

CHAPTER 121

AN ACT

SB 375

Relating to declarations under penalty of perjury; creating new provisions; amending ORS 46.425, 107.095, 107.097, 107.138, 107.139, 107.434, 107.437, 107.705, 107.710, 107.720, 107.725, 107.730, 107.840, 109.767, 124.005, 124.010, 124.020, 124.030, 153.080, 163.741, 163.760, 163.763, 163.773, 163.775 and 419B.367; and declaring an emergency.

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

SECTION 1. ORS 46.425 is amended to read:

46.425. (1) An action in the small claims department shall be commenced by the plaintiff's filing with the clerk of the court a [verified] claim in the form prescribed by the court.

(2) The claim shall:

(a) Contain the name and address of the plaintiff and of the defendant, followed by a plain and simple statement of the claim, including the amount and the date the claim allegedly accrued. *The claim shall include an affidavit signed by the plaintiff and stating*;

(b) State that the plaintiff made a [bona fide] good faith effort to collect the claim from the defendant before filing the claim with the clerk; and

(c) Include an affidavit attesting to the accuracy of the statements described in paragraphs (a) and (b) of this subsection or a declaration under penalty of perjury in the form required by ORCP 1 E.

(3) Except in actions arising under ORS chapter 90, the plaintiff must include in a claim all amounts claimed from the defendant arising out of a single transaction or occurrence. Any plaintiff alleging damages on a transaction requiring installment payments need only claim the installment payments due and owing as of the date of filing of the claim, and need not accelerate the remaining payments. The plaintiff may include in a claim all amounts claimed from a defendant on more than one transaction or occurrence if the total amount of the claim does not exceed \$10,000.

(4) Notwithstanding subsection (3) of this section, a plaintiff bringing an action on assigned claims:

(a) Need bring an action only on those claims that have been assigned as of the date the action is filed; and

(b) May bring separate actions for each person assigning claims to the plaintiff.

SECTION 2. ORS 153.080 is amended to read:

153.080. (1) Notwithstanding any other provision of law, the court may admit as evidence in any trial in a violation proceeding the affidavit **or declaration** of a witness in lieu of taking the testimony of the witness orally and in court. The authority granted under this section is subject to all of the following:

[1] (a) Testimony may not be presented by affidavit **or declaration** under the provisions of this section unless the court has adopted rules [authorizing the use of affidavits and] providing procedures for the introduction and use of [the] testimony **by affidavit or declaration**.

[2] (b) The court shall allow testimony by affidavit **or declaration** under this section only upon receiving a signed statement from the defendant waiving the right to have the testimony presented orally in court.

[3] (c) Testimony by affidavit **or declaration** under this section is not subject to objection as hearsay.

[4] (d) A statement signed by the defendant under [subsection (2) of this section] **paragraph (b) of this subsection** does not constitute a waiver of trial unless the affidavit **or declaration** specifically so provides.

[5] (e) Nothing in this section requires that the defendant or any other witness waive the right to appear if other testimony is introduced by affidavit **or declaration** as provided in this section.

(2) As used in this section, "declaration" means a declaration under penalty of perjury in the form required by ORCP 1 E.

SECTION 3. ORS 107.095 is amended to read:

107.095. (1) After the commencement of a suit for marital annulment, dissolution or separation and until a general judgment therein, the court may provide as follows:

(a) That a party pay to the other party such amount of money as may be necessary to enable the other party to prosecute or defend the suit, including costs of expert witnesses, and also such amount of money to the other party as may be necessary to support and maintain the other party.

(b) For the care, custody, support and maintenance, by one party or jointly, of the minor children as described in ORS 107.105 (1)(a) and for the parenting time rights as described in ORS 107.105 (1)(b) of the parent not having custody of such children.

(c) For the restraint of a party from molesting or interfering in any manner with the other party or the minor children.

(d) That if minor children reside in the family home and the court considers it necessary for their best interest to do so, the court may require either party to move out of the home for such period of time and under such conditions as the court may determine, whether the home is rented, owned or being purchased by one party or both parties.

(e) Restraining and enjoining either party or both from encumbering or disposing of any of the real or personal property of either or both of the parties, except as ordered by the court.

(f) For the temporary use, possession and control of the real or personal property of the parties or either of them and the payment of installment liens and encumbrances thereon.

(g) That even if no minor children reside in the family home, the court may require one party to

move out of the home for such period of time and under such conditions as the court determines, whether the home is rented, owned or being purchased by one party or both parties if that party assaults or threatens to assault the other.

(2) A limited judgment under ORS chapter 18 may be entered in an action for dissolution or annulment of a marriage providing for a support award, as defined by ORS 18.005, or other money award, as defined by ORS 18.005. Notwithstanding ORS 19.255, a limited judgment entered under this subsection may not be appealed. Any decision of the court in a limited judgment subject to this subsection may be appealed as otherwise provided by law upon entry of a general judgment.

(3) The court shall not require an undertaking in case of the issuance of an order under subsection (1)(c), (d), (e), (f) or (g) of this section.

(4) In a suit for annulment or dissolution of marriage or for separation, wherein the parties are copetitioners or the respondent is found by the court to be in default or the respondent having appeared has waived further appearance or the parties stipulate to the entry of a judgment, the court may, when the cause is otherwise ready for hearing on the merits, in lieu of such hearing, enter a judgment of annulment or dissolution or for separation based upon a current affidavit **or declaration under penalty of perjury in the form required by ORCP 1 E, executed by** [of] the petitioner or copetitioners, setting forth a prima facie case, and covering such additional matters as the court may require. If custody of minor children is involved, then the affidavit **or declaration under penalty of perjury** must also include the name of the party with whom the children currently reside and the length of time they have so resided.

(5) When a court orders relief under subsection (1)(c) or (d) of this section, the court may include in its order an expiration date for the order to allow entry of the order into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice as provided in ORS 107.720. If the person being restrained was provided notice and an opportunity to be heard, the court shall also include in the order, when appropriate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) or (g)(8) to affect the person's ability to possess firearms and ammunition or engage in activities involving firearms.

