

Senate Bill 37

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Joint Interim Committee on Judiciary for Oregon State Bar Elder Law Section)

SUMMARY

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

Modifies Elderly and Disabled Person Abuse Prevention Act to allow guardian or guardian ad litem to file petition on behalf of elderly or disabled person.

A BILL FOR AN ACT

1
2 Relating to Elderly and Disabled Person Abuse Prevention Act; creating new provisions; and
3 amending ORS 124.005, 124.010, 124.015, 124.020 and 124.030.

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

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

6 124.005. As used in ORS 124.005 to 124.040:

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

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

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

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

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

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

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

25 (2) "Disabled person":

26 (a) Has the meaning given that term in ORS 410.040 (4) if the person meets a criterion listed in
27 ORS 410.040 (4)(b); or

28 (b) Means a person described in ORS 410.715.

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

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

1 **(4) “Guardian petitioner” means a guardian or guardian ad litem for an elderly or dis-**
 2 **abled person who files a petition under ORS 124.005 to 124.040 on behalf of the elderly or dis-**
 3 **abled person.**

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

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

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

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

8 **(9) “Petitioner” means an elderly or disabled person who files a petition under ORS**
 9 **124.005 to 124.040.**

10 [(8)] **(10) “Sweepstakes”** means a procedure for awarding a prize that is based on chance.
 11 “Sweepstakes” includes any such procedure in which a person is required to purchase anything, pay
 12 anything of value or make a donation as a condition of winning a prize or of receiving or obtaining
 13 information about a prize. “Sweepstakes” also includes any such procedure that is advertised in a
 14 way that creates a reasonable impression that a payment of anything of value, purchase of anything
 15 or making a donation is a condition of winning a prize or receiving or obtaining information about
 16 a prize.

17 [(9)] **(11) “Sweepstakes promotion”** means an offer to participate in a sweepstakes.

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

19 124.010. (1)**(a)** [*Any*] **An** elderly or disabled person who has been the victim of abuse within the
 20 preceding 180 days **or a guardian or guardian ad litem of an elderly or disabled person who**
 21 **has been the victim of abuse within the preceding 180 days** may petition the circuit court for
 22 relief under ORS 124.005 to 124.040, if the elderly or disabled person is in immediate and present
 23 danger of further abuse from the abuser.

24 **(b)** The elderly or disabled person **or the guardian or guardian ad litem of the elderly or**
 25 **disabled person** may seek relief by filing a petition with the circuit court alleging that the elderly
 26 or disabled person is in immediate and present danger of further abuse from the respondent, alleging
 27 that the elderly or disabled person has been the victim of abuse committed by the respondent within
 28 the 180 days preceding the filing of the petition and describing the nature of the abuse and the ap-
 29 proximate dates thereof. The abuse must have occurred not more than 180 days before the filing of
 30 the petition.

31 **(c) A petitioner or guardian petitioner is not required to provide in the petition infor-**
 32 **mation regarding the relationship of the elderly or disabled person with the respondent.**

33 **(d)** Allegations in the petition [*shall*] **must** be made under oath or affirmation. The circuit court
 34 [*shall have*] **has** jurisdiction over all proceedings under ORS 124.005 to 124.040.

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

37 (3) [*An elderly or disabled person’s*] **The** right to petition for relief under ORS 124.005 to 124.040
 38 [*shall*] **is** not [*be*] affected by the fact that the elderly or disabled person has left the residence or
 39 household to avoid abuse.

40 (4) A petition filed under ORS 124.005 to 124.040 [*shall*] **must** disclose the existence of any El-
 41 derly and Disabled Person Abuse Prevention Act proceedings, Abuse Prevention Act proceedings,
 42 or any marital annulment, dissolution or separation proceedings, pending between the parties.

43 (5) Upon the filing of a petition under ORS 124.005 to 124.040, the clerk of the court shall give
 44 the [*elderly or disabled person*] **petitioner or guardian petitioner** information provided by the De-
 45 partment of Human Services about local adult protective services, domestic violence shelters and

1 local legal services available.

2 (6) For purposes of computing the 180-day period in this section and ORS 124.020, any time
 3 during which the respondent is incarcerated or has a principal residence more than 100 miles from
 4 the principal residence of the [petitioner] **elderly or disabled person** shall not be counted as part
 5 of the 180-day period.

