

A-Engrossed
Senate Bill 106

Ordered by the Senate April 14
Including Senate Amendments dated April 14

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires firefighters and emergency medical technicians to report abuse of elderly persons. Modifies definition of "abuse" for Elderly Persons and Persons with Disabilities Abuse Prevention Act. Modifies definition of "abuse" for reporting abuse of elderly persons.

Specifies relief that court may order regarding wrongful taking of money or property from elderly person or person with disabilities.

Establishes rules governing passage of property from elderly and incapacitated persons who suffer physical or financial abuse that results in felony conviction of abuser. Provides that if abused person dies within five years after abuse occurs, property that would have passed from abused person to abuser by intestate succession, by will or by trust passes as if abuser had predeceased abused person.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to abuse of vulnerable persons; creating new provisions; amending ORS 112.455, 112.465,
3 112.475, 112.485, 112.495, 112.505, 112.515, 112.525, 112.535, 112.545, 124.005, 124.010, 124.015,
4 124.020, 124.024, 124.050 and 124.075; and declaring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 124.005 is amended to read:

7 124.005. As used in ORS 124.005 to 124.040:

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

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

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

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

16 (d) Willful infliction of physical pain or injury.

17 (e) Use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment,
18 coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a na-
19 ture as to threaten significant physical or emotional harm to the elderly person or person with dis-
20 abilities.

21 (f) Causing any sweepstakes promotion to be mailed to an elderly person or a person with dis-
22 abilities who had received sweepstakes promotional material in the United States mail, spent more

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 than \$500 in the preceding year on any sweepstakes promotions, or any combination of sweepstakes
2 promotions from the same service, regardless of the identities of the originators of the sweepstakes
3 promotion and who represented to the court that the person felt the need for the court's assistance
4 to prevent the person from incurring further expense.

5 **(g) Wrongfully taking or appropriating money or property, or knowingly subjecting an**
6 **elderly person or person with disabilities to alarm by conveying a threat to wrongfully take**
7 **or appropriate money or property, which threat reasonably would be expected to cause the**
8 **elderly person or person with disabilities to believe that the threat will be carried out.**

9 **(h) Sexual contact with a nonconsenting elderly person or person with disabilities or with**
10 **an elderly person or person with disabilities considered incapable of consenting to a sexual**
11 **act as described in ORS 163.315. As used in this paragraph, "sexual contact" has the meaning**
12 **given that term in ORS 163.305.**

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

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

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

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

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

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

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

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

24 (b) ORS 410.715.

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

27 (10) "Sweepstakes" means:

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

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

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

35 (11) "Sweepstakes promotion" means an offer to participate in a sweepstakes.

36 **SECTION 2.** ORS 124.010 is amended to read:

37 124.010. (1)(a) **Except as provided in subsection (8) of this section,** an elderly person or a
38 person with disabilities who has been the victim of abuse within the preceding 180 days or a
39 guardian or guardian ad litem of an elderly person or a person with disabilities who has been the
40 victim of abuse within the preceding 180 days may petition the circuit court for relief under ORS
41 124.005 to 124.040, if the elderly person or person with disabilities is in immediate and present
42 danger of further abuse from the abuser.

43 (b) The elderly person or person with disabilities or the guardian or guardian ad litem of the
44 elderly person or person with disabilities may seek relief by filing a petition with the circuit court
45 alleging that the elderly person or person with disabilities is in immediate and present danger of

1 further abuse from the respondent, alleging that the elderly person or person with disabilities has
2 been the victim of abuse committed by the respondent within the 180 days preceding the filing of
3 the petition and describing the nature of the abuse and the approximate dates thereof. The abuse
4 must have occurred not more than 180 days before the filing of the petition.

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

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

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

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

13 (4) A petition filed under ORS 124.005 to 124.040 must disclose the existence of any Elderly
14 Persons and Persons With Disabilities Abuse Prevention Act proceedings, any Abuse Prevention Act
15 proceedings, [or] any marital annulment, dissolution or separation proceedings pending between the
16 parties **or any protective proceedings under ORS chapter 125.**

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

20 (6) For purposes of computing the 180-day period in this section and ORS 124.020, any time
21 during which the respondent is incarcerated or has a principal residence more than 100 miles from
22 the principal residence of the elderly person or person with disabilities is not counted as part of the
23 180-day period.

