

# Senate Bill 376

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## SUMMARY

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

Eliminates requirement that petitioner for post-conviction relief provide two extra copies of petition. Provides exception to requirement that petitioner attach documentary evidence supporting petition.

Provides that regular term of circuit court is January 1 to December 31 of each year. Provides exception for judicial districts that comprise more than one county.

Eliminates requirement that guardian file verified written reports. Allows guardian to instead file written reports with affidavit or declaration under penalty of perjury.

Deletes from statutes forms relating to restraining orders to prevent abuse of elderly persons and persons with disabilities and directs State Court Administrator to prescribe content and form of petition, order and related forms.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to circuit court documents; amending ORS 3.235, 124.020, 124.024, 138.560, 138.580 and  
3 419B.367; and declaring an emergency.

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

5 **SECTION 1.** ORS 138.560 is amended to read:

6 138.560. (1) A proceeding for post-conviction relief pursuant to ORS 138.510 to 138.680 shall be  
7 commenced by filing a petition [*and two copies thereof*] with the clerk of the circuit court for the  
8 county in which the petitioner is imprisoned or, if the petitioner is not imprisoned, with the clerk  
9 of the circuit court for the county in which the petitioner's conviction and sentence was rendered.  
10 Except as otherwise provided in ORS 138.590, the petitioner must pay the filing fee established un-  
11 der ORS 21.135 at the time of filing a petition under this section. If the petitioner prevails, the  
12 petitioner shall recover the fee pursuant to the Oregon Rules of Civil Procedure. The clerk of the  
13 court in which the petition is filed shall enter and file the petition and bring it promptly to the at-  
14 tention of such court. A copy of the petition need not be served by petitioner on the defendant, but,  
15 in lieu thereof, the clerk of the court in which the petition is filed shall immediately forward a copy  
16 of the petition to the Attorney General or other attorney for the defendant named in ORS 138.570.

17 (2) For the purposes of ORS 138.510 to 138.680, a person released on parole or conditional par-  
18 don shall be deemed to be imprisoned in the institution from which the person is so released.

19 (3) Except when petitioner's conviction was for a misdemeanor, the release of the petitioner  
20 from imprisonment during the pendency of proceedings instituted pursuant to ORS 138.510 to 138.680  
21 shall not cause the proceedings to become moot. Such release of petitioner shall not change the  
22 venue of the proceedings out of the circuit court in which [*they*] **the proceedings** were commenced  
23 and shall not affect the power of such court to transfer the proceedings as provided in subsection  
24 (4) of this section.

25 (4) Whenever the petitioner is imprisoned in a Department of Corrections institution and the

**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 circuit court for the county in which the petitioner is imprisoned finds that the hearing upon the  
 2 petition can be more expeditiously conducted in the county in which the petitioner was convicted  
 3 and sentenced, the circuit court upon its own motion or the motion of a party may order the  
 4 petitioner’s case to be transferred to the circuit court for the county in which petitioner’s conviction  
 5 and sentence were rendered. The court’s order is not reviewable by any court of this state.

6 (5) When a petitioner who is imprisoned in a Department of Corrections institution is trans-  
 7 ferred to another Department of Corrections institution, the circuit court in which a post-conviction  
 8 relief proceeding is pending may deny a motion for a change of venue to the county where the  
 9 petitioner is transferred. The court’s order is not reviewable by any court of this state.

10 **SECTION 2.** ORS 138.580 is amended to read:

11 138.580. The petition shall be certified by the petitioner. Facts within the personal knowledge  
 12 of the petitioner and the authenticity of all documents and exhibits included in or attached to the  
 13 petition must be sworn to affirmatively as true and correct. The Supreme Court, by rule, may pre-  
 14 scribe the form of the certification. The petition shall identify the proceedings in which petitioner  
 15 was convicted and any appellate proceedings thereon, give the date of entry of judgment and sen-  
 16 tence complained of and identify any previous post-conviction proceedings that the petitioner has  
 17 undertaken to secure a post-conviction remedy, whether under ORS 138.510 to 138.680 or otherwise,  
 18 and the disposition thereof. The petition shall set forth specifically the grounds upon which relief  
 19 is claimed[,] and shall state clearly the relief desired. All facts within the personal knowledge of the  
 20 petitioner shall be set forth separately from the other allegations of fact and shall be certified as  
 21 [heretofore] provided in this section. **Except as provided in rules adopted under ORS 1.002**, affi-  
 22 davits, records or other documentary evidence supporting the allegations of the petition shall be  
 23 attached to the petition. Argument, citations and discussion of authorities shall be omitted from the  
 24 petition but may be submitted in a separate memorandum of law.

25 **SECTION 3.** ORS 3.235 is amended to read:

26 3.235. (1) The regular terms of the circuit court in the several districts of the state shall be  
 27 **January 1 through December 31 of each year.** *[held at times designated by order of the presiding*  
 28 *circuit judge of the court. The order shall be made and entered of record each year, and may be*  
 29 *amended by making and entering of record further orders.]*

30 (2) Notwithstanding subsection (1) of this section, in districts *[which are comprised of]* **that**  
 31 **comprise** more than one county, the court *[shall]* **may** designate *[sufficient]* **by order** regular terms  
 32 in each county within the district to conduct those matters which arise from that county. *[In no*  
 33 *event shall there be less than two terms per year in each such county.]* **Terms designated under this**  
 34 **subsection may be different from the term established in subsection (1) of this section.**

35 **SECTION 4.** ORS 419B.367 is amended to read:

36 419B.367. (1) Upon granting a motion for guardianship under ORS 419B.366 or upon granting a  
 37 petition for guardianship under ORS 419B.365, the court shall issue letters of guardianship to the  
 38 guardian. As provided in ORS 419A.255, a guardian may disclose letters of guardianship when nec-  
 39 essary to fulfill the duties of a guardian. Letters of guardianship must be in substantially the fol-  
 40 lowing form:

41 \_\_\_\_\_

42  
 43 State of Oregon, )  
 44 ) LETTERS OF  
 45 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\_\_\_\_.

(Seal)

\_\_\_\_\_, 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 contain 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

1 419B.376. A guardian is not liable to third persons for acts of the ward solely by reason of being  
2 appointed guardian.

3 **SECTION 5.** ORS 124.020 is amended to read:

4 124.020. (1) When a petitioner or guardian petitioner files a petition under ORS 124.010, the  
5 circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed  
6 or on the following judicial day. Upon a showing that the elderly person or person with a disability  
7 named in the petition has been the victim of abuse committed by the respondent within 180 days  
8 preceding the filing of the petition and that there is an immediate and present danger of further  
9 abuse to the person, the court shall, if requested by the petitioner or guardian petitioner, order, for  
10 a period of one year or until the order is withdrawn or amended, whichever is sooner:

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

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

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

19 (d) That the respondent be restrained from entering, or attempting to enter, on any premises  
20 when it appears to the court that such restraint is necessary to prevent the respondent from abus-  
21 ing, intimidating, molesting, interfering with or menacing the elderly person or person with a disa-  
22 bility;

23 (e) That the respondent be:

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

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

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

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

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

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

39 (B) Requiring the respondent to return custody or control of the money or property of the per-  
40 son to the person;

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

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

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

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

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

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

9 (a) The elderly person or person with a disability;

10 (b) The guardian or guardian ad litem of the elderly person or person with a disability;

11 (c) Witnesses to the abuse; or

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

13 (4) Immediate and present danger under this section includes but is not limited to situations in  
14 which the respondent has recently threatened the elderly person or person with a disability with  
15 additional abuse.

16 (5) When a guardian petitioner files a petition on behalf of an elderly person or a person with  
17 a disability, the guardian petitioner shall provide information about the person and not about the  
18 guardian petitioner where the petition, order or related forms [*described in*] **prescribed under** sub-  
19 section (6) of this section require information about the petitioner.