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

- 8 (a) **Contact and retain counsel;**
- 9 (b) **Have access to personal records;**
- 10 (c) **File objections to the restraining order;**
- 11 (d) **Request a hearing; and**
- 12 (e) **Present evidence and cross-examine witnesses at any hearing.**

13 **SECTION 3.** ORS 124.015 is amended to read:

14 124.015. (1) [If the respondent requests a hearing pursuant to ORS 124.020 (7),] The court shall
 15 hold [the] a hearing within 21 days following the request, and may cancel or change any order issued
 16 under ORS 124.020[.] **if the respondent or elderly or disabled person requests a hearing pur-**
 17 **suant to ORS 124.020 (8).**

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

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

22 (b) Assess against [either] **any** party reasonable attorney fees and such costs as may be incurred
 23 in the hearing.

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

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

30 (4) The court [shall have the further power to] **may** approve any consent agreement to bring
 31 about a cessation of abuse of the parties. However, the court may not approve a term in a consent
 32 agreement that provides for restraint of a party to the agreement unless the other party petitioned
 33 for and was granted an order under ORS 124.010. An order or consent agreement made under this
 34 section may be amended at any time and shall continue in effect for a period of one year from the
 35 date of the order issued under ORS 124.020.

36 (5) [No] **An** order or agreement made under ORS 124.005 to 124.040 or ORS 133.310 and 133.381
 37 [shall] **may not** in any manner affect title to any real property.

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

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

41 (8) Notwithstanding any right or remedy established in ORS chapter 90 or ORS 105.105 to
 42 105.168, a petitioner **or guardian petitioner** may enforce an order issued under ORS 124.005 to
 43 124.040.

44 **SECTION 4.** ORS 124.020 is amended to read:

45 124.020. (1) When [an elderly or disabled person] **a petitioner or guardian petitioner** files a

1 petition under ORS 124.010, the circuit court shall hold an ex parte hearing in person or by tele-
 2 phone on the day the petition is filed or on the following judicial day. Upon a showing that the
 3 *[petitioner]* **elderly or disabled person named in the petition** has been the victim of abuse com-
 4 mitted by the respondent within 180 days preceding the filing of the petition and that there is an
 5 immediate and present danger of further abuse to the *[petitioner]* **elderly or disabled person**, the
 6 court shall, if requested by the petitioner **or guardian petitioner**, order, for a period of one year
 7 or until the order is withdrawn or amended, whichever is sooner:

8 (a) That the respondent be required to move from the *[petitioner's]* residence **of the elderly or**
 9 **disabled person**, if in the sole name of the *[petitioner]* **elderly or disabled person** or if jointly
 10 owned or rented by the *[petitioner]* **elderly or disabled person** and the respondent, or if the parties
 11 are married to each other;

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

14 (c) That the respondent be restrained from abusing, intimidating, molesting, interfering with or
 15 menacing the *[petitioner]* **elderly or disabled person**, or attempting to abuse, intimidate, molest,
 16 interfere with or menace the *[petitioner]* **elderly or disabled person**;

17 (d) That the respondent be restrained from entering, or attempting to enter, on any premises
 18 when it appears to the court that such restraint is necessary to prevent the respondent from abus-
 19 ing, intimidating, molesting, interfering with or menacing the *[petitioner]* **elderly or disabled**
 20 **person**;

21 (e) That the respondent be:

22 (A) Restrained, effective on a date not less than 150 days from the date of the order, from
 23 mailing the *[petitioner]* **elderly or disabled person** any sweepstakes promotion;

24 (B) Required to remove the *[petitioner]* **elderly or disabled person** from the respondent's
 25 sweepstakes promotion mailing list or place the *[petitioner]* **elderly or disabled person** on a list of
 26 persons to whom sweepstakes promotions may not be mailed; and

27 (C) Required to promptly refund any payment received in any form from the *[petitioner]* **elderly**
 28 **or disabled person** after the date the order is entered by the court; or

29 (f) Other relief that the court considers necessary to provide for the safety and welfare of the
 30 *[petitioner]* **elderly or disabled person**.

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

32 (a) The *[petitioner]* **elderly or disabled person**;

33 **(b) The guardian or guardian ad litem of the elderly or disabled person**;

34 *[(b)]* (c) Witnesses to the abuse; or

35 *[(c)]* (d) Adult protective services workers who have conducted an investigation.

36 (3) Immediate and present danger under this section includes but is not limited to situations in
 37 which the respondent has recently threatened the *[petitioner]* **elderly or disabled person** with ad-
 38 ditional abuse.