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

- 27 (a) Contact and retain counsel;
- 28 (b) Have access to personal records;
- 29 (c) File objections to the restraining order;
- 30 (d) Request a hearing; and
- 31 (e) Present evidence and cross-examine witnesses at any hearing.

32 **(8) An elderly person or a person with disabilities may not file a petition under ORS**
33 **124.005 to 124.040 against a guardian or conservator for the elderly person or the person with**
34 **disabilities.**

35 **SECTION 3.** ORS 124.020 is amended to read:

36 124.020. (1) When a petitioner or guardian petitioner files a petition under ORS 124.010, the
37 circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed
38 or on the following judicial day. Upon a showing that the elderly person or person with disabilities
39 named in the petition has been the victim of abuse committed by the respondent within 180 days
40 preceding the filing of the petition and that there is an immediate and present danger of further
41 abuse to the elderly person or person with disabilities, the court shall, if requested by the petitioner
42 or guardian petitioner, order, for a period of one year or until the order is withdrawn or amended,
43 whichever is sooner:

44 (a) That the respondent be required to move from the residence of the elderly person or person
45 with disabilities, if in the sole name of the elderly person or person with disabilities or if jointly

1 owned or rented by the elderly person or person with disabilities and the respondent, or if the parties are married to each other;

2
3 (b) That a peace officer accompany the party who is leaving or has left the parties' residence
4 to remove essential personal effects of the party;

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

8 (d) That the respondent be restrained from entering, or attempting to enter, on any premises
9 when it appears to the court that such restraint is necessary to prevent the respondent from abus-
10 ing, intimidating, molesting, interfering with or menacing the elderly person or person with disabili-
11 ties;

12 (e) That the respondent be:

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

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

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

20 (f) **Except as provided in subsection (2) of this section**, other relief that the court considers
21 necessary to provide for the safety and welfare of the elderly person or person with disabilities.

22 **(2) If the court enters an order finding that the petitioner is entitled to relief, in whole**
23 **or in part, on the grounds that the respondent wrongfully took or appropriated the**
24 **petitioner's money or property or threatened to wrongfully take or appropriate the**
25 **petitioner's money or property, the court in its order:**

26 (a) **May order only relief that the court considers necessary to prevent or remedy the**
27 **wrongful taking or appropriation of the petitioner's money or property, including but not**
28 **limited to:**

29 (A) **Directing the respondent to refrain from exercising control over the petitioner's**
30 **money or property;**

31 (B) **Requiring the respondent to return custody or control of the petitioner's money or**
32 **property to the petitioner;**

33 (C) **Requiring the respondent to follow the instructions of the petitioner's previously ap-**
34 **pointed guardian or conservator; or**

35 (D) **Prohibiting the respondent from transferring the petitioner's money or property to**
36 **any person other than the petitioner.**

37 (b) **May not use a restraining order issued under ORS 124.005 to 124.040 to allow any**
38 **person other than the petitioner to assume responsibility for managing any of the**
39 **petitioner's money or property.**

40 (c) **May not issue a restraining order under ORS 124.005 to 124.040 for relief that is more**
41 **appropriately obtained in a proceeding filed under ORS chapter 125 including, but not limited**
42 **to, giving control and management of the petitioner's financial accounts or property for any**
43 **purpose other than the relief granted under paragraph (a) of this subsection.**

44 [(2)] (3) The showing required under subsection (1) of this section may be made by testimony
45 of:

- 1 (a) The elderly person or person with disabilities;
- 2 (b) The guardian or guardian ad litem of the elderly person or person with disabilities;
- 3 (c) Witnesses to the abuse; or
- 4 (d) Adult protective services workers who have conducted an investigation.

5 [(3)] (4) Immediate and present danger under this section includes but is not limited to situations
 6 in which the respondent has recently threatened the elderly person or person with disabilities with
 7 additional abuse.

