

PACKET E1

**OBTAINING A RESTRAINING ORDER**

**ELDERLY PERSONS AND PERSONS WITH DISABILITIES  
ABUSE PREVENTION ACT**

**INSTRUCTIONS**

This packet contains forms and instructions to assist you in obtaining a Restraining Order under the Elderly Persons and Persons With Disabilities Abuse Prevention Act. The instructions are designed to give you detailed information about how to fill out the forms. **(If you need to obtain a Restraining Order to stop a person or company from mailing sweepstakes promotions, please ask the clerk for Packet E3.)**

A "Restraining Order" is an order of the court that orders the person named in the Restraining Order (the "Respondent") to stop threatening or abusing, and to stay away from you (the "Petitioner") or the elderly/disabled person you are filing on behalf of. The Restraining Order can order the Respondent to move out of or stay away from your home, job or school site. The police are required to enforce a Restraining Order. A person who violates a Restraining Order can be arrested, tried for contempt of court or any crimes committed, and if found guilty, can be fined or put in jail.

**IF YOU ARE AN ELDERLY PERSON OR A PERSON WITH DISABILITIES, AND A  
“GUARDIAN PETITIONER” FILES A PETITION ON YOUR BEHALF, YOU RETAIN THE  
RIGHT TO:**

- Contact and retain counsel;
- Have access to personal records;
- File objections to the restraining order;
- Request a hearing; and
- Present evidence and cross-examine witnesses at any hearing.

**GUARDIAN PETITIONERS**

You may also use this packet if you are a guardian or guardian ad litem for an elderly or disabled person on whose behalf you are filing for a restraining order to stop another person (the “Respondent”) from threatening or abusing the person you represent. You must be the guardian or guardian ad litem for the elderly person or disabled person for whom you are filing. If you are using the packet for this purpose, you are called a “GUARDIAN PETITIONER.”

**THROUGHOUT THE FORMS AND INSTRUCTIONS, INFORMATION IS PROVIDED FOR AND REQUESTED ABOUT THE ELDERLY OR DISABLED PERSON YOU REPRESENT. AS A GUARDIAN PETITIONER, YOU ARE TO PROVIDE INFORMATION, NOT ABOUT YOURSELF, BUT ABOUT THE ELDERLY OR DISABLED PERSON ON WHOSE BEHALF YOU ARE SEEKING A RESTRAINING ORDER. Provide information about yourself as “guardian Petitioner” only where specifically requested.**

**If you have questions about how the law works or what it means, you may need to see a lawyer. The court clerk cannot give you any legal advice.**

**You do not have to have a lawyer to use this procedure, but you have the right to have a lawyer represent or help you. If you do not know a lawyer, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free by dialing 1-800-452-7636. If you believe you cannot afford a lawyer, ask the court staff if your area has a legal service (legal aid) program that might help you.**

Not everyone is eligible for a Restraining Order under the Elderly Persons and Persons With Disabilities Abuse Prevention Act. Check the eligibility list below carefully to determine whether you are eligible to use the procedure and forms provided in this packet. If you are eligible, you may use the procedure whether or not you have left your residence or household to avoid abuse.

### **ELIGIBILITY REQUIREMENTS**

You are eligible to use this Restraining Order procedure if:

You are 65 years of age or older **AND** you are NOT a resident of a long-term care facility;

**OR**

You are a “person with disabilities.” This means that

- you have a physical or mental impairment that substantially limits one or more major life activities; or
- you have experienced an injury to the brain caused by extrinsic forces where the injury results in the loss of cognitive, psychological, social, behavioral, or physiological function for a sufficient time to affect your ability to perform the activities of daily living;

**OR**

You are a guardian or guardian ad litem for an elderly or disabled person who meets the eligibility requirements described above;

**AND**

The abuse was committed within the 180 days\* preceding the filing of the petition (\*any period of time after the abuse occurred during which the Respondent was in jail or prison or lived more than 100 miles from your home does not count as part of the 180-day time period, and you may still be eligible for a Restraining Order);

**AND**

You are in immediate and present danger of further abuse from the Respondent;