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

43 *[(4)]* (5) An instruction brochure shall be available from the clerk of the court explaining the
 44 rights set forth under ORS 124.005 to 124.040. The petition, order and related forms shall be avail-
 45 able from the clerk of the court and shall be in substantially the following form:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

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

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

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

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

ATTACH ADDITIONAL PAGES
IF NECESSARY.

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

I am a resident of _____ County, Oregon.

Respondent is a resident of _____ County, Oregon.

I am **either** 65 years of age or older[.] (I am _____ years of age) **or I am a disabled person (circle the one that describes you).**

- 1. CHECK AND FILL OUT [*THE*] 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:

1 Within the last 180 days, respondent has:

- 2 — A. Caused me physical injury by other than accidental means.
- 3 — B. Attempted to cause me physical injury by other than accidental means.
- 4 — C. Placed me in fear of immediate serious physical injury.
- 5 — D. Caused me physical harm by withholding services necessary to maintain my health and
- 6 well-being.
- 7 — E. Abandoned or deserted me by withdrawing or neglecting to perform duties and obli-
- 8 gations.
- 9 — F. Used derogatory or inappropriate names, phrases or profanity, ridicule, harassment,
- 10 coercion, threats, cursing, intimidation or inappropriate sexual comments of such a
- 11 nature as to place me in fear of significant physical or emotional harm.
- 12 — G. Sent me sweepstakes promotions, and I feel the need for the court’s assistance to
- 13 protect me from further expense. I am an elderly, disabled or incapacitated person. In
- 14 the past year, I spent more than \$500 on sweepstakes promotions that I received in the
- 15 United States mail.

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

21

22 3. Any period of time after the abuse occurred during which respondent was incarcerated (in
 23 jail or prison) or lived more than 100 miles from your home is not counted as part of the
 24 180-day period, and you may still be eligible for a restraining order.
 25 Respondent was incarcerated from _____, ____ (year),
 26 to _____, ____ (year).
 27 Respondent lived more than 100 miles from my home from _____, ____ (year), to
 28 _____, ____ (year).

29

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

32

33 Date and location of abuse:
 34 _____
 35 _____

36 How did respondent injure or threaten to injure you?
 37 _____
 38 _____
 39 _____

40

41 5. Are there incidents other than those described in question 4 above, in which respondent in-
 42 jured or threatened to injure you? If yes, explain:
 43 _____
 44 _____
 45 _____

1 6. The abuse I am complaining about was witnessed by _____ (affidavit attached).
2 Other persons with knowledge of the abuse are _____ (affidavit attached).
3

4 7. I am in immediate and present danger of further abuse by respondent because:
5 _____
6 _____
7 _____
8

9 8. In any of the above incidents:
10
11 Were drugs, alcohol or weapons involved? Yes No
12 Did you need medical help? Yes No
13 Were the police or the courts involved? Yes No
14

15 If you have circled yes to any of the above questions, explain:
16 _____
17 _____
18

19 9. A. There (is) (is not) another Elderly and Disabled Person Abuse Prevention Act or Abuse
20 Prevention Act proceeding pending between respondent and me. It is filed in
21 _____ (County), _____ (State), and I am (Petitioner) or (Respondent) in
22 that case.
23 The case number of the case is: _____
24 B. There (is) (is not) another lawsuit pending between respondent and me for divorce,
25 annulment or legal separation.
26 If yes, type of lawsuit: _____
27 It is filed in _____ (County), _____ (State).
28

29 10. Respondent may be required to move from your residence if it is in your sole name, or if it
30 is jointly owned or rented by you and respondent, or if you and respondent are married.
31 I (do) (do not) want respondent to move from my residence.
32 My residence is:
33 Owned Leased Rented
34 By: _____
35

36 PETITIONER ASKS THE COURT TO GRANT THE RELIEF INDICATED IN THE "PETITIONER'S
37 REQUEST" COLUMN OF THE PROPOSED RESTRAINING ORDER, WHICH IS ATTACHED.
38

39 _____

40
41 PETITIONER MUST NOTIFY THE COURT
42 OF ANY CHANGE OF ADDRESS.
43

44 ALL NOTICES OF HEARING WILL
45 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)
) ss.
County of _____)

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

NOTARY PUBLIC FOR OREGON
My commission expires: _____

RELEVANT DATA

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

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

GUARDIAN PETITIONER
Name _____
Address _____
Telephone # _____

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

reach you if necessary.

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

Where is respondent most likely to be located?