8 [(4)] (5) When a guardian petitioner files a petition on behalf of an elderly person or a person
 9 with disabilities, the guardian petitioner shall provide information about the elderly person or per-
 10 son with disabilities and not **about** the guardian petitioner where the petition, order or related
 11 forms described in subsection [(5)] (6) of this section require information about the petitioner.

12 [(5)] (6) An instruction brochure shall be available from the clerk of the court explaining the
 13 rights set forth under ORS 124.005 to 124.040. The petition, order and related forms shall be avail-
 14 able from the clerk of the court and shall be in substantially the following form:

16
 17 IN THE CIRCUIT COURT OF
 18 THE STATE OF OREGON FOR
 19 THE COUNTY OF _____

20
 21 _____,) PETITION FOR
 22 Petitioner) RESTRAINING ORDER
 23 (your name)) TO PREVENT ABUSE
 24) OF ELDERLY
 25) PERSONS OR
 26) PERSONS WITH
 27 vs.) DISABILITIES
 28)
 29) NO. _____
 30 _____,)
 31 Respondent)
 32 (person to be)
 33 restrained))

34
 35 YOU MUST PROVIDE COMPLETE AND TRUTHFUL INFORMATION. IF YOU DO NOT, THE
 36 COURT MAY DISMISS ANY RESTRAINING ORDER AND MAY ALSO HOLD YOU IN CON-
 37 TEMPT OF COURT.

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

41 ATTACH ADDITIONAL PAGES
 42 IF NECESSARY.

43
 44 I am the Petitioner and I state that the following information is true:
 45

1 I am a resident of _____ County, Oregon.

2

3 Respondent is a resident of _____ County, Oregon.

4

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

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

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

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

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

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

14 ___ E. Respondent has sent me sweepstakes promotions.

15 ___ F. None of the above.

16 2. To qualify for a restraining order, respondent must have done one or more of the following:

17 Within the last 180 days, respondent has:

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

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

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

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

23 ___ E. Abandoned or deserted me by withdrawing or neglecting to perform duties and obli-
24 gations.

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

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

32 ___ H. **Wrongfully taken or appropriated my money or property, or alarmed me by**
33 **conveying a threat to me that my money or property would be wrongfully taken**
34 **or appropriated, which I reasonably believed would be carried out.**

35 ___ I. **Had nonconsensual sexual contact with me or sexual contact to which I was**
36 **incapable of consenting.**

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

42

43 3. Any period of time after the abuse occurred during which respondent was incarcerated (in
44 jail or prison) or lived more than 100 miles from your home is not counted as part of the
45 180-day period, and you may still be eligible for a restraining order.

1 Respondent was incarcerated from _____, ____ (year),
2 to _____, ____ (year).

3 Respondent lived more than 100 miles from my home from _____, ____ (year), to
4 _____, ____ (year).

5
6 4. Did the abuse happen within the last 180 days not including the times respondent was
7 incarcerated (in jail or prison) or lived more than 100 miles from your home? Yes No

8
9 Date and location of abuse:
10 _____
11 _____

12 How did respondent injure or threaten to injure you?
13 _____
14 _____
15 _____

16
17 5. Are there incidents other than those described in question 4 above, in which respondent in-
18 jured or threatened to injure you? If yes, explain:

19 _____
20 _____
21 _____

22
23 6. The abuse I am complaining about was witnessed by _____ (affidavit attached).
24 Other persons with knowledge of the abuse are _____ (affidavit attached).

25
26 7. I am in immediate and present danger of further abuse by respondent because:

27 _____
28 _____
29 _____

30
31 8. In any of the above incidents:

32
33 Were drugs, alcohol or weapons involved? Yes No
34 Did you need medical help? Yes No
35 Were the police or the courts involved? Yes No

36
37 If you have circled yes to any of the above questions, explain:

38 _____
39 _____

40
41 9. A. There (is) (is not) another Elderly Persons and Persons With Disabilities Abuse Pre-
42 ventation Act or Abuse Prevention Act proceeding pending between respondent and me.
43 It is filed in _____ (County), _____ (State), and I am (Petitioner) or (Re-
44 spondent) in that case.
45 The case number of the case is: _____

1 B. There (is) (is not) another lawsuit pending between respondent and me for divorce,
2 annulment or legal separation.

3 If yes, type of lawsuit: _____

4 It is filed in _____ (County), _____ (State).

5 C. **There (is) (is not) a protective proceeding filed in _____ (County),**
6 **_____ (State).**

7 10. Respondent may be required to move from your residence if it is in your sole name, or if it
8 is jointly owned or rented by you and respondent, or if you and respondent are married.