SECTION 4. ORS 107.097 is amended to read:

107.097. (1) Except as otherwise provided in subsection (3) of this section, a court may not enter ex parte a temporary order under ORS 107.095, 109.103 or 109.119 providing for the custody of, or parenting time with, a child.

(2)(a) A party may apply to a court for a temporary protective order of restraint by filing with the court an affidavit **or a declaration under penalty of perjury in the form required by ORCP 1 E**, conforming to the requirements of ORS 109.767.

(b) Upon receipt of an application under this subsection, the court may issue a temporary protective order of restraint restraining and enjoining each party from:

(A) Changing the child's usual place of residence;

(B) Interfering with the present placement and daily schedule of the child;

(C) Hiding or secreting the child from the other party;

(D) Interfering with the other party's usual contact and parenting time with the child;

(E) Leaving the state with the child without the written permission of the other party or the permission of the court; or

(F) In any manner disturbing the current schedule and daily routine of the child until custody or parenting time has been determined.

(c) A copy of the order and the supporting affidavit **or declaration under penalty of perjury** must be served on the other party in the manner of service of a summons under ORCP 7. The order must include the following statement:

Notice: You may request a hearing on this order as long as it remains in effect by filing with the court a request for a hearing. In the request you must tell the court and the other party that you object to the order and specifically why you disagree with the representation of the status quo described in the order. In the request you must also inform the court of your telephone number or contact number and your current residence, mailing or contact address.

(3)(a) A court may enter ex parte a temporary order providing for the custody of, or parenting time with, a child if:

(A) The party requesting an order is present in court and presents an affidavit **or a declaration under penalty of perjury**, alleging that the child is in immediate danger; and

(B) The court finds, based on the facts presented in the party's testimony, **[and] the party's affidavit or declaration under penalty of perjury** and **[in]** the testimony of the other party, if the other party is present, that the child is in immediate danger.

(b) The party requesting an order under this subsection shall provide the court with telephone numbers where the party can be reached at any time during the day and a contact address.

(c) A copy of the order and the supporting affidavit **or declaration under penalty of perjury** must be served on the other party in the manner of service of a summons under ORCP 7. The order must include the following statement:

Notice: You may request a hearing on this order as long as it remains in effect by filing with the court a request for a hearing. In the request you

must tell the court and the other party that you object to the order on the ground that the child was not in immediate danger at the time the order was issued. In the request you must also inform the court of your telephone number or contact number and your current residence, mailing or contact address.

(4)(a) A party against whom an order is entered under subsection (2) or (3) of this section may request a hearing by filing with the court a hearing request described in subsection (2) or (3) of this section at any time while the order is in effect.

(b) The court shall make reasonable efforts to hold a hearing within 14 days and shall hold a hearing no later than 21 days after receipt of the request for the hearing. The court shall notify each party of the time, date and place of the hearing.

(c) An order issued under subsection (2) or (3) of this section remains in effect through the date of the hearing. If the party against whom the order was entered fails to appear at the hearing without good cause, the court shall continue the order in effect. If the party who obtained the order fails to appear at the hearing without good cause, the court shall vacate the order.

(d) The issue at a hearing to contest:

(A) A temporary protective order of restraint is limited to a determination of the status quo at the time the order was issued. If the child's usual place of residence cannot be determined, the court may make any further order the court finds appropriate in the best interests of the child.

(B) A temporary order for the custody of, or parenting time with, a child is limited to whether the child was in immediate danger at the time the order was issued.

(5) The State Court Administrator shall prescribe the content and form of a request for a hearing described in subsections (2) and (3) of this section.

(6) As used in this section:

(a) "Child's usual place of residence" has the meaning given that term in ORS 107.138.

(b) "Party's usual contact and parenting time," "present placement and daily schedule of the child" and "current schedule and daily routine of the child" have the meanings given "parent's usual contact and parenting time," "present placement and daily schedule of the child" and "current schedule and daily routine of the child" in ORS 107.138.

SECTION 5. ORS 107.138 is amended to read:

107.138. (1)(a) A court, upon the motion of a party, may enter a temporary status quo order to either party in a proceeding to modify a judgment that awards custody of a child after:

(A) Notifying the other party; and

(B) Giving the other party an opportunity to contest issuance of the order.

(b) The motion for a temporary status quo order must be supported by an affidavit **or a declaration under penalty of perjury in the form required**

by ORCP 1 E, setting forth with specificity the information required by ORS 109.767 and the person with whom the child has lived during the preceding year and the child's current schedule, daily routine and usual place of residence.

(c) Notice to the party against whom the motion for the order is sought must be served at least 21 days before the date set for the hearing. The issue at the hearing is limited to a determination of the status quo at the time the motion for the order was filed.

(2) A temporary status quo order restrains and enjoins each parent from:

(a) Changing the child's usual place of residence;

(b) Interfering with the present placement and daily schedule of the child;

(c) Hiding or secreting the child from the other parent;

(d) Interfering with the other parent's usual contact and parenting time with the child;

(e) Leaving the state with the child without the written permission of the other parent or the permission of the court; or

(f) In any manner disturbing the current schedule and daily routine of the child until the motion for modification has been granted or denied.

(3) For purposes of this section:

(a) "Child's usual place of residence" means the place where the child is living at the time the motion for the temporary order is filed and has lived continuously for a period of three consecutive months, excluding any periods of time during which the noncustodial parent did exercise, or would otherwise have exercised, parenting time.

(b) "Parent's usual contact and parenting time," "present placement and daily schedule of the child" and "current schedule and daily routine of the child" mean the contact, parenting time, placement, schedule and routine at the time the motion for the temporary order is filed.

SECTION 6. ORS 107.139 is amended to read:

107.139. (1)(a) Following entry of a judgment, a court may enter ex parte a temporary order providing for the custody of, or parenting time with, a child if:

(A) A parent of the child is present in court and presents an affidavit **or a declaration under penalty of perjury in the form required by ORCP 1 E**, alleging that the child is in immediate danger;

(B) The parent has made a good faith effort to confer with the other party regarding the purpose and time of this court appearance; and

(C) The court finds by clear and convincing evidence, based on the facts presented in the parent's testimony, **[and] the parent's affidavit or declaration under penalty of perjury** and **[in]** the testimony of the other party, if the other party is present, that the child is in immediate danger.