20 (6) **The State Court Administrator shall prescribe the content and form of the petition,**  
21 **order and related forms for use under ORS 124.005 to 124.040. The clerk of the court shall**  
22 **make available the forms and** an instruction brochure. [*shall be available from the clerk of the*  
23 *court explaining the rights set forth under ORS 124.005 to 124.040. The petition, order and related*  
24 *forms shall be available from the clerk of the court and shall be in substantially the following form:*]

25 [ \_\_\_\_\_ ]

26  
27 *IN THE CIRCUIT COURT OF*  
28 *THE STATE OF OREGON FOR*  
29 *THE COUNTY OF \_\_\_\_\_*

30  
31 \_\_\_\_\_ ) *PETITION FOR*  
32 *Petitioner* ) *RESTRAINING ORDER*  
33 (*your name*) ) *TO PREVENT ABUSE*  
34 ) *OF ELDERLY*  
35 ) *PERSONS OR*  
36 ) *PERSONS WITH*  
37 *vs.* ) *DISABILITIES*  
38 )  
39 ) *NO.* \_\_\_\_\_  
40 \_\_\_\_\_ )  
41 *Respondent* )  
42 (*person to be* )  
43 *restrained*) )

44  
45 *YOU MUST PROVIDE COMPLETE AND TRUTHFUL INFORMATION. IF YOU DO NOT, THE*

1 COURT MAY DISMISS ANY RESTRAINING ORDER AND MAY ALSO HOLD YOU IN CON-  
2 TEMPT OF COURT.

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

6 ATTACH ADDITIONAL PAGES  
7 IF NECESSARY.

8  
9 I am the Petitioner and I state that the following information is true:

10  
11 I am a resident of \_\_\_\_\_ County, Oregon.

12  
13 Respondent is a resident of \_\_\_\_\_ County, Oregon.

14  
15 I am either 65 years of age or older (I am \_\_\_\_\_ years of age) or I am a person with a disability  
16 (CIRCLE THE ONE THAT DESCRIBES YOU).

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

- 18 — A. Respondent and I have been living together since \_\_\_\_\_, \_\_\_\_ (year).
- 19 — B. Respondent and I lived together from \_\_\_\_\_, \_\_\_\_ (year), to \_\_\_\_\_,  
20 \_\_\_\_\_ (year).
- 21 — C. I have been under the care of respondent since \_\_\_\_\_, \_\_\_\_ (year).
- 22 — D. I was under the care of respondent from \_\_\_\_\_, \_\_\_\_ (year), to \_\_\_\_\_,  
23 \_\_\_\_\_ (year).
- 24 — E. Respondent has sent me sweepstakes promotions.
- 25 — F. None of the above.

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

27 Within the last 180 days, respondent has:

- 28 — A. Caused me physical injury by other than accidental means.
- 29 — B. Attempted to cause me physical injury by other than accidental means.
- 30 — C. Placed me in fear of immediate serious physical injury.
- 31 — D. Caused me physical harm by withholding services necessary to maintain my health and  
32 well-being.
- 33 — E. Abandoned or deserted me by withdrawing or neglecting to perform duties and obli-  
34 gations.
- 35 — F. Used derogatory or inappropriate names, phrases or profanity, ridicule, harassment,  
36 coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of  
37 such a nature as to place me in fear of significant physical or emotional harm.
- 38 — G. Sent me sweepstakes promotions, and I feel the need for the court's assistance to protect  
39 me from further expense. I am an elderly person or a person with a disability. In the past  
40 year, I spent more than \$500 on sweepstakes promotions that I received in the United  
41 States mail.
- 42 — H. Wrongfully taken or appropriated my money or property, or alarmed me by conveying a  
43 threat to me that my money or property would be wrongfully taken or appropriated,  
44 which I reasonably believed would be carried out.
- 45 — I. Had nonconsensual sexual contact with me or sexual contact to which I was incapable

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*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 )

) ss.