9 I (do) (do not) want respondent to move from my residence.

10 My residence is:

11 Owned Leased Rented

12 By: _____

13
14 PETITIONER ASKS THE COURT TO GRANT THE RELIEF INDICATED IN THE "PETITIONER'S
15 REQUEST" COLUMN OF THE PROPOSED RESTRAINING ORDER, WHICH IS ATTACHED.
16

17
18
19 PETITIONER MUST NOTIFY THE COURT
20 OF ANY CHANGE OF ADDRESS.

21
22 ALL NOTICES OF HEARING WILL
23 BE SENT TO THIS ADDRESS
24 AND DISMISSALS MAY BE
25 ENTERED IF YOU DO NOT APPEAR
26 AT A SCHEDULED HEARING.
27

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

31
32 _____
33 PETITIONER

34
35 STATE OF OREGON)
36) ss.
37 County of _____)

38
39 SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2____.

40 _____
41 NOTARY PUBLIC FOR OREGON
42 My commission expires: _____

43
44 RELEVANT DATA
45

1 RESPONDENT _____
 2 Sex _____ Telephone # _____
 3 Residence Address _____
 4 City/State/Zip _____
 5 County _____
 6 Birthdate _____ Age _____
 7 Race _____
 8 Height _____ Weight _____
 9 Eye Color _____
 10 Hair Color _____

11
 12 PETITIONER (you) _____ GUARDIAN PETITIONER
 13 Sex _____ *Telephone # _____ Name _____
 14 *Residence Address _____ Address _____
 15 City/State/Zip _____ _____
 16 County _____ Telephone # _____
 17 Birthdate _____ Age _____
 18 Race _____
 19 Height _____ Weight _____
 20 Eye Color _____
 21 Hair Color _____

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

25
 26 PLEASE FILL OUT THIS INFORMATION
 27 TO AID IN SERVICE OF
 28 THE RESTRAINING ORDER
 29

30 Where is respondent most likely to be located?

31 Residence Hours _____
 32 Employment Hours _____
 33 Address: _____
 34 _____
 35 Employment Hours _____
 36 Address: _____
 37 _____

38
 39 Description of vehicle _____
 40 _____

41
 42 Does respondent have any weapons or access to weapons? Explain:

43 _____
 44 _____
 45 _____

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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

1 124.010;
2 — There is an immediate and present danger of further abuse to petitioner.

3
4 IT IS HEREBY ORDERED that:

5 Petitioner's Request Judge's Initials

6 [] 1. Respondent is restrained (prohibited) from intimidating,
7 molesting, interfering with or menacing petitioner, or
8 attempting to intimidate, molest, interfere with or menace
9 petitioner. _____

10 [] 2. Respondent is restrained (prohibited) from entering, or
11 attempting to enter: _____

12 (Include names and address unless withheld for safety reasons.)

13 [] Petitioner's residence. _____

14 [] Petitioner's business or place of employment. _____

15 [] Petitioner's school. _____

16 [] Other locations. _____

17 [] 3. Respondent is restrained (prohibited) from:
18 [] Contacting, or attempting to contact, petitioner by telephone. _____

19 [] Contacting, or attempting to contact, petitioner by mail. _____

20 [] 4. Respondent shall move from and not return to the re-
21 sidence located at _____ except with a
22 peace officer in order to remove essential personal effects
23 of the respondent, including, but not limited to:
24 clothing, toiletries, medications, Social Security cards,
25 birth certificates, identification and tools of the trade.

26 [] 5. A peace officer shall accompany the petitioner to the _____
27 parties' residence in order to remove essential personal
28 effects of petitioner, including, but not limited to:
29 clothing, toiletries, medications, Social Security cards,
30 birth certificates, identification and tools of the trade.