Residence Hours _____

Employment Hours _____

Address: _____

Employment Hours _____

Address: _____

Description of vehicle _____

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

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

Is there anything about respondent's character, past behavior or the present situation that indicates

that respondent may be a danger to self or other? Explain:

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

_____,)

Petitioner)

1 (your name)) RESTRAINING ORDER
 2) TO PREVENT ABUSE
 3 vs.)
 4) NO. _____
 5)
 6 _____,)
 7 Respondent)
 8 (person to be restrained))
 9)

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

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

18
 19 Judge's Initials

- 20 — Petitioner been abused by respondent as defined by ORS 124.005;
- 21 — The abuse of petitioner by respondent occurred within the last 180 days as provided in ORS
- 22 124.010;
- 23 — There is an immediate and present danger of further abuse to petitioner.

24
 25 IT IS HEREBY ORDERED that:

<u>Petitioner's Request</u>	<u>Judge's Initials</u>
27 [] 1. Respondent is restrained (prohibited) from intimidating,	_____
28 molesting, interfering with or menacing petitioner, or	
29 attempting to intimidate, molest, interfere with	
30 or menace petitioner.	
31 [] 2. Respondent is restrained (prohibited) from entering, or	_____
32 attempting to enter:	
33 (Include names and address unless withheld for safety reasons.)	
34 [] Petitioner's residence.	_____
35 [] Petitioner's business or place of employment.	_____
36 [] Petitioner's school.	_____
37 [] Other locations.	_____
38 [] 3. Respondent is restrained (prohibited) from:	
39 [] Contacting, or attempting to contact, petitioner by telephone.	_____
40 [] Contacting, or attempting to contact, petitioner by mail.	_____
41 [] 4. Respondent shall move from and not return to the re-	_____
42 sidence located at _____ except with a	
43 peace officer in order to remove essential personal	
44 effects of the respondent, including, but not	
45 limited to: clothing, toiletries, medications,	

- 1 social security cards, birth certificates,
- 2 identification and tools of the trade.
- 3 [] 5. A peace officer shall accompany the petitioner to the _____
- 4 parties' residence in order to remove essential personal
- 5 effects of petitioner, including, but not limited to:
- 6 clothing, toiletries, medications, social security cards,
- 7 birth certificates, identification and tools of the trade.
- 8 [] 6. Beginning on a date not less than _____
- 9 150 days from the date of this order, the
- 10 respondent shall not mail the petitioner any
- 11 further sweepstakes promotions.
- 12 [] 7. Respondent shall remove the petitioner _____
- 13 from the respondent's sweepstakes
- 14 promotion mailing list or shall place the
- 15 petitioner on the respondent's list of persons
- 16 to whom sweepstakes promotions may not be mailed.
- 17 [] 8. Respondent shall refund any payment _____
- 18 received in any form from the petitioner
- 19 after the date this order is entered by the court.
- 20 [] 9. Other relief: _____
- 21 _____
- 22 _____
- 23 [] 10. No further service is necessary because _____
- 24 respondent appeared in person before the Court.

25
26 IT IS FURTHER ORDERED that:

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

29 Other Amount (\$)

30
31 THE ABOVE PROVISIONS OF THIS RESTRAINING ORDER ARE IN EFFECT FOR
32 A PERIOD OF ONE YEAR OR UNTIL THE ORDER IS VACATED, MODIFIED OR
33 SUPERSEDED, WHICHEVER OCCURS FIRST.

34
35 DATED this _____ day of _____, 2____.

36
37 _____
38 CIRCUIT COURT JUDGE (signature)
39 _____
40 CIRCUIT COURT JUDGE (printed)

41 _____
42
43
44
45 IN THE CIRCUIT COURT OF

THE STATE OF OREGON
FOR THE COUNTY OF _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

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

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 or Disabled Person and the Petition for Restraining Order to Prevent Abuse 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

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 and
) Disabled Person 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

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

6
7 REQUEST FOR HEARING

8
9 I am the Respondent in the above-referenced action and I request a hearing to contest all or part
10 of the order as follows (mark one or more):

- 11 The order restraining me from contacting, or attempting to contact, the petitioner.
12 Other _____

13
14 I (will) (will not) be represented by an attorney at the hearing.

15
16 Notice of the time and place of the hearing can be mailed to me at the address below my signature.