1 County of \_\_\_\_\_ )

2

3 SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_

4

5

NOTARY PUBLIC FOR OREGON

6

My commission expires: \_\_\_\_\_

7

8

RELEVANT DATA

9

10 RESPONDENT \_\_\_\_\_

11 Sex \_\_\_\_\_ Telephone # \_\_\_\_\_

12 Residence Address \_\_\_\_\_

13 City/State/Zip \_\_\_\_\_

14 County \_\_\_\_\_

15 Birthdate \_\_\_\_\_ Age \_\_\_\_\_

16 Race \_\_\_\_\_

17 Height \_\_\_\_\_ Weight \_\_\_\_\_

18 Eye Color \_\_\_\_\_

19 Hair Color \_\_\_\_\_

20

21 PETITIONER (you) \_\_\_\_\_

GUARDIAN PETITIONER

22 Sex \_\_\_\_\_ \*Telephone # \_\_\_\_\_

Name \_\_\_\_\_

23 \*Residence Address \_\_\_\_\_

Address \_\_\_\_\_

24 City/State/Zip \_\_\_\_\_

25 County \_\_\_\_\_

Telephone # \_\_\_\_\_

26 Birthdate \_\_\_\_\_ Age \_\_\_\_\_

27 Race \_\_\_\_\_

28 Height \_\_\_\_\_ Weight \_\_\_\_\_

29 Eye Color \_\_\_\_\_

30 Hair Color \_\_\_\_\_

31

\*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.

32

33

34

35

PLEASE FILL OUT THIS INFORMATION

36

TO AID IN SERVICE OF

37

THE RESTRAINING ORDER

38

39 Where is respondent most likely to be located?

40 Residence Hours \_\_\_\_\_

41 Employment Hours \_\_\_\_\_

42 Address: \_\_\_\_\_

43 \_\_\_\_\_

44 Employment Hours \_\_\_\_\_

45 Address: \_\_\_\_\_

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*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)* ) *RESTRAINING ORDER*  
 ) *TO PREVENT ABUSE*  
 ) *OF ELDERLY PERSONS*  
*vs.* ) *OR PERSONS WITH*  
 ) *DISABILITIES*  
 )  
 ) *NO.* \_\_\_\_\_  
\_\_\_\_\_, )  
*Respondent* )  
*(person to be restrained)* )  
 )

*TO THE RESPONDENT:  
VIOLATION OF THIS RESTRAINING ORDER  
MAY RESULT IN YOUR ARREST AND IN*

CIVIL AND/OR CRIMINAL PENALTIES.  
REVIEW THIS ORDER CAREFULLY.  
EACH PROVISION MUST BE OBEYED.  
SEE YOUR RIGHTS TO A HEARING.

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

Judge's Initials

- Petitioner 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.	_____
<input type="checkbox"/> Other locations.	_____
<input type="checkbox"/> 3. Respondent is restrained (prohibited) from:	
<input type="checkbox"/> Contacting, or attempting to contact, petitioner by telephone.	_____
<input type="checkbox"/> Contacting, or attempting to contact, petitioner by mail.	_____
<input type="checkbox"/> 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.	_____
<input type="checkbox"/> 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.	_____
<input type="checkbox"/> 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.	_____
<input type="checkbox"/> 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	_____

1 persons to whom sweepstakes promotions may not be mailed.

2 [ ] 8. Respondent shall refund any payment received \_\_\_\_\_  
3 in any form from the petitioner after the date  
4 this order is entered by the court.

5 [ ] 9. Other relief: \_\_\_\_\_  
6 \_\_\_\_\_  
7 \_\_\_\_\_

8 [ ] 10. No further service is necessary because respondent \_\_\_\_\_  
9 appeared in person before the Court.