(b) The party requesting an order under this subsection shall provide the court with telephone numbers where the party can be reached at any time during the day and a contact address.

(c) A copy of the order and the supporting affidavit **or declaration under penalty of perjury** must be served on the other party in the manner of service of a summons under ORCP 7. The order must include the following statement:

Notice: You may request a hearing on this order as long as it remains in effect by filing with the court a request for a hearing. In the request you must tell the court and the other party that you object to the order on the ground that the child was not in immediate danger at the time the order was issued. In the request you must also inform the court of your telephone number or contact number and your current residence, mailing or contact address.

(2)(a) A party against whom an order is entered under subsection (1) of this section may request a hearing by filing with the court a hearing request described in subsection (1) of this section at any time while the order is in effect.

(b) The court shall hold a hearing within 14 days after receipt of the request for the hearing. The court shall notify each party of the time, date and place of the hearing.

(c) An order issued under subsection (1) of this section remains in effect through the date of the hearing. If the party against whom the order was entered fails to appear at the hearing without good cause, the court shall continue the order in effect. If the party who obtained the order fails to appear at the hearing without good cause, the court shall vacate the order.

(d) The issue at a hearing to contest a temporary order for the custody of, or parenting time with, a child is limited to whether the child was in immediate danger at the time the order was issued.

(3) The State Court Administrator shall prescribe the content and form of a request for a hearing described in this section.

(4) A party seeking relief under this section shall concurrently file, or have pending, a motion under ORS 107.135 to set aside, alter or modify any portion of the judgment that provides for custody, parenting time or visitation.

SECTION 7. ORS 107.434 is amended to read:

107.434. (1) The presiding judge of each judicial district shall establish an expedited parenting time enforcement procedure that may or may not include a requirement for mediation. The procedure must be easy to understand and initiate. Unless the parties otherwise agree, the court shall conduct a hearing no later than 45 days after the filing of a motion seeking enforcement of a parenting time order. The court shall provide forms for:

(a) A motion filed by either party alleging a violation of parenting time or substantial violations of the parenting plan. When a person files this form,

the person must include a copy of the order establishing the parenting time.

(b) An order requiring the parties to appear and show cause why parenting time should not be enforced in a specified manner. The party filing the motion shall serve a copy of the motion and the order on the other party. The order must include:

(A) A notice of the remedies imposable under subsection (2) of this section and the availability of a waiver of any mediation requirement; and

(B) A notice in substantially the following form:

When pleaded and shown in a separate legal action, violation of court orders, including visitation and parenting time orders, may also result in a finding of contempt, which can lead to fines, imprisonment or other penalties, including compulsory community service.

(c) A motion, **supported by an affidavit or a declaration under penalty of perjury in the form required by ORCP 1 E**, and an order that may be filed by either party and providing for waiver of any mediation requirement on a showing of good cause.

(2) In addition to any other remedy the court may impose to enforce the provisions of a judgment relating to the parenting plan, the court may:

(a) Modify the provisions relating to the parenting plan by:

(A) Specifying a detailed parenting time schedule;

(B) Imposing additional terms and conditions on the existing parenting time schedule; or

(C) Ordering additional parenting time, in the best interests of the child, to compensate for wrongful deprivation of parenting time;

(b) Order the party who is violating the parenting plan provisions to post bond or security;

(c) Order either or both parties to attend counseling or educational sessions that focus on the impact of violation of the parenting plan on children;

(d) Award the prevailing party expenses, including, but not limited to, attorney fees, filing fees and court costs, incurred in enforcing the party's parenting plan;

(e) Terminate, suspend or modify spousal support;

(f) Terminate, suspend or modify child support as provided in ORS 107.431; or

(g) Schedule a hearing for modification of custody as provided in ORS 107.135 (11).

SECTION 8. ORS 107.437 is amended to read:

107.437. (1) A person entitled to physical custody of a child may make an ex parte application for an order of assistance to a court of any county:

(a) In which a child is located if the person is entitled to the physical custody of the child under a valid and current order issued in this state; or

(b) In which a valid and current foreign custody order has been filed with a petition as provided in subsection (3) of this section.

(2) The application must include a certified copy of the custody order. The order of assistance may direct a law enforcement agency having jurisdiction where the child is located to use any reasonable means and force to deliver the child as directed by the court, including directing forcible entry into specified premises. The court may issue an order of assistance upon *[the sworn]* **an affidavit [of] or a declaration under penalty of perjury in the form required by ORCP 1 E, executed by** the applicant and a finding of the court that:

(a) The applicant is entitled to physical custody of the child under a valid and current custody order; and

(b) The child is being held by another person in substantial violation of the custody order.

(3) When the application for an order of assistance is made to a court in which the custody order has been entered or registered, the applicant shall make the application in the form of a motion. In all other cases, the applicant shall make the application in the form of a petition. The court may not charge a filing fee for a motion or petition filed under this section.

(4) The law enforcement agency to which an order of assistance is directed shall make a return to the court specifying whether the order was executed, and if so, a statement reflecting the date on which the order was executed and any other information required by the court in the order of assistance.

(5) A court may not issue an order of assistance for the purpose of enforcing parenting time or visitation rights.

(6) Except for intentional torts committed outside the scope of the peace officer's duties, a peace officer is not civilly or criminally liable for any action taken in recovering the custody of a child pursuant to an order issued under this section.

SECTION 9. ORS 107.840 is amended to read:

107.840. (1) The State Court Administrator shall establish a procedure applicable to every court in this state that ensures that the Social Security numbers of parties to a proceeding under ORS 107.085 or 107.485 are kept confidential and exempt from public inspection.

(2) The procedure established under this section must:

(a) Require that Social Security numbers be listed on a separate paper attached to an affidavit *[of]* **or a declaration under penalty of perjury in the form required by ORCP 1 E, executed by** the person providing the Social Security number, certifying that the Social Security number is correct;

(b) Ensure that the Social Security numbers are provided to or made accessible to the entities primarily responsible for providing support enforcement services under ORS 25.080; and

(c) Comply with the requirements of 42 U.S.C. 666 relating to provision of Social Security numbers.

