

1. What is "stalking"?

Oregon law defines "stalking" as repeated and unwanted contact which causes the victim, or a member of the victim's immediate family or household, to feel alarmed or coerced¹. The unwanted contact must happen at least two times, and includes:

- Coming into the victim's visual or physical presence
- Following the victim
- Waiting outside the victim's home, property, work or school (or that of the victim's immediate family or household)
- Sending the victim written or e-mail communications
- Speaking with the victim
- Communicating with the victim through a third person
- Committing a crime against the victim
- Communicating with someone the victim knows or deals with, with the intent of affecting that person's relationship with the victim
- Communicating with business entities with the intent of affecting the victim's rights or interests
- Damaging the victim's home, property or work
- Delivering an object to the victim's home, property or work

2. What legal options are available if I'm being stalked?

There are two options available under Oregon law: (1) contact a law enforcement officer, and/or (2) file legal papers in circuit court asking for a protective order and/or damages. In Marion County, you may contact the Marion County Sheriff's Office (503-588-5032) or city police department (in which the contact occurred). If it is an emergency, call 911.

Advice and assistance from a lawyer is highly recommended for victims who wish to file legal papers in

circuit court. There is information at the beginning of this pamphlet about how to find a lawyer.

3. What happens once the stalking is reported to law enforcement?

There are a couple of ways a stalking report can be handled. The officer may issue a stalking citation, directing the alleged stalker (called the "respondent") to appear in court. In court, the judge will determine if a stalking order should issue. In addition, the officer may arrest the respondent for the crime of stalking. The District Attorney may also file criminal charges for the crime of stalking. Once a court stalking order is issued, each violation carries the threat of criminal prosecution.

4. What happens after a stalking citation is issued?

The citation will direct the respondent to appear in court at a set time for a hearing. It will be attached to a copy of the stalking complaint, containing the information about the stalking the victim (called the "petitioner") gave to the law enforcement officer. The petitioner will also be notified of the time and place for the hearing, and will need to make an appearance at the hearing if he or she wishes to have a stalking order issued by the court.

5. What happens at the hearing?

The hearing allows both the petitioner and respondent to present their respective sides of the case. Both parties may testify, and may call other witnesses to testify.

During the hearing, the judge will consider whether petitioner meets the legal standard for issuance of a stalking order. The court must find: (1) the contact causes the victim to feel reasonable apprehension about the victim's safety or the safety of the victim's immediate family or household, (2) it is objectively reasonable for the victim to have been alarmed or coerced by the contact (a reasonable person would feel that way in the same situation), and (3) the respondent acted intentionally, knowingly or recklessly in making the unwanted contact.

Sometimes the judge will set a new date for the full hearing to allow the respondent to hire a lawyer, prepare his or her case, or because more time is needed to hear all of the issues. If the judge sets the case over to a later date, he or she may enter a temporary stalking protective order that prohibits contact, until a full hearing can be

held. There is no guarantee the judge will set the case over, so both parties should be prepared to present evidence at the first hearing.

6. What if I am afraid of seeing the respondent in court?

There is usually a deputy sheriff present at the hearing. However, if you are fearful, you may notify the court and ask to be escorted in and out of the courthouse. Also, the court may allow you to present your testimony over the telephone, but you must get permission from the court to do so before the hearing.

7. What happens if one side doesn't show up for the hearing?

If the petitioner doesn't show up at the time set for the hearing, the case will be dismissed. In other words, no stalking order will be issued and the case will be closed.

If the respondent doesn't show up, in most cases the court will issue a warrant for the respondent's arrest and enter a stalking protective order until another hearing can be held.

8. What does a stalking order do?

A stalking order is a court order that prohibits the respondent from having certain "contact" with the petitioner. The contact is specifically defined by the order, which may also include attempts to make contact. The petitioner and respondent should read the order carefully to understand what is not allowed. In certain circumstances, federal law may restrict respondent from buying, receiving and carrying firearms and ammunition. A respondent who has questions about this should consult with a lawyer.