**AND**

You are a victim of one or more of the kinds of "abuse" listed below:

- physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;
- neglect that leads to physical harm through withholding of services necessary to maintain health and well-being;
- abandonment, including desertion or willful forsaking of you or the withdrawal or neglect of duties and obligations owed to you by a caregiver or other person;
- willful infliction of physical pain or injury;
- 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 you with significant physical or emotional harm;
- wrongful taking or appropriation of your money or property, or alarming you by threatening that your money or property would be wrongfully taken or appropriated, and you reasonably believed that threat would be carried out;
- sexual contact that you did not consent to, or sexual contact to which you were incapable of consenting.

**IMPORTANT**

**You CANNOT request a restraining order against a person who is your current court-appointed guardian or conservator.** If you believe you are being subjected to abuse by your court-appointed guardian or conservator, you should notify the judge in the court where the guardianship or conservatorship is pending and consult with an attorney.

**HOW DO I FILL OUT AND FILE THE PAPERWORK?**

You may either type or handwrite to fill out the forms. If you handwrite the forms, you must use a ball point, black ink pen only and you must print (no cursive) clearly. Answer each question carefully and tell the truth. **If you wish to have your residential address or telephone number withheld from Respondent, use a contact address and contact telephone number so the court and sheriff can reach you if necessary.** Do not write in the parts of the papers that say, "Judge's Initials." If available, a court facilitator or advocate may be able to help you fill out the forms. They cannot answer legal questions.

You must file the Petition in either the county where you live or the county in which the Respondent lives. **If you are a "guardian Petitioner," you must file in the county where either the elderly/disabled person you represent or the Respondent resides (lives).** If the name of the county is blank on the form, fill in the name of the county in which you are asking for a Restraining Order.

**IMPORTANT NOTE**  
***INFORMATION THAT MUST BE KEPT CONFIDENTIAL***

You must keep certain information (“confidential personal information”) out of any papers you file or submit to the court. You must instead, provide that information in a Confidential Information Form. “Confidential Personal Information” includes social security number; date of birth; former legal names; driver license numbers; and employer’s name, address, and telephone number. It also applies to information about a party or a party’s child. On the document where that protected personal information would otherwise appear, you must note that the information has been separately provided under UTCR 2.130. (UTCR refers to the Uniform Trial Court Rules that apply across the state).

Relevant Rules and Forms

**UTCR 2.130** - Confidential Personal Information in Family Law and Certain Protective Order Proceedings

[UTCR 2.130 Confidential Information Form for EPPDAPA Petitioners](#)

[UTCR 2.130 Confidential Information Form for EPPDAPA Respondents](#)

[UTCR Form 2.130.2 Notice of Filing of Confidential Information Form \(CIF\) or Amended CIF](#)

**This packet contains the following forms:**

- Petition For Restraining Order to Prevent Abuse of Elderly Person or Person with Disabilities
- Restraining Order to Prevent Abuse
- Declaration of Proof of Service
- Notice to Respondent/Request for Hearing
- Notice to Elderly Person or Person With Disabilities/Objections and Request for Hearing
- Petitioner’s/Guardian Petitioner’s Motion and Declaration, and Order of Dismissal
- Order After Hearing

If you are filing the petition on your own behalf, write your name in the space on the left. (You are the "Petitioner.") **If you are filing as a “Guardian Petitioner,” you should put the name of the elderly or disabled person you are filing on behalf of and check the box for “Guardian Petitioner,” then write your name on the blank line provided.**

Write in the name of the Respondent (the person who has abused (hurt) or threatened you) and whom you want the court to order to stay away from you. Leave the "No. \_\_\_\_\_" space blank until the court clerk gives you a case number. Indicate whether you are the Petitioner or the Guardian Petitioner. If you are the Petitioner, write in the name of the county and state in which you live. If you are the Guardian Petitioner, write in the name of the person you are filing on behalf of and the name of the county and state in which that person lives. Check the box to indicate whether you are the guardian or guardian ad litem of the elderly/disabled person you are filing on behalf of.