SECTION 10. ORS 109.767 is amended to read:

109.767. (1) In a child custody proceeding, each party, in its first pleading or in an attached affidavit **or declaration under penalty of perjury in the form required by ORCP 1 E**, shall give information, if reasonably ascertainable, *[under oath]* as to the child's present address or whereabouts, the places where the child has lived during the last five years and the names and present addresses of the persons with whom the child has lived during that period. **If the information is given in the party's first pleading, the pleading must include an affidavit or a declaration under penalty of perjury.** The pleading, or **attached affidavit or declaration under penalty of perjury**, must state whether the party:

(a) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or parenting time or visitation with the child and, if so, identify the court, the case number and the date of the child custody determination, if any;

(b) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding; and

(c) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or parenting time or visitation with, the child and, if so, the names and addresses of those persons.

(2) If the information required by subsection (1) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(3) If the *[declaration]* **information** as to any of the items described in subsection (1) of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(4) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(5) If a party alleges in **the first pleading, or in an attached affidavit [or a pleading under oath] or declaration under penalty of perjury**, that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice. Costs incurred by the court when special

notice procedures are made necessary by the non-disclosure of identifying information shall be paid by the parties as deemed appropriate by the court.

SECTION 11. ORS 419B.367 is amended to read:

419B.367. (1) Upon granting a motion for guardianship under ORS 419B.366 or upon granting a petition for guardianship under ORS 419B.365, the court shall issue letters of guardianship to the guardian. As provided in ORS 419A.255, a guardian may disclose letters of guardianship when necessary to fulfill the duties of a guardian. Letters of guardianship must be in substantially the following form:

 State of Oregon,)
) LETTERS OF
 County of _____) GUARDIANSHIP

BY THESE LETTERS OF GUARDIANSHIP be informed:

That on _____ (month) _____ (day), 2_____, the _____ Court, _____ County, State of Oregon, appointed _____ (name of guardian) guardian for _____ (name of ward) and that the named guardian has qualified and has the authority and duties of guardian for the named ward including legal custody of the ward, except as provided below.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed the seal of the court at my office on _____ (month) _____ (day), 2_____.
 _____, Clerk of the Court
 By _____, Deputy

(2) In the order appointing the guardian, the court shall require the guardian to file with the court a [verified] written report within 30 days after each anniversary of appointment and may:

(a) Specify the frequency and nature of visitation or contact between relatives, including siblings, and the ward, if the court determines that visitation or contact is in the ward's best interests;

(b) Enter an order for child support pursuant to ORS 419B.400 that complies with ORS 25.275; and

(c) Make any other order to provide for the ward's continuing safety and well-being.

(3) The report required under subsection (2) of this section must:

(a) Contain a summary sheet that:

(A) Identifies the written report and includes the date of submission and the name of the submitting person; and

(B) Is maintained as part of the record of the case under ORS 419A.255 (1); [and]

(b) Be maintained in the supplemental confidential file under ORS 419A.255 (2)[.]; and

(c) Contain an affidavit attesting to the accuracy of the report or a declaration under

penalty of perjury immediately above the signature line of the guardian as follows: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury."

(4)(a) Upon timely receipt of a report under subsection (2) of this section, the court shall review the report and maintain the report as described in subsection (3) of this section. The court may:

(A) Direct the local citizen review board to conduct a review;

(B) Subject to the availability of funds, appoint a court visitor and require the visitor to file a report with the court; or

(C) Conduct a court review.

(b) If the court does not receive a report under subsection (2) of this section in a timely manner, the court shall:

(A) Direct the local citizen review board to conduct a review;

(B) Subject to the availability of funds, appoint a court visitor and require the visitor to file a report with the court; or

(C) Conduct a court review.

(5) Except as otherwise limited by the court, a person appointed guardian has legal custody of the ward and the duties and authority of legal custodian and guardian under ORS 419B.373 and 419B.376. A guardian is not liable to third persons for acts of the ward solely by reason of being appointed guardian.

SECTION 12. ORS 107.705 is amended to read: 107.705. As used in ORS 107.700 to 107.735:

(1) "Abuse" means the occurrence of one or more of the following acts between family or household members:

(a) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.

(b) Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury.

(c) Causing another to engage in involuntary sexual relations by force or threat of force.

(2) "Child" means an unmarried person who is under 18 years of age.

(3) "Declaration under penalty of perjury" means a declaration under penalty of perjury in the form required by ORCP 1 E.

[(3)] (4) "Family or household members" means any of the following:

(a) Spouses.

(b) Former spouses.

(c) Adult persons related by blood, marriage or adoption.

(d) Persons who are cohabiting or who have cohabited with each other.

(e) Persons who have been involved in a sexually intimate relationship with each other within two years immediately preceding the filing by one of them of a petition under ORS 107.710.

(f) Unmarried parents of a child.

[4] (5) “Interfere” means to interpose in a manner that would reasonably be expected to hinder or impede a person in the petitioner’s situation.

[5] (6) “Intimidate” means to act in a manner that would reasonably be expected to threaten a person in the petitioner’s situation, thereby compelling or deterring conduct on the part of the person.

[6] (7) “Menace” means to act in a manner that would reasonably be expected to threaten a person in the petitioner’s situation.

[7] (8) “Molest” means to act, with hostile intent or injurious effect, in a manner that would reasonably be expected to annoy, disturb or persecute a person in the petitioner’s position.

SECTION 13. ORS 107.710 is amended to read:

107.710. (1) Any person who has been the victim of abuse within the preceding 180 days may petition the circuit court for relief under ORS 107.700 to 107.735, if the person is in imminent danger of further abuse from the abuser. The person may seek relief by filing a petition with the circuit court alleging that the person is in imminent danger of abuse from the respondent, that the person has been the victim of abuse committed by the respondent within the 180 days preceding the filing of the petition and particularly describing the nature of the abuse and the dates thereof. The abuse must have occurred not more than 180 days before the filing of the petition. [*Allegations in the petition shall be made under oath or affirmation.*] **The petition must include allegations made under oath or affirmation or a declaration under penalty of perjury.** The circuit court shall have jurisdiction over all proceedings under ORS 107.700 to 107.735.

(2) The petitioner has the burden of proving a claim under ORS 107.700 to 107.735 by a preponderance of the evidence.

