Service of an investigative demand under subsection (3) of this section shall be made personally within this state. If personal service within this state cannot be made, substituted service may be made by any of the following methods:

(a) Personal service outside of this state;

(b) Mailing the investigative demand by registered or certified mail to the last-known place of business, residence or abode within or outside of this state of the person for whom service is intended;

(c) As to any person other than a natural person, in the manner provided for service of summons in an action or suit; or

(d) Such service as the court may direct.

(6) If any person after being served with an investigative demand under subsection (3) of this section fails or refuses to obey an investigative demand issued by the Attorney General or a district attorney, the Attorney General or district attorney may, after notice to an appropriate court and after a hearing, request an order:

(a) Granting injunctive relief to restrain the person from engaging in conduct that is involved in the alleged or suspected violation; or

(b) Granting other relief as may be required, until the person obeys the investigative demand.

(7) Any disobedience of any final order of a court under subsection (6) of this section shall be punished as a contempt of court.

(8) ORS 192.550 to 192.595 apply to the disclosure of financial records by a financial institution pursuant to the service of an investigative demand under subsection (3) of this section. [1995 c.671 §5; 2003 c.265 §1]

124.130 Statute of limitation. An action under ORS 124.100 to 124.140 must be commenced within seven years after discovery of the conduct described in ORS 124.105 and 124.110 that gives rise to a cause of action under ORS 124.100 to 124.140. [1995 c.671 §6]

124.135 Remedies not exclusive. The remedies provided by ORS 124.100 to 124.140 are in addition to any other remedy, civil or

criminal, that may be available under any other provision of law. [1995 c.671 §7]

124.140 Estoppel based on criminal conviction. A defendant convicted in any criminal proceeding of conduct that gives rise to a cause of action under ORS 124.100, whether the conviction results from a plea or verdict, is estopped from denying the conduct for purposes of an action under ORS 124.100 to 124.140. [1995 c.671 §8]

PENALTIES

124.990 Criminal penalty. A person who violates ORS 124.060 commits a Class A violation. [Formerly 410.990]