10  
11 *IT IS FURTHER ORDERED that:*

12 SECURITY AMOUNT FOR VIOLATION OF ANY PROVISION OF THIS ORDER IS  
13 \$5,000 unless otherwise specified.

14 Other Amount (\$ )

15  
16 *THE ABOVE PROVISIONS OF THIS RESTRAINING ORDER ARE IN EFFECT FOR*  
17 *A PERIOD OF ONE YEAR OR UNTIL THE ORDER IS VACATED, MODIFIED OR*  
18 *SUPERSEDED, WHICHEVER OCCURS FIRST.*

19  
20 *DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.*

21  
22 \_\_\_\_\_  
23 *CIRCUIT COURT JUDGE (signature)*

24 \_\_\_\_\_  
25 *CIRCUIT COURT JUDGE (printed)*  
26 \_\_\_\_\_

27  
28  
29 *IN THE CIRCUIT COURT OF*  
30 *THE STATE OF OREGON*  
31 *FOR THE COUNTY OF \_\_\_\_\_*

32  
33 )  
34 \_\_\_\_\_ ) NO. \_\_\_\_\_  
35 *Petitioner,* )  
36 *vs.* ) *AFFIDAVIT OF PROOF*  
37 \_\_\_\_\_ ) *OF SERVICE*  
38 *Respondent.* )  
39 )  
40 )  
41 *STATE OF* )  
42 *OREGON* )  
43 ) *ss.*  
44 *County of \_\_\_\_\_* )

45 *I am a resident of the State of Oregon. I am a competent person 18 years of age or older. I am*

1 not an attorney for or a party to this case, or an officer, director or employee of any party to this case.

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

7 \_\_\_\_\_  
8 Signature of \_\_\_\_\_

9  
10 SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_

11 \_\_\_\_\_  
12 NOTARY PUBLIC FOR OREGON  
13 My Commission Expires: \_\_\_\_\_  
14 \_\_\_\_\_

15  
16  
17 IN THE CIRCUIT COURT OF  
18 THE STATE OF OREGON  
19 FOR THE COUNTY OF \_\_\_\_\_

20  
21 \_\_\_\_\_ )  
22 \_\_\_\_\_ ) NO. \_\_\_\_\_  
23 Petitioner, )  
24 vs. ) MOTION AND ORDER  
25 \_\_\_\_\_ ) OF DISMISSAL  
26 Respondent. )  
27 \_\_\_\_\_ )

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

30 \_\_\_\_\_  
31 \_\_\_\_\_ Petitioner  
32 SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_

33 \_\_\_\_\_  
34 NOTARY PUBLIC FOR OREGON  
35 My Commission Expires: \_\_\_\_\_

36 IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_

37 \_\_\_\_\_  
38 JUDGE  
39 \_\_\_\_\_

40  
41 IN THE CIRCUIT COURT OF  
42 THE STATE OF OREGON  
43 FOR THE COUNTY OF \_\_\_\_\_

44  
45 \_\_\_\_\_ )

1 (D.O.B. \_\_\_\_\_) ) NOTICE TO RESPONDENT  
 2 Petitioner, ) (Elderly Persons and  
 3 ) Persons With Disabilities  
 4 ) Abuse Prevention Act)  
 5 )  
 6 and ) NO. \_\_\_\_\_  
 7 )  
 8 \_\_\_\_\_ )  
 9 (D.O.B. \_\_\_\_\_) )  
 10 Respondent. )

11 THIS FORM MUST BE  
 12 ATTACHED TO SERVICE COPY  
 13 OF RESTRAINING ORDER  
 14

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

19  
 20 REQUESTS FOR HEARING MUST BE MADE WITHIN 30 DAYS AFTER YOU RECEIVE THE  
 21 ORDER. YOU MUST INCLUDE YOUR ADDRESS AND TELEPHONE NUMBER WITH YOUR  
 22 REQUEST FOR A HEARING. THE HEARING WILL BE HELD WITHIN 21 DAYS. AT THE  
 23 HEARING, A JUDGE WILL DECIDE WHETHER THE ORDER SHOULD BE CANCELED OR  
 24 CHANGED. THE ONLY PURPOSE OF THIS HEARING WILL BE TO DETERMINE IF THE  
 25 TERMS OF THE COURT'S TEMPORARY ORDER SHOULD BE CANCELED, CHANGED OR  
 26 EXTENDED.