(3) A person’s right to relief under ORS 107.700 to 107.735 shall not be affected by the fact that the person left the residence or household to avoid abuse.

(4) A petition filed under ORS 107.700 to 107.735 shall disclose the existence of any custody, Family Abuse Prevention Act or Elderly Persons and Persons With Disabilities Abuse Prevention Act proceedings, or any marital annulment, dissolution or separation proceedings, or any filiation proceeding, pending between the parties, and the existence of any other custody order affecting the children of the parties.

(5) When the petitioner requests custody of any child, the petition shall comply with ORS 109.767 and disclose:

(a) The child’s present residence and the length of time the child has resided at the residence;

(b) The county and state where the child resided for the five years immediately prior to the filing of the petition;

(c) The name and address of the party or other responsible person with whom the child is presently residing;

(d) The name and current address of any party or other responsible person with whom the child resided for the five years immediately prior to the filing of the petition;

(e) Whether the party participated as a party, witness or in any other capacity, in any other litigation concerning the custody of the child in this or any other state;

(f) Whether the party has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(g) Whether the party knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody, parenting time or visitation rights with respect to the child.

(6) For purposes of computing the 180-day period in this section and ORS 107.718, any time during which the respondent is incarcerated or has a principal residence more than 100 miles from the principal residence of the petitioner shall not be counted as part of the 180-day period.

SECTION 14. ORS 107.720 is amended to read:

107.720. (1)(a) Whenever a restraining order, as authorized by ORS 107.095 (1)(c) or (d), 107.716 or 107.718, that includes a security amount and an expiration date pursuant to ORS 107.095, 107.716 or 107.718 and this section, is issued and the person to be restrained has actual notice of the order, the clerk of the court or any other person serving the petition and order shall immediately deliver 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, and copies of the petition and order. **Proof of service may be made by affidavit or by declaration under penalty of perjury.** If an order entered by the court recites that the respondent appeared in person before the court, the necessity for service of the order and [*an affidavit of*] proof of service is waived. Upon receipt of a copy of the order and notice of completion of any required service by a member of a law enforcement agency, the county sheriff shall immediately enter the order into the Law Enforcement Data System maintained by the Department of State Police and into the databases of the National Crime Information Center of the United States Department of Justice. If the petition and order were served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System and databases of the National Crime Information Center upon receipt of a true copy of [*the affidavit of*] proof of service. The sheriff shall provide the petitioner with a true copy of any required proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order.

The order is fully enforceable in any county or tribal land in this state.

(b) When a restraining order has been entered into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice under paragraph (a) of this subsection, a county sheriff shall cooperate with a request from a law enforcement agency from any other jurisdiction to verify the existence of the restraining order or to transmit a copy of the order to the requesting jurisdiction.

(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 107.718, the restraining order shall not be terminated upon a motion for dismissal by the 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 immediately deliver a copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original order from the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

(4) Pending a contempt hearing for alleged violation of a restraining order issued under ORS 107.095 (1)(c) or (d), 107.716 or 107.718, 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 a restraining order is issued under ORS 107.095 (1)(c) or (d), 107.716 or 107.718, the issuing court shall set a security amount for the violation of the order.

SECTION 15. ORS 107.725 is amended to read:

107.725. (1) The court may renew an order entered under ORS 107.716 or 107.718 upon a finding that:

(a) A person in the petitioner's situation would reasonably fear further acts of abuse by the respondent if the order is not renewed; or

(b) A person in the situation of a child who was in the petitioner's custody during the time the order existed, who was also included as a protected person in the order and who has reached 18 years of age since the date the order was entered would reasonably fear further acts of abuse by the respondent if the order is not renewed.

(2) A finding that there has been a further act of abuse is not required to renew an order under subsection (1) of this section.

(3) The court may renew an order under subsection (1)(b) of this section regardless of whether the original petitioner agrees to or seeks renewal of the order. If the petitioner does not agree to or seek renewal of the order concurrently with the request of the child who has reached 18 years of age, the court may modify the order upon renewal to exclude the

petitioner as a protected person in the order. A child who has reached 18 years of age may seek renewal under this section without having to file a petition under ORS 107.710.

(4) A court may renew an order on the basis of [a sworn,] **an** ex parte petition alleging facts supporting the required finding. **The petition must include allegations made under oath or affirmation or a declaration under penalty of perjury.** If the renewal order is granted, the provisions of ORS 107.716 (5) and 107.718 (8) to (10) apply except that the court may hear no issue other than the basis for renewal unless requested in the hearing request form and thereafter agreed to by the petitioner or the child who has reached 18 years of age. The court shall hold a hearing required under this section within 21 days after the respondent's request.

SECTION 16. ORS 107.730 is amended to read:

107.730. (1) At any time after an order has been issued under ORS 107.700 to 107.735 and after the time period set forth in ORS 107.718 (10)(a):

(a) A party may request that the court modify terms in the order that were entered under ORS 107.718 (1)(a), (b), (g) or (i) for good cause shown.

(b) A petitioner may request that the court modify by removing or making less restrictive terms in the order that were entered under ORS 107.718 (1)(b), (g) or (i) for good cause shown. Application to the court under this paragraph may be by ex parte motion.

(2) The clerk of the court shall provide without charge the number of certified true copies of the request for modification of the order and notice of hearing necessary to effect service and, at the election of the party requesting the modification, shall have a true copy of the request and notice delivered to the county sheriff for service upon the other party.

(3) The county sheriff shall personally serve the other party with a request under subsection (1)(a) of this section, unless the party requesting the modification under subsection (1)(a) of this section elects to have the other party personally served by a private party or unless otherwise ordered by the court.

(4) The provisions of ORS 107.716 (5) apply to a modification of an order under this section.

(5) The clerk of the court shall deliver a copy of an order of modification entered under subsection (1) of this section to the county sheriff for service and entry into the Law Enforcement Data System as provided in ORS 107.723.

(6)(a) The county sheriff shall serve a copy of an order of modification:

(A) Entered under subsection (1)(a) of this section by personal service on the nonrequesting party.

(B) Entered under subsection (1)(b) of this section by mailing a copy of the order to the nonrequesting party by first class mail.