31 [] 6. Beginning on a date not less than 150 _____
32 days from the date of this order, the respondent shall
33 not mail the petitioner any further sweepstakes promotions.

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

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

41 [] 9. Other relief: _____ _____
42 _____
43 _____

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

1 IT IS FURTHER ORDERED that:

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

4 Other Amount (\$)

5
6 THE ABOVE PROVISIONS OF THIS RESTRAINING ORDER ARE IN EFFECT FOR
7 A PERIOD OF ONE YEAR OR UNTIL THE ORDER IS VACATED, MODIFIED OR
8 SUPERSEDED, WHICHEVER OCCURS FIRST.

9
10 DATED this _____ day of _____, 2_____.

11
12 _____
13 CIRCUIT COURT JUDGE (signature)

14
15 _____
16 CIRCUIT COURT JUDGE (printed)

17
18
19 IN THE CIRCUIT COURT OF
20 THE STATE OF OREGON
21 FOR THE COUNTY OF _____

22
23)
24 _____,) NO. _____
25 Petitioner,)
26 vs.) AFFIDAVIT OF PROOF
27 _____,) OF SERVICE
28 Respondent.)
29)
30)
31 STATE OF)
32 OREGON)
33) ss.
34 County of _____)

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

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

43 _____
44 Signature of _____
45

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 _____

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

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. _____))

1 Respondent.)

2 THIS FORM MUST BE
3 ATTACHED TO SERVICE COPY
4 OF RESTRAINING ORDER
5

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

10
11 REQUESTS FOR HEARING MUST BE MADE WITHIN 30 DAYS AFTER YOU RECEIVE THE
12 ORDER. YOU MUST INCLUDE YOUR ADDRESS AND TELEPHONE NUMBER WITH YOUR
13 REQUEST FOR A HEARING. THE HEARING WILL BE HELD WITHIN 21 DAYS. AT THE
14 HEARING, A JUDGE WILL DECIDE WHETHER THE ORDER SHOULD BE CANCELED OR
15 CHANGED. THE ONLY PURPOSE OF THIS HEARING WILL BE TO DETERMINE IF THE
16 TERMS OF THE COURT'S TEMPORARY ORDER SHOULD BE CANCELED, CHANGED OR EX-
17 TENDED.

18
19 Keep in mind that this order remains in effect until the court that issued the order modifies or
20 dismisses it. If you are arrested for violating this order, the security amount (bail) is \$5,000, unless
21 a different amount is ordered by the court. Violation of this order constitutes contempt of court
22 and is punishable by a fine of up to \$500 or one percent of your annual gross income, whichever is
23 greater, a jail term of up to six months, or both. Other sanctions may be imposed.

24 _____
25
26 REQUEST FOR HEARING
27

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

- 30 The order restraining me from contacting, or attempting to contact, the petitioner.
31 Other _____
32

33 I (will) (will not) be represented by an attorney at the hearing.
34

35 Notice of the time and place of the hearing can be mailed to me at the address below my signature.
36

37 Date: _____
38

39 _____
40 SIGNATURE OF RESPONDENT
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42 _____
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45 ADDRESS

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TELEPHONE NUMBER

~~[(6)]~~ (7) 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)]~~ (8) 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)]~~ (9)(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)]~~ (6) 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

1 be held in person or by telephone. If the respondent, elderly person or person with disabilities seeks
2 to raise an issue at the hearing not previously raised in the request for hearing form, the petitioner
3 or guardian petitioner is entitled to a reasonable continuance for the purpose of preparing a re-
4 sponse to the issue.

5 (d) The court shall exercise its discretion in a manner that protects the elderly person or person
6 with disabilities from traumatic confrontation with the respondent.

7 **SECTION 4.** ORS 124.050 is amended to read:

8 124.050. As used in ORS 124.050 to 124.095:

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

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

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

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

16 (d) Willful infliction of physical pain or injury.