The stalking order is considered fully effective when the respondent receives notice of the order, either in open court or because a law enforcement officer delivered a copy of the order to the respondent. After that date, if the respondent contacts petitioner in a way that violates the terms outlined in the court's order, the District Attorney may file criminal charges.

¹ "Alarmed" and "coerced" are specifically defined by Oregon law. "Alarm" means to cause apprehension or fear resulting from the perception of danger. "Coerce" means to restrain, compel or dominate by force or threat. ORS 163.730.

9. **What if the parties have children together?**

A stalking order doesn't provide who is to have custody or parenting time with the children. To get a court order addressing these issues and how exchanges of the children are to occur, different legal papers will need to be filed by one of the parents. These issues are best handled with the assistance of a lawyer, however, court forms are available through Dissolution Resource Services at the Courthouse for those who can't afford legal assistance. In addition, Marion-Polk Legal Aid Service provides some assistance to financially eligible domestic violence victims.

If the situation involves abuse, the victim may be eligible for a Family Abuse Prevention Act Order, which can provide for temporary custody and parenting time. For more information on who is eligible for such an order, contact court staff at Dissolution Resource Services.

10. **What if the stalking continues?**

If the respondent violates the terms of the order, the petitioner should report the violation to local law enforcement officials, usually a sheriff's office or city police department. The violation may result in mandatory arrest of the respondent.

Typically, a report is filled out and forwarded to the District Attorney's office for review. A deputy district attorney, and sometimes a grand jury, reviews the evidence to determine if the crime of stalking can be proved. If sufficient evidence exists, the attorney will file paperwork charging the respondent with the crime. Since it is a criminal proceeding, the respondent has the right to be represented by an attorney. Although the petitioner is not a party to the criminal case, he or she may be called to testify at grand jury or at trial. The Marion County District Attorney's office, through its Victim's Assistance program, provides support for victims during this process.

11. **What if the stalking continues outside of Marion County?**

A stalking order obtained in Marion County is enforceable throughout the State of Oregon. Once a stalking order is entered and Respondent has notice of the order, the sheriff's office enters the order into the Law Enforcement Data System maintained by the Oregon State Police. This allows law enforcement personnel throughout the state access to the information about the stalking order.

Federal law may also provide protection against violation of the order in other states. For more information about enforcement in other states, contact a private attorney or legal aid program.

12. **How long does a stalking order last?**

Unless otherwise specified in the court order, a stalking order is unlimited in duration.

13. **What happens if the respondent is convicted of stalking?**

The penalty depends on the severity of the situation, respondent's criminal history and other factors considered by the judge. If this is respondent's first conviction for stalking, or violation of a stalking order, the maximum sentence is a year in jail and a \$5,000 fine. If respondent has a prior conviction of stalking, or violation of a stalking order, the maximum sentence is five years in prison and a \$100,000 fine. If the sentence includes probation, there is usually a provision for no contact with the victim, with jail time if the respondent does not comply.

14. **What if the petitioner doesn't want the stalking order anymore?**

Although there is no specific provision in Oregon stalking law for dismissing (discontinuing) a stalking order, there's nothing to prevent a petitioner from making such a request. Whether or not the stalking order will be dismissed is up to the judge. To make a formal request to discontinue a court order, a legal "motion" is usually required. Since there are no court forms for this procedure, legal advice is recommended.

Stalking

Answers to Commonly Asked Questions

This pamphlet answers common questions about the process for obtaining a stalking order in Marion County, Oregon. It is not a complete statement of the law, and should not be substituted for legal advice from a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar Referral Service (1-800-452-7636), visit Dissolution Resource Services at the Marion County Courthouse (100 High St. NE, Salem) or, if you are low income and a victim of domestic violence, you may qualify for legal services through the Marion-Polk Legal Aid Service (503-581-5265).

Stalking victims should contact Mid-Valley Women's Crisis Service (503-399-7722) for safety planning. Victims may also contact the Marion County Circuit Court Domestic Violence Victim Access Program (503-584-7789) or the Marion County District Attorney's Victim Assistance Program (503-588-5253) for further information about stalking.

Marion County Circuit Court
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