(b) If the order of modification recites that the respondent appeared in person before the court, the necessity for service of the order and [an affidavit of] proof of service is waived.

(7) The court may assess against either party a reasonable attorney fee and costs that may be incurred in the proceeding.

SECTION 17. ORS 124.005 is amended to read: 124.005. 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 a disability or the withdrawal or neglect of duties and obligations owed an elderly person or a person with a disability 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 a disability.

(f) Causing any sweepstakes promotion to be mailed to an elderly person or a person with a disability 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.

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

(h) Sexual contact with a nonconsenting elderly person or person with a disability or with an elderly person or person with a disability considered incapable of consenting to a sexual act as described in ORS 163.315. As used in this paragraph, “sexual contact” has the meaning given that term in ORS 163.305.

(2) “Declaration under penalty of perjury” means a declaration under penalty of perjury in the form required by ORCP 1 E.

[(2)] (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.

[(3)] (4) “Guardian petitioner” means a guardian or guardian ad litem for an elderly person or a person with a disability who files a petition under ORS 124.005 to 124.040 on behalf of the elderly person or person with a disability.

[(4)] (5) “Interfere” means to interpose in a way that hinders or impedes.

[(5)] (6) “Intimidate” means to compel or deter conduct by a threat.

[(6)] (7) “Menace” means to act in a threatening manner.

[(7)] (8) “Molest” means to annoy, disturb or persecute with hostile intent or injurious effect.

[(8)] (9) “Person with a disability” means a person described in:

(a) ORS 410.040 (7); or

(b) ORS 410.715.

[(9)] (10) “Petitioner” means an elderly person or a person with a disability who files a petition under ORS 124.005 to 124.040.

[(10)] (11) “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)] (12) “Sweepstakes promotion” means an offer to participate in a sweepstakes.

SECTION 18. ORS 124.010 is amended to read:

124.010. (1)(a) Except as provided in subsection (8) of this section, an elderly person or a person with a disability 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 a disability 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 person is in immediate and present danger of further abuse from the abuser.

(b) The elderly person or person with a disability or the guardian or guardian ad litem of the person may seek relief by filing a petition with the circuit court alleging that the person is in immediate and present danger of further abuse from the respondent, alleging that the person 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 a disability and the respondent.

(d) [Allegations in the petition must be made under oath or affirmation.] **The petition must include allegations made under oath or affirmation or a declaration under penalty of perjury.** 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 a disability 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, any marital annulment, dissolution or separation proceedings pending between the parties or any protective proceedings under ORS chapter 125.

(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 a disability 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 a disability, the elderly person or person with a disability 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.

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

SECTION 19. ORS 124.020 is amended to read:

124.020. (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 a disability 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 person, 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 a disability, if in the sole name of the person or if jointly owned or rented by the person 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 a disability, or attempting to abuse, intimidate, molest, interfere with or menace the person;

(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 a disability;

(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 a disability any sweepstakes promotion;

(B) Required to remove the elderly person or person with a disability from the respondent's sweepstakes promotion mailing list or place the person 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 a disability after the date the order is entered by the court; or

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

(2)(a) If the court finds that the elderly person or person with a disability has been the victim of abuse as defined in ORS 124.005 (1)(g), the court may order only relief that the court considers necessary to prevent or remedy the wrongful taking or appropriation of the money or property of the person, including but not limited to:

(A) Directing the respondent to refrain from exercising control over the money or property of the person;

(B) Requiring the respondent to return custody or control of the money or property of the person to the person;

(C) Requiring the respondent to follow the instructions of the guardian or conservator of the person; or

(D) Prohibiting the respondent from transferring the money or property of the elderly person or person with a disability to any person other than the elderly person or person with a disability.

(b) The court may not use a restraining order issued under ORS 124.005 to 124.040:

(A) To allow any person other than the elderly person or person with a disability to assume responsibility for managing any of the money or property of the elderly person or person with a disability; or

(B) For relief that is more appropriately obtained in a protective proceeding filed under ORS chapter 125 including, but not limited to, giving control and management of the financial accounts or property of the elderly person or person with a disability for any purpose other than the relief granted under paragraph (a) of this subsection.

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

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

(4) 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 a disability with additional abuse.

(5) When a guardian petitioner files a petition on behalf of an elderly person or a person with a disability, the guardian petitioner shall provide information about the person and not about the guardian petitioner where the petition, order or related forms described in subsection (6) of this section require information about the petitioner.

(6) 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)
 vs.
 _____,
 Respondent
 (person to be
 restrained)

) PETITION FOR
) RESTRAINING ORDER
) TO PREVENT ABUSE
) OF ELDERLY
) PERSONS OR
) PERSONS WITH
) DISABILITIES
)
) NO. _____
)
)
)

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 a disability (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 a disability. In the past year, I spent more than \$500 on sweepstakes promotions that I received in the United States mail.
 - H. Wrongfully taken or appropriated my money or property, or alarmed me by conveying a threat to me that my money or property would be wrongfully taken or appropriated, which I reasonably believed would be carried out.

— I. Had nonconsensual sexual contact with me or sexual contact to which I was incapable of consenting.

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).

C. There (is) (is not) a protective proceeding 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 others? Explain:

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

_____))
Petitioner))
(your name)))
vs.))
_____))
Respondent))
(person to be restrained)))

RESTRAINING ORDER
TO PREVENT ABUSE
OF ELDERLY PERSONS
OR PERSONS WITH
DISABILITIES
NO. _____

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 has 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:

<u>Petitioner's Request</u>	<u>Judge's Initials</u>
<input type="checkbox"/> 1. Respondent is restrained (prohibited) from intimidating, molesting, interfering with or menacing petitioner, or attempting to intimidate, molest, interfere with or menace petitioner.	_____
<input type="checkbox"/> 2. Respondent is restrained (prohibited) from entering, or attempting to enter: (Include names and address unless withheld for safety reasons.)	_____
<input type="checkbox"/> Petitioner's residence.	_____
<input type="checkbox"/> Petitioner's business or place of employment.	_____
<input type="checkbox"/> Petitioner's school.	_____

- [] 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.