**WHAT HAPPENS ONCE I’VE FILLED OUT THE PAPERWORK?**

After you complete the forms as directed in these instructions, you should present them to the court clerk. There is no fee for filing papers under the Elderly Persons and Persons With Disabilities Abuse Prevention Act.

## **WILL THERE BE A HEARING?**

After filing, a hearing is scheduled. The court is required to hold an “*ex parte*” (one side only) hearing on the day the papers are filed or on the next day that the court is open for business. The hearing may be done in person or, in some courts, by telephone. There is no hearing fee.

If the judge decides that you are eligible for a Restraining Order and are in immediate danger of further abuse, the judge must issue a Restraining Order. What protection the judge includes in the Restraining Order depends on what you ask for in the Restraining Order and the information the judge receives at the hearing.

Once the judge signs the Restraining Order, it is in effect for one year unless it is ended earlier by the court at your request or unless the court renews it at your request. To renew the order, you must file the proper paperwork that can be obtained from the court.

## **WHO DO I SERVE WITH THE RESTRAINING ORDER AND HOW DO I SERVE THEM?**

A copy of the Restraining Order must be "served on" (delivered to) the person who has abused you. That person is called the "Respondent." The order must be given to the Respondent in person by the sheriff or other person who is qualified to serve legal papers unless the court finds that further service is unnecessary because the Respondent appeared in person before the court and received the papers. There is no service fee when the sheriff's office serves the order. If you arrange to have a private process server serve the papers, you will need to pay any fees to that person.

### **GUARDIAN PETITIONERS**

A copy of the Restraining Order, Petition, and all related forms must also be given to (“served on”) the elderly or disabled person for whom you are guardian ***within 72 hours after the court issues a restraining order***. The papers must be given to the elderly or disabled person “in person” by the sheriff or another person who is qualified to serve legal papers. ***You cannot serve the papers on the elderly or disabled person yourself***. The elderly or disabled person must also be served with a NOTICE containing a statement of their rights, together with an objection form that the elderly or disabled person may complete and mail to the court to request a hearing.

## **WHAT HAPPENS IF THE RESPONDENT OR ELDERLY/DISABLED PERSON REQUESTS A HEARING?**

Within 30 days after receiving the Restraining Order, the Respondent or elderly/disabled person has the right to ask for a hearing. If such a request is made, the court must hold a hearing within 21 days following the request. If the Respondent or elderly/disabled person is represented by an attorney, the time for the hearing may be extended for up to five days to provide the other parties with time to seek legal representation. The judge may change or cancel the Restraining Order based on the information the judge receives at the second hearing.

The Respondent may request a hearing by filling out the "Respondent's Request For Hearing" portion of the “Notice To Respondent/Request for Hearing” form, and filing that form with the court clerk.

The elderly or disabled person may request a hearing by filling out the “Request For Hearing” portion of the “Notice to Elderly Person or Person With Disabilities/Objections and Request for Hearing” form, and personally filing or mailing that form to the court.

### **WHAT CAN I DO IF THE RESPONDENT DOES NOT OBEY THE RESTRAINING ORDER?**

The Respondent can be arrested for violating the Restraining Order. The order will state the amount of security ("bail") to be posted if the Respondent is arrested for violating the order. The Respondent will be released if s/he is able to post 10 percent of this bail amount, but will still have to appear for trial. Violating a Restraining Order is contempt of court and is punishable by a fine of up to \$500 or 1 percent of Respondent's annual gross income, whichever is greater, a jail term of up to six months, or both. Other punishments may be ordered.

There are also other things you may do to stay safe. When you receive this packet or when you file your papers with the court, you should receive information provided by the Seniors and People with Disabilities division of the Department of Human Services about the local adult protective services, domestic violence shelters, and local legal services available in your area. If you do not receive this information, ask the court clerk for a copy.

### **WHAT IF I NEED AN ACCOMMODATION OR AN INTERPRETER?**

If you have a disability and need an accommodation, or you are unable to speak English and need a foreign language interpreter, you must tell the court as soon as possible, but at least four days before your hearing. Tell the clerk what specific disability you have and what type of assistance you need or prefer, or which language you speak.