17
18 Date: _____

19
20 _____
21 SIGNATURE OF RESPONDENT

22
23 _____
24 _____
25 _____
26 ADDRESS

27
28 _____
29 TELEPHONE NUMBER

30
31
32 [(5)] (6) If the court orders relief:

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

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

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

44 (A) Personally;

45 (B) By mailing certified true copies of the petition and order by certified mail to the address to

1 which the [*petitioner*] **elderly or disabled person** would have sent the payment for goods or services
 2 promoted in the sweepstakes promotion had the [*petitioner*] **elderly or disabled person** been order-
 3 ing the goods or services [*instead of serving the petition and order*]; or

4 (C) In the manner directed by the court.

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

7 [(6)] (7) If the county sheriff:

8 (a) Determines that the order and petition are incomplete, the order and petition shall be re-
 9 turned to the clerk of the court. The clerk of the court shall notify the petitioner **or guardian**
 10 **petitioner**, at the address provided by the petitioner **or guardian petitioner**, of the error or omis-
 11 sion.

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

17 [(7)(a)] (8)(a) Within 30 days after a restraining order is served **on the respondent** under this
 18 section **or within 30 days after notice is served on the elderly or disabled person under section**
 19 **7 of this 2003 Act**, the respondent **or elderly or disabled person** [*therein*] may request a court
 20 hearing upon any relief granted. The hearing request form shall be available from the clerk of the
 21 court and shall be in substantially the form provided in subsection [(4)] (5) of this section.

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

27 (c) The hearing [*shall*] **is** not [*be*] limited to the issues raised in the respondent's **or elderly or**
 28 **disabled person's** request for hearing form and may include testimony from witnesses to the abuse
 29 and adult protective services workers. The hearing may be held in person or by telephone. If the
 30 respondent **or elderly or disabled person** seeks to raise an issue at the hearing not previously
 31 raised in the request for hearing form, the petitioner **or guardian petitioner** [*shall be*] **is** entitled
 32 to a reasonable continuance for the purpose of preparing a response to the issue.

33 (d) The court shall exercise its discretion in a manner that protects the [*petitioner*] **elderly or**
 34 **disabled person** from traumatic confrontation with the respondent.

35 **SECTION 5.** ORS 124.030 is amended to read:

36 124.030. (1) Whenever a restraining order, as authorized by ORS 124.015 or 124.020, that includes
 37 a security amount and an expiration date pursuant to ORS 124.015 and 124.020 and this section, is
 38 issued and the person to be restrained has actual notice thereof, the clerk of the court or any other
 39 person serving the petition and order shall deliver forthwith to a county sheriff a true copy of the
 40 affidavit of proof of service on which it is stated that personal service of the petition and order was
 41 served on the respondent, a copy of the petition and a true copy of the order. If an order entered
 42 by the court recites that the respondent appeared in person before the court, the necessity for fur-
 43 ther service of the order is waived and an accompanying proof of service is not necessary. Upon
 44 receipt of a true copy of proof of service, when required, and a true copy of the order, the county
 45 sheriff shall forthwith enter the order into the Law Enforcement Data System maintained by the

1 Department of State Police. Entry into the Law Enforcement Data System constitutes notice to all
2 law enforcement agencies of the existence of such order. Law enforcement agencies shall establish
3 procedures adequate to ensure that an officer at the scene of an alleged violation of such order may
4 be informed of the existence and terms of such order. Such order shall be fully enforceable in any
5 county in the state. The petitioner **or guardian petitioner** may elect to deliver documents per-
6 sonally to a county sheriff or to have them delivered by a private person for entry into the Law
7 Enforcement Data System.

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

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

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

18 (4) Pending a contempt hearing for an alleged violation of a restraining order issued pursuant
19 to ORS 124.015 or 124.020, a person arrested and taken into custody pursuant to ORS 133.310 may
20 be released as provided in ORS 135.230 to 135.290. Whenever such restraining order is issued, the
21 issuing court shall set a security amount for the violation of such order.

22 **SECTION 6. Section 7 of this 2003 Act is added to and made a part of ORS 124.005 to**
23 **124.040.**

24 **SECTION 7. (1) A guardian petitioner must give notice of the petition, order and related**
25 **forms described in ORS 124.020 (5) to the elderly or disabled person named in the petition.**

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

28 **(a) The right to contact and retain counsel;**

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

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

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

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

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

36 **(4) Notice under this section must be personally served on the elderly or disabled person.**
37 **The date of personal service must be not later than 72 hours after the court issues a re-**
38 **straining order under ORS 124.020.**

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

41