[STATE OF
OREGON
County of _____]

)
) NO. _____
) [AFFIDAVIT OF] PROOF
) OF SERVICE
)
)
)
) 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 _____

_____,) 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. _____))
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

(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 a disability would have sent the payment for goods or services promoted in the sweepstakes promotion had the elderly person or person with a disability 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.

(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.

(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 a disability under ORS 124.024, the respondent, elderly person or person with a disability 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 (6) of this section.

(b) If the respondent, elderly person or person with a disability 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 a disability 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 a disability from traumatic confrontation with the respondent.

SECTION 20. ORS 124.030 is amended to read:

124.030. (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 of the order, the clerk of the court or any other person serving the petition and order shall immediately deliver 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, and copies of the petition and order. **Proof of service may be made by affidavit or by declaration under penalty of perjury.** If an order entered by the court recites that the respondent appeared in person before the court, the necessity for service of the order and [*an affidavit of*] proof of service is waived. Upon receipt of a copy of the order and notice of completion of any required service by a member of a law enforcement agency, the county sheriff shall immediately enter the order into the Law Enforcement Data System maintained by the Department of State Police. If the petition and order were served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System upon receipt of a true copy of [*the affidavit of*] proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order. The order is fully enforceable in any county in this state.

(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 immediately deliver a copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of the 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 under 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 a restraining order is issued under ORS 124.015 or

124.020, the issuing court shall set a security amount for the violation of the order.

SECTION 21. ORS 163.760 is amended to read: 163.760. As used in ORS 163.760 to 163.777:

(1) **“Declaration under penalty of perjury,”** “family or household members,” “interfere,” “intimidate,” “menace” and “molest” have the meanings given those terms in ORS 107.705.

(2) “Sexual abuse” means sexual contact with:

(a) A person who does not consent to the sexual contact; or

(b) A person who is considered incapable of consenting to a sexual act under ORS 163.315, unless the sexual contact would be lawful under ORS 163.325 or 163.345.

(3) “Sexual contact” has the meaning given that term in ORS 163.305.

SECTION 22. ORS 163.763 is amended to read:

163.763. (1) A person who has been subjected to sexual abuse and who reasonably fears for the person’s physical safety may petition the circuit court for a restraining order if:

(a) The person and the respondent are not family or household members;

(b) The respondent is at least 18 years of age; and

(c) The respondent is not prohibited from contacting the person pursuant to a foreign restraining order as defined in ORS 24.190, an order issued under ORS 30.866, 124.015, 124.020, 163.738 or 419B.845 or an order entered in a criminal action.

(2)(a) A petition seeking relief under ORS 163.760 to 163.777 must be filed in the circuit court for the county in which the petitioner or the respondent resides. The petition may be filed, without the appointment of a guardian ad litem, by a person who is at least 12 years of age or by a parent or lawful guardian of a person who is under 18 years of age.

(b) The petition must allege that:

(A) The petitioner reasonably fears for the petitioner’s physical safety with respect to the respondent; and

(B) The respondent subjected the petitioner to sexual abuse within the 180 days preceding the filing of the petition.

(c) [*Statements in the petition must be made under oath or affirmation.*] **The petition must include allegations made under oath or affirmation or a declaration under penalty of perjury.**

(d) The petitioner has the burden of proving a claim under ORS 163.760 to 163.777 by a preponderance of the evidence.

(3) The following periods of time may not be counted for the purpose of computing the 180-day period described in this section and ORS 163.765:

(a) Any time during which the respondent is incarcerated.

(b) Any time during which the respondent has a principal residence more than 100 miles from the principal residence of the petitioner.

(c) Any time during which the respondent is subject to an order described in subsection (1)(c) of this section.

SECTION 23. ORS 163.773 is amended to read:

163.773. (1)(a) When a restraining order is issued in accordance with ORS 163.760 to 163.777 and the person to be restrained has actual notice of the restraining order, the clerk of the court or any other person serving the petition and the restraining order shall immediately deliver to a county sheriff copies of the petition and the restraining order and a true copy of [*the affidavit of*] proof of service on which it is stated that the petition and the restraining order were served personally on the respondent. **Proof of service may be made by affidavit or by declaration under penalty of perjury.** If a restraining order entered by the circuit court recites that the respondent appeared in person before the court, the necessity for service of the restraining order and [*an affidavit of*] proof of service is waived.

(b) Upon receipt of a copy of the restraining order and notice of completion of any required service by a member of a law enforcement agency, the county sheriff shall immediately enter the restraining order into the Law Enforcement Data System maintained by the Department of State Police and the databases of the National Crime Information Center of the United States Department of Justice. If the petition and the restraining order were served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the restraining order into the Law Enforcement Data System and the databases of the National Crime Information Center upon receipt of a true copy of [*the affidavit of*] proof of service. The sheriff shall provide the petitioner with a true copy of any required proof of service.

(c) Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the restraining order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the restraining order may be informed of the existence and terms of the restraining order. The restraining order is fully enforceable in any county or tribal land in this state.

(d) When a restraining order has been entered into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice under this subsection, a county sheriff shall cooperate with a request from a law enforcement agency from any other jurisdiction to verify the existence of the restraining order or to transmit a copy of the restraining order to the requesting jurisdiction.

(2) A sheriff may serve a restraining order issued under ORS 163.760 to 163.777 in the county in which the sheriff was elected and in any county that is adjacent to the county in which the sheriff was elected.

(3)(a) A sheriff may serve and enter into the Law Enforcement Data System a copy of a restraining

order issued under ORS 163.760 to 163.777 that was transmitted to the sheriff by a circuit court or law enforcement agency through an electronic communication device. Before transmitting a copy of a restraining order to a sheriff under this subsection through an electronic communication device, the person transmitting the copy must receive confirmation from the sheriff's office that an electronic communication device is available and operating.

(b) For purposes of this subsection, "electronic communication device" means a device by which any kind of electronic communication can be made, including but not limited to communication by telephonic facsimile and electronic mail.