17 (e) **An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425,**
18 **163.427, 163.465 or 163.467.**

19 (f) **Wrongfully taking or appropriating money or property, or knowingly subjecting an**
20 **elderly person or person with disabilities to alarm by conveying a threat to wrongfully take**
21 **or appropriate money or property, which threat reasonably would be expected to cause the**
22 **elderly person or person with disabilities to believe that the threat will be carried out.**

23 [(2) "*Department*" means the Department of Human Services.]

24 [(3)] (2) "Elderly person" means any person 65 years of age or older who is not subject to the
25 provisions of ORS 441.640 to 441.665.

26 [(4)] (3) "Law enforcement agency" means:

27 (a) Any city or municipal police department.

28 (b) Any county sheriff's office.

29 (c) The Oregon State Police.

30 (d) Any district attorney.

31 [(5)] (4) "Public or private official" means:

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

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

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

38 (d) Peace officer.

39 (e) Member of the clergy.

40 (f) Licensed clinical social worker.

41 (g) Physical, speech or occupational therapists.

42 (h) Senior center employee.

43 (i) Information and referral or outreach worker.

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

45 (k) Any public official who comes in contact with elderly persons in the performance of the of-

1 ficial's official duties.

2 **(L) Firefighter or emergency medical technician.**

3 **SECTION 5.** ORS 124.075 is amended to read:

4 124.075. (1) Anyone participating in good faith in the making of a report [*pursuant to ORS*
5 *124.050 to 124.070*] **of elder abuse** and who has reasonable grounds for the making [*thereof,*] **the**
6 **report** shall have immunity from any civil liability that might otherwise be incurred or imposed with
7 respect to the making or content of such report. Any such participant shall have the same immunity
8 with respect to participating in any judicial proceeding resulting from such report.

9 (2) The identity of the person making the report shall be treated as confidential information and
10 shall be disclosed only with the consent of that person or by judicial process, or as required to
11 perform the functions under ORS 124.070.

12 **SECTION 6.** Section 7 of this 2005 Act is added to and made a part of ORS 112.455 to
13 **112.555.**

14 **SECTION 7.** ORS 112.455 to 112.555 apply to an abuser only if the decedent dies within five
15 years after the abuser is convicted of a felony by reason of conduct that constitutes physical
16 abuse of the decedent, as described in ORS 124.105, or financial abuse of the decedent, as
17 described in ORS 124.110.

18 **SECTION 8.** ORS 112.455 is amended to read:

19 112.455. As used in ORS 112.455 to 112.555:

20 (1) **"Abuser"** means a person who is convicted of a felony by reason of conduct that
21 constitutes physical abuse as described in ORS 124.105 or financial abuse as described in ORS
22 **124.110.**

23 [(1)] (2) "Decedent" means:

24 (a) A person whose life is taken by a slayer; or

25 (b) **A person who dies after an abuser engages in conduct against the person that con-**
26 **stitutes physical abuse as described in ORS 124.105 or financial abuse as described in ORS**
27 **124.110.**

28 [(2)] (3) "Slayer" means a person who, with felonious intent, takes or procures the taking of the
29 life of [*another*] **a decedent.**

30 **SECTION 9.** ORS 112.465 is amended to read:

31 112.465. Property that would have passed **by intestate succession, by will or by trust** from
32 [*the*] **a decedent** or the estate of the decedent to [*the slayer*] **a person who was a slayer or an**
33 **abuser of the decedent, passes and vests** [*by intestate succession, by will or by trust shall pass and*
34 *be vested*] as if the slayer **or abuser** had predeceased the decedent.

35 **SECTION 10.** ORS 112.475 is amended to read:

36 112.475. If [*the*] **a slayer of a decedent** and the decedent, **or an abuser of a decedent and the**
37 **decedent**, owned property as tenants by the entirety or with a right of survivorship, upon the death
38 of the decedent an undivided one-half interest [*shall remain*] **remains** in the slayer **or abuser** for
39 the lifetime of the slayer **or abuser** and[,] subject [*thereto,*] **to that interest** the property [*shall pass*
40 *to and be*] **passes to and is** vested in the heirs or devisees of the decedent other than the slayer
41 **or abuser.**

42 **SECTION 11.** ORS 112.485 is amended to read:

43 112.485. If [*the*] **a slayer of a decedent**, the decedent and [*another or others*] **one or more other**
44 **persons** owned property with a right of survivorship, **or if an abuser of a decedent, the decedent**
45 **and one more other persons owned property with a right of survivorship**, upon the death of

1 the decedent the interest of the slayer **or abuser** *[shall remain]* **remains** as an undivided interest
2 in the slayer **or abuser** for the lifetime of the slayer **or abuser** and[,] subject *[thereto,]* **to that in-**
3 **terest** the property *[shall pass to and be]* **passes to and is** vested in the other surviving owner or
4 owners.

5 **SECTION 12.** ORS 112.495 is amended to read:

6 112.495. (1) Property in which *[the]* **a slayer of a decedent, or an abuser of a decedent,** owns
7 a reversion or vested remainder subject to an estate for the lifetime of **the** decedent *[shall pass]*
8 **passes** to the heirs or devisees of the decedent for a period of time equal to the normal life ex-
9 pectancy of a person of the sex and age of the decedent at the time of death. If the particular estate
10 is owned by a third person for the lifetime of the decedent, *[it shall continue]* **the estate continues**
11 in *[such]* **the third** person for a period of time equal to the normal life expectancy of a person of
12 the sex and age of the decedent at the time of death.

13 (2) As to a contingent remainder or executory or other future interest owned by *[the]* **a slayer**
14 **of a decedent or an abuser of a decedent** *[subject to become]* **that becomes** vested in the slayer
15 **or abuser** or increased in any way for the slayer **or abuser** upon *[the condition of]* the death of the
16 decedent:

17 (a) If the interest would not have **increased or** become vested *[or increased]* if the slayer **or**
18 **abuser** had predeceased the decedent, the slayer **or abuser** *[shall be]* **is** considered to have *[so]*
19 predeceased the decedent; and

20 (b) In any case, the interest shall not be so vested or increased during a period of time equal
21 to the normal life expectancy of a person of the sex and age of the decedent at the time of death.

22 **SECTION 13.** ORS 112.505 is amended to read:

23 112.505. (1) Property appointed by the will of the decedent to or for the benefit of *[the]* **a slayer**
24 **of a decedent or an abuser of a decedent** *[shall be]* **is** distributed as if the slayer **or abuser** had
25 predeceased the decedent.

26 (2) Property owned either presently or in remainder by *[the]* **a slayer of a decedent or an**
27 **abuser of a decedent,** subject to be divested by the exercise by the decedent of a power of revo-
28 cation or a general power of appointment, *[shall pass to and be]* **passes to and is** vested in the heirs
29 or devisees of the decedent other than the slayer **or abuser**. Property so owned by the slayer **or**
30 **abuser,** subject to be divested by the exercise by the decedent of a power of appointment to a par-
31 ticular person or persons or to a class of persons, *[shall pass to such]* **passes to the** person or
32 persons or in equal shares to the members of *[such]* **the** class of persons to the exclusion of the
33 slayer **or abuser**.

34 **SECTION 14.** ORS 112.515 is amended to read:

35 112.515. Proceeds payable to or for the benefit of *[the]* **a slayer of a decedent or an abuser**
36 **of a decedent** as beneficiary or assignee of the decedent of the following interests shall be paid to
37 the secondary beneficiary, or if there is no secondary beneficiary, to the personal representative of
38 the decedent's estate:

39 (1) A policy or certificate of insurance on the life of the decedent.

40 (2) A certificate of membership in any benevolent association or organization on the life of the
41 decedent.

42 (3) Rights of the decedent as survivor of a joint life policy.

43 (4) Proceeds under any pension, profit-sharing or other plan.

44 **SECTION 15.** ORS 112.525 is amended to read:

45 112.525. If *[the]* **a** decedent is beneficiary or assignee of any policy or certificate of insurance

1 on the life of *[the]* a slayer of the decedent or an abuser of the decedent, the proceeds shall be
2 paid to the personal representative of the decedent's estate unless:

3 (1) The policy or certificate names some person other than the slayer or abuser, or the personal
4 representative of the slayer or abuser, as the secondary beneficiary.