27  
 28 Keep in mind that this order remains in effect until the court that issued the order modifies or dis-  
 29 misses it. If you are arrested for violating this order, the security amount (bail) is \$5,000, unless a  
 30 different amount is ordered by the court. Violation of this order constitutes contempt of court and is  
 31 punishable by a fine of up to \$500 or one percent of your annual gross income, whichever is greater,  
 32 a jail term of up to six months, or both. Other sanctions may be imposed.

33 \_\_\_\_\_  
 34  
 35 REQUEST FOR HEARING  
 36

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

- 39  The order restraining me from contacting, or attempting to contact, the petitioner.
- 40  Other \_\_\_\_\_

41  
 42 I (will) (will not) be represented by an attorney at the hearing.

43  
 44 Notice of the time and place of the hearing can be mailed to me at the address below my signature.  
 45

1 *Date:* \_\_\_\_\_

2  
3 \_\_\_\_\_  
4 *SIGNATURE OF RESPONDENT*

5  
6 \_\_\_\_\_  
7  
8 \_\_\_\_\_  
9 *ADDRESS*

10  
11 \_\_\_\_\_  
12 *TELEPHONE NUMBER*

13 [ \_\_\_\_\_ ]

14  
15 (7) If the court orders relief:

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

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

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

27 (A) Personally;

28 (B) By mailing certified true copies of the petition and order by certified mail to the address to  
29 which the elderly person or person with a disability would have sent the payment for goods or ser-  
30 vices promoted in the sweepstakes promotion had the elderly person or person with a disability been  
31 ordering the goods or services; or

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

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

35 (8) If the county sheriff:

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

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

44 (9)(a) Within 30 days after a restraining order is served on the respondent under this section  
45 or within 30 days after notice is served on the elderly person or person with a disability under ORS

1 124.024, the respondent, elderly person or person with a disability may request a court hearing upon  
 2 any relief granted. The hearing request form shall be available from the clerk of the court [*and*  
 3 *shall be in substantially the form provided in subsection (6) of this section*] **in the form prescribed**  
 4 **by the State Court Administrator.**

5 (b) If the respondent, elderly person or person with a disability requests a hearing under para-  
 6 graph (a) of this subsection, the clerk of the court shall notify the petitioner or guardian petitioner  
 7 of the date and time of such hearing, and shall supply the petitioner or guardian petitioner with a  
 8 copy of the request for a hearing. The petitioner or guardian petitioner shall give to the clerk of the  
 9 court information sufficient to allow such notification.

10 (c) The hearing is not limited to the issues raised in the request for hearing form and may in-  
 11 clude testimony from witnesses to the abuse and adult protective services workers. The hearing may  
 12 be held in person or by telephone. If the respondent, elderly person or person with a disability seeks  
 13 to raise an issue at the hearing not previously raised in the request for hearing form, the petitioner  
 14 or guardian petitioner is entitled to a reasonable continuance for the purpose of preparing a re-  
 15 sponse to the issue.

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

18 **SECTION 6.** ORS 124.024 is amended to read:

19 124.024. (1) A guardian petitioner must give notice of the petition, order and related forms [*de-*  
 20 *scribed in*] **prescribed under** ORS 124.020 (6) to the elderly person or person with a disability named  
 21 in the petition.

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

- 24 (a) The right to contact and retain counsel;
- 25 (b) The right to have access to personal records;
- 26 (c) The right to file objections to the restraining order;
- 27 (d) The right to request a hearing to contest all or part of the restraining order; and
- 28 (e) The right to present evidence and cross-examine witnesses at any hearing.

29 (3) Notice provided under subsection (1) of this section must be similar to the notice provided  
 30 to the respondent [*under ORS 124.020 (6)*] and must contain an objection form that the elderly per-  
 31 son or person with a disability may complete and mail to the court.

32 (4) Notice under this section must be personally served on the elderly person or person with a  
 33 disability. The date of personal service must be not later than 72 hours after the court issues a re-  
 34 straining order under ORS 124.020.

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

37 **SECTION 7.** **This 2015 Act being necessary for the immediate preservation of the public**  
 38 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**  
 39 **on its passage.**