(4) When a circuit court enters an order terminating a restraining order issued under ORS 163.760 to 163.777 before the expiration date, the clerk of the court shall immediately deliver a copy of the termination order to the county sheriff with whom the original restraining order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original restraining order from the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

(5)(a) A contempt proceeding for an alleged violation of a restraining order issued under ORS 163.760 to 163.777 must be conducted by the circuit court that issued the restraining order or by the circuit court for the county in which the alleged violation of the restraining order occurs. If contempt proceedings are initiated in the circuit court for the county in which the alleged violation of the restraining order occurs, the person initiating the contempt proceedings shall file with the court a copy of the restraining order that is certified by the clerk of the court that originally issued the restraining order. Upon filing of the certified copy of the restraining order, the circuit court shall enforce the restraining order as though that court had originally issued the restraining order.

(b) Pending a contempt hearing for an alleged violation of a restraining order issued under ORS 163.760 to 163.777, a person arrested and taken into custody pursuant to ORS 133.310 may be released as provided in ORS 135.230 to 135.290.

(c) Service of process or other legal documents upon the petitioner is not a violation of a restraining order entered under ORS 163.760 to 163.777 if the petitioner is served as provided in ORCP 7 or 9.

SECTION 24. ORS 163.775 is amended to read:

163.775. (1)(a) A circuit court may renew a restraining order entered under ORS 163.760 to 163.777 upon a finding that it is objectively reasonable for a person in the petitioner's situation to fear for the person's physical safety if the restraining order is not renewed. A finding that the respondent has subjected the petitioner to additional sexual abuse is not required.

(b) A circuit court may renew a restraining order on the basis of [*a sworn,*] **an** ex parte petition alleging facts supporting the required finding. **The**

petition must include allegations made under oath or affirmation or a declaration under penalty of perjury. If the renewal order is granted, the provisions of ORS 163.765 (4) to (8) and 163.767 (3) apply, except that the court may hear no issue other than the basis for renewal, unless requested in the hearing request form and thereafter agreed to by the petitioner. The circuit court shall hold a hearing required under this paragraph within 21 days after the respondent's request.

(2) At any time after the time period set forth in ORS 163.765 (6):

(a) A party may request that the circuit court modify terms in the restraining order for good cause shown.

(b) A petitioner may request that the circuit court remove terms in the restraining order or make terms in the order less restrictive. Application to the circuit court under this paragraph may be by ex parte motion.

(3) The clerk of the court shall provide without charge the number of certified true copies of the request for modification of the restraining order and notice of hearing necessary to effect service and, at the election of the party requesting the modification, shall have a true copy of the request and notice delivered to the county sheriff for service upon the other party.

(4) The county sheriff shall serve the other party with a request for modification of a restraining order under subsection (2)(a) of this section by personal service, unless the party requesting the modification elects to have the other party personally served by a private party or unless otherwise ordered by the circuit court.

(5) The provisions of ORS 163.767 (3) apply to a modification of a restraining order under this section.

(6) The clerk of the court shall deliver a copy of an order of modification entered under this section to the county sheriff for service and entry into the Law Enforcement Data System as provided in ORS 163.773.

(7)(a) The county sheriff shall serve a copy of an order of modification:

(A) Entered under subsection (2)(a) of this section by personal service on the nonrequesting party.

(B) Entered under subsection (2)(b) of this section by mailing a copy of the order of modification to the respondent by first class mail.

(b) If the order of modification recites that the respondent appeared in person before the circuit court, the necessity for service of the order and [*an affidavit of*] proof of service is waived.

(8) A restraining order entered under ORS 163.760 to 163.777 may not be terminated on motion of the petitioner, unless the motion is notarized.

SECTION 25. ORS 163.741 is amended to read:

163.741. (1) Service of a stalking protective order shall be made by personal delivery of a copy of the order to the respondent. The respondent need not be

served if an order of the court indicates that the respondent appeared in person before the court.

(2) Whenever a stalking protective order, as authorized by ORS 163.735 or 163.738, is served on a respondent, the person serving the order shall immediately deliver to the county sheriff a true copy of [*the affidavit of*] proof of service, on which it is stated that personal service of the order was made on the respondent, and a copy of the order. **Proof of service may be made by affidavit or by declaration under penalty of perjury in the form required by ORCP 1 E.** If service of the order is not required under subsection (1) of this section, a copy of the order must be delivered to the sheriff by the court. Upon receipt of a copy of the order and notice of completion of any required service by a member of a law enforcement agency, the county sheriff shall immediately enter the order into the Law Enforcement Data System maintained by the Department of State Police and into the databases of the National Crime Information Center of the United States Department of Justice. If the order was served on the respondent by a person other than a member of a law enforcement agency, the county sheriff shall enter the order into the Law Enforcement Data System and databases of the National Crime Information Center upon receipt of a true copy of [*the affidavit of*] proof of service. The sheriff shall provide the complainant with a true copy of any required proof of service. Entry into the Law Enforcement Data System constitutes notice to all law enforcement agencies of the existence of the order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order. The order is fully enforceable in any county in this state.

(3) When a stalking protective order has been entered into the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice

under subsection (1) of this section, a county sheriff shall cooperate with a request from a law enforcement agency from any other jurisdiction to verify the existence of the stalking protective order or to transmit a copy of the order to the requesting jurisdiction.

(4) When a stalking protective order is terminated by order of the court, the clerk of the court shall immediately deliver a copy of the termination order to the county sheriff with whom the original order was filed. Upon receipt of the termination order, the county sheriff shall promptly remove the original order from the Law Enforcement Data System and the databases of the National Crime Information Center of the United States Department of Justice.

SECTION 26. (1) **The amendments to ORS 46.425, 107.095, 107.097, 107.138, 107.139, 107.434, 107.437, 107.705, 107.710, 107.720, 107.725, 107.730, 107.840, 109.767, 124.005, 124.010, 124.020, 124.030, 153.080, 163.741, 163.760, 163.763, 163.773, 163.775 and 419B.367 by sections 1 to 25 of this 2015 Act become operative September 1, 2015.**

(2) **The State Court Administrator may take any action before the operative date set forth in subsection (1) of this section that is necessary to enable the State Court Administrator to exercise, on and after the operative date set forth in subsection (1) of this section, all the duties, functions and powers conferred on the State Court Administrator by this 2015 Act.**

SECTION 27. **This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.**

Approved by the Governor May 20, 2015

Filed in the office of Secretary of State May 20, 2015

Effective date May 20, 2015