5 (2) The slayer or abuser, by naming a new beneficiary or assignee, performs an act which would
6 have deprived the decedent of the interest of the decedent if the decedent had been living.

7 **SECTION 16.** ORS 112.535 is amended to read:

8 112.535. Any insurance company making payment according to the terms of its policy, or any
9 financial institution, trustee or other person performing an obligation to *[the]* a slayer of a decedent
10 or an abuser of a decedent *[shall not be subjected]* is not subject to additional liability because
11 of ORS 112.455 to 112.555 if the payment or performance is made without written notice by a
12 claimant of a claim arising under those sections. Upon receipt of written notice the person to whom
13 it is directed may withhold any disposition of the property pending determination of the duties of
14 the person.

15 **SECTION 17.** ORS 112.545 is amended to read:

16 112.545. ORS 112.455 to 112.555 do not affect the rights of any person who for value and without
17 notice purchases or agrees to purchase property that *[the]* a slayer of a decedent or an abuser
18 of a decedent would have acquired except for *[those sections]* ORS 112.455 to 112.555, but all pro-
19 ceeds received by the slayer or abuser from the sale shall be held by the slayer or abuser in trust
20 for the persons entitled to the property as provided in *[those sections]* ORS 112.455 to 112.555. The
21 slayer *[shall be]* or abuser is liable for any portion of the proceeds of the sale that the slayer *[may*
22 *have expended]* or abuser spends and for the difference, if any, between the amount received from
23 the sale and the actual value of the property.

24 **SECTION 18.** ORS 124.015 is amended to read:

25 124.015. (1) The court shall hold a hearing within 21 days following the request, and may cancel
26 or change any order issued under ORS 124.020 if the respondent, elderly person or person with dis-
27 abilities requests a hearing pursuant to ORS 124.020 *[(8)]* (9).

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

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

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

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

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

40 (4) The court may approve any consent agreement to bring about a cessation of abuse of the
41 parties. However, the court may not approve a term in a consent agreement that provides for re-
42 straint of a party to the agreement unless the other party petitioned for and was granted an order
43 under ORS 124.010. An order or consent agreement made under this section may be amended at any
44 time and shall continue in effect for a period of one year from the date of the order issued under
45 ORS 124.020.

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

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

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

6 (8) Notwithstanding any right or remedy established in ORS chapter 90 or ORS 105.105 to
7 105.168, a petitioner or guardian petitioner may enforce an order issued under ORS 124.005 to
8 124.040.

9 **SECTION 19.** ORS 124.024 is amended to read:

10 124.024. (1) A guardian petitioner must give notice of the petition, order and related forms de-
11 scribed in ORS 124.020 [(5)] (6) to the elderly person or person with disabilities named in the peti-
12 tion.

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

16 (a) The right to contact and retain counsel;

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

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

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

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

21 (3) Notice provided under subsection (1) of this section must be similar to the notice provided
22 to the respondent under ORS 124.020 [(5)] (6) and must contain an objection form that the elderly
23 person or person with disabilities may complete and mail to the court.

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

27 (5) Proof of service under this section must be filed in the proceeding before the court holds a
28 hearing under ORS 124.015.

29 **SECTION 20.** (1) **Except as provided by subsection (2) of this section, the amendments**
30 **to ORS 112.455, 112.465, 112.475, 112.485, 112.495, 112.505, 112.515, 112.525, 112.535 and 112.545**
31 **by sections 8 to 17 of this 2005 Act apply to all conduct that constitutes physical abuse as**
32 **described in ORS 124.105 or financial abuse as described in ORS 124.110, whether occurring**
33 **before, on or after the effective date of this 2005 Act.**

34 (2) **The amendments to ORS 112.455, 112.465, 112.475, 112.485, 112.495, 112.505, 112.515,**
35 **112.525, 112.535 and 112.545 by sections 8 to 17 of this 2005 Act do not apply to persons who**
36 **die before the effective date of this 2005 Act.**

37 **SECTION 21.** **This 2005 Act being necessary for the immediate preservation of the public**
38 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
39 **on its